

Legal Education In Indonesia : Professional Jurist In Globalized Era

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LEGAL EDUCATION IN INDONESIA: PROFESSIONAL JURIST IN GLOBALIZED ERA

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Abstract

This paper seeks to identify the linkages between the traditional concept of legal education based on affiliation of legal system and the rise of global market forces. It argues that the method of legal education should be changed to accommodate the need of globalized era where indicated by the rise of free flow of trained legal professions. This pattern is particularly pronounced in the moot court competitions where the participants are the law students over the world. The champions of these competitions are very rare came from the civil law developing countries. This paper considers the prospects for new forms of legal education, especially in Indonesia that can be used to anticipate for the forth coming ASEAN Community in 2015 as well as the global market forces. It is necessary therefore for legal education to have curriculum inserted other legal traditions and provide students with international legal training experience. Thus Indonesian graduates not only be as professional jurist but also be able to work in the increasingly commercialized and globalized profession of law

Key words: legal education, Indonesia, professional jurist, globalized era

1. Introduction

In globalization era as nowadays, very common for lawyers to deal with complex legal contracts or disputes involved many facet of legal sub-divisions and mixed legal system. This can involve a combination of legal, economic and environmental legal issues, all of which needs to be thoroughly understood by lawyers involved in this issue. Furthermore, in this era of liberation of trade where marked by the notion of free flow of good, capital, services and investment, the competition among nations is tighter than before. This becomes challenges and opportunities for every state should enhance their human resources to gain the benefits of globalization. For this reason Indonesia should reform its legal education to keep pace with international trend of global law. It is in turn law faculties should put adequate training inserted into the curriculum and method of teaching so that their graduates have wider knowledge of law and may have overview of other legal systems beside civil law tradition, to produce the global professional jurist graduates.

This paper tries to examine the legal education in Indonesia especially in preparing law graduates in globalized world. It first describes an overview of the globalized world and crossing border legal services. It then analyzes the legal education in Indonesia and its correlation to the legal systems in the world. It presents the history of legal education in Indonesia, the curriculum and the organization structure of Indonesia legal education. The article reviews the challenge

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and opportunities provided globalized era for legal education in Indonesia. Finally it draws conclusion and raise some suggestions

II. Globalized World and Crossing Borders Services

A. Globalized World

The combination of the development of technology telecommunication and transportation mode with the free flow of person, services, capital and investment as the core of trade agreements among states and international organizations has led the world capital and financial as well as commercial markets became integrated and interconnected. The business people have searched for low labor cost and cheap raw materials that are provided by medium small companies (MSC) abroad. The immediate linking of the remote parts of the world is common view for business people to engage contractual obligation with their counterparts. The lawyers called on to participate in helping business tap into sources of finance around the world for investment. In this context, legal education has significant role in terms of production of lawyers' skills suited to the complexity and diversity of legal practice in current globalized world. Legal education has significant relation with globalization.

Trade liberalization which is introduced and led by the World Trade Organization (WTO), has gradually opened internal market of its members with the concept of freer movement of goods, services, capital and investment. The Indonesian internal market has become international market due to the existence of trade of service agreements among nations by which Indonesia as a member. In other words, professionals will offer their services in Indonesia. Some foreign lawyers have been selected and already have recommendations from Indonesian Advocates Association / Persatuan Advokat Indonesia (Peradi) to get permit to practice in Indonesia.² Therefore it would be necessary for the Indonesian law schools to adopt an aggressive strategy to improve the international competitiveness of their respective graduates to pursue the level playing field in international judiciary system. In this increasingly internationalized domestic market for services, Indonesian lawyers will have to compete against foreign lawyers who offer attracted legal services.

