

TOWARDS ACHIEVING SUSTAINABLE DEVELOPMENT GOAL IN QUALITY LEGAL EDUCATION: AN ANALYSIS OF CLINICAL LEGAL EDUCATION (CLE) IN CONTEXT OF INJURY OFFENCE LIABLE TO QISAS UNDER THE BRUNEI SYARIAH PENAL CODE ORDER 2013

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Abstract: Nations across the globe are actively progressing towards achieving the Sustainable Development Goals or SDGs. One of the SDGs is in education. Clinical Legal Education (CLE) is a part of learning which is pivotal in the study journey of a Law student legal education. It must co-exist with the theoretical learning method obtained from Law classrooms. Using the CLEs in legal pedagogy instils and develops professional skills in a Law student such as advocacy, client counselling, legal negotiations, legal drafting etc. Whereas on the other hand, one of the non-fatal offences against person under the Brunei Syariah Penal Code Order 2013 is the offence of causing injury or hurt liable to qisas. This is whereby for instance a person voluntarily caused another person to sustain bodily pain which is liable to the punishment of qisas or retaliation under the Order. The research employed the library-based research in order to analyze how the offence of causing injury or hurt liable to qisas under the Order is taught by legal educators and learnt by Law students using the Clinical Legal Education (CLE). The research found that the Clinical Legal Education (CLE) methods are cardinal pedagogical methods in order to produce not only theoretical but also practical-minded law graduates who will be industry ready when they enter their professional career pathway after graduation. This helps in ensuring a country's achievement in SDGs particularly legal education.

Keywords: Sustainable development goals, clinical legal education, qisas, syariah penal code

Introduction

One of the world's well known objective to develop various aspects of human life is the Sustainable Development Goals or also known as SDGs. This SDGs outline several key objectives to be attained. One of them is to attain quality education including legal education. This specific objective in education is cardinal in order to achieve one crucial aspect of life craved by all mankind which is justice. By upholding legal education, it is hoped that justice will be served at its best to all who seek for it. Therefore, it is pertinent to use the best methods in legal pedagogy in order to instil knowledge and train skills in law students so that they will succeed in delivering justice at its best.

In legal pedagogy, two most important teaching and learning methods are the traditional method and the clinical method. The former basically involves students attending lectures in classrooms. For instance, students learn the elements of an offence by way of their lecturer's slides presentation of the class. Whilst, the latter constitutes the hand-on knowledge, skills and experience of the law learnt in classrooms. This among others include the industrial training undergone by law students during a period of time in their studies as a law student.

For the purpose of this research, the focus is on the importance of using the clinical method in legal pedagogy in teaching and learning the injuries offence liable to *qisas* under the Brunei Shariah Penal Code Order 2013.

Sustainable Development Goals in Education

The Sustainable Development Goal assigned for education is numbered as 4 in the list. There are three broad objectives which are the cognitive learning objectives, socio-emotional learning objectives and behavioural learning objectives.

The first broad objective is called cognitive learning objectives. There are several objectives under this which are: the learner understands the important role of education and lifelong learning opportunities for all (formal, non-formal and informal learning) as main drivers of sustainable development for improving people's lives and in achieving SDGs; the learner understands education as a public good, a global common good, a fundamental human right, and a basis for guaranteeing the realization of other rights; the learner knows about the inequality in access to and attainment of education, particularly between girls and boys and in rural areas and about reasons for a lack of equitable access to quality education and lifelong learning opportunities; the learner understands the role of culture in achieving sustainability; and the learner understands that that education can help create a more sustainable, equitable and peaceful world.

The second broad objective is referred to as socio-emotional learning objectives. The objectives under this heading are: the learner is able to raise aware of the importance of quality education for all, a humanistic and holistic approach to education, ESD and related approaches; the learner is able through participatory methods to motivate and empower others to to demand and use educational opportunities; the learner is able to recognize the intrinsic value of education and to analyse and identify their own learning needs in their personal development; the learner is able to recognize the importance of their own skills for improving their life in particular in employment and entrepreneurship; the learner is able to engage personally with ESD.

The third broad objectives is named behavioural learning objectives. This includes: the learner is able to contribute to facilitating and implementing quality education for all, ESD and related approach at different levels; the learner is able to promote gender equality in education; the learner is able to publicly demand and support the development of policies promoting free, equitable and and quality education for all, ESD and related approaches as well as aiming at safe, accessible and inclusive educational facilities; the learner is able to promote the empowerment of young people; and the learner is able to use all opportunities for their own education throughout their life and to apply the acquired knowledge in everyday situations to promote sustainable development.

Clinical Legal Education (CLE)

Clinical Legal Education (CLE) is a method in legal curriculum which is focused more on the hands-on or practical aspect of learning law. It consists of such as counselling, legal drafting, research, communication, prospective clients and witnesses interviews, negotiations and problem-solving skills. Law is a professional course and therefore law students have to be trained in legal settings or real-life scenarios for the sake of producing confident and practical lawyers who will be able to deliver justice as best as possible.

