

CHALLENGES TO LEGAL EDUCATION IN INDONESIA *

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A Flashback: the Problem

A diagnostic assessment of legal development in Indonesia, a study by the Government of Indonesia (represented by Bappenas) under a grant of the World Bank in 1996, contained among other things the following statement on legal education (p.61):

“Most of the Indonesian law schools use the lecture method as their primary medium for teaching law. ... Foreign language material is used only in subjects which cover international law ... The foreign material referred to is predominantly English as Dutch is a fading language in Indonesia. Most of the Indonesian law materials utilized are statutory provisions while Supreme Court decisions are only used to illustrate the application of particular provisions. The style or method of teaching in many law schools still leans too heavily on mastery of rules as rules (black letter law) rather than illustrations of principles.”

The above observation has not changed for the better in 2003. Criticism against the fresh graduates focused on their inability to write logically consistent legal opinions, which presupposes incompetence in one of the most important skills a practicing lawyer should possess. The following observation refers to the challenges to legal education in Indonesia (p. 62):

“The rising challenges of global economy include trade in services. Although (it) ... is to some extent different from trade in goods, the fact is that in both cases, the domestic market will, in the near future, evolve into an international market. In the increasingly internationalized domestic market for services, Indonesian lawyers will have to compete against legal services offered in the country by foreign lawyers... It will therefore be necessary for the Indonesian law schools to adopt an aggressive strategy to improve the international competitiveness of their respective graduates.”

* Source from —

1. Ali Budiardjo, Nugroho, Reksodiputro (in cooperation with Mochtar, Karuwin & Komar). 1997. **Law Reform in Indonesia. Results of a research study undertaken for the World Bank.** Jakarta: CYBERconsult.

2. Mardjono Reksodiputro. 2003. *“Peran Pendidikan Tinggi Hukum Dalam Pembaruan Hukum Indonesia”*. (to be published in *Jentera, Jurnal Hukum*).

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Among the recommendations that were suggested by the study (pp 62-63) was (a) the establishment of a special education, leading to a Certificate of Advanced Education in Practical Law, that should be given to law graduates who want to be positioned as judges, public prosecutors and practicing lawyers, and (b) the establishment of a Legal Professional Education Accreditation Board, to improve the quality of the law schools and the training facilities for the legal profession (judges, public prosecutors and practicing lawyers).

This paper intends to focus on the above two main issues and hopefully will attract the attention of the senior judges and law practitioners as well as the deans of the main law schools in Indonesia. The goal of the paper is to stimulate debate about the issues, especially with and within the professional association to be formed under the new law on advocates in Indonesia.

New challenges in the next decade

At least on three occasions has the writer tried to draw attention to the problems faced by legal education in Indonesia. Twice in ALA conferences in Manila and in Kuala Lumpur and once, in 1996/1997, in a diagnostic study by the Indonesian government on legal development in Indonesia. It was the writer's conclusion that the common source of the problems lies with the lack of concern within the Indonesian legal community. For too long has the legal community closed their eyes to the cause of these problems. With the new challenges that the Indonesian legal system faced in the so called "reformation era" (after the collapse of the New Order government under President Suharto), it is hoped that the legal community in Indonesia will open their eyes and accept responsibility.

The challenges of the expansion of information technology and the rapid changes in law and society prompted by the globalization of economic activity are well known and have been adequately addressed in several conferences of ALA, since its inception in 1979. Indonesia's economic policy has also tried to cope with the trade and investment liberalization process to be achieved in 2020 by APEC developing country members. The Indonesian government diagnostic study in 1996/1997 recognized that economic policy changes were not supported by adequate changes in the legal and judicial system. The government's intention to use the study to embark on a comprehensive reform failed due to the economic crisis phased by Indonesia in 1998 and the ensuing changes in the political climate.

Now we have other challenges to face with, albeit the common source of the problem is still the same. There is a lack of concern within the legal community about the predicaments of law schools in Indonesia. For too long the legal educators have had to cope alone with the problem of how to produce graduates that can meet the standards and demands of the legal profession. Government economic technocrats who have been running the country for the last 30 years have also closed their eyes to the cause of the problem. For some reason, the legal community is also not seriously concerned.

The first, and maybe the foremost problem facing Indonesian law schools is faculty development. Hand-in-hand with the need to develop faculty is the

updating of their libraries. And to encourage law professors to do research in foreign or international materials, they should upgrade their knowledge of English. A second problem is curriculum development, which includes active teaching in small classroom settings with in depth case analysis. This means that some ingraining changes in the methodology of teaching should be encouraged. The problems mentioned above have been elaborated by the writer in other papers, including papers for ALA conferences and will therefore not be elaborated further in this paper. It should be noted however, that in the past the task to find solutions to the problems and to do the necessary reform in legal education has been given to the Consortium of Legal Science (*Konsorsium Ilmu Hukum*). Since its abolishment nearly two years ago, the challenge to make the reforms within the law schools will be the responsibility of the deans.

