



**LEGAL EDUCATION IN INDONESIA
WITHIN THE FRAMEWORK OF THE CHARTER OF THE ASSOCIATION OF
SOUTH-EAST ASIAN NATIONS**

Dr. Rico Pandeiro, S.H., LL.M.

TABLE OF CONTENTS

- I. OVERVIEW
- II. HISTORY OF INDONESIAN LEGAL EDUCATION
- III. INDONESIAN LAWS ON EDUCATION
- IV. LEGAL EDUCATION IN INDONESIA
- V. LAW AND EDUCATION UNDER THE ASEAN CHARTER
- VI. RIGHT TO EDUCATION AS A FUNDAMENTAL HUMAN RIGHT
- VII. SOME PROBLEMS SURROUNDING INDONESIAN LEGAL EDUCATION
- VIII. CONCLUSION AND PROPOSITION



LEGAL EDUCATION IN INDONESIA WITHIN THE FRAMEWORK OF THE CHARTER OF THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS

I. OVERVIEW

As one of the founding fathers, the largest, and the most populated South-East Asian nation, Indonesia plays a crucial role in the ASEAN. After initiating the establishment of the Association through Bangkok Declaration of August 8, 1967,¹ Indonesia entered into a new chapter of constitutional life since ratifying the first ever ASEAN Charter on October 8, 2008.² The ratification does not only impact the internal affairs of Indonesia, but most importantly, it also determines Indonesia's subsequent external policies in interacting with fellow Member States.

With a stronger cooperation in so many aspects among the 10 Member States as provided by the Charter, justice and rule of law are elements that are much sought by the people of ASEAN nowadays. Hence, law practitioners now play a pivotal role in realizing that demand and promoting greater ASEAN cooperation. The birth of ASEAN Law Association (ALA) in November 1980³ marked such role, and efforts to build a better legal environment in ASEAN continue through many channels; education being one of them. Without a good legal education, the promotion of legal development in ASEAN is lamentably delicate; if not, impossible.

For that reason, this paper addresses issues surrounding legal education in Indonesia within the framework of ASEAN.

II. HISTORY OF INDONESIAN LEGAL EDUCATION

The first law school in Indonesia was established by the Dutch East Indies government in 1909 under the name of *Rechtsschool*. The school was established in Batavia to meet the demand of P.A. Achmad Djajadiningrat, the head of Serang regency.

¹ "Overview-Association of South East Asian Nations", available at: <<http://www.aseansec.org/64.htm>>, accessed on April 16, 2009.

² "DPR Ratifikasi Piagam ASEAN", *Kompas.com*, October 8, 2008, available at: <<http://kompas.com/read/xml/2008/10/08/15010167/dpr.ratifikasi.piagam.asean..>>, accessed on April 16, 2009.

³ "Asean Law Association-About Us", available at: <<http://www.aseanlawassociation.org/history.html>>, accessed on April 16, 2009.



The school was then upgraded into a higher educational institution under the name of *Rechtshogeschool* or *Faculteit der Rechtsgeleerdheid*. The inauguration was delivered by Governor General D. Fockt on October 28, 1924 in Jakarta.

Twenty-four subjects were taught at the *Rechtshogeschool*, namely: Introduction to the Science of Law, Constitutional and Administrative Laws, Civil and Criminal Laws, Customary Law, Islamic Law, Commercial Law, Sociology, Governmental Science, Law of the Dutch-Indies Nations, Malay, Javanese, Latin, Philosophy of Law, Principles of Roman Civil Law, International Civil Law, Intergentile Law, Criminology, Psychology, Medical Forensic Science, International Law, Overseas Colonial Law, Dutch-Indies History, and Statistics.

The period of study at the *Rechtshogeschool* was five years and it was divided into two stages. The first stage had to be completed within two years in which the candidate must pass a candidate's exam (*candidaatsexamen*). The end of the second stage was marked with a doctoral examination (*doctoraal-examen*). During the last year, known as doctoral-examination part three, the candidate could select one of the four majors (*richtingen*) available. They were: Civil Law, Criminal Law, Constitutional Law, and Sociology-Economics. Those who passed this level were entitled to the *Meester in de Rechten* title, which gave the bearer the right to be: (a) an advocate and lawyer and other positions in the judicial field; and (b) state employee in the field of education.⁴

III. INDONESIAN LAWS ON EDUCATION

Education falls within one of the areas constitutionally protected in Indonesia. Article 31 of the Fourth Amendment of the 1945 Constitution mandates that:

“(1) Every citizen has the right to education.

