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بِوَسِيْلَةِ اِسْلَامِ اِنْبَاءِ اِيْجِيْطِ اِمْلِيْنِيَا

RIGHTS AND OBLIGATIONS OF TEACHERS: AN
ANALYSIS OF EDUCATION LAW OF UNITED
STATES AND MALAYSIA

BY

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ABSTRACT

History has documented that teachers contributed towards the development of human civilization. The ancient Greek, Chinese, Indian and Islamic education contributed towards European Renaissance in education. It gave birth to the modern principles and practices of educational philosophy, educational psychology, educational pedagogy and educational administration. However, increasing trends over teachers' misconduct and educational malpractice can tarnish the teaching profession. The comparative study of the laws of education between the United States and Malaysia highlights the fundamental importance of safeguarding teachers' rights and obligations. The laws of education cannot be found in a single documented source. It derives its sources from many areas of the laws that affect teachers globally. It draws its roots, *inter alia*, from the Education Acts, yet elements of law of contract, law of torts, administrative and constitutional law, criminal law and human rights legislation are also of crucial importance. The values that support the laws of education are derived from international as well as domestic law. These laws govern the conduct of teachers, educational administrators and educational institutions, established the national systems of education and the legalization of education in many nations. Legalization is a process by which decisions emanating from courts as well as the statutory provisions of the Parliament or other administrative authorities force new regulatory or controlling procedures upon the operation of educational institutions which has consequent legal implications on teachers especially. The evidence of the legalization of education in the United States and Malaysia and elsewhere is irrefutable as being indicated by the courts being used to challenge questionable educational practices and decision-makings. The constitution, statutes and other laws relating to education safeguard, *inter alia*, teachers' rights and obligations to personal life, pedagogical liberty and disciplinary due process. The common law and Islamic law recognize these rights and obligations, but differ in interpretation on teachers' obligations and liabilities under law of contract, law of torts, administrative and constitutional law or criminal law. Today's educational institutions operate in a complex legal environment and a wide range of legal issues influence the lives of teachers, students and administrators. Too many teachers view the law with anxiety and fear. In order to unfold this trend, the writer conducted a quantitative and qualitative survey of 200 teachers, from both public and private schools, which showed more than 90% of the respondents lack the rudimentary knowledge on the laws of education, but concurred that it should be introduced to the teacher training programs either at pre-service, in-service or post-service level. The study

concludes that knowledge of the laws of education is highly recommended to teachers, educational administrators and educational institutions for it can enhance professionalism, quality assurance and educational governance in teaching and learning.

ملخص البحث

ومن الامور التي لا خلاف فيها دور المعلم فالمعلم يلعب دورا هاما في تكوين التقدم الانساني حتى أصبح ذلك التقدم اعظم منزلة فالمجتمع الانساني يهتم بوظيفة المعلم اهتماما شديدا ولا يقبل اى المخالفة القانونية من المعلم لان تلك المخالفة فى الحقيقة تعيب وظيفة المعلم. لقد اكتشفت البحوث بين نظام التعليم للولاية المتحدة الامريكية وبين ماليزيا وتؤكد على اهمية حفظ الحقوق ومسؤولية المعلم. وكان التقدم التراثي من "غريك" والصين والهند والاسلام قد ساهم كثيرا فى بلوغ علماء الغرب مكانة عظيمة فى مجال التعليم والتربية وأنه قد أبدأ طبقة القانون او النظام التعليمي الذي يفسر عن الدور والحقوق ومسؤوليات المعلم فى عصرنا الحاضر أن النظام التعليمي أيضا يصون ويحفظ كل ما يتعلق بالحقوق ومسؤوليات المعلم والمدارس فعلى عنق الحكومة مسؤولية فى إنشاء النظام التعليمي الداخلي فى كثير من البلدان وفى نفس الوقت، تعلن الحكومة مسؤوليات المعلمين وقيمهم ووظيفتهم فى تحقيق الهدف التعليمي والتربوي فالنظام القانوني والنظام التعليمي يضمن حقوق المعلمين فى (1) حريتهم فى الاحوال الشخصية (2) حريتهم فى "اكاديميك" (3) مناسبة حفظ اعمالهم اليومية. وعلى صعيد آخر أن القانون الوضعي والاسلامي قد أقر حقوق المعلمين ومسؤولياتهم ودافعاهم غيرانهما يخالفان فى بعض الامور كاستحقاقهم فى طلب التعويض أن وجد (تحت قانون العقد و"تورت" والجنائي). وفى بحث "العدد" حول معرفة المعلم على النظام التعليمي لقد أجريت التجربة على 200 معلما من مدارس الحكومة والخاصة والنتيجة من ذلك البحث ان 90% من المعلمين لا علم لهم بالنظام التعليمي الذي يتعلق بوظيفتهم فالبحث أيضا يجد اهمية تعريف النظام التعليمي على المعلمين منذ بداية عملهم لأن هذا التعريف يساعدهم فى ترقية احتمالهم بالمسؤوليات والقيم ووظيفتهم كالمعلم والمربي.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for other degrees at IIUM or other institutions.

Mohamed Ishak Abdul Hamid

Signature:.....

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**RIGHTS AND OBLIGATIONS OF TEACHERS: AN ANALYSIS OF
EDUCATION LAW OF UNITED STATES AND MALAYSIA**

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