Indonesian Legal Higher Education Paradigm during Covid-19 Pandemic

Sulaksono

Universitas Negeri Surabaya, Indonesia
Email: sulaksono@unesa.ac.id

Abstract

The phenomenon of legal case problems in Indonesia has increased. Thus, legal higher education is an institution expected to graduate the bachelors of law such as judges and lawyers that will be able to handle the legal problems in Indonesia. This research aims to discover the paradigm of higher legal education during a covid-19 pandemic. This research uses a case study with qualitative as the research method. The data is obtained by observing legal higher education as an institution also several cases in Indonesia. The study shows that Indonesian legal education is ineffective, especially in using optical perspective to help and encourage the students. The results are student did not know how to face the criticism and creative legal. The faculty of law in Indonesia only teach the process of the legal system without knowing the actual phenomenon. In conclusions, students still find it hard to develop the culture of asking, discussing and giving explanations related to the legal system in their education.

Keywords: Law students; Legal education; Optical perspective; Paradigm.

1. Introduction

Nowadays, education is one of the crucial aspects used to measure a person's intellectual level. Indonesia has various educations, including higher legal education. Higher legal education is an institution that has a vital role in obtaining law graduate students. Several cases in Indonesia indicated that many professional and expert bachelors of law are needed to handle the problem. Ironically, those cases affect legal inequality. It can be seen from several opaque portraits of law enforcement in Indonesia. It began in 2009 during the cases of Bibit and Chandra [1] and Prita Mulyasari [2] is a portrait of the legal problem which has been happening as public consumption and it is a part of 'misguided judiciary' [3]. The misguided judiciary still occurs in several cases during a covid-19 pandemic. For example, a porridge seller in Tasikmalaya [4] should pay the penalty on Monday, 5 July 2021 and Asep Lutfi Suparman [5] on 13 July 2021 is a problematic form of legal inequality. It occurs because they prefer to choose to be imprisoned rather than pay the higher amount of penalty to the apparatus, which is not comparable with their income. Furthermore, the attention and public choice voice toward law enforcement agencies and apparatus are rigorous post-reform, especially the legal problems involving human rights, nation and country. Along with the news in various mass media regarding public support for law enforcement, there are also disappointment and public criticism of law enforcement that occurred, either by the police, prosecutors or the courts.

Public disappointment happens because of the expectations unfulfilled to the court in providing the truth and justice, also the realization of peace and welfare [6]. Nowadays, several societies believe in justice as it is the last fortification. Machmudin (2016). However, the public trust is contradicted by the facts of the court's decline. It is the opposite of the characteristic of the court, which has the function to solve the legal conflict. A court is ruling the constructs fair procedural determination. Moreover, the court decision will be successful by people with money and power. According to Azis (2019), Access to justice should be equal for every society, and it cannot be obtained. It means that ideal access to justice should be executed equitably, available, and equivalence for every party; however, it is still challenging to reach. It happens because there is an inequality in prosperity, authority and economic system. Justice is often received only by the elite parties. In the implicated situation, justice becomes a place for the legal mafia and market section [9].

Furthermore, the judge's decision is still considered unjust and not based on the truth. It is an accusation that the judges are corrupting practices (Komisi Hukum Nasional, n.d.). Indonesia's law enforcement is generally deaf, blind, and insensitive and has no conscience for equal justice in a society that needs justice, truth, and humanity. When the case decision is not correct, injustice and inhumanity, thus it is reasonable if society gives value to the judge's decision which cannot solve the legal cases. The decision can be suspected and accused if they do not provide the truth, fairness and humanity; however, they choose to prioritize several interests that are not related to the absolute truth of the case [9]. Based on the descriptive above, the study that concern paradigm towards higher law education institution known to be limited. Therefore, this study plan to discover the paradigm of higher legal education during a covid-19 pandemic.

2. Results and Discussions

The Efforts to Initiate Progressive Legal Higher Education

Legal contextual thought is a legal education model that introduces an understanding that places legal function and aim as an instrument in society for constructing the discipline, establishing justice, avoiding abusing authority, forming the mentality of praiseworthy humans and receiving the society participation message. Nowadays, the reality of legal education is directed to John Austin's perspective in Positivism [10] which stated that "law is a kind of instruction. Therefore, it should have come from one specific authorized source. In Pure Theory of Law Latipulhayat (2014) stated that he is not acknowledged legal realism discipline as Roscoe Pound's taught: Law is a tool of social engineering.