Long before ASEAN has adopted the ASEAN Framework Agreement on Services (AFAS) in 1995.³ This agreement aims to establish free trade area in services among ASEAN Members through mobilization of the private sector in order to improve the efficiency and competitiveness of the service industries in ASEAN member states. The member states are to strengthen and enhance existing cooperation efforts in this sector. This agreement is consistent with the ASEAN members' commitments under the General Agreement on Trade in Service (GATS). In other words, under AFAS the ASEAN members should liberalize trade in services in the region by expanding the depth and scope of liberalization beyond those under taken by Member States under GATS.⁴ Under AFAS, the member states have adopts horizontal commitments on trade services. Thus, ASEAN is an important market of trade in services. Soon the private companies

2 The Head of Peradi, Otto Hasibuan said that the number of foreign lawyer who practicing in Indonesia is seventy and this number is continuing to increase, see www.baliantara.com

3 ASEAN Framework Agreement on Services, text at <http://www.aseansec.org/6628.htm>

4 Ibid, Art I.c

of ASEAN members will engage on trading to tap investment in the region. Lawyers should safeguard this beneficial complex transaction given the fact that each ASEAN member has its own legal traditions, such as civil law, common law and hybrid law.

The free trade on services is then highlighted under the ASEAN Community that will be established in 2015. Therefore, in relatively short time, Indonesia will have a free flow of skilled labors with the other ASEAN members. The ASEAN member countries have prepared the Mutual Recognition Arrangement (MRA), which so far specify the basic qualification for seven groups of professionals to work freely in each other's countries. These groups of skilled labors are engineering services, architectural services, surveying qualification, medical practitioners, dental practitioners, nursing services, and accountancy services. This scheme has not cover lawyers yet. In so far, Indonesia will have both advantages and disadvantages with this agreement. Indeed, Indonesian market will exposure to the challenge of development the personnel and business competitiveness of this professions. Once the ASEAN Economic Community (AEC) becomes reality, it will become essential for those who concerned to this scheme to understand what it means to them, especially members of the seventh effected professionals.

A study in 1996 on Indonesian legal education by Bapenas has mentioned the correlation between legal education and liberalized of trade services states as follow,⁵

"The rising challenges of global economy include trade in services. Although (it) ... is to some extent difference 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."

Therefore legal education has considered the domestic and international market as well as the competition in globalized era. It is necessary to know what the difference of these kinds of words. In 2008, Simon Chesterman said that⁶

"Internationalization saw the world as an archipelago of jurisdiction, with a small number of lawyers involved in mediating disputes between jurisdictions or determining which jurisdiction applied; transnationalization saw the world as patchwork, with greater need for familiarity across jurisdiction and hence a growth in exchanges and collaborations; globalization is now seeing the world as a web in more ways than one, with lawyers needing to be comfortable in multiple jurisdiction".

Globalization is making people think in new ways about legal profession and the role of legal education. In this context, it should bear in mind that there is no global law, no global government and no global sovereignty. Nevertheless, the local complexities, cultures, regulations, institutions are equally important in resolving whatever the issues.

5 Mardjono Reksodiputro, Challenges to Legal Education in Indonesia see at http://www.aseanlawassociation.org/docs/w3_indo.pdf (visited 02/09/2013)

6 Simon Chesterman, the Globalization of Legal Education, Singapore Journal of Legal Studies, (2008) 58-67, p58

B. Crossing Borders Legal Services: the U.S. Law Firms Experiences

In this globalized era, national borders may be irrelevant when we talk about trade in services. The globalization of capital, financial, and commercial markets that has occurred over past thirty years has led to interconnected and interdependency of economic, political, socio-cultural of nations in the world. The movement of persons and professionals between parts of the world are common thing currently. All of these things in tandem with advance technology information are dramatically altering the delivery of legal services today. It can be said that this is globalization of economy that has its greatest and most measurable impact on lawyers. For over the last decade foreign law firms have gave legal services outside their national borders, especially lawyers from U.S. and U.K. The provision of cross-border legal services has contributed into national revenues, for example, the U.S. law firms collected \$ 1.4 billion from foreign clients in 1992 alone.⁷

The prominent U.S. law firms such as, Cravath, White & Case, and Baker & McKenzie have provided legal services around the world. Of these law firms, Baker & McKenzie has expansive business across borders by practicing an affiliation of legal services with local law firms. It has over 22 branch offices over the world. The Baker & McKenzie has employed foreign lawyers in their offices, and its percentage is much higher than the percentage of the foreign lawyers in Cravath and White & Case offices.⁸

It can be said that at least four actors are identified as being particularly significant to professionalization processes, namely, the practitioners, the users of professional services, the states, and the universities.⁹ Each of them has certain role in shaping the legal professional as a negotiated outcome which each equipped with their own interests, agenda, and resource capabilities. In this context, the role of education is a resource which produces the knowledge-base of the professions and provides the credentials (an approved degree) that support professional closure regime.¹⁰

