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The manuscript should be in 1.5 single spacing and justified, with the margin of 2.5cm.

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## **Important Notes**

The first six articles of this Special Issue were contributed by the Group of Researchers of professional bodies such as architects, planners, surveyors and others. Therefore, their writings differed from the normal social sciences literature. The rest of the articles were contributed by those who are specialized in Islamic Social Sciences area.

## Legal and Human Rights Protection to Non Permanent Teachers at the Private School in Accordance with the Indonesian Law on Teacher and Lecture Law 2005

Yuli Rakhmawati Ramdhani\*

Heru Susetyo\*\*

### Abstract

Human Rights is a right given by God directly to human as basic rights. Therefore, there is no power in the world that can remove it. Humanity has it not because it is given by society or based on positive law, but based on its dignity as a human being. One of the kinds of human rights that we know is a right to get an education. Education is part of Human Rights which must be owned by every citizen. Rights for education in the International context are listed in Article 13 International Covenant on Economic, Social, and Cultural Rights. Education includes various elements, both economic, social, and cultural rights and civil and political rights. In carrying out the educational process, there are many variables that should be fulfilled, there is curriculum, facilities and also quality of Teacher. The competency and ability of teacher is key to get a good education. According to the staffing system, Teacher is divided into two parts, namely the Teacher who is included in the category of state civil apparatus paid by the state and Non permanent Teachers who are paid by the Foundation in carrying out their work. This article discusses the problems faced by Non permanent Teachers, made by using the legal literature study method with a legislative review approach, case approach, concept approach and comparative approach.

**Keyword:** Protection, Human Rights, Non-permanent Teacher, Non Certification, Lecture Law

### Introduction

Constitution Number 39 Year 1999 states Human Rights is an instrument of right adhered to human as God's creature and His Blessing which must be respected, upheld and protected by State, Law, Government and every people for respect as well as the protection of Human Rights. Human Rights is a right given by God directly to human as basic rights. Therefore, there is no power in the world that can remove it. This human rights is fundamental for human life. One of the kinds of human rights that we know is a right to get an education.<sup>1</sup>

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<sup>1</sup> Indonesia, Law Number 39 Year 1999 About *Human Right*, Article 1.

Human Rights is a right given by God directly to human as basic rights. Therefore, there is no power in the world that can remove it. Humanity has it not because it is given by society or based on positive law, but based on its dignity as a human being.<sup>1</sup> One of the kinds of human rights that we know is a right to get an education. Rights for education itself is human rights and a certain means needed to realize other rights.<sup>2</sup>

Education is part of Human Rights which must be owned by every citizen. Rights for education in the International context are listed in Article 13 International Covenant on Economic, Social, and Cultural Rights. Education includes various elements, both economic, social, and cultural rights and civil and political rights.

Education in Indonesia plays an important role in the framework of educating nation life. This is in accordance with the Opening of the Constitution of the Republic of Indonesia 1945 The fourth alinea, namely: protecting the entire Indonesian nation and all spilling blood of Indonesia, advancing public welfare, educating the life of the nation and participating to carry out world order based on freedom, eternal peace and social justice.

In Indonesia, that rights is owned by every citizen and this is guaranteed by the 1945 Constitution. The sound of Article 31 of the 1945 Constitution states "Every citizen has the right to education", according to that law, Government has the legal responsibilities in the implementation of national education system to carry out the mandate set out in Section 31 of the Constitution of the Republic of Indonesia 1945 related to the intellectual life of the nation. Education given to citizens must be as early as possible, because the context of education itself is an effort to humanize humans.

According to that explanation, every Indonesian citizen is protected and guaranteed by the government through Republic of Indonesia's 1945 Constitution in obtaining the formulated human rights in article 28C paragraph (1) every person has right to develop themselves by meeting needs basically, has right to get education and benefit from science and technology, art and culture, in order to improve the quality of life and for the welfare of the human; Article 28D Paragraph (3) Every person has right to get the same opportunity in government (1945 Constitution of the Republic of Indonesia). Educational Matters are regulated in Article 31 of

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<sup>1</sup> Donnely Jack, *Universal Human Rights In Theory and Practice*, (London :Cornell University Press, Ithaca and London, 1989), P. 70.

