

The Dynamics of Human Rights Education in Indonesian Law Schools

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The development of human rights education in higher education institutions in Indonesia has a contextual setting and its existence was influenced by internal debates. During the authoritarian regime of Soeharto, human rights were taught as part of constitutional rights, and did not reflect international human rights law. Within that context, the name of the course was *Hak-Hak Dasar* or Fundamental Rights (known also as Constitutional Rights). The fundamental rights taught at that time were the rights provided under the Indonesian Constitution.

The 1945 Indonesian Constitution (*Undang-Undang Dasar* or UUD 1945) has three articles (Articles 27, 28, and 29) guaranteeing only four fundamental rights: (1) freedom of assembly and association; (2) freedom of thought; (3) right to work and right to life; (4) freedom of religion. The subsequent Indonesian Constitution of 1949 (*Konstitusi Republik Indonesia Serikat* or *Konstitusi RIS*) and the Indonesian Constitution of 1950 (*Undang-Undang Dasar Sementara* or *UUDS 1950*) have a separate chapter covering many more human rights. As stated by Moh. Yamin, a law scholar and founder of the Indonesian Constitution, the *Konstitusi RIS* and *UUDS 1950* were the only Constitutions from among all constitutions in the world that completely incorporated all human rights provided by the Universal Declaration of Human Rights of 1948.¹ In late 1950s, the process to amend *UUDS 1950* was stopped by Soekarno through a Presidential Decree issued on 5 July 1959 and re-enacted *UUD 1945* as the Indonesian Constitution.²

Although UUD 1945 has limited fundamental rights provisions, it did not mean that higher education institutions limited the

teaching of human rights during the Soeharto regime. There was dynamic, and at the same time challenging, discourse on human rights in the academe at that time, when the words "human rights" were considered very sensitive and critical. This discourse was taking place at a time when exacerbated, massive and systematic human rights violations at various levels were occurring. The government extremely coopted the universities making them unsurprisingly the transmitter of ideas that legitimized unpopular policies against human rights, or perhaps made them quiet enough about human rights violations.

The situation changed much after the fall of Soeharto in 1998, when the euphoria of "reformasi" (reform agenda) progressively influenced the development of human rights course. Since then, democracy started to grow, freedom of speech and thought relatively advanced, and human rights issues became fascinating subjects of discourse. This article examines how far has university human rights course developed after Soeharto stepped down in 1998, and how such change brought new human rights course models, teaching methodology, objective and process

of evaluation, and substantive development of human rights education. The discussion in this article is limited to the experience of law schools in Indonesia.

Perspectives and strategies of human rights education

In the early development of the human rights course in Indonesian law schools, human rights were perceived more as constitutional rights. The human rights course developed therefore in the context of constitutional rights course development. Human rights taught by the Constitutional Law Department under the constitutional rights course (and expectedly taught from a constitutional law perspective) hardly had any reference to international human rights law. The course focused on the history of rights, philosophical foundation of human rights, and the relationship between the state, people and human rights under the national legal framework. Fundamental rights in this context were related to the fundamental law, the Constitution, which both the government and people should respect as the highest law and social contract in a particular country.

Subsequently, the human rights courses in law schools incorporated the international human rights instruments subsequent to their ratification to become part of the national legal system. For instance, Indonesia has ratified six international human rights instruments: (i) Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW] (1984); (ii) Convention on the Rights of the Child [CRC] (1990); (iii) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT] (1998); (iv) Convention on the Elimination of All Forms of Racial Discrimination [CERD] (1999); (v) International Covenant on Economic, Social and Cultural Rights [ICESCR] (2005); and (vi) International Covenant on Civil and Political Rights [ICCPR] (2005). The

human rights courses adjusted to include the ratified international human rights instruments. Thus, it seems that the human rights education perspective of law schools is reactive to new legislations rather than pro-active in promoting human rights principles and the rights-based approach perspective, regardless of whether or not the government has ratified international human rights instruments.

A dynamic human rights education in higher education institutions in Indonesia depends much on the interest, innovation and other personal qualities and capacities of the human rights lecturers.

