

Corporal Punishment in Educational Context: Criminal Law Regulatory Framework

Godeliva Ayudyana Suyudi *

Legal Observer, Indonesia

Fanny Tanuwijaya

University of Jember, Jember, Indonesia

I Gede Widhiana Suarda

University of Jember, Jember, Indonesia

Glenn Wijaya

Tsinghua University, Beijing, China

ABSTRACT: Teachers may impose sanctions or Corporal Punishment on students for educational purposes. In several cases, the Corporal Punishment action taken by the teacher resulted in the imposition of criminal sanctions on the teacher. This paper describes the perspective of criminal law settlement in Corporal Punishment cases. This paper uses the normative juridical research method, which examines the application of positive legal norms. Hence, this paper interprets the corresponding law in the means of textually. Furthermore, researchers use a conceptual framework to illustrate a teacher's professional duties and Corporal Punishment. Finally, this research uses qualitative descriptive analysis supported by a case approach. This research found that applying life skill-based and contextual learning methods may prevent the aftermath of teachers' Corporal Punishment. Teachers, carrying out their professional duties, may avoid criminal charges for Corporal Punishment if these actions do not exceed reasonable limits, which result in student losses, both physically and psychologically. The functionalization of criminal law may be prevented using *ultimum remedium* in resolving Corporal Punishment cases. This may occur in settlement through restorative justice, which involves various parties in the educational process. Alternatively, criminal law settlement may be used in Corporal Punishment cases. Judges may apply the concept of individualized punishment in imposing sanctions on teachers who are proven guilty of Corporal Punishment. Finally, this paper recommends a psychological intervention to assess educators' mental capacity. This may take form through periodic assessments to determine the competence of teachers as educators.

KEYWORDS: Corporal Punishment, Regulatory of Criminal Law Perspective, Students, Teacher.



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* Corresponding author's e-mail: anaohoiwutun@gmail.com

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I. INTRODUCTION

Material criminal law and formal criminal law are criminal law in a broad sense, while criminal law in a narrow sense is criminal law which only covers material criminal law.¹ In criminal law, there are 3 (three) main issues, namely criminal acts, criminal liability (hereinafter referred to as PJP), and punishment.² PJP according to Simons is a psychological condition, so that the application of criminal provisions is deemed appropriate.³ PJP is crucial to determine the responsible ability of the perpetrator and assess the perpetrator's mistakes based on the principle of error or *geen straf zonder schuld*;⁴ while the determination of a criminal act is based on the principle of legality. The focus of this research is on criminal acts and PJP that are in the realm of material criminal law⁵ which may not be separated from formal criminal law⁶ related to proving the case. Over time, education is experiencing rapid development.⁷ The development of education triggers a pattern of education that demands the

¹ OS Eddy Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016) at 17.

² Barda Nawawi Arief, *Tujuan dan Pedoman Pemidanaan (Prespektif Pembaharuan & Perbandingan Hukum Pidana)*, 4th ed (Semarang: Pustaka Magister, 2012) at 12-13.

³ Hiariej, *supra* note 1 at 15.

⁴ Fifink Praiseda Alviolita, “Pertanggungjawaban Pidana Oleh Pengurus Korporasi Dikaitkan Dengan Asas Geen Straf Zonder Schuld” (2018) 3:1 Refleksi Hukum Jurnal Ilmu Hukum 1–16.

⁵ Maksun Rangkuti, “Hukum Pidana Materil: Unsur, Aspek, dan Prinsip”, (2023), online: *Fakultas Hukum Terbaik Medan Sumut* <<https://fahum.umsu.ac.id/hukum-pidana-materil-unsur-aspek-dan-prinsip/>> accessed 16 July 2023.

⁶ Adhelfy Prabas, Zulfikar Jayakusuma & Davit Rahmadan, “Analisis Hukum Pidana Materil dan Formil Terhadap Pemberantasan Tindak Pidana Pencucian Uang di Indonesia” (2020) 7:1 Jurnal Online Mahasiswa JOM Bidang Ilmu Hukum 1–13 at 8.

⁷ “Perkembangan Pendidikan Dalam Masyarakat”, (2020), online: <<https://bgpkasel.kemdikbud.go.id/berita-258-perkembangan-pendidikan-dalam-masyarakat.html>> accessed 5 July 2023.

ability of teachers' adaptability and creativity. In addition, development in education has had an impact on the economic and social development of society,⁸ as stated by the Father of the Vietnamese people, Ho Chi Minh who said that "no teacher no education, no education no economic and social development".⁹

The development of the era that has influenced the world of education has led to a shift in the pattern of relations between teachers and students, both within the school environment and outside of school. In line with the developments and shifts that have occurred, the motto 'Tut Wuri Handayani¹⁰ which means a teacher must push his students from behind will also experience a shift,¹¹ and the development of education should follow the development of the times.

Teachers as the main driving force of educational progress must encourage their students to follow developments in every teaching and learning process, both related to intra-curricular activities¹² as well as extracurricular¹³ held at school, as stated in Law Number 20 of 2003 concerning the National Education System (hereinafter referred to as the National Education System Law).¹⁴ The functioning of the education system may not be separated from the role of the teacher in achieving

⁸ Marlina Marlina, "Punishment Dalam Dunia Pendidikan dan Tindak Pidana Kekerasan" (2014) 7:1 Jurnal Mercatoria 46–57.

⁹ *Ibid.*

¹⁰ Tut Wuri Handayani was initiated by Ki Hajar Dewantoro as the Father of Indonesian Education

¹¹ Elly Manizar, "Peran Guru Sebagai Motivator Dalam Belajar" (2015) 1:2 Tadrib 204–222.

¹² Intracurricular activities are activities held in the learning process related to the lessons contained in the curriculum structure. Khusna Shilviana & Tasman Hamami, "Pengembangan Kegiatan Kokurikuler dan Ekstrakurikuler" (2020) 8:1 Palapa 159–177 at 160.

¹³ Extracurricular activities are programs of activities carried out by students outside the classroom and outside class hours that aim to be able to help students develop their potential and talents, through mandatory activities or optional activities *Ibid* at 160–161.

¹⁴ Article 3 of the National Education System Law states that the aim of national education is to develop the potential of students so that they can become human beings who believe in and fear God Almighty, have noble character, are healthy, knowledgeable, capable, creative, independent, and can become democratic and responsible citizens answer.

educational goals as stipulated in Article 3 of the National Education System Law. Teachers are the main component of achieving education for Indonesian children at all times, and to achieve educational goals teachers may use certain methods in carrying out their professional duties. However, the methods used to achieve goals in educating are limited by rules that may not be violated, in this case related to orders or prohibitions in the learning process at school,¹⁵ which is usually accompanied by threats of sanctions for violators.

