

# The Urgency of Legal Education for Teachers to Prevent Teacher Criminalization in Learning

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## The Urgency of Legal Education for Teachers to Prevent Teacher Criminalization in Learning

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**Abstract:** Teachers are educators who carry out their duties and obligations professionally. However, there is a clash between enforcing discipline to students and Law No. 35 of 2014 concerning Child Protection. The main problem in this research is analyzing the reasons for the need for legal education for teachers to prevent the criminalization of teachers in learning and government efforts to prevent the criminalization of teachers in learning. This research used a juridical-normative approach method with secondary data, which was analyzed deductively using descriptive-analytical data analysis. The results of the research and discussion show that legal education is needed for teachers to prevent criminalization because teachers receive protection through Law No. 14 of 2005 concerning Teachers and Lecturers and Law No. 20 of 2003 concerning the National Education System. The many conflicting cases of enforcing teacher discipline for students and the imposition of sanctions, which result in criminalization, encourage the need for legal education and legal understanding for teachers in Indonesia. Efforts that the government can make to prevent criminalization are providing legal outreach programs for teachers in Indonesia, strengthening legal protection regulations for teachers in learning, and providing character education to students.

**Keywords:** Teacher, Criminalization, Legal Education, Learning

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### INTRODUCTION

Education is a conscious and planned effort to create an atmosphere and learning process so that students actively develop their learning potential and self-potential to have religious and spiritual power, self-control, personality, intelligence, morals, and skills needed by themselves, society, and nation (Masri et al., 2023). Education is essential to support a better life in the future. Education is a fundamental right for everyone in all situations and conditions because education is a foundation for lifelong learning (Mujafiat & Yoenanto, 2023). Teachers have an essential role in education, both academic and non-academic. This world of education encourages efforts to integrate the nation to improve the quality of human resources in Indonesia.

Education is the key word in an effort to improve the quality of human life within which it has a role and objective to 'humanize'. Education is essentially the process of maturation quality of life. Through the process of human expected to understand the meaning and essence of life, and for what and how to carry out the task of living and life correctly. That's why the focus of education is directed to the formation of a superior personality with emphasis on the quality of the maturation process of logic, heart, character, and faith. The highlight was reaching the point of perfection education quality of life (Luangsinhitheth, et al., 2017)

Teachers are professional educators with the role and task of advancing education in Indonesia. Teachers' concerns are not only related to economic welfare or wages but also to fulfilling their constitutional rights. Legal Protection and Fulfillment of Rights to teachers in Indonesia are accommodated through government regulations and policies, including Law No. 14 of 2005 concerning Teachers and Lecturers. The role of the teacher in learning in schools has an immense contribution, not only in intellectual education but also in character education. The fulfillment of students' character education and discipline is frequently carried out by punishing them when they violate school orders.

These actions often become disciplinary conflicts by teachers, interpreted as acts of criminalization by some students' parents.

In carrying out their duties, educators are entitled to obtain a sense of security and work safety guarantees through the following protection: (a) law, (b) profession, and (c) occupational safety and health. Teachers need guarantees, legal protection, and definite rules to get a sense of security in carrying out their duties and professions (Suharyanta, 2020). Some time ago, Indonesian people were shocked by the cases of violence, harassment, and criminalization by parents against teachers. The case is reported by various media, such as print, electronic, or online. It is widely discussed by people online and offline.

One of the cases was experienced by Malayanti, a SMA Negeri 3 Wajo teacher, on November 6, 2017. Students' parents reported Malayanti to the police for pinching the arm of her students who played mobile phones in the entrepreneurial class. A similar case was experienced by Sambudi (45), who had to undergo a hearing at the Sidoarjo District Court for pinching one of his students who did not follow the school rules to carry out the Dhuha prayer in congregation (Rozi, 2018). In carrying out their professional duties, teachers are not only based on Law No. 14 of 2005 concerning teachers and lecturers but also on Government Regulation No. 74 of 2008 concerning teachers (Serah & Setiawati, 2022).

