NORMATIVE ANALYSIS OF LAW NO 23 YEAR 2002 ABOUT CHILDREN’S PROTECTION IN RELATION TO CHARACTERED LEARNING AT PRIMARY SCHOOL IN MEDAN, INDONESIA

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ABSTRACT
The consequences of the behaviors displayed by the younger generation that tend to be negative, caused the teachers often become the focus of resentment and considered unable to educate the character. They forget that the teacher is also human, who has emotions. Teachers can be depressed, disappointed, panicked, angry and scared, while on their shoulders lay the responsibility of teaching the character. But they are always overshadowed by the existence of Law No. 23 Year 2002, which regulates the protection of children. Therefore there is often a misunderstanding between the concepts of character learning that the teachers apply to the demands of the Children Protection Law. Departing from that phenomenon, the specific target would like to contribute some ideas on how to implement the Child Protection Law if it is related to the teachers’ difficulties in character learning in primary school. What normative idea should be given to the existence of Child Protection Law? How does the strategy teach character according to the requirement of curriculum 2013? And yet to fulfill the substances of the Child Protection Law and find the method to teach the right character for primary school. The method used is normative with a case study approach.

Keywords: Child Protection Law; Curriculum 2013; teaching strategy; charactered learning

INTRODUCTION
Education is a process toward a better direction. Building the character of children from an early age is necessary in order to prepare the nation's qualified generation that is needed in the nation's development. The development of the nation's character is a conscious effort to repair, to improve all the behaviors that include the customs, values, potentials, abilities, talents and minds of the Indonesian nation. The character building is a demand of the Government and the society, which must be realized in education. Based on the concerns of the government and the public in observing the behavioral conditions of the young generation that tend to be destructive lately, the government launched the 2013 curriculum. The 2013 curriculum implementation plan focuses on education that builds the students’ character for the advancement of the nation's children. This was conveyed by the Minister of Education and Culture of the Republic of Indonesia, Muhammad Nuh, in the event of the socialization of the 2013 curriculum with the theme of "the innovative creative character" in the Education Office Hall of West Java Province March 16, 2013. "I hope the teachers to be more creative to instill the value that can build the students’ characters in every subject, because the essence of education is humanizing human beings. Mathematics or physics which are the essential knowledge, should be able to contribute also in the character building" (Pikiran Rakyat, March 17, 2013).

It is very clear the success parameters of the 2013 curriculum, namely the establishment of a qualified primary school student. For the character building, teachers are given flexibility in tasks and responsibilities, learning strategies, methods for achieving the efforts. But in the implementation of his duties, teaching the character in primary school, the teachers often face obstacles. The teachers must be consistent in educating the rules, norms, behaviors, moral values that must be obeyed by the children. So here’s the problem. The teacher will give any sanction to the students who disobey based on the principle
of punishment. Punishment is a consequence of a disobedient act or out of the agreed rules. Punishment is also part of the phenomenon of life that serves to change, straighten or instill a sense of responsibility in people. Therefore, if a student's character is to be formed, perhaps the teacher takes various possible actions, including punishment. (Rudi Cahyo, 2013).

All the teachers’ punishment intentions aim to educate, and pay attention to the educational values. But we must not forget, all teachers are also ordinary people who have fluctuated in emotions. Teachers also have instincts in determining the type of punishment according to the student's error rate. So it can be that a spontaneous punishment is a reaction to the emotional instability of the teachers in facing the student's negative behavior. The researcher submits a case: "As reported in a junior high school, a student was fighting. Then a teacher separates them. Instead the teacher was verbally abused by a student who fought earlier, because he did not accept the fight separated. The teacher slapped the student once to make him silence. In the end the teacher was reported to the police and imprisoned, though eventually the teacher was issued with a ransom.

Finally what happened at the school, the teachers no longer dared to act decisively to the students. But the students do as they please. There is a process of abandonment, and the students easily mock and insult the teachers as they please. Where does our education lead to?

