Legal Client Counseling for Sharia Law Students: An Innovative Approach toward Increasing Professionalism in Sharia Counseling

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Abstract

One of the issues that often circulates among newly recruited Sharia lawyers is the lack of the required capability or aptitude to be a Sharia counsel, especially when conducting legal counseling with clients. The Department of Sharia law, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia (UKM), must play an important role in preparing its graduates with a variety of skills, among them being client counseling. In relation to this, a client counseling training program had been introduced for the first for Year 3 students of the Department of Sharia Law in 2011/2012 Academic Year who were taking the course Comparative Civil Law. This research is aimed at viewing the perception of the Sharia students towards the client counseling program that they had taken, and the implication of the said course on their legal couseling skills. For the purpose of this research, semi-structured and in-depth interviews were conducted with seven (7) students who had graduated in 2012 and are currently in the process of completing their chambering at their respective law firms. This research had found that the client couseling program taught to these former students had provided them with both benefit and early exposure to them, and simultaneously increased their legal couseling skills. This research proposes that client counseling is included as a form of Problem-Based Learning (PBL) in all comparative law subjects at the Department of Sharia Law as an innovation to the subject-matter which encourages more graduates to pursue professions such as that of Sharia lawyers.

Keywords: client counseling, sharia law students, sharia lawyer

1. Introduction

The issue of possessing the competency to become a good lawyer or legal advisor that fulfils market demands is not a new one among fresh graduates from either civil or Sharia backgrounds. The question of whether law graduates possess the qualities or aptitude that is necessary in the legal profession (Williams, 1990) often persists in the minds of students who desire to pursue a career in the former. In 2012, the Malaysian Bar Association conducted a study involving 400 law firms in Malaysia, and found that the majority of the employers were dissatisfied with the proficiency of their younger lawyers. This may possibly stem from the neglect of certain institutes of higher learning to take into account the basic legal practical skills in both the teaching and learning process in university (Cheng, 2012). According to Cooper (1962), many legal practitioners believe that law schools or faculties do not play a serious enough role in the effort to equip law graduates to that end. This failure poses a problem to the judicial system as a whole (Sarat, 1991), especially when the law, the sole purpose of which is to provide justice, oppose prejudice and protect the rights and interests of individuals and society, cannot be fittingly implemented.

Law students must possess the basic skills to become lawyers such as problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling and negotiation (Brayne, Duncan & Grimes, 1998). However, it is a consistent fact that students are only exposed to these skills after they graduate (Baron & Corbin, 2012), i.e. during their chambering, although it is also noted that most students can easily acquire a position in a law firm as soon as they graduate from university without being in possession of any additional skills. This does not however apply to those who wish to pursue a career in litigation (Goodpaster, 1975). This is due to the fact that skills such as communication, counseling and negotiation carry considerable weight in legal proceedings (Lande, 2012). In relation to the aforementioned, one of the primary advocate skills

that new future lawyers should grasp is client counseling. This skill corresponds exactly to the main duty of a lawyer, which is to advise a client that requires legal advice and assistance (Jayakumar, 2007). It thus follows that a program which provides training of such skill would be enormously beneficial in enabling students to be given early exposure to the reality of their future career choice while still in university.

Unfortunately, whatever early exposure to client counseling via training programs currently available to students is neither thorough nor uniform, and is usually dependent on the initiative of the lecturer or student himself. For example, lecturers who feel the necessity of instilling client counseling capability in their students may include a training program to that effect as part of an activity-based teaching process, or as part of their subjects' continuous assessment. Therefore, this article will discuss the perspective of Sharia students toward client counseling programs, simultaneously proving the importance of such training in developing professionalism among future Sharia counsel.

2. Literature Review

Society in general may presume that each and every legal practitioner, even those who have only just been registered as lawyers, all possess practical qualifications. The reality is that, according to most seasoned legal practitioners, it is almost never the case (Cooper, 1962). Studies have however shown that the invariable mission of all university law schools or faculties is to train and produce as many excellent lawyers as they can (Vanderbilt, 1951; Osmond, 1949). Law students will play significant roles in providing counsel, advocacy, raising the standard of the legal profession, in the courts and the law, in elevating public opinion and also in holding key positions in public office (Vanderbilt, 1951). It thus follows that law students must also be shown the realities of the legal profession in order for them to be most excellent lawyers. To achieve that end, a variety of training programs and modules had been introduced such as "School for Young Lawyers"- Harvard Law School (Osmond, 1949), "Clinical Legal Skills"- Glasgow Caledonian University (Maharg, 1996), "Law Clinic and Legal Aid Programs," and so on. Despite these existing efforts, it is an undeniable challenge for any university to expose all of these skills to students in class, given the relatively short duration of time students have to complete their studies in. This notwithstanding, even limited exposure may potentially enlighten students of the basic legal skills they need to know (Vanderbilt, 1951).