In Majalengka, a teacher, only because of shaving the hair of one of his students, had to sit in the trial. In the trial, the teacher was proven guilty and sentenced to three months in prison with six months of probation. Although the teacher was given a concurrent sentence and probation, the Supreme Court annulled it, and the teacher was sentenced to be free. Based on the Supreme Court jurisprudence, the teacher cannot be criminalized while undergoing his profession and taking disciplinary actions against students. Former Deputy Chairperson of the Indonesian People's Consultative Assembly, Hidayat Nur Wahid, said, "The teacher's actions that reprimand and punish their students in the context of implementing discipline, as long as they are still in the corridor of education cannot be criminalized. If you just pinch or punish to uphold discipline and then get reported to law enforcement, what is the fate of our education world? " The role and task of the teacher are not only to convey knowledge, skills, guidance, and instructions, design and implement learning and evaluate; as an educator, a teacher also develops personality and fostering character (Nawawi, 2018).

The case of teachers who get discriminatory acts does not only occur in Indonesia. The case of teachers as victims of bullying also occurred in South Africa and received the attention of the locals. The teacher is bullied in the workplace, so the South African Government provides several legal protection efforts: (1) The Employment Equity Act (55 of 1998), which prohibits Unfair Discrimination, Including Harassment, in the Workplace; (2) The Basic Condition of Employee Act (75 of 1997) which sets out minimum employee conditions, including the right to a safe working environment, (3) The occupational health and safety act (85 of 1993), which ensure employee 'health and safety'; (4) The Code of Good Practice on the Handling of Sexual Harassment Cases (GN R711 in GG 19406 of July 17, 1998), which provides guidelines for dealing with sexual harassment in the workplace (Langeveldt, 2023).

The need for teacher protection is not only related to protecting their welfare rights but also the protection of the teachers concerned to carry out their duties and roles optimally with a sense of security and comfort. When teachers are affected by legal issues, especially those relating to their duties, Law No. 14 of 2005 concerning teachers and lecturers should be the basis for their legal protection. However, in reality, the law has not protected teachers optimally, so they seem to struggle alone in solving the issue, especially the legal ones (Budoyo, 2022).

Legal protection and efforts to fight violence against teachers become other dimensions of violence against students. Both are facing each other, but some victims must be saved. Violence against teachers is still a peripheral issue and has not yet become the focus. The primary current is violence against students and their protection efforts. Most literature studies focus on aggression, violence, and intimidation against students. However, teacher violence against students is not sufficiently studied, and the study of violence against teachers is rarely carried out. Therefore, it takes the state's presence for peace and the teacher's inner welfare while working. Teachers' professional organizations are also one of the practical systems against violence against teachers (Triwiyanto et al., 2023).

Legal protection includes acts of violence, threats, intimidation, discriminatory treatment, or unfair treatment of students, students' parents, the community, bureaucracy, or other parties. Professional protection includes protection from termination of employment that is not under statutory regulations, inappropriate wages, restrictions in giving opinions, harassment of the profession, restrictions or other prohibitions that prevent teachers from carrying out their duties, and further study obstacles.

Occupational safety and health protection includes protection from the risk of work security disorders, work accidents, bullies during work time, natural disasters, work environment health, and other risks. IPR protection includes copyright and industrial property rights (Hasima, 2020).

Teachers are often in a dilemma between professional obligations and community treatment. The teacher is required to help students to achieve educational goals. However, when the teacher seeks to uphold discipline, teachers are intercepted by the Child Protection Act and Komisi <sup>2</sup> Lindungan Anak Indonesia. Discipline by school teachers, which was once considered mediocre, is now considered to violate human rights. As a <sup>2</sup> result, the teachers face a dilemma. On the one hand, they must uphold discipline and school rules, while on the other hand, they are worried about being criminalized by parents or the defenders of the child for accusations of violence. The dilemma implies that the teacher becomes less strict with students who violate the rules and orders in school (Fauzi, 2017).

Criminalization is determining an act that was not previously unlawful or a criminal act to become a criminal act. The criminalization of teachers in learning often occurs because of the conflict between the Child Protection Law and the enforcement of discipline and character for students. Some parents reported disciplinary action from teachers to protect their children's rights from discriminatory actions. This creates a dilemma for legally protecting teachers in carrying out their profession.