(2) Every citizen is obliged to attend basic education and the government is obliged to fund it.

(3) The government endeavours and conducts a national education system, which improves the faith, faithfulness to God, and good behaviour, in smartening the life of the nation, which shall be regulated by a Bill.

⁴ “The Faculty of Law-General Information”, available at: <http://webdev.ui.ac.id/page/the-faculty-of-law-en.html?UI=cb151cd1c9a93bb0ca13d9d7fe6f7ad6>, accessed on April 15, 2009.



(4) *The State prioritizes that the budget for education shall constitute at least twenty percent of the National Budget and of the Local Budget to fulfill the need for the national education.*

(5) *The government improves science and technology by upholding religious and State unity values for better civilization and mankind wealth.”*

This provision was implemented by the government by enacting Bill No. 20/2003 on the National Education System, which aims to regulate “*all of the inter-related components of education in achieving the purposes of national education*”.⁵ This signifies that the Bill sets a framework where all of the components involved in the national education, being: citizens, parents, the society as a whole, the government, the educators, and students, are brought together to be viewed and regulated as an inseparable unity within one system.

Other important provisions embodied under the Bill are:

1. The principles of democracy and non-discrimination in conducting the national education system [Article 4(1)];
2. Everyone aged 7 to 15 years is under an obligation to attend the basic education [Article 6(1)];
3. The compulsory basic education within the meaning of the Bill is that of a primary school and junior high school [Article 17(2)]. These together account for 9 (nine) years of education;
4. Central and local governments are obliged to provide a compulsory basic education for free [Article 34(2)];
5. Formal education unit established by the government or the society shall have the status as a legal entity [Article 53(1)];
6. Education unit established by the representative of a foreign country in Indonesia for foreign students may apply the regulations applicable in such country based on the approval of the Indonesian government [Article 64];
7. Everyone who gives, aids to give, or uses falsified certificates, competence certificates, academic titles, profession, or vocation is subject to penal sanctions varying from a five to ten years imprisonment and/or a fine equal to 500 million

⁵ See Article 1 Par. (3) of Bill No. 20/2003

up to one billion Rupiahs. Those who continue to manage a closed-down educational unit or manage such unit in the absence of a government permit are also subject to an imprisonment of maximum ten years and/or a fine equal to one billion Rupiahs [Article 67-71].

Indonesian Law on Human Rights also protects the right to everyone to education. As Article 12 of Bill No. 39 (1999) enumerates:

“Everyone has the right to protect his personal development, to acquire education, to smarten himself, and to improve his quality of life in order to become an individual who is faithful, responsible, well behaved, content, and wealthy, in accordance with human rights”.

IV. LEGAL EDUCATION IN INDONESIA

One can commence to take legal studies in Indonesia upon the completion of high school. The scholastic period varies from 3,5 to 6 years. The programs offered cover: Bachelor of Law program, Master of Law program, and Doctoral program. Each program is normally finished after a student submits a script or thesis and defends it before a group of professors.

In accordance with the Decree of the Ministry of National Education of the Republic of Indonesia No. 232/U/2000, the curriculum applied in universities or other educational institutions of the same level is set as follows:

“Article 7

- (1) The curriculum of a higher educational institution upon which the studies are based consists of:
 - a. Core curriculum ;*
 - b. Institutional curriculum.**
- (2) Core curriculum is a set of analyzed materials and lessons which must be included in a scholastic program which is formulated into a curriculum that applies nationally. Core curriculum consists of a group of subjects on personal development, a group of subjects which characterize the purpose of education in the form of science and skills, expertise in the students’ area of study, behavior in the students’ area of study, and manner in behaving with the society, as a*

minimum prerequisite which must be fulfilled by students in completing their studies.