III. Legal Education Indonesia and the Legal Systems in the World

Legal education has generated broad interest across communities insofar as it connects to notions of professionalism, whereby certain occupations acquire certain standardization in relation to certain tasks. Education lies at the heart of models of professional formation in which it has a duty to select and train carefully its prospective members so to guarantee minimum competency levels and quality standards. In this context, it is necessary for legal educators to make some adjustments of their capabilities and infrastructures to suit with the quality demand. A study on Indonesian legal education (represented by Bappenas) in 1996 among others stated about legal education as follows,

- 13
- 7 John Flood, *Lawyers as Sanctifiers: the Role of Elite Law Firms in International Business Transactions*, 14 *Indiana Journal of Global Legal Studies* 35, p.51
- 8 Mary C. Daly, *Thinking Globally: Will National Borders Matter to Lawyers a Century from Now?*, *Journal of the Institute for the Study of Legal Ethics*, 297, 1996, p. 309
- 9 James R. Faulconbridge and Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 *Geo J. Legal Ethics* 1335, 2009, p 1324
- 10 Ibid.

"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."¹¹

Until now the legal education in Indonesia still does the similar method as stated in that study. The majority of Indonesian law schools currently still do the process of transferred law knowledge by using lecture as the main method. As consequence, the fresh graduates of Indonesian law schools have less capable to write logically consistent legal opinions as significant skills as practicing lawyer. The method of learning also still leans heavily on mastery of rules as rules. This method is incompatible with legal education vision to give the graduates with proper skills and knowledge so that they ready as practicing lawyers.

Most nations today follow one of two major legal systems, the Anglo-American common law system and Continental or civil law system. All legal systems have similar objectives, namely regulate and harmonize the human activity within society. Legal systems may be said to be the composite of the legal institutions, rules, laws, regulations, and legal actors of specific political units, usually state or sub-states entities.¹² Legal systems are generally classified into legal traditions.¹³ In each society the legal system forms part of the culture and civilization as well as of the history and the life of its people.¹⁴ The common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents.¹⁵ Civil law tradition, on the other hand, developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as, Spain and Portugal. These two legal systems have fundamental differences and the most fundamental ways in which they diverged was in the establishment of judicial decisions as the basis of common law and legislature decisions as the basis of civil law.¹⁶

Indonesia is a civil law country. In civil law system the courts have the task to interpret the law as contained in legislation, without being bound by the interpretation of the same legislation given by higher courts; this means that under civil law, the courts main task is deciding particular cases by applying and interpreting legal norms. Therefore, compare to lawyers from common law countries, lawyers from the civil law countries tend to be more conceptual while their counterpart from the common law countries are considered to more pragmatic.¹⁷ Both codes and statutes

11 Cited in Mardjono Reksodiputro, *Challenges to Legal Education in Indonesia*, p 2, see at http://www.aseanlawassociation.org/docs/w3_indo.pdf (visited 02/09/2013)

12 John Henry Merryman, *The Civil Law Traditions: An Introduction to the Legal Systems of Western Europe & Latin American* (2nd Edition, 1985)

13 John Henry Merryman and Rogelio Perez-Perdomo, *The Civil Law Traditions: An Introduction to the Legal Systems of Europe & Latin American* (3rd Edition, 2007)

14 Joseph Dainoff, *The Civil Law and the Common Law: Some Point of Comparison*, JSTOR, the American Journal of Comparative Law, Vol 15, no.3, (1966-1967), pp 419-435

15 See at <http://www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf> (visited 29/08/2013)

16 Ibid.

17 Caslaw Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, (2001) 32 VUWLR 817, p

within civil law systems make extensive use of definitions and classifications, and they offer a highly systematic and exhaustive overview of the law. All of this character unintentionally bring into legal education which merely focus on interpret legal norms. In the common law system, the courts are supposed not only to decide disputes between particular parties but also to provide guidance as to how similar disputes should be settled in the future. It can be seen in the EU legal system as stated as follows,

„...the fact that the E.U. has been able to bring together a large number of civil and common law traditions under a single legislature show that the two systems are by no means as

Therefore, it is not impossible to introduce common law traditions to law students in Indonesia to enrich their mindset. The main challenges facing a civil lawyer who wishes to understand and function within a common law system relate to the role and structure of statutes and the significance of case law.