The existence of child protection law for according to the researcher becomes a long suffering for the teachers. They are faced with a dilemma in the process of education and the character building of their students. On one side they bear the responsibility of fostering the students’ character. On the other side, they are charged with criminal penalties if they impose the punishment on their students. Maybe people can think, is not there another way that is non-violent? But according to the researcher sometimes the violence can be effective and as a shock therapy. So what should we do to address this issue? The researcher can propose some problems: 1) how is the weakness of the existence of the Child Protection Act when it is associated with the teachers’ difficulties in character learning in primary school?; 2) What normative idea should be given to the existence of Child Protection Law? ; 3) What are the right alternative teaching strategies for primary school by sticking to the demands of child protection law?

METHODOLOGY
A. The Nature of Law No. 23 Year 2003

Some important notes from Law No. 23 Year 2003, which inspired the appearance of the problems in this study:

1) CHAPTER I article 1: About general provisions
1. Child protection is any activity to guarantee and protect the child and his/her attitude;
2. In order to live, grow, develop, and participate, in an optimally appropriate manner;
3. With the dignity and dignity of humanity, and have protection from violence and;
4. Discrimination.

2) Article 13
1. Every child during the care of a parent, guardian or any other party who is responsible for care shall be entitled to have protection from treatment:
   a. discrimination;
   b. Exploitation, both economic and sexual;
c. Negligence;
d. Cruelty, violence and abuse;
e. injustice; and
f. Other misconduct.

2. In relation with a parent, guardian or caregiver conducts any form of treatment as referred to in paragraph (1), the offender shall be subject to a penalty

3) Article 80

1. Any person who commits cruelty, violence or threats of violence, or abuse of a child, is liable to a maximum imprisonment of 3 (three) years 6 (six) months and/or a fine of not more than Rp 72,000,000.00 (seventy two Million rupiah).

2. In accordance to the child as referred to in paragraph (1) is seriously injured, the offender shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah).

3. In accordance to the child as referred to in paragraph (2) is dead, the offender shall be punished with a maximum imprisonment of 10 (ten) years and/or a fine of not more than Rp 200,000,000.00 (two hundred million rupiah).

4. The criminal penalty is added by one third of the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) if the offender is his / her parents. (Hukumonline.com, 2013)

B. The Principle of Educative Punishment

1. Educational experts have formulated 6 principles that need to be considered for giving punishment to children. Set a joint punishment. Limits and types of punishments should be established with the children. Invite them to participate in determining the limits of their behavior and what punishment they will receive if they break the agreement. Through this way the child is expected to have a sense of responsibility for the agreement made.

2. Do not delay the punishment. Give punishment when the child makes a mistake, if possible do it immediately, do not delay until the next day. Delay the punishment will make the child feel depressed because waiting for what punishment he will receive later.

3. Give the appropriate punishment. Do not excessively penalize the child. If there is an agreement, punish the child according to the agreement made with him/her. Excessive punishment will only make the children become more depressed and potentially hurt their feelings.

4. Pay attention to the time limit of punishment. The next important thing in punishing children is not to punish them for too long. If the punishment given will take a long time, then make sure the punishment given is an educational punishment.

5. show the natural result. One method of punishment is to let the child feel the consequences of his/her mistake. For example if the child does not want to eat, then let him to feel hungry as a the result of his behavior. This way is expected to make the child naturally understand the consequences of his/her actions.

6. Give appreciation for his achievements. Give the child a gift or a minimum of praise if the child has been well behaved or able to achieve a certain achievement. Not just the child’s mistakes that must be
given the consequences, the child’s success should be appreciated so that the child feels that the teacher or parents really love him. (H.R Bukhori Muslim)

The changes of education curriculum are an important agenda for education in Indonesia today. Today's crucial point puts forward the need to build the character of the nation, because it is based on the society’s facts and perceptions about the declining quality of attitude and morals of children or young generation. So what is now required is a character education curriculum which means the curriculum itself has a character, and at the same time it is oriented to the shaping of the students’ characters (Winkel, 2000). Based on the tasks and responsibilities of the teachers for the character establishing of primary school students, while they are faced with criminal threats as contained in the Child Protection Act, this paper will find an alternative solution.

C. Education of Character

The education of character is not a new thing. The implant of values as a characteristic of a person's character has been ongoing since a long time ago. However, along with the values shift in the society, it seems to require the re-establishment of these values into a container of educational activities in every teaching.