(3) Institutional curriculum is a set of analyzed materials and lessons which form part of the higher education curriculum, consisting of an additional group of sciences in the core curriculum which are set with due regard to the circumstances and needs of the environment and characters of the said institution. ”

In several universities, legal studies are divided into various majors. The comparison of those majors in two Indonesian universities, namely University of Indonesia and Gadjah Mada University is shown below:

University of Indonesia⁶	Gadjah Mada University⁷
1. Civil Law	1. Procedural Law
2. Criminal Law	2. Customary Law
3. Procedural Law	3. Administrative Law
4. Economic Law	4. Agrarian Law
5. Constitutional & Administrative Law	5. Commercial Law
6. Transnational Law	6. International Law
7. Law on the Society and Societal Matters	7. Islamic Law
	8. Environmental Law
	9. Tax Law
	10. Islamic Law
	11. Civil Law
	12. Criminal Law
	13. Constitutional Law

⁶ Available at: <<http://law.ui.ac.id/index.php/program-sarjana-hukum-reguler/35-s1-reguler-program-kekhususan.html>>, accessed on April 17, 2009.

⁷ Available at: <http://hukum.ugm.ac.id/index.php?option=com_content&task=view&id=140&Itemid=165>, accessed on April 17, 2009.

Legal education has shown admirable progress in the 101st year since its initiation in Indonesia. There are currently more than 2,000 law schools⁸ and more than 3,800 professors⁹ in Indonesia.¹⁰ Some universities have even proven a vast deal of qualities on national and international levels.

In February 2008, the Ministry of National Education published a list of 50 promising Indonesian universities.¹¹ In January 2009, Gadjah Mada University (UGM) was listed among Top 100 Asian Universities,¹² being ranked 64th. Over the past three consecutive years, this university, together with the University of Indonesia (UI) frequent the Times Higher Education Supplement chart of Top 400 universities worldwide. In 2008, UI ranked 287th, whereas UGM ranked 316th.¹³ In 2007, UGM ranked 360th,¹⁴ while UI ranked 395th.¹⁵ Both universities even made it to the Top 300 universities in 2006, with UI

⁸ Available at:

<http://www.dikti.go.id/index.php?option=com_content&task=view&id=140&Itemid=61>, accessed on April 17, 2009.

⁹ The term “professor” differs from a common understanding on someone who gives lectures in the university. In order to become a professor, one must pass several requirements set by the Ministry of National Education, such as that he/she must have attained a Doctoral degree and must have written numerous scientific books, articles, journals, papers, etc. After passing those requirements, such person will be inaugurated as a Professor through a Ministerial Decree.

¹⁰ “Pendidikan: Tunjangan Guru Besar Dua Kali Lipat”, *Lampung Post*, available at: <<http://www.lampungpost.com/cetak/berita.php?id=2008122622514815>>, accessed on April 17, 2009.

¹¹ See

<http://www.dikti.go.id/index.php?option=com_content&task=view&id=140&Itemid=61>, accessed on April 17, 2009.

¹² “Ranking Web of World Universities-Top Asia”, *Webometrics*, available at: <http://www.webometrics.info/top100_continent.asp?cont=asia>, accessed on April 17, 2009.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Available at:

<http://www.topuniversities.com/worlduniversityrankings/results/2008/overall_ranking_s/fullrankings/>, accessed on April 17, 2009.

in the 250th position and UGM in the 270th.¹⁶ University of Diponegoro was also cited among Top 500 universities.¹⁷

Indonesian law students have also shown their class in prestigious national and international competitions. The list of some of the achievements attained by the accomplished universities is shown as follows:

No.	Universities	Achievements
1.	University of Indonesia ¹⁸	<ul style="list-style-type: none">• Winner of the 7th Red Cross International Humanitarian Law Moot Court Competition for Asia Pacific in Hongkong (2009).• Winner of National Moot Court Competition against Corruption, organized by the University of Pancasila in cooperation with the Attorney-General of Indonesia (2008).• Winner of Law Debating Competition organized by the Catholic University of Parahyangan (2008).• Winner of the International Law Maritime Arbitration Moot in Melbourne, Australia (2007).• Runner Up of the Asian Law Students Association (ALSA) International Commercial Arbitration Moot Competition in Bangkok, Thailand

¹⁶ "UI Tempati Peringkat 6 PT Terbaik di Asia Tenggara", *Antara*, available at: <<http://www.antara.co.id/arc/2006/11/23/ui-tempati-peringkat-enam-pt-terbaik-di-asia-tenggara/>>, accessed on April 17, 2009.