In the U.S, there was a study on legal education. The 2007 Carnegie Report *Educating Lawyers* has issued strong criticism of professional legal education and which has had a profound and continuing impact throughout the common law world.¹⁹ This Study found two major limitation of legal education, namely, first, most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Second, law schools fail to complement the focus on skill in legal analysis with effective support for developing ethical and social skills. Students need opportunities to learn about reflection and practice the responsibility of legal professionals.

Meanwhile, the history of the development of legal education in Indonesia is related to the period of government. The objectives of legal education in Indonesia have been changed many times as this followed the fundamental change of Indonesian government, namely, from the colony to an independent state, from revolution era to the development stage, and in the democratic model of government. Thus, legal education objectives were not independent processes.²⁰ In the new of independent state era, the graduates of law faculties were not only to courage to throw off the colonial law but also possessed certain skill in building Indonesia as an independent state. In Suharto governmental period, the legal education was designed to ensure the graduates were able to support the process of development in Indonesia.²¹ In this period, the task to find solution and problem of legal education has been given to the Consortium of Legal Science (Konsorsium Ilmu Hukum). Accordingly, law students were only expected to know adequate the theory and the prevailing laws and regulations and their applicability in the community. Therefore, the insertion of sociology in legal education and law studies became

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18 Margaret Fordham, *Comparative Traditions – Introducing the Common Law to Civil Lawyers in Asia*, *Asian Journal of Comparative Law*, Vol.1 (2006) 138, p 139

19 William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law*, The Carnegie Foundation, for the Advancement of Teaching 2007. This 4-year study funded by the Foundation on legal education of 16 law schools in the U.S. and Canada, it re-examine „thinking like a lawyer“, the paramount educational construct currently use

20 Soetandyo Wignjosebroto, „Development of the National Law and Legal Education in Indonesia in the Post-Colonial Era“, cited in Hikmahanto Juwana, „Legal Education Reform in Indonesia“

21 Ibid.

important. As a consequence, law in Indonesia at that time, both in theory and practice, was constantly related to the socio-economic development problems. It should be noted however, since the Consortium" abolishment in 1993, the challenge to make the reforms within the law schools will be the responsibility of the deans.²²

³ Following years after the abolishment of the Consortium, there was the 1993 curriculum that is provided under the Minister of Education and Culture Decree no. 17/D/O/1993 (hereinafter the 1993 curriculum). In this new curriculum, graduates are expected to know the theory as well as legal skills. In other words, both academic and professional legal education came together in one curriculum.

The legal education in this period had substantial problems that could be obstacle for the development of legal education in Indonesia itself. The first, and maybe the foremost problem facing Indonesian law schools were faculty development and the libraries. With regard the faculty development, it was necessary to encourage law professors to do research in foreign or international materials, so that they have to 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.

In 2004 there was the competency-based curriculum (CBC) throughout in Indonesia and this should be incorporated into the legal education curriculum. The problems that arose when the competency-based curriculum inserted in curriculum of law faculty are the fact that law faculty graduates may potentially enter enormous varied institutions so that makes it difficult to determine appropriate standard competencies.²³ In this regard, Hikmahanto Juwana stated that,

The incorporation of the CBC into the legal education curriculum does not have to be identified with the legal profession. For law faculties that provide a university legal education then the CBC must be interpreted as an effort to produce graduates that possess competencies that can be perceived by the society and the traditional legal profession as appropriate for the employment they will enter.²⁴

Further he stated that the CBC might be reflected by, among other, the teaching subjects that already exist, the teaching methods, and the process of learning.²⁵ By examining all of these things, it will find the weaknesses of the organization of legal education in Indonesia. Currently the curriculum of law faculties is the exclusive authority of the deans. At the national level, it is a mechanism of Coordination of Law Deans of Indonesian" Public University that responsible for the design curriculum for law faculties in Indonesia. This body has committed to design the curriculum, which covers legal practicing professional. The curriculum consists of sixty percent of theory and forty percent of legal practice. The teaching methodology of small classes is applied. In short, this new curriculum was designed to produce professional jurist graduates. The graduates are supposed to mastering legal practice hence the legal graduates are designed ready for work.