Orders or prohibitions in the learning process at school are usually in the form of rules that apply, both for students and teachers and education staff. The threat of sanctions in the form of punishment may be imposed for violators of the rules. The punishment imposed by the teacher on students who violate school rules is a natural thing to do to achieve educational goals. Punishment in the world of education may be carried out by fellow students, or by teachers against students.¹⁶

Corporal Punishment¹⁷ is known as the punishment carried out by the teacher against students. Application of Corporal Punishment in schools as means of discipline or control has existed for centuries in various parts of the world.¹⁸ Corporal Punishment in a broad sense means encompasses euphemistically described ‘garden-variety reasonable spankings’ through to more severe assaults constituting classic child abuse.¹⁹ (Namely actions such as reasonable slapping to severe attacks are classic child abuse).

In the past, Corporal Punishment is seen as a reasonable. In the household context, Corporal Punishment is claimed to result with the child

¹⁵ The rules that apply to teachers in carrying out the learning process apart from being regulated internally within the school environment, are also regulated in various kinds of laws and regulations related to education. These laws and regulations, both related to administrative law and criminal law

¹⁶ Muhammad Rosikhu, “Tindak Pidana Kekerasan Terhadap Anak Didik Dalam Dunia Pendidikan” (2017) 32:3 Jatiswara.

¹⁷ Vita Mahardhika et al, “Literasi Buku Saku Pedoman Corporal Punishment Untuk Guru-Guru SMA SMK Negeri se-Blitar Raya Dalam Mengantisipasi Kekerasan di Sekolah” (2022) 2:2 Jurnal Dedikasi Hukum 150–159 at 150.

¹⁸ Trianah Sofiani & Saif Askari, “Efektivitas Penegakan Hukum Terhadap Corporal Punishment Di Sekolah” (2020) 4:2 Jurnal Bina Mulia Hukum 224–242.

¹⁹ Bernadette Saunders, “Corporal Punishment of Children: A Human Rights Violation” (2010) 18:4 The International Journal of Children's Rights 661–664.

compliance,²⁰ therefore it is seen as a positive outcome. Meanwhile in educational context, it has the intention and a role of behavioural control of students.²¹ However, the degree of discomfort or pain is entirely subjective to the perpetrator which may result in an abusive behaviour. Meanwhile, the opposing party argues that disciplinary punishment has a substance that is harsh and tends to harm children, both physically and psychologically.²² In criminal law, severe physical Corporal Punishment may regarded as an offence. Meanwhile mild or light Corporal Punishment may not be categorized as an unlawful act.

Corporal Punishment studies become interesting when criminal charges take place against teachers over reports of parents or guardians of students who claimed the teacher's actions as “harmful” against their child. The teacher's actions that are seen as hurting the child are then followed up by the parents or guardians of the students by reporting them²³ to the police with a request for legal proceedings. In fact, when teachers 'hurt' students in their capacity to carry out their professional duties. Corporal Punishment may be imposed on students for educational purposes, however, the limits are not regulated normatively, especially both physical and psychological punishment. Corporal Punishment may be carried out by the teacher with limitations, among other things, not causing injury or pain, or the punishment is carried out with compassion, namely, the punishment is given to students with the aims and objectives of education. However, reports of parents or guardians of students to the police have raised issues.

Corporal Punishment excess may be studied from the perspective of criminal law, however, there are no reasonable limits of application

²⁰ George W Holden, “Perspectives on The Effects of Corporal Punishment: Comment on Gershoff (2002).”

²¹ Hem Sagar Rimal & Archana Pokharel, “Corporal Punishment and Its Effects in Children” (2013) 2:3 *Journal of Kathmandu Medical College* 156–161.

²² Rusmilawati Windari, “Penggunaan Hukum Disiplin (Corporal Punishment) pada Anak Di Lingkungan Sekolah Dalam Perspektif Hukum Pidana di Indonesia” (2015) 4:3 *Jurnal Hukum Prioris* 303–328.

²³ In the context of formal criminal law or Indonesian criminal procedural law, a report is defined as a notification by a person to law enforcement officials (police) due to rights or obligations under the law to the competent authority about a criminal incident that has occurred or is being or is suspected to be occurring.

Corporal Punishment make punishment in the world of education interesting to study. There are several cases of court decisions that have permanent legal force and impose criminal sanctions on teachers who commit Corporal Punishment can be a bad precedent in the world of education. For this reason, it is necessary to study the use of criminal law mechanisms or legal functionalization²⁴ in solving Corporal Punishment cases which is expected to provide a solution.

Article 1 point 1 Law Number 14 of 2005 concerning Teachers and Lecturers (hereinafter referred to as the Teacher and Lecturer Law), explains that the main task of the teacher is to educate, teach, guide, direct, train, assess, and evaluate students in early childhood education through formal education, basic education, and secondary education.²⁵ If related to the goals of national education, it can be concluded that the main task of the teacher is to assist in educating and shaping the character and character of students through guidance and direction. Referring to the teacher's duties in providing education, teaching, guidance, and direction to students, in the process of developing and forming character in students, teachers must provide the best teaching for their students. However, in some cases, there are still unscrupulous teachers who do not implement good education and teaching in accordance with educational goals as stipulated in the Teacher and Lecturer Law.

In criminal law enforcement practices involving teachers who carry out physical violence and/or psychological violence against their students, they have been found guilty of committing a crime based on Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning Amendments second on Law Number 23 of 2002 concerning Child Protection to become Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child

²⁴ Barda Nawawi Arief provides a definition of the functionalization of criminal law, which is an effort so that criminal law can function, operate or be realized in real terms. YA Triana Ohoiwutun et al, "Fungsionalisasi Pasal 44 Kuhp Dalam Penyidikan Tindak Pidana Pembunuhan (Suatu Re-Orientasi & Re-Evaluasi Menuju Reformulasi)" (2019) 5:2 Veritas Justitia 352–373 at 356.

²⁵ The same formulation regarding teacher duties is also specified in Article 1 point 1 of Government Regulation Number 74 of 2008 concerning Teachers.

Protection (hereinafter referred to as the Child Protection Law). Several court decisions that have permanent legal force have applied provisions for violations of the Child Protection Law committed by teachers against their students. Based on data according to the National Coordinator of the Indonesian Education Monitoring Network (JPPI), as many as 65 cases of physical violence against by teachers occurred in the school environment.²⁶

In the facts that were revealed in court, based on the evidence and conviction of the judge the teacher was proven guilty of committing a crime of violence against children and ended with the judge's decision imposing criminal sanctions on the teacher. Three court decisions with permanent legal force that impose criminal sanctions on teachers include: Batang District Court Decision Number 11/Pid.Sus/2012/PN.Btg (hereinafter referred to as Decision Number 11/Pid.Sus/2012/PN.Btg); Kolaka District Court Decision Number 94/Pid.Sus/2020/PN.Kka (hereinafter referred to as Decision Number 94/Pid.Sus/2020/PN.Kka), and Sampang District Court Decision Number 165/Pid.B/2019/PN Spg (hereinafter referred to as Decision Number 165/Pid.B/2019/PN Spg).