In 1980, Roberto Mangaberu Unger prioritized a legalism "Legal Critis Studies" (LCS) in Harvard, United States [12]. Sociology legal expert Satjipto Raharjo in Law Faculty, Diponegoro University, socializes more actual and progressive legal thought [13]. In Indonesia and other countries, this movement does not obtain recognition. Thus, development in universities is not good. The national legal system which has been built is a material synthesis source. It is gained from global legal power (international), such as realism legal doctrine and local legal power. The main characteristic thought of contextual legal is perceiving legal as an instrument to achieve the justice. Hence, it can be described several parameters that required to be a concern in building a national education system on contextual legal education, as follows:

First, a contextual legal education needs a fundamental philosophical framework. The principle of national legal education construction's rejection comes from legal norms which is reliable and fair. Generally, it cannot be separated from the education intention to create a plenary, intelligent, skillful and religious human [14]. It is relevant for using the hermeneutic approach in national legal education. It is because legal science *das-sollen* is constantly related to society's social reality, which has its values and norms [15]. The harmonization among meta- phenomenologists, as Karl Popper declares by the rational empiric fact, certainly is relevant to the Indonesian situation. The fundamental ideology functioned as a vision and mission unification instrument in national legal education for the future. It is related to Article 3 of Constitution Number 20/2003, which mentions that national education aims to develop the student as religious human to the almighty God, noble, healthy, full of knowledge, have the proper skill, creative, and independent.

Second, the human resources become a factor of determinant humanity modal. The prospective students and lecturers were prepared with an exact selection pattern. A meritocratic approach or valuation of quality and equality, non-discriminative, absolutely should be implemented. Moreover, human resources in state or private universities generally have standard intellectual capacity. Due to the legal education output to look for a superior candidate, the government attempts in legal education limitation. In several common law countries such as Australia, the United Kingdom and America, the Continental system's faculty of law (law school) is established in bounded quantity.

Third, the legal education as the basis of competency should be customized to the needs of society [16]. The competence curriculum and syllabus are not only lead to the purpose of law education. It is not only for craftsman's ability in concrete social reality. It should be led in human resources establishment, which consists of law science (comprehensive knowledge), having the practical ability (legal skill), and positive behaviour to universal values in applying legal system which is related to the demand of society. The determination of SKS amount (Credit Semester System) in the theoretical science section (40%) with the practical ability (40%), moral and professional ethic (20%) needed comprehensive elaboration with relevancy and usability. Furthermore, the optimization of law principles, theories, law norm models, law philosophy, law logic and reason, and professional legal ethic code becomes essential in processing an integrated legal education.

Fourth, the teaching method by dialogic, interactive and case study, legal opinion is very decisive. It is also a traditional atmosphere in freedom of thinking for student and lecturer as positive practice hold on critical legal argument. Moreover, dissenting opinion as democratic process and transparency in the justice field is teaching the method of positive legal culture [17]. Theology perspective of Muhammad Abduh, who explains about Al-Hurriyat, the independence as a creative and innovative modal is related to the 'active learning' teaching model. The use of legal empiric research except juridical normative through literature study should be a routine habit. Furthermore, student understanding of life can affect society's creation process and legal application. In addition, a transparency model in the reality of legal work also has opened for a student who joins fieldwork practice. Besides, their abundance of experience inductively can assemble the specific law theory.

Fifth, sociology, anthropology, psychology, and culture are complementary to science. It is essential for making an interdisciplinary approach to legal education (Ibrahim, 2006). Consequently, it realizes that legal science's weakness in answering society's problem is how it is careless about the source. Therefore, society's tendency which is a delighted litigant in court (litigious) and outside the court (non-litigious) could not completely answer the problem in legal science.

Besides, the form of dispute resolution currently emerging in society is not available favorable legal. It requires the public to turn the local law rules into more familiar ones in society. Furthermore, the controversy of normative and sociology juridical is no longer being antagonistically observed, though it is aimed to complete each attempt. Satjipto Rahardjo stated that the essential of Magister program in 1980 Indonesian law education, is paradigmatic (revolutionary) returning in the law education field, it was explained that:

> "As revolution, since *rechtshoge* school is opened in Dutch colonial era in 1922, thus Indonesia only familiar with profession program. The essence or quality of changing is revolution in 1980's mid-year, therefore Indonesia is not only familiar with profession program, but also science, particularly in field of law…."

Moreover, after opening the Law Science Doctoral Program, especially at Diponegoro University, the law's position as object science enhanced the science program's existence. Then, whoever want to study in Law Science Doctoral Program at Diponegoro University should not graduate with bachelor of law.