The current reality is that teachers are faced with two things: enforcing discipline and character education and the wrong perspective of some parents when teachers enforce discipline as if it is in direct conflict with the Child Protection Law. Therefore, "The Urgency of Legal Education for Teachers to Prevent Criminalization in Learning" is necessary in this research. This research consists of two main issues: (1) Why is legal education for teachers needed to prevent the criminalization of teachers in learning? (2) What are the government's efforts to fulfill teachers' constitutional rights in carrying out their duties in upholding discipline and character education for students so that they are not easily criminalized based on the Pancasila values of justice?

This research has an element of novelty compared to several previous similar studies. Research by Triputra et al. (2020) entitled "The State's Responsibility to Protect Teachers in Carrying Out Their Professional Duties" examines the state's fulfillment of teachers' rights in carrying out their professional duties. In this research, we also discussed Decision Number 1554K/Pid/2013, which acquitted Aop Saopudin, a teacher in Majalengka, as the defendant. The Supreme Court considered that what the defendant did was his duty, not a crime. The defendant was not sentenced because his actions aimed to educate students to be excellent and disciplined (Triputra et al., 2020). This research is novel in the form of the urgency for legal education to prevent criminalization for teachers in enforcing discipline and character education for students.

The following research that correlates with this research is by Gazali (2021) titled "Legal Protection for Teachers Who Provide Physical Sanctions within Reasonable Limits to Students." This research examines the legal protection regulations for teachers in providing sanctions to students within reasonable limits, which are accommodated through statutory regulations. However, it is felt that its implementation is still very inadequate, considering that many teachers are still haunted by fear and worry about criminalization by students in carrying out their duties, thereby reducing the professionalism of teachers in providing education and discipline in schools (Gazali, 2021). The novel element in this research is the awareness of the urgency of legal education for teachers to increase their understanding of teachers' rights and obligations as professional educators. This research aims to analyze and examine the reasons for the need for legal education for teachers to prevent the criminalization of teachers in learning and provide recommendations for the government to fulfill teachers' constitutional rights in upholding discipline and character education for students so that they are not easily criminalized based on the Pancasila value of justice.

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## METHODS

This research used a juridical-normative approach with qualitative and quantitative data. The primary data source for this research was secondary data. This research used a case approach regarding teacher criminalization, a literature study approach, and a statutory regulations approach (Hardiyanti et al., 2022).

The following were secondary data sources: (1) Primary Law: laws and regulations relating to the legal protection of teachers, such as Law No. 14 of 2005 concerning Teachers and Lecturers and Law

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No. 20 of 2003 concerning the National Education System; (2) Secondary Law: explanation of statutory regulations and judge's decisions that are under the legal protection of teachers from criminalization; (3) Tertiary Law: explanation from Kamus Besar Bahasa Indonesia and the Black Law Dictionary.

Data were analyzed descriptively and analytically with a deductive approach. This research examined general matters regarding the legal protection of teachers and then focuses on the urgency of legal education to prevent the criminalization of teachers as professionals.

In secondary data, the general truth is sought using deductive logic in the initial analysis (use of theories), but this does not rule out the possibility of analysis using inductive logic on cases of privatization documented in the form of study results, recordings, and research results (Suteki & Taufani, 2018).

## RESULT AND DISCUSSION

### 1. The Reason for the Urgency of Legal Education to Prevent the Criminalization of Teachers

As a professional, the teacher must have good teacher competence adequate. The competency demands of a teacher can be traced in terms of mastery of the conceptual, mastery of various skills, and in overall professional attitude. In short, it can be stated that a teacher is declared competent if he is actually able to carry out his teaching duties, such as being able to guide his students efficiently, effectively and in an integrated manner. Teacher competence does not merely designate the quantity of work, but moreover designates or demands the quality of teacher work (Rahayu, et al., 2023).

In this era of modernization, legal regulation in public relations is becoming increasingly important. Its importance can be seen in the education sector, which requires basic regulations and policies set by authorized officials. This policy is adapted to educational conditions, especially regulations regarding the right to obtain education (Shakirova et al., 2023). Recognition of the right to obtain education is contained in international conventions and national regulations. Implementing the rights and obligations to obtain education must not harm the rights and freedoms of other people (Karapetian, 2023).

