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## LEGAL EDUCATION FOR THE FUTURE OF INDONESIA: A CRITICAL ASSESSMENT

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### *Abstract*

*This paper provides an analysis of the extent to which institutions of higher legal education in Indonesia are able to prepare graduates to think critically and respond in a reform-minded way to changes in society. Legal developments have always been unable to catch up with the speed of changes within society, especially due to political constraints in the law-making process. This paper aims to explain how higher legal education institutions may help to bridge the gaps between the existing normative legal frameworks, the law-making process, and developments in the community. To what extent are managers in higher legal education institutions open to formulating and implementing new developments within the curriculum? Is there enough space to enrich legal science with novel approaches and methodologies that analyze the development of law and legal practice more fundamentally? To what extent do interdisciplinary studies of law have a place in the curriculum? The answer to these questions will have an impact on the development of legal science and the future law-making in Indonesia.*

**Keywords:** *legal education, legal reform, rule of law, law and society scholarship, socio-legal studies*

### **Abstrak**

Tulisan ini memberikan analisa mengenai sejauh mana pendidikan tinggi hukum mampu mempersiapkan lulusannya untuk berpikir kritis, dan mampu merespon perubahan masyarakat secara progresif. Perkembangan hukum selalu tidak mampu mengejar kecepatan perubahan masyarakat, terutama karena kendala politik dalam proses perumusan hukum. Tulisan ini bertujuan menjelaskan posisi pendidikan tinggi hukum yang berusaha menjembatani kesenjangan antara proses pembuatan hukum, sistem hukum normatif yang ada di satu sisi, dan perkembangan masyarakat di sisi yang lain. Sejauh mana para otoritas pendidikan tinggi hukum bersikap terbuka dalam merumuskan dan mengimplementasikan perkembangan baru di dalam kurikulum? Apakah ada cukup ruang untuk memperkaya ilmu hukum dengan pendekatan dan metodologi baru, guna menganalisis perkembangan praktik hukum secara lebih mendasar? Sejauh mana studi hukum interdisipliner memiliki tempat dalam kurikulum? Jawaban atas pertanyaan-pertanyaan tersebut akan berdampak pada perkembangan ilmu hukum dan masa depan perumusan hukum di Indonesia.

**Kata kunci:** *pendidikan hukum, reformasi hukum, rule of law, keilmuan hukum dan masyarakat, studi sosio-legal*

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## I. INTRODUCTION

The legal education curriculum will determine what kind of law graduates are produced. For the sake of the future of Indonesia, the demands are for law graduates who can respond to the practices and legal cases that continue to develop in society. It is important to study the matter of legal certainty, but it should not abandon substantive justice, which is the essence of community justice. However legal justice is not always synonymous with substantive justice, because legal justice is more akin to procedural justice (Sadurski Wojciech, 1984:329-354). How can we uphold the rule of law by continuing to promote community justice, so that the rule of law does not become defective? However, law cannot be studied without studying the society and culture where it is located. What kind of legal education is needed for the future of Indonesia to create a strong rule of law, but at the same time with a perspective of justice for underserved communities?

This paper will attempt to answer this question, and it will be structured as firstly, a description of the general problems found within Indonesia's legal system; secondly a brief introduction to problems of legal education in relation to the problems of the legal system; thirdly, an exposition of general problems within Indonesia's higher education as is relevant to legal higher education; fourthly some suggestions for improvement.

### A. Contemporary Legal Problem of Indonesia's Legal System

The Amendment of the Constitution resulted in a general state administrative reform. The significant outcomes include the 'one person one vote' policy in general elections, the emerge of the Constitutional Court, Judicial Commission of Indonesia, Commission on Human Rights, Corruption Eradication Commission, National Commission on Violence Against Women and many more. These changes seem to be the consequences of programs such as the Law and Development Movement (1960), Rule of Law Movement (1990), and Access to Justice of which Indonesia has benefited from in the last 20 years.

A kind of wake-up call for jurists was issued by a survey conducted by the Commission on Legal Empowerment entitled *Making the Law Work for Everyone* (2008 and 2009). The document states that out of the four billion people worldwide who live-in poverty many of them are women, and their condition was due to the lack of access to justice as defined by all of the survey's different parameters (Commission on Legal Empowerment, 2008; Commission on Legal Empowerment, 2009). Usually, the problem



of poverty is discussed by economists and is an issue of demographics only. Apparently, the problem of poverty is also a legal problem. Poverty is man-made. People become poor because first, there are no laws and policies that accommodate their interests. Second, there is no access to legal literacy. Third, lack of access to legal identity, like the Indonesian identity card, known as KTP (*Kartu Tanda Penduduk*), birth certificate, marriage certificate, etc. as a KTP is the entry ticket to access various welfare programs from the government. Fourth, the absence of legal assistance for the poor, especially women.<sup>2</sup>

The issue of Access to Justice for the past 20 years has been the subject of studies and programs from world institutions with branch offices in Indonesia, involving many legal experts in the process of formulating program designs. Key principles such as *Justice for all, Equality before the law* are indeed very important for legal certainty. However, in a multi-ethnic society with a high social class disparity, and the absence of a strong scheme from the state that forces the rich to subsidize the poor through an effective tax system, legal neutrality does not actually bring justice to disadvantaged groups and underserved communities. Thus, affirmative laws and policies are needed, especially for the poor and women. Therefore, programs are angled to address *Justice for the Poor* or *Justice for Women* (UNDP.org, 2004).

The programs that produced the *Access to Justice* approach recently has been considered as an answer to the shortcomings of various legal development programs in developing countries that were initiated by previous programs. The lack of success of those programs in the past is generally due to the lack of knowledge about the legal system in developing countries, which does not involve public participation (Carothers, 2005;15-30) while Access to Justice programs are designed to resolve the weaknesses of previous legal development programs.

The question is to what extent does legal development, which includes legal reform has been made accessible to society and justice seekers? What is happening with the lawmaking process and legal enforcement during the last 20 years Indonesian Reformation Era? There have been plenty of achievements from the implementation of good governance for case court filing management in the Syaria Court (Sumner, 2011) that were extended to many district courts in Java including the efforts to digitalize court decisions by the Supreme Court and Constitutional Court. Downloading court decisions

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<sup>2</sup> Among a number of proposed parameters for legal empowerment proposed by the Commission on Legal Empowerment, I am of the opinion that these four pillars are important for Indonesia.



was never thought possible in Indonesian society. However, there are lot more legal problems to address, mainly within the law making process and legal enforcement, which has excluded public participation, lacked transparency and accountability.

In recent years, legislations have emerged with such strong political nuances that they have lost their social legitimacy. In fact, if such legal products are passed, they would immediately ensnare every citizen and have a broad impact on their lives. Examples of such laws include: the Omnibus Law on Job Creation (Law No. 11 Year 2020), that may potentially cause the loss of living space and natural resources (land, water, minerals) of indigenous people, and impact other sectors as covered by the Omnibus Law; the Draft Amendment of Criminal Law which has several Articles that are perceived to be forms of State intervention towards private space and social relations; the Revision of the Corruption Eradication Commission (KPK) Law No. 19/2019, that may be the most criticized legislative product as the commission used to be the most trusted institution in the country; as well as the existence of 421 Regional Regulations that domesticate women throughout the country that cannot be suspended even by the Minister of Home Affairs (as stated by the Constitutional Court No. 56/PUU-XIV/2016) and of which there has not been any solution (Komnas Perempuan 2019) .

From a critical perspective, the priority of legal issues can also be highlighted. How can certain legislations be ratified all at once? On the other hand, there are laws awaited by the public, for example, the Bill on the Elimination of Sexual Violence (RUU PKS), which has been in the pipeline for more than three years pending deliberation. Even then, in parliament, only the title has been debated so far, even though data shows that every two hours there are three victims of sexual violence in Indonesia (Komnas Perempuan 2019). The next question is whether the law considers or ignores the experience and reality of the victims; is the law beneficial or detrimental, in what ways, and what groups does it impact?