Skills such as client counseling need to be exposed to students while they are still in university. An institution of learning is the most suitable place for law students to learn as much as they can about their chosen profession in legal counseling (Osmond, 1949). From a purely legal aspect, client counseling does not merely entail listening to the client's problem and advising him; as his counsel, one must possess the capability to also resolve the problem faced by the client (Chapman, 1993). These client counseling training programs are a training process in which the students play the role of counsel in resolving the legal problems presented by the clients. Among the main objectives of client counseling is to inculcate communication skills in students when interviewing their clients and monitor how they control and settle the client's problem with relevant and appropriate advice.

There are numerous books written by professors and legal practitioners relating to these skills (Brayne, Duncan & Grimes, 1998; Goldring, Sampford & Simmonds, 1998), including specific works on interviewing and counseling clients (Sherr, 1986; Chapman, 1993). These include detailed guides or checklists that are necessary for a lawyer to have during client counseling. They start with the process of determining dates for meeting with the client, counseling sessions, identifying the problems and their solutions, right up to the stage of documenting the decision made or advice accepted by the client (Gold, Mackie, & Twining, 1989). The same applies to the works of Sherr (1986), who had prepared several action plans and guidelines for handling client counseling. It is strongly felt that these books may be referred to as manuals in conducting client counseling programs at university, and it would be wise to use them as supplementary reading material for students and lecturers alike in defining the initial picture relating to client counseling programs.

Previous studies have also shown that these client counseling programs have been stressed upon for a considerable time now, and have also been expanded to be included in the study of law subjects in universities abroad, especially in the United Kingdom, United States and India. However, there remains to be no specific research on client counseling training programs for law students in Malaysia, especially for Sharia law students. For example, students undertaking a Law Bachelor's Degree and Administrative Studies at the Glasgow Caledonian University, United Kingdom will be open to participate in client counseling training programs during the third year of their studies. Under the Clinical Legal Skills module, these students will be trained to understand and practice basic skills such as client counseling, legal writing, legal-document preparation, and negotiation. These skills are vital for them to learn before they concentrate on researching and writing their dissertations during the students' fourth year of study (Maharg, 1996). In this module, students will be exposed

to the introduction of client counseling theory (narrative and reflective) for three weeks. They will then practice these skills via attachment to a law firm. Most students find this program to be extremely helpful in grasping the concept of client counseling, which also combines other skills such as interviewing, negotiating and writing.

At the same time, the Indian Bar Council, a professional body for legal practitioners in India, also plays a role in the preparation of the syllabus for Professional Legal Education in their country. This Council has drawn up a complete structure of practical training for future lawyers, among which include vital skills such as professional ethics, counsel-judiciary relations, identifying contempt of court situations, moot courts, pre-trial procedure, negotiation, interviewing, client counseling, drafting arguments and legal documents, legal aid, and so on (Jayakumar, 2007). The same can be said for law students in America, where it is compulsory for them to attain the academic standard set by the American Bar Association and Association of American Law Schools (Vanderbilt, 1951). This also proves the serious role taken on by the nation's professional body in training and producing law students who have the credibility to be lawyers.

Coming back to the local situation, client counseling training programs are neither in fact new nor alien in Malaysia. In preparing the standards manual for Sharia law and Law programs, the Malaysian Qualification Agency (MQA), which is the only quality-control organization for higher education in the country, had targeted for each national university as their main output to be students capable of entering into negotiations and proposing resolutions to legal problems to clients, otherwise known as client counseling. Despite the provision of client counseling training for Sharia law students in their standard manual, none of the faculties or departments of Sharia Law in Malaysian universities offers it to their students. However, the pilot attempt by the Department of Sharia Law, Faculty of Islamic Studies, UKM to conduct a client counseling training program was received well, with positive responses from the students. This training was provided in two subjects: Comparative Civil Law and Comparative Family Law. In furtherance to this, this study will discuss the perspective of Sharia law students towards the client counseling training program and view how far it has influenced the development of professionalism among future Sharia counsel.