According to Law No. 14 of 2005 concerning Teachers and Lecturers, teachers are professional educators with the main task of educating, teaching, guiding, directing, training, assessing, and evaluating students in early childhood education through formal, primary, and secondary education. From this understanding, it is clear that teaching is not an ordinary job everyone can do. Teaching requires mastery of several educational concepts and theories and sufficient practice to educate, teach, guide, train, and evaluate students. Becoming an educator requires feeling called to a sacred duty, loving and caring for students, and having a sense of responsibility entirely based on one's duties. These three requirements form a unified whole. It means that an educator, including teachers, must possess these three requirements. From other sources, it is explained the following requirements to become an educator: having more knowledge, embedding value in one's knowledge, and being willing to transmit knowledge and its values to others (Dardiri et al., 2021).

Teachers play a vital role in the world of education in Indonesia. They provide knowledge development and play a role in character education for the younger generation. Teachers carry out three primary professional duties: their professional duties as teachers, humanitarian duties, and societal duties in which they live and are served. In connecting these three duties, teachers often interact with colleagues, government, society, students, and other relevant parties (Budoyo et al., 2021).

The teaching profession and the factors that influence it need to be studied from various points of view. Considering the matters, this research aims to analyze the most critical components of the teacher's professional role in the fundamental relationships of educational arrangements, which examine the rights and responsibilities of teachers. These rights and responsibilities of teachers are related to rights regarding their wages/salaries, including their welfare (Erdmanis & Mihailovs, 2022). A complex issue teachers face in regional areas is the accessibility of these types of protection. However, the solution to every legal problem lies in law enforcement practices. Good law enforcement is possible if officers are excellent and fair because they occupy a strategic position in law enforcement (Baptista, 2018).

In carrying out his professional duties, a teacher cannot be separated from various legal problems, such as potential criminalization. Currently, teachers are always required to teach

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and educate humans. However, teachers are ordinary people. Sometimes, teachers do things that are considered to violate children's rights, such as picking on nosy students, shouting at disobedient students, physically punishing students who harm other people, or for disciplinary reasons. This kind of condition is truly unacceptable. As a result, teachers face resistance or at least complaints from parents, child observers, and other parties who uphold children's human rights at school (Yasin et al., 2022). Therefore, the position of teachers in education is significant. Due to the increasingly high development of technology and information, teachers must be able to act as facilitators, motivators, and mentors of students, and it is no longer enough to act as the party delivering the lesson (Amelia & Amin, 2023).

Teachers carrying out their duties and professions can also be equated with other workers who need protection. Protection of workers is an inseparable part of protecting citizens as a state obligation. Basic human rights must be fulfilled by getting protection wherever they work. Whether or not they have the same status as citizens, they get a life worthy of being a human being under Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Every citizen has the right to work and receive compensation and fair and appropriate treatment in work relationships" (Muin, 2015).

In the last few decades, teachers have often become the focus of attention from society and the mass media in carrying out their duties. This is due to the increasing number of acts of violence that occur in schools, whether committed by students, parents, guardians, school administrators, or even teachers themselves. These acts of violence occurred due to parents' misunderstanding of teachers in disciplining students, which then resulted in acts of violence, fights between students, and misunderstandings between teachers and other educational staff. The impact of various cases of violent acts, especially those caused by teachers' attitudes in disciplining students, often brings teachers or other educational personnel to court. Discipline by school teachers, which was once considered mediocre, is now considered to violate human rights. As a result, the teachers face a dilemma. On the one hand, they must uphold discipline and school rules, while on the other hand, they are worried about being criminalized by parents or non-governmental children defender organizations on charges of committing violence against children (Saihu & Taufik, 2019).

Many acts of criminalizing teachers need to be studied more deeply, not only from the perspective of positive law but also from the perspective of victimology. Victimology studies the impact of someone being convicted. Teacher being convicted when carrying out his professional duties causes physical and mental suffering, affecting not only the teacher who is convicted but also the family of the teacher concerned (Budoyo, 2022). The problems of the teaching profession are indeed very complex and complicated, so serious effort is needed to solve these problems. Protection of teachers as regulated by law, covering legal, professional, safety, and occupational health aspects, is still not optimal. This non-optimality can be seen in several cases involving inappropriate treatment of teachers in the form of violence, intimidation, and the like. In short, there is a gap between the legal aspects and the reality obtained by teachers (Pristiwiyanto, 2020).