<sup>2</sup> Universal Declaration Of Human Rights, *General Comment Of Economic Social and Culture Convention*, 1999, Article 13.

the Basic Law.Educational Matters are regulated in Article 31 of the Republic of Indonesia Constitution Indonesia 1945 which states;

1. Every citizen has the right in education.
2. Every citizen is obliged to attend basic education and the government is obliged to finance it.
3. The Government undertakes and organizes a national education system by improving character of student in order to educate the life of the nation regulated by law.
4. The state prioritizes the education budget of at least twenty percent of budget for state revenues and expenditures as well as regional income and expenditure budgets to meet the needs of implementing national education.
5. The government promotes science and technology by upholding values religion and national unity for the advancement of civilization and the welfare of citizen.

National Education Law Number 20 of 2003 concerning the Education System National is then abbreviated (National Sidik Law No. 20 Th. 2003). National Education functions develop capabilities and shape the character and dignity of a dignified nation in order to educate the nation's life. It aims to develop potential participants students to be human beings who believe and fear God Almighty, good attitude, healthiness, have a capability on knowledge, creative independent character and a responsible democratic citizen (Law of the Republic of Indonesia Number 20 of 2003 concerning the National Education System).

For get a good education, there are many variables should have, one of them is Teacher, according to Law No. 14 of 2005 concerning Teachers and Lecturers (Article 1), it is stated that:

"Teachers are professional educators with the main task of educating, teaching, guiding, directing, training, evaluating and evaluating students in the formal education pathway, at the education level. basic and secondary education ".

From that statment, describe teacher is proffessional job and also a profession that shoul have a competence.Competence means the ability to realize something in accordance with the tasks assigned to someone. Competency is also related to the standards in which a person is said to be competent in his field if his knowledge, skills, and attitudes and

results are in accordance with standards (sizes) that are determined and/or recognized by his institution / government.<sup>1</sup>

In teaching, there are two main skills which must be mastered by a teacher, namely:

1. Mastering teaching materials,
2. Mastering methodology.

Teaching skills belong important aspect, this skill also named as basic skill in teaching and must be owned and mastered by every teacher when they are teaching, because teaching is not only a process to deliver knowledge, but also it includes many aspect, such as: improve attitude of student, manage their emotion, making a good habit, and become a role model to transfer knowledge for their own future.<sup>2</sup>

Teaching skills with several skills or basic skills with several abilities or basic skills which are closed must be owned and actualized by every teacher in conducting their tasks, teachers skills can be developed and guided in teacher profession guidance and development, according to development on carier and knowledge to increase teacher's competency and performance in order to conduct learning and education process in class and outside class. Efforts to improve competency by teachers should be accompanied by efforts to improve legal protection and human rights for teachers.

Teaching skills with a number of fundamental abilities or skills with some basic or inherent skills or skills must be possessed and actualized by each teacher in carrying out their duties. Teachers' teaching skills also have skills, strengthening skills, variations in skills, skills in explaining, skills for opening and closing lessons, skills in leading small group discussions, skills in managing teaching small groups and individuals. Various competencies that must be possessed by teachers are part of professional work such as other professions in the world, so that welfare and guarantee of human rights, of course, must be same with other professional professions.

In education system in our country the teaching profession is divided into two types, namely Teachers who are State Civil Apparatus Teachers and Private Non Permanent Teachers.

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<sup>1</sup> Mulyasa E. *Teacher competency standards and certification*, (Bandung: PT. Rosda Karya, 2007), p. 28.

<sup>2</sup> Hernowo. *Being a teacher who wants who can teach in a fun way*, (Bandung: MLC, 2005), p. 5.

Teachers who are ASN teach in Public Schools, while Private Non Permanent Teachers teach in private schools. Teachers of private honors are divided into two, namely certified teachers and non-certified teachers. Non Permanent Teacher problems are still a public concern. The large number of Non Permanent Teachers automatically creates new unresolved issues. The problems that arise are not only limited to the minimum wages of Non Permanent Teachers that is low which ultimately has implications for the quality of education, but also the problem about the guranty of theirfuture and health guaranty. The existence of Non Permanent Teachers who initially became a counterweight to the inadequate needs of teachers must of course find the right solution in overcoming them.

