Teaching International Law: Indonesian Practical Experience

By:

Koesrianti

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Introduction

This article discusses the teaching of international law in Indonesia and its related issues. Ideally, as the center of the process in transferring knowledge, lecturers who teach international law in universities have an important role in creating and maintaining the culture of international law in higher education in Indonesia. In this context, they serve to satisfy a fundamental need of the nation to provide law graduates who are equipped with sufficient knowledge of international law. In practical teaching life, however, students are not interested in studying international law. This article examines why students are less inclined to study international law and provides some possible solutions to overcome this.

In general, education is an effort that is intentionally and systematically planned to create study environment and processes where students can actively develop their potential to foster strengths and skills as professionals

upon finishing their studies. In the context of legal education, Hikmahanto Juwana (2005) stated that legal education essentially aims for something neutral, which means that it cannot be tailored to particular political circumstances, nor should it be changed when the power of the government has changed to suit the preferences of that authority. As a result, ultimately, in the education phase, the college and university graduates, as the alumni of the faculty of law, in general, will have similar competencies.

In Indonesian law schools, students are required to fulfil a minimum of 144 credits to graduate. Out of the 144 credits, 66 credits (equivalent to 22 subjects) are classified as the national curriculum, which are basic legal sciences that introduce students to general legal topics, such as introduction to law, introduction of Indonesian law, private law, criminal law, administrative law, *Adat* law, constitutional law, Islamic law, and other subjects, including international law. The remaining 78 credits are divided into subjects that are part of the Faculty of Law curriculum (54 credits) and subjects that are majors or focuses of study of the students (24 credits). Since 2010, the students' intake in our Faculty is 250 students each year, which is the smallest number among the faculties of law in public universities in Indonesia whose student intakes are approximately 400-600 students each year. Our Faculty has designed a small class of 40 students as our Faculty would like to produce as many graduates as possible who will become successful professional jurists, and so enhance the competitiveness of Indonesian lawyers in a globalized era.

Teaching international law

It is not unusual for people to inquire whether international law can be considered 'law'. The term international law from a normative point of view is considered in terms of norms not law. This view mainly comes from a lay person's understanding that international law does not fulfil all requirements to be considered as law, as such, international law cannot constitute law in the proper sense. Accordingly, a law must have specific legal elements, such as sanctions, a central government capable of enforcing it and some binding authority of the rules. Yet, international law does not satisfy all of these elements. This view is not contemporary as it is based on the theories of an era gone by. For example, John Austin (1832, p. 123), the positivist legal theorist

and reformer of the 18th century, asserted that international law is not ‘real law’ due to the lack of a ‘sovereign’. For Austin, law reflects the sovereign’s wishes and is based on the sovereign’s power.

In the context of the study of international law, this positivist mindset has been the way freshmen year students view law. Viewing the law in this light, the students encounter difficulties in understanding international law. The term international law in this article refers to public of international law. Having said this, students must be encouraged to change their mindset from private law, with an individual as the subject of law, to states as the subject of international law (Clapham, 2012). Students usually start studying international law after they have completed the subjects of private and criminal law in the previous semesters, therefore they are familiarized with the characteristic of the law practiced in domestic settings of *Trias Politica* where there is the legislature, judiciary, and executive and police force.

Moreover, most of the students assume that international law is merely a set of norms, and that it is not a law with definite punishment. They often see in the media that in many cases, the major power countries are likely to avoid any accountability or responsibility on the international level. These countries are untouchable by international law, and this has driven the students to have the perception that international law does not exist. They do not see in the system of international rules a central authority that regulates the actions of its members and which may enforce these rules by the imposition of penalties. Furthermore, there are international disputes that remain unresolved for years without any solution at all, such as crisis in Palestine, the plight of Rohingya refugees, and violence in Syria, as well as other internal conflicts in all parts of the world.

Lecturers who teach international law have more challenges than those who teach other branches of law. Lecturers of international law have constraints in delivering the materials in their course due to language constraints since they have difficulties in digesting international law textbooks that are mostly in English. In the late 1980s, I started as a young lecturer in the international law department, and at that time, I had the initiative to attend an English course with my own money to improve my English. Fortunately, after six years as a

lecturer, I had the opportunity to be one of the awardees of an Australian scholarship, the Australian Development Scholarship. I did my master's program and my doctoral program at a university in Sydney, Australia. Later on, this academic background became an important foundation for my study of international law as I can read a lot of international law textbooks more easily than before, participate in many international conferences, and also write articles on international law in English.

