

Curriculum Standardization for Advocate Education in Indonesia

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Abstract

¹ Implementation of Advocate Profession Education by an advocate organization is a requirement for appointment of an advocate and it is regulated by the Article 2 paragraph (1) of Law no. 13 of 2003 on Advocates. However there are many Advocate Associations in Indonesia and each organization has different ways and standards to conduct the advocate education process. This article on curriculum standardization of advocate education in a period of transition describes legal reforms, liberalization of legal services, and the advancement of Information Technology (IT). This article uses descriptive methods by examining the role of advocates who use legal skills to serve their clients. Data collection involves experience and personal involvement. It concludes that there must be cooperation between advocate professional organizations with universities in the implementation of Special Education of Advocate Profession with a standardized curriculum.

Key words: Curriculum Standardization, Advocate Education, Legal services liberalization, Legal information technology

Introduction

Advocates in Indonesia are better known as lawyers, and considered as a noble profession, because they devote themselves to the benefit of society and not to themselves and because of their obligations to upholding human rights. It is believed that advocates offer free legal service activities to the poor and the law-blind. The presence of advocate is very important in realizing the ideals of a nation: they help in realization of an egalitarian, just and prosperous society based on the national law.

The Advocate is labeled as law enforcement profession that should be carried out without pressure or intimidation from other sections of government. The role of advocate is to give advice on any matters of law to their client, sometimes it involves representing a client in the civil and criminal courts or advising a client on matters such as matrimonial and family law, trusts and estates,

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⁶ regulatory matters, property transactions and commercial and business law. The Client may be a person, legal entity or other institution.

To become an advocate, the candidate should normally hold S1 law degree (equal to Bachelor of Law), as stated in the explanation of ¹ Article 2 paragraph [1] of Law no. 18 Year 2003. This degree may be awarded by the Faculty of Law, Faculty of Syariah, Military Law College or Police Science College. An advocate candidate must also attend special education programs pertaining to advocate profession and attend apprenticeship to an advocate office for at least 2 (two) years continuously. Besides, in order to qualify for ²⁰ the Special Education of Advocate Profession (*Pendidikan Khusus Profesi Advokat PKPA*), he must also have passed the Advocate Profession Exam (*Ujian Profesi Advokat UPA*); and taken the Advocate Appointment and Oath. Moreover, for the appointment of an advocate, it is required that the Advocate Profession Education Program should be offered by an advocate organization. This requirement is regulated by ¹ Article 2 paragraphs (1) of Law No 13 of 2003 on Advocates.

A renowned scholar ^{of} higher education of law can also be appointed as an advocate after having attending a special advocate education conducted by an advocate organization. There are several advocate professional organizations in Indonesia that conduct Special Education of Advocate Profession, such as the Indonesian Advocate Association (PERADI), Indonesian Advocate Congress (KAI), IKADIN (Indonesian Advocates Association), AAI (Indonesian Advocates Association) and HAPI (Indonesian Lawyers Association / Lawyers). Each organization has different ways and standards in conducting advocate education process.

This study examined the role of advocate, a legal profession that has been broadly defined to include lawyers who use their legal skills to pursue a wide range of social and political ideas and ideals beyond client services. This study focused specifically on standardization of advocate education curriculum in facing future challenges. Recently the Indonesian advocates are facing a period of transition marked by anxiety triggered by three things: first, it is the legal reforms that strive to create an institutional design for the establishment of a state level law. Second, it is liberalization of Legal Services which is often considered as a mere play on words to expand the

area service of the law. Third, it is Information Technology (IT) which threatens to overthrow the tyranny of distance and time in the merger between computer technology and communication.

In such circumstances, it becomes essential for advocate education to ensure building up such core competencies that can address current legal issues in changing technological and social conditions. For this purpose it requires a curriculum or system of plans and arrangements regarding the learning materials content as a guide in teaching and learning activities for the prospective advocate. The curriculum should be tailored to the needs of today's legal services. This article discusses the preparation of an ideal advocate education curriculum drawn up by universities and advocate organizations in Indonesia.