3. Method

This research was conducted with the objective to assess the extent of the effect of client counseling programs on Sharia students. In relation to this, this study will discuss the perspective of Sharia students towards client counseling training programs that they have attended. This study will also attempt to determine how far client counseling programs have influenced the development of professionalism amongst future Sharia lawyers. The research data was collected via in-depth semi-structured interviews conducted over the telephone and through e-mail communication as suggested by Leon et al. (2003). The interview was found to be the most effective instrument in obtaining information from the research subjects or participants.

The research participants consisted of seven (n = 7) former students of Bachelor's Degree in Islamic Studies (Sharia law) who were approximately 23 years of age, and who had recently graduated in October, 2012. Of the participants, three (n = 3) were male and five (n = 5) were female, all of whom are currently undergoing their chambering at legal firms across Malaysia, namely in Bandar Tasik Selatan and Jelatek, Kuala Lumpur, Petaling Jaya, Selangor, Muar, Johor and Kota Baharu, Kelantan. Three of the participants had been chambering for three (3) months, one for two (2) months, and the remaining three had been chambering for only a month. The most important criteria in selecting these participants for the interview was that they had all attended the client counseling training program during their studies at the Faculty of Islamic Studies, UKM, specifically during the PPPG3543 course (Comparative Civil Law). The second criteria for their selection was that they all had to be currently undergoing their chambering. The research also found that three of the participants had also received client counseling training from other subjects such as Comparative Family Law, and while studying for the Diploma in Islamic Judicial Administration in the subjects of Internship and Sharia Moot Court. The following is a list of the questions that were asked by the interviewer to the participants:

- 1) State your background, i.e. your full name, gender, age, field of study at University (major/minor, if relevant), year of graduation, the name and address of the law firm you are currently chambering at, and how long you have been chambering there.
- 2) How far has this client counseling training program been relevant to the teaching and learning process for Sharia students?
- 3) To what extent has the client counseling training program increased your interest to become a Sharia counsel?
- 4) How has the client counseling training program at university helped you in your chambering?

- 5) From which aspect did the client counseling training program help you during your chambering?
- 6) Should the client counseling training program be continued and expanded to be included in all other Sharia subjects regardless of which academic year the students are in?
- 7) What do you propose or suggest to improve the client counseling training program for application by graduates of Sharia studies in the future, especially for those who wish to pursue a career in Sharia counseling?

4. Discussion

The research findings showed that all of the participants unanimously agreed that client counseling training should be given to students before they dive into the real world of legal professions. This is parallel to the views of Jayakumar (2007) and Maharg (1996) that client counseling as a skill is an important one to be taught to law students in class. The skill of providing legal counseling services to clients ought to be a priority for law faculties, and in fact should go so far as to be made part of the curriculum studied at university (Sarat, 1991). The process in which an individual studies his future profession is known as 'professional socialisation', which is greatly supported by the teacher-student process in the classroom and practical skills or similar training programs (Reid-Searl et al., 2010). In fact, the possession of the client-counseling skill is also one of the basic skills a lawyer should have in addition to skills in interviewing, advising, analysing and planning, persuading, brokering, negotiating, convincing, drafting, researching, collecting data and information, litigating, and private law-making (Goodpaster, 1975). Furthermore, the study also showed that a brilliant lawyer must be a responsive counselor and advisor towards the problem faced by his client (Vanderbilt, 1951; Goodpaster, 1975).

This research also showed that early exposure to client counseling programs had indirectly increased the participants' interest in pursuing a professional legal career, enough to encourage them to begin chambering and also gain enough confidence to embark on the former despite their being graduates in Sharia law studies. This supports the findings of the study conducted by Naidu (2007), that an improvement in academic skills will contribute to ones' confidence and self-worth. Moreover, for the participants who had always aimed at the Sharia lawyer profession, these training programs were capable of adding value to their studies.

Participant 2: "Throughout the client counseling program, at the beginning my interest in legal counseling was not much to speak of. But now that I'm chambering, I can reflect on how important the client counseling program was while I was still in university. As of now, my wish to be a Sharia lawyer is increasingly strong."

Participant 3: "After I completed my client counseling training, I became more interested in the legal profession, which before that I had never thought of pursuing. With the client counseling training, I understood better and eventually changed my mind which had told before that I was incapable of doing it."

