

Curriculum and Instructional Challenges in Clinical Legal Education of Indonesian Law Schools: Breaking The Legacy

Hamzah¹

Abstract

Clinical Legal Education (CLE) has recently been accepted as the pedagogic model in most Indonesian universities since the Asia Foundation Collaboration authorized eight universities to pursue this program. The objective of this study was to identify curriculum and instructional challenges in clinical legal education of Indonesian law schools, as well as how new models can be implemented. The case method was applied, and observation and in-depth interviews were utilized to collect information. Document analysis was employed to clarify interviews and observational data. The implications of this study are significant for legal academicians, law framers and law students. This study indicated that CLE is a meaningful implementation, and that the faculty and students desire legal education that is free from the influence of political elites and bureaucratic practices. It is also suggested to remove labels given to governments in Indonesia during the Dutch colonial regime such as the Old Order or New Order. Another suggestion is that law schools in Indonesia should teach graduates the skills that are useful in the long-term. Future studies can be carried out to introduce new study programs in various fields of CLE in all universities across Indonesia.

Keywords: Indonesian legal education, curriculum, law and education, reforms

Introduction

The curriculum in Indonesian law schools can be divided into two categories: first, Indonesian National Laws; second, the Legal system composed of civil, criminal, constitutional, administrative, and international law (Nurjaya, 2011). In addition, the Indonesian legal system continues to be under the influence of the erstwhile Colonial Dutch government that taught law subjects, only to prepare legal literates or bureaucrats to perform Dutch administrative functions and operations (Nurjaya, 2011). Their main objective was also to prepare judges to work as *landraad*, or legal officers, in the offices of the Dutch Colonial government. Such legal bureaucrats, or *rechtsambtenaren*, were taught a legal curriculum that was designed to provide them with a complete knowledge of legal principles and how to enact legislation to favour the Dutch government (Wignjosoebroto, 2002). In America between 1960 and 1970, the core philosophy of clinical legal education (CLE) was that teaching students as they performed their professional roles was an essential component of professional education (Milstein, 2001).

¹ Faculty of Law, Lampung University, agizaddien@gmail.com

However, over time, these legal graduates acquired an awareness that modified their objectives. They developed the courage to overthrow Dutch Colonial law to attain independence for Indonesia.

The law in Indonesia has always been influenced by three legal systems: European (Western) law under the Dutch imperial rule, Islamic law that was adopted historically in Indonesia and the customary law, referred to as *hukum adat*, in the Indonesian communities (Hoadley, 2009; Purwanto, 2017). It is important that law subjects should teach in one direction, especially that which leads to the development of a national law for Indonesia (Abdullah, 1994). It is also important to attempt to strengthen the legal education curriculum and develop its scope. The content must be designed such that it is able to provide a strong foundation in basic academic legal knowledge to law students of undergraduate and postgraduate programs. These new developments should be formulated to improve professional development, job creation and provide access to higher-employment opportunities (Cramton, 1982). Its implementation must also be applicable to all stakeholders -- students, lecturers and anyone who aims for progress and change in Indonesia (Pipkin, 1979; Shulman, 2005). The field of Clinic Legal Education (CLE) was found to be an area in which multi-disciplinary development could take place (Arifin, 2017).

Literature Review

Historical Review

After independence in 1945, Indonesia established its first higher legal education system in Yogyakarta and Jakarta, the *Balai Perguruan Tinggi Gadjah Mada* (the Gadjah Mada Higher Education), based on the *Hooger Onderwijs Ordonantie 1946*, with the objective to review the status of national litigious education, and how it could assist in bolstering Indonesian leadership in governance and support a newly-established Indonesian State (Rahardjo & Tabah, 2004). During this period, the legal curriculum was designed to bring the legal education to the mainstream. Even after independence, the law students were studying only the theory, and the prevailing laws and regulations. They were, however, expected to be sensitive to the operation of the law in the Indonesian community. The Government of Indonesia formed a Legal Sciences Consortium (KIH) to promote legal education and law studies (Rahardjo & Tabah, 2004). The KIH has taken the initiative to review and evaluate the legal curricula of the universities in Indonesia.

