

Legal Protection of Teaching Staff in Light of The Maqasid Al-Shari'ah as outlined in Law Number 14 of 2005 concerning Teachers and Lecturers

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Abstract: This study examines the legal protection of teaching staff in light of the maqasid al-Shari'ah (objectives of Islamic law) as outlined in Law Number 14 of 2005 concerning Teachers and Lecturers. This research approach implements a qualitative approach with a normative juridical design. Data were obtained through primary sources, including laws on education and books on maqasid al-Shari'ah. The data collection technique of a literature study is a systematic process of gathering information from written sources. The results show that Law Number 14 of 2005, Articles 39 and 41, emphasize the obligation of the government, regional governments, communities, professional organizations, and educational institutions to protect teachers from violence, intimidation, threats, or unfair treatment. The purpose of Sharia lies in the principle of Hifz al-Nafs, which includes guaranteeing physical and psychological safety from acts of violence, abuse, or criminalization while carrying out teaching duties. This aligns with the human rights principles recognized in Islam to honor teachers.

Keywords: legal protection, educators, maqasid al-Shari'ah, law.

Abstrak: Penelitian ini membahas perlindungan hukum tenaga pengajar tinjauan maqasid al-syari'ah atas Undang-Undang Nomor 14 Tahun 2005 tentang Guru dan Dosen. Pendekatan penelitian ini mengimplementasikan kualitatif dengan desain yuridis normatif. Data diperoleh melalui sumber primer undang-undang dalam pendidikan dan kitab-kitab maqasid asyariah. Teknik pengumpulan data studi literatur adalah proses sistematis mengumpulkan informasi dari sumber tertulis. Hasil penelitian menunjukkan, UU Nomor 14 Tahun 2005 Pasal 39 dan 41 menegaskan kewajiban pemerintah, pemerintah daerah, masyarakat, organisasi profesi, dan satuan pendidikan untuk melindungi guru dari kekerasan, intimidasi, ancaman, atau perlakuan tidak adil. Sedangkan tujuan Syariah terletak pada prinsip Hifz al-Nafs mencakup jaminan keselamatan fisik dan psikologis dari tindakan kekerasan, penganiayaan, atau kriminalisasi saat menjalankan tugas mengajar. Ini sejalan dengan prinsip HAM yang diakui dalam Islam untuk memuliakan guru.

Kata Kunci: perlindungan hukum, tenaga pengajar, maqasid al-syari'ah , undang-undang

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Introduction

The development of modern criminal law demonstrates an expansive tendency through the expansion of criminalization of various forms of social behavior previously resolved through non-penal mechanisms. This phenomenon, known as criminalization, is often associated with the strengthening of penal populism and public demands for a harsh legal response to every social conflict (Hamzani et al., 2022). Consequently, criminal law has shifted from the principle of *ultimum remedium* to become the primary instrument of social control, without always considering proportionality, social context, and the long-term impact on certain groups (Kholiq, 2022).

In the context of education in Indonesia, this tendency has had a significant impact on the teaching profession, which is increasingly vulnerable to criminalization. Teachers often find themselves in a dilemma between exercising their pedagogical authority and the risk of violating the law, particularly due to the often formalistic interpretation of the Child Protection Law (Laoli & Lase, 2023).

Disciplinary actions or educational interactions that should be part of the educational process are often processed as criminal offenses. Supreme Court Decision Law Number 14 of 2005 highlights this problem, as criminalizing teachers raises serious questions about the fairness, proportionality, and protection of the teaching profession within the national legal system (Esmaeili, 2021). Theoretically, the study of overcriminalization has long been developed in criminal law literature, including by Sanford H. Kadish, who criticized the expansion of criminal law that ignores the moral principle of blameworthiness (Berman, 2023).

Meanwhile, research on educational law in Indonesia generally focuses on the legal protection of teachers or the normative conflict between educators' authority and positive law, without a comprehensive ethical-normative framework (Wulandari, 2020). On the other hand, the study of *maqasid al-shari'ah* (the principle of the law of the law) is more widely applied in the fields of family law, Islamic economics, and Islamic civil law, and is relatively rarely used as a critical analysis tool for criminal law practices, particularly in the educational context (Wulandari, 2020).