In the other words, the institutionalization of human rights education is not fully influenced by the development of an institutional (law school) perspective, but more likely from individual perspective. For instance, a lecturer who has women studies background would have deeper perspective on women's rights issues, including related human rights standards and mechanisms.

The relevant question in this context is, how do they integrate various individual perspectives into human rights education? The experience in the Faculty of Law, Airlangga University gives an example in integrating diverse backgrounds and skills. From a higher education institution point of view, human rights are taught as part of "soft skills education" that promotes human dignity, respect for difference, and human rights culture. Human rights are also taught as values that support the realization not only of the teaching or education mission, but also the "public servant mission"³ of higher education institutions in Indonesia. Human rights education has become a responsibility mandated to all law educators in the university, regardless of the academic field of the people giving the course.

Because of this public servant mission, the human rights course at the university level can be linked to real issues in society and can directly respond to these problems. In this case, human rights can be understood not only as a course or program offered by law schools, but also as

the “soft skills approach” of law educators. This perspective on the role of educators is perhaps too optimistic and paradoxical. Consistent teaching of human rights is questionable in the context of several other courses (such as those on Manpower Law, Investment Law, Intellectual Property Rights, and Business Law) whose content may conflict with human rights because of the neo-liberal paradigm that support their teaching in Indonesia.

Viewing human rights as legal issues under the prevailing perspective of law schools does not mean that all law educators are fully aware of the human rights situations involved. As the mainstream school of thought in Indonesian law schools, positivist thought views human rights as legal rights and simplifies the problem of rights protection generally. And this meant that social, economic, political and cultural structures of society are not necessarily discussed in relation to human rights. Nevertheless, the development of human rights course in higher education institutions should be appreciated for causing a better academic environment than during the Soeharto regime in terms of human rights promotion and development.

Curriculum and methodology development

Although the human rights course in higher education institutions is mostly taught as a law-based subject and mostly found in law school curriculums, there is still diversity in the curriculums and teaching methodologies involved. For instance, international human rights law is certainly a law course addressing the UN Charter, Universal Declaration of Human Rights, and other international human rights instruments. Yet the course on international human rights law is not always offered as part of the law school curriculum.

Uniquely, the name of the human rights course is also diverse. The University of Jember, Brawijaya University, University of Muhammadiyah Yogyakarta (UMY), and University of

Surabaya (Ubaya) teach “Law and Human Rights” course. The Airlangga University offers “Human Rights” course (without the word ‘Law’), and previously offered “Law and Human Rights” and “Fundamental Rights” courses. Actually, the current Indonesian School of Law Conference recommends the teaching of “Human Rights” course, without the word ‘Law’.⁴

The status and course requirement of the human rights course are also varied. In the University of Jember, the status of “Law and Human Rights” course is *Wajib Umum* (General Compulsory course), and the students should first pass “International Law” and “Constitutional Law” as course requirements in studying “Law and Human Rights.” This is due to the difficulty of studying international law (covering international criminal law, humanitarian law, and United Nation systems) under the “Law and Human Rights” course unless students have previously studied “International Law” and “Constitutional Law.”

In other universities, such as Airlangga University, University of Surabaya, Brawijaya University and University of Muhammadiyah Yogyakarta, the status of “Law and Human Rights” course is *Wajib Nasional* (National Compulsory course), which means that all law schools should have “Law and Human Rights” course in the first year curriculum. Perhaps, the differences in the status and requirements of the human rights course do not have much significance because both *Wajib Umum* and *Wajib Nasional* have similar consequences, requirement for law students to take “Law and Human Rights” (or “Human Rights” in the case of Airlangga University) as compulsory course.

Similarity in status does not mean similarity in syllabuses and teaching methodologies. The specific characteristics of the course are influenced by the faculty policy. For instance, in the University of Muhammadiyah Yogyakarta, one of the largest Islamic university networks in Indonesia, the “Law and Human Rights” course involves discussion of its relationship with law

and its comparison with Islamic perspectives on human rights. This is due to an objective of the course of promoting human rights as part of the university's religious mandate. The university also has a "Humanitarian Law" course that is closely related to human rights, and has the status of *Pilihan Pengembangan Minat* (Optional Course to Develop Student Interest) in the International Law Department.