Based on Decision Number 11/Pid.Sus/2012/PN Btg, there are several legal considerations used by the judge in deciding the case, namely that the elements in Article 80 paragraph (1) of the Child Protection Law are in accordance with the criminal act committed by the perpetrator, and The defendant was found guilty of committing violence against children. The sentence imposed on the defendant is in the form of a probationary sentence. In Decision Number 94/Pid.Sus/2020/PN.Kka the defendant did not raise an objection/exception, the sentence imposed by the judge on the defendant was in accordance with the error and the consequences it caused, namely in the form of a probationary sentence as specified in Article 14(a) Criminal Code. In Decision Number 165/Pid.B/2019/PN Spg the defendant submitted a written criminal complaint which basically explained that the defendant admitted the actions he had committed and regretted his actions and asked for leniency because the actions carried out by the

²⁶ Antaranewscom, "Guru Jadi Pelaku Kekerasan di Sekolah Terbanyak Selama 2022", (2022), online: *Antara News* <<https://www.antaranews.com/berita/3329478/guru-jadi-pelaku-kekerasan-di-sekolah-terbanyak-selama-2022>>.

defendant were intended to educate, not to hurt the victim. The judge considered that the actions carried out by the defendant were aimed at educating the victim, and had no intention of hurting the victim, furthermore there had been peace between the defendant and the victim's parents.

The imposition of criminal sanctions or punishment on teachers who are carrying out their professional duties as educators is a phenomenon that is likely to occur in the future. The judge's sentence on the punishment of a teacher was justified, especially viewed from the evidence and legal facts revealed in court.²⁷ The actions of the convicted teacher have been proven to have violated criminal law and can be accounted for according to criminal law. Resolving Corporal Punishment in the world of education requires several improvements in related laws, namely the Child Protection Law and the Teachers and Lecturers Law. Furthermore, the application of administrative sanctions and other non-litigation methods to teachers who give physical punishment to their students. If the Corporal Punishment given is considered severe or detrimental, teachers as educators can be held responsible by being sanctioned according to the relevant law.²⁸

No definitive limits to Corporal Punishment by teachers may be a bad precedent and a separate threat to teachers as educators in carrying out their professional duties. The Criminal Code (hereinafter referred to as the Criminal Code), the Child Protection Law, and other laws and regulations can be applied in cases related to punishment by teachers. However, teachers as educators need to get protection in carrying out their professional duties, therefore, this paper attempts to describe the prospective resolution of cases related to Corporal Punishment.

Scientific writing related to the perspective of criminal law policy on Corporal Punishment has proven as a significant interest in scientific

²⁷ Y A Triana Ohoiwutun, Samuel Saut Martua Samosir & Chosya Sheila Aprilliana Arimbhi, "Penerapan Asas Kepentingan Terbaik bagi Anak Korban Tindak Pidana Perkosaan yang Melakukan Aborsi" (2023) 2:1 Jurnal Hukum Politik dan Ilmu Sosial 149–163.

²⁸ Rusmilawati Windari, Supanto & Widodo Tresno Novianto, "Child Protection Versus Teacher Protection: A Legal Review of The Settlement of School Corporal Punishment in Indonesia" (2021) 76 Crime Law Social Change 1–22.

journals. Writing on the perspective of criminal law policy Corporal Punishment carried out by the teacher towards students as the focus in this study may be juxtaposed with some of the previous studies. Churin Ayu Qorina and Pudji Astuti wrote journal articles on action parameters of Corporal Punishment teacher to students. The focus of Qorina and Astuti's study is on the parameters of criminal acts Corporal Punishment which can be categorized as action or punishment in education. Qorina and Astuti writing to find out the action parameters Corporal Punishment and the legal consequences carried out by the teacher against students.²⁹ Qorina and Astuti's writings did not discuss criminal liability and punishment that can be imposed on teachers who are proven to have committed Corporal Punishment.

Trianah Sofiani and Saif Askari wrote on the effectiveness of law enforcement against Corporal Punishment at school.³⁰ The focus of Sofiani and Askari's study is on the situation, causal factors, and the impact of Corporal Punishment in schools and the effectiveness of law enforcement as a procedure to discipline students. Sofiani and Askari's article elaborates on the urgency of legal reform on Corporal Punishment in several ways. These are to clarify the act of Corporal Punishment, with the hope that students will not commit evil deeds and/or violations. This paper is different from the writings of Sofiani and Askari's articles, this paper tries to offer the concept of restorative justice and the concept of criminal individualization for teachers who are proven guilty of Corporal Punishment.

Rusmilawati Windari writes about the use of disciplinary punishment (Corporal Punishment) on children in the school environment in the

²⁹ Churin Ayu Qorina, "Parameter Corporal Punishment Guru Terhadap Peserta Didik" (2017) 4:3 *Novum Jurnal Hukum* 44–52. In this study, there are 4 (four) four limitations to *corporal punishment* includes: only students who make mistakes get sanctions from the teacher; physical punishment sanctions against students do not result in medical assistance; sanctions in accordance with the purpose of educating and disciplining learners; and the purpose of the deterrent effect of imposing sanctions on students.

³⁰ Sofiani & Askari, *supra* note 18.

perspective of Indonesian criminal law.³¹ Windari's article focuses on describing the categorization of Corporal Punishment as a crime and criminal liability. This paper tries to offer PJP limits that can be imposed on teachers who are in charge of carrying out their profession, and alternatives for settling Corporal Punishment cases without resorting to criminal law.

From several related Corporal Punishment studies above, this paper aims to describe the focus of the problem related to the perspective of the learning method model versus Corporal Punishment. Then the description will be continued on the practice of criminal law enforcement on Corporal Punishment. Finally, this paper concludes with a description of the principles of regulation and future law enforcement of Corporal Punishment.

II. METHOD

This paper use normative juridical research with the aim of finding the truth based on the logic of jurisprudence from the normative side.³² In addition, this research is an interpretation of legal norms without considering its original academic drafts. The legal material used consists of primary legal material³³ and secondary legal materials; while the approach includes statutory approach, conceptual approach and case approach.

The statute approach is the most important approach as well as court decisions that have permanent legal force. Materials for the statutory approach include: the Criminal Code, the National Education System Law, the Teacher and Lecturer Law, the Child Protection Law, PP on Teachers, Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Republic of Indonesia Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The use of a

³¹ Windari, *supra* note 22.

³² Hiariej, *supra* note 1.

³³ See Peter Mahmud Marzuki, *Penelitian Hukum Normatif* (Jakarta: Kencana, 2019) at 182. Primary legal material is legal material that has an authoritative nature, which has certain authority.

conceptual approach (conceptual approach) is based on the theory and doctrine that developed in the science of law.³⁴ The conceptual approach used in this paper is the principle of legality, the principle of error *geen straf zonder schuld*, the theory of punishment, the concept of Corporal Punishment, and the concept of restorative justice. The case approach is based on court decisions that have permanent legal force including Decision Number 11/Pid.Sus/2012/PN.Btg, Decision Number 94/Pid.Sus/2020/PN.Kka, and Decision Number 165/Pid .B/2019/PN Spg.