In carrying out their professional duties, Islamic boarding school teachers are not only obligated to improve their professionalism continuously but also face increasingly complex challenges alongside changing societal perspectives, which are consciously

influenced by the doctrine of legal protection for children, including students. However, legal protection for Islamic boarding school teachers must also be considered. Article 39, paragraph (1) of the Teachers and Lecturers law states that “the government, regional government, community, professional organizations, and/or educational units are obliged to protect teachers in carrying out their duties (Sulaiman, 2023).

Furthermore, article (2) states that “protection as referred to in paragraph (1) includes legal protection, professional protection, and occupational safety and health protection.” Legal protection includes protection against acts of violence, threats, intimidation, discriminatory treatment, or unfair treatment from students, parents of students, the community, the bureaucracy, or other parties (Wukir, 2022). Professional protection includes protection against termination of employment that is not in accordance with statutory regulations, the provision of unreasonable remuneration, restrictions on expressing opinions, professional harassment, other restrictions/prohibitions that could hinder teachers in carrying out their duties, and obstacles to further study.

Protection is all efforts aimed at providing a sense of security to victims carried out by family members, advocates, social institutions, the police, the prosecutor’s office, the courts, or other parties, whether temporarily or based on a court order. Protection is the most important aspect of human life in carrying out daily activities. It is said to be the most important aspect because protection provides a guarantee for safety, health, and security in human life (Fathin, 2022).

Article 28D of the 1945 Constitution states that “Everyone has the right to 'Recognition, guarantee, protection, and legal certainty that are fair and equal before the law.” This affirms that everyone has the right to recognition, meaning recognition by the state, guarantees and protection from the state itself, and equal treatment before the law (Hidayati & Quddus, 2022). Education is a human innate right that must be fulfilled, encompassing both material and spiritual aspects, both scientific and moral, and both worldly and spiritual.

Given these conditions, there is a gap in studies that integrate the analysis of the overcriminalization of teachers with the *maqasid al-syari'ah* approach. Existing studies have addressed teacher protection (maqasid) separately. This article fills this gap by

integrating maqasid al-syari'ah as a normative framework for assessing the practice of overcriminalization in criminal law enforcement against teachers, specifically through an analysis of outlined in Law Number 14 of 2005 concerning Teachers and Lecturers. This approach is expected to offer an alternative perspective that is more just, contextual, and oriented toward the welfare of the development of criminal law in education in Indonesia.

Research Method

This research is normative legal research aimed at examining and evaluating the practice of criminal law enforcement against the teaching profession from the perspective of overcriminalization and maqasid al-shari'ah (Ghanad, 2023). The normative approach was chosen because the research focuses on the analysis of legal norms, court decisions, and legal concepts, rather than the empirical behavior of legal subjects (Creswell, 2023).

The data sources for this study are literature relevant to the research topic, both secondary and primary. The primary sources include books, scientific journals, undergraduate theses, dissertations, research reports, historical documents, encyclopedias, and newspapers (Clarke, 2022). Data were obtained through reviewing, reading, and analyzing various library materials. Literature study data collection techniques are a systematic process of gathering information from written sources (books, journals, reports) by searching (using keywords and search engines), reading, recording/documenting, editing (checking for completeness), organizing (grouping data), and analyzing (finding theories and foundations) to support the research (Williams, 2022).

Data that already had strong validity were then analyzed using four stages: domain analysis, taxonomic analysis, componential analysis, and cultural theme analysis (Brailas & Tragou, 2023). A similar analysis model, like Ryan's, explains that techniques for analyzing data about cultural domains use componential analysis, taxonomy, and mental mapping (Ernest & Fonkem, 2023).

Research Results and Discussion

Legal Protection for Teaching Staff in Law Number 14 of 2005 concerning Teachers and Lecturers

In carrying out their duties as educators, teachers have the authority to impose sanctions if students are deemed to have committed errors. Sanctions can take the form of reprimands or warnings, both verbal and written, as well as punishments that serve as a deterrent to students. Parents and schools, particularly teachers, have differing perceptions. Deterrent punishments like pinching are considered human rights violations under child protection laws, according to parents (Kasmawati, 2018). Meanwhile, teachers still consider such sanctions to be educational.

This is very different from the educational system of the past. If a child received punishment from a teacher and then reported it to their parents, the parents might scold the child or even impose additional punishment at home. It is natural for parents to protect their children, but parents should also reconsider if the child has committed a serious offense. Parents should share the school's perception (Simbre et al., 2021). Reporting a teacher by a parent will certainly stop the teacher from educating their students. With a little pinching, intimidation, or other forms of abuse, the teacher is considered to be committing child abuse.

