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# BEYOND THE *FAKULTAS*' FOUR WALLS: LINKING EDUCATION, PRACTICE, AND THE LEGAL PROFESSION

Stephen A. Rosenbaum, J.D., M.P.P.<sup>†</sup>

*Abstract:* More than fifty years after the first post-colonial Southeast Asian regional conference on legal education, commentators and educators do not necessarily agree on the appropriate curricular balance between theory, doctrine, and practice, or what role the government should play in directing the orientation of legal studies and careers in Indonesia's law schools. The author argues in favor of legal education that is rich in experiential learning and integrates the involvement of practitioners and doctrinal faculty. This objective may be a relatively new reality in Indonesia, but also one that needs revitalization in other Southeast Asian nations and beyond. This article lays out the contemporary debate in Indonesia over the composition and direction of legal education, asserting that consistent with best practices, learning practical skills in analysis, advocacy, and professionalism—including clinical methods—should be integrated into the program. Moreover, Indonesia's recently adopted Legal Aid Law presents an opportunity for students and staff at publicly funded law schools to become more actively involved in delivering legal assistance to the indigent. If faculties are not sufficiently resourced, they should more effectively employ lawyers and judges in an adjunct capacity, particularly in a practicum or other co-teaching model. Finally, the author argues that the State should play a guiding role in developing a cadre of social-justice lawyers.

## I. INTRODUCTION

The year 2013 marked the golden anniversary of the first regional conference report on the status of legal education in the independent nations of Southeast Asia.<sup>1</sup>

Like many other former colonies in the region, Indonesia has since undergone a number of changes in its legal education system—both in

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<sup>1</sup> The conference was actually held during the latter part of 1962 at the University of Singapore but was not formally reported on until 1963. Harry E. Groves, *Southeast Asian Conference on Legal Education*, 15 J. LEGAL EDUC. 429, 429 (1963). In addition to Singapore, delegates were sent by Indonesia, Malaya, India, Pakistan, Ceylon, Burma, Thailand, Vietnam, Cambodia, Philippines, Japan, and Australia. *Id.*

reality and rhetoric. In its early stages, the new Indonesian leadership was anxious to cast off the detested Dutch regime, but not necessarily reject a legal framework grounded in *rechtsstaat gedachte*, or rule of law.<sup>2</sup> Even before independence, Indonesian theorists were attempting to craft a Constitution that would meld the traditional and indigenous values inherent in *hukum adat* (customary law) with Western principles of individualism, ownership, and contractual rights.<sup>3</sup> While the rhetoric may have condemned the role of formal law and lauded the importance of a uniquely Indonesian social and communitarian ethic, there appeared to be no disagreement that the role of the *fakultas hukum*<sup>4</sup> is to produce lawyers, advocates, judges, and bureaucrats who would help foster industrialization and modernization in the new nation.

Yet, to this day, commentators and educators do not necessarily agree on the appropriate curricular balance between theory, doctrine, and practice, or what role the government should play in directing the orientation of legal

<sup>2</sup> The Dutch term for rule of law later yielded to *negara hukum*, but remained a concept in name only, eventually giving way to a new revolutionary slogan. Daniel S. Lev, *The Lady and the Banyan Trees: Civil-Law Change in Indonesia*, 14 AM. J. COMP. L. 282, 289 (1965); see generally Yves Dezalay & Briant G. Garth, *Law, Class and Imperialism*, FRENCH NATIONAL CENTER FOR SCIENTIFIC RESEARCH (Feb. 2008) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1092161](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1092161) (last visited March 8, 2013); Adriaan Bedner, *Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions*, 5 HAGUE J. RULE L. 253 (2013). See also David M. Mednicoff, *Can Legalism Be Exported? U.S. Rule of Law Work in Arab Societies and Authoritarian Politics*, 11 ILSA J. INT'L & COMP. L. 343, 345 (2005) (stating that “the rule of law generally refers to the preeminence of legal norms over personal political authority, or, as often formulated, a government of laws, not men.”). Scholar Erik Jensen cites several publications “[f]or those who are interested in the great historical debates about the definition of rule of law.” Erik G. Jensen, *Justice and the Rule of Law*, in BUILDING STATES TO BUILD PEACE 119, 138 n.16 (Charles T. Call ed., 2008). See also Stephen A. Rosenbaum, *Clinique To Go: Changing Legal Practice in One African Nation in Six Days*, 17 INT'L J. CLIN. LEG. EDUC. 59, 59 n.2 (2012) (noting that the term rule of law “is endowed with ‘a multiplicity of definitions and understandings’” and “is not a recipe for detailed institutional design [but] an interconnected cluster of values” (citations omitted)).

<sup>3</sup> See Satjipto Rahardjo, *Between Two Worlds: Modern State and Traditional Society*, 28 L. & SOC'Y REV. 493, 493-94 (1994) (stating that the *Undang-undang Dasar* (Constitution) of 1945, the year in which Indonesia proclaimed independence, “expressly stipulates that the Republic of Indonesia is a state based on law . . . [and] has from the very start relied on legal concepts, theories, and doctrines that were already part of the dominant legal tradition of the world.”) This tradition stems from European colonization that “led to the civil law and the common law being imposed on the . . . colonies and becoming the basic law . . . even upon independence.” Tan Cheng Han, *Change and Yet Continuity—What Next After 50 Years of Legal Education in Singapore?*, SING. J. LEGAL STUD. 201, 203 (2007). Yet, at the same time, Indonesia started to develop a legal system that infused new laws with the precepts and concepts of *adat*. Glen Wright, *Indigenous People and Customary Land Ownership Under Domestic REDD+ Frameworks: A Case Study of Indonesia*, 7 L. ENV'T & DEV'T J. 117, 125 (2011), available at <http://www.lead-journal.org/content/11117.pdf>.

<sup>4</sup> This is the term for law school in Bahasa Indonesia, the country's official language. Together with the *Hukum Nasional* (national legal system), Bahasa Indonesia “is considered a major contribution toward bringing this nation, plural in many aspects, into homogeneity.” Rahardjo, *supra* note 3, at 497. For a more nuanced interpretation of the transition from colonial to post-colonial legal educational objectives and the role of language, legal legacy, and national identity, see Adriaan Bedner, *Some notes on the Future of Indonesian Legal Education 3-4* (2013) (unpublished manuscript) (on file with author).

studies and careers.<sup>5</sup> Even where there may be shared recognition about the desirable objectives and outcomes for law graduates, there is an acknowledgment that law faculties have limited human and material resources to meet them.<sup>6</sup> Moreover, jurisprudence is underdeveloped amongst jurists, robust research by faculty is lacking, and there is little critical thinking by students.<sup>7</sup> The contemporary conversation about the direction of legal education is not restricted to Indonesia; it is mirrored in sister law schools across Southeast Asia<sup>8</sup> and should resonate with legal educators everywhere who are examining traditional pedagogy.

In this article, I argue in favor of a legal education that is experientially rich and dependent on the integration of practitioners and doctrinal faculty. This objective may be a relatively new reality in Indonesia, but also one that needs re-emphasis or refinement everywhere, from neighboring Asian nations to the United States. In Part II, I lay out the basic debate in Indonesia over the composition and direction of legal education. I assert that learning practical skills in analysis, advocacy, and professionalism should not be postponed, but rather integrated into the typical four-year undergraduate degree program, consistent with best pedagogical practices. Curriculum should not be designed exclusively for those entering careers in commercial law firms, business enterprises, or government ministries, but also for those who want to represent the indigent and otherwise marginalized and disenfranchised members of society. In Part III, I briefly describe the educational practices and reforms taking place among Indonesia's Southeast Asian neighbors, with particular emphasis on the trend toward employment of practical legal education methods such as clinics. In Part IV, I assert that if faculties are not sufficiently resourced, they should more effectively employ lawyers and judges in an adjunct capacity, particularly in a practicum or other co-teaching model. In this way,

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<sup>5</sup> Moreover, among those who favor a theoretical or doctrinal approach to teaching law, there is a debate over the appropriate balance between teaching so-called formal law and the indigenous or traditional law (*hukum adat*). For more on the debate, see, e.g., Rahardjo, *supra* note 3, at 497-502; Bedner, *supra* note 2, at 497-502. As early as 1965, Professor Daniel Lev made reference to "such old, but still alive, debates" over the conflict between *adat* law and Islamic law. Lev, *supra* note 2, at 292 n. 28.

<sup>6</sup> See Hikmahanto Juwana, *Legal Education Reform in Indonesia*, 1 ASIAN J. COMP. L. 1, 9-11 (2006).

<sup>7</sup> Leiden University Senior Law Lecturer Adriaan Bedner, in his critique of Dean Hikmanato Juwana's analysis, paints a harsh portrait of the law and lawyers: "The same text books are used for years and teaching methods are one way communications . . . A culture has emerged in which students will never think critically about a subject, because the answers expected from them at exams should be as close to what they have been dictated as possible." Bedner, *supra* note 4, at 6. See also Bedner, *supra* note 2, at 257 (citations omitted) (complaining that Indonesian law graduates never learn to "do law" or "to acquire an effective 'internal legal attitude'" because the study of law is "highly theoretical, but at the same time superficial . . .").

<sup>8</sup> See *infra* Part III.

the Legal Academy will develop lawyers with professional skills and increase the ranks of a professoriat that is practice-oriented and familiar with best teaching practices. Law faculties must have the autonomy to initiate new programs and deviate from a centralized, time-honored curriculum.

In opting for clinical and other professional skills programs, law schools have formed partnerships with non-governmental organizations (“NGOs”), offering training or other technical support. While these organizations have provided exemplary programming, it is incumbent on law faculties to “own” the curriculum and the attendant clinics or externships, and not simply “contract out” the educational mission to NGOs or ad hoc field placements. Finally, in Part V, I argue that the State, through its public institutions, should play a guiding role in developing a cadre of social justice lawyers. The recently adopted Legal Aid Law presents an opportunity for students and staff at publicly funded law schools to become more actively involved in delivering legal assistance to the poor.

While the analysis of this article is directed primarily at law faculties in Indonesia, where there is currently national debate about the direction of legal education reform, these arguments are equally applicable to other nations in Southeast Asia that are in the midst of transitioning from legal regimes heavily influenced by colonial or post-colonial authoritarian governments. The discussion about the integration of adjunct practitioners and full time faculty members has universal relevance.