¹⁷ *Ibid.*

¹⁸ See www.law.ui.ac.id



		<p>(2007).</p> <ul style="list-style-type: none">• Best Oralist of the Philip C. Jessup International Law Moot Court Competition in Washington D.C., U.S.A., on behalf of Hanna Azkiya (2007).• Winner of the Asia Cup International Law Moot Court Competition in Tokyo, Japan (2006).
2.	Catholic University of Parahyangan ¹⁹	<ul style="list-style-type: none">• Outstanding Delegation in the Harvard National Model of United Nations in Boston, U.S.A. (2009).• Winner of the 5th Moetiara Djokosoetono National Moot Court Competition, organized by the Faculty of Law of University of Indonesia (2008).• Runner Up of the Indonesian National Rounds of the Philip C. Jessup International Law Moot Court Competition, organized by the Indonesian Society of International Law in Jakarta (2008).• Best Oralist and Best Memorial of the Manfred Space Law Mootcourt Competition in Sydney, Australia (2006).
3.	Gadjah Mada University ²⁰	<ul style="list-style-type: none">• Fourth Winner of the Red Cross International Humanitarian Law Moot Court Competition for Asia Pacific in

¹⁹ See www.unpar.ac.id



		Hongkong (2006).
4.	University of Atmajaya Jakarta ²¹	<ul style="list-style-type: none">• Winner of the Indonesian National Rounds of the Philip C. Jessup International Law Moot Court Competition organized by the Indonesian Society of International Law in Jakarta (2007).
5.	University of Pelita Harapan ²²	<ul style="list-style-type: none">• Top 24 Universities in the Philip C. Jessup International Law Moot Court Competition, Washington D.C., U.S.A. (2009).• Runner Up of the Indonesian National Rounds of Philip C. Jessup International Law Moot Court Competition, Jakarta (2009).• Final Frontier Award on Manfred Lachs Space Moot in Sydney, Australia (2007)• Best Memorial Award & Top Ten Best Speaker, Asia Cup Moot Court Competition, Tokyo, Japan (2007)• 2nd place in Jabotabek College Law Debate Championship (2007)
6.	University of Padjadjaran ²³	<ul style="list-style-type: none">• 2nd Runner Up and 2nd Best Memorial

²⁰ See www.hukum.ugm.ac.id

²¹ See www.atmajaya.ac.id

²² See www.uph.edu

²³ See www.unpad.ac.id



		<p>of the Indonesian National Rounds of Philip C. Jessup International Law Moot Court Competition (2009)</p> <ul style="list-style-type: none">• Runner Up of the ALSA LC Moot Court Competition, organized by Airlangga University (2009).• 2nd Runner Up and 2nd Best Memorial of the Indonesian National Rounds of Philip C. Jessup International Law Moot Court Competition (2008)• Winner of National Law Debating Competition, organized by Permahi and BPHN in the Faculty of Law of University of Pancasila (2008).
--	--	---

V. LAW AND EDUCATION UNDER THE ASEAN CHARTER

The birth of the ASEAN Charter marked an enormous step taken by the Member States to bring ASEAN from a mere association of nations to an international organization equipped with international legal personality.²⁴ The Charter was signed on November 20, 2007 by all of the Member States,²⁵ marking the 40th Anniversary of the Association, and has been ratified by all of them, with Singapore being the first one,²⁶ and Indonesia being the last one.²⁷

The Charter is the ultimate result of the Member States' long and continuous efforts to produce the first ever comprehensive and thorough constitution which meets the progressive demand of the Member States in particular, and the international community in general. The formation of the Charter was pioneered through several instruments, namely:

²⁴ See Article 3 of the ASEAN Charter.

²⁵ See <<http://www.aseansec.org/21069.pdf>>.

²⁶ Singapore ratified the Charter on January 7, 2008.

²⁷ Indonesia ratified the Charter on October 8, 2008.



- Bali Declaration of ASEAN Concord II on the Establishment of the ASEAN Community;
- Vientiane Action Programme on the Decision of the Establishment of the ASEAN Charter;
- Kuala Lumpur Declaration on the Establishment of the ASEAN Charter; and
- Cebu Declaration on the Blueprint of the ASEAN Charter.