The emerged consequent stated that legal scientist is persuaded to survive the law extensively [17]; thus, it means looking for truth. It means that every law academic must attempt as a truth seeker. Moreover, it is mentioned as the process of law signification and visionary awareness that scientists' chore is enlightening the society. Hence, the education field can make a contribution.

Currently, before the constitutional of Magister and Master Program, law education prefers mentioned as Lawyers Law or Law for Lawyers or Law for The Professional, it stated that every person is persuading and proposing for being a professional, atrocious side emerges perspective that it is the only one truth, the law which convenient in the region mentioned as "logical law". Besides, it develops the further distance even dominates and hegemony that every person who conveys about the law is only in the "logical law" section. Nevertheless, with the emergence of Magister and Master's education, thus the law has become broader than law description, which has been reduced to only Lawyers Law.

In the dynamic development, social issues led o each characteristic which is stable and formal, the development of practice legal by bureaucratic official's government, the law practitioners and law science development build a distance with reality, as the system in a different section. In other words, there is a gap between law and social realities as the cause of law cannot respond to the problems proposed. Law science enforced in Indonesia and practiced by both government and private sector legal practitioners tends to a positivistic paradigm as Hans Kelsen's taught and his Reine Rechtslehre. Several Indonesian law experts, law science, is not adequate in a society which encounters the law construction and social change.

Sudirman Kartohadiprodjo stated that the law exists to create justice besides public order. The element of justice that permeates the entire field of law is related to the judgment of other humans in social life. Therefore, a fair assessment of whether a human act or behaviour is proper or not will be determined by the human perspective; it is related to the individual of life promiscuity; thus, it becomes a life perspective which they can hold. People's perspective of life significantly determines legal systems and juridical ways of thinking. Thus, the juridical thinking taught in Indonesia is still affected by Dutch's perspective on the law. It is not related to Indonesian thinking as an individual trait.

3. Conclusion

Law is an instrument which should be operated. Education institutions which use this optic will demonstrate the student's skills about how to master and use the instrument. It means that human law education does not educate them seriously and systematically to examine the law as a regulative instrument in society and only regulates how to operate the law accurately. It can be said that the skill which has been taught is necessary.

The implication of the dominant optical perspective in Indonesian education tends not to help and encourage the students to encounter legal, creative, and critical. Because the world of education is oriented toward prescriptive optics, the outputs produced ultimately shape their minds, as following statement: (1) the policy that should be used in a specific case, (2) how to apply the policy in the condition that contains risk which occurs in constriction of intellectual ability. It contradicts an attempt that is direct to the natural scientist training. In reality, the law faculties in Indonesia barely try to explain the law phenomenon systematically. However, it thinks about how the law is operated. The law characteristic, which allows students to explain law phenomena in society, can be seen in several central basic questions.

Furthermore, Satjipto Rahardjo, the law scientist in literal meaning, refers to those who can accomplish "theory building". Then, in developing this ability, it is suggested that law education is not only by sharing the law science as "applied science" but also as "basic science". It gives convenience to the absolute law study; student lacks preparation for being genuine practitioner. Therefore, it is constant in law application. However, it is lacking in developing the related culture, which discusses and explains the legal system.

Acknowledgements
Thanks to the professor who helped to complete the research.

Funding
There is no significant financial support for this article.