Injury Offence Liable to Qisas under the Brunei Syariah Penal Code Order 2013

Under the Brunei Syariah Penal Code Order 2013, the offence of causing injury is defined under section 167 as follows:

“Any person who causes hurt to a person as provided under section 168, without causing his death, is said to have caused hurt.”

A person is considered to have committed the offence of causing injury or hurt if he has done it without resulting the death of the victim.

The types of injury or hurt has been outlined under section 168 of the Order. Section 168 (a) explains that where the injury caused any part of the victim’s body to be dismembered or injured this is known as *itlaf al-udhw*. Where the accused had caused the destruction or permanent impairment of function or use of a *itlaf salahiyyat al-udhw* ny part of the victim’s body or permanent disfigurement of any part of the victim’s body, the nature of the injury is termed as *itlaf-salahiyyat-al-udhw*. *Syajjah* is another type of injury recognized under the Order. It refers to hurt on the head or face of the victim which does not amount to *itlaf-al-udhw* or *itlaf-salahiyyat-al-udhw*. Another type of injury is called *jurh*. This is where the injury or wound is caused to any other part other than the victim’s head and face which leaves a mark or scar whether temporary or permanent. Lastly is other hurts.

In regards to the offence of causing injury which is liable to the qisas punishment, reference has to be made to section 169 (1) of the Order. The section states:

“Any person who causes hurt to a person and it is proved in such manner as provided under section 170 is guilty of an offence and shall be liable on conviction to qisas punishment.”

A person is considered to have committed the offence of causing injury which is liable to the qisas punishment if he has caused the hurt to the victim and such causing is proven by way given under section 170 of the Order (by ikrar of the accused, confessing with his consent before a Court of competent jurisdiction or by syahadah of at least two syahid according to Hukum Syara' other than the evidence of the victim, after the Court is satisfied having regard to the requirements of tazkiyah al syuhud). For instance, where Ali caused Ahmad hurt by punching, Ali will be liable to qisas if his criminal act is proven by either his own ikrar or testimonies of two syahid.

However, the above position is subject to other sections in the Order. Section 171 stipulates the circumstances whereby qisas punishment is not to be enforced. These include four circumstances which are firstly, where the offender who has committed the offence is dead; secondly, when part of the body for which qisas punishment is to be imposed is not functional or otherwise incapacitated; third, when pardon is given by the victim or his wali; and fourth, when sulh between the victim and the offender has been made. Furthermore, section 172 explains that the court shall, in consultation with a Government medical practitioner, determine whether a hurt caused is liable to qisas or otherwise.

Clinical Legal education (CLE) in Context of Injury Offence Liable to Qisas Under the Brunei Syariah Penal Code Order 2013

Clinical Legal Education (CLE)'s importance and application in context of injury offence liable to qisas under the Brunei Syariah Penal Code Order 2013 could be seen from the roles, duties and responsibilities of two of the main parties in and out of court legal matters which are the syarie prosecutor and the defence counsel.

The Syarie Prosecutor

The Syarie Prosecutor is required to do research and inquire from various criminal-related agencies in order to gather facts and evidences. For instance, the syarie prosecutor will have to be in touch with the police department who is responsible for interrogating the victim of the offence. The syarie prosecutor has to meet police officers and investigators to get information. From this the syarie prosecutor has to have confidence to communicate with these people. Questions such as who is the victim, his profession, the time of the incident, the facts of the incident and the aftermath are examples which would be asked by a syarie prosecutor to the police department. Hence, this shows how relevant and important is the CLE in ensuring current future syarie prosecutors (law students or graduates) to possess confidence, communication and research skills. Apart from this, the syarie prosecutor has to interview the victim and any eye-witnesses who had seen the incident or who could be of use to build his case. The syarie prosecutor would be asking questions such as what happened before the incident, where is the place (to ensure the police department's information tally with the victim's and witnesses' information), the time of occurrence, what might have triggered the accused to hurt the victim, the part of the body inflicted, any weapon used, from which side or direction did the accused come to attack etc.

In court, the syarie prosecutor has to commence the case by stating the charge with which the accused is being charged with. This requires him to be cautious as he ought to avoid any errors in framing the charge though a charge might be curable it is best to avoid any errors in this kind. He has to think very carefully which questions can be asked upon the witnesses and which is not for instance, some questions would not be allowed in court to be asked because it is as if the syarie prosecutor is putting the answer into the mouth of the witness. Answers have to be

memorized or carefully kept in record. He also has to know when to object or allow any questions. For example, he may object to the question posed by his adversary (the defence counsel) if it is hearsay. This makes him put to practice his evidence laws studied in law classrooms in university. His knowledge of the law is put to test and context. His duty is to ensure justice and in practice he has to ensure that the court grants him the prima facie case.