## II. INDONESIAN LEGAL EDUCATIONAL REFORM

Almost two decades ago, Dean Satjipto Rahardjo of the University of Deponogoro argued that “[e]ducation has not played an important role in legal development in Indonesia.”<sup>9</sup> In a more recent commentary, University of Indonesia Dean Hikmahanto Juwana<sup>10</sup> asserted that today’s graduates are still inclined to be “legalistic” and seem unaffected by post-independence developments in the field of legal education.<sup>11</sup> He maintains that students

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<sup>9</sup> Rahardjo, *supra* note 3, at 500. Several years before his death, Dean Rahardjo wrote passionately about “[a] longing for a distinct Indonesian theory [that] pervades the academic community—a theory with more structured, elaborated, and systematically developed legal concepts and constructs, which would give direction to national development. Basic to such a theory would be, for instance, the legal construction of the concepts of ownership and contract, the criminal justice system, and constitutional law. The question is whether it is possible to develop legal concepts and doctrines nurtured by communal and harmonious values.” *Id.* at 502.

<sup>10</sup> Professor Bedner refers to this as the most comprehensive and critical (contemporary) account of Indonesian legal education. Bedner, *supra* note 4, at 6. Juwana served as dean from 2003 to 2013.

<sup>11</sup> See Rahardjo, *supra* note 3, at 500-02. Professor Bedner criticizes the “legalistic” lawyers as “good at memorising and . . . faithful to legal doctrine. They have not gained a broad understanding of the law, but are apparently trapped in its details . . .” Bedner, *supra* note 4, at 6. He describes them as those

are in fact no different from graduates of the Dutch colonial era<sup>12</sup> and do not reflect the policy preferences of Indonesia's political leaders or the needs of the country.<sup>13</sup> If Indonesia's future lawyers are to serve the needs of the nation and its people, further educational reforms will be necessary. This section describes the evolution of Indonesia's legal education, reviews of the debate over legal education in Indonesia, and argues that learning practical skills in analysis, advocacy, and professionalism should not be postponed, but rather integrated into the typical four-year undergraduate degree program.

#### A. *Post-Colonial Legal Education Framework*

Soekarno, Indonesia's independence leader and first President, had called for a legal revolution to overthrow all aspects of colonial law, criticizing legal experts and formal law as "conservative powers serving to obstruct the wheels of revolution."<sup>14</sup> In the early 1960s, Soekarno summoned jurists to become "agents of the Revolution"<sup>15</sup> as part of his Guided Democracy (*Demokrasi Terpimpin*) political scheme.<sup>16</sup> Juridical sources dating from the colonial period were no longer considered legally binding, but mere "guidelines."<sup>17</sup> The practical effect of the edict was limited, but its ideological consequences were significant and further demoralized the legal community.<sup>18</sup>

When Soeharto replaced Soekarno as President in 1967, legal education was designed primarily to ensure that graduates were able to

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who favor pragmatism and economic development over social justice and social utility. *Id.* at 7 (stating that "while the relation between legal certainty, justice and social utility is always dynamic, in Indonesia it is both unsettled and contested—which makes reform of legal education a highly political issue.").

<sup>12</sup> See Juwana, *supra* note 6, at 5.

<sup>13</sup> See *id.* at 6.

<sup>14</sup> *Id.* at 2 n.1.

<sup>15</sup> Bedner, *supra* note 2, at 258.

<sup>16</sup> *Id.* at 259.

<sup>17</sup> *Id.* at 258. Law in the colonial Netherlands Indies was "pluralist in nature and a field of bitter contestation between those who favoured the continuous application of indigenous (*adat*) law, leading to legal pluralism, and the protagonists of a uniform system to be applied to all of the population in the colony." *Id.* at 255. After independence, all Indonesian governments sought to replace *adat* with "western-inspired legal ideas—even if not always with great success." *Id.* For more discussion of the colonial and post-colonial reconciliation of Western, customary, and Islamic law, see generally Lev, *supra* note 2.

<sup>18</sup> See Lev, *supra* note 2, at 289. "Older notions of law began to crumble as political control weakened and as ideological emphases were concentrated on national self-identify, national unity, and the continuing revolution. The rule of law (*Negara hukum*) lost force as a symbol, giving way to the 'law of revolution' (*hukum revolusi*)." *Id.* See also Dezalay & Garth, *supra* note 2, at 12 (relating that lawyers who sought to maintain professional autonomy were accused of being "too much Western oriented [and] too much Dutch thinking.").

support the socio-economic development process in Indonesia.<sup>19</sup> Under the New Order (*Orde Baru*), legal codes were binding once again, but the goal of developing a coherent system of legal reasoning remained elusive. The Soeharto regime tightly controlled the judiciary throughout the 1970s and 1980s. New law schools were established, and although they produced a larger number of would-be attorneys and officers of the court, “their quality further declined.”<sup>20</sup> Professor Adriaan Bedner has observed that while the New Order government supported Soeharto’s attempts at modernization of Indonesian law as part of his overall nation-building and economic development program, “in the end it was neither prepared to tolerate an independent judiciary nor to support an independent-minded academic community.”<sup>21</sup>

The curriculum reform of 1993 did respond to the needs of employers, ensuring that graduates not only knew the theoretical aspects of the law, but also possessed the necessary legal skills to practice.<sup>22</sup> At the time, Dean Rahardjo commented that the reform was intended “to increase the practical knowledge imparted in a legal education”<sup>23</sup> and that “people generally want law schools to continue to educate people to be judges, attorneys, and advocates. Keeping the orientation of curriculum to the job market means that legal education is dominated by the modern sector—by business, banking, and bureaucracy.”<sup>24</sup>

However, the graduation of more employment-ready lawyers has not ended the divided thinking about the orientation of Indonesian legal education. Many reformists close to Rahardjo argue against legal positivism in favor of considering a variety of non-legal sources in order to attain a just solution in a given case.<sup>25</sup> They advocate for the formal preparation of “progressive” law graduates.<sup>26</sup> Progressive legal education—still at the

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<sup>19</sup> Law students were expected to know legal theory and the prevailing laws and regulations, but also to be sensitive to how the law operated in the community. Juwana, *supra* note 6, at 2-3. One commentator describes this period as a return to education founded on three rule of law principles of the 1945 Constitution: supremacy of law, equality before the law, and due process of law. See Wasis Susetio, *Building A New Paradigm in Law Education in Term[s] of Upholding the Rule of Law in Indonesia Through Clinical Study*, 7 US-CHINA L. REV. 52 (2010).

<sup>20</sup> Bedner, *supra* note 2, at 259.

<sup>21</sup> *Id.* at 260. Soeharto and the “Berkeley mafia” of economist-technocrats assembled around him discovered that law got in the way of economic development. When the President “found no need to invest in law to legitimate his anti-Communist regime . . . [t]he ‘legal euphoria’ came to an end.” Delazay & Garth, *supra* note 2, at 12.

<sup>22</sup> Juwana, *supra* note 6, at 3.

<sup>23</sup> Rahardjo, *supra* note 3, at 500.

<sup>24</sup> *Id.* Professor Bedner maintains that despite fifteen [sic] years of *Reformasi*, contemporary legal education in Indonesia “is still very much a New Order heritage.” Bedner, *supra* note 4, at 6.

<sup>25</sup> Bedner, *supra* note 2, at 264.

<sup>26</sup> *Id.*

theoretical stage—opposes the educational status quo.<sup>27</sup> Its development may be read as a reaction to the law's unresponsiveness to fundamental changes occurring in Indonesia and elsewhere in Southeast Asia. The progressives' main adversaries are the proponents of *hukum murni* (pure law). These positivists argue for a system that only looks at legal rules found in a very limited number of legal sources, and consider everything outside of these sources as extra-legal at best.

Lastly, a less outspoken group maintains that jurists should take into account social realities in order to obtain just solutions, an approach referred to in terms of realism, socio-logical jurisprudence, or socio-legal.<sup>28</sup> According to Bedner, however, “[t]hese groups seem more engaged in a debate about what law is than about trying to improve the disciplinary study of law.”<sup>29</sup>

Two factors underlie questions about the direction of legal education and the law in Indonesia and Southeast Asia in general. The first is the globalization of the economy, ideas, and culture. The second is the transition from a society founded on autocratic or state power to one genuinely founded on the rule of law. Whereas legal academics and lawyers seem to agree that law school curriculum should serve the interests of future employers and must respond to globalization and transition to rule of law, they disagree about its content—and the influence of political leadership. In particular, as discussed below, there are conflicting views about whether theory and practice should be combined in the four years of law school education.

### B. *Theory, Doctrine, and Practice*

The dichotomy between knowledge of legal detail and greater understanding of the law seems to mirror what one Southeast Asian law commentator calls the distinction between the “doctrinal” versus the “theoretical” approach.<sup>30</sup> Dean Tan Cheng Han,<sup>31</sup> of the National University of Singapore, argues that the latter focuses not only on the teaching of legal doctrine, but also on facilitating student understanding of legal theory and

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<sup>27</sup> See Juwana, *supra* note 6, at 4; Bedner *supra* note 2, at 264. In Professor Bedner's taxonomy, the “progressive” lawyers are Indonesia's version of legal realists who are oriented to justice and social utility outcomes and argue the importance of social sciences informing the study of law. Bedner, *supra* note 4, at 7-8.

<sup>28</sup> Bedner, *supra* note 2, at 264.

<sup>29</sup> *Id.*

<sup>30</sup> See Tan Cheng Han, *Challenges to Legal Education in A Changing Landscape—a Singapore Perspective*, 7 SING. J. INT'L & COMP. L. 545, 556 (2003).

<sup>31</sup> Tan's deanship ended in 2012.



concepts and an awareness of the differences in approach in other legal systems.<sup>32</sup> Some employers say they prefer graduates who “know...laws and regulations,” as opposed to a broader or deeper understanding of the law.<sup>33</sup> This preference for a technocratic or ministerial orientation seems counter-intuitive and even ironic, given the need for individuals with critical thinking and practical skills to enter a profession, energize the economy, or aid development.