Different from the University of Muhammadiyah Yogyakarta is the "Law and Human Rights" syllabuses in the University of Jember, which are designed to complement the courses on "Constitutional Law" and "International Law." "Humanitarian Law" in this university is taught in one class as part of the "Law and Human Rights" course. This means that there is no specific course on, and less space and time for teaching, "Humanitarian Law."⁵

Usually, law schools teach human rights as part of the introductory course in studying law, because of the strong, natural relationship between law and human rights. The syllabus for this course has the following items:⁶ (i) Principles of human rights; (ii) Philosophical foundation of rights; (iii) Concepts of human rights; (iv) Fundamental rights and the Constitution; (v) History of human rights (law); (vi) Human rights, rule of law and democracy; (vii) International human rights law 1 [civil and political rights]; (viii) International human rights law 2 [economic, social and cultural rights]; (ix) National human rights law; (x) Role of the state and non-state actors in human rights; (xi) State responsibility in human rights; (xii) Human rights mechanisms; (xiii) Most serious crimes; and (xiv) Human rights in current situation.

The supplementary course on human rights also differs from one university to another. In Brawijaya University, the human rights course is complemented by several closely related courses such as Law and Gender.⁷ In the University of Surabaya, the course on Law and Child Protection is one of the supporting courses for human rights.⁸

Concerning teaching methodologies in hu-

man rights, lecture is mainly used in the form of speeches, presentations, and discussions. There is limited use of participatory teaching methods. In Airlangga University, beside presentation and discussion, the human rights course employs participatory methods such as individual presentations by students, role play, case studies, video presentation, and interactive communication in understanding sensitive or critical issues in human rights. The objective of these methods is not only to introduce human rights, but also to build the character of law students in order to promote human rights in the wider society.

Actually the human rights program can be enlarged through various ways, such as by creating moot court as an extracurricular course, internship in human rights centers or legal aid offices, and attending human-rights-related seminars, workshops, or conferences. In the context of Indonesia, these extracurricular courses can easily be done to be able to teach human rights. One of the challenges in promoting the teaching of human rights in higher level of education is the establishment of human rights course at masters level. So far, in the Asian region, there are only three universities which have international masters program on human rights: (i) MA Human Rights Program in Mahidol University (Thailand); (ii) LL.M International Human Rights Law in Hong Kong University (Hong Kong); and (iii) MA Human Rights Program in University of Calcutta (India). Several Indonesian universities are already starting to develop Women Studies Program at masters level, such as in the University of Indonesia (Jakarta). Under the Women Studies Program, many human rights issues related to rights protection for women and children are included. Based on this experience, the role of Women Studies Center in each university, including Human Rights Studies Center, is important and significant to initiate and develop masters or other higher level programs.⁹

Human rights center and the law school

Human rights centers play an important and significant role in initiating and developing the human rights program at graduate and higher levels. In this section I examine the role of the human rights centers in the human rights course of law schools.

The human rights (studies) center, better known as *Pusat Studi Hak-Hak Asasi Manusia* (PUSHAM), is established to promote human rights in higher education institutions and implement the university mandate on public service. There are many PUSHAMs attached to universities or university faculties in Indonesia, but not all of them significantly support the human rights movement. There are several famous PUSHAMs in Indonesia:¹⁰ (i) PAHAM Unpad (Faculty of Law, Padjadjaran University); (ii) PUSHAM UII (Islamic University of Indonesia); (iii) PUSHAM Ubaya (University of Surabaya) and (iv) PUSHAM Unair (Airlangga University).

The PUSHAMs were established in these four universities in diverse ways. PUSHAM UII, Unair and Ubaya were established as university-level programs, and they are influenced by the diverse backgrounds of lecturers involved in the centers. Most of them are not lawyers or law lecturers, but political scientists, anthropologists, social scientists, and social workers. They employ the multidisciplinary approach and involve various fields of expertise. From this point of view, the multidisciplinary approach is more useful in understanding the complexity of human rights, and practically makes the dissemination of human rights to various faculties easier.

