

A VIEW ON LEGAL RISK MANAGEMENT IN UNIVERSITI TEKNOLOGI MARA (UITM)

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Abstract. Risk management is important in Malaysia. It is a policy of the Federal Government. This policy is adopted by all public universities including Universiti Teknologi Mara (UiTM). Risks faced by an organisation could be positive or negative. One important category of risk is the legal risk. Legal risk is important in Malaysia because it practises the rule of law. The rule of law is also applicable to UiTM. Legal risk has its own principles and they are applied in all public universities including UiTM. The university has its structure to manage legal risk. The structure involves the University Strategic Risk Management Council supported by the Risk Management Unit and also the Risk Management Committees of all Responsible Centres in the university. The structure also shows that UiTM is serious in legal risk management to help it achieves its visions and objectives. Based on the above statements, this article explains the basic principles of legal risk management and also legal risk management in the university. Under legal risk management, this article will look at the importance of the legal risk to the university by looking at its substantive and procedural aspects as well as appreciating some views of those involved in legal risk management from the unit.

Keywords: *legal risk management principles, legal risk management processes, legal risk management practices, legal risk reports*

Introduction

Risk management is an important subject and practice in Malaysia and other countries. In Malaysia, it is the Federal Government's policy. For instance, in the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) under the Prime Minister's Office (PMO), it implements the Public Sector Information Security Risk Assessment. Another example is the Ministry of Health, which has the Risk Management Plan 2016-2020. The government's policy is also a policy for all Public Universities including UiTM. The public universities are adopting the policy because all of them are statutory bodies. As statutory bodies, normally they will adopt relevant government policies that are in line with their objectives, visions, and missions. In UiTM, risk management is a policy that binds its staff and students. For instance, it has the University Strategic Risk Management Council. The council decides and provides solutions and recommendations for the risk management of the university. In another instance, the university also has the Risk Management Unit which coordinates and facilitates risk management. Thus, risk management is a culture in the university as it is in existence in the whole university including administrative offices and faculties.

Part of risk management in UiTM is the categories of risk. One of the important categories is legal risk. The university is widely exposed to potential legal risks because it involves diverse legal relationships in particular contractual relationships. Potential risks also exist in tortious and criminal matters as the university is bound to observe the rule of law in Malaysia. Because of these situations, this paper analyses two issues namely: Principles governing legal risk management and legal risk management in the university.

Discussion

Principles governing legal risk management

Legal risk management is unique and important. The existence of legal offices in governments, companies, and universities affirms the importance of legal risk. In general, there are principles governing legal risk management. Thus, this heading analyses the meaning of legal risk and also the principles governing legal risk management.

Meaning of legal risk

Risk is viewed from positive and negative contexts. It concerns anticipation of a future event that may bring benefits or losses to an organisation. For instance, the financial risk is positive and negative for an organisation. If an organisation decides to invest in the stock market, there are possibilities of it getting profits or losses. That is why the organisation must implement risk management to assess these possibilities. Legal risk is defined in many ways. The first definition denotes all business risks with legal consequences. Another definition concerns risks derived from legal work products or uncertainty. Some extend the legal risk beyond strictly legal consequences and refer to reputational concerns, and intra-organisational culture (Moorhead and Vaughan, 2018). Legal risk has its own context. It concerns legal, regulatory, and contractual matters, non-contractual rights, and obligations. Legal matters are derived from political decisions, administrative acts, regulatory orders, codified laws, judgments and awards, procedural rules, memoranda of understanding, or contracts (Al-Kalidi, 2019). For instance, an order made by a local council to bar smoking in a particular area is a legal risk. Affected parties may challenge this order in court and the court may quash the order. This affects the local council's reputation and financial wealth.

Non-contractual rights involve an organisation that fails to assert its non-contractual rights. For instance, a company has its own intellectual property rights. These rights cover copyrights, patents, trademarks, trade secrets, and confidential information. In one situation, the third-party breaches information confidentialities which allow the company to take legal actions. However, the company fails to do so (San Tay, 2020). Non-contractual obligations concern an organisation's behaviours or decisions that are illegal. For instance, a company mismanages and misuses its social media platforms which infringe others' privacies. This situation may result in others suing the company for tortious wrongs. In short, the legal risk covers a variety of areas of law such as constitutional law, administrative law, contract law, and torts law. The legal risk also touches on rights and obligations. Politics also influence legal risk management. Law will monitor organisations to properly manage the legal risk and the courts will provide legal solutions if the legal risk contradicts the law.