While professional education exists outside the confines of the university—for example, postgraduate training for judges, prosecutors, and other government lawyers—it fails to effectively combine theory and practice and merely repeats what was learned at the faculty.<sup>34</sup> This is because the academics who teach most of the courses generally have minimal, if any, experience in practice, and those practitioners who teach in the professional program often use material that is theoretical in nature.<sup>35</sup>

Notwithstanding the arguments above, Dean Juwana maintains that law school cannot inculcate both a thorough theoretical understanding of the law and the skills demanded by the world of commerce, government, and society at large.<sup>36</sup> The fusion of university and professional legal education is not a realistic objective, he argues, because the allocation of time—typically four years—for students to garner both theoretical (academic or “university”) knowledge and practical knowledge (i.e., professionalism)<sup>37</sup> is too short.

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<sup>32</sup> Tan Cheng Han, *supra* note 30, at 556.

<sup>33</sup> Juwana, *supra* note 6, at 5. Professor Bedner points out a contradiction: while Dean Juwana “first argues that graduate employers prefer the type of graduate produced today by Indonesian law faculties, he later on refers to the [employers’] complaints and says that the same employers deem them unable to compete with graduates from other countries.” Bedner, *supra* note 4, at 6.

<sup>34</sup> See Juwana, *supra* note 6, at 8.

<sup>35</sup> *Id.* at 7-8; see also *infra* note 107.

<sup>36</sup> Juwana, *supra* note 6, at 5-6.

<sup>37</sup> Professor Juwana’s reference to professionalism and professional education appears to be used in juxtaposition to theoretical education. *Id.* at 11-12. Other commentators have used the terms “liberal” and “vocational” to contrast the two approaches. See, e.g., Tan Cheng Han, *supra* note 30, at 546, 556, 559, 565-66, 578. In the American legal educational context, the term “professional” has a more particular meaning. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 77-80, 119 (Clinical Legal Educ. Ass’n 2007) (explaining that professional skills and professionalism include “communicat[ing] effectively” with colleagues and other professionals and capacity to deal sensitively and effectively with colleagues and others); WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 97, 185-86 (Carnegie Found. for Advancement Teaching 2007) (describing how American legal education includes professional “apprenticeship” involving intensive socialization, professionalization, and values-shaping). The debate about law schools’ role in developing professionalism is not new. I have previously written that “[w]hile Professor Stuckey and the Carnegie Foundation bring a nuanced and renewed attention to longstanding concerns, ‘the same critiques and responses have been repeated’ for seventy-five years in the vast literature on preparation of law students for practice.” Stephen A. Rosenbaum, *The Juris Doctor Is In: Making Room at Law School for Paraprofessional Partners*, 75 TENN. L. REV. 315, 316 n.11 (citation omitted) (2008).

Juwana recommends that the future academic curriculum should concentrate on providing theoretical and doctrinal mastery of the laws and not be “burdened” with the need to provide professional legal education.<sup>38</sup> The curriculum for undergraduate programs should be designed to impart strong academic legal knowledge to students, leaving it to the graduate-level Masters program to attend to three main objectives: an “academic” agenda; enhancement and deepening the law graduate’s knowledge of the law; and a “professional” agenda.<sup>39</sup>

Bender adopts a more nuanced position with respect to the curricular emphasis placed on theory or doctrine over practice. He contends that any reform must address such issues as the unmanageable quantity of course requirements, haphazard selection of courses, and memorization of rules, along with the decline of rigorous scholarship and development of jurisprudence.<sup>40</sup> While I do not disagree with his critique—and would suggest those deficiencies can be remedied concurrently with the reforms proposed here—I have chosen to focus on the experiential, practical, and social justice aspects of the law school curriculum.

In any event, privileging a theoretical university (undergraduate) curriculum at the expense of the practical is at odds with the international trend in legal education, i.e., blending the doctrinal and the practical in one field of study.<sup>41</sup> Professor Jeff Giddings goes so far as to describe the liberal and professional division—well-known in Commonwealth legal education systems—as counterproductive and a “false antithesis.”<sup>42</sup> One of the consequences of “perpetuating the artificial ‘skills/theory’ dichotomy”<sup>43</sup> is that it affects students’ understanding of the professional standard under which they will operate once they leave the Academy.<sup>44</sup> If there are problems with the current educational delivery system, rather than discard

<sup>38</sup> Juwana, *supra* note 6, at 11-12. While elements of legal practice may be encountered by students in the university, Juwana believes these should not be the major concern of the curriculum. *Id.* at 12.

<sup>39</sup> *Id.* at 13-14.

<sup>40</sup> Bedner, *supra* note 2, at 255-63.

<sup>41</sup> See, e.g., JEFF GIDDINGS, PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION 43-44 & nn. 14 & 17 (2013) (noting acceptance by United States and Australian authorities of integrated theory and practice in legal education); THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE chapters 1-7 (Frank S. Bloch, ed., 2010) (describing history of clinical education reform efforts in North and South America, Africa, Commonwealth nations, Asia, and Europe).

<sup>42</sup> GIDDINGS, *supra* note 41, at 44 (citing noted South African academic and jurist Sir Bob Hepple. Bob Hepple, *The Renewal of the Liberal Law Degree*, 55 CAMBRIDGE L.J. 470, 471, 477 (1996)).

<sup>43</sup> Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 JOHN MARSHALL L. REV. 303, 341 (2000). Moreover, Busharis and Rowe “have found that students often view the standards to which they are held in law school [are] not attainable or [are] unrealistic in the practice of law. This leaves a vacuum that is too often filled by habits developed in haste.” *Id.* at 341-42.

<sup>44</sup> *Id.*

the desired professional skills curriculum, the instructional mechanism should be retooled as suggested in Parts IV and V below.

### C. *Connecting Learning to Lawyering*

Teaching technique is another area of concern.<sup>45</sup> Professor Juwana claims that those who teach law are resistant to change and ignore the fundamental changes in the professed objectives of legal education.<sup>46</sup> Students are alienated by a “Eurocentric” method of lecturing<sup>47</sup> and are bored because the course materials are foreign to them and they think the “law is not ‘real’ or something that they can relate to,” but merely a mandatory class requirement.<sup>48</sup> Rather, lecturers must be capable of encouraging students to know more about the topics under discussion and abandon the one-way communication method.<sup>49</sup>

Requiring students to do something to mentally process the concepts they are learning—instead of merely sitting and listening—is crucial to learning.<sup>50</sup> They must see their learning as important to their personal and professional needs. Consistent with adult learning theory, law students want to understand the relationship between the learning goals of the class and the methods the professor is using to achieve those goals. Students should be in control of their own learning process and have a role in deciding what and how they will learn.<sup>51</sup>

One instructional approach that recognizes the need to relate learning goals to methodology is the Competency-Based Curriculum (“CBC”). In the field of legal studies, for example, the faculty identifies professions that law graduates are likely to enter.<sup>52</sup> Once the professions are identified, the

<sup>45</sup> Hikmahanto Juwana, *Teaching International Law in Indonesia*, 5 SING. J. INT’L & COMP. L. 412, 417 (2001).

<sup>46</sup> Juwana, *supra* note 6, at 4.

<sup>47</sup> Juwana, *supra* note 45, at 417.

<sup>48</sup> *Id.* Professor Juwana adds: “In my experience, I have had to refer to the Hollywood television series ‘Xena: Warrior Princess’ or the academy award winning movie, ‘Gladiator,’ to make student[s] understand the time and setting when international law was at its infancy.” *Id.* Although writing specifically about the teaching of international law, his critique is surely applicable to other course subjects.

<sup>49</sup> Juwana, *supra* note 6, at 7, 9, 13. Most lessons are presented via one-way communication, such as lecturers dictating notes to students and the students simply copying what is presented to them. *Id.* at 7. One of my LL.M. students from Indonesia, a law lecturer herself, described the phenomenon using the metaphor of a chef: “First, we had . . . Teacher Centered Learning . . . everything came from the lecturer, who buys the ingredients, prepares the meal, and feeds the students.” E-mail from Birkah Latif, LL.M. student, University of Washington School of Law, to Stephen A. Rosenbaum (Sept. 29, 2013) (on file with author).

<sup>50</sup> SOPHIE SPARROW ET AL., *TEACHING LAW BY DESIGN FOR ADJUNCTS* 4 (2010).

<sup>51</sup> *Id.* at 6.

<sup>52</sup> Professor Juwana offers the following as perceived competencies: A law graduate will be able to 1) appreciate and develop arguments from different perspectives, 2) provide a basis for an argument that is

necessary competencies can be determined and factored in to the courses of instruction.<sup>53</sup> The CBC is already established in Indonesia's primary and secondary schools, and in other fields of higher education.<sup>54</sup>

Students learn best when they are active participants in the learning process.<sup>55</sup> Active learning and authentic lawyering experiences, including role-playing, help students maintain interest in the learning process.<sup>56</sup> Ultimately, as students want to become good lawyers, professors should connect learning to law practice, articulate explicit expectations, give students an opportunity to practice, provide feedback, and allow them to show progress in multiple ways.<sup>57</sup> These forms of "applied" education range from classroom simulations to moot court competitions to externships to in-house clinics.<sup>58</sup>

Dean Juwana also urges policymakers and law faculties to pay more attention to the law school infrastructure: library resources,<sup>59</sup> research and journal expertise,<sup>60</sup> lecture rooms, and large class size.<sup>61</sup> Moreover, burgeoning work opportunities off-campus often attract senior members of

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advanced; and 3) present an argument in a persuasive manner in written or oral form. Juwana, *supra* note 6, at 12. In a similar vein, Malaysia has adopted a *Kod Amalan Jaminan Kualiti IPTA* (Code of Practice on Quality Assurance in Public Universities) setting out learning outcomes. Nik Ahmad Kamal Nik Mahmud, *Maintaining Standards in Undergraduate Level Education in Malaysia*, 17 SING. ACAD. L.J. 913, 918 (2005).

<sup>53</sup> See generally STUCKEY ET AL., *supra* note 37, at chapter 2 (establishing desirable competencies or "outcomes" for law students based on recommendations from commentators and bar association authorities from United States and United Kingdom).