The establishment of these PUSHAMs was also partially supported by Ministry of Law and Human Rights. The Center for Human Rights Studies of the Islamic University of Indonesia (PUSHAM UII) based in Yogyakarta for example was founded through a Memorandum of Understanding between the university and the Ministry of Law and Human Rights.

The Minister of Law and Human Rights and the Rector of Islamic University of Indonesia signed the memorandum on 7 April 2000. On the other hand, the Letter of Agreement (MOU.01/meneg/HAM/04/2000 underline 381/B.1/IV/2000) between Airlangga University and the Ministry was signed on 2 November 2000 to establish PUSHAM Unair, after holding a human rights workshop.¹¹

PAHAM Unpad was established under the law school (faculty-level) program. Because of this, most of staff members involved are lawyers or law scholars. PUSHAMs have the opportunity of helping strengthen the law on human rights through their human rights law course, and of helping in the easier understanding of the complexity of human rights standards and mechanisms. PUSHAMs based in law schools also provide the law students with “law laboratory” in support of or supplementary to the extracurricular Law and Human Rights course.

Both multidisciplinary model and law laboratory model have particular strengths and weaknesses. Integrating human rights in various ways into the different courses minimizes the weakness of the multidisciplinary model, and by having the support of the PUSHAMs it becomes interdisciplinary laboratory model. PUSHAM Ubaya, for instance, according to its Director, will incorporate human rights course into all disciplines, not only in the law course, and they have been preparing a curriculum for it.¹² PUSHAM UII also supported law lecturers in improving their knowledge of human rights law through annual training activities. Also, the Human Rights Law Studies (*Pusat Kajian Hukum HAM*), the new institution established under the Constitutional Law Department (faculty level) of Airlangga University, although mostly supported by law scholars, has been involving people with various backgrounds in implementing and improving its programs.

In this context, the establishment of human rights (law) laboratory using the interdisciplinary approach is one of the challenges of the PUSHAMs of Indonesia. Significantly,

a number of PUSHAMs are well-connected or networked in support of the human rights struggle. This is a good development in the process of improving the human rights situation in the post-authoritarian Indonesia.

RANHAM, the challenges for law schools

The adoption of National Action Plan for Human Rights (RANHAM) is not new to the Indonesian government. The government has been adopting action plans since the fall of Soeharto in 1998, and re-planned them every five years. The current RANHAM was adopted through Presidential Decree Number 40/2004 (2004-2009). The appointment of members of a National Committee (Committee) that is directly responsible to the President was the first step in implementing RANHAM 2004-2009. The Committee has the responsibility of coordinating RANHAM activities, including:¹³

- a. Establishment and strengthening of RANHAM institution
- b. Preparation for the ratification of international human rights instruments
- c. Preparation for the harmonization of legislations with international human rights standards
- d. Dissemination and education on human rights
- e. Application of human rights norms and standards
- f. Monitoring, evaluating and reporting on human rights situations.

It has the main duty of securing the implementation of RANHAM at the regional and district levels and coordinating the RANHAM program and activities at the regional level.

The Committee has a working group consisting of representatives of government institutions, national institutions (related to human rights such as the National Commission for Human Rights [Komnas HAM], women's commission), expert groups, and civil society.

Higher education institutions, including PUSHAMs, can support RANHAM by promoting human rights through joint training of trainers programs, research collaboration, policy advocacy, and disseminating human rights through formal or non-formal education. As observed by PUSHAM Ubaya, the implementation of RANHAM has not been well-coordinated among government institutions, including universities. It created unfortunately much mis-communication and distrust among Committee members.¹⁴

Unsurprisingly many human rights activists, members of Komnas HAM and academics often question the activities for RANHAM. In this context, the higher education institutions, particularly law schools, can contribute significantly to the implementation of RANHAM. They can help in harmonizing district regulations, and disseminating human rights principles, norms and standards to local organizations as part of the implementation of RANHAM at the regional or district level. They can also force the implementation of RANHAM by monitoring, evaluating and reporting it to the Committee. These activities can be initiated not only by PUSHAMs but also by academics who are concerned with human rights.