Various regulations mandate that lawmaking at any level must be based on an academic draft. The methodological question is whether the research or basic assessment of the academic draft can be held accountable for their validity and quality? Or is it just a formality, because it is common knowledge that social research in government agencies must not exceed the five-day administrative limit. Even research on social and humanitarian issues cannot be done at lightning speed, let alone the study of policies that concern the lives of many people. The study must produce a narrative of the experience, reality, and world view of the community members regarding the issue in question.



Furthermore, has ROCCIPI, Regulatory Impact Analysis (RIA) or other parameters been carried out on a bill (Seidman, Seidman and Abeyeskerere 2000)? The goal is that the law produced does not conflict with the sense of community justice.

The poor quality of legislative and policy products can also be seen from the many findings of science and technology in the fields of food, energy, health, automotive and marine sectors which cannot be developed for the public to enjoy because of constrained regulations. Likewise, there are various results of innovation and creativity of scientists whose continuity is limited by regulations. This causes the stagnation and waste of scientific works.

It is important to test whether a legal formulation meets the Rule of Law (RoL), an umbrella concept needed to protect citizens against state power. The RoL's understanding continues to grow due to various debates, especially regarding its function, whether RoL is only aimed at protecting individual citizens of the state, or does it also include the protection of relations between citizens regarding rights and ownership. The substance of RoL is grouped into three categories by Bedner, namely, (1) procedural, (2) substantive, and (3) control mechanism, each of which is the result of a long debate (Bedner 2010).

In the procedural category the state must be regulated by law, not by individuals, and the government must obey the law. Here there is a formal legal element that requires the law to be clear, certain, accessible, predictable, and widely applicable. There is also an element of democracy, which means that it does not have to win the most votes when it comes to issues of justice and humanity. A number of these requirements must be met for law to effectively protect citizens from excessive state power.

The substantive category requires that the law and its interpretation refer to the principles of justice, fairness and due process of law. Based on theoretical debate, the next element is that the law must contain (1) the protection of individual rights, basic political rights and ownership rights; and (2) the protection of group rights. Finally, the category of control mechanism requires providing access for any disputing parties to judicial independence. Today the means to control of excess power is not only limited to the *Trias Politica* but has grown to give birth to the Ombudsman, Tribunal, various commissions including the National Human Rights Commission and the Corruption Eradication Commission (Bedner 2010).

Based on the three categories of the RoL, it can be verified whether a legislation meets the requirements. If it elicits strong protests from the public, it means there is something wrong with the implementation of RoL. Today, the concept of RoL is



continued with its study and application through the concept of Access to Justice, especially for marginalized groups. In short, the law-making process that ignores the reality of society, even harms it, is contrary to the principle of the Rule of Law. This most certainly will endanger the future of Indonesia, the largest Islamic democratic country that has been admired by the world in maintaining diversity, but has unfortunately shown to be weak in implementing the Rule of Law (Lindsey and Pausacker 2017). Is the existence of a justice program voiced by the world, the enforcement of the Rule of Law principle, enough to inspire Indonesian law scholars to get involved and master their knowledge?

How does the Indonesian legal education respond all the legal issues and practices through its curriculum, which cannot be apart at least from political, social, economic, and cultural contexts? Do the Indonesian faculties of law transform the macro level legal issues to its curriculums, updated reading materials and teaching methods? All those transformations are needed to challenge the way of thinking and raise awareness of law students to be problem solvers.

## **B. Questioning Indonesian Legal Education**

How does legal education through its curriculum ensure that students understand the essence of the three elements of the rule of law, namely the protection of individual rights, group rights, and independent judiciary? How can we ensure that when they become involved as legal officials, especially those dealing with the lawmaking process, that they truly fulfill the three principles of these elements?

Apparently subjects on Socio-Legal Studies and the activities of its scholars are not given enough space in legal education (Wiratman 2019). This is reflected in how most legal students aspire to be corporate lawyers. Not many law graduates are eager to be lawyers of the public sector, working in legal aid NGOs or legal research centers. Whilst many legal problems on the national level need to be addressed by more legal reform activists or public sector lawyers.

The situation can be explained by two things. First, the strength of legal positivism hegemonizes faculties of law in Indonesia has seemingly failed to raise awareness among the legal scholar and legal practitioners on the importance of bridging the gap between legal justice and social justice. Secondly, discussing legal education cannot be separated from the broader issue of higher education in Indonesia which to this day still faces serious challenges in the form of chronic regulatory and administrative burdens under the



authority of the Ministry of Education and Culture for more or less 75 years. The regulatory challenges have impeded the development of science and university governance. Furthermore, the Ministry does not have a clear, long-term national design on what science-technology and humanities research is needed for the future. More specifically, what kind of legal research is needed to map the large and multi-faceted issues facing the nation?

### **C. Methodology**

The earlier questions in this paper will be explained using secondary data as well as primary data from observations during my career with law faculty lecturers, especially those who conduct socio-legal studies, for the past 36 years. However, the teaching of subjects such as Law and Society or Economy can be found since the Rechtshogeschool's curriculum in 1924. Afterwards, there have always been studies in the field of anthropology of law or sociology of law with various thematic issues, conducted by a limited number of legal scholars.

Officially, since 2008, Socio-Legal Studies as a school of thought was popularized in Indonesia by the Faculty of Law Universitas Indonesia (UI) in collaboration with the Van Vollenhoven Institute (VVI) - Leiden Law School. The two institutions collaborated through organizing socio-legal studies courses for Faculty of Law lecturers from various law faculties in Indonesia. The course was conducted three times at the UI Faculty of Law (FHUI) in 2008-2009, followed by lecturers from ten other law faculties. The second course was hosted by FHUI and VVI between 2011 and 2012 and was carried out not only at FHUI, but also at Diponegoro University (UNDIP) in Semarang, and Brawijaya University (Unibraw) in Malang. After that, a network of socio-legal studies lecturers was formed through many scientific meetings and publications. Among them was the 100-year conference commemorating the Van Vollenhoven Indigenous Legal Legacy in Leiden 2017 (Van Vollenhoven Institute, Leiden Law School 2017), and a socio-legal studies course for faculty of law lecturers from ten universities of eastern Indonesia in 2019. Observations and talks with lecturers over a long period of time provided a lot of data about the curriculum and the implementation of legal education in their respective universities.





## II. COMMON PROBLEMS OF HIGHER EDUCATION IN INDONESIA

The development of legal education is very much controlled under the system and bureaucracy of different universities and the Ministry of Education and Culture. Faculties of law are mandated to hierarchically implement all the regulation and policies mandated by the Ministry and their universities. Yet the government has stated how important the role of higher education is to drive and enhance the nation on multiple levels but implementing it into practice is not that easy.

In several speeches, President Joko Widodo has questioned why our universities find it difficult to develop. Even the nomenclatures of fields of study have never changed, disregarding the fact that the victor of contemporary society would be those who can prove to be the fastest innovator. He suggested that our higher education be open to the real needs of various sectors needed by the community, to avoid experiencing disruption. Therefore, he appointed Nadiem Makarim, a young, pioneering business start-up entrepreneur who was the CEO of Go-Jek, as Minister of Education and Culture.<sup>3</sup> The 35-year-old minister then founded the idea of *Merdeka Belajar* and *Merdeka Campus* which aims to make education down to earth, and where students are not human textbooks but can also practice and be connected to social reality.<sup>4</sup>

Disruption will not only (and have) hit giant companies, but also universities that are unwilling to change and are slow to respond to the needs of society and industry (Oey-Gardiner, 2017;1-16). This need not be the case as knowledge and information abound in cyberspace. These days the headquarters of large industries are filled with scientists and PhDs from fields of science that are responsive to societal and future needs. Intelligent people do not only exist in universities, but also in industries, non-governmental organizations (NGOs) and civil society movements. Universities are no longer the only source of knowledge and are challenged to work together with all parties. The demand now is not only to implement a Triple Helix collaboration<sup>5</sup>, but an N-Helix<sup>6</sup> form of collaboration with multiple parties.