<sup>54</sup> Juwana, *supra* note 6, at 17. For a critique of competency-based learning at the postsecondary educational level, see, e.g., Amy E. Slaton, *Competency vs. Open-Ended Inquiry*, INSIDE HIGHER ED, <http://www.insidehighered.com/views/2014/02/21/essay-questions-benefits-rush-competency-based-education> (last visited Feb. 23, 2014). History Professor Slaton "fear[s] that the deployment of 'competencies' and 'proficiencies' as instruments of economy and brevity is simply antithetical to the open-ended inquiry that is foundational to rigorous critical thinking, for learner and teacher."

<sup>55</sup> Tan Cheng Han, *supra* note 3, at 212-13 (discussing the importance of active learning and student-centric pedagogy).

<sup>56</sup> SPARROW ET AL., *supra* note 50, at 58-59.

<sup>57</sup> *Id.* at 24.

<sup>58</sup> See, e.g., *The 2010-11 Survey of Applied Legal Education*, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (May 6, 2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (last visited Feb. 18, 2014) (stating that "applied legal education" includes live-client clinics under supervision of faculty member who is also a licensed attorney as well as "off-site" field placement programs in which students are simultaneously taught and supervised by law school faculty and practicing lawyers).

<sup>59</sup> Libraries have generally been disregarded in Indonesian legal education; even where adequate law libraries do exist, the majority of lecturers and students do not actively utilize their resources and many materials are outdated. Juwana, *supra* note 6, at 7-8.

<sup>60</sup> Many law faculties in Indonesia do not currently produce law journals, and those that do exist lack professionalism in management. *Id.* at 8. The majority of lecturers neither research nor publish in academic journals. Whatever research or writing they do undertake is often the bare minimum required for promotion. *Id.* at 6-7.

<sup>61</sup> *Id.* at 6-8.

the faculty away from the campus.<sup>62</sup> While there should be room for diverse approaches, the future orientation of law faculties, legal education, and the legal profession rests on resolving these fundamental issues about the nature of the curriculum and the instructional models. To resolve these issues, Indonesia can look to the larger trends in Southeast Asia, and law schools should seek to include more practitioners in their teaching mission.

### III. THE TREND IN SOUTHEAST ASIA TOWARD PRACTICAL LEGAL EDUCATION

Indonesia is not alone in rethinking the role of law schools and the education and training of future lawyers. As noted below, other institutions in Southeast Asia, particularly the law schools in the Association of Southeast Asian Nations (“ASEAN”) countries, are addressing the same questions. The public discussion is equally focused on favoring theory over practice, with a particular emphasis on globalization of educational practices, such as clinical methodology, and of the legal profession itself.

#### A. *Education Reform Elsewhere in the Region*

As discussed below, a number of national and private law schools, sometimes in partnership with NGOs, have been successfully piloting some form of experiential or clinical education.<sup>63</sup> Yet, not all jurists or legal educators are convinced of the merits of this approach.

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<sup>62</sup> *Id.* at 7. In Indonesia it is considered highly prestigious for lecturers to work off-campus, in government agencies, and in the private sector. Some faculty members are also attracted to campus administration. *Id.*

<sup>63</sup> I use the word “clinical” in its broadest sense to encompass any practical, service-learning, or experiential education or training offered to law students. This includes in-house, live-client legal services settings, classroom simulations, and supervised field placement or externship for academic credit. *See, e.g.*, STUCKEY ET AL., *supra* note 37, at 166, n. 542; GIDDINGS, *supra* note 41, at 75-76, nn. 1-2 (2013). For an excellent overview of clinical legal education—its history, theory and application—see *id.*, chapters 1-4. Clinical methodology may include supervised representation of clients, use of simulated exercises in a variety of settings, both within law schools and without, and is designed to teach skills and values necessary to the ethical and competent practice of law. However, a colleague and I have observed that “[r]egrettably, while there is legitimate pedagogical debate within the Academy about what constitutes the best experiential model for preparing future lawyers, it is sometimes manifested in a divisiveness and competitiveness between ‘live clinic’ and ‘skills’ clinicians and between those favoring in-house, as opposed to field placement clinical models. This only serves to further marginalize an already marginalized faculty of experience-based legal educators and does little to foster collegiality and collaboration.” Suzanne Rabé & Stephen A. Rosenbaum, A “*Sending Down*” *Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. LEGAL EDUC. 296, 297 n. 2 (2010).

Dean Tan has written extensively about the region's "tension between liberal and vocational education."<sup>64</sup> The aim of a liberal education is "that students should not merely know or know how to but understand why things are as they are and how they could be different,"<sup>65</sup> whereas "vocational" instruction "will produce graduates who are ready made for practice."<sup>66</sup> This is not much different from the tension discussed above in the Indonesian context, except that even under the "liberal" rubric, there is room for disagreement.<sup>67</sup> After further analysis, including a discussion about the impact of globalization and technology, Tan concludes that a solid legal education must encompass all of these perspectives, and to urge otherwise is to foster a "false and dangerous antithesis between academic and practical."<sup>68</sup>

Nevertheless, Tan does not unequivocally endorse a professional skills or clinical curriculum. He suggests that courses perceived as vocational should be offered, but with the caveat that they "not be taught simply to teach students how to do things," but to better illuminate how legal principles operate, thereby enabling students to obtain a deeper, more personalized and more critical understanding of the law."<sup>69</sup> This concern for integrated instruction could be expounded upon. Law schools transitioning from exclusively traditional doctrinal and theory classes may fail to embrace the newer experiential components of the curriculum.<sup>70</sup> This failure results

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<sup>64</sup> Tan Cheng Han, *supra* note 30, at 556. See also Mahmud, *supra* note 52, at 925 (noting that a similar debate has taken place in Malaysia).

<sup>65</sup> Tan Cheng Han, *supra* note 30, at 556.

<sup>66</sup> *Id.* at 557.

<sup>67</sup> By doctrine, Tan means "knowing, understanding and applying legal rules. The emphasis is on 'black letter' law." See *id.* at 565. Theory is defined as "any academic analysis[is] of the law which requires a degree of abstraction from the principles stated in case and statute-based law" or "the study of law from the 'outside.' By this is meant the use of intellectual disciplines, external to law, to carry out research on its economic, social or political implications." *Id.* at 565-66 (citations omitted).

<sup>68</sup> *Id.* at 558 (citing WHAT ARE LAW SCHOOLS FOR? 20 (Peter Birks ed., 1996)).

<sup>69</sup> Tan Cheng Han, *supra* note 30, at 578. He also supports a clinical legal education component "to develop the right attitudes towards ethics and social responsibility." Tan Cheng Han, *supra* note 3, at 212. Dean Tan attributes the law faculty's reluctance to offer these courses as stemming from a fear of creating a "trade school" mentality." *Id.* Academics in the Global North have expressed similar fears when curricular reforms were being introduced. See, e.g., Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Its Gaps We Should Seek to Narrow*, 8 CLIN. L. REV. 109, 117-19, nn. 38-49 (2001) (describing objections unleashed by law school deans, doctrinal faculty members, and others to sweeping experientially-based reforms recommended in 1992 landmark report issued by a section of the American Bar Association: *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (the so-called "MacCrate Report").

<sup>70</sup> Professor Deborah Maranville writes that curricular integration "acknowledges that the quality of learning may vary according to whether it is relatively unconnected to other experiences, or is integrated with doctrinal courses and other learning experiences." Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Client Experiences*, 7 CLINICAL L. REV. 123, 133

in a curricular disconnect that breeds misunderstanding and a “contracted out” mentality on the part of administrators, teaching staff, and even students, further hampering a fully integrated educational mission.

Malaysian academician R. Rajeswaran asserts that “there is too much black letter [law] taught at the academic stage at our law schools” and urges a greater awareness of the need for more professionalism in legal education, particularly in experiential learning.<sup>71</sup> Mock trials and moot advocacy competitions are well established in most law schools in Malaysia, as in all common law countries, as a useful learning activity, either as part of the curriculum or on an extra-curricular basis, both at the undergraduate and professional levels.<sup>72</sup> All law faculties also arrange short-term internships of students with law firms or legal aid clinics during the semester vacations.<sup>73</sup> Malaysian schools have also promoted student-centered learning in small groups and tutorials.<sup>74</sup>

Recommendations for inter-university collaboration, innovation, and adaptation are applicable to law faculties in all ASEAN countries, whether the systems are based on common law or civil codes.<sup>75</sup> The teaching of comparative perspectives can also be enhanced through greater collaboration between law schools, faculty exchanges, and joint teaching programs. The ASEAN Law Association is perhaps the proper body to initiate annual meetings of all the deans of the leading law faculties on a formal basis to chart a course for cooperation among the universities.<sup>76</sup> Long-range goals for Southeast Asia include establishing a permanent regional association of

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(2000). Afghan faculty members, with whom I have spoken at universities experimenting with clinical education, invariably describe the legal clinic as an entity outside the defined curriculum, with little to no involvement by the permanent instructional staff—whether it is a two-week abbreviated course conducted off-site by prosecutors or judges or an on-going training program led by NGO staff lawyers. On a similar note, I found that among Egyptian law faculty “[l]egal [c]linic’ or ‘interactive teaching’ may be bandied about like buzzwords, understood in name only. There is no university-level or national agreement on the use of interactive teaching techniques, as some doubt the effectiveness of these teaching tools and how appropriate they are in the law school setting.” Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERK. J. MIDEAST AND ISLAMIC L. 39, 57-58 (2012). See also, Lisa Bliss, Lessons Learned from Teaching Clinical Legal Education in Thailand, 63 J. LEGAL EDUC. 524, 526 (2014) (observing how “the initial understanding is that clinical legal education is a different method of teaching” which ranges from interactive instruction to live client interaction).

<sup>71</sup> See generally R. Rajeswaran, *Legal Education in ASEAN in the 21st Century* 7 (Nov. 22-25, 2006) (working paper No. 2: Malaysia), available at <http://www.aseanlawassociation.org/workshop-ninthGA.html>. Although Professor Rajeswaran’s observations are based largely on the educational systems in Malaysia and Singapore, I argue that they are applicable to Indonesia as well.

<sup>72</sup> *Id.* at 7. A new moot innovation in the region is the client counseling competition. See, e.g., *id.*

<sup>73</sup> *Id.*

<sup>74</sup> See Mahmod, *supra* note 52, at 921-23.