This paper focus on the existence of Corporal Punishment viewed from the perspective of criminal law use descriptive qualitative analysis. The method of qualitative descriptive analysis is carried out by describing and explaining the learning method model versus the teacher's Corporal Punishment action against students in the school environment. Corporal Punishment actions which were then resolved through the criminal law mechanism and decided by the court were analyzed descriptively qualitatively using the applicable legal provisions and prospective future law enforcement. The final result of this writing is in the form of a prescription which is expected to add references and insights regarding the mechanism of Corporal Punishment law enforcement with all its legal consequences.

III. LEARNING METHOD VERSUS ACTION MODEL PERSPECTIVE CORPORAL PUNISHMENT

Education plays an important role in one's life. The National Education System Law states that education aims to develop the potential of students to become people who believe in and fear God Almighty, with noble character, are healthy, knowledgeable, capable, creative, independent, become citizens of a democratic and responsible state,³⁵ or it can be said that the purpose of education is to shape the character of the nation's 'children', by using various ways.

³⁴ According to Peter Mahmud Marzuki, the purpose of conducting legal research is to develop new arguments, theories or concepts as a premise for solving the problems at hand. *Ibid.*

³⁵ Law No. 20 Year 2003 on the National Education System Law.

Regarding the method used to shape the character of students, in this case it can be done using 2 (two) methods, namely the life skill learning-based method and contextual learning methods. Both of these learning methods can be used as an alternative in the formation of student character.

Life skill learning-based method,³⁶ which derive from *'life'* which means life, and *"skill"* which means skill, intelligence, skill. When referring to the *life skill* are skills, intelligence, and ability. According to Listyono, *life skill* is the ability and courage to face life's problems, by being proactive and creative, trying to find and find solutions to overcome problems.³⁷ Regarding life skill learning-based method, Dadang Yunus argues that the purpose of education to nurture developing prowess which is held through formal education channels.³⁸

In particular, educational goals of life skill learning-based method are: *first*, to improve skills, knowledge, and attitudes towards the community so that citizens have a high awareness that education is important for themselves or their family members; *second*, has a high work ethic, and can produce superior works, and be able to compete in the global market. An example of a life skill learning-based method can be done by developing a sense of empathy, critical thinking, and creative thinking. Another example is the ability to think creative, students are expected to have the ability to solve problems, especially in one of the subjects in school by thinking smoothly, flexibly, with elaboration.³⁹

³⁶ A Atmawarni, "Membangun Karakter Peserta Didik Di Sekolah Berbasis Life Skill" (2020) 11:2 Genta Mulia Jurnal Ilmu Pendidikan.

³⁷ Tasyarah Tasyarah, Elly Susanti & Elvira Iskandar, "Peran Kelompok Wanita Tani pada Program Pekarangan Pangan Lestari (P2L) Terhadap Pengembangan Life Skill Anggota Kelompok di Kabupaten Aceh Besar" (2023) 8:1 Jurnal Ilmu Mahasiswa Pertanian 180–192; Iin Hindun, "Model Pengembangan Pendidikan Kecakapan Hidup (Life Skill) pada Sekolah Umum Tingkat Menengah di Kota Batu" (2005) 1:1 Jurnal Humanity at 29.

³⁸ Atmawarni, *supra* note 36 at 302.

³⁹ Novi Marliani, "Peningkatan Kemampuan Berpikir Kreatif Matematis Siswa melalui Model Pembelajaran Missouri Mathematics Project (MMP)" (2015) 5:1 Formatif : Jurnal Ilmiah Pendidikan MIPA, online: <<https://journal.lppmunindra.ac.id/index.php/Formatif/article/view/166>>.

While contextual learning model⁴⁰ can be done by inviting or being able to connect the material being studied with the real world. Through the contextual learning model, students are expected to be able to discover concepts and be able to build their own knowledge through teacher guidance. Using the contextual learning model, it is hoped that students will get comprehensive results, which include cognitive, affective as well as psychomotor aspects. The realization of implementing the contextual learning model, that is, when the teacher teaches basic competencies regarding the environment around life, can be linked to the values contained in these basic competencies and linked to real life in the community.⁴¹

In order to build the character of students, through life skill learning-based methods and contextual, acts of violence⁴² should not happen in the world of education. Acts of violence in the world of education have the potential to cause trauma for students, in addition, they are vulnerable to causing criminal acts that end in criminal cases as happened in legal facts. Decision Number 11/Pid.Sus/2012/PN.Btg, Decision Number 94/Pid.Sus/2020/PN.Kka and Decision Number 165/Pid.B/2019/PN Spg.

⁴⁰ Jenny Indrastoeti Sp, *Penanaman Nilai-Nilai Karakter Melalui Implementasi Pendidikan Karakter Di Sekolah Dasar* (2016); Abdul Kadir, “Konsep Pembelajaran Kontekstual di Sekolah” (2013) 13:1 *Dinamika Ilmu*, online: <http://journal.uinsi.ac.id/index.php/dinamika_ilmu/article/view/20>; Dek Ngurah Laba Laksana & Maria Angelina Seso, “Desain Pembelajaran Konstekstual Spirit Meda Mazi di SD Kelas Rendah” (2018) 2:1 *Journal of Education Technology* 1–5.

⁴¹ Examples of contextual learning models in mathematics, for example teachers in delivering learning material not only use scientific approach models which cause students to be less active in learning activities, but mathematics as a science that studies logical concepts that represent the use of symbols, patterns, and Relationships in their function help humans understand and master social, economic and natural problems. Panji Setiawan & Dewa Nyoman Sudana, “Penerapan Model Pembelajaran Kontekstual untuk Meningkatkan Hasil Belajar Matematika” (2019) 2:3 *Jurnal Ilmiah Pendidikan Profesi Guru* 238–247 at 239.

⁴² Delfianto Quartita said that violence in schools against students is an act that results in physical, mental, sexual or psychological misery or suffering, including bullying. Jetty Martje Patty & Cindy Agnesia Ratmala, “Tindak Kekerasan Terhadap Anak di Lingkungan Satuan Pendidikan dan Peranan Keluarga Sebagai Upaya Non-Penal Dalam Pencegahan” (2020) 5:2 *Jurnal Belo* 115–129. In this writing, violence against children is specifically limited to what is done by teachers against students while studying at school which results in physical, mental and psychological misery.

The process of forming character by applying 2 (two) ways, namely the life skill learning-based method, and contextual. In this case, the life skill learning-based method can be done by teaching students to think critically, even though in fact it is often used in non-formal education,⁴³ but can be applied in formal education in school. Several ways in the life skill learning-based method can be applied in education in schools which are formal education. Development of empathy, critical thinking, and creative thinking is a model of life skill learning-based method that can be reached; while the contextual learning method can be done by the teacher providing an example for students, by showing something related to learning. The purpose of the contextual learning model is for students to be able to find concepts that can be used to build their own knowledge through teacher guidance.⁴⁴ Through the contextual learning model, students are expected to obtain comprehensive results.