As long as the punishment is not excessively violent and has a clear educational purpose, there should be some awareness on the part of parents. The exception is when the child is abused without reason or the sanctions are imposed that could cause serious injury. This kind of behavior can be categorized as child abuse.

Parents who object to teachers disciplining their children using symbols of violence, such as pulling, pinching, hitting, shaving, and other forms of disciplinary action, can lead to teachers being criminalized. Article 80 paragraph (1) of Law Number 23 of 2002 concerning Child Protection states: "Any person who commits cruelty, violence or threats of violence, or abuses a child, shall be punished by imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah) (Rizky, 2022). This law is the trigger for reporting teachers to the legal system.

The strength and enthusiasm for the implementation of education have also increased with the enactment of Law of the Republic of Indonesia Number 14 of 2005 concerning Teachers and Lecturers. This law is considered a legal umbrella for teachers and lecturers, with no differential treatment between public and private teachers (Yani & Mahdi, 2024).

Article 36 states that the Government, society, professional organizations, and/or educational institutions are obliged to protect teachers in the performance of their duties. Although the existence of this law seems more about legal force for improving teacher welfare, protection for the teaching profession is often overlooked. This is further enhanced by Government Regulation Number 19 of 2017, which amends Government Regulation Number 74 of 2008 concerning Teachers (Yustia et al., 2024). Protection for the teaching profession itself has been recognized in Government Regulation Number 74 of 2008. In this PP, teachers are professional educators with the primary task of educating, teaching, guiding, directing, training, assessing, and evaluating students in early childhood, primary, and secondary education.

In addition, there is the Regulation of the Minister of Education and Culture Number 10 of 2017 concerning Protection for Educators and Education Personnel, which includes protection against: a. Acts of violence; b. Threats; c. Discriminatory treatment; d. Intimidation; and/or e. Unfair treatment, from students, parents of students, the community, bureaucracy, and/or other parties related to the implementation of duties as Educators and Education Personnel (Haris, 2020). Teachers, as professional educators, in carrying out their duties, will come into contact with students, students' parents, and the observing community.

These subjects when teachers carry out professional duties may result in differences in interpretation between professional teachers and other parties, professional organizations as quickly as possible play a professional role, because it is not uncommon for professional teachers to be responsible outside of what is their professional responsibility to receive protection, as stipulated in Article 39 of Law Number 14 of 2005 concerning Teachers and Lecturers which provides and requires protection for teachers in their duties (Sipahutar et al., 2022). Article (2) also explains the scope of protection. This provision clearly distinguishes between legal protection, professional protection, occupational safety protection, and occupational health protection.

According to Fitzgerald, Salmond's theory of legal protection states that the law aims to integrate and coordinate various interests in society. In a conflict of interests, protecting certain interests can only be achieved by limiting others'. The legal interest

concerns human rights and interests, so the law has the highest authority to determine which human interests need to be regulated and protected (S. Arifin, 2020).

Although a legal umbrella has been issued in Supreme Court (MA) jurisprudence, as quoted from the MA website, stating that teachers cannot be punished while carrying out their profession and taking disciplinary action against students, there needs to be a shared understanding between schools, teachers, parents, and students regarding how to address student violations (Sutopo, 2019). This aims to prevent the recurrence of cases in which parents criminalize teachers. This understanding can be implemented in a memorandum of understanding (MoU) between parents and schools regarding the limits of sanctions, which can be agreed upon at the beginning of school.

Maqasid al-Syari'ah Analysis of the Legal Protection of Educators

When viewed through the lens of the *maqasid al-shari'ah* (Islamic principles), specifically the protection of reason (*hifz al-'aql*), Law Number 14 of 2005 concerning Teachers and Lecturers can be understood as a normative restriction against excessive criminal punishment. This function aligns with contemporary criminal law theory, which emphasizes moral boundaries and proportionality in punishment. *Maqasid al-shari'ah* in Islamic law serve not only as a normative objective of sharia but also as an evaluative framework for the application of law. Protection of reason (*hifz al-'aql*), life (*hifz al-nafs*), and the public interest requires that the law be applied proportionally and not cause harm that outweighs its benefits (Arzam & Kusnadi, 2023).