Principles

There are ten principles governing legal risk management. The first principle is the organisational context. It is an established fact that an organisation will be affected by politics, social situations, and law. Politics run a sovereign country. They have diverse ideologies and these ideologies will affect the long-term vision of a country. For instance, in Malaysia, politics must recognise the interests of the Malays and the Natives of Sabah and Sarawak as the dominant factor. Normally, a political movement

or party that ignores these interests will not do well in general elections. Social situations evolve from time to time. They also exist based on religious beliefs and local cultures as well as customs. In countries that prioritise religion, governments will make policies that are friendly to religion to avoid the potential risk of protests and being voted out in general elections. In countries which that not prioritise religion, the government policies are more liberal and open. For instance, there are risks when the United Kingdom legalises same-sex marriages as equal to normal marriages especially done in churches. The government must exercise risk management on this matter.

Law affects politics, social situations, and others. It exists in governments, institutions, communities, families, and individuals. Legal risk management comes in different ways and methods. Governments will conduct legal risk management in order to ensure that their policies are accepted by the people and also the foreign communities. Lawmakers will also conduct legal risk management in ensuring that potential laws when passed will benefit the people and the voters. Institutions like universities will implement legal risk management to avoid potential legal actions by third parties that can affect their images and brands. The second principle is the stakeholder's involvement. Legal risk management must involve stakeholders for them to know what they can contribute to the betterment of the organisation. For instance, the organisation may invite a stakeholder to attend a risk management meeting. This meeting will make him or her have a clear picture of problems or challenges faced by the organisation. The stakeholder may also propose suggestions during the meeting so the legal risk management of the organisation would become better in the future.

The third principle is the organisation's objectives. Legal risk management must be in line with the objectives of the organisation. For instance, if the organisation is a public university, the university must ensure that its legal risk management is in line with its educational objectives. Risk contexts and criteria must focus on the quality of the university's academic programmes and its academic staff's integrity and knowledge. The fourth principle is reporting. Communication in legal risk management is important. All information conveyed must be authentic and accurate. Any decision made by risk management meetings must be based on authentic and accurate information. The importance of reporting necessitates an organisation to appoint qualified individuals to facilitate legal risk management. The individuals must have diverse skills and knowledge. The skills and knowledge should cover law, economy, accountancy, and others. Although it concerns legal risk management, the legal risk co-exists with other important risks such as reputational, financial, operational, and strategic.

The fifth principle is duty and responsibility. Legal risk management involves a holistic approach. All parties must work together to create an excellent legal risk management culture. For instance, a faculty in a public university has its risk management committee. The Dean of the faculty must ensure that all staffs and students of the faculty understand the importance of legal risk management. Therefore, a lecturer who has finished lecturing will automatically switch off the aircon and the light because he or she understands that there is a legal risk for not switching off the aircon and the light. The sixth principle is structural support. To have effective legal risk management, a group of individuals must be formed. The group will be in charge of legal risk management and should comprise individuals who are dynamic, responsive, and hardworking. An ideal scenario is to have individuals who know substantive and procedural laws apart from knowledge of statistics, accountancy, and finance. The

individuals should be aware that law changes from time to time and this will affect the organisation.

The seventh principle is early warning instruction. The legal risk must be detected earlier so that it could not become a problem for the organisation. This could be achieved by having good communication at all levels in the organisation. As stated earlier, legal risk management is a team effort. All parties must work together. The respected parties must also be given the authority to manage and resolve any legal risk that jeopardise every unit in the organisation. The eighth principle is continuous review. Legal risk management involves input reviews at all levels. The review must be done continuously because it allows continuous enhancement of the risk management of the organisation. For instance, in a risk management meeting, it has identified and accepted a legal risk. The relevant unit must implement the mitigation plan to control the legal risk. The unit must later present the effectiveness of the mitigation plan in the next risk management meeting. The meeting will determine whether the plan should continue or decide on a new mitigation plan to control the risk. This should be done continuously.