A lack of knowledge of English is a major obstacle for many law students as there are still not many international law textbooks in Bahasa (Indonesian). On one hand, most reference books of international law are foreign books in English. On the other hand, in general, the English proficiency of the students is modest. Moreover, these textbooks are not only difficult to find in Indonesia, but also use a lot of English legal terminology that is more difficult to understand than common English. As a result, students are unable to understand international law comprehensively, and this has prevented them from studying international law. Therefore, there are not many students interested in studying international law.

International law textbooks that present international law as 'down to earth', and which students can study through its application to Indonesia or Asia, are difficult to find. Majority of international law reference textbooks are Western books that use European history and cases as illustrations on all topics. This is unacceptable. To some extent, however, it fails to encourage the students to study international law well. It is more comfortable for the students if they could study international law with Asian than European centric references. Therefore, in teaching international law, I often refer to the jurisprudence of the International Court of Justice (ICJ), in which Indonesia was a disputing party, such as the case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia). I also refer to the article (Koesrianti, 2006) that I wrote in Bahasa (Indonesian) on the resolution of international disputes that included this case as an example. This article was published in *Yuridika*, a nationally published journal. On other occasions, when I teach topics about the Association of Southeast Asian Nations (ASEAN), I refer to my article that was published by Law Review, another national journal. This subject is for the students who choose international law as their major or focus of study.

Currently, majority of my students use a reference book on international law that is published internally known as *Buku Ajar*. Aside from that, my students can read suggested reference books that are provided in the Law Faculty's library. The number of these textbooks, however, is limited. As foreign books, these international law textbooks are very expensive.

It is unfortunate that most of the international law textbooks are written in Western-styles (European centric) by Western authors. In other words, the students have to learn international law based on textbooks that contain and discuss international law topics from Western countries' point of view. All of the legal concepts and cases are Western. There are only a few international law textbooks that are relevant to an Asian setting and are written in English by authors from Asia. I have only found one textbook (Keyuan and Chen, 2011).

Moreover, international law is perceived as identical with Western law, because almost international law textbooks that are reference books for law schools in the entire globe are written by authors from Western countries. Abundant researches on international law were also done by researchers from Western states. This is also the case with international lawyers who won cases on behalf of certain countries. These lawyers are mostly from Western countries. In so many cases before the ICJ, the non-Western states often hired Western lawyers to argue on their behalf (Gaubatz and MacArthur, 2001). Similarly, in cases when the Asian countries, for example Indonesia, were the disputing parties, they also hired Western lawyers when appearing before the ICJ. Examples of these are the Ligitan Sipadan case and Batu Puteh case. The failure of developing countries to defend their cases with their national lawyers have raised the question of whether international law is 'international' law that has an international character which belongs to all states in this entire globe (Gaubatz and MacArthur, 2001).

Furthermore, most international law conventions have been constructed in favor of the Western states, since Western states were the principal drafters of these conventions. This has driven some students to perceive international law as a law that was created by the West to regulate the world for the purpose of maintaining the interests of Western countries. It is difficult to find an international convention that reflects the interest of the third world. Indeed,

everything outside Europe is not a part of international law but objects that are regulated by international law. To some extent, this view is not incorrect. However, to counter this view, I often refer to the adoption of the provisions of the archipelagic state in the 1982 United Nations Convention on Law of the Sea (UNCLOS). Articles 46-54 are the capstones of the third world archipelagic states efforts, such as Indonesia, the Philippines, Fiji, and Mauritius to win international recognition for the archipelagic principle. For Indonesia, this UNCLOS is the culmination of the Indonesian efforts for almost 25 years, to get this legal concept accepted by the international community. As a result, Indonesia has sovereignty over its archipelagic waters because the 1982 UNCLOS formally recognized the existence of a new category of states known as archipelagic states (Butcher and Elson, 2017). This legal concept stemmed from the Declaration of the Djuanda of 13 December 1957, which stated that the Indonesian government had 'absolute sovereignty' over all the waters lying within straight baselines drawn between the outermost islands of Indonesia. By referring to this doctrine to my students, I am able to show that the third world countries, like Indonesia, can be international lawmakers instead of law takers. I also would like to boost the optimistic feeling of the students and hopefully encourage them to study international law.