<sup>75</sup> See generally, R. Rajeswaran, *supra* note 71 at 7.

<sup>76</sup> *Id.* at 8.

law schools, developing common standards for legal education and recognition of law degrees, and allowing freer movement of lawyers across borders.<sup>77</sup>

### B. Preference for Clinical Education

Clinical legal education takes many forms throughout the region.<sup>78</sup> Various law schools<sup>79</sup> as well as NGOs<sup>80</sup> have offered clinical training programs. Singapore recently hosted its first conference on clinical legal education, with the aim of promoting pro bono work and the creation of a regional network of sustainable clinical legal education programs.<sup>81</sup>

<sup>77</sup> Juwana, *supra* note 6, at 9.

<sup>78</sup> See, e.g., Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India in THE GLOBAL CLINICAL MOVEMENT*, *supra* note 41, at 37-44 (describing development of clinical education in Southeast Asian law schools). There is also a burgeoning body of scholarship on clinical and professional skills education programs in developing and non-Western countries. See, e.g., THE GLOBAL CLINICAL MOVEMENT, *supra* note 41, chapters 4-7 (describing development of clinical education in Africa, Asia, and Latin America); Jane Aiken, *Lessons From Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391 (2003); David F. Chavkin, *Thinking/Practicing Clinical Legal Education from Within the Palestinian-Israeli Conflict: Lessons from the Al-Quds Human Rights Clinic*, 18 HUM. RTS. BRIEF 14, (2010); Stuart R. Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. LEGAL EDUC. 101 (1998); Kirsten A. Dauphinais, *Training A Countervailing Elite: The Necessity Of An Effective Lawyering Skills Pedagogy For A Sustainable Rule Of Law Revival In East Africa*, 85 N.D. L. REV. 53 (2009); Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil & Common Law Cultures & its Implications for Clinical Education*, 15 CLINICAL L. REV. 131 (2008); Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education in Iraqi Law Schools*, 23 BERKELEY J. INT'L L. 112 (2005); DANIELA IKAWA & LEAH WORTHAM, *THE NEW LAW SCHOOL: REEXAMINING GOALS, ORGANIZATION & METHODS FOR A CHANGING WORLD* (2010); Philip F. Iya, *Fighting Africa's Poverty and Ignorance Through Clinical Legal Education: Shared Experiences with New Initiatives for the 21<sup>st</sup> Century*, 1 INT'L J. CLINICAL. LEGAL EDUC. 13 (NOV. 2000); Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 FORDHAM INTL L.J. 374 (2007); Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 55 (2009); T.O. Ojienda & M. Oduor, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, 2 INT'L J. CLIN. LEGAL EDUC. 49 (2002); Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law & a Mission of Social Justice*, 8 YALE HUM. RTS & DEV. L.J. 117 (2005); Rosenbaum, *supra* note 2; Mary Pat Treuthart & Stephen A. Rosenbaum, *Engendering a Clinic: Lessons Learned from a Domestic Violence Clinical Course in Qatar*, INT'L REV. L. 1 (2013).

<sup>79</sup> See, e.g., Rajeswaran, *supra* note 71, at 8, 10.

<sup>80</sup> These include: Bridges Across Borders South East Asia Community (BABSEA) Legal Education Initiative, Open Society Justice Initiative (OSJI), and Institute on Policy, Law and Development-Vietnam (PLD-Vietnam). The United Nations Development Programme (UNDP) has also been an active sponsor in the region. Lasky & Prasad, *supra* note 78, at 39. One U.S. clinician, who mentored law faculty in Thailand, notes the importance of external influences on the development of clinical education in the region. Bliss, *supra* note 70, at 527, 529-30. Professor Lisa Bliss credits NGOs, academic exchanges, governmental policy, and rapid economic development with spurring the growth of legal services clinics and other forms of innovative instruction. *Id.*

<sup>81</sup> BABSEA, Community Legal Education, Inaugural Singapore Clinical Legal Education Conference and Workshop March 16-17, 2012, <http://www.babseacle.org/articles/inaugural-singapore-clinical-legal-education-conference-on-march-16-2012/> (last visited Jan. 27, 2014). See also Tan Cheng



One model that has received praise is the program on Clinical Legal Education Teaching Methods conducted in Cambodia with the support of the Open Society Justice Initiative (“OSJI”).<sup>82</sup> This training aims to familiarize participants with innovative and interactive teaching methodology, and has been hailed as an example of successful inter-university collaboration.<sup>83</sup> Bridges Across Borders South East Asia Community Legal Education Initiative (“BABSEA CLE”) has piloted a model of interscholastic transnational collaboration between law schools, lawyers, and civil society.<sup>84</sup> In its yearly legal studies externship, participants from different countries work alongside the BABSEA CLE<sup>85</sup> team with NGOs and stakeholders from different communities on peer education or lay advocacy issues.<sup>86</sup>

The project demonstrates how a low-cost and replicable model integrates access to justice and collaboration between university students, lawyers, legal academics, civil society, and government actors to educate and empower underrepresented groups through rights awareness outreach. Among other things, this collaboration enables groups to participate in decision-making processes at the local and central government levels, and to nurture a pro bono community service network.<sup>87</sup>

Law schools in the Philippines have long been regarded as pioneers in clinical legal education in Southeast Asia with a strong social justice

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Han, *supra* note 3, at 212. Earlier clinical conferences and workshops, held in Phnom Penh and Manila, are credited for increasing the quality and quantity of clinical education in the region. Lasky & Prasad, *supra* note 78, at 40, 43.

<sup>82</sup> Rajeswaran, *supra* note 71, at 8. The Open Society Foundations and affiliated entities have a longstanding and respected involvement in developing clinical education in the Global South. *See, e.g., Clinical Legal Education Training Materials*, OPEN SOCIETY FOUNDATIONS (Feb. 7, 2006), <http://www.opensocietyfoundations.org/publications/clinical-legal-education-training-materials> (last visited Jan. 27, 2014). The Pannastra University of Cambodia Legal Clinic has also been an innovative leader. It is run entirely by graduates of the program and has a high number of alumni active in representation of the poor or other fields of legal advocacy. Lasky & Prasad, *supra* note 78, at 43.

<sup>83</sup> *See, e.g.,* Rajeswaran, *supra* note 71, at 8.

<sup>84</sup> *See generally* Bruce A. Lasky & Norbani Mohamed Nazeri, *The Development and Expansion of University-Based Community/Clinical Legal Education in Malaysia: Means, Methods, Strategies*, 16 INT’L J. CLIN. LEG. EDUC. 59 (2011).

<sup>85</sup> “CLE” can be an acronym for either clinical legal education or community legal education—and sometimes both.

<sup>86</sup> *See, e.g.,* Christopher Walsh et al., *Strengthening Access to Justice Through Clinical Legal Education (CLE)*, TRANSFORMING GOV’T: PEOPLE, PROCESS AND POL’Y, 380, 382-83 (2012).

<sup>87</sup> *Id.* at 389. On the development of clinical models in Southeast Asia, *see, e.g.,* Uli Parulian Sihombing, *ILRC and BABSEA CLE: Promoting Clinical Legal Education in Indonesia*, BABSEA COMMUNITY LEGAL EDUCATION INITIATIVE, [http://www.babseacle.org/wordpress/wp-content/uploads/2012/02/2011-BABSEA-CLE-Magazine\\_Online.pdf](http://www.babseacle.org/wordpress/wp-content/uploads/2012/02/2011-BABSEA-CLE-Magazine_Online.pdf) (last visited Jan. 27, 2014). The Indonesian Legal Resource Center (“ILRC”) and BABSEA jointly presented a lecture about strengthening access to justice by developing legal clinics and conducted a training workshop on how to set up a new legal clinic. *Id.*

mandate,<sup>88</sup> prompting some to call for Filipino faculties to offer courses in teacher training in ASEAN member states.<sup>89</sup> The National Economics University in Hanoi has also developed a clinic for small businesses,<sup>90</sup> the goal of which is to serve poor and marginalized communities in business registration and management.<sup>91</sup>

One popular clinical model that has proven to be easily transferable, typically referred to as “Street Law,”<sup>92</sup> informs students or marginalized populations—such as prisoners, agricultural laborers, women, or persons with little formal schooling—about basic relevant laws and their legal rights under those laws and promotes “practical law” and community empowerment.<sup>93</sup> Other clinics provide transactional legal services in the sale of land, writing of wills, or creation of small businesses or non-profit NGOs.<sup>94</sup> Although informal, these sessions offer a digestible form of legal recourse to people who would otherwise have none.<sup>95</sup> The regional increase

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<sup>88</sup> The U.S. clinical movement had a strong influence in the Philippines and, unlike their counterparts in the region, law schools incorporated fully-accredited clinical education programs into the curriculum, sometimes as a mandatory course. Lasky & Prasad, *supra* note 78, at 38-39, 49. These programs, serving the legal needs of marginalized communities, have been engaged in “an almost-religious mission to spread clinical legal education throughout the country.” *Id.* at 39.

<sup>89</sup> See, e.g., Rajeswaran, *supra* note 71, at 10.

<sup>90</sup> Tue Phuong Nguyen, *NUE CLE Clinic is in Business*, BABSEA COMMUNITY LEGAL EDUCATION INITIATIVE, <http://www.babseacle.org/articles/neu-cle-clinic-is-in-business/> (last visited Jan. 27, 2014). Clinical programs also operate at Vietnam National University (Hanoi), and elsewhere in the country, as part of a broad regional partnership under the tutelage of BABSEA and OSJI. PLD-Vietnam and the Vietnamese Bar Association have also organized training and clinical development. Lasky & Prasad, *supra* note 78, at 39-41.

<sup>91</sup> Almost 20 years ago, Ho Chi Minh City University recognized that most university-based professors were “excessively isolated from the enormous changes in the business environment and in legal practice that [we]re taking place.” Mark Sidel, *Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training*, 11 UCLA PAC. BASIN L.J. 221, 239 (1992-1993). It therefore resurrected the [formerly Saigon University] law faculty's customary reliance on adjunct faculty from practice and government agencies to teach most law courses. *Id.*; see also Paula C. Littlewood, *Journey to Vietnam*, WASH. ST. B. NEWS 9, 11 (Oct. 2011) (discussing the ABA Rule of Law Initiative delegation, which encourages clinical education and skills training and partnerships).