The Implant of these values is embedded into the learning implementation plan with the intention of achieving a character that has become faded. Each school subject has its own values that will be implanted in the students. This is due to the focus primacy of each school subject that certainly has different characteristics.

D. Learning Strategy

Learning strategy is defined as a learning activity that must be conducted by the teachers and the students for the learning purpose can be achieved effectively and efficiently (Sanjaya, 2006: 145). While the meaning of the learning method is the way used to implement the plan that has been prepared in real activities for the objectives that have been prepared to be achieved optimally (Daryono, 1998: 126).

1. Type of Method

The method used in this research is normative with a case approach, by conducting the research more directed to the law and the approach of case. The law approach is conducted by reviewing all laws and regulations pertaining to legal issues being addressed. This case approach is carried out by examining the cases related to the issues faced that have become the court decisions.

2. Source of Data

a. Primary Material of Law

The primary source of law used by the Law of the Republic of Indonesia No 35 Year 2014 on the amendment to Law No. 23 Year 2002 on Child Protection. But within the boundaries of the article that does not change the researcher continues to analyze the article contained in the Law No. 23 Year 2002.

b. Secondary Material of Law

The secondary materials of law are processed from 1) describing the law symptoms in the society, 2) withdrawing the legal principles; and 3) formulating the normative idea of the proposed law substance designed. The materials used are sourced from books, legal journals and the internet.

c. Tertiary Material of Law
The tertiary legal material is a legal material that supports the primary materials of law and the secondary materials of law by providing the insights and understandings of other materials of law. The materials of law used by the writer are Kamus Besar Bahasa Indonesia and Kamus Hukum.

C. Technique of Data Analysis

Analyzing the data is used qualitative techniques by giving thought contribution to the law-maker, in order to give more specific explanation to the rules which can give the blur of the society’s understanding to the article of Child Protection Law.

DISCUSSION

The consequence of a mistake is the punishment given, because the positive purpose of punishment is giving a shock therapy to the doer. This kind of punishment is often committed in an educational institution with the assumption and belief that that way is effective to educate the student’s character. But with the existence of the Child Protection Law, teachers have some kind of fear whenever they are improper giving the punishment to students.

The original punishment meant for the shaping the students’ characters, was misunderstood by the parents and the law enforcers as a form of abuse and cruelty. Whereas in the past the teachers also gave punishment to their students who violated the rules with minor physical punishment such as hitting palms with rattan if the students have long nails, standing in front of the class for those who do not make homework. But the teacher's actions never reaped protests from the public. In fact, most parents support the policy of the teacher, and if the students told about it to their parents surely they would be added by their parents’ punishment. But now, the teachers are depressed and overshadowed by the threat of Law No. 23 Year 2002. The teachers are afraid of the consequences they will receive in the form of imprisonment as stipulated in article 80 CHAPTER XII of the criminal provisions. If the teachers are exposed, the Article 80 paragraph (1) alone is a very profound suffering for the teachers, who earn a mediocre income. Meanwhile their intention to educate by giving physical punishment is good, so that the child grows into a character human.

The Child Protection Law seems to have been a trap for holding the teachers, and a tool for criminalizing the teachers. This also cannot be separated from the meaning of human rights that excessive after the rolling of reform. The article which is usually referred to in the report on the complaint of violence against the children by the teachers is Law No. 23 Year 2002 Article 54 about Child Protection which states that "Children within and around the school environment shall be protected from acts of violence committed by the teachers, school administrators or friends within the school concerned, or other educational institutions."

The types of violence as listed in article 69, namely physical, psychological, and sexual violences. While, on Wikipedia site mentioned there are four main categories of violence acts against children, namely: (1) negligence, (2) physical violence, (3) emotional/psychological abuse, and (4) child sexual abuse. The disciplinary action conducted by the teachers, who was once considered as usual, is now considered to violate the human rights. As a result, the teachers face a dilemma; on the one hand, they must uphold the discipline and the school order, while on the other hand, they are worried about being criminalized by parents or NGOs of child defenders on charges of child abuse.