The challenge for the judiciary

The Indonesian justice system has had a rough time during this last five years. In 1997 the above diagnostic study on legal development in Indonesia it was already hinted that the judiciary is tainted and accused of impropriety. The following is a statement about the judicial system (p.121):

“The most damaging accusation is the lack of an independent judiciary. This is usually linked with the position of the judiciary as “employees of the state” (pegawai negeri) and placed under the administration of the executive (Department of Justice) [The] dominant role of the executive enables an unhealthy restraining influence over the judiciary, particularly in controversial cases (both civil and criminal cases).”

This unease over the judiciary dates back to the New Order government under President Suharto, but even now the judiciary faces criticism for allegedly lacking independence in high-profile cases involving the government or public figures.

The quality of the judges has also come under attack. The diagnostic study observes (p. 122):

“Most of the individual judges, particularly of the lower courts (Pengadilan Negeri), are considered as inadequate in their knowledge of substantive law (especially civil and commercial law) and the rules of procedural law.”

Things may be changing. The new chief justice is a professor of law and has a very good academic reputation. His appointment was broadly welcomed in many circles and symbolizes that the government is serious about reforming the judiciary. The recent blueprint for programs with the Supreme Court as a focal point shows that the chief justice is committed to reforming. What is needed now is active implementation that can demonstrate improvements in the delivery of judicial services to the public. Many in the legal community have very high hopes that the chief justice, a very respected jurist, will improve the judiciary's tainted image. As the saying goes: “a chief justice reflects the integrity and impartiality of the system; if you have the wrong person, then you have the wrong system.”

The judicial system has tried to improve its judicial service by establishing a special economic chamber within the general courts of five commercial cities (Jakarta, Medan, Makassar, Surabaya and Semarang). Special expertise in business law is a primary requirement for the judges who will serve in the economic chambers. Continuing legal education for judges is by giving them the opportunity to improve their knowledge by joining special courses in business law, in Indonesia as well as abroad.

The challenge for the Indonesian bar

The new law on the legal profession (advocates) will play an exceedingly important part in legal life in Indonesia. This new law sets forth the aims and purposes of the legal profession, its organizational structure and its procedures. Through this law the present voluntary organizations of lawyers engaged in the practice of law (litigation and non-litigation services) will form a national bar. According to the regulation any person possessing a higher legal education who has worked in the capacity of a judicial litigator or legal consultant must become a member of the bar.

In the past ten years the number of persons in possession of a higher legal education rose sharply. In 1992 around 13,000 new lawyers graduated every year from the more than 200 law schools in Indonesia. Under the new regulation, a law college education alone is not sufficient to qualify for admission to the bar. Besides theory practical experience - the know-how of the profession - is needed; and graduates must serve a definite period as probationers. The Bar Council will be greatly instrumental in raising the professional standard of the legal profession. It is hoped that the Bar Council will pay attention to the following statement in the diagnostic study (p. 121):

“In cases of judicial corruption, the practicing lawyers (attorney-at-law and public prosecutors) are also accused of facilitating bribery. Especially, attorneys and counselors-of-law (legal consultants for non-litigation cases) could be accused of being “brokers” in transactions involving law as a commercial commodity”.

Reform by the bar should aim for the legal profession as an institution to have the same standing and prestige it enjoys in ALA countries and elsewhere. A strong legal profession should show that its members stand independent in their devotion to freedom and democracy; they should also try to curb excesses and abuses of government. The bar has the power to invoke disciplinary measures for infractions of rules of professional conduct and even disbar an advocate by revoking his license on grounds of the commission of a crime being established by a court.

Conclusion

If the legal community wants to achieve an improvement in legal education, the writer would like to offer the following suggestions. The deans of the major law schools and the legal professional organizations, as stakeholders,

should come together to address the problem. The conference should discuss the following agenda:

First, the need to establish a firm commitment to closer cooperation on legal education issues. The scope of possible cooperation is wide, but as a start the law school and the stakeholders could work on improving coordination in basic areas like information on faculty, curriculum and library development.

Second, the need to establish a joint training program build on the already existing programs, that will lead to a Certificate of Advanced Education in Practical Law. All law graduates who want to become judges, public prosecutors and practicing lawyers should undergo this program before they are eligible to apply for one of the above position. The training program will be conducted by a Qualifying Board with representatives of the Supreme Court, the Attorney General Office and the Bar Council (under the new law on advocates).

Third, the need to improve the quality of the law schools and the different training facilities which now exist to train judges, public prosecutors and other legal professionals. An independent institution should be established, that will have the authority to make periodic evaluation and can be called the Legal Professional Education Accreditation Board.

Finally, the need to consider an integrated multi-dimensional approach to the problem of international competitiveness of our law graduates and our legal profession. It should also be understood that it is sometimes necessary to work across traditional professional boundaries.