Based on the life skill learning-based method and contextually, the formation of the character of students can be achieved as intended in the educational goals of making human beings with noble morals able to be responsible as citizens of a democratic society. Consequently, Corporal Punishment which contains aspects of violence does not have to be carried out by the teacher in the teaching and learning process, both during intra-curricular and extra-curricular learning at school.

The teacher's actions in the process of forming the character of students who are carried out with violence can be associated with criminal law. According to the author's opinion, in the process of forming the character of students, they should not apply Corporal Punishment. Based on the three court decisions that have permanent legal force in this writing, the

⁴³ Non-formal education is an educational path that is carried out outside of formal education which can be carried out in a structured and tiered manner. Ahmad Darlis, "Hakikat Pendidikan Islam: Telaah Terhadap Hubungan Pendidikan Informal, Non Formal dan Formal" (2017) 24:1 J Tarb, online: <<http://jurnaltarbiyah.uinsu.ac.id/index.php/tarbiyah/article/view/131>> at 91.

⁴⁴ The results of Panji Setiawan & Dewa Nyoman Sudana's research found that there were two cycles in class action and in each cycle included the action planning stage, the implementation stage, the observation stage, and the reflection stage. This study shows that the contextual learning model is able to improve students' mathematics learning outcomes. Setiawan & Sudana, *supra* note 41 at 239.

facts at trial proved that the actions of the teacher of Corporal Punishment can be categorized as a criminal act.

In relation to criminal acts, among the allegations of the public prosecutor for acts of violence committed by teachers against students have been proven in the process of proving the case at the court. The teacher's actions have fulfilled the elements of the crime of violence against children as determined in the Child Protection Law.⁴⁵ According to the author's opinion, the portrait of the teaching profession which was sentenced to imprisonment in the case of Corporal Punishment is ironic,⁴⁶ because on the one hand the teacher is a noble profession in molding the personal character of the nation's 'children', but on the other hand, ironically the teacher becomes a convict in a crime committed in carrying out his professional duties.⁴⁷ Therefore, in the next section the author describes how criminal law should be implemented in cases of violence perpetrated by teachers against their students in carrying out their professional duties.

⁴⁵ Decision Number 11/Pid.Sus/2012/PN.Btg imposed sanctions on the defendant HMW having been proven guilty of committing the crime of violence against, and imposed a criminal sanction of 5 (five) months imprisonment and a fine of Rp. 500,000.00 (five hundred thousand rupiah) if the fine is not paid is replaced by imprisonment for 2 (two) months; Decision Number 165/Pid.B/2019/PN Spg imposed sanctions on the defendant HA who was guilty of committing the crime of violence against children, and imposed a prison sentence of 1 (one) month; and Decision Number 94/Pid.Sus/2020/PN.Kka imposed sanctions against Defendant Y guilty of committing the crime of violence against children, and imposed a prison sentence of 3 (three) months. The three court decisions that have legal force The permanent punishment is a suspended sentence, in the sense that the prison sentence imposed by the judge does not have to be served if the convict fulfills the conditions determined by the judge and also the law. The conditions that must be met by the convict include not committing a crime during the period of serving the probation sentence.

⁴⁶ The Big Indonesian Dictionary (KBBI) states that irony is an event or situation that is contrary to what is expected or should have happened but has become a destiny. "Arti kata ironi - Kamus Besar Bahasa Indonesia (KBBI) Online", online: <<https://kbbi.web.id/ironi>>. Accessed 22 July 2023

⁴⁷ Even though in the three court decisions mentioned above, the convict does not have to serve a prison sentence because the judge decided on a suspended sentence, the judge's decision has given a negative stigma to the teacher as a convict.

IV. LIMITS OF ERROR AND TEACHER'S PJP ON ACTIONS CORPORAL PUNISHMENT

The application of Corporal Punishment in the school environment, is not separate from the teaching profession. Teaching is a noble profession⁴⁸ because of its role in making a major contribution to the formation of the character and personality of quality students. Nevertheless, Corporal Punishment done by the teacher, has been used as an excuse for parents to report it to the police. The report to the police was accompanied by demands for legal proceedings against teachers who were 'seen to have committed violence' against students. In Corporal Punishment, teachers who commit acts of violence against students can be held accountable according to criminal law based on mistakes.

Responsible ability is the basis of PJP. According to van Hamel, a person is declared capable of being responsible if an actor: psychologically understands or is aware of the meaning of his actions, realizes that the actions committed are prohibited by societal procedures, and the perpetrator is able to determine his will for his actions.⁴⁹ From a criminal law perspective, Corporal Punishment carried out by the teacher against students, can be associated with justification reasons.⁵⁰

⁴⁸ According to Trianto and Sardiman, a teacher is a profession and/or position that requires special expertise, so professional teachers must have the ability to carry out their responsibilities towards students, parents, society, religion, nation, and state to achieve educational goals. Rivaldo Paul Telussa et al, "Workshop Guru Sebagai Pekerja Profesional di SMTK Teon Nila Serua Kabupaten Maluku Tengah" (2023) 2:2 Jurnal Pengabdian Mandiri 735–740. Indicators of teachers as professionals with expertise include that each teacher is required to take certain education, and attend special training, and even under certain conditions the government requires educator certification to support their competence as teachers. Teachers have a professional organization, the Association of Indonesian Teachers (PGRI), which was established on 25 November 1945.

⁴⁹ Marpaung Leden, "Asas-Teori-Praktik Hukum Pidana" (2005).

⁵⁰ In the theory of criminal law, there are 3 (three) reasons for not being convicted of an offender, also known as the reason for abolishing a crime. K. Wancik Saleh stated that justification reasons are reasons that eliminate and eliminate the unlawful nature of an act, so that the perpetrator's actions are seen as proper and right actions; reasons for forgiveness, are reasons that eliminate the guilt of the perpetrator, in this case the perpetrator's actions are still unlawful and constitute a criminal act but the perpetrator is not punished because there was no mistake; and the reason for the

Regarding the reasons for justification in criminal law, it can be linked to criminal acts committed by teachers against students. From the perspective of justification reason, there are 2 possibilities, namely:⁵¹ *First*, teachers as perpetrators are not accountable according to criminal law on the pretext of "*tuchtrecht*"⁵² and *second*, accountable based on *loss and benefit* principle.

The teacher who committed Corporal Punishment within certain limits, and for educational purposes it is not always possible to be subject to criminal sanctions, even though formally the teacher has committed a crime. Committed Corporal Punishment that is unpunished is based on "*Tuchtrecht*", this can be categorized as justification reasons in criminal law. This means Corporal Punishment is 'justifiable' because of the elimination of the unlawful nature of the act, so that acts of violence within certain limits for educational purposes can eliminate the unlawful nature of the act, especially from the aspect of material unlawful nature.⁵³ In this case, despite the nature of Corporal Punishment declared formally against the law,

abolition of prosecution, is based on the government (in this case through the public prosecutor) the actions of the perpetrators do not need to be prosecuted and punished based on their utility and benefits to the community and considerations of the public interest. Nanang Tomi Sitorus, "Perdamaian Sebagai Upaya Penghapusan Proses Pidana (Studi Kasus Putusan Mahkamah Agung Nomor 1600 K/Pid/2009)" (2020) 3:2 *Doktrina: Journal of Law* 128–139.