Having ratified the Charter, Indonesia evidently acquired access to abundant privileges and benefits out of a stronger cooperation among the Member States as provided by the Charter. One of those advantages is the opened opportunity to better and enhance legal education in Indonesia.

Law and education are governed in various provisions under the Charter, namely:

Preamble, Paragraph 8:

*“ADHERING to the principles of democracy, **the rule of law** and good governance, respect for and protection of human rights and fundamental freedoms”.*

Article 1, Paragraph 7:

*“To strengthen democracy, enhance good governance and **the rule of law**, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN”.*

Article 1, Paragraph 10:

*“To develop human resources through closer cooperation in **education and life-long learning**, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community”.*

Article 1, Paragraph 11:

*“To enhance the well-being and the livelihood of the peoples of ASEAN by providing them with **equitable access to opportunities for human development, social welfare, and justice**”.*

Article 2, Paragraph 2, Sub-paragraph (h):

*“Adherence to **the rule of law**, good governance, the principles of democracy and constitutional government”.*



The importance of the law and education under the Charter is also evidenced by the ASEAN Law Ministers Meeting (ALAWMM) and ASEAN Education Ministers Meeting (ASEM) established pursuant to Annex 1 of the Charter. This Annex regulates the ASEAN Sectoral Ministerial Bodies established pursuant to Article 10 of the Charter. The Charter also acknowledges under Annex 2: the ASEAN-ISIS Network; ASEAN Academics of Science, Engineering, and Technology; ASEAN Academy of Engineering and Technology, ASEAN Law Association, Southeast Asia Regional Institute for Community and Education; and Southeast Asian Studies Regional Exchange Program Foundation as “Entities Associated with ASEAN” pursuant to Article 16 of the Charter. All this only shows that not only are law and education now fully embraced within the system of ASEAN, but also that Member States have come to realize that in order to achieve the objectives and purposes of ASEAN, those areas must now be profoundly focused on.

With a strengthened cooperation within ASEAN after the Charter entered into force, the Member States are currently pursuing to develop a mechanism modeled on the European ERASMUS program where students are enabled to transfer and accumulate credits between universities. At the 9th Workshop Quality Assurance taking place in the University of Indonesia on December 11-12, 2008, the AUN (ASEAN University Network) explored the possibility of initiating a “Mechanism for the Establishment of ASEAN Credit Transfer System”. For the purpose of this workshop, two study areas in the Faculty of Engineering of the University of Indonesia, being Civil and Mechanical Engineering, were assessed by the AUN Assessor Team.²⁸ Externally, ASEAN universities have also commenced to explore the possibility of creating a credit transfer system with Japan²⁹ and the European Union.³⁰

VI. RIGHT TO EDUCATION AS A FUNDAMENTAL HUMAN RIGHT

The ASEAN Charter also enumerates provisions on human rights, which can be found under:

Article 2, Paragraph 2, Sub-paragraph (i):

²⁸ See <<http://www.aun2008.ui.edu/>>, accessed on April 19, 2008.

²⁹ “An Asian Erasmus”, *World Education News & Reviews*, available at: <<http://www.wes.org/ewenr/08Sept/asiapacific.htm>>, accessed on April 19, 2008.

³⁰ “EU-ASEAN Credit Transfer System”, available at: <<http://www.fb9dv.uni-duisburg.de/eacts/project.php>>, accessed on April 19, 2008.



*“Respect for fundamental freedoms, **the promotion and protection of human rights**, and the promotion of social justice”.*

Article 14:

*“1. In conformity with the purposes and principles of the ASEAN Charter relating to **the promotion and protection of human rights and fundamental freedoms**, ASEAN shall establish an ASEAN human rights body.*

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.”

The right to education is evidently one of the fundamental human rights that must be protected under international law. This can be seen from numerous international legal instruments, such as:

1. Universal Declaration of Human Rights (1948)

This Declaration reads:

“Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

2. International Covenant on Economic, Social, and Cultural Rights (1966)³¹

This Covenant stipulates that:

³¹ This Covenant is now part of Indonesian national law after Indonesia acceded to it through Bill No. 11 (2005).