Other than that, I also teach the Asia-Africa Conference (AA Conference) in Bandung in 1955 when discussing the relationship between international politics and international law. It is the utmost if not impossible challenge to teach the subject of international law with an Indonesian setting. Having a discussion on the Bandung Conference and applying this method to the class may provide an alternative breakthrough. This discussion will raise student questions about how the political environment has changed from the time of the Cold War, when the AA Conference was held, to the globalization era. However, such an approach will, to a certain extent, identify potential developments of international law literature concerning the endorsement of the third world concept in recent international relations, in particular, to enhance the international visibility of Asia and Africa as parts of the international community by re-introducing the 10-point 'declaration on promotion of world peace and cooperation,' the Bandung Communique or *Dasasila Bandung* to the students.

Another obstacle that I found when I teach international law is reading habits. In general, students do not have a good reading habit. I assume that they have language constraints in understanding the reading materials that are mostly in English. For the international law subject, a team-teaching method has designed for the last four meetings at the end of the semester. Here, class discussions are divided into groups. In these class discussions, lecturers give the students four landmark international cases, and then students are divided into two opposing groups (applicants and respondents). This kind of teaching method is similar to the method called problem-based learning (PBL) that I had learned later on when our Law Faculty was engaged in a co-operative project on teaching methods.

In 2017, our Faculty of Law opened classes that were presented in English. This has enhanced, to a certain extent, the students' insights in international law. Students are now actively participating in class discussions, whereas previously, they seemed reluctant or shy to be involved in discussions. However, in this 'English class' model, they prefer to have open discussions between the students and professors with a few lectures. The class was designed to be a small group of 25 students, in which the class can have lively discussions on any topic during the whole semester. As a result of this teaching method and support from the International Law Students Association (ILSA) in our Faculty, our students' international moot court competition team for the Phillip C. Jessup International Law Moot Court Competition, the world's largest moot court competition, won first place at the national round in 2019. The team has improved over the years because of the parallel English class that has improved the students' ability to learn international law subjects full of passion.

In the last five years, our University, after being declared as cyber campus, has introduced e-learning as part of the teaching method. Our University has developed an e-learning program called Airlangga University e-learning Application, also known as AULA. In the previous years, before the recent global COVID-19 pandemic in 2020, each subject needed to have on-line meetings in addition to meetings in the classroom. These online meetings (by using AULA) should comprise at least ten percent of the total meetings in one semester. During the COVID-19 pandemic, all classes in our Faculty are now 100 percent on-line, because we have to work from home as the national

policy. The e-learning (AULA) provides all types of teaching methods, including class lecturing, class discussion, quizzes, assignments, and evaluation. The process of teaching and all the works related to it have been conducted on-line. In the previous semester, e-learning classes had been held smoothly. In e-learning method, some lecturers are tasked as captains to overcome problems that are experienced by other lecturers and some students who are not accustomed to the digitalized working environment. This e-learning method also enriches the experience of the lecturers in interacting with their students in online classrooms as a new phenomenon that everyone has to catch up with.

Conclusion

Education should create study environment and processes that students can use to actively improve their potential and that can provide value-added study experiences which will eventually increase their competitiveness in the workplace. Knowledge is a series of cognitive encounters that are extracted, created, and developed systematically by using a certain approach based on the scientific method to explain scientific inquiry in a community. In short, the purpose of education at all levels—basic, middle, or high education—is to equip students with knowledge and skill that benefit them when they graduate from school. In this context, lecturers of international law have an important role not only in creating the culture of international law, but also in maintaining it in higher education in Indonesia.

Currently, many of our alumni study abroad after they finished their bachelor's degree from our Faculty and are now working as lawyers in reputable law firms in Jakarta. In this context, the teaching method has improved the learning experiences of our students, which ultimately has enhanced our graduates' competitiveness. Nevertheless, there is still room for improvement and further learning of the pedagogic teaching method for international law, including mastering of digitalization study processes, through which I can transfer knowledge and skill to my students professionally.

Lastly, I believe that participating in additional trainings, such as Teaching and Researching International Law (TRILA) of the Centre for International Law (CIL) of the National University of Singapore, is helpful in learning and implementing

the most effective teaching methods for international law.

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*Koesrianti, Ph.D., is an Associate Professor at the Faculty of Law, Airlangga University, Surabaya, Indonesia. Email address: koesrianti@fh.unair.ac.id. I would like to thank Prof Antony Anghie of the NUS Centre for International Law for his encouragement and support.

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