⁵¹ Windari, *supra* note 22.

⁵² Cloth rightis the teacher's actions that are permitted in *tuchtrecht* not only depriving children/students of freedom, but also acts of punishment that are carried out within certain limits with minimal losses. At least the action must meet three conditions, namely: 1) under forced conditions, 2) limited flogging (must be with certain considerations and, 3) used to achieve permitted goals. Asliani Asliani, "Tinjauan Yuridis Terhadap Hukuman Disiplin Pada Anak Didik di Sekolah" (2023) 2:1 *Seminar Nasional Hukum Sosial Dan Ekonomi* 143–149 at 148.

⁵³ According to Soedarto, the teachings of unlawful nature are divided into 2 (two) types, namely against formal law and against material law. The nature of formal violation of law is an act that is punishable by crime and is formulated as a criminal act, and the elimination of a criminal act is based on the law, in this case the nature of being against the law is the same as against the law; while the unlawful nature of the material, is an act that is not only against the law (written law) but also must be seen from the enactment of the unwritten law, and the elimination of the unlawful nature based on the provisions of the law and/or based on unwritten rules(via Legal). Setya Indra Arifin, "Rekonstruksi Sifat Melawan Hukum Pidana Materiil Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP" (2023) 4:1 *Al Wasath Jurnal Ilmu Hukum* 29–42.

however in terms of educational goals that do not violate the decency system which materially does not violate the law. Therefore teacher that committed Corporal Punishment within certain limits⁵⁴ should not be punished based on the enactment of the teaching of unlawful materiality in its negative function.⁵⁵

According to Barda Nawawi Arief, the meaning of material lawlessness is incompatible with or contrary to unwritten or living laws, as well as contrary to the propriety principles that live in society.⁵⁶ Referring to the opinion of Nawawi Arief, Corporal Punishment essentially does not conflict with unwritten law and does not conflict with the decency. Therefore, Corporal Punishment cases, Law enforcement officers should apply the teachings of the nature of against material law. The nature of violating material law is synonymous with “*onrechtmatige daad*” or “*unlawful act*”,⁵⁷ this may be applied in Corporal Punishment cases.

Based on the conceptual framework, material unlawfulness has a negative function, that is, actions committed by teachers in carrying out their duties formally in the law are categorized as unlawful acts, but the unlawful nature of their actions can be eliminated. Corporal Punishment by teachers towards their students is indeed unlawful based on the provisions of the

⁵⁴ Within certain limits, in this case, the teacher's actions do not result in injuries that hinder students from carrying out activities.

⁵⁵ Currently the Criminal Code that applies based on Law no. 1 Year 1946 which is a translation of the *Criminal Code for the Netherlands Indies* legacy of the Dutch East Indies government adheres to the teachings of the nature of against formal law. With the ratification of the New Indonesian Criminal Code (UU No. 1 of 2023) the lawlessness has expanded, in the sense that Article 2 of the New Indonesian Criminal Code adheres to the teachings of formal lawlessness and material lawlessness.

⁵⁶ Barda Nawawi Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan (Buku II)* (Bandung: PT Citra Aditya Bakti, 2011) at 26.

⁵⁷ *Onrechtmatige daad* is often used in civil law which is defined as an unlawful act that is in the realm of private law violations. *Onrechtmatige daad* is defined in Article 1365 of the Civil Code, the elements of which include: the existence of an act, the act is unlawful, there is the fault of the perpetrator, there is a loss to the victim, and there is a causal relationship between the act and the loss. Gita Anggreina Kamagi, “Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata dan Perkembangannya” (2018) 6:5 *Lex Privatum*, online: <<https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/21369>> at 64.

Child Protection Law, however, the aim of carrying out the educational process is what should materially eliminate its unlawful nature.

Over time, there have been several acts whose unlawful nature was removed on the basis of justification reasons in the theory and practice of criminal law. Regarding the elimination of the unlawful nature of material Corporal Punishment carried out by the teacher can be based on unwritten values and laws recognized by the teaching profession, namely "*disciplinary law*" or "*Tuchtrecht*". *Tuchtrecht* means the right to discipline or the right to supervise exercised by parents, guardians or teachers against students who are still within certain limits. Certain limits, that is, if the teacher performs these actions within the scope of his work and responsibilities, which are based on good goals in the administration of education. The teacher's actions in the implementation of education can be rationally accepted as long as it is within the limits of reasonableness, namely by minimizing the losses experienced by students (both economic and non-economic losses), and taking into account the physical and psychological conditions of students.⁵⁸ Examples of Corporal Punishment that is allowed which are oriented towards physical activity that has a positive impact, for example sanctions for sweeping the classroom/school yard, cleaning the classroom, and so on.

Tuchtrecht not only allows the actions of teachers who deprive students of freedom, but also regarding acts of punishment against students which are regulated within certain limits with the smallest possible loss. *Tuchtrecht* should at least meet 3 conditions, namely, carried out under forced conditions, its application is limited or must be with certain considerations, and its application is carried out to achieve permissible goals.⁵⁹

⁵⁸ Desida Dwizhafira, Nur Rochaeti & Yusriyadi Yusriyadi, "Penegakan Hukum Bagi Guru Sebagai Pelaku Tindak Pidana Kekerasan di Sekolah" (2018) 7:4 Diponegoro Law Journal 406–426.

⁵⁹ Robert Andario, mentioned that disciplinary law it is the right of parents, guardians and teachers to punish children or students within certain limits (based on the principle of proportionality) for the purpose of educating, and Indonesian law still provides for the right of teachers to discipline students based on Supreme Court Decision Number 1554 K/Sip/2013 dated 6 May 2014 which justifies the teacher's action of cutting the students' long hair. Robert Andario, "Keberadaan dan Peran

Teachers can be accounted for based on principles *loss and benefit*. Based on the basic idea of "justice", the purpose of good education, which is formally against the law, is not always a justification for the acts of violence committed. The aim of educating cannot always be used as an excuse for a criminal penalty for teachers, if the actions taken by the teacher turn out to neglect the interests of students, and ignore the principle of proportionality between benefits and losses, causing considerable losses for students.

Sec.2363 Elementary and Secondary Act 2002 (America) has determined the losses arising from actions taken by teachers, namely: *economic loss* and *non-economic loss*.⁶⁰ Non-economic losses incurred include physical losses and non-physical/emotional losses. Teacher actions that go beyond the limits and are physically detrimental, for example: punishing students standing in the field under the hot sun until they faint because they don't do homework, hitting students with a piece of wood causing injuries. According to Leden Marpaung, this action is included in the scope of action that exceeds the limit.⁶¹ It is the act of punishment that exceeds the limit that can be detrimental, both physically and non-physically which can be categorized as an act that exceeds the limit. The teacher's actions that exceed the limits cannot be justified even if they are carried out for educational purposes. *Tuchtrecht* can be used as long as the teacher's actions to discipline students do not exceed the limit or cause consequences prohibited by law, for example not causing pain or injury, which can be categorized as criminal acts of persecution.