The ninth principle is culture and support. Proposing ideas, questions, and open discussions should be culturised in the organisation. This encourages participation by more parties in legal risk management. Brainstorming sessions are important to deliberate on these ideas, questions, and discussions. Thus, the involvement of these parties would ensure that legal risks are managed in a holistic way than a rigid way. The tenth principle is continuous improvement. Legal risk management should involve relevant creative strategies. These creative strategies are achievable by having a diverse group of people managing legal risk. The group should include senior and also junior staff of the organisation. Having creative strategies also help the organisation to minimise the potential effect of legal risk to the organisation (Aven, 2016; Luko, 2013; Renn, 1989).

In short, the principles governing legal risk management are varied and important to an organisation. The principles will ensure the organisation implements legal risk management within the vision, mission, and objective of the organisation. Thus, every organisation has its vision, mission, and objective. The other important aspect of the principles is the encouragement of all individuals of the organisation to participate in legal risk management. Everybody has an important role in legal risk management. Thus, specific individuals who are knowledgeable in legal risk management must be appointed. These individuals will lead and guide others in legal risk management.

Legal risk management in UiTM

Risk management is a policy in UiTM and must be adopted by its staff. Risk management also covers legal risk management. It has its own structure and procedure. Risk management in the university is important because it has the most students and branches throughout Malaysia. It also has campuses in every state in Malaysia. Because of the situation, discussions are made on two aspects namely, the substantive and procedural structure and also the practice of legal risk management itself.

Substantive and procedural structure

In UiTM, the highest body which determines legal risk management is the University Strategic Risk Management Council. The council has many duties. One of its duties is to endorse risk tolerance levels. For instance, it may decide that a risk tolerance level on

Legal Risk A is high and Legal Risk B is low. The other duty of the council is to endorse or amend any policy relating to risk management. The endorsement and amendment show that it practises creative strategies in embracing the principle of continuous improvements and reviews. However, the endorsement and amendment are done in line with the university's visions, objectives, and missions. The other interesting duty of the council is to endorse decisions made by risk management committees at an operational level for instance high-impact risk management, the safety of record, etc. The other important body in legal risk management in UiTM is the Risk Management Unit. The unit coordinates, monitors, and provides advice on the university's legal risk management. The scope of the unit involves strategic, operational, and project legal risks. In coordination, the unit will report to the council the legal risk management reports of all the Responsible Centres in the university. For instance, after a risk management meeting, a faculty submits a report to the unit. Some contents of the report state various types of legal risks ranging from extreme, medium, and low. The unit will then report these contents to the council for further actions and decisions.

In monitoring, the Risk Management Unit monitors and ensures that all faculties, units, or departments in UiTM implement legal risk management. The monitoring is done by having risk management coordinators appointed by the unit. The coordinators are stationed in the faculties, units, or departments to ensure that they implement legal risk management. They also form meeting quorums in the faculties, units, or departments' risk management meetings. Failure of them to attend the meetings may invalidate any decisions on legal risk management. They also act as secretaries at the meetings. They are also invited by the departments to give advice in strategic planning meetings. It is a policy of the university that in any strategic planning meeting, discussions must be also made on risk management. In providing advice, the Risk Management Unit provides advice on legal risk management to all relevant faculties, units, and departments in UiTM. The unit provides advice if asked so by the University Strategic Management Risk Council. The faculties departments may also ask the unit for advice on legal risk management. For instance, a faculty may organise a course on legal risk management involving the faculty management officials. Thus, it will invite the unit to conduct a course on legal risk management. The unit will also take its own initiatives to spread the importance of legal risk management to the whole community of the university. For instance, it will utilise its online system to disseminate information on legal risk management to the community.

The next important body in legal risk management in UiTM is the Risk Management Committees of the faculties or departments. The committee is headed by the head of a faculty, unit, or department. It will conduct frequent risk management meetings to determine issues such as accepting or rejecting legal risks, proposing control and preventive actions, and evaluating existing control and preventive actions. The risk management co-ordinator who is the secretary of the meeting will record in writing the outcomes of the meeting and then will report them to the Risk Management Unit via the online system known as the e-RMS. The report will be used by the unit to present during a meeting with the University Strategic Management Risk Council. The heartbeat of legal risk management in UiTM apart from the Risk Management Unit is the risk management coordinators. The coordinators are the representative of the unit in a faculty, unit or department in UiTM. A risk management co-ordinator will advise the faculty or department to consistently implement legal risk management. He or she is also the one who is going to report legal risk management activities to the unit.