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<sup>3</sup> Go-Jek is a hail riding decacorn first established in Indonesia in 2009 as a call center to connect consumers to courier delivery and two-wheeled ride-hailing services. See <https://www.gojek.com/>.

<sup>4</sup> *Merdeka Belajar* (Freedom to Learn) and *Merdeka Kampus* (Freedom Campus) is a policy developed by Nadiem Makarim, the current Indonesian Minister of Education and Culture, to give freedom and autonomy to educational institutions from bureaucratization, whereby lecturers are freed from complicated bureaucracies, and students are given the freedom to choose their preferred fields. It also aims to encourage students to master a variety of useful knowledge to enter the world of work. The Merdeka Campus provides an opportunity for students to choose the courses they wish to take. (Sevima.com 2020)

<sup>5</sup> Triple Helix collaboration refers to a set of interactions between academia, government and industry.

<sup>6</sup> N Helix refers to a collaboration with multiple parties.



In developed countries, universities work very closely with industries, as well as with government agencies, parliament, judicial institutions, and civil society. This network has caused universities to synergize with the challenges of the times and the changing needs of society. The nomenclature of science has long been almost without limits. Science develops outside the limits of its primordial discipline, meets other sciences, and gives birth to new knowledge across disciplines. New knowledge grows organically, and the focus of research institutes replaces what is considered obsolete.

The progress of science is supported by good university governance. Institutions at universities are academic units, not administrative units. Lecturers and students can work peacefully without administrative obstacles. Academic and financial administrative affairs are carried out by professionals who are interconnected with digital networks so that they are easily accessible, transparent, and accountable. University structural positions are offered to anyone who is willing and are even open to those from other universities. Dean positions, for example, are offered in turn with a spirit of collegiality with hardly any politics involved.

University institutions cannot be likened to any other institution, whether political or business, because the university's function is specifically to produce knowledge, not merely to memorize and apply knowledge like at primary and secondary education (Magna Charta Universitatum.org, 1988). According to study results, community development in several ASEAN countries is closely related to higher education, which provides a source of knowledge as a basis for policymaking. The study also shows that while benchmarking the leading tertiary education curriculum and models of developed countries may be good, but one cannot leave the local, cultural and historical context of a particular nation in the development of its higher education (Hill, Chung & Rozilini, 2017;1-6).

In general, students from various digital science majors understand big data in this era of artificial intelligence. These skills are important, but not enough. Bachelor of social sciences and law must also be thinkers and produce social-humanities research that is at the frontier of knowledge and is able to predict the future of society and culture in the technological era with its array of problems. The current outbreak of the COVID-19 pandemic reinforces the call for scientists to increasingly collaborate in an interdisciplinary manner to obtain the most comprehensive and appropriate solution.



Although COVID-19 is indeed a problem within the area of medicine and health, its devastating impact has changed global life in every field, demonstrating that the compartmentalization of science is outdated. It is important to conduct legal studies that provide legal policy recommendations as to what can best save the community in a pandemic.

World agencies such as the United Nations Development Program (UNDP) have reviewed the position of the Indonesian people in 2045-2050 at the advent of the Asian Century, and the emergence of three billion new rich people in Asia, led by China and India (UNDP.org, 2013). But with the emergence of the COVID-19 pandemic in 2020, how will the constellation of Asian economies be affected, and how can legal science explain which policies can do more to salvage co-affected countries, according to their individual needs and context? Interdisciplinary law studies can contribute to solving world problems like those we find today.

### **III. PROBLEM OF LEGAL EDUCATION**

Law is a science that is rich, important, and has multiple dimensions because it conceptualizes actions in various fields of life, and even constructs whether a person is a good person or a criminal. In addition, the operation of the law is related to other fields such as economic, social, political, cultural, and various other sectors. The implementation of law is very much interconnected with other fields, which is why Lawrence M. Friedman prefers to describe law as a system, which consists of the substance, structure, and culture of law (Friedman, 1977).

The law regulates what is and what is not allowed in human relations. Through legal texts, philosophies, and the spirit of justice, guidelines are formulated for community life or dispute resolution. However, there is always a gap between legal norms as ideal goals and substantial justice in practice when in fact law is a determining factor for almost all broad issues. To close this gap, the study of law requires an interdisciplinary perspective. Legal experts in certain fields should collaborate with experts in other fields of law. Social-humanities scientists and pioneers of legal philosophers have long laid the foundation. Even the basis for the interdisciplinarity of legal studies can be traced epistemologically (Ratnapala, 2007 & Bodenheimer, 1981).

Legal science basically consists of two domains. First is the realm of dogma and doctrine (criminal law, civil law and procedural law). Second is the realm of the science of legal reality which is the basis for the birth of sociology of law, legal history, legal



anthropology, law and politics, legal psychology and many more. Today there is a fast-growing development in the field of "new" branches of legal science such as Socio-Legal Studies (Bedner, Irianto, Otto & Wirastri, 2012) or Law & Society scholarship, and Comparative Law, which believes in the need for non-legal data in legal studies (Van Hoecke, 2015;1-35 & Adams, 2017).

The growth of theoretical thinking has become enormous, such as Critical Legal Studies, Feminist Jurisprudence, Economic Analysis of Law, and Legal Pluralism. In Socio-Legal Studies and Comparative Law, the substance of the problem being studied is legal issues, but to explain and answer the problem, one may borrow the methodological approach of other sciences. This contribution of methods from other sciences enriches legal research method instead of eliminating its paradigmatic authority. Epistemologically, legal science is not only comprised of the legalistic doctrine, but also the science of legal reality. Which is why legal studies are taught at Faculties of Law, and not Faculties of Legislations.

Epistemologically, the legal science should not only consist of dogmatic and doctrinal legal knowledge but also knowledge about the reality of law in practice or socio-legal studies.<sup>7</sup> However it seems that the legal curriculum at Indonesian faculties of law are strongly dominated by very strict dogmatic purists. The curriculum leaves very little opportunity for students to learn the science of legal reality.

Today openness to science and digital technology for law graduates is also inevitable. First, it is driven by the need for a legal reform program. In general, throughout the world, the problems faced by the justice seeker regarding the judicial process are delays, lack of access, and corruption (Reiling, 2009). Digital technology supports and ensures good administrative governance and judicial processes. The dark period of the judicial process, in which nepotism, collusion, and corruption undermined the authority of the Indonesian court investigated by Pompe should not be minimized (Pompe, 2012).

Digital information and technology are also needed in the evidentiary process in court trial such as video, audio in court sessions, electronic reporting, video conferences for witnesses, and file storage. Today's crimes are growing, and the proof requires the help of science and technology because the punishment must be based on proof,

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<sup>7</sup> The conflict between science and science dogma, is expressed by Rupert Sheldrake thus *“There is a conflict in the heart of science between science as a method of inquiry based on reason, evidence, hypothesis, and collective investigation, and science as a belief system, or a world view. And unfortunately, the world view aspect of science has come to inhibit and constrict the free inquiry which is the very lifeblood of the scientific endeavor.”* – Rupert Sheldrake (Wooley 2013)



investigative findings and investigations that are accurate and precise, so as not to wrongfully punish people. In short, all the decision-making processes in trial may require information technology in order to provide services in a fair and transparent manner. Digital technology may also be utilized for the lawmaking process in parliament to accommodate the reality and sense of justice of the community.

Second, there will be a massive shift when one thousand conventional jobs are lost to artificial intelligence, this includes the legal profession, such as notaries and advocates. Large law firms will collapse because corporations no longer want to pay for expensive services, which can be replaced by digital applications; while small law firms will merge to provide more varied services (Susskind, 2012 & 2017). On the other hand, as many as 1.7 thousands new professions will be born (World Economic Forum.org, 2019). Will we accept this challenge with openness and new initiatives?