The impact of the dilemma, eventually the teachers become less assertive against the students who misbehave or violate the school rules. The students are left naughty, rather than the teachers will have legal problems. The teacher's indecision affects the teacher's authority becomes low in before the students, especially among the naughty students. They increasingly violate the school rules, because they will not be punished. The teachers finally find the safe condition. They do not want to bother with the students’ attitude, behavior, ethics, and courtesy (though their hearts may rebel). They come to school just for
teaching, convey the materials until the lesson hours are over, and go home. The point is they just do their obligations. The process of education should include three domains, namely cognitive, affective, and psychomotor, more dominant in the affective domain. As a result, many children are smart but their attitudes and behavior are not good. The number of juvenile delinquency is increasing and worrisome, even in the category of criminal acts, such as stealing, robbing, torturing, raping, and even killing. It certainly cannot be left. This is a big job to think about and look for the solution among parents, school, government, and society.

Now let us consider the word “persecution” in chapter 13 above, it is not the persecution including violence and similar to torture, but hitting the one-time because of the teacher’s emotional, is it including persecution? Let us observe deeply this case, where a teacher, Asep Sugeng at Kelambir Medan, was tried in Medan District Court on Wednesday and sentenced for ¾ years in 2013. He was accused of molesting his students, for beating the student’s hands with rattan one time. The next day the students repeated again, then the teacher hit the student 3 times. The parents do not accept the attitude of the teacher, and reported to Medan Police Helvetia. The teacher was charged with article 80 of Law No. 23 year 2002. Actually, there was an apology from the teacher, but the victim’s family asked for 50 million and the defendant could not afford it. (Analisa, April 6, 2013) In response to this case, can teachers only be blamed unilaterally?

According to the researcher’s insight, the word of ‘persecution’, means a planned act (of intent) and done repeatedly. The intention is structured because there is grudge and hurt. Likewise, persecution is defined by the target of the opponent experiencing physical and psychological pain. But if we look at the beatings cases to the students in schools are more to the reaction of the teachers because of the stimuli reflected the child. The child displays behaviors that violate the rules, and as the teachers, they must have the responsibility to straighten the wrong attitude of the child. Is it because of this problem the teacher is entitled to imprisonment? How long the suffering of the teachers with the existence of this Child Protection Law. Consider again the word “persecution” in article 13 of the Child Protection Law. Is not that cruelty is a sadistic act and done repeatedly, and it involves physical and psychic. Cruelty is more to the actions done by an uneducated person. And usually the cruelty has a sick target and more sadistic opponents. So parents do not overdo because every parent who entrusts his child to school would expect his son well needed by all the school residents, especially the teachers. In other words, parents expect their children to feel comfortable in school.

Schools can be the students’ second homes, and the teachers are expected to play parent-roles at school. When there is a problem that befalls their child, then the parents do not be too reactive and emotional. Do not just listen to the unilateral explanation of their child, because instinctively. AS a child, even when he does wrong he is defended by parents, and instinctively parents would love their child, and want to defend their child. Besides listening to the children's explanations, parents should come to school themselves, to ask for clarification or explanation from the school regarding the problems faced by their children. Do not represent to the helpers or other family members, because the information may be not fully true.

In the old times, when a child reported to his parents because he was punished by the teacher, the parents actually increased his sentence because parents believe that the teacher did not merely give punishment to their child, if their child did not make mistakes. In other words, parents really believe in the teacher. Even when registering their children, parents give the teachers freedom to do anything to their children, which is important for their children to be educated, able to read, write and count. Today, when there is a small case, there are parents directly report the police while bringing lawyers complain of violence by the teacher against their child. This type of parents usually comes from the people who think they are educated (but less understood their duties as parents), officials, bureaucrats, officials, or think have any support that can help them. As a result, the teacher had to go back and forth to the police station for interrogation, and his teaching duties were abandoned. If there is any violence (especially mild violence)
against the child, then do not rush to report the police or report NGOs, let alone journalists, because it can be long affairs, and it will make a commotion, even a polemic. It is better to find solutions in peace and kinship. Surely there are no teachers who want to persecute their students, though the teachers are also human, who may do mistake. Parents and teachers should introspect each other, forgive each other, and take the wisdom from the event. In essence, there is a good communication between the teachers and the parents.