Teachers often experience criminalization when carrying out their duties and profession. This results from a conflict of teachers' interests in implementing discipline and providing students sanctions in learning. As professional educators, teachers often receive reports from students' parents because they feel that the punishments for their children are too heavy and violate the Child Protection Law. The teacher's intention in providing character learning was misinterpreted by several parties as if he was intentionally committing a criminal act against children as students. Conditions like this often occur or can be called criminalization of teacher actions in learning. Discipline by school teachers, which was once considered mediocre, is now considered to violate human rights. As a result, the teachers face a dilemma. On the one hand, they must uphold discipline and school rules, while on the other hand, they are worried about being criminalized by parents or non-governmental children defender organizations on charges of committing violence against children (Sudibyo & Kiyamudin, 2018).

Soetandyo Wignjosoebroto believes that criminalization is a statement that specific actions must be assessed as criminal acts based on normative considerations whose final form is a decision. The meaning of criminalization can also be seen from a value perspective. In this case, criminalization is a change in values that causes several acts that were previously

considered to be acts that were not reprehensible and not subject to criminal prosecution to change into acts that are considered reprehensible and need to be punished. The definition of criminalization states that criminalization is limited to determining a criminal act threatened with criminal penalties (Nasir, 2021).

Legal education for teachers is one strategy to prevent criminalization experienced by teachers in Indonesia because they enforce discipline and impose sanctions on students. An ideal understanding of the law for teachers will increase awareness regarding fulfilling their rights and obligations in learning in line with Pancasila values.

## 2. Government Efforts to Fulfill Legal Education for Teachers as an Effort to Prevent Criminalization for Teachers based on Pancasila Justice

Legal protection for teachers as long as it aims to protect teachers' rights from all discriminatory actions, including criminalization. So far, teachers' actions in enforcing discipline by imposing student sanctions have often conflicted with Law No. 35 of 2014 concerning Child Protection. However, teachers as educational entities are also protected by Law No. 14 of 2005 concerning Teachers and Lecturers based on the duties and functions of teachers to create a generation with noble and virtuous character under the values of Pancasila as the way of life of Indonesians. However, reality does not match the expectations (Maryanto et al., 2022).

The implementation of education in Indonesia adheres to the philosophy of the education paradigm in the 21st century, which does not allow violent punishment to be used as a tool for education. Punishment in the education process must be used to educate and honor students. It was confirmed by the National Education Observer, Fasil Jalal, as a Government Expert in the judicial review session of Law No. 35 of 2014 concerning Amendments to Law No. 27 of 2002 concerning Child Protection. The current education system better protects children's rights as regulated in Law No. 35 of 2014 concerning Child Protection. In the Juvenile Delinquency paradigm, psychological juvenile delinquency includes the actions of juveniles that are contrary to legal norms and are anti-social, which cause unrest in the community, school, and family (Lafie, 2020).

An issue that often clashes with the interests of teachers in Indonesia is related to legal protection for them in providing learning by enforcing discipline. Teachers in Indonesia must understand the law to prevent actions that lead to criminalization and to anticipate the level of criminalization of teachers' actions that clash with the wrong perspective of parents.

Article 40 of Law No. 20 of 2003 concerning the National Education System states that legal protection is one of the rights of teachers. Teachers have the right to legal protection and protection of intellectual property rights. The protection in question is a form of service that must be carried out by law enforcement officers in order to provide a decent life by the law and a sense of physical and mental security. Through the Law on Teachers and Lecturers, the administrators of the Indonesian Teachers Association hope that the government will realize the protection of the teaching profession related to risks in carrying out their duties as professionals. Work safety protection includes protection against work security disturbances, work accidents, fire, natural disasters and other forms of disaster (Kulsum, 2023).