Higher legal education has never been neglected in government circles, as there have been attempts to align the law graduates with the national development of Indonesia in the last few decades. However, these attempts have remained confined to bureaucratic practices and were never put into practice in universities. For instance, in 1972, the Ministry of Education and Culture formed a core legal education curriculum committee (*kurikulum inti pendidikan hukum*) by Decree No. 0198/1972, to replace the curriculum of the colonial times (Silalahi, Suhadi, & Anitasari, 2017). The committee recommended introducing the semester system in place of the yearly system. It emphasized that the content and teaching methodology be more indigenous, targeting Indonesian needs and social nuances. These recommendations were criticized and there was much resistance. Eventually, the universities decided to disregard these recommendations (Nurjaya, 2011). In 1993, there was another attempt to amend the legal curriculum to satisfy employers and law professionals who felt that there was a dearth of law graduates in the country that were fluent in legal theories and technology. Their main concern was that the graduates were not fit for practice, nor could they be trusted for modern legal pursuits (Kusumaatmadja & Agoes, 2003). Hence, the law curriculum was amended to ensure that legal graduates developed practical, legal skills, in addition to learning legal theory and knowledge. Fortunately, this step was accepted by academia as well as the professionals of the industry (Rahardjo & Tabah, 2004).

Curriculum Reforms in Indonesia

In 1983, the semester system was replaced with the unit-based credit semester system (*sistem satuan kredit semester*) to comply with the stipulations of the Director General of Higher Education Decision Letter No. 30/1983 (Juwana, 2006). This was an attempt to distinguish legal education from other educational programs. It was also recommended that the curriculum of a few courses be redesigned to provide law graduates with practical knowledge and opportunities to gain skills and competencies. Subsequently, in 1993, another effort was made to reform the curriculum by the Minister of Education and Culture Decree No. 017/D/0/1993, which was later revised by the Minister of Education and Culture Decision Letter No. 0325/U/1994 (Juwana, 2006). This Decree raised concerns regarding the similarities between academic and professional legal education curricula, and suggested a single, unified curriculum to achieve both objectives. However, the 1993 curriculum could not effect significant reforms, as various universities were not willing to accept a single unified curriculum (Juliartha, Atmadja, & Purnawati, 2014). In 2000,

another Decree was issued by the Minister of National Education through Decision Letter No. 232/U/2000, concerning Higher Education Curriculum Development and Evaluation of Student Academic Achievement. The new orders suggested that the Higher Education Curriculum be transformed into a core curriculum, composed of a few interdisciplinary subjects, aiming to develop legal skills and expertise, namely: personality development (*Mata Kuliah Pengembangan Kepribadian*) and development of scientific expertise and skills (*Mata Kuliah Pengembangan Keilmuan dan Keterampilan*). This core curriculum, however, could not be implemented, as it was deemed to be drafted by bureaucrats of the Department of National Education, who were not law academicians.

More recently, in 2017, the First International Conference on Clinical Legal Education was held at the Faculty of Law, Universitas Negeri Semarang, Indonesia (Tangwun, 2017). The event proved successful and was an effective academic platform for legal professionals, including lawyers, judges, faculty, researchers and students. The conference discussed both academic and professional issues related to professionals of the law, especially in the context of clinical legal education and law clinic practice. Several issues were raised during the conference. In the opening remarks, Tangwun (2017) stressed upon the need for more research and diversification of clinical legal education by faculties and universities. He also raised a concern regarding how non-litigation clinics had disturbed the principal objectives of legal education. According to him, the Law faculty should act as clinicians and assist the law graduates to develop practical skills through rigorous training and simulation exercises within these clinics. He suggested three steps: first, for the faculty to plan an educational experience with the students; second, an assessment and evaluation of students' skills; and finally, a reflection step in which students reflect upon their new experiences and on the feedback of the evaluation.

CLE: the Pedagogical Approach

The term CLE can be defined as "... a process of learning with the intention of providing law students with practical knowledge, skills, values in order to realize legal services and social justice, implemented on the basis [that] teaching methods are interactive and reflective..." (Arifin, 2017; Lestari, Maskun, & Ekwandari, 2015). In Indonesia, the legal professionals have formed organizations such as the Clinical Legal Education Association of Indonesia (APHKI) and the Clinical Legal Association of Indonesia (CLAI). In 2011, a Symposium on CLE was held in

Yogyakarta, supported by fifty litigious law institutions. The symposium aimed to create a novel CLE model at the university level (Lestari et al., 2015; Suhadi, 2017).

The creation of a CLE model faces multiple challenges. First and foremost, there is the absence of a unified curriculum to teach all the subjects under the CLE model. Second, the CLE must encompass a comprehensive curricular approach to include the teaching of legal theories, professional practices and accountabilities of law graduates, expecting students to prioritize issues of social justice and commitment to ethics, despite political pressures (Suhadi, 2017). Third, the CLE should promise to make legal assistance available to communities and marginalized groups outside the legal jurisdiction, with the help of legal academics (Stuckey, 2007).