Furthermore, the writer gives his opinions about article 80 of the Child Protection Law. Is the amount of fines imposed on the teacher's violence too large if he is subjected to that article? How naïve we are in replying to the sincerity of teachers in educating our children with the punishment that is not worth it. The normative idea here is that according to the writer's opinion, categorize the types of punishment based on mild, moderate and severe punishment, and under which circumstances the violence was committed. Is torture done to a child under his or her authority as a worker, or a child being tortured for fighting if being told about the child’s mistake like a teacher teaching at the school? The conclusion is classifying the types of acts, punishments and exceptions under the circumstances of legal behavior should be considered by lawmakers.

Standing on the personality competencies, the teachers must possess pedagogical, professional, and social competencies. This means that the teachers’ attitude should be related to the attitude, speech, and deed of the teacher when teaching. So it takes the emotional maturity of the teachers. Strengthening the teacher personality competencies is the spearhead of learning. The teacher is the person who interacts most and communicates with the students. Therefore, the first accused party when there is a case that affects the student is the teacher. The writer believes that basically every teacher wants to have his students master the knowledge that he or she submits, skillful and virtuous. Each teacher has their own style, manner, and character in delivering the subject matter. But in principle, all teachers have a desire in their little hearts that is their students will be useful and successful persons in the future. Teachers are equipped with great competence personalities.

In Government Regulation No. 74 year 2008 article 3 paragraph (5) about Teacher mentioned that the indicator of the personality competence of a teacher, among others: (a) believe and piety, (b) noble character, (c) true and honest, (d) democratic, (e) solid (f) prestigious (g) stable (h) mature (i) honest (j) sportive (k) an example for learners and the community, (l) objectively evaluates its own performance, and (m) develops itself independently and sustainably. Furthermore, in the attachment of Permendikbud Number 16 of 2007 on Competency Standards and Teacher Qualification, the Teacher Main Competencies from personality aspect are described as follows: (1) acting in accordance with Indonesian religious, legal, social and cultural norms, (2) presenting themselves as persons of noble character, and role model for learners and society, (3) present themselves as steady, stable, mature, wise, and authoritative individuals, (4) show high work ethics, pride and confident, and (5) uphold the code of ethics of the teacher profession. Is there still doubt from our hearts as parents to the teachers who already have the indicators of competence above.

Teaching the character means the teachers educate the children with nine pillars of character, namely: 1) the character of loving God and all of His creations; 2) independence and responsibility; 3) honesty and trustworthiness; 4) respect and courtesy; 5) philanthropists, and helpers; 6) confident and hardworking; 7) leadership and justice; 8) good and humble; and 9) tolerance, peace and impression. According to the researcher, a teacher of humanist, democratic, but firm and authoritative is needed for the growth of positive character for the students. This competency is one of the teachers’ competencies needed to have in addition to pedagogical, professional, and social competence. Personality competence is closely related to the attitude, speech, and deed of the teacher when teaching. In the context of violent acts to students, the mastery of personality competence becomes a bulwark for the teachers to avoid the violence against the students.
CONCLUSION
In developing the students, the teachers must be firm, courageous, authoritative, and compassionate. The teacher, besides as a teacher and educator, must also act as a parent as well as a friend to his students. Teachers should not abstain from their disciples, though they must maintain their prestige. Teachers must also have close relationships with their students in the context of being teachers and students. The writer suggests that the act of violence by the teachers towards the students is caused more by the lack of mature personality of the teachers’ competence. It is true that the teacher is also a human being, who can be angry or emotional at times, but that is where the need for self-control. Consequences as a teacher, he must have extra patience in educating the students. The Law Number 14 Year 2005 of Regulation of Teacher Protection Article 39 paragraph (1) states that "Government, local government, community, professional organization, and/or educational unit shall provide protection to teachers in performing their duties. Subsequently to article (2) it states that "the protection referred to in paragraph (1) includes legal protection, professional protection, and safety and health protection.

REFERENCES