Participant 7: "I've been keen on being a lawyer since a long time ago. So when there was a program like client counseling while I was studying, I was definitely excited and more convinced to be a lawyer."

All of the participants agreed that the client counseling program had been helpful in their chambering. This is exactly what the objective of this training program is, i.e. among other things, to make the program a step towards preparing students to a real work-environment (Wallman et al., 2011; Madsen & Turnbull, 2006). The research also found that there are several significant aspects in the client counseling training program that can really help the participant during his or her chambering. One of them is the skill to communicate with the client. Without sufficient training in the skills of interviewing and counseling, a chambering student will face some problems when they meet their clients for the first time (Chapman, 1993). Besides that, among the aspects of the client counseling skill that must be given attention during chambering are listening skills and understanding the client's problem, while at the same time suggesting the best legal resolution to the problem. This coincides with a study conducted by Vanderbilt (1951) in that good counseling skills are evidenced when a lawyer has the ability to identify the problem and apply the existing law to the problem presented by the client. Furthermore, if it is deemed relevant to the client's case, the lawyer may refer him to another party whose involvement is necessary to the case, such as a social worker or psychiatrist.

Participant 1: "With the previous client counseling training, I find it easier to communicate and know how to help the client in the manner and skill taught during that training."

Participant 2: "The client counseling training I took in university has helped me a lot in my current chambering. For example, when communicating with my client, regardless of whether it's face-to-face interaction or just over the phone..."

Participant 3: "The client counseling program is highly relevant because it can help enhance communication skills with clients and increase our confidence in attending to clients. Sharia law students should by right be accomplished in this skill because the majority of them will find their way in to the legal field, and if they are not given early exposure, they will find it difficult to do their work and attend to clients in the early stages."

Participant 4: "It was the client counseling program that I found to have been most useful during the process of opening new files, where we need to obtain all the necessary information from the client regarding the case or problems that they face."

In addition, this study also found a need for some other skills to be addressed during client counseling training programs, namely, preparation of questions, how to ask them and make comments and summaries regarding a given problem and/or procedure, from the very first moment one meets with the client til the end of that counseling session. According to Sherr (1986), interviewing a client is the first step a lawyer takes when he wishes to handle a case. The interview is aimed at obtaining early information relating to the issue faced by the client. It is also an important step toward building a relationship based on trust between the client and the counsel, which will no doubt help with the efficiency in which the case is handled. There are three main elements present during the interview: listening, questioning and advising the client. The lawyer must allow room to the client to talk and voice out his problem during this session. Subsequently, a Q&A session will be conducted by the counsel with the client in order to obtain a more complete set of information. Finally, the counsel will advise the client accordingly on the legal effects of his case, and propose a resolution or alternative resolutions to the client's problem (which may include some extra legal research if the problem the client faces is outside his expertise) before the case summary is completed or any further dates for counseling sessions are determined.

There are a number of important techniques in conducting client counseling, such as explaining first the duration to be expected and the cost of the counseling session before focusing fully on the interview. It may be noted that there is no limit to the number of times a client may meet with his counsel. Right from the initial meeting, the counsel must try tto conduct the interview with a good ear in order to get the most salient information pertaining to the case. The counsel must also be patient, and wait for the client to be ready to express their problem before advising them and proposing a resolution to it.

Participant 2: "Client counseling skills must be present and nurtured in a chambering student, specifically to help deal with different clients' and their personalities with calm and ease. Also, with client counseling skills, we can get to know the client's problem and attempt to suggest steps to resolving it. Some clients who come to file a case don't always tell us the whole story. Therefore, with the experience and knowledge gained from the previous training, we can find ways to get the story out and determine what the real issue is."

Participant 5: "For me, there must be exposure from the aspect of procedure, starting from the early stage prior to meeting the client and up to the last stage of the counseling session."

Participant 6: "Client counseling training has helped me face my clients, communicate with them, identify their problems, and prepare me step by step in terms of preparing questions right from what's their name, what's the issue, the client counseling procedure and so on..."

This study had also found that the participants agreed that exposure to mere theory is not enough. This corresponds with the view of Wallman et al. (2011) who stated that there must be a transition from theoretical knowledge to field work. Students should be able to practice the skills they learn in the lecture hall and translate them into their field of work or practical training. In fact, full dependency on the theoretical aspects taught in the classroom will not help a student achieve the standard of quality expected (Madsen & Turnbull, 2006). Effective counseling should be practiced in its entirety, and not based on legal knowledge found merely in books. In order for the transition from law student to professional to succeed, there can be no question that they must learn and undergo practical (McLean, 2010). It thus follows that client counseling training programs are the first step in realising this transition process.