Teacher protection, viewed from the principle of *maqasid al-Shari'ah* (the five main objectives of Islamic law), under the principle of *Hifz al-Din* means protecting the source of Islamic knowledge itself. Honoring teachers is tantamount to honoring knowledge and the religion of Allah, which in turn brings blessings and tranquility (Z. Arifin & Mahmudi, 2022). The principle of *Hifz al-Nafs* (Natural Self-Reliance) encompasses ensuring physical and psychological safety from violence, abuse, or criminalization while carrying out teaching duties. This aligns with the human rights principles recognized in Islam to honor human dignity (Arafat, 2023).

The principle of *Hifz al-Aql* (Natural Self-Reliance) means protecting teachers from harassment or intimidation, ensuring optimal transfer of knowledge (education), thus preserving the common sense and intelligence of the younger generation.

Meanwhile, the principle of *Hifz al-'Ard* (Natural Self-Reliance) means preventing disrespectful treatment, slander, or defamation by students, parents, or the community. Respecting teachers is an obligation to uphold educators' dignity. The fifth principle, *Hifz al-Mal* (Natural Self-Reliance), ensures that teachers are not financially burdened, allowing them to focus on teaching (Rahmawati, 2022).

In this context, *maqasid* can be understood as the principle of limiting legal power (normative restraint), which aligns with the concept of proportionality in modern law. Cass Sunstein emphasizes that the principle of proportionality is an essential element of a just legal system, particularly in preventing excessive legal responses to social risks (Harefa, 2022). If it is linked to *maqasid al-syari'ah*, then the criminalization of teachers must be tested not only on formal legality but also on its impact.

Within the framework of the *maqasid al-shari'ah* (the aims of Islamic law), the application of criminal law must be directed towards protecting the public interest and preventing greater harm. The principle of *hifz al-'aql* demands protection of the educational process and intellectual development. At the same time, *hifz al-nafs* emphasizes the protection of the dignity and security of individuals, both students and teachers (Iqbal, 2023). Law Number 14 of 2005 concerning Teachers and Lecturers can be understood as an implicit application of *maqasid al-shari'ah*, as it rejects criminalization that could potentially undermine the function of education (*hifz al-'aql*) and the dignity of the teaching profession (Yusefri & Faizin, 2022).

Criminalization in this case risks causing greater harm than good for teachers, students, and the education system as a whole. In this ruling, Law Number 14 of 2005 concerning Teachers and Lecturers states that disciplinary action taken by teachers is part of their legitimate pedagogical authority (Budoyo et al., 2023). This consideration is crucial because it distinguishes between educational conduct and criminal conduct. Both the first-instance and appellate courts have failed to make this distinction, making criminal law the primary instrument for resolving educational conflicts (Tahir et al., 2024). This approach reflects a structural problem in law enforcement, namely the tendency to prioritize formalistic child protection without considering the context of educational relations.

From the perspective of teacher immunity, this demonstrates the law's failure to assess the degree of harm and the act's blameworthiness. A teacher's disciplinary

actions cannot be equated with intentional violence or discrimination. The Supreme Court's ruling correctly emphasized that criminalizing teachers in this context could undermine the education system. Criminalizing legitimate disciplinary actions will create a chilling effect on teachers, thus hindering the optimal implementation of the educational function.

Conclusion

Based on the research analysis, it can be concluded that Law Number 14 of 2005 concerning Teachers and Lecturers does not yet provide a strong legal basis for protecting teachers in the performance of their professional duties. Articles 39 and 41 emphasize the obligations of the government, regional governments, communities, professional organizations, and educational institutions to protect teachers from violence, intimidation, threats, or unfair treatment.

Article 39, paragraph 2 covers protection against acts of violence, threats, discriminatory treatment, intimidation, or unfair treatment, whether from students, parents, the community, the bureaucracy, or other parties. Article 39, paragraph 2, covers protection against unlawful termination of employment, inadequate remuneration, restrictions on academic freedom, and protection in the performance of duties. Article 39, paragraph 2, covers the right to a sense of security and safety in carrying out duties, both inside and outside educational institutions.

Meanwhile, the purpose of *maqasid al-syari'ah* operationally serves as a limiting principle for criminal law. Criminalizing teachers can only be justified if the action clearly violates the student's right to self and is no longer within the realm of pedagogical authority. This approach aligns with the principle of proportionality in modern criminal law, as proposed by Sunstein, which rejects excessive legal responses to social risks.

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