Although in a pluralistic Indonesian society, geographic and technological disparities are to be expected, the shifting has taken on a different character from one place to another. There are some communities who already live in Industrial Technology 4.0, but there are still those who live and work using simple technology. The challenge then becomes greater, because how can modern law coexist with customary law and oral tradition?

The answer to this question can only be obtained if the legal education curriculum is more open to lectures on the knowledge of legal reality. The study of legal pluralism for example gives an understanding that legal centralism which believes that state law is the only law and applies uniformly to all people is utopian (Griffiths, 1986;1-55). The daily reality of society is the social arenas where the intertwining of state law, customary law, religious law and customs, may contradict each other but may also influence and impact each other so that new laws are born. In today's global era, inter-legal co-existence is increasingly complex with the presence of international law - especially in the field of human rights and good governance, adopted by the national laws of many countries (Benda-Beckmann, Benda-Beckmann & Griffith, 2016; 1-27). The convergence between laws from various directions is what causes laws to move, change, and legal change is a necessity.

#### **A. Dutch and Indonesian Legal Roots**

Indonesian legal roots are the same as those of Dutch law because of our colonial history. But now it seems that the Dutch and Indonesian legal systems are moving in



different directions. There is a lot of legal cooperation between Indonesia and the Netherlands, one of which is in the field of law and justice reform. From the intense visits of Dutch legal officials and academics, we know that jurisprudence (judge-made laws) in the Netherlands has been considered an increasingly important source of law, apart from codification of the Law. Jurisprudence continues to prioritize consistency and legal unity, because different judges strive to interpret and apply the law in the same way. The increasing emphasis of jurisprudence as a source of law seems to be in line with the main tasks of the Dutch Supreme Court, namely through: (1) Providing legal protection in individual cases, (2) Ensuring legal unity, and (3) Contributing to the development of law (Supreme Court of Indonesia 2018). Through the application of the tradition of jurisprudence, there seems to be an effort to bring legal certainty closer to community justice.

Jurisprudence from important cases in the Netherlands generally becomes reference and discussion material in various lectures at the Dutch law faculties. Their students not only learn about basic concepts, dogmas and legal doctrines, but also the living law through judges' rulings. There is always a gap between the legal text and the reality of how law works within the community. A legal text may still contain philosophy and idealism, which aims to protect society, but it is not yet a living law. To be a living law, the text of the law must be tested mainly through a dispute, and the judge's ruling on the dispute can be considered as the living law, because that law has been applied and will be obeyed.

That is the reason why it is very important to study court decisions for law students everywhere. However, the Indonesian law curriculum does not provide enough opportunities for students to hone their skills to analyze legal cases. They are instead told to memorize doctrines and legal texts. Law schools in the Netherlands demonstrate, by dissecting court cases, students can examine the development of new laws through court decisions and find out whether the decisions are of high quality because they contain breakthroughs. Law is not only discussed as a “dead” inanimate object (black letter laws), but it is instead integrated with current legal issues that cannot be isolated from social and scientific development.

The enforcement of the rule of law remains firm while accommodating the development of new justice-based laws. In such a world of law, the Netherlands has succeeded in raising a legal culture or legal awareness among its citizens. People are afraid to break the law, not necessarily because there is an authority to oversee it, but



because there is an awareness that breaking the law is wrong, detrimental to oneself and others, and therefore carries a heavy penalty. Unsurprisingly, the Netherlands currently has the policy of closing many prisons (Hardoko 2017).

The “black letter” curriculum system has implications for the way law graduates, especially judges, think and work in Indonesia. Without intending to generalize, let me take an example of a study conducted by the Judicial Commission (Judicial Commission of Indonesia 2017) in eight regions of Indonesia including remote and conflict-ridden areas.<sup>8</sup> The study found that in general, the judges still position themselves to be mere mouthpieces of the law, using the excuse that “they did not want to be blamed by their superiors” - especially if the head of the court was in the court room. Occasionally they would rationalize that their decision was made “because it refers to the Dutch legal system”, when in fact it had been changed. Only a few judges dared to make breakthroughs in providing services for justice seekers.

This is related to a larger judicial problem faced by the Indonesian judges. The second amendment to the Indonesian Constitution in 2001 does not clearly state whether the independence of judges is individual or institutional. The Supreme Court states that the interpretation of a judge’s independence should be viewed as the “independence of judicial institutions”(Indonesia 2001). The Supreme Court emphasizes the freedom and independence of the judiciary - not the personal independence of the judge (Judicial Commission of Indonesia 2017, 29-56). On the other hand, the 2007 Bangalore Principles of Judicial Conduct, stated that the independence of judges is both individual and institutional (UNODC 2002).

The impact of such a regulation was huge for the implementation of the work of judges on the ground at the time. In the study it was found that the relationship between the judge and the head of the District Court in the region was both an administrative and a hierarchical one. The nature of such a relationship may also impact budgetary outcomes according to the interests of the Registrar or decisions on the promotion and transfer of judges (Judicial Commission of Indonesia 2017). Therefore, if a head of the court was present in the panel of judges, then the panel members would not dare to make a

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<sup>8</sup> In 2012, there were eight areas that were used as research locations, including Sabang-Nanggroe Aceh Darussalam, Kuala Tungkal-Jambi, Garut-West Java, Surabaya-East Java, Mataram-East Nusa Tenggara, Abepura/Jayapura-Papua, Ambon-Maluku and Nunukan-East Kalimantan. Furthermore, in 2013 and 2016, there were data updates carried out by the research team. From the updating of the data, there are three areas that become additional research locations. The three regions are Berau-East Kalimantan, Sinabang-Nangroe Aceh Darussalam, and Tual-Maluku. (Judicial Commission of Indonesia 2017, 24-27)



dissenting opinion. The safest option is to simply become a mouthpiece of the law, and to apply black letter laws.

According to Aharon Barak, an Israeli professor of law, based on his experience as a judge, being a mouthpiece of the Law is outdated, regardless of whatever legal system is adopted by a particular country (Barak 2006). He states that the judge is not a mirror that passively reflects the image of the law. The judge is an artist, creating a picture of the law born from his own hands. Judges are secondary legislatures, especially when legal texts cannot catch up with the rapid development of society. Judicial creativity is part of the existence of the law, and the duty of the court. He further stated that the public has the right to know that judges make different decisions and how (Barak 2012).

The same thing was stated in the past by a judge by the name of Paul Scholten, who co-founded the *Rechtshogeschool* in Batavia in 1924 (Barak 2012, 3-19). According to him, the law seeks an understanding of things that exist (*het bestaande*), but that understanding cannot be obtained without linking the given material (legal text) with history and society. The “purity” of Legal Studies always contains something that is “unpure” from its founding components. If this process is not carried out, then the law can degenerate into a “bloodless phantom” (Scholten 2002).

According to Barak, explaining the relationship between the law, the judiciary and the judges is greatly helped by an interdisciplinary legal approach (Barak 2006). He says, this approach can vary, namely through: Legal Realism, Positivism, Natural Law Movement, Legal Process Movement, or Critical Legal Studies. In short, Barak said that the law regulates relations between people and reflects the values shared in society. The role of the judge is to understand the purpose of law in society and help the community to achieve its goals. However, law in society is like a living organism, always factual and in a constant state of flux. The changes can be minor ones, slow moving and difficult to observe. On the other hand, they can also be drastic. The relationship between law and reality is so fluid, and changes in the law are a result of changes in social reality.

But there are times when legal norms find it difficult to follow changes in social reality, creating a chasm between society and law. That is why according to Barak, legal life is not just logic, but must also be experienced and adapted according to social reality. Legal history is the history of legal adaptation to the changing needs of life. As primary legislature, parliament has a primary role and responsibility to make legal changes. The legislature has the power to create new laws, thus determining a new social reality, even the nature and character of the desired social reality. Meanwhile, the role of judges may





only be secondary and limited, but they also have a golden opportunity to shape the law as a secondary legislature (Barak, 2006).