Data and information on legal risk management in particular determination of legal risks and legal risk mitigation plans must be recorded by the faculties or departments. UiTM practises two methods. The first method is the risk register document. This method is an old method used by the university in reporting legal risk management activities. After a legal risk management meeting, the risk management coordinator will fill in the information relating to the determination of legal risks and legal risk mitigation plans in the risk register. This risk register will be kept by the faculty, unit, or department. Then the co-ordinator will use the second method, the e-RMS online system. He or she will key in the information into the e-RMS system. The Risk Management Unit as the owner of the e-RMS system will then generate the information into data analytics to be presented in meetings with the University Strategic Management Risk Council. The e-RMS system is in line with the need to implement modern technology in legal risk management. Risk management in general is becoming a complex matter (Castro et al., 2008). Modern technology like the e-RMS system will help the university to have authentic data and information. As stated earlier, the key to have a successful legal risk management is to make decisions based on authentic data and information. The university will use the information to make important decisions in managing legal risk.

The above bodies and individuals manifest the important process of legal risk management in UiTM. The process is adopted by all faculties, units, and departments in the university. There are six processes in legal risk management. The first process is the identification of legal contexts. The identification concerns the scope of legal risks which affect the working process of a faculty, unit, or department. For instance, the working process of a faculty involves numerous matters such as academic programmes, students, and administration. Therefore, the risk management committee of the faculty will identify legal risks derived from the matters. For instance, there are legal risks if students are involved in contracts, crimes, and torts. There is a risk that the faculty may face legal actions if it commits a breach of trust in evaluating and assessing a student's performance and grade. There is also a legal risk if a faculty building is not built based on law. The second process is the identification of the legal risk and its sources. There are numerous methods that a faculty, unit, or department adopt to identify the legal risk and its sources. One of the methods is through brainstorming sessions that are normally done in a risk management meeting. Thus, one of the functions of the meeting is to identify and recognise potential legal risks. The other method is observation. For instance, by observing the facilities of a faculty, an individual may foresee potential legal risks derived from the state of the facilities. The next possible method is experiences. An individual may have to experience certain impacts of legal risks. This experience is crucial to assist him if he is involved in legal risk management. The truth about these methods is that they are varied and not rigid. The legal risk could be determined in many ways and it depends on the creativities of the ones involved in legal risk management.

The third process is the analysis of the legal risk. The analysis involves the table of probabilities and the table of risk impacts. The table of probabilities shows the frequency of the occurrence of the legal risk. The frequency is divided into five categories namely, infrequently, low probability, a possibility, high probability, and almost certainly. For instance, the category of almost certainly states that the occurrence of the legal risk is once a month. The table of risk impacts shows the impacts of the legal risk. The impacts are none, small, medium, large, and very large. The combination

of the two tables may generate a diverse analysis of the legal risk. For instance, legal risk 'A' is a possibility and its impact is medium. Legal risk 'B' is infrequently and its impact is low probability. The fourth process is the evaluation and categorisation of the legal risk. The process involves the schedule of risks. The schedule categorises the legal risk into extreme, high, medium, and low. The Responsible Centres determine each legal risk into the five categories. For instance, Legal risk 'A' may be high in Responsible Centre 'B' but low in Responsible Centre 'D'.

The fifth process is the legal risk treatment which is done through the mitigation plan and the risk treatment schedule. Under the mitigation, a Responsible Centre through its Risk Committee meetings states whether it stops, reduces, transfers, or accepts the legal risk. If the legal risk is accepted, the extent of the implementation of the mitigation plan is stated in the risk treatment table. For instance, a legal risk that is extreme has a shorter duration of the implementation of the mitigation compared to another legal risk that is medium. The last process is monitoring and evaluation. Monitoring and evaluation involve all the previous processes of the identification of legal contexts, the legal risk and its sources, the legal risk's analysis, evaluation, categorisation, and legal risk treatment. The monitoring of the processes is important to ensure that legal risk management in the Responsible Centres is done correctly according to rules, regulations, and procedures. The evaluation of the processes ensures that legal risk management in the Responsible Centres is better from time to time. Thus, the Centres will be open to open and constructive criticism in their legal risk management. In short, the existence of the above processes shows that UiTM is serious in its legal risk management. The university intends to become the centre of legal risk management in the Malaysian academic world. Because of the largest numbers of staff, students, facilities, and campuses, UiTM needs to have very good legal risk management.