²² Reksodiputro, supra n 13, p. 3

²³ Juwana, supra n 22

²⁴ Ibid.

²⁵ Ibid

IV. Challenge and Opportunities

In globalized era there are challenges and opportunities for lawyers practicing across borders. It is true that each legal system has its own legal traditions. This however opens for rapprochement between common law and civil law. For example, in European Union, its legal system represents a mixture system that contains elements of both civil law and common law system. Indonesian lawyers inevitable have participated in regional as well as multilateral level.

In ASEAN level, there is an avail opportunity to Indonesian lawyers practicing cross borders legal services in regional ASEAN level. ASEAN Charter was designed to create the legal framework for ASEAN as a rules-based organization. It provides the dispute settlement mechanism in Chapter VIII. The ASEAN Dispute Settlement Procedure (DSP) utilized less-formal means of dispute mechanism. ASEAN members prefer to solve disputes among them by peaceful means, namely, negotiation, conciliation, and good offices. ASEAN however still has a legal avenue as DSP provides arbitration as one type of dispute settlement means to solve their disputes in concerning the interpretation or application of the ASEAN Charter and other ASEAN instruments.²⁶ For economic disputes in ASEAN can be solved by utilizing the Vientiane Protocol 2004.²⁷

The WTO as multilateral system is becoming more litigious over time. In the new released book on WTO, titled 'the Future and History of WTO' written by Prof. Craig Van Grassek, among others, presents statistical assessment of WTO litigation that there is shift to litigation from negotiation.²⁸ This fact can be seen as a good opportunity for lawyers to participate to legal services in the multilateral system including lawyers from Indonesia. So far, Indonesia with other developing countries such as Brazil, India, Argentina, and Korea so far has participated in the WTO dispute resolution mechanism both as respondent and complainant.²⁹ In an age when co-operation and mutual understanding are core aims, there is a strong impetus for lawyers from each system to be familiar with and able to function within the other.³⁰ The differentiation of legal cultures between Asia as favoring conciliation rather than confrontation, for example, really does not explain any difference in litigation processes. Also difference between common law and civil law countries are not significant in explaining the different in level of litigation, though African and Middle East countries have yet to file a single action in WTO DSP.³¹

It is relevant to say that in globalized era, the law school must teach new kinds of legal skills to their students. These legal skills are not only include applied skills of logic and reasoning legal theory, but also necessary skills of legal practicing as international lawyers. Still the key success for lawyers practicing globally is to have a set of solid foundation on their own substantive area of law. Having said that, graduates of law schools should be given with international dimension

26 ASEAN Charter, art.25, see <http://www.aseansec.org>

27 The Protocol on Enhanced Dispute Settlement Mechanism, signed in Vientiane by the economic ministers at the 11th ASEAN Summit 2004

28 Craig van Grassek, *The Future and History of WTO*, WTO Publisher, 2013

29 The number of participation of Indonesia in WTO Dispute Settlement Procedure (DSP) is as complainant (6) and as respondent (4) and as third party (8). Top 20 users of WTO DSP, see Won-Mog Choi, *Korea's Experience of Peaceful Settlement of WTO Disputes: Some Lessons for Asia*, *Korean Journal of International and Comparative Law*, vol.1 no.1, 2013, p. 16

30 Fordham, *supra* n 20, *ibid*

31 Grassek, *supra* n 29

of global trade law, as it is impossible to overemphasize the importance of understanding the nature and function of legal system of certain countries

V. Conclusion

Legal education in Indonesia cannot separate with its global environment. The law faculties in Indonesia have acted as the primary site of the reform of legal profession in order to fulfill the demand of professional lawyers in this increasingly commercialized and globalized profession of law. Some have reformed the content of curriculum by inserted legal practice that produce professional jurist for law employment in national market. This however is not enough considering the existed of market global of legal services. Legal education in Indonesia is necessary to implement progressive curriculum that inserted other legal traditions and international dimension so that graduates have wider knowledge and experiences. Primary focus of law school must remain preparing students to become practicing lawyers with some adequate legal training and overseas legal experiences, such as, joint international legal competitions and internship in global law firms. In short, in globalized world law schools must teach new kind of legal skills so that law school graduates could be categorized as professional jurist locally and internationally.

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