Judges are very able to make changes to the law through court interpretation. In this regard, court recognition of the role of judges must be deemed important to bridge the gap between obsolete laws and new social realities. A judge cannot say that the matter of changing the law is the sole responsibility of the legislature. The court must take up the role of making changes to the law together with the legislature (Barak 2006).

Aharon Barak has described the relationship between law, society, court and judge as being a highly integrated relationship which cannot be separated from each other. The relationship is dynamic because the changes that occur in one aspect affect other aspects. When legal changes are made consciously to capture the needs of the community, then the gap between the two can be bridged. In fact, the community's goals of equality and ultimate justice is delivered by the law and the judiciary.

The above description shows that the links between law, justice and society are important to be discussed both in the realm of the Anglo-Saxon and Continental legal systems such as the Netherlands'. New developments must be followed by Indonesian law. Activating judges to make more hallmark decisions is important in order to close the gap between procedural justice and substantive justice. A quality court decision not only benefits justice, especially for disadvantaged groups or underserved communities, but also provides law students with good study material. We need to realize that while we have the same roots as Dutch law, we are now lagging.

#### **IV. QUO VADIS OF INDONESIA LEGAL EDUCATION**

Why is it important to observe the relationship between law, society and the world of justice and link it to the world of legal education? A faculty of law is the birthplace of judges, prosecutors, legal experts and policy makers at the central and regional levels, as well as legal practitioners including human rights advocates. It is these legislators and policy makers in the parliament and executive branches of government who will determine what is and is not allowed, right and wrong, and thus, impacting various sectors of the country.

Indonesian law students in their first years believe that laws are made to protect people from wrongful and rapacious acts and to dispense justice. When they have studied subjects such as Law and Socio-Legal Studies and Philosophy of Law and become acquainted with Critical Legal Studies, then, they will understand that the law can also be



misused by a group of people who have power or money by controlling many people who have no power (Hunt SPRING 1986; Unger 2015). They do so by building a false consciousness, for example by saying that all established formal legal procedures are appropriate and good. The way the law works in Indonesia provide good examples to justify the basic assumptions of this theory.

#### **A. *Obsolete Legal Curricula***

What can we observe from legal education spread from Sabang to Merauke today? Does it only produce law graduates who can enter the job market, thus allowing the university to obtain a good rating based on tracer studies?<sup>9</sup> The demands of Indonesia in the future are very complex, so at the very least law schools must give birth to legal professional with fundamental legal knowledge, strong legal skills, as well as critical attitudes towards the dynamics of society and the world.

In various law faculties undergraduate students generally are required to take 144 semester credit units (*satuan kredit semester*, SKS), consisting of 100 SKS for faculty-mandated compulsory subjects, 21 compulsory university-mandated subject credits, 4 SKS for their graduating thesis, and the remaining 19 SKS are allocated for compulsory subjects from different departments within the faculty according to the students' final thesis. There is little room for taking optional courses from other departments or faculties.

Why are there so many compulsory courses? Shouldn't the compulsory ones only comprise of basic legal knowledge? In general, the majority of professors and lecturers consider their own field of work important and thus, should be designated as compulsory courses.

#### **B. *The Views of Law Students and Socio-Legal Scholars***<sup>10</sup>

This section will describe how different students and law lecturers respond to the current legal education curriculum which emphasizes a “black letter” way of thinking and provide limited opportunities to connect law with empirical data about society. Some undergraduate students and professors who teach at the Department of Law, Society and Development, Faculty of Law, Universitas Indonesia share their opinion and experience

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<sup>9</sup> Tracer study is a research on the situation of alumni, especially in terms of job search, work situations, and the use of competency acquisition during college at UI. In developed countries, alumni traceability studies are the main studies that have been carried out systematically, institutionally, and continuously. (Universitas Indonesia 2014)

<sup>10</sup> All names mentioned in this section are pseudo-names.



of learning and teaching socio-legal studies. They are in the opinion that empirical data is very important to strengthen their capacity to understand the relation between law and society.

#### *Legal Education in critical perspective of the students*

Some students conveyed their critique to the existing legal curriculum. A male fresh graduate, Gunawan, stated, “I am of the mind that our Faculty of Law is hegemonized by legal formalism, which causes a fossilized way of thinking among students as they lack the imagination needed to learn real-life legal practices. They cannot understand that there is always a gap between law as legal text with legal practices. During my studies, I always deal with the subject of formal procedural law, which did nothing to enlighten me. The fact is somebody who disobeys the law reflects his/her reaction against the arbitrary rule of the authority, as they have experienced injustice at the grassroot level”

He continued, “The law is far away from their daily life, as law enforcement is mostly constrained by formal procedure. I believe that this is a failure. In the democratic nation state, people should be able to criticize the lawmaking process and existing laws. Legal formalism strongly influences the curriculum and teaching method at our faculty. There is a deficit of enlightening lectures. Only socio-legal professors and a professor who teach legal philosophy can fulfill my thirst for meaningful legal knowledge. If this situation does not change, I worry that legal drafters and practitioner would not be able to contemplate the importance of justice. “

Tia, a female student seconded the earlier opinion of the legal curriculum. She says, “It perhaps somewhat different situation with my other colleagues. Sometimes I feel desperate to be at faculty of law. I testify that most teaching subjects are not accommodative to the way how people are practicing law. No wonder that law does not work well in its implementation. However, when I am in contact with the team of Legal Anthropology and Gender and Law, which I took in the last semester, there is a hope in me. I aware that there are another law teachers who pay attention the importance of socio-economic background should be taken into account in studying law.”

#### *The Implication to legal practice*

Another male fresh graduate, Rizal, is very much concern with the implication of the existing legal education to legal practice. He said, “A jurist who does not use contextual analysis in interpreting the law, will be in a danger. Don’t you see? First,



many students or fresh graduate from UI tends to interpret the law without context. They stick to a black letter interpretation of the law and tend to be distraught when they are asked to conduct legal drafting (from scratch)”

He continued, “Secondly, judges with a legal positivist mindset have very limited flexibility to come up with legal breakthroughs. They prefer to be mere mouthpieces of the law. They never arrive at a decision that favors justice. I quote a case from my thesis. There is a case involving the Sultan of Banten”<sup>11</sup> The Syaria Court rejected to settle the inheritance case, which disputed the line of succession for the crown of Sultan Banten. The judges rationalized that the dispute was an issue of *adat* law and not Islamic law. The rejection disappointed all of the parties involved as they had spent a lot of money for the three years that it took to reach a verdict. Third, being hegemonized by Legal Positivism, many of my colleagues forget that legal resources are not limited merely to the codified law. Jurisprudence, judge-made laws) and usages are also influential sources of the law. Perhaps only the knowledgeable and experienced legal scholars understand the importance of jurisprudence and tradition.”

#### *The importance of Interdisciplinary Approach*

A student and some docents give their opinion of the importance of interdisciplinary study of law. A female student, her name is Ani, expressed her feeling on it. “I am blessed and impressed with Legal Anthropology class. I have got a new perspective to understand law. You are all teachers respect us, the student and accept different view in laws. I am happy to be in this study program of Law, Society and Development. It is because I learn a lot that studying law is not only about doctrinal study. We learn how to be a jurist with sensitivity to certain social problem in daily life of people. To be a scholar you should be humble and altruist. You should prove that to be a jurist does not always look *so expensive*, detached from people on the street, minority group of people , who are all justice seeker”

A male lecturer, named Tony, argued, “Socio-Legal Studies is an advancement from normative legal studies. A knowledgeable jurist should understand Socio-Legal Studies, in order not to be labeled as a legal machine. Socio-legal studies is needed to have a deeper interpretation of the law. This is a must. However, politics in legal education has excluded Socio-Legal Studies from the curriculum. “

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<sup>11</sup> The Case of Dzuriyat Kesultanan Banten v Soerjaatmadja - Supreme Court Decision No. 107 K/Ag/2019



A female lecturer, her name is Bening, underlined the previous statement, “I cannot imagine studying law without Socio-Legal Studies, as empirical research is needed to understand the goings-on in society. There is the law as formulated and operationalized by a group of people. Law is a living anthropological document. How do students respond to Socio-Legal Studies in my classroom? Many of them said that they are enlightened as they have gained new perspectives to view legal issues. In my observation, students from my class will continue to take other subjects under our department, like Anthropology of Law, Sociology of Law, or gender and law.”