Based on the explanation of *Tuchtrecht*, the actions of teachers who commit acts of violence in carrying out their duties can be justified according to law, so that teachers as perpetrators are not subject to criminal sanctions if the actions committed are still within the scope of their work and responsibilities. In addition, the actions taken have a good purpose for education, for example Corporal Punishment done to enforce discipline, and the actions taken by teachers are still within reasonable limits by

Hak Mendisiplinkan (*Tuchtrecht*) Sebagai Alasan Pembena di Luar Undang-Undang Dalam Sistem Hukum Pidana Indonesia” (2017) 5:2 *Lex Privatum* at 37.

⁶⁰ Windari, *supra* note 22.

⁶¹ *Ibid.*

minimizing the losses felt by students, both physical and non-physical losses.

Based on an explanation of the ability to take responsibility for Corporal Punishment carried out by teachers to students, based on 3 court decisions used by the author as material in the case approach, the author believes that the teacher who committed Corporal Punishment cannot be subject to criminal sanctions. Alternatively, Corporal Punishment can be justified according to law with predetermined limits, namely: not causing substantial losses to students, both physical and psychological losses, *economic loss* nor *non-economic loss*, and the actions taken by the teacher can be accepted by the parties, in this case students, parents, the school, and the community. The limits regarding tuchtrecht's actions can be said to be beyond the limits if they can be detrimental and have no benefit in educational efforts, for example punishing students to stand in the field in the sun until they faint just because the students did not do their homework. The act of punishing students in the sun until the students faint does not result in any value, but only causes ongoing losses for the students, such as physical pain until they faint.⁶²

V. PROSPECTIVE FUNCTIONALIZATION OF CRIMINAL LAW INCORPORAL PUNISHMENT IN THE FUTURE

Relates to the functionalization of criminal law in action Corporal Punishment, cannot be separated from the function of criminal law. Theoretically, there are 2 (two) types of functions of criminal law, namely *ultimum remedium* and *primum remedium*. Sudikno Mertokusumo clarify the function criminal law as a last tool in law enforcement (*ultimum remedium*),⁶³ whereas in its function *primum remedium* Criminal law is the main means of enforcing the law. In the context of *primum remedium* is not the final drug but the main drug to create a deterrent effect on perpetrators

⁶² Kartono Kartono, *Eksistensi Hak Guru Mendisiplinkan (Tuchtrecht) Murid Melalui Hukuman Fisik (Corporal Punishment)* (2022).

⁶³ Sudikno Mertokusumo, *Penemuan Hukum : Sebuah Pengantar* (Yogyakarta: Liberty, 2007) at 12.

of criminal law violations.⁶⁴ In the settlement of action Corporal Punishment, criminal law should be used as a last resort or in its function which is *ultimum remedium*. In this case, if Corporal Punishment does not cause detrimental consequences for students, the criminal law process should be abolished by functioning the *ultimum remedium*.

Another function of criminal law can be distinguished into 2 functions, namely the function of criminal law in general, and the function of criminal law in particular. The function of criminal law in general is to regulate life among members of the community in carrying out social order; whereas specifically the function of criminal law is to protect the legal interests of the actions to be carried out by the perpetrators, accompanied by threats of sanctions that are sharper than sanctions in other branches of law.⁶⁵ However, the sharp and cruel nature of criminal law in its application must bear in mind the negative impact it has, both individual and societal impacts. For individual convicts, the negative impact of applying criminal law is also felt by their families and people whose lives depend on the convict; In addition, the loss to society is the frequent occurrence of recidivism as a result of imprisonment.⁶⁶

Given the negative impact arising from the application of criminal law in Corporal Punishment, criminal law should be used as a last resort. Therefore, restorative justice efforts are prioritized over applying criminal law. Restorative justice is a process of justice pursued in criminal law as an effort to bring together related parties (especially victims and perpetrators) in seeking and finding a way of a just solution to restore the original situation before the occurrence of a criminal incident and not aimed at

⁶⁴ Elsa Priskila Singal, "Primum Remedium Dalam Hukum Pidana Sebagai Penanggulangan Kejahatan Keras Putih (Money Laundering)" (2021) 10:6 Lex Crimen, online: <<https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/34419>>.

⁶⁵ Masruchin Ruba'i, "Buku Ajar Hukum Pidana. Media Nusa Creative" (2021) at 8.

⁶⁶ Puteri Hikmawati, "Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif (Criminal Conditional Supervision As A Substitute Of Probation Sentence Towards Restorative Justice) | Hikmawati | Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan" (2017), online: <<https://jurnal.dpr.go.id/index.php/hukum/article/view/923>>.

retaliating against the perpetrator.⁶⁷ Therefore, a joint effort of students, parents/guardians and teachers as actors in efforts to 'peace' should be prioritized by law enforcement officials in resolving cases. Thus, it can prevent negative stigma against the teaching profession.

There is a negative stigma in the application of criminal law to teachers who commit Corporal Punishment should be a wise consideration, considering that the teaching profession is a noble profession.⁶⁸ The negative stigma of the application of criminal law will stick throughout the life of the teaching profession in Corporal Punishment, by implementing restorative justice, this negative stigma can be avoided. In its development, there are 2 (two) streams in criminal law, namely the classical school and the modern school. The classical school teaches that the purpose of criminal law is to protect individual interests from the arbitrariness of the authorities;⁶⁹ while the modern school teaches that the purpose of criminal law is to protect society from crime. In the modern stream, the purpose of criminal law adheres to the postulate "*le salut du people est la supreme loi*" which means the highest law is the protection of society.⁷⁰

Protection of society as the highest law in relation to Corporal Punishment can be interpreted broadly, namely the protection of students as victims and the protection of the teaching profession as perpetrators of Corporal Punishment. Consideration of a professional teacher is a teacher who has expertise, responsibility, and a sense of fellowship that is supported by strong professional ethics.⁷¹ Therefore, criminal law in its function as last resort by applying the postulate "*le salut du people est la supreme loi*" need to be prioritized in these Corporal Punishment cases.

⁶⁷ Muhammad Adam Zafrullah, "Penerapan Keadilan Restoratif (Restorative Justice), Apa Syarat-Syaratnya? - LBH 'Pengayoman' UNPAR", (2023), online: <<https://lbhpengayoman.unpar.ac.id/penerapan-keadilan-restoratif-restoratif-justice-apa-syarat-syaratnya/>>.