Conclusion

The initiatives discussed above will not develop further without the support of the higher education institutions. Financial assistance, for example, is a big problem for PUSHAMs and for the development of human rights study programs at law schools. They still depend much on the government or foreign donor institutions.

The government and foreign donor institutions unfortunately usually have a systematic scheme in designing their own agendas, which are non-negotiable frameworks. The issues of good governance, access to justice, and poverty reduction strategy programs are common issues designed by most donor institutions. These is-

sues, as part of hegemony strategies, became the content of the mainstream discourse on human rights in Indonesia, in support of the donor institutions' funding support conditionality in favor of market liberalization. In the context of Indonesia, the World Bank, Asian Development Bank, European Union, and USAID are the most influential donor institutions in configuring what we call "human rights market assistance."

"Human rights market assistance" has become a politico-legal imposition which tremendously drives the legal framework in Indonesia. This situation has become the backdrop for the enactment several political economy legislations which strongly direct law reform agendas, such as the Law on Water Resource (2004), Labor Law (2003), and the Law on Industrial Relations Dispute Resolution (2004). These legislations are examples of explicitly legal basis for human rights violation, or well known as "legalized violation of human rights." Whether we like it or not, the current situation came about because of dependency on donor programs, which seem to influence the study of human rights.

This legal imposition paradigm is a challenge to law schools and PUSHAMs in transforming and promoting human rights values in Indonesia.

Endnotes

¹ See Koentjoro Poerbopranoto, *Hak-Hak Manusia dan Pancasila Dasar Negara Republik Indonesia*. Jakarta: J.B. Wolters, 1953, page 92.

² In this context, Soekarno also introduced "guided democracy" as new political model for the Indonesian revolution and democracy. "Guided democracy" is practically another word for "softened" authoritarian model.

³ The university missions in Indonesia, known as *Tri Dharma Perguruan Tinggi*, are (i) educational mission; (ii) research mission; and (iii) public servant mission.

⁴ Interview with Iwan Satriawan (Assistant Dean of the University of Muhamadiyah Yogyakarta) and

Johan Erwin Ishariyanto (University of Muhamadiyah Yogyakarta), 15 May 2007.

⁵ Interview with Gautama Arundhati (University of Jember), 14 and 17 May 2007.

⁶ These sample syllabus contents are based on the human rights courses in Airlangga University (Surabaya) and Brawijaya University (Malang), which both introduced the courses under the Constitutional Law Department.

⁷ Interview with Ibnu Tricahyo (Brawijaya University), 15 May 2007.

⁸ Interview with Yoan Nursari Simanjuntak (University of Surabaya), 16 May 2007.

⁹ Many universities have at least a PUSHAM, while several universities have both Women Studies Center and PUSHAM such as the University of Surabaya, Airlangga University and Brawijaya University.

¹⁰ Being "famous" in this context is seen from their role in actively and progressively promoting human rights through various activities, and being well-known among most human rights activists. My interview with several non-governmental organizations (NGOs) in Jakarta identifies the four PUSHAMs for frequently cooperating and linking with not only NGOs but also Komnas HAM and the government (Ministry of Law and Human Rights).

¹¹ PUSHAM Unair has the mandate of promoting "human rights awareness in society and struggling [to develop] state policy that [is] more committed [to] realizing human rights through [scientific] studies." Professor Soetandyo Wigynosoebroto, MPA (Commissioner of KOMNAS HAM/National Commission for Human Rights) and Hafid Abbas (Deputy II, Ministry of Human Rights Affairs) attended the workshop.

¹² Interview with Yoan Nursari Simanjuntak (University of Surabaya), 16 May 2007.

¹³ Edited version of the original text of RANHAM 2004-2009.

¹⁴ Interview with Yoan Nursari Simanjuntak (University of Surabaya), 17 April 2007.