Another female lecturer, Santi, gave her opinion on it, “Through the perspective of Socio-Legal Studies, student can learn about the causal relation between law and society. They go beyond the border of normative legal order and enter the world of legal practices in a better way. However, law is not merely written in books, but law is also observable in society; law has not been only about logic, but it is also a (social) experience.”

Tere, a female lecturer strongly expressed her opinion, “The socio-legal approach helps me understand legal processes in society as well as the relation between the law in the books and law in action. The limitations of normative legal study constrained our understanding of how the law works in society. Students in my classroom usually give me positive responses as they aware of the importance of Socio-Legal Studies. “

Finally, Teguh, a male lecturer stated his argumentation, “Legal Positivism assumed that the law is automatically operationalized within fixed parameters. Law is factual. It is also simplistic as legal texts are the only law as they are endorsed by the authority of the State. It behaves similarly to math and science. Following the flow of a syllogism, law is about a certain action and how to regulate it. I teach law and economics, and I am of the opinion that legal positivism is needed, as we need legal certainty in enforcing law. However, I would not mind another approach of law like Socio-Legal Studies. This approach has the capacity to capture society in such an inductive way and come up with conclusions and relevant recommendations for legal reform. A jurist needs to have the skill to trace legal libraries to analyze certain cases and conduct social research so that they may respond to the people’s sense of justice.”

It is evident from the aforementioned opinions of law students and professors’ opinions that teaching interdisciplinary subjects related to law are needed by jurists to strengthen their knowledge and skill. It is a perfect combination. The aim is to increase their abilities to analyze legal practices. It seems that there is common knowledge among most legal scholars and professors on campus. They are of the opinion that Socio-Legal



Research is identical with what general social research used to be, which is not true. Unfortunately, Socio-Legal knowledge is not familiar among many legal scholars.

### C. Criticizing Postgraduate Legal Education

If undergraduate (S1) legal education curriculum emphasizes a black letter approach towards the law, where is the space for legal science to be studied in a more comprehensive manner? Lectures on socio-legal studies, which are basically interdisciplinary law studies and their respective methodologies, should be provided at the postgraduate (S2) level. The goal is for S2 students to understand the law in a more comprehensive manner, especially towards legal science and how the law operates. Furthermore, PhD (S3) students should concentrate on obtaining the ability to conceptualize all the legal knowledge they have obtained from their S1 to S3 degrees, be able to relate it to legal material and data and synthesize it. It is hoped that he or she would be able to produce new conceptual ideas, resulting in an abstraction from the entirety of what they have learned.<sup>12</sup>

However, it seems that the curriculum for S1 up to S3 levels display the same strong focus on black letter laws. Again, there is very little room for PhD students to study the knowledge of legal realities or interdisciplinary law studies. Both of which are really needed to produce complete and basic legal knowledge. Very few students can distinguish in what context they must write a legal opinion, and in what context they must write a scientific paper of law. Based on the Indonesian National Qualifications Framework Standard, the higher the strata of a course, the more interdisciplinary it must be (Direktorat Jenderal Pembelajaran dan Kemahasiswaan 2015). The ability to respond to community needs requires a paradigmatic shift. To become a world class research-based university, study programs, especially postgraduate law programs, must also be open to interdisciplinary legal approaches.

Meanwhile in other law schools in foreign countries, for example, there are already departments of "Law, Science and Technology" or "Law and Health Science", and many more according to the issues being faced by the community. PhD student candidates who have a desire to produce works for particular sectors have the supporting expertise and knowledge that they need. In developed countries, doctoral candidates prioritize seeking

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<sup>12</sup> In the academic context a *sarjana* means an academic degree holder whereby a sarjana S1 is a holder of a bachelor's degree, S2 is a master and S3 is a holder of PhD degree. The S stands for *strata* which means level (*stratum* in Latin, plural *strata*).



professors who they believe have the expertise to guide them before looking at their affiliated universities as they will work together in their professor's research team. A graduate student in Germany, for example, is usually asked which professor they will associate with, not which department. By the end of their studies, they will have produced various quality journal articles or patents. The university gets a big name and incentive from the state (or industry) which will further enhance the institution.

On the contrary, in Indonesia, PhD students generally look out for the reputation of their universities, not the expertise of professors. Doctoral programs in law usually provides a broader specialization in mainstream standard legal fields which must be followed through compulsory lectures and teaching subjects. Further specialization of their studies is usually built out of collaborative projects with government or law enforcement institutions, which would frequently send their own employees to post-law schools. It is common knowledge that postgraduate studies are considered to be a source of income for faculties and universities by recruiting as many students as possible. The creation of various fields in postgraduate studies is not designed to respond to the development of legal science of the world or the need to respond to society, but rather for the pragmatic agenda of gaining as many students as possible. As a result, students are forced to choose from any of the majors available, which may not match their expectations to gain the knowledge that they need to produce a good dissertation in their area of interest. Many students end up changing majors and letting go of their original desires, knowledge, and interests, to fit in with the provided curriculum.

#### **D. Methodological Implications**

Methodology is a logical consequence of the theory and knowledge used or learned. But even among legal academics, there are still those who question the choice of their research methods to this day. They are still searching for the "true and pure" method of legal science. Some of them ask, what is the method of pure legal science research, which is not "polluted" by social science methods? Many lecturers say that legal research is identical with desk research, as it must be normative and juridical, if then field research is carried out, then the research belongs to social science.

The above questions arise due to the lack of mastery of the paradigmatic position of law in the universe of socio-humanities theories (meta methodology), and how legal epistemology explains the scope of legal science. The weaknesses in the teaching methodology of legal research in Indonesia are a common phenomenon. Methodological



material even at the postgraduate level, is more about legal writing techniques, procedures, and standard formats which must be followed when students write their papers.

Teaching methodology that should contain material on legal epistemology and its methodological consequences, the position of the theory of legal thought in the scientific paradigm and meta methodology, does not exist. Law students are therefore not encouraged enough to understand academic and scientific thinking that may enable them to build the logical thinking required in writing. This can be seen from their graduate theses, be it at the undergraduate, masters or doctoral levels. Many students do not understand how to build up logic and develop logical units between sentences, paragraphs, and chapters. Scientific work is an integrated unit, connected to one another, that can lead up to a thesis or dissertation. The work is reflected in research questions, which must be answered in various chapters containing data.

Students are not taught about the consequences of when a theory is used on research methods. For example, students who employ the Feminist Jurisprudence approach will naturally reflect that approach in their thesis arguments and research questions. First, they would surely use a normative legal approach to study documents or methods as they will disassemble and analyze legal texts to find out how they position women based on their imagination and assumptions, and even myths about women. Second, they would analyze court decisions because they would want to know how the law is applied in cases involving women (Olsen 1995). If the trial is still ongoing, they would have the opportunity to conduct field research. They could observe the trial, record what they hear, see, witness, especially the arguments in court between parties, and use it as data. Third, field research is needed to obtain data about the worldview of the research subjects and to get an understanding of how the law works in daily life. This field research is important because it must develop arguments to criticize unjust laws and provide material for the purpose of legal reform.