This research will be conducted with a qualitative analysis method by analizing primary sources and secondary sources that have been obtained during the study. This research is normative juridical research. The data sources that will be used in secondary data in the form of literature study result. The legal material examined is primary legal material, namely Labour law and Law No. 20 Th. 2003 concerning National Education System. In addition to secondary data, this will also be supported by data from interview with resources persons

This study will apply the analytical method using secondary data, namely library research. However, to support data originating from secondary sources such as book, article megazine, and journal. Primary sources are also used, namely interview with resources person. In collecting data, primary legal sources and secondary legal sources are used. The primary legal material, namely Law No. 14 of 2005 concerning Teachers and Lecturers .

### **Legal Protection of Law and Human Right for Non-Permanent Teachear on Private School**

Legal protection is providing protection for human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by the law or in other words legal protection is a variety of legal efforts that must be given by law enforcement officials to provide a sense of security, both mental and physical from disturbances.<sup>1</sup>

The definition of legal protection also a protection given to legal subjects in the form of legal instruments both preventive and repressive,

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<sup>1</sup> Rahardjo Satjipto, *Legal Studies* (Bandung: PT. Citra Aditya Bakti, 2014), p. 74.

both written and unwritten. In other words, legal protection is a description of the function of law, to provide a justice, order, and peace among the world.<sup>1</sup>

According to CT. Kansil Legal protection is the narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of human law, they have the right and obligation to take legal action.<sup>2</sup>

Non Permanent Teacher in private school as a same like another profession also have a right to get a legal protection, they carrying out educational activities is one component that determines the quality or not of education included in it, Non Permanent Teachers at private schools. In carrying out their duties status Non Permanent Teachers as non-civil servant teachers receive compensation payments based on the institution's policy or foundation policy. In some schools compensation by the foundation is only the basic salary, the rest they provide salary only for the hourly free.

Non Permanent Teachers are non-permanent teachers who have not been at least as candidates for civil servants and are on salary per class hour. In some cases, they are paid on a voluntary basis and even below the minimum salary that has been officially determined. In general, they are voluntarily taken by the Foundation in private schools, even some of them belong to teachers who are not permanent employee of the foundations, so many of teacher don't have a legal and human rights protection when they are doing responsibility.

There are a related relationship between salary and also performance of Teacher. Performance is the level of success of a person in carrying out their duties in accordance with their responsibilities and authority based on the standard of performance that has been set during a certain period in order to achieve organizational goals. Teacher performance in schools has an important role in achieving school goals. Performance issues are under the spotlight of various efforts made to achieve good performance.

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<sup>1</sup> Rahayu, 2009, "People Transportation, *etd.eprints.ums.ac.id. Republic of Indonesia Government Regulation, Number 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations*", Republic of Indonesia Law Number 23 of (2004) concerning the Elimination of Domestic Violence, Article 1.

<sup>2</sup> Kansil, CST, *Introduction to Indonesian Law and Legal Studies*, (Jakarta: Balai Pustaka, 1989), p. 40.

The government's attention to education has been socialized, and the education budget mandated by the Law of 20% has been implemented. Therefore the teacher's performance will certainly be of concern to all parties. Teachers must be truly competent in their fields and teachers must also be able to serve optimally.

Teacher performance is an important factor in determining tasks and responsibilities as educators. With the existence of high performance, the teacher concerned will strive to carry out their duties and obligations optimally and work hard, trying to overcome all obstacles and carry out their duties as well as possible. Conversely, if the teacher's performance is low, the specific learning goals and goals of education will generally be difficult to realize it.

Teacher performance does not materialize, but it is influenced by certain factors, both internal and external factors have an impact on teacher performance. Internal factors of teacher performance are factors that come from the teacher that can affect their performance, for example abilities, skills, personality, perception, motivation, field experience. These internal factors can basically be engineered through pre-service training and in-service training. The pre-service training method can be done by selecting prospective teachers strictly, organizing a quality teacher education process and channeling graduates in accordance with their fields. While in the in-service training the only way to do this is to organize quality training on an ongoing basis.

### **External Factors That Affected Teachers Performance**

One of the factors that influence teacher performance is salary. Every person who gets a high salary, his life will prosper. People will work enthusiastically if their work is able to improve their lives. On the contrary, people who are not prosperous or lack will work without passion. How is it possible for a teacher to work professionally when leaving home already confused with household needs. Salary is one form of compensation for work performance provided by the employer to workers.