<sup>92</sup> See generally LEE P. ARBETMAN & EDWARD L. O'BRIEN, *STREET LAW: A COURSE IN PRACTICAL LAW* (8th ed., 2010). “Street Law” is a registered trademark. The terms “community legal education” or “public legal education” are often used to describe the same instructional model designed for lay and activist audiences. *Id.* at ii; see also Richard Grimes et al., *Street Law and Social Justice Education*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 225 (Frank S. Bloch, ed., 2011).

<sup>93</sup> *Id.* For an account of Street Law in Malaysia, see, e.g., Mahmud, *supra* note 52, at 923. Community legal education programs also operate at universities in Cambodia, Laos, Thailand, and throughout the region, including the Islamic University of Indonesia. Lasky & Prasad, *supra* note 78, at 39-43.

<sup>94</sup> Ainul Jaria Maidin, *Clinical Legal Education Initiatives In The International Islamic University Malaysia*, 7(13) J. APPLIED SCI. RES. 2169, 2170 (2011).

<sup>95</sup> *Id.* at 2171. Globalization has also increasingly influenced law curriculum in Southeast Asia. Many law schools in ASEAN nations already incorporate comparative perspectives in their teaching, and many wish to do so on a larger scale. See, e.g., Tan Cheng Han, *Legal Education in ASEAN* at 12 (2006), [http://www.aseanlawassociation.org/9GAdocs/w2\\_Singapore.pdf](http://www.aseanlawassociation.org/9GAdocs/w2_Singapore.pdf) (last visited Jan. 28, 2014). Law is

in accredited and government-sanctioned clinical programs and mandatory clinical course requirements point toward a bright future for practice-oriented legal education in Indonesia and throughout Southeast Asia.<sup>96</sup>

#### IV. ENGAGEMENT OF PRACTITIONERS IN LAW SCHOOL

In order to impart practical legal skills and prepare students for professional service, law schools must have adequate faculty resources. Yet, as noted earlier, most Indonesian law schools have a dearth of teaching staff who have practitioner experience.<sup>97</sup> To address this problem, schools should collaborate with members of the private bar, government ministries, and the judiciary by inviting individuals to teach on a part-time or adjunct basis. As discussed below, this is not merely about supplemental hiring, i.e., “filling gaps” in the curriculum or compensating for a lack of subject matter expertise on the part of the full-time doctrinal faculty. It involves a conscientious effort at integrating theory and practice that must be endorsed by the entire faculty, from the top administrator to the podium lecturer.

Adjuncts are adept at integrating theory and practice, improving the transfer of practical skills to students.<sup>98</sup> Moreover, “their special

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viewed less in autonomous national terms and more as part of a comprehensive, transnational and international legal system. *Id.* However, many law teachers have limited language abilities and have to depend on scarce or non-existent translations of legal materials. *Id.* Language barriers and inadequate financial resources also make it difficult to rely on foreign professors. *Id.* Nevertheless, a premium is placed on learning English. *See* Rajeswaran, *supra* note 71, at 10-11. The importance of English as the language of instruction and public discourse was actually noted at the 1962 regional legal education conference by the then-Chief Justice of Singapore. *See* Groves, *supra* note 1, at 433. He urged the former colonies “not to reject English under the pressure of nationalism, but to retain and strengthen it as a national asset.” *Id.*; *see also* Bedner, *supra* note 4, at 4 (observing that the decline of popular knowledge of colonial language led to a gap in Indonesian jurists’ access to jurisprudential principles developed in Dutch prior to independence).

<sup>96</sup> Having multiple university partners in Southeast Asia operate their own brand of successful clinical programming in different legal systems has also helped overcome possible challenges that clinical education is a “Western pedagogical method not appropriate” for the region. Lasky & Prasad, *supra* note 78, at 41.

<sup>97</sup> Juwana, *supra* note 6, at 7-8. Professor Bedner observes that “lecturers are described as lacking knowledge of legal practice,” but adds that “whereas they seem to be working off campus all the time – surely they should learn something there.” Bedner, *supra* note 4, at 7. Like most nations in the region, Indonesia has historically prohibited its public employee faculty members from practicing law. Lasky & Prasad, *supra* note 78, at 44.

<sup>98</sup> *See* Daniel Thies, *Rethinking Legal Education in Hard Times*, 59 J. LEGAL EDUC. 598, 619-20 (2010). Of course, not all good practitioners are necessarily good teachers. They must be encouraged to relay pragmatic or professional knowledge without feeling the need to emulate doctrinal faculty teaching methods. *See, e.g.,* Andrew F. Popper, *The Uneasy Integration of Adjunct Teachers into American Legal Education*, 47 J. LEGAL EDUC. 83, 84 (1997) (tendency of adjuncts “to do to their students in the classroom what was done to them when they were law students . . .”). *See also* STUCKEY, *supra* note 37, at 158 (recommending that law schools provide guidance and orientation on teaching methodology, syllabi, evaluation, etc. to adjunct faculty).

contribution is that they are able to think ‘transactionally,’ which combines the theory and the practice in a strategic way.”<sup>99</sup> They also provide supplemental perspectives and insights on legal reasoning, critical thinking, crafting legal arguments, and on the subject matter of [a] particular course,<sup>100</sup> and can serve as professional role models.<sup>101</sup> Students learn “the lingo of experts in their fields” to perform the work of the experts and “the importance of and interrelation between sophisticated legal analysis and practical lawyering skills.”<sup>102</sup> The Academy’s acknowledgment of the importance of practical training may not come easily. For example, it has only been in the last few decades that American law schools have weaned themselves from the anti-experiential legacy of Christopher Columbus Langdell, the founder of U.S. modern legal education. One former dean wrote that “two cures to Langdell’s disease have been administered at most law schools”: hiring adjuncts in the classroom and clinical faculty on the tenure-track or long-term-contracts.<sup>103</sup>

#### A. *Co-Teaching and Practicum Model*

One means of utilizing adjuncts to increase practical training within the Academy—and rejecting the choice between teaching legal skills or legal substance—is for law schools to offer a practicum. This is a skills-based course taught concurrently with a doctrinal course in the same area of

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<sup>99</sup> David A. Lander, *Are Adjuncts a Benefit or a Detriment?*, 33 UNIV. OF DAYTON L. REV. 285, 290 (2008); see also Thies, *supra* note 98, at 619-20 (noting that adjuncts are “generally more focused upon how to use the law strategically to accomplish client goals.”).

<sup>100</sup> See Lander, *supra* note 99, at 289-90.

<sup>101</sup> See, e.g., SPARROW ET AL., *supra* note 50, at 64. Students can sense an instructor’s professionalism, engagement to community, and commitment to values. *Id.* Adjuncts are often “extraordinarily enthusiastic” about their teaching and are in the classroom “purely and simply because they want to be there.” Lander, *supra* note 99, at 290.

<sup>102</sup> Busharis & Rowe, *supra* note 43, at 339.

<sup>103</sup> Popper, *supra* note 98, at 83 (stating that Langdell, “[o]ur infamous foreparent... considered it essential to his plan that law professors be schooled in legal theory and, preferably, not contaminated by the experiences inherent to the practice of law... This infectious disorder may still be contaminating American legal education...”). *Id.* Indeed, there is an ongoing debate about whether, and to what degree, American law schools are treating the Langdellian malady. See, e.g., American Bar Association Task Force on the Future of Legal Education *Draft Report and Recommendations* 24-25 AMERICAN BAR ASSOCIATION, (Sept. 20, 2013) (hereinafter *ABA Draft Report*) [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/task\\_force\\_on\\_lealeducation\\_draft\\_report\\_september2013.authcheckdam.pdf-211k-2014-02-27](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_lealeducation_draft_report_september2013.authcheckdam.pdf-211k-2014-02-27) (last visited March 8, 2014) ((VII)(D) “Delivery of Value to Students in Law Schools and in Programs of Law-Related Education Should Be Emphasized,” (E) “There Should be Clear Recognition that Law Schools Exist to Teach People to Provide Law-Related Services,” & (F) “There Should Be Greater Innovation in Law Schools and in Programs That Deliver Law-Related Education.”).

law.<sup>104</sup> Students who enroll in both the doctrinal course and the practicum receive an opportunity for practical experience and personal feedback on projects requiring writing, research, analysis, client communication, or other skills related to a particular substantive area of law.<sup>105</sup>

The practicum is also a vehicle for increasing interaction between the law school and the local bar.<sup>106</sup> Practicing lawyers, prosecutors, government counsel, and judges are uniquely situated to teach these practical skills courses. They practice these skills daily, and “so long as they are insightful about the skills, they have the potential to be outstanding teachers.”<sup>107</sup> Classroom presentations by lawyers or judges should be scheduled to reinforce concepts in the exercises the practicum students are working on at the time of the visit. Practitioners can add illustrations from their own cases and offer personal and different perspectives. Students have the benefit of hearing the vocabulary used in this area of practice and witnessing for themselves some of the disagreements within a specific social context. For some students, this will be their first direct contact with someone practicing in the community or field the student hopes to enter.<sup>108</sup> Moreover, like all part-time staff, adjuncts are “usually easy on the school’s budget.”<sup>109</sup>

Ideally, a practicum allows students to draw on the doctrinal, theoretical, and policy arguments they learned in the companion course connected to the practicum for each assignment. It builds on curriculum to which students were exposed in their first year and is able to progress through a variety of learning styles.<sup>110</sup> The practicum may also attract students who find learning in traditional lecture classrooms difficult. This model’s emphasis on individual critique and feedback is an advantage that outweighs the fact that the practicum may only be available to a limited number of students enrolled in the doctrinal class.<sup>111</sup> The doctrinal course

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<sup>104</sup> Busharis & Rowe, *supra* note 43, at 305.

<sup>105</sup> *Id.* at 305-06 (explaining that law schools offer practica in tax law and employment discrimination law, but only a sub-group of students who are in the companion doctrinal class are able to enroll in the one-credit practicum).

<sup>106</sup> *Id.* at 340.

<sup>107</sup> Lander, *supra* note 99, at 290.

<sup>108</sup> Busharis & Rowe, *supra* note 43, at 348.