One of the participants of the International Conference on Clinical Legal Education, Ayus (2017), strongly recommended to adopt a pedagogical approach in developing CLE. In the context of Malaysian law schools, the author shared successful experiments that enhanced student knowledge and skills. He suggested that, similar to the law schools in Malaysia, a "limited autonomy" could be permitted of the Law Faculty to innovate their teaching and learning methods and make them compatible with the curriculum. However, he also discussed the constraints of this proposal, as such steps require strong student cognitive skills in order to be able to expect an improvement. The reason, he mentioned, was the dearth of legal skills and among the students and lack of a pedagogical approach among the law teachers. Similarly, Arifin (2017) regards the CLE as a progressive pedagogy which is an interactive, hands-on classroom approach to promote learning. The author added that the CLE utilized simulations of real-life cases and clinical experiences of experienced law clinicians and legal practitioners.

Competency-Based Curriculum (KBK)

Hikmahanto Juwana, the Dean and Professor of the Faculty of Law at the University of Indonesia, recommended a competency-based curriculum (CBC) for all Law Programmers in the country. He lamented on the absence of a policy to introduce a CBC into the Indonesian legal education system. According to him, a CBC should be centered upon the standard competencies of the legal profession. By incorporating these competencies in the curriculum, the law faculties only account for the requirements of a legal profession that the students will enter. He insisted that a CBC should be incorporated with the existing curriculum rather than to design a novel curriculum. Suhadi (2017), in another study, asserted the relevance of clinical legal education and found it essential to

the training and development of human resources in the country. One of the competencies that could be developed through CLE, according to the author, is reflective thinking that arises when students gain experience in the clinics and develop the sensitivity and intuition to be applied to real dilemmas of their clients.

Method

The theoretical framework of this study was formed on the basis of the historical evolution approach, which the Indonesian government adopted in 1972, when a new legal education curriculum (*kurikulum inti pendidikan hukum*) was established for all core law subjects by the Minister of Education and Culture according to Decree No. 0198/1972. The framework also encompassed the curriculum amendment of 1993, which ensured that law graduates in Indonesia must know not only theory, but should also possess legal skills to accommodate the demands of the job market. These regulatory initiatives shall be utilized in line with the prior studies and attempts by Indonesian Law schools to introduce CLE. It is based, also, on *Case Clinical Legal Education in America* (Milstein, 2001), *Andragogical Basis of Clinical Legal Education* (Bloch, 1982), *The Growing Disjunction Between Legal Education and the Legal Profession* (Edwards, 1992), *Theory and Practice in Legal Education: An Essay on Clinical Education* (Spiegel, 1986) and *Signature Pedagogies in the Professions* (Shulman, 2005). The study was conducted in law schools that were influenced by three different practices of law. Where there adapted and reformulated to the new formula that applied to the curriculum.

Results and Discussion

The findings of this study began with investigation of the 1993 amendments of the legal curriculum. It was found that the step was considered progressive (Rahardjo & Tabah, 2004) and welcomed by both academia and the industry professionals. It was seen in this light because it arrived after an absence of reforms and was also a reaction to the stagnation that had crept into the Indonesian legal education. In addition, it was a response to the insensitivity of the National government, and their previous initiatives. As a result, the National Law Commission (KHN) was forced to provide special status to legal education in the country (Effendy, 2005; Rahayu, Ulfatin, Wiyono, Imron, & Wajdi, 2018). The amendments of the 1993 curriculum succeeded in developing awareness of the core objectives of the system of legal education in the country. The academia realized that legal education must also provide opportunities to develop legal skills and

competencies among the law graduates, in addition to a theoretical foundation. A spirit of positivism was identified in the bureaucrats as well, as they felt in them the need to implement the amendments (Samekto, 2017). It was specified to all universities that the law curriculum should have three categories: (a) subjects that were indispensable to any legal system such as civil law, criminal law, constitutional law, administrative law and international law; (b) subjects that related to the Indonesian socio-cultural ethos such as the *adat* law; (c) subjects that required legal skills to halt corruption, oppose crimes, protect the environment and maintain social justice.