References
[1] R. . . R. E. Ks, "The Inconvenient Problems of Law Enforcement in Indonesia In Relation To the Case of Bibit-Chandra," Indones. J. Int. Law, Vol. 7, No. 3, Aug. 2021, Doi: 10.17304/Ijil.Vol7.3.235.
[2] A. D. Bachari, "Berita Bohong Dalam Sistem Peradilan Pidana," Pembuktian Pidana Penyebaran Ber. Bohong Dalam Sist. Peradil. Pidana Di Indones., Vol. 5, No. November, Pp. 93–104, 2020.
[3] M. Yusuf, I. Y. Limpo, D. Maulina, A. B. Mallagerang, And M. Hm, "Role Of The Judge In Creating Justice As An Instrument Of Social Change," Univ. Bengkulu Law J., Vol. 1, No. 1, Pp. 11–18, 2017, Doi: 10.33369/Ubelaj.V1i1.1330.
[4] M. Iqbal, "Tukang Bubur Di Tasikmalaya Didenda Rp 5 Juta Karena Langgar Ppkm Darurat," 07/07, 2021. Https://Www.Liputan6.Com/News/Read/4600489/Tukang-Bubur-Di-Tasikmalaya-Didenda-Rp-5-Juta-Karena-Langgar-Ppkm-Darurat (Accessed Oct. 25, 2022).
[5] I. Nugraha, "7 Fakta Kasus Penjual Kopi Yang Dipenjara Karena Langgar Ppkm Darurat," 18/07, 2021. Https://Www.Kompas.Com/Tren/Read/2021/07/18/092036165/7-Fakta-Kasus-Penjual-Kopi-Yang- Dipenjara-Karena-Langgar-Ppkm-Darurat?Page=All (Accessed Oct. 25, 2022).
[6] D. Usup, "Periodesasi Perkembangan Pemikiran Dalam Hukum Islam (Suatu Telaah Historis-Kultural)," J. Ilm. Al-Syir'ah, Vol. 6, No. 1, Sep. 2016, Doi: 10.30984/As.V6i1.241.
[7] D. D. Machmudin, "Mengembalikan Kewibawaan Mahkamah Agung Sebagai Peradilan Yang Agung," J. Konstitusi, Vol. 10, No. 1, P. 33, May 2016, Doi: 10.31078/Jk1012.
[8] A. P. Azis, "Kekosongan Hukum Acara Dan Krisis Access To Justice Dalam Kasus-Kasus Pemberhentian Kepala Daerah/Wakil Kepala Daerah Di Indonesia," J. Huk. Pembang., Vol. 49, No. 1, P. 1, Apr. 2019, Doi: 10.21143/Jhp.Vol49.No1.1908.
[9] M. Hamudy and A. Rais, "Political Broker and Budget Mafia in Indonesian Parliament," J. Bina Praja, Vol. 06, No. 03, Pp. 213–219, Sep. 2014, Doi: 10.21787/Jbp.06.2014.213-219.
[10] Supriyono, "Hukum Pidana Indonesia Ditinjau Dari Teori Hukum Positivisme," J. Ilm. Fenom., Vol. Xv, No. November, Pp. 1696–1703, 2017.
[11] A. Latipulhayat, "Hans Kelsen," Padjadjaran J. Ilmu Huk. (Journal Law), Vol. 1, No. 1, Pp. 196–208, 2014, Doi: 10.22304/Pjih.V1n1.A12.
[12] M. Ali Safa'at and M. Istiqomah, "Critical Legal Studies (Cls): An Alternative for Critical Legal Thinking in Indonesia," Petita J. Kaji. Ilmu Huk. Dan Syariah, Vol. 7, No. 1, Pp. 11–20, Apr. 2022, Doi: 10.22373/Petita.V7i1.122.
[13] Z. Wijayanti, K. Kismartini, And R. Sunu, "Kolaborasi Dalam Sosialisasi Program Generasi Berencana Pada Pelaksanaan Pendewasaan Umur Pernikahan," J. Litbang Sukowati Media Penelit. Dan Pengemb., Vol. 5, No. 2, Pp. 74–86, May 2022, Doi: 10.32630/Sukowati.V5i2.280.
[14] P. Martyajuarlinda and D. D. Kusumajanto, "Effect Of Entrepreneurship Education And Self Efficacy Towards The Intention Of Entrepreneurship," J. Pendidik. Bisnis Dan Manaj., Vol. 4, No. 3, Pp. 142–152, Oct. 2018, Doi: 10.17977/Um003v4i32018p142.
[15] I. D. Mustikarini, "Bangunan Ilmu Politik Hukum Diantara Ilmu-Ilmu Sosial Dan Ilmu Hukum," Yust. Merdeka J. Ilm. Huk., Vol. 6, No. 2, Sep. 2020, Doi: 10.33319/Yume.V6i2.59.
[16] B. Endarto, A. S. Alam, And S. Abadi, "Curriculum Development In The Field Of Law: Facing The New Era Of Industrial Revolution 4.0," J. Phys. Conf. Ser., Vol. 1179, No. 1, P. 012079, Jul. 2019, Doi: 10.1088/1742-6596/1179/1/012079.
[17] M. Firdaus, A. Ekbal, And P. Bhattacharyya, "Incorporating Politeness Across Languages In Customer Care Responses: Towards Building A Multi-Lingual Empathetic Dialogue Agent," Lr. 2020 - 12th Int. Conf. Lang. Resour. Eval. Conf. Proc., No. May, Pp. 4172–4182, 2020.