The Defence Counsel

The defence counsel is required to do research and inquire from various criminal-related agencies in order to gather facts and evidences. For instance, the defence counsel will have to be in touch with the police department who is responsible for interrogating the victim of the offence. The defence counsel has to meet police officers and investigators to get information. From this the defence counsel has to have confidence to communicate with these people. Questions such as who is the victim, his profession, the time of the incident, the facts of the incident and the aftermath are examples which would be asked by a defence counsel to the police department. Hence, this shows how relevant and important is the CLE in ensuring current future defence counsels (law students or graduates) to possess confidence, communication and research skills. Apart from this, the defence counsel have to interview the victim and any eye-witnesses who had seen the incident or who could be of use to build his case. The defence counsel would be asking questions such as what happened before the incident, where is the place (to ensure the police department's information tally with the victim's and witnesses' information), the time of occurrence, what might have triggered the accused to hurt the victim, the part of the body inflicted, any weapon used, from which side or direction did the accused came to attack etc. These information could be useful in assisting the defence counsel to critically think and see where loopholes are and therefrom offer any possible best defence/s.

In court, the defence counsel has to disprove the charge with which the accused is being charged with. This requires him to be a good listener and a quick responder. He has to think very carefully which questions can be asked upon the witnesses and which is not for instance, some questions would not be allowed in court to be asked because it is as if the defence counsel is putting the answer into the mouth of the witness. Answers have to be memorized or carefully kept in record. He also has to know when to object or allow any questions. For example, he may object to the question posed by his adversary (the syarie prosecutor) if it is hearsay. This makes him put to practice his evidence laws studied in law classrooms in university. His knowledge of the law is put to test and context. His duty is to ensure justice and in practice he has to ensure that the court will rule no prima facie case in which means that the case is ruled in his and his client's favour without have to go into the defence stage of the trial.

In the context of the offence of causing injury liable to qisas under the Brunei Syariah Penal Code Order 2013, the syarie prosecutor's duty is to ensure that the elements under section 168 (1) are fulfilled which is that hurt is caused and the hurt is proved by way stated under section 170 of the Order. The syarie prosecutor is concerned with proving the elements of the offence or the facts in issue and any relevant facts. On the other hand, the defence counsel has to do otherwise. Possessing the clinical skills is crucial in order to deliver justice in the most confident and effective way which is essential in ensuring that justice is not only be done but is done in the best manner.

The Correlation Between Sustainable Development Goal in Legal Education, Clinical Legal education (CLE) and its Application in Context of Injury Offence Liable to Qisas Under the Brunei Syariah Penal Code Order 2013

As can be seen above, the CLE is very important in legal education as it trains law students to be used to legal practice in real-life setting. This would realise the three main objectives under Sustainable Development Goal in education. Therefore, the correlation between the Sustainable Development Goal in legal education, CLE and its application in context of injury offence liable to qisas under the Brunei Syariah Penal Code Order 2014 could be seen from the fulfillment of the three broad objectives of education in SDG.

For instance, the first broad objective is called cognitive learning objectives. By using CLE in legal pedagogy the learner understands the important role of legal education and lifelong learning opportunities for all (formal, non-formal and informal learning) as main drivers of sustainable development for improving people's lives and in achieving SDGs; the learner understands legal education as a public good, a global common good and a basis for guaranteeing the realization of other rights; the learner understands the role of culture in achieving sustainability; and the learner understands that that quality legal education can help create a more sustainable, equitable and peaceful world.

The second broad objective is referred to as socio-emotional learning objectives. By utilizing CLE in teaching and learning law: the learner is able to raise aware of the importance of quality legal education for all, a humanistic and holistic approach to legal education; the learner is able through participatory methods to motivate and empower others to demand and use legal educational opportunities; the learner is able to recognize the intrinsic value of legal education and to analyse and identify their own learning needs in their personal legal professional development; the learner is able to recognize the importance of their own legal skills for improving their life and others in particular in employment and entrepreneurship.

The third broad objectives is named behavioural learning objectives. The benefits of implementing CLE in legal education would make: the learner to be able to contribute to facilitating and implementing legal quality education for all; the learner is able to promote gender equality in legal education; the learner is able to publicly demand and support the development of policies promoting free, equitable and quality legal education for all, as well as aiming at safe, accessible and inclusive legal educational facilities; the learner is able to promote the empowerment of young people; and the learner is able to use all opportunities for their own legal education throughout their life and to apply the acquired practical legal knowledge in everyday situations to promote sustainable development.

Conclusion

In conclusion, Clinical Legal Education (CLE) is crucial in order to produce not only well knowledgeable legal graduates but quality legal graduates who possess not only knowledge but also hands-on legal skills needed in real-life world which is more challenging than sitting and listening to lectures in legal classrooms. The quality of legal education will be more enhanced where CLE is utilized properly and vastly in legal curriculum. This will upheld the SDG in education, specifically legal education.

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