Literature Review

Law Reform is a kind of democratization of law making, law enforcement, and legal awareness. Although legal reform has been pursued in Indonesia since the 1950s, the law enforcement in Indonesia has always remained weak. Linnan (1999) criticized the existing efforts made in the direction of legal reforms and developed the interpretation of this problem since 1980 upto the Reformation Period. These interpretations act as advices of different approaches to make further legal development with implications for structural reforms in the Indonesian legal system (Linnan, 1999). Lindsey (2004), in another study, states that Indonesia's legal infrastructure has faced a period of a radical reforms for full six years since the crisis. As per the requirement, a number of commissions were set up such as the National Law Commission (*Komisi Hukum Indonesia* KHN) formed by President Abdulrahman Wahid in February 2000. The mandate was to provide a formal legal opinion to the president when required and to reform the legal institutions (Lindsey, 2004). Unfortunately, KHN is not empowered to make its own recommendations, because it is outside the ministry or agency and reports directly to the president. It also depends upon the political will of the president or other ruling leaders whether to accept or reject its recommendations.

In order to bring law reforms in Indonesian, it is necessary to have a highly improved legal environment that could establish institutional design required to realize a rule of law. A few steps have been taken towards legal reform such as laws like The National Human Rights Commission (Komnas HAM), the Business Competition Supervisory Commission (*Komisi Pengawas*

Persaingan Usaha KPPU), the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* KPK) and the Commercial Court. Moreover, while legal prosecutors including the Police too are moving towards a better change, lawyers are also increasingly asking clients for consulting services or litigation practices. Their endeavors to bring reforms in law have driven to better legal services in Indonesia.

As said earlier, Indonesian advocates are facing a few major disruptive situations: one, liberalization of legal services that has already taken place in developed countries and is considered a good substitute for substantial efforts to expand the area of the law services; second, the advancement in legal information technology that promises to change the pattern and type of works. To throw more light on these situations, it is evident that ever since liberalization started in Southeast Asia, Indonesia has followed the Declaration of ASEAN Concord II or Bali Concord II, which is the decision of Heads of States from 10 Member States. Ever since the declaration was socialized in 2015, Indonesia has become a single production-based market resulting in Indonesia facing a free market phenomenon. After this declaration, imported goods now can easily enter into the Indonesian market and compete with the local products.

³ In order to reduce the legal uncertainty in the country, Indonesian government also actively seeks to improve transparency. The government offices provide legal information, regulations, instructions, application forms and similar subsidiary instruments to the business community or any end user. However, the community has often complained that there is no one-stop information-center publicly accessible to find more about regulations issued by the government.

³ The government is also providing the community with meaningful notice of and opportunity to comment on draft implementing regulations. Regarding formal mechanisms for soliciting input from business and professional community for formulating and amending trade policy, there are still complaints from some business community that the government does not represent their interests when it creates regulations with respect to their sectors (Brotosusilo, 2010). The impact of this ratification not only increases trade and foreign exchange, but also results in an increase in cross border workers, including legal service profession.⁵ Law no. 18 of 2003 on Advocates, and the presence of foreign advocates or legal consultants are not prohibited under the law. The Article

23 of the Advocate Law restricts the authority of foreign advocates, which may only provide advice or legal opinion according to foreign law. These foreign advocates also are mere employees or consultants of law firms and hence they cannot practice directly or open a law firm or send their representatives in Indonesia.

It has also been observed that the increasing need for advocate services within the ASEAN Economic Community has encouraged advocates as well as law firms of each ASEAN member countries, to compete with one another for the legal services market. In such a situation, Simanjuntak (2016) observes an urgent need for the readiness of Indonesian advocates competing with foreign counterparts not only in the Indonesian legal services market, but also in the entire ASEAN region. This situation encourages Indonesian lawyers to prepare for liberalization of legal services (Simanjuntak, 2016).

Russell (2013) considers that Information Technology (IT) has the potential to change the lawyers' work patterns. For instance, the document assembly software in a disruptive legal situation can greatly reduce the time that lawyers spend on document drafting. He also classified that hand-held device provides relentless connectivity because of having wireless broadband access, powerful video, high processing speed and nearly endless storage capacity. Technology further drives greater expectations among clients. He also envisioned the offering of legal services online and discusses the use of systems such as legal diagnoses, to generate legal documents, to assist in legal audits and to provide legal updates (Russell, 2013).