There is so many interdisciplinary law methods developed by experts. For example, in the field of socio-legal studies collected by Banakar and Travers in 2005 alone, there were plenty of methods. All the methods that have been developed are hybrids that were born from both legal science and social science methods. For example, the qualitative methods of socio-legalism include sociolegal ethnography (Flood 2005), legal discourse on micro history (Scheffer 2005), text analysis (Banakar and Travers 2005) and case studies that are employed to examine legal culture (Banakar, *Studying Cases Empirically*:





A Sociological Method for Studying Discrimination Cases in Sweden 2005). The most widely developed method by legal anthropologists is legal ethnography, including the method of feminist legal ethnography (Bano 2005; Griffiths 2005). Legal pluralism experts also develop ethnographic methods in a global perspective (multi-sited ethnography) such as research on actors that cause laws to move and change (Schiller 2005; Nujiten 2005; Werner 2005; Wiber 2005). These researchers examine legal issues, ask legal questions, but in conducting their research use a combination of legal texts and methods of the social sciences.

When we observe the various scientific works of law students in almost all legal libraries in Indonesia, the most striking thing is the existence of an almost uniform format. As it turns out, the format and technicality of writing were the main things they paid attention to. Especially in the methodology section or research method, uniform formats and structures are frequently found, even similar sentences. For example, "... in this study, primary, secondary, tertiary data are used". Then each describe what they mean by primary, secondary, and tertiary data. Such a "fossilized" format shows the stagnation in the practice of legal research methods in Indonesian law schools.

It is of course worth conducting a study of legal texts, which aim to analyze the various content of laws for specific purposes or to check the coherence of a statutory regulation. However, in many students' works, often the legislation or policy used are merely copy-pasted into their work, sometimes taking up many pages. Furthermore, there are no adequate information or clear analysis to explain the articles contained within the law.

The purpose of legal document research (normative legal research) is also poorly understood. Thus, legal science research works become very brief and dry, despite the very thick physical presentation. Likewise, if a court decision is presented as data, then the material is merely copied often without adequate analysis that shows that the legal case is analyzed and reconstructed in such a way that show their relationships clearly how the case stands, the debates in court, the judge's considerations and decisions, and how they all related to the research questions.

This way of technical thinking provides no freedom to be creative; this is reflected in many papers from undergraduate (S1) up to doctoral (S3) level final assignments, as well as papers written for various occasions. Whatever legal issues are being discussed, invariably they begin with almost the same sentence, "Indonesia is a nation governed by the Rule of Law (*rechtstaat*) not *machtstaat* ...". In the final projects (thesis, dissertation)



of students, you can also find "standard" diction, whose meanings tend to overlap, such as: "literature review", "conceptual framework", and "theoretical framework". They do this because they do not understand what exactly should be written to build a theoretical framework. Isn't a theoretical framework a narrative that connects several concepts whose relationships can be explained and which serves as a guide for the writer to analyze and organize data?

Most law scholars may understand theory as teachings, but in my opinion such teachings also contain important concepts. The theory used by someone can be recognized from how they choose their words, write their sentences, and especially through their main thesis and research questions that are built in. In the theoretical framework, there should be conceptual debates that emerge both from textbooks and journal articles (research papers) of various authors. A good theoretical framework should be a narrative that provides theoretical learning and enlightenment for its readers, as well as being a guide for the authors themselves about how the data would be organized logically.

Law students also often feel burdened because they are required to write a theoretical framework that contains a range of grand theories, middle-range theories, and local theories. As a result, it becomes a kind of "convenience store" as they quote many big-name figures, however only in the form of fragments of opinions unrelated to each other with no theoretical analysis or reasoning related to the theme. If the theoretical framework is well written, the genre of the theory used will be reflected. Doctoral students in law most certainly should master the basic theories of legal concepts and classical figures, but they do not need to put all of them in writing, which would tend to make the whole piece unfocused. Let all of these basic theories be stored as intellectual property in the mind of the writer as their repertoire of knowledge.

Many students lose "pearls" of good data to big theory quotes. For example, there is a dissertation about how religious judges in the Sumatran region address inheritance. From a survey the student conducted with a fairly large number of respondents (more than one hundred), they obtained interesting findings. When hearing an inheritance case in court, the judges will refer to the Compilation of Islamic Law or *Faraid*, which in principle gives a bigger portion to boys. But when asked how they personally deal with it, the data shows that they will divide the inheritance equally between girls and boys. However, because the student was required to look for a grand theory, the dissertation was filled with what he called the Pancasila Legal Theory, resulting in the elimination of many interesting data (Zamzami 2012). Another example would be a dissertation about a



traditional dispute resolution forum among fishermen. However, the student was required to present a classical state theory, unrelated directly to the essence of dispute resolution, only so that his dissertation would be regarded as a legal dissertation (Lestarini 2014).

In short, even intelligent graduate-level students, many of them lecturers, are not empowered to produce excellent legal knowledge. In my opinion, a PhD graduate should have the ability to: (1) Develop logical thinking in his dissertation chapter by chapter, (2) formulate research problems related to (the synthesis of) theory and methodology (3) understand the significance of the theoretical framework to guide research, (4) master basic research methods and apply them according to the needs of the research problems, (5) conduct critical analysis in his writings, (5) make abstractions that are highly required as a PhD, (6) explain legal configurations in the social, political, economic, cultural context, which shows that they are not alienated from the society where the law originated. Writing a dissertation is like making a masterpiece. The student should be given the freedom to utilize all of their potential scholarly abilities, their intellect, and be the creator of their “work of art” and therefore should not be burdened by excessive technicalities.

## **V. SOME RECOMMENDATIONS AND CONCLUSION**

In practice, students do not have the opportunity to learn about the knowledge of the reality of the law because of the focus on compulsory faculty lectures and compulsory majors. There are indeed customary law courses, which have the privilege to become compulsory and be worth three credit courses, but in general, in many faculties of law, customary law is taught as a fossilized and immovable law, photographed and memorized by a dogmatic normative approach, positioned only as part of civil law (Priambodo 2018; Van Vollenhoven Institute, Leiden Law School 2017).

Based on various realities and experiences, this paper attempts to demonstrate how legal education is carried out in Indonesia to this day. The Study Program, whose nomenclature has almost never changed, shows a fossilized curriculum with all its effects on the development of legal theory and methodology as if the world of legal education stopped spinning decades ago. Management of tertiary education and legal education continues to be carried out as business as usual in a stagnant comfort zone. The impact is the birth of legal scholars, especially judges, prosecutors, and police officers, who think very formalistically, textually, and do not dare to make legal breakthroughs even if it relates to humanitarian affairs and concerns. To welcome Indonesia's future, which



promotes prosperity and justice, this way of thinking cannot be carried out anymore, and there must be a fundamental change. The futuristic ideas of the Minister of Education and Culture have provided a way for these changes, but its success will depend on how universities and law faculties translate it.

#### A. What should the law students know?

In order to become law enforcers and officials, undergraduate students need to learn and understand empirically that law is a determining factor for many areas of concern. Knowledge of how the law works, and how it comes into contact with many other sectors such as social, political, cultural, economic, are within socio-legal studies. Legal texts, from the Constitution to village regulations and various policies, must be brought to life and applied in legal cases in court. This is because in the trial process, the legal texts undergo intense scrutiny through the interpretation of various parties before reaching the judge's decision. Thus, it is imperative that law students have legal reasoning as well as the knowledge and skills to analyze judges' decisions.

However, legal scholars must also know that not all disputes would end up in a district court. Court cases are only the tip of an iceberg. Historically and culturally, in general, people in many parts of the world are not accustomed to bringing disputes to court for various reasons, e.g., taboo, a poor understanding of the law, not having a network of power, the long distance to the court and general inaccessibility, e.g., due to poverty. Furthermore, attempts are made to contain the conflict so as not to escalate into a dispute, as maintaining kinship and social relationships are considered more important than winning assets or scarce resources. Many disputes are resolved in social and cultural meeting rooms (Benda-Beckmann 1986; F. v. Benda-Beckmann 1985) The Japanese consider going to court taboo, and till today, they prefer mediation forums in social spaces (Kawashima 1963, 41-72) (Feldman 2007). These methods of mediation and deliberation are also adopted in dispute resolution in modern industries. Even the role of judges in the courts is expected by law and the parties to resolve disputes (via settlements through compromise) (Iwai 1991, 201-241).