According to Constitution of Employment, On Chapter 1 General Provision, Article 1 verse (2) states that Labor is every person who can do job in order to produce thing and/or service, either to complete own needs or to complete people's needs. Furthermore, on verse 10 in constitution, states that: "Work competency is work skill of every individual which includes knowledge, skills, and work attitude aspect which is similar to appointed standard"

According to the law above, therefore teacher can be defined as a part of labor, since on the time he/she works, he/she produces service in the form of teaching to students professionally, more than that, according to the listed in verse 10, in which every labor is person who has competency, that is ability to work, teacher has completed those elements above.

According to the similar Constitution, discussion about labor wages, furthermore, is regulated in Chapter Two (Payment) On article 88 verse 4 which states that: Government determines minimum wage as defined in verse (3) letter a based on decent life and by concerning productivity and economic growth. If it refers to the regulation above, wages compensation for a teacher is very possible to refer to law above, since teacher is a part of labor. Then, how compensation of wages payment for a teacher in Sukabumi Regency.

Regional minimum wages are the minimum standards used by business actors in providing wages to their employees in the business environment. Whereas the minimum wage or city or regency minimum wage is the minimum wage that applies to the city or regency area where this wage must be greater than the provincial minimum wage. Regional minimum wages is carried out by the Governor and the determination is carried out once a year. The provincial minimum wage or minimum wage is the minimum wage in one province. This minimum wage applies to all cities and districts in the province. The determination is carried out by the Governor and based on recommendations from the Provincial Wages Board.

Regional minimum province is also stipulated once a year like . Minimum wages are made so that there is equitable distribution of income and the results of development can also be enjoyed by most people. The minimum wage also becomes a legal certainty and protection of the rights held. Regional Minimum Wages Sukabumi Regency 2019 is as much as Rp. 2.791.015, however, wages for a Non Permanent Teacher at private school is between Rp. 500.000,00 and Rp. 1.000.000,00. It is based on how many hours of the teacher teach. Based on Law on the National Education system, that is Law No. 14 of 2003 about the compensation of performace teacher the article 15 states that:

Income above the minimum life necessities as referred to in Article 14 paragraph (1) letter a includes basic salary, benefits attached to salaries, and other income in the form of professional allowances, functional allowances, special benefits, and additional

benefits related to his duties as the teacher is determined by the principle of appreciation on the basis of achievement.

Teachers appointed by educational units organized by the Government or regional governments are given salaries according to the laws and regulation) Teachers appointed by educational units organized by the community are paid a salary based on a work agreement or collective labor agreement. Teachers appointed by educational units organized by the community are paid a salary based on a work agreement or collective labor agreement.

In this third part, there is a lot of abuse by the foundation which is the owner of a private school, because salary payments are often unilaterally determined not based on mutual agreement, and the teacher cannot speak much, because many of them need work so they are forced to participate the rules of the foundation.

Compensation performance is not only the matters for Non Permanent Teacher in private schools also do not have a guarantee of pension, because there are no legal rules governing this matter. in some cases, we even found that Non Permanent Teachers also did not have health insurance, even though this should be the responsibility of the school that hired them. Based on interview that have been held with Teacher at Sukabumi, that mostly they are paid not based on district regional minimum wage standards. The payroll system in the private Non Permanent Teacher specified is divided into two types.

The first type where, private schools apply a payroll system with the term "life hours", the life time means that each teacher on a salary based on the number of hours he teaches can be multiplied by the number of attendances of each teacher. The second type is what is called "dead hours", which means dead hours is a system of payroll for teachers, based on the number of hours they teach in just one week, while the other three weeks in the period of each month are valued as loyalty to the foundation .

This is the cause of problems in the field, because often they are only in salaries in the range of 300-500 per month, very far away from the wage criteria minimum in Sukabumi district. The next question asked to them is whether they have a guarantee of old age as it is owned by the state civil apparatus teacher, the answer is no guaranteed old age is something that is of great value to the teacher, because with the guarantee of old age, they will be increasingly motivated to provide the best performance in the world of education. The difference between ASN teachers and private Non Permanent Teachers was felt as a form of

injustice, because even in the reality the responsibility what was done by ASN teachers and private Non Permanent Teachers was the same.

In addition to the things mentioned above, the third deviation based on the interview conducted was the absence of health insurance provided by the private Non Permanent Teacher. Only a small number of private Non Permanent Teachers are facilitated to get health insurance cards, most of them are not facilitated. In reality, Indonesian government actually anticipates the gap between ASN teachers and Non Permanent Teachers, namely with teacher certification, but the process of obtaining teacher certification is not an easy way to do.