Since this study focused only on the CLE as a novel model for the legal curriculum, the objective was to identify the factors that would lead to successful establishment of CLE as a teaching model. CLE was first introduced in Indonesia by the Asia Foundation Collaboration with eight universities. However, it received initial resistance from faculty and legal professionals, who commented that there was no difference between the CLE model and the existing Faculty of Law (FH) subjects. The researcher then investigated and found that a few subjects had the potential to incorporate the teaching of legal skills and that they fitted in the framework of CLE. These subjects would render the law graduates practice-ready as soon as they completed their studies, and they were they study of criminal procedural law, civil procedural law, Islamic procedural law, procedural law of constitutional court, administrative procedural law and legislative drafting (Lestari et al., 2015; Wajdi et al., 2018; Wignjosoebroto, 2014).

The CLE was then compared to the FH approach of teaching these courses. The findings revealed that the FH approach assisted graduates in the acquisition of legal knowledge, theories and principles, but could not provide them with adequate opportunities for field training or legal internships which would permit their learning of practical legal skills and competencies. Consequently, graduates were unable to offer legal analysis in their practice as lawyers, attorneys and judges. They were not confident to practice in the affairs of the government offices, corporate and private firms, civil society organizations (CSOs) and in the matters of social justice. The course contents of the CLE curriculum were then reviewed. In contrast, it was revealed that a few of these modules serve "unmet legal needs", and attempt to replace the legacy of the colonial era. The CLE model also has the provision of providing legal aid to people of limited means and those who do not have access to legal services. The students can gain experience in aspects of legal practice, including client-handling, performing case-related research and the art of reflecting the Public Interest Litigations. The new model promises to resolve the issues of unemployment and social

security. In addition, the CLE model also replaces the traditional methods of teacher-centered learning with student and learner-centered seminars and group work. There are student presentations, problem-based scenarios and skills-based learning. The assessments also include coursework and case studies regarding relevant legal issues and client based problems, simulated and real client cases, exercises regarding advocacy, and interviewing and negotiation skills. In short, the CLE curriculum is a highly innovative and timely initiative that meets the demands of the Indonesian legal education system.

For example, the Faculty of Law at the University of Hasanuddin (FH UNHAS) introduced clinical subjects in their curriculum. In addition to reviewing the entire curriculum, it also implemented clinics such as civil law, criminal law, anti-corruption law and environmental law clinics. These are aligned with the university curriculum. The law graduates are expected to practice their theoretical concepts in these clinics and develop the requisite skills. The graduates are also trained in how to manage these clinics in collaboration with social partners, such as CSOs and legal institutions including the District Courts and Provincial Prosecutor Offices (Lestari et al., 2015).

The Indonesian Legal Resource Center (ILRC) is a civil, non-governmental organization which promotes human rights and social justice in Indonesia (Lestari et al., 2015). The ILRC has collaborated with institutions, communities and universities to develop networks that provide legal aid for marginalized communities and promote clinical legal education. In the past, Indonesia has encountered severe instances of corruption, non-availability of human rights protection at legislative levels and inadequate law enforcement. All these constraints can be solved by modifications in legal education and the robust practice of law in the Indonesian society. The ILRC urges that the universities, especially law departments, provide graduates that can control bureaucracy, governmental institutions, courts and higher-education organizations. These law graduates would hold prominent and legitimate positions in the government framework and work towards the renewal of legal education as one of their priorities. The ILRC has begun several campaigns in the fields of social justice, halting the commercialization of universities, providing legal aid to marginalized communities and reforming legal education.

Lastly, the "Student Exchange Program" and "Clinical Legal Education Exchange Program" between Universitas Indonesia and Universiti Malaya was discovered. These exchange programs are organized by the Universitas Indonesia Legal Clinic and Community Outreach Program (COP) in cooperation with the Asian Law Student Association (ALSA) of the Universiti Malaya. Through

these programs, students attend legal counseling activities and learn to apply legal education to social justice and human rights causes. This experience is vital for the success of Indonesian law students and should be encouraged and supported through any means possible.

Conclusion

The study found that faculties and students desire legal education that is free from the influence of political elites and bureaucratic practices. Secondly, the abolishment of Dutch labels on the Indonesian government during the colonial regimes (Old or New Orders) is suggested. This terminology exists as a legacy and inflicts a burden on legal education. Another suggestion of this study is that law institutions of Indonesia should implement educational policies that would provide long-term benefits for the law graduates, as they must be comparable to graduates from law schools across the world. Hence, it is important for the government to reform the curriculum and introduce the CLE model to law institutions.

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