Various studies have shown that dispute resolution carried out outside official institutions is preferred. Workers of a factory in Chile in seeking justice prefer mediation through an institution called the *Inspectorat* (a kind of mediation institution), even though there are Labor Courts (Ietswaart 1982). In America, transactional negotiations between large companies are preferred; even though they are legally bound to the contract



agreement that regulates in detail what should be done in case of a dispute (Macaulay 1985, 465). The Muslim community in Britain, relies more on Shariah Councils which are unofficial non-statutory bodies to resolve family law cases based on Muslim family law (Bano 2005, 91-112).

How is it in Indonesia? Nancy Tanner described examples of dispute resolution in Minangkabau which were carried out in the foyer of a school, a mosque or prayer room (*mushola*), village hall or even in a coffee shop (Tanner 1993). The Karo Batak people have what is called *runggun*, and the Toba Batak people have *marhata*, an institutionalized tradition of a formal deliberation process that produces decisions based on consensus (Slaats and Portier 1992). In Toraja, South Sulawesi, it is called *hadat* (Ihromi 1988, 139-158). The dispute forum is integrated with other institutions that underlie the customary or social activities needed by the local community. The legal institutions referred to in such disputes are based on adat, religion, customs, or a combination of them all. According to the legal pluralism perspective, these days, norms, and values, derived from national as well as international level laws and principles in dispute resolution or consensus-building, can be found at the grassroots level. Once parties are in dispute, they would have the choice of law and dispute forum (forum shopping) as well as the liberty and rationality to choose which one. Likewise, institutions (or functionaries) have the choice to accept or refuse to resolve disputes (shopping forums) with certain rationalities or interests (K. v. Benda-Beckmann, Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra 1981).

The lack of knowledge on Socio-Legal Studies, perhaps can explain why although many law faculties may have legal clinics, but too many legal cases from poor communities, women, and other underserved communities go unaccommodated. Justice seekers often go to legal aid organizations organized by NGOs, such as YLBHI (Indonesian Legal Aid Foundation) which oversees 16 LBHs (legal aid offices) in various cities. In 2019, YLBHI received 4,174 requests for legal assistance in total, including 1,496 cases requests made to LBH Jakarta (Yayasan Lembaga Bantuan Hukum Indonesia 2019). Meanwhile specifically for cases related to women and children, the Legal Aid Foundation of the Indonesian Women's Association for Justice (LBH APIK) has 13 branches, and they alone received 837 requests in 2018, 648 cases in 2017, and 854 cases



in 2016.<sup>13</sup> Their problem is the lack of advocate resources and operational funds, especially when Indonesia became a G20 country in 1999, more foreign donor funds are directed to African countries. In this case there is almost no meaningful collaboration between universities and legal aid institutions.

In general, law students today, especially in big cities, being smart and very pragmatic, take up business law and aspire to become high-paying corporate lawyers. They want to graduate quickly, if possible, in three years, and by taking short semesters. Becoming an instant lawyer is the goal. Rarely do law students aspire to become public sector advocates or lawyers. However, among the very few who are motivated to take majors such as "Law and Society" and obtain a lot of knowledge and experience of the field through research assignments, they are provided with knowledge to pursue their career further down the line. Expertise in the field of law and society is very much needed for the work of legal consultants, researchers, experts in international institutions, funding agencies, various government sectors, and various non-governmental organizations. Even law enforcers really need knowledge about how the law works in society.

Finally, Minister of Education Nadiem Makarim's ideas about *Merdeka Belajar* and *Merdeka Campus* need to be positively responded to, specifically how there are 40% of existing majors that may be taken from other departments, faculties, and even other universities. Many do not support this idea because it is considered to reduce the adequacy of lectures that provide expertise and are not realistic in their implementation. But if this idea is conducted with good planning and regulation, it can provide a solution for tertiary education curriculum - including legal education - which has been heavily segmented and obsolete for decades.

## **B. Conclusion**

This paper attempts to show the relationship between legal education, curriculum, and knowledge production through the works that law graduates produced. To welcome a better future for Indonesian law, legal reform in the form of proper revisions or formulation of legislation and policies and the production of high quality and fair court decisions are necessities.

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<sup>13</sup> LBH Apik (Legal Aid Foundation of the Indonesian Women's Association for Justice) is a leading network of 16 legal aid societies for *women*. It is a feminist organization, mostly located in the capital of the province. For over a quarter of a century it has been advancing women's human rights, justice and development. (<http://lbhapik.or.id/wp-content/uploads/2018/09/AR-2016-1.pdf>).



The formulation of the law and the decision of the judge must take into account a society that is always changing and requires new laws. The process of formulating the law requires not only formal legality, but also social legitimacy. Therefore, open mindedness is needed to provide the entire spectrum of legal knowledge to prospective law graduates. They not only need a strong basic legal knowledge, but also knowledge of how the law works and how it interconnects with the legal culture of society. How do you put all this legal knowledge in the formulation of an appropriate curriculum from bachelor to doctoral law education?

Universities and legal education play an important role in producing qualified law graduates with good character, who will later in the future hold social and professional positions to pass on their knowledge and expertise in all fields of law. Critical thinking and reform must begin with legal education. The legal education curriculum must reflect its response and sensitivity to the needs of the community's sense of justice. There must also be a shared awareness that there is a huge disparity between legal developments and the rapid development of society mainly due to the findings of science and technology. However, there are always political and bureaucratic obstacles in the process of formulating the law, so that the making of legislative products is slow. The tardiness of the law in responding to the needs of the community, including the handling of humanitarian crimes and corruption committed in increasingly sophisticated ways, can have a wide-ranging and problematic effect on law enforcement. When faced with the COVID-19 pandemic, various policies that can save all layers of society are needed. In this situation, legal education, through its curriculum must be able to give birth to thinkers and practitioners of law who are sensitive, compassionate, creative, and able to make breakthroughs and legal changes.

It is true that universities receive intakes from relatively poor primary and secondary education systems in Indonesia (Reviana 2019). However, if they arrive at the university, especially the reputable State Universities of Indonesia, surely, they are the best students, who emerged from intense competition in academic achievements.

Our undergraduate students today are smart millennials, fluent in English, are even better than their lecturers in international classes, can read and even write journals, and think critically. What is our attitude towards these great students who will become an asset for Indonesians to move forward? Is it not our main task to provide them with high quality legal education? Likewise, for postgraduate students, they must be given the widest possible space to enable them to understand the relationship between law and



society which take into consideration all dimensions of the problem. They must be able to obtain the best quality education. Running a business-as-usual curriculum, reluctance to evaluate and revise the curriculum, teaching methods, and resource management of lecturers, will cause postgraduate students to be alienated from society and leave the implementation of substantive justice to fall short. Academic culture and the love of knowledge is difficult to develop in this kind of academic governance system. Hopefully, the Minister of Education and Culture's policy on *Merdeka Belajar* and *Merdeka Campus* **can** be considered for its implementation to be continued. Should there be technical obstacles in their implementation, they should be overcome creatively.

Why should postgraduate students be of concern? In addition to the aim of creating justice for the community, universities in Indonesia over the past 10 years are required to follow the trend of becoming a World Class University, characterized by numerous reputable journal writings. Currently, our universities are still merely teaching universities. Graduate students should be the backbone of knowledge production. They must be part of the academic work of their professors, so that together they can produce legal knowledge needed by the government, industries, and the wider community. This requires collaborative empowerment between universities or legal education institutes, the government, industries, civil society and the wider community. The development of global science and the anticipation of a disruption era for universities does require extensive collaboration between universities along with each and every related party (N-Helix).





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