<sup>109</sup> Lander, *supra* note 99, at 289; Thies, *supra* note 98, at 619. It is beyond the scope of this article to address the inequities in compensation and security of employment between part-time adjuncts and tenure-track faculty. The disparity was dramatically illustrated by the case of a U.S. adjunct professor living in destitute conditions who died shortly after her university contract was terminated. See Tyler Kingkade, *Woman Who Taught at College for Decades Dies Making Reportedly Less than \$25,000 a Year*, HUFFINGTON POST (Sept. 19, 2013) [http://www.huffingtonpost.com/2013/09/19/adjunct-obituary-duquesne\\_n\\_3956003.html](http://www.huffingtonpost.com/2013/09/19/adjunct-obituary-duquesne_n_3956003.html) (last visited Jan. 28, 2014).

<sup>110</sup> Busharis & Rowe, *supra* note 43, at 319.

<sup>111</sup> *Id.* at 340.

could serve as the “hub of [a] wheel”<sup>112</sup> of several practicum offerings. For example, a public international law course could be offered with several practica simultaneously, each with different skills or practice focuses: drafting resolutions or agreements, negotiating disputes, or preparing for litigation. These practica could be tailored to fit the experience of the available faculty and the interests of small groups of students.<sup>113</sup> Bringing in real-life experiences through photos, YouTube clips, field trips, and simulations, such as drafting and negotiating a contract or conducting a mock client interview, are also effective techniques.<sup>114</sup>

A practicum can also reinforce ethical standards for students,<sup>115</sup> whereas a single course in professional responsibility—if offered at all—cannot adequately instill ethical standards, in part because students do no “real” work in such a course. Law firms left with the task of teaching ethics may not have the time to commit to mentoring young lawyers and, due to the stress of practice and desire to please senior attorneys, may give short shrift to ethical guidance.<sup>116</sup> Moreover, waiting for this stage of training leaves students unprepared to confront specific ethical questions in context.<sup>117</sup> Thus, the practicum is an ideal way to bring many of the benefits of the real-life workplace under the roof of the law school. It allows the Academy to expose students to professional development while putting its imprimatur on experiential education.

### B. Faculty-Practitioner Collaboration

The practicum model also recognizes that the doctrinal professor may not have time to devote to—or expertise in developing—writing assignments and detailed exercise problems. Either the professor or adjunct may assume primary teaching responsibility for the practicum. No matter the division of labor, there must be a high level of cooperation, grounded in the belief that the two instructors are equals and respect each other’s strengths. Otherwise, the situation has the potential to exacerbate status differences.<sup>118</sup> If a school

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 350. Having practicum students in the substantive class can also raise the level of discussion in the larger doctrinal class because “[p]racticum students frequently express their appreciation for learning these critical skills.” *Id.* at 341.

<sup>114</sup> SPARROW ET AL., *supra* note 50, at 87-88.

<sup>115</sup> See, e.g., Busharis & Rowe, *supra* note 43, at 339 (explaining how practicum students who are actively advising clients have better appreciation for real world quandaries than from textbook examples).

<sup>116</sup> *Id.* at 342.

<sup>117</sup> *Id.* at 343-44.

<sup>118</sup> *Id.* at 344-45; see also Marcia Gelpe, *Professional Training, Diversity in Legal Education, and Cost Control: Selection, Training, and Peer Review for Adjunct Professors*, 25 WM. MITCHELL L. REV. 193, 212-13 (1999) (explaining that good contact between full-time and adjunct faculty helps full-time and

works to create a collaborative and communicative faculty community and successfully encourages meaningful interaction, the full-time faculty, adjuncts, and students will benefit.<sup>119</sup> The faculty as a whole is responsible for the teaching function, and their involvement from the beginning is more likely to foster a greater level of interaction between full- and part-time faculty.<sup>120</sup>

Each adjunct could be paired with at least one full-time faculty member with whom to discuss the teaching process and substance. In addition to one-to-one mentoring, select adjuncts should be invited to gatherings at mutually convenient times where speakers discuss teaching techniques and otherwise become acclimated to the school's intellectual and communitarian life.<sup>121</sup> Every adjunct should have a mentor. The law schools that build strong and deep relationships between their full-time and adjunct faculty will not only improve the quality of the adjunct teaching, but will minimize the number of failed courses. This effort will require a strong commitment by the leadership of the school.<sup>122</sup>

The practicum's small size and close link to a doctrinal course set it apart from other classes. It gives students an opportunity to improve their analytical skills through writing and practical exercises in the context of a core curricular course. By contrast, traditional skills courses, such as clinical programs, externships, or judicial advocacy courses, require large investments of student time and a greater faculty-to-student ratio.<sup>123</sup> The

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adjunct faculty learn from each other and increases adjuncts' investment in, and satisfaction with, their part-time teaching jobs). Unfortunately, a faculty divide infects many elite law schools—at least in the American context—where professional and social relations between tenure-track and the adjunct track, or between clinical and doctrinal faculty, are governed by an unwritten hierarchical and non-collegial protocol. *See e.g.*, STUCKEY ET AL., *supra* note 37, at 158 (“law schools have not done a good job, generally, in nurturing adjunct faculty but are marked by a lack of inclusiveness and interaction.”). I have personally witnessed the indifference, exclusivity and disrespect, but am pleased to report that the University of Washington, for the most part, is a welcome exception to the rule. A propos, an American Bar Association task force recently recommended, in a draft report, that faculty members’ emphasis on personal status be downgraded. *See ABA Draft Report*, *supra* note 100, at 32 (urging that [full-time] faculty members “Reduce the Role Given to Status as a Measure of Personal and Institutional Success.”).

<sup>119</sup> Lander, *supra* note 99, at 290. This interaction can also dilute any mutual resentment or disrespect that may exist between full-time faculty members and adjuncts. *Id.*; *see also* Busharis & Rowe, *supra* note 43, at 345 (collaboration between tenured, doctrinal faculty and non-tenured faculty has the potential to exacerbate status differences).

<sup>120</sup> Gelpe, *supra* note 118, at 213-14. Professor Gelpe writes that the full-time faculty has an obligation to assist the adjunct faculty “to be successful, by creating conditions that minimize their difficulties and maximize their effectiveness as teachers.” *Id.* at 211.

<sup>121</sup> Popper, *supra* note 98, at 85-86. Discussing teaching and learning with colleagues is also an effective professional development activity. SPARROW ET AL., *supra* note 50, at 123.

<sup>122</sup> Lander, *supra* note 99, at 297.

<sup>123</sup> *See, e.g.*, GIDDINGS, *supra* note 41, at 68 (noting the importance of close supervision, the “hallmark of clinical education”); David McQuoid-Mason & Robin Palmer, *African Law Clinicians’ Manual* 38-39, INSTITUTE FOR PROFESSIONAL TRAINING & OPEN SOCIETY FOUNDATIONS (April 2013),

practicum's flexibility also makes it a cost efficient supplement to more expensive externships or clinical programs.<sup>124</sup>

Flexibility is an important asset to the practicum concept. Although labor intensive to develop, as is any new course, a practicum can be offered in one year but not the next, depending on faculty interest and other commitments. By contrast, clinics cannot be started one year and put on hiatus the next. The practicum can also vary in frequency and duration, meeting weekly or biweekly, for example, and for the whole semester or just a portion. A one-credit course for a smaller number of students is easier to fit in to student and faculty schedules, and therefore does not create a prohibitive drain on faculty resources.<sup>125</sup> Of course, flexibility is not useful within an educational system where changes are hampered by bureaucratic barriers. In Indonesia, as in many countries, changes in textbooks, scheduling, and credits offered are subject to decisions at the level of the faculty department, University governing council, or even the Ministry of Higher Education.<sup>126</sup>

It is clear that if adjunct faculty members are carefully selected, trained, evaluated, and communicated with, their addition to a faculty provides many benefits. It is equally clear that unless a law school commits sufficient time and/or funds to do the above, the school will have a significant number of failures, and the results will damage the students and the school. The undertaking requires resources, energy, and creativity, to construct and monitor an effective and integrated adjunct program.<sup>127</sup>

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[www.gaje.org/wp-content/uploads/gravity\\_forms/27-61ffabe162d29b7fe6c279abe68e27eb/2013/12/African-Law-Clinicians-Manual-McQuoid-Mason.pdf](http://www.gaje.org/wp-content/uploads/gravity_forms/27-61ffabe162d29b7fe6c279abe68e27eb/2013/12/African-Law-Clinicians-Manual-McQuoid-Mason.pdf) (last visited March 8, 2014) (explaining the importance of considering staff to student ratios).

<sup>124</sup> Busharis & Rowe, *supra* note 43, at 349-50. Schools should also take advantage of opportunities to integrate adjuncts into the classroom with full-time faculty. For example, a large lecture course can include small groups of students working with an adjunct on a particular practice problem introduced in class by a full-time professor. Not only will the students benefit from this experience, but the adjuncts will have the advantage of observing the full-time professor at work, thus providing the school with an experienced pool of adjuncts to draw on later to teach other courses. Thies, *supra* note 98, at 621.

<sup>125</sup> Busharis & Rowe, *supra* note 43, at 349-50. Adjunct faculty can also be used as part of an externship program. The most successful externships are those where the student has an adjunct serving as a mentor at the field placement and a full-time faculty member who consults with both the student and the adjunct over the course of the term. Popper, *supra* note 98, at 87.

<sup>126</sup> This point was underscored during a workshop discussion. See Workshop on Lawyers, Human Rights Education and Access to Justice," held by Southeast Asia Legal Education: Preparing Lawyers for Tomorrow's Society and Profession (Oct. 1, 2013) (on file with author). Change can be impeded by layers of bureaucratic oversight and lack of local autonomy, even at the level of law school departments or individual teaching staff. *Id.*; see also Stephen A. Rosenbaum, *supra* note 70, at 57, 63 (discussing collegial resistance to change and the non-collaborative institutional culture in law faculties undergoing curricular transformation).