Practice of legal risk management

The practice of legal risk management in UiTM is viewed from the scope of legal risk management and issues. The scope is divided into strategic, operational, and project risks. Strategic risk means risks that arise in pursuit of business objectives. Many strategic issues exist in a state of uncertainty from which strategic risk can emerge as objectives are pursued (Emblemsvåg and Kjølstad, 2002). The strategic risk of the university involves finance, research, the quality of graduates, staff development, strategic partnership, and unexpected event. These factors are reasons for the existence of legal risk. For instance, the existence of dishonesty and unethical practice among academicians are reasons for legal risk. The dishonesty and practice will result in legal actions against the university by third parties. Operational risk is a day-to-day hazard of running a business of an organisation. It happens everywhere for instance, injuries sustained from a design weakness in playground equipment (Dvorsky et al., 2021; Coleman, 2010). In UiTM, operational risk involves the management of all the Responsible Centres. For instance, the management of a faculty involves the details of the faculty, facilities, staff, students, and academic sessions. Generally, the faculty faces legal, strategic, financial, and project risks. Negligence on part of the faculty is a reason for legal risk. For instance, if a student suffers injuries because of dangerous facilities, the faculty may face legal action from him.

Project risk is an uncertain event or condition that, if it occurs, has a positive or negative effect on at least one project objective. It offers benefit and threat within a single project (Gachie, 2017). Project risk exists in UiTM because the university enters

into contracts with other parties involving projects. It is compulsory for the university to conduct a risk assessment for any proposal of projects by other parties. Part of the risk assessment must include legal risk and its sources. For instance, a proposal is made by a company to the university to install internet facilities. The university must conduct a risk assessment on the proposal before making a decision to accept or reject the proposal. Issues are derived from the writer's interviews with Mr. Badrul Hisham Hussein and Dr. Shamshimah Samsuddin, the UiTM Risk Management Unit Coordinators. The issues are the lower number of registered legal risk in the e-RMS system, the understanding of legal risk, and the priority of others over legal risk. The lower number of registered legal risk implies two assumptions. The first assumption is a Responsible Centre does not have legal risk and the second one is legal risk is not important in the centre. The first assumption is not logical because legal risk exists everywhere. The second assumption is acceptable, because under the risk management of the centre, it may not register legal risk in the e-RMS system if it is not extreme. However, on part of the unit, the lower number of registered legal risk is a concern because it needs data and information to report to the University Strategic Risk Management Council. The understanding of legal risk may occur because persons do to relate it with legal actions in courts. Persons may not have thought that legal risk involves reasons such as defects in buildings, hazards in facilities, electrical wastage, etc. The priority of others over legal risk as stated earlier occurs when a Responsible Centre does not register legal risk in the e-RMS system.

Conclusion

The above discussions highlight several important issues. The first issue is legal risk management is important to UiTM. The university does not only adopt the Federal Government policy but also intends to use risk management as an important tool to achieve its visions and objectives. The second issue is principles governing legal risk management involve many areas and people. Legal risk covers both public and private laws. Public law involves relationships between individuals and the government. Private law concerns contracts and torts (Ali Mohamed and Ahmad, 2021). The principles establish an important fact that legal risk management can achieve success with cooperation among those involved in an organisation. Those involved cover staff and outside parties such as stakeholders and customers.

Legal risk management in UiTM involves substantive and procedural structure, as well as practice. The university afforded legal risk management authoritative bodies managing and facilitating risk management. The authoritative bodies will direct the university staff to implement legal risk management. One important aspect is legal risk management processes. The processes involve legal risk identification, analysis, evaluation, categorisation, treatment, and monitoring. Monitoring and evaluation are important because they ensure legal risk management is up-to-date through check and balance. Accepting criticisms and views are important in the university's legal risk management. The practice of legal risk management involves strategic, operational, and project risks. The three risks are vital to the objectives and visions of the university. Each of the risks involves a legal risk that the university has to manage with care and diligence. Lastly, the issues of the lower number of registered legal risks, the understanding of the legal risks, and the priority of others over legal risks, should alert the university to intensify efforts to make its staff understand the importance of legal

risk. There should not be an attitude regarding law as important when things got worse. Legal risk is as important as other risks.

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Conflict of interest

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