⁶⁸ Dyah Indraswati, Prihma Sinta Utami & Deni Sutisna, "Persepsi dan Motivasi Mahasiswa Pendidikan Guru Sekolah Dasar (PGSD) Tentang Profesi Guru" (2020) 8:3 Jurnal Dimensi Pendidikan dan Pembelajaran 131–138.

⁶⁹ Hiariej, *supra* note 1.

⁷⁰ *Ibid* at 31.

⁷¹ Edi Hendri (Dosen UPI Kampus Tasikmalaya), "Guru Berkualitas: Profesional dan Cerdas Emosi" (2010) 19 saung-guru, online: <[http://jurnal.upi.edu/saung-guru/view/188/Guru Berkualitas: Profesional Dan Cerdas Emosi](http://jurnal.upi.edu/saung-guru/view/188/Guru%20Berkualitas:%20Profesional%20Dan%20Cerdas%20Emosi)>.

The classical school of criminal law requires criminal law of acts or deed-criminal law (*daad-strafrecht*), then according to the modern school requires a criminal law that is oriented towards the perpetrator.⁷² Orientation to the teacher as a perpetrator of Corporal Punishment should also pay attention to the continuation of a professional teacher's career. The use of criminal law as a last resort in Corporal Punishment cases may be done by prioritizing the imposition of administrative sanctions rather than criminal sanctions. Administrative sanctions in the form of verbal warnings, written warnings, reduced rights, and temporary dismissal from positions as educators/educational personnel or the heaviest administrative sanctions in the form of termination/termination of employment relations will be more beneficial than the imposition of criminal sanctions.

In criminal law, the modern school is based on three foundations namely, fighting crime, paying attention to other sciences, and functioning last resort (*ultimum remedium*).⁷³ The basis of the classical legal school is to see crime based on moral freedom. Based on the classical legal school, crime is a product of the offender's freedom of moral choice. Based on the view of freedom that exists, some experts argue that the classical theory explains that crime is a mistake and the perpetrator must be morally responsible, therefore, the perpetrator who violates must receive punishment according to the moral values of society in retaliation for the crime he committed.⁷⁴

According to the author's opinion, the use of criminal law in its function as a first remedy is part of the classical school which in its development has been displaced by the modern school. The modern school in criminal law which is based on efforts to fight crime, taking into account the application of other sanctions outside of criminal law, and the last resort function is appropriate in handling Corporal Punishment cases. Referring to the teachings of modern schools in criminal law, future settlement of Corporal Punishment should prioritize restorative justice involving parties in the educational process. Involvement of the education office and teacher professional organizations in the process of restorative justice is urgent, as

⁷² Hiariej, *supra* note 1.

⁷³ *Ibid.*

⁷⁴ Syaiful Bakhri, "Pengaruh Aliran-Aliran Falsafat Pemidanaan dalam Pembentukan Hukum Pidana Nasional" (2011) 18:1 Jurnal Hukum Ius Quia Iustum 137–157.

formulated in Article 1 number 1 of the Republic of Indonesia Attorney Regulation No. 15 of 2020,⁷⁵ and Article 1 point 3 Police Regulations 2021. Restorative justice is the handling of criminal cases involving perpetrators, victims, families of perpetrators and families of victims, and related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

Based on Police Regulations 2021 and Attorney General's Regulations 2020, the case resolution mechanism of Corporal Punishment in restorative justice involves the education office and/or teacher professional organizations. The urgency of the involvement of the education office and/or teacher professional organizations is useful for correcting violations that have been committed by teachers and for future development. The author argues, in handling cases of Corporal Punishment, if restorative justice does not reach agreement, then principle of last resort can be applied.

According to the author's opinion, prioritizing the application of restorative justice rather than the application of criminal law is based on the following considerations: first, high social cost that must be borne by society in the application and use of criminal law; second, the negative stigmas arising from the application of criminal law, for example the negative stigma as a former convict towards a teacher who was found guilty of Corporal Punishment; third, alternative settlement should be the spirit that developed in the community to resolve Corporal Punishment cases; and fourth criminal law should be used as the last resort in Corporal Punishment cases in Indonesia. Of the four considerations mentioned above, criminal law should not be used as long as there are alternatives to settle Corporal Punishment cases.

From the first statement to the fourth according to the author, in handling Corporal Punishment, investigators prioritize the application of restorative justice, and if restorative justice is not achieved at the investigation stage, at a later stage the public prosecutor can also apply restorative justice. In terms

⁷⁵ "Peraturan Kejaksaan No. 15 Tahun 2020", online: <<https://peraturan.bpk.go.id/Details/169939/peraturan-kejaksaan-no-15-tahun-2020>>.

of implementing restorative justice, parents or guardians of students, teachers, schools or the education office, teacher professional organizations and community leaders or religious leaders are given the opportunity to be involved in resolving these problems amicably.

With regard to characteristics in criminal law, *ultimum remedium* is the enforcement of criminal law that is carried out by imposing harsh and sharp sanctions, but as much as possible to reduce suffering for the perpetrators.⁷⁶ Usage of *ultimum remedium* last can be done if restorative justice failed/didn't reach agreement. Application of *ultimum remedium* in Corporal Punishment cases should have definitive measures, so as not to cause suffering/trauma to the victim. In addition, the imposition of sanctions for Corporal Punishment can be adapted to the nature and circumstances of the offender. According to Sudarto, the imposition of sanctions by taking into account the nature and circumstances of the offender is called criminal individualization.⁷⁷ The urgency of applying the concept of criminal individualization in Corporal Punishment, by referring to the teacher's track record and character while carrying out his profession as an educator, for example by reviewing the teacher's behavior before, during and after the incident happened. In certain conditions related to criminal individualization, a psychiatric examination intervention is needed to test competence as a teacher with a psychological perspective.

VI. CONCLUSION

Terms regarding Corporal Punishment has not been specifically regulated in Indonesian positive law. The Child Protection Law is used as a basis in deciding cases against teachers who committed Corporal Punishment. Criminal law enforcement can be resolved by prioritizing the use of restorative justice and applying criminal individualization to teachers who are proven to have committed Corporal Punishment. This study

⁷⁶ Nur Ainiyah Rahmawati, "Hukum Pidana Indonesia: Ultimum Remedium Atau Primum Remedium" (2013) 2:1 Recidive.

⁷⁷ Tri Wahyu Widiastuti, "Prinsip Individualisasi Pidana Dalam Hukum Pidana Dan Hukum Pidana Islam Di Indonesia" (2010) 9:2 Wacana Hukum, online: <<https://ejournal.unisri.ac.id/index.php/Wacana/article/view/275>>.

recommends related involvement of psychological insight or intervention through teacher competency tests as investigators, and parents/guardians of students should prioritize dialogue with the teacher or the school in solving Corporal Punishment, before reporting it to the police. There are several methods used in restorative justice. The most effective restorative justice method used is family group conferencing, because the perpetrator is confronted directly with the victim, the victim's family and the perpetrator's family. One of the aims of family group conferencing is to provide an opportunity for victims to be directly involved in discussing violations and making decisions regarding sanctions. appropriate for the offender.

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