<sup>127</sup> Lander, *supra* note 99, at 297. Professor Roy Stuckey offers guidelines for faculty integration, culling recommendations from other commentators. See STUCKEY, *supra* note 37, at 157-59; see also Juwana, *supra* note 6, at 14 (stating that changes require time, energy, money and patience). In theory,



## V. PRACTICAL EDUCATION AND LEGAL AID LAWYERING

Ideological or bureaucratic intervention by the State in determining the direction of legal education and the legal profession is not always welcome.<sup>128</sup> Reforms, however, are not necessarily divorced from national policies or politics. Legislation aimed at invigorating and investing in lawyers for under-represented clients and causes presents an opportunity for robust participation by law faculties. Similarly, efforts by the Government to actively foster the training and formation of a breed of social justice warriors should be treated not as just another public relations mirage, but as a genuine step toward realizing change.

To be clear, the concept of legal aid bureaus embedded in Indonesian law schools, and even clinical education, is not new. Yet, implementation has been uneven across the country and stymied over time.<sup>129</sup> With the Parliament's adoption of Legal Aid Law No. 16/2011 a little over two years ago,<sup>130</sup> "[t]he legal aid service delivery in Indonesia has entered a new chapter."<sup>131</sup> The law explicitly notes that the right to legal aid "has been universally accepted" and is guaranteed in the International Covenant on Civil and Political Rights.<sup>132</sup> The preamble makes references to 1) fair and equal treatment before the law as a means of protecting human rights; 2) the State's responsibility in providing access to justice for the poor; and 3) the realization of justice and social change through legal assistance.<sup>133</sup>

The assistance is intended for individuals or groups of poor people who cannot meet their basic needs appropriately and independently, notwithstanding their economic and social rights e.g., the right to food,

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after years of highly centralized oversight, Indonesian law schools now have the freedom to amend or improve the curriculum as they see fit. *Id.* at 12.

<sup>128</sup> Even the allegedly misguided policies of Soekarno's Guided Democracy contained kernels of what today would be deemed laudable, e.g., teaching social science subjects in the law faculties. Bedner, *supra* note 4, at 5. There should be no argument against (revolutionary) zeal—particularly when the State waves the banner of social justice—but only against its authoritarian excesses and misapplications.

<sup>129</sup> *Id.* at 5. In fact, the aim of Soeharto's Justice Minister, Mochtar Kusumaatmadjah, "was to re-establish the link between the legal professions and legal education." *Id.* He supported "clinical legal education" by legal aid offices connected to universities and the inculcation of practical legal skills such as memo writing. Kusumaatmadjah also promoted the introduction of the social sciences into the law curriculum. But much of this policy remained unrealized in practice. *Id.*

<sup>130</sup> UNDANG-UNDANG TENTANG BANTUAN HUKUM [hereinafter "Law Concerning Legal Aid"], Law No. 16/2011 (Oct. 4, 2011) (Indon.).

<sup>131</sup> ERNA RATNANINGSIH, ASOSIASI'LBH'APIK'INDONESIA (ASSOCIATION OF LEGAL AID SOCIETIES FOR WOMEN), NATIONAL REPORT—LEGAL AID SYSTEM IN INDONESIA 5 (2013). Ms. Ratnaningsih is also a practicing lawyer with the Jakarta Legal Aid Institute.

<sup>132</sup> *Id.*, at Explanation, I, General.

<sup>133</sup> Law Concerning Legal Aid, *supra* note 130 (Preamble). Furthermore, the implementation of legal aid must be based on the principles of justice, equality before the law, transparency, efficiency, effectiveness, and accountability. *Id.* at art. 2.

clothing, health care, education, housing, employment, and the right to engage in small business and/or housing.<sup>134</sup> A prominent advocate claims that the current legal aid providers are not yet meeting the needs of the poor community.<sup>135</sup> In addition to grants and voluntary donations, the Government is required to allocate funds to the law and human rights budget, for purposes of carrying out the law.<sup>136</sup>

Under the law, Legal Aid offices may recruit paralegals, lecturers, and law school students.<sup>137</sup> The adoption of this law could provide an opportunity for law faculties (including lecturers and students) to become more directly engaged in delivery of legal assistance to the poor through a field placement or externship—or perhaps in establishing a regional legal clinic under the auspices of the law school. The *Badan Pembinaan Hukum Nasional* (National Legal Development Body)<sup>138</sup> has a secretariat and staff that oversees the operations and perhaps may someday coordinate efforts between the school and the State and provide the necessary resources in staff and operational expenses.

Parliament and civil society are supposed to monitor the verification and accreditation process to ensure that it effectively reaches the indigent and to provide input to government regulation on the legal aid delivery guidelines.<sup>139</sup> Even if students or teaching staff do not opt for direct delivery of services, the expansion of a government-mandated national legal aid program should prompt the creation and expansion of law school courses and activities that foster vocational or professional skills and the recruitment of the necessary personnel to teach those courses.

Law schools can become an integral part of the legal aid network by training students with an emphasis on social justice and providing assistance to the poor. Dean Juwana, who has given substantial consideration to the subject of educational reform, suggests that “[p]erhaps it is time for the

<sup>134</sup> RATNANINGSIH, *supra* note 131, at 6.

<sup>135</sup> *Id.* For example, legal aid NGOs only serve 16 out of 34 Indonesian provinces. *Id.* A senior editor at the *Jakarta Post* recently drew a sharp contrast between the image of yesteryear’s lawyer, during the last days of Soeharto, and today’s: “they once sang a heroic national song called ‘*Maju tak Gentar Membela yang Benar*’ (Move Forward to Defend the Truth) . . . It is disappointing that many advocates have switched teams . . . For the corrupt lawyers, it is no longer about ‘defending the truth’ but ‘*maju tak gentar membela yang bayar*’ (moving forward to defend those [corrupt officials] who pay).” Kornelius Purba, *The APEC nostalgia and a wish to become a lawyer*, *JAKARTA POST* (Oct. 6, 2013) at 1, available at <http://www.thejakartapost.com/news/2013/10/06/by-way-the-apec-nostalgia-and-a-wish-become-a-lawyer.html>.

<sup>136</sup> Law Concerning Legal Aid, *supra* note 130, arts. 16, 17.

<sup>137</sup> *Id.* art. 9.

<sup>138</sup> The *Badan* has an established secretariat. See *BADAN PEMBINAAN HUKUM NASIONAL* [National Law Development Agency], [www.bphn.go.id](http://www.bphn.go.id) (last visited Feb. 18, 2014).

<sup>139</sup> RATNANINGSIH, *supra* note 131, at 5-6.

objectives of legal education to be independent of outside interests [and] freed from the ephemeral desires of the political elite and policy-makers of the day.”<sup>140</sup> He also writes that the past labels given to governments with transient interests in Indonesia<sup>141</sup> “have placed a heavy burden on legal education . . . that ultimately have a negligible significance for law graduates in the future.”<sup>142</sup> This does not mean, however, that Indonesian leaders need be silent. Political and policy orientation can help ensure that a new cadre of attorneys and advocates are available to serve the legal needs of the poor. They can do this with the help of the private bar and other members of the legal profession, as well as with their full-time professors and lecturers.

If there is a “heavy burden” placed on legal education, it should be that social justice values must be part of any curricular reform. One commentator argues that only by embracing the teaching of these values can students become effective pro bono advocates and shapers of public policy and develop empathy with their clients.<sup>143</sup>

## VI. CONCLUSION

As an undergraduate institution that is not simply training future attorneys, the law faculty in Southeast Asia has a duty to impart knowledge, skills, and values to professionals who will serve society in other ways, as well as the duty to generally prepare a citizenry for an inquisitive, informed, and active life. While the acquisition of professional skills is a worthwhile objective for law students, it is only part of what it takes to develop a lawyers’ skills to the point where they can address the needs of clients who are disenfranchised or underrepresented in a society undergoing social transformation.<sup>144</sup>

In keeping with the regional and international trend, it is incumbent on Indonesian law schools to begin to introduce practical and experiential teaching methods into their curricula.<sup>145</sup> The law faculty must facilitate

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<sup>140</sup> Juwana, *supra* note 6 at 10.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* Whatever the reform, Juwana cautions that it must be implemented so that students, lecturers, and other stakeholders will be prepared for the change, and that it will demand time, energy, money, and patience. *Id.* at 14.

<sup>143</sup> Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 38-42 (1995).

<sup>144</sup> Rosenbaum, *supra* note 70, at 49 (acknowledging that the educational mission of an undergraduate institution characterized by large class size and less competitive admissions criteria may favor a generalist program over one of professional specialization).

<sup>145</sup> This includes seeking opportunities for education abroad for prospective teaching staff. *See, e.g., UW Law to Strengthen Legal Education in Indonesia*, ASIAN LAW CENTER, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, <http://www.law.washington.edu/AsianLaw/Countries/Indonesia.aspx> (last visited Feb. 3,

more formalized involvement of practitioners in its mission of education and training, particularly in co-teaching settings. Schools and the bar can work together in ways that preserve scarce resources and foster self-advocacy and respect.

The *fakultas hukum* is well situated as the forum that allows legal scholars and future lawyers to join with practicing attorneys, judges, non-government organizations, and lay advocates in educating the public about their legal rights and insuring a basic level of counsel and representation. It is important to move from aspirational goals to concrete steps. The Legal Aid Law of 2011 could serve as a stimulus for action. This transformation also requires that the law faculty address the tension between liberal education and vocational education and marry litigation experience with academic knowledge.

Although the law faculties of Indonesia and the Southeast Asian region have all experienced at least a half century of growth in independent states, they can still aim—in the words of the report issued 50 years ago after the first post-colonial conference—to be “free to experiment with ideas in a way not easy in long-established schools” and “bound by no special traditions, no entrenched institutional habits . . .”<sup>146</sup> It is a message that can be translated into many languages and subscribed to by law teachers across the globe.

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2014) (describing “E2J” multi-year grant from USAID to University of Washington and The Asia Foundation to support Indonesian law lecturers in LL.M program, among other aspects of legal capacity building); *Legal Education Support Program-Afghanistan (LESPE)*, ASIAN LAW CENTER, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, <http://www.law.washington.edu/AsianLaw/Research/Projects/AfghanEducators.aspx> (last visited Feb. 3, 2014) (describing collaborative effort of U.S. State Department, Afghan Ministry of Higher Education, University of Washington, and major Afghan Shari’a and law faculties to build legal education capacity, in part by offering LL.M degrees to faculty members).

<sup>146</sup> Groves, *supra* note 1, at 429.