Teacher certification is an effort to improve teacher quality coupled with improving teacher welfare, so that it is expected to improve the quality of learning and the quality of education in Indonesia on an ongoing basis. The form of increasing teacher welfare is in the form of one-time professional allowance for basic salary for teachers who already have an educator certificate.

The need for an educator certificate for teachers and lecturers, not only to fulfill the requirements of a profession that requires minimum qualifications and certification, is also intended for teachers and lecturers to be given professional allowances by the State. Professional allowances are needed as an absolute requirement for a profession so that professionals can live decent and adequate lives, especially until now teachers and lecturers are still classified as low-income groups who must be helped to improve welfare through law.

Based on these interests, then in the Teacher and Lecturer Law explicitly formulated in article 16, that the government provides teacher professional allowances appointed by the government and educational units organized by the community that have an educator certificate equal to one time the basic salary raised by the government at the same level of employment and qualifications. This professional allowance is allocated in the APBN and APBD. The same substance for lecturers is regulated in article 53 of the Law on teachers and lecturers. Thus, discrimination between teachers and lecturers with the status of civil servants and non-civil servants will not occur again.

Educator certification for teachers is regulated in article 11 paragraph (2) and (3) of the Teachers and Lecturers Act which states that educator certificates are held by universities that have accredited education staff procurement programs established by the government and implemented transparently, objectively and accountably. Everyone who has an educator's certificate has the same opportunity to be

appointed as a teacher in a particular education unit (Article 12 Law Teacher and Lecture).

In order for educator certificates obtained by teachers who are civil servants and noncivil servants without many obstacles, the government and regional governments are required to provide a budget, including to improve academic qualifications (Article 13 paragraph 1 of the teacher and lecturer laws).

In addition to professional allowances, teachers who have an educator certificate, and those who have not been certified will be provided by the Statefunctional allowance or similar benefits to teachers, both those who are civil servants and non-civil servants. This allowance is allocated in the APBN and / or APBD, so that there is no doubt that this allowance will not be carried out by the government (article 17 of the teacher and lecturer law).

The Teachers and Lecturers Act mandates that educators and professional workers have the right to obtain professional rights and obligations. Thus, educators are expected to serve totally in their profession and be able to live properly from the profession. In the Teacher and Lecturer Law it is determined that:

“An educator must have academic qualifications, competence of educators as learning agents, educator certificates, physically and mentally healthy and have the ability to realize national education goals (Article 8)”

Academic qualifications are obtained through undergraduate college programs (S1) or four diploma programs (D-IV) that are in accordance with their duties as teachers (article 9) and S-2 for lecturers (Article 46). The Teacher should be work at list 10 years as a teacher. Every fund that using for the fund of certification prossess should pay by themselves.

The program that have been formulated for non permanent teacher to protect their protection law and also human right by certification is a long journey, In fact this program also not effective to solve the problem of non permanent teacher. Certification for teacher unefective because requirment of required every years become difficult, meanwhile in reality non permanent teacher also become many more every years.

## **Conclusions**

Protection and Human Right Teacher certification are not accomodated, many of them, pay under minimum regional payment.Salary that pay for them is depend on the solution from the Foundation at private school, they also don't have healty insurance and guarantee for their future.

A Government have been making the solution for this problem, there is making a certification as recognition for the competency of Teacher, which can make impact to increase welfare for them. But, this solution is also have a weekness. The government making limitation to make all the Teacher have a certification, because of funding reason, According to data at 2019, Departement of Education and Culture have announced that 837.535 teachers do not have certificate<sup>1</sup> This huge number made because many terms must be completed to get the certification. The guaranties for them on the future and healtyness insurances also have aweakness.

According to the research, the solution which can be made for non permanent Teacher is making a new rule specially for them. As we know, only several teacher can get certification. Most of them, the protection and regarding of human right depend on the foundation that hire them. Therefore, to make foundation obey the rule is giving the protection, giving the minimum salary based on their regulation about minimum wages in their districts. It is a must to make it immediately.

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<sup>1</sup> www.datakemendikbud.go.id Wednesday, *Total Certification Teacher in Indonesia*, July 10 2019, accessed on July 8, 2019.

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