Participant 5: "Just theory is not enough. However, practically, through this training program I have been able to get an idea of how to face a client, i.e. similar to the way we practiced in university."

Participant 7: "For me, this exposure is of course very important, because theory alone will not suffice. With training programs like this, at least there'll be less of a 'shock' when faced with real-life situations."

In addition to this, this study has also found that client counseling training programs should be offered to students during the early years at university as mentioned by most of the participants. The research findings showed that many of them agreed that these programs should be introduced during either the second or third year

at university; some in fact even suggested it be introduced during the first year. From previous studies, most universities introduce practical skills (or client counseling skills) to students during their third year (Maharg, 1996). However, Osmond's (1949) research suggests that regardless of how hard the life of a first-year student at university may be, he must already make preparations to becoming a lawyer. However, by painting a negative and frightful picture to first-year students, early exposure to counseling skills will only damper their interest, and make it harder for that student to prepare himself to be an excellent lawyer (Maclean, 2010).

Participant 1: "In my opinion, client counseling training should be given to students of all years and included in relevant subjects, especially the law subjects."

Participant 2: "Yes, I strongly agree that client counseling be made a compulsory subject, particularly in the Sharia Law department. If not during the first year, then at least in the second and third. At first it will be hard for students to accept, but once they start chambering as I have, they'll realise how important the client counseling training was at university".

Participant 4: "There must be early exposure starting from the second or third semester. Students need to be aware of the realities that occur in this field. This will help students familiarise themselves with the nature of the work before they start for real."

Participant 5: "There must be exposure to students starting from at least the second year."

Participant 6: "Students must be exposed to client counseling as early as the second year and at the latest, the third. It's important and highly valuable to them..."

The research findings also showed that all the participants agreed that client counseling training programs be continued and expanded to all other comparative Sharia law subjects, especially the final year subjects. In fact, given their awareness of the importance of this training to students, the participants agreed that client counseling should be worth credit hours and made a compulsory subject in the Department of Sharia Law. This is similar to McLauglin's (2010) study, where he posited that the curriculum taught must also contribute to the students' future careers. As an educator, it is vital to put forward on the most valuable educational experience that can reap the most benefits for the students. By exposing the students to these training modules and stressing on their importance in the classroom, lecturers are actually working towards polishing the students' own potential within.

Participant 3: "I suggest that this program be made a compulsory one for Sharia students, regardless of the module, and that it is not limited to certain subjects only so that more students can benefit from the experience."

Participant 5: "I propose that [it is] included in the credit hours as the subject "Workplace Communication", therefore increasing the level of Sharia law education at university."

Participant 6: "My suggestion is that this program must be conducted thoroughly, and not just under the purview of one lecturer, since comparative law subjects taught by other lecturers do not include this program..."

From this study, it is found that Sharia law graduates who have forged legal careers were extremely positive in their view on the client counseling programs they experienced while at university. This positive outlook has resulted in their learning a great deal during the process of their training, all of which was continued and applied once they began their careers. In general, this study has found that client counseling programs for Sharia law students have been able to draw their interest toward pursuit of a career in the legal area, and also enhance the professionalism of future lawyers.

5. Conclusion

Client counseling is a common practice in any civil law school. The attempt to conduct such programs for Sharia students is an innovative move in the teaching and learning context of that area. The execution of the program for Sharia students in the Department of Sharia Law, Faculty of Islamic Studies, UKM has piqued the interest of students to pursue a career in Sharia law counseling, at the same time increasing their level of professionalism as future lawyers. In accordance with the requirement to produce high-quality graduates and fulfill the market demand, this study proposes that this client counseling program is made an important component in the teaching and learning of all comparative law subjects at the Department of Sharia Law as an innovation to encourage more graduates to pursue a professional career such as Sharia law counsel or lawyer. Many efforts can be made and programs and modules may be proposed and arranged by referring to the various client counseling training modules conducted in universities abroad. Even though this study has not been conducted more comprehensively and it does not represent the voice of all former Sharia law students, it may still be used as a sevidence of the dire need for client counseling training programs for Sharia law students.

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