Due to the globalization and rapid growth in the use of computers, it is expected that the computing power will double and maybe treble in a span of every five years. This increasing computing power and invention of new devices would drive current lawyering technologies such as document automation, decisions engines, e-discovery tools, communication and collaboration tools, legal research tools, and legal expert systems to continue to mature and progress in functionality and availability. "Most of these tools started out in a desktop delivery environment, but there has been a sharp increase in the number of online tools available to attorneys. This trend will continue so that by 2020 most of the viable solutions will be available either exclusively over the Internet or with very limited desktop interfaces". He also predicted the entry of non-advocate service

providers into the legal market, some of which would focus exclusively on consumers, some on attorneys, and others would sell their merchandise to both consumers and lawyers.

Another study (Setiawan et.al, 2017) examined the organization of advocate professional education in Indonesia and United States and found out several are differences in organization imparting Advocate Education in Indonesia and United States. First, Advocate Professional Education programs in the United States are run by law schools while in Indonesia these educational programs are offered by Advocates organization. Secondly, unlike the United States, Advocate Professional education in Indonesia are such type of Special Education Advocate Professional programs (*Pendidikan Khusus Profesi Advokat PKPA*) that are the part of a higher education course and must meet national standards of higher education (Setiawan et.al, 2017).

Similarly, the legal education offered in Ukraine and Germany have two common features: first, the legal system of two countries is based on an acknowledgment of appropriate basic law, both in the field of basic legal concepts; secondly, the curriculum is the basic normative document that determines the organizing of the educational process at higher education institutions of law in Ukraine and Germany Nasilenko (2014) finds that the state is also involved in establishing the communicative competence of future lawyers and prepares them for education-learning, research and productive practices. The improvement in the communicative competence of future lawyers is seen in several activities such as integration of specialized courses in specialist and professional disciplines; perfection of verbal and written communication skills; occupational analytic soul receptions; and so on. All of these factors help shape the communicative competencies of the future (Nasilenko, 2014).

A profession is a position or occupation that requires expertise of its members; who carry out their duties through scientific techniques expertise and high level of ability and competence. In Law Number 14 of Year 2005 on Teachers and Lecturers, a professional is defined as a person who takes for his livelihood such activities that requires expertise, skills, or proficiency. A professional must meet certain quality standards or norms including a minimum professional qualification. Thus professionals Indonesia are individuals with high skills, competences of standards and performance. Regarding certification and qualification for such professionals, Sagala (2009)

argues that there are several considerations to be taken for the appointment of teachers and lecturers in law (Sagala, 2009). With the changing landscape of law, Burk (2014) too argues that the role of legal education needs to change. Unfortunately, many law schools have closed down because of their traditional model which had not been changed despite market pressures and development requirements (Burk, 2014)

In another study, Hamilton (2014) insists for adopting a core competency-based curriculum and tailored courses according to the unique needs of the academic or core programs at every level. He asserts that such courses must be introduced at junior, intermediate as well as senior levels and provide training in key areas that develop various work-level skills and client-based services. Such courses will also help the mid-level peers and junior colleagues in learning about people management, leadership and self-development and also to resolve management related issues (Hamilton, 2014; Zayed, 2018).

Heineman (2007) also observed that professional education must prioritize aspects of competence and skills, as these are based on knowledge and expertise required in any vocational education. There are six core competencies a lawyer must have: oratory skills, collaboration skills, emotional intelligence, project management skills, time management and mastery of information technology. Law schools must endeavor to teach these competencies as core legal competencies. This should be done in a more systematic manner in teaching, together with other courses, where the "complementary competencies" required for current students are likely to have diverse careers and hopefully achieve leadership positions and responsibilities (B Tarman, 2012; Ben W. Heineman, 2007; Tünkler, Tarman, & Güven, 2016). In fact, Advocate education is a professional educational program. Hence the purpose, mission, reality of the legal profession in international world, and the provisions of legislation concerning professional education are all included in Law no. 20 of 2003 on National Education System as well as in the provisions of Law No. 18 of 2003 on Advocates.

Methods

This article has used descriptive methods to examine the role of advocates who depend upon legal skills to serve their clients. It emphasizes the quality of entities and processes with their meanings that are not tested or measured experimentally in terms of quality, quantity, intensity, or frequency.