Currently, legal education in Indonesia has entered the post-President Soeharto era. The transition of legal education in Indonesia was marked by efforts to improve it by the Minister of Education, which was then referred to as the Legal Sub-Consortium. The Legal Sub-Consortium began in 1967 and was established in 1969 to reorient the goals of legal education to produce graduates capable of becoming independent decision-makers and try to improve the standards of legal education. The Sub-Consortium calls for a legal education where students learn to apply the law non-formally. In 1973, chaired by Mochtar Kusumaatmadja, the basic curriculum for national legal education was published, which was then implemented by several law faculties in Indonesia. New features of the curriculum are the introduction of written rather than oral exams, training for legal practice, contract drafting, legislative drafting, and an interdisciplinary approach to law. This curriculum development also introduces a legal aid bureau and clinic so students can practice their legal skills. Legal education in this new curriculum involves interdisciplinary knowledge to create legal education that can meet the needs of Indonesian society, which cannot be equated with legal education in the colonial era and the era of guided democracy (Nugroho et al., 2022).

During this reign, the Indonesian government changed from authoritarian to democratic. This change in power also impacts the system and objectives of legal education. One of the reforms in legal education at this time is the desire for legal education to produce progressive graduates. Prof. Satjipto Rahardjo, a Professor at the Faculty of Law at Universitas Diponegoro, raised this idea. According to him, progressive legal education answers the law's unresponsiveness to fundamental changes occurring in Indonesia. One of the main focuses in progressive legal education is how law faculties can produce graduates who always put conscience and justice above the law (Bedner & Vel, 2021).

Fulfilling teachers' rights to obtain legal education should be inseparable from fulfilling other teachers' rights. Legal education is intended so that teachers in Indonesia have an understanding and awareness regarding the protection and enforcement of the law in carrying out their duties and obligations as professionals. Teachers' lack of understanding of legal education makes it easy for society to judge teachers when giving sanctions to their students using the Child Protection Law. This conflict further weakens teachers' position as entities entitled to legal protection.

Efforts to implement legal education for teachers must also be accompanied by an understanding of Pancasila values to harmonize the two. Pancasila-based education can be implemented by applying Pancasila values when implementing character in schools. Pancasila occupies the highest position in controlling the fundamental character of Indonesia's young generation. Pancasila is considered capable of playing its role in character training for students. It is hoped that after students successfully graduate from school, they will be able to practice the values of Pancasila in their daily lives. The role of Pancasila is also planned to form graduates with great knowledge and good morality in their role in society. By obtaining exemplary character education, Indonesia can create a young generation with thoughts that follow Indonesia's development objectives (Tirtoni, 2022).

Building legal awareness for teachers and all school members will encourage the implementation of a learning climate that supports the cultivation of knowledge and character education in students. The central and regional governments provide legal understanding and awareness for all school members, including teachers, administrative staff, students and parents/guardians, to prevent arbitrary criminalization of individuals, especially teachers. This legal education can be provided through outreach programs from local governments with authority over primary and secondary-level schools.

Recommendations for forms of legal education to prevent criminalization can be carried out by the government with the Indonesian Teachers Association by regularly carrying out legal awareness programs and understanding regulatory provisions and policies relating to education and fulfilling obligations and teachers as professional staff for the advancement of the quality of future generations.

The urgency of this research is to encourage legal understanding and awareness for teachers as professionals in carrying out their duties and obligations so that they can identify things that can prevent violations of teachers' human rights and students' human rights. Legal education here emphasizes the teacher's ability to prevent arbitrary criminalization by parents and students in providing disciplinary sanctions to students at school.

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## CONCLUSION

Based on the findings and discussion, the urgency of legal education for teachers to prevent criminalization is carried out because of the increasing number of legal cases faced by Indonesian teachers in learning due to the clash between enforcing discipline and character education for students with Law No. 35 of 2014 concerning Child Protection. Teachers as professionals also have positions and rights that must be fulfilled as regulated in Law No. 14 of 2005 concerning Teachers and Lecturers. Sufficient legal understanding for teachers will prevent criminalization because they understand the boundaries of which actions are regulated and protected by law in providing learning to students. The government's efforts to prevent the criminalization of teachers in learning and enforce discipline of students can be carried out through educational programs and legal outreach for teachers. This socialization of legal understanding aims to provide teachers with knowledge of their rights and obligations under Law No. 14 of 2005 concerning Teachers and Lecturers.



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