“Art. 13

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*



4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

3. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)

"Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

4. Charter of the Organization of American States (as amended by the Protocol of Managua of 1993)

"Article 30

The Member States, inspired by the principles of inter-American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved.

Article 47

The Member States will give primary importance within their development plans to the encouragement of education, science, technology, and culture, oriented



toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress.

Article 49

The Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases:

- a) Elementary education, compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge;*
- b) Middle-level education shall be extended progressively to as much of the population as possible, with a view to social improvement. It shall be diversified in such a way that it meets the development needs of each country without prejudice to providing a general education; and*
- c) Higher education shall be available to all, provided that, in order to maintain its high level, the corresponding regulatory or academic standards are met.*

Article 50

The Member States will give special attention to the eradication of illiteracy, will strengthen adult and vocational education systems, and will ensure that the benefits of culture will be available to the entire population. They will promote the use of all information media to fulfill these aims.

Article 111

The General Secretariat shall promote economic, social, juridical, educational, scientific, and cultural relations among all the Member States of the Organization, with special emphasis on cooperation for the elimination of extreme poverty, in keeping with the actions and policies decided upon by the General Assembly and with the pertinent decisions of the Councils.”

5. African Charter on Human and Peoples’ Rights (1981)

“Article 17

- 1. Every individual shall have the right to education*
- 2. Every individual may freely take part in the cultural life of his community.*

3. *The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”*

VII. SOME PROBLEMS SURROUNDING INDONESIAN LEGAL EDUCATION

1. Lack of Professors

Indonesian universities still lack professors needed in their fields due to the lengthy period of time required to attain such profession, whereas they are very much needed to give lectures or assess doctoral thesis. The former Minister of National Education, Malik Fajar cited that for such reason, a professor can teach in many different universities. He also stated that this problem could be attributed to the fact that in order to become a professor, one can take 15 to 20 years of career. That is why a university lecturer can take up a profession other than only teaching in the university; being a politician for instance.³²

Malik Fajar revealed that in the University of Indonesia for example, most of the professors come from the Faculty of Medicines and Economics, while the least number of professors can be found in the Faculty of Law and Literatures. He added that in this case, the government can only encourage lecturers to become professors by publishing scientific writings, papers, essays, journals, and articles, all of which requires diligence and willingness from the lecturers themselves.³³

2. Lack of Students' Quality

In 2006, the Director General of the Higher Education of the Ministry of National Education, Satryo S. Brodjonegoro assessed that the current development of Indonesian law faculties does not significantly impact the country's legal reform. He viewed that the poor quality of Indonesian legal products is attributable to the poor quality of many legal drafters who do not comprehend the essence of the regulations which they make. This resulted in so many overlapping, illogical, or ineffective legal products. He reminded that not only are law enforcers, such as judges, prosecutors, or police responsible for the weak

³² "Universitas di Indonesia Kekurangan Guru Besar", *Gatra.com*, available at: <<http://www.gatra.com/2003-12-03/artikel.php?id=32304>>, accessed on April 19, 2009.

³³ *Ibid.*

law enforcement in Indonesia, but legal educational institutions also are. They are vital to the law enforcement reform because they are where law enforcers originate from.³⁴

In line with Brodjonegoro, the former Head of the Supreme Court, Bagir Manan viewed that many Indonesian law graduates do not have an adequate foundation of legal reasoning and they hardly master theories as a basis to think rationally and systematically. This is clearly a loss, since mastering legal reasoning is indispensable to the development and enforcement of law in Indonesia.³⁵

The Dean of the Faculty of Law of the National University of Singapore, Prof. Tan Cheng Han stated that a good curriculum is not sufficient to produce good law graduates. Besides that, an accurate method of teaching is also needed. “The focus should be on how to educate them to think critically and analytically, not only to teach them how to draft contracts or write news”, he elaborated.³⁶

3. Judicial Review of Bill No. 20 (2003) on the National Education System by the Constitutional Court

On February 2, 2008, the Indonesian Constitutional Court annulled Article 49 Paragraph (1) of Bill No. 20 (2003) on the National Education System, insofar as it concerns the phrase “...salary of the educators and...”, because it contradicts the 1945 Constitution.³⁷

The Article reads:

“The budget for education except the salary of the educators... is allocated minimum 20% of the State Budget in the sector of education and minimum 20% of the Local Budget”.