Data collection involved experience and personal involvement. The researcher directly approached people, situations, and phenomena in Indonesia the study the dynamics of advocacy organizations; transitional conditions associated with legal reforms, liberalization of legal services and legal information technology. The sources of data comprised secondary law material in the form of legislation.

Discussion

When liberalization is applied on legal services, lawyers need to overcome cultural obstacles both in the form of community systems, customs, technology, behavior and language. This is the basic foundation of building the ability and readiness of global activities. For instance, proficiency in English or the language used by target countries is a constraint; but such limitations are not an inevitable burden. Lawyers can learn to make a shift in the direction of an increasingly global and liberal market of legal services in the region and hone their competence.

One of the requirements to become an advocate is to follow the advocate's education. It is the education of practitioners who are not prepared to become academicians but legal practitioners who would struggle with the realities of legal practice (Wahyudi, S.Ag., 2010). Advocate Educational programs are organized by advocate organizations in coordination with higher education institutions with a view to:

- a. Providing knowledge, skills and expertise for learners to meet the minimum requirements to be appointed as an advocate, in accordance with the requirements set by Law Number 18 Year 2003.
- b. Delivering a Scientific Occupation Advocate (not just a worker or a "handyman" who requires only knowledge and skills) but requiring certain basic knowledge (dogma / doctrine, principle, theory and philosophy of values) in this case legal science and auxiliary sciences useful to run the profession.
- c. Producing advocates who have moral and honest oriented personalities and behaviors; that are honest, fair, and responsible and have high integrity to the profession and the interests of society / clients, not just personal interests (money and power) or certain groups.

Moreover, the enhancement of advocate skills requires an education process with a specific curriculum, certified profession, accreditation of professional education, and special licensing by professional associations. The provision of Article 2 Paragraph (2) of Law Number 18 Year 2003 regarding Advocate states that the Advocate ⁵ can be appointed as an Advocate who has a higher education background in law and after attending special education of advocate profession conducted by advocate organization.

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Based on the provisions of Article 20 paragraph (3), Article 21 paragraph (1) and paragraph (2) of ¹⁶ Law Number 20 Year 2003 on National Education System, it is concluded that the implementation of professional education is held by universities only. The Indonesian law is entitled to organize higher education programs and provide academic, professional or vocational degrees but only in collaboration with a university. It cannot award an academic degree, professional diploma or a vocational certification unless it enters into a MOU with a university. In other words, advocate organizations and legal colleges cannot organize the educational program themselves, and must coordinate with the educational institutions like universities according to the law. In addition, other substantial issues such as standard curriculum, availability of professional teachers in every region still act as constraints for the higher education.

It is also necessary to expect quality output from the professionals like advocates if they have benefited from the special education of advocate profession. These advocates must show evidence of understanding more deeply the quality condition in higher degrees of law. They must also determine the high quality of special education programs in advocate profession and the level of deficiencies associated with it. They must also be prepared to develop the competence and skills required of a law graduate. They should be motivated to join this special education law profession, and mold themselves accordingly in line with the standard quality of the expected advocates.

Advocates must make strong efforts to meet the expected objectives of the advocate profession. They must acquire higher education to match the real needs of the world of professional advocates. In response to the facts already mentioned above, it is therefore necessary for legal higher educational institutions or universities to cooperate with legal professional associations. They must mutually anticipate the needs of both parties and make such efforts that lead to the quality

improvement. Such advocates should be produced who would be on high demand once they acquired a law degree through such collaborative programs.

If we look further the world of advocates has two levels of specific expertise, Russell (2013) noted that advocates who are professionals are still too general in their practice and handling of cases (especially litigations), they do not need any specific specialist legal skills training provided by professional organizations. They have adequate general legal capabilities to perform and deliver their responsibilities. But an advocate is also required to possess technological capabilities that can support the settlement of client cases. Secondly, advocates (as well as legal consultants) by professional associations are required to have specific expertise in dealing with certain legal issues. For example, advocates in the field of capital market law must have a certification as evidence of their expertise in the field of capital market law. In the past those who obtained certificates of expertise through courses and examinations, and obtained licenses from Bapepam were both advocates and non-advocates.

Hence, advocates require not only general legal expertise but also specific skills. In order to increase their expertise in specific areas, advocates require an education process with a specific curriculum, professional certification, accreditation of professional education, and special licensing by professional associations. This is more beneficial if legal education institutions and professional legal associations can anticipate the professional needs of advocates and work together to design a model of professional education in accordance with the demands of skills needs.

The Association of Indonesian College of Law Higher Education (APPTHI) assesses that advocate organizations as stipulated in Article 1 number 4 of the Advocate Law are called professional organizations, and not educational organizations. So that all forms of implementation carried out in educational activities is deviating from what is meant in the formation of an advocate organization itself. On the other hand, educational institutions including higher education institutions have a great responsibility in the implementation of education within the framework of achieving national education goals. Related to that, the Head of Indonesian Association of Higher Education Leaders Association filed a petition for judicial review of the Advocate Law to

the Constitutional Court related to the Special Education of Advocate Professional (*Pendidikan Khusus Profesi Advokat PKPA*) as regulated in Article 2 paragraph (1) of the Advocate Law.

The verdict of the Constitutional Court was a foothold for Advocates' Organizations and universities / high schools of law. The court mandated that the two parties must cooperate in the implementation of PKPA for Advocates candidates. If possible, the Ministry of Research and Technology Higher Education must also play an active role by making a special curriculum related to this PKPA material. In this way, all the material will be taught to all Advocate candidates and they will have the same level of material quality and the same standard. In this way, the implementation of PKPA would really become a part of formal education that is not perfunctory.

A case example can be cited here. The implementation of PKPA as the decision of the Constitutional Court in case 95 / PUU-XIV / 2016 is expected to make PKPA to have quality level institution which is also equal to accreditation of university and / or high school lawyer. The existence of such benchmarks of minimum accreditation number B for college or law high school is accredited. In such cases, it is expected PKPA results will produce a reliable and qualified advocates who can help the community and improve the competitiveness of the nation.

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The cooperation between professional advocate organizations with universities can also be realized in the form of developing a model of professional education at two levels, namely the level of general profession and the level of the special skills. The professional education program should be considered to be an integrated program between general professional education programs, special professions and master programs (professions). This is so that the program participants get double benefits by holding a master's (profession) field of law and bearing the title advocate (general), as well as advocates with special expertise in a particular field of law after they graduate in the education program.

The next step is to prepare a model of learning in accordance with the demands of the world of legal professions including facilities and infrastructure with giving full importance to the lecturers / teachers. All the requirements of the learning process to suit the interests of professional lawyers and high quality legal education standards must be discussed together seriously by the world of

higher education law with legal professional associations, especially the association of advocates. Only through mutually reinforced cooperation, the problem of professional education advocate can improve the quality of professional advocates. Therefore it should start pioneering the existence of a joint forum between the law faculty with legal professional associations, in order to always be able to greet each other and provide input for the benefit of higher education law and the legal profession.

Last, but not the least, a standardization of advocate education allows students to perform better, because they must learn certain information in a given period. With a standardized curriculum in place, it would give lecturer specific instructions on subject to cover and how to assess students. However, the student can take course everywhere across the country.

Conclusion

Basically, advocacy education is a professional education, either because of the purpose factor, education mission, the reality of the history of the legal profession in the international world, and because of the provisions of legislation concerning professional education, both based on Law no. 20 of 2003 on National Education System as well as based on the provisions of Law No. 18 of 2003 on Advocates. The existence of Decision of the Constitutional Court in case 95 / PUU-XIV / 2016 gives the consequence of the need for cooperation between advocate professional organizations with universities in the implementation of PKPA with the standardization of curriculum in the implementation of PKPA.

There are six core competencies an advocate must have: oratory skills, collaboration skills, emotional intelligence, project management skills, time management and information technology mastery. These competencies must be developed, if they can survive in facing disruptive situations. Law schools should teach them; government agencies need to test them; law firms need to make their advocates expert in it.

In addition, cooperation between professional organizations advocate with universities can also be realized in the form of developing a model of professional education in two levels, namely the level of general profession (general) and the level of a special profession (special skills). In relation

to requirements of becoming an advocate in Indonesia, it is suggested to formulate criteria and requirements for appointment and law firms eligible for apprenticeship for potential advocate members.

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