³⁴ “Dirjen Dikti Kritik Kemampuan Logika Mahasiswa Fakultas Hukum”, *Hukumonline*, available at: <http://www.hukumonline.com/detail.asp?id=14759&cl=Berita>, accessed on April 19, 2009.

³⁵ “Ketua MA Cemaskan Rendahnya Mutu Pendidikan Hukum Lanjutan”, *Hukumonline*, available at: <http://www.hukumonline.com/detail.asp?id=9642&cl=Berita>, accessed on April 19, 2009.

³⁶ *Hukumonline, loc. cit.*

³⁷ “Gaji Pendidik Masuk Anggaran Pendidikan”, available at: <http://www.mahkamahkonstitusi.go.id/berita.php?newscode=562>, accessed on April 19, 2009.

This provision is contrary to the spirit of the Bill itself, where teachers must indeed be included as part of the national education system. It also contravenes Article 31 Paragraph (4) of the 1945 Constitution which mandates that:

“The State prioritizes that the budget for education shall constitute at least twenty percent of the National Budget and of the Local Budget to fulfill the need for the national education.”

With this Judgment, teachers are also entitled to the 20% allocation of the State and Local Budget used to finance the national education. Nevertheless, the fact that the government attempted to exclude teachers from the constitutionally mandated budget under this Bill is a sad reality, with due regard to teachers playing an indispensable role in educating the children of the nation and taking part in enhancing the development of the nation itself. The government must take more attentive measures to guarantee the well-being and livelihood of all kinds of educators in this country.

4. Judicial Review of Bill No. 9 (2009) on Educational Corporation

In March 2009, a coalition consisting of a number of NGOs calling themselves “Coalition for Education” submitted a request for judicial review of Bill No. 9 (2009) on Educational Corporation before the Constitutional Court. Emerson Yuntho, a member of the Coalition stated that the Bill contradicts the Constitution for several reasons:

First, the Bill reduces the constitutional obligations and responsibilities of the State to guarantee an access to education for all citizens unexceptionally. Second, the Bill encourages commercialization and liberalization of education by converting the organizers of education into businessmen, thereby positioning the government as a mere facilitator. Third, the Bill treats capital as a main partner to provide education. It emphasizes the management of finance as a basis to develop education. Fourth, the Bill allows a prohibitively expensive education, and therefore narrowing access to education for the poor.³⁸

This reality only shows how education no longer draws serious attention of the government. With a rapid globalization where free trade and common market seem to no longer be unusual, profits are understandably pursued in all sectors. The government must always remember that it is vested with a constitutional responsibility to preserve, enhance, and develop education accessible to every citizen of the nation.

³⁸ Available at: <<http://web.bisnis.com/umum/pendidikan/1id110305.html>>, accessed on April 19, 2009.



VIII. CONCLUSION AND PROPOSITION

CONCLUSION

As reached by the Standing Committee on Legal Education during the ASEAN Law Association Governing Council Meeting from the 9th to 12th of April 2009 in Bandar Sri Begawan, Brunei Darussalam, it should focus on developing a teaching module for an elective council that can be taught in various universities within the ASEAN region with the content as follows:

1. Overview of the ASEAN Charter;
2. Potential implementation of issues that may arise which are specific to a country, but focusing on three practice areas:
 - a) Environmental law;
 - b) Access to justice; and
 - c) Corporate law.

PROPOSITION

1. Creating an ad-hoc committee within the Standing Committee on Legal Education to supervise the implementation of the above mentioned areas, and the President of this ad-hoc committee shall be appointed for minimum 3 (three) years;
2. Creating a curriculum in ASEAN law schools which includes a subject on ASEAN comparative law. The module used for teaching this subject can be adopted from the writings of ASEAN scholars on legal reform in their respective countries, as can be found on ALA website. The topics of this subject may vary from the historical background of judiciary system in each ASEAN country to theoretical and practical legal development of each country; and
3. Harmonizing the existing legal regimes of ASEAN countries so that they can go hand in hand between each other, especially in areas which may be regarded as “neutral” and are similar in each country, such as business law. If this area could be harmonized, it would be possible to take the matter to the next level, by harmonizing other areas such as criminal law and civil law.