

Reformulating Clinical and Continuing Legal Education: The Demand on Creating Skilful Professional Jurist in Indonesia

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Abstract: Establishing legal clinic in a law school is one of the keys to create law school graduates to be come a professional jurist. To reach this purpose the legal education has to reform the teaching methodology, and its interdisciplinarian approach. The option lies between creating a new externship program or modifying the course by adding practice knowledge. One of the obstacles that may arise is the limitation of the student to conduct an advocacy to defend their client's rights in the court, since they have to represent their clients, as a party's authority to sue or be sued in a representative capacity. Indonesian legal profession faced the growing public distrust of the legal profession as the result of increasing perception of incompetency and corruption in legal profession. A program to restore the public trust of legal profession should be paved immediately, and Law School as an intitution that produces lawyers, has the responsibility to restrore it. In the context of controlling the professionalism of lawyers, Contionuing Legal Education is a program for legal profession having the capacity to promote social justice dimension of the practice of law and other professional values for lawyers.

1 INTRODUCTION

In Indonesia, the begining of legal aid established in the 1940s by Professor Zelyemaker, a Dutch professor of law who developed a legal aid bureau at the law high school (Irwan and Hearn 2016, p. 8). Since then, after the Independence of Indonesia from dutch colonialism, the clinical movement started evolving, although most of the clinic did not survive. There was no standard and model of law clinic that implemented in the curriculum of Higher Education Institutions On its development, legal clinics that implemented in each school of law in Indonesia developing in various way, depend on the needs of stake holders, since the lack concern of government to promote and instituationalized legal clinic. The status quo last from 1966 until 1998 (a period known as 'the New Order' era) when all the injustice occured as a result of the absence of access of justice and people power since the relationship between CSOs and state was very weak (*Ibid*).

The awareness of the need for legal clinics in legal education institutions began to occur after the fall of 'the New Order era', when access of justice as one of the goal of 'reformation' era bring up the need of professional jurist that also have the social awareness

to guide the 'reformation' agenda. In 2004, President Yudhoyono became the first president who was elected, and brings up the platform which included justice as one of four pillars. This provided a new stability and openness for the government and paved the way for greater voice from CSOs and donor support (*Ibid*, p.9). The opennes also bring the realization the need of restructuring legal education, therefore Indonesia legal education needs a lot of changes especially the clinical legal education, since many course material in the legal clinic of the law school are going nowhere and fails to provide students with adequate skills for the future career in law. The drastic changes are important, in order to solve fundamental problems of "outdated" learning methodology in law school, where many legal education in Indonesia still unable to provide the market of the graduates that could be directly used as a professional jurist as aresult of the previous government regime.

As the impact of the strong cooperation between CSOs (both domestic and international CSOs), clinical legal education knowledge excessively inspiring law professor. Those "new" legal educations methodology are believed as a sollution in reforming Indonesia legal education. In order to

catching up with the development, problem based learning (PBL) promoted, since then, many Legal Aid Institution under school of law formed. It appears to be an ideal form of PBL methodology, that could develop student's lawyering skill. However, since only small amount of student could enrolled as intern, the inability of law professor in law practices, and the tendency of legal aid institutions only accommodates the interest of students who want to work as advocates, the Legal Aid Institution alone could not meet the various need of student, since other lawyering skill from various legal profession also needed by student.

In the same time, the learning method that currently implemented by many law schools are remain similar with the learning method that was implemented during the Dutch colonialism era. By using only lecturing method which is a traditional teaching method achieves the legal education's purpose that enabled law student to highlight the importance of legal education both in pedagogical terms, in the same time considering issues of social justice, are way too hard to achieve. Hence, such kind of teaching methodology need to be reformed, by promoting such two-ways learning such as socratic method as onw of ideal learning methodology, to replace lecturing method as a one-way learning method so that it's purpose to allow the law graduates mastering law theories, improving student's critical thinking, and their capability to apply the law in the context of experiential teaching in legal clinic could be achieved.

By implanting the PBL, reforming the teaching methodology, in the context of reshaping the clinical legal education, the purpose of legal education on producing graduates that is qualified as a professional jurist in, more likely possible achieved. Therefore, the HEI have to set a goal of educating students to this responsibility for assuring access to justice is best met if such education permeates the curriculum. Each law school course should raise issues of access to justice, with clinical courses exposing students to the reality of how these issues play out in the lives of indigent clients when the systems made them become inferior from the written law perspective, and creating a solution to address their needs. Law schools that emphasize the professional values in the teaching methodology, should implement it in every class, not only in the clinical courses.¹

¹ New York State Judicial Institute, Introduction to Clinical Legal Education , 2005, p. 12

2.1 The Urgencies of the Legal Clinic and Continuing Legal Education

The obligation in preparing legal skill for students should not rest solely on the law schools, but also other segments of the legal profession bear the same responsibility. Institutionalizing clinical education, need a strong cooperation between law school and other law profession organisation, CSOs, including legal institutions wich enable student to conduct clinics works, intern, and to provide student a "laboratory" to implement their knowledge. Mostly, the problem arised when the Higher Education Institution, in this case law schools, does not build strong cooperation with legal institution, CSOs or legal professional organization. Even takes time to set up cooperation between law school especially if they have never been build strong coopeartion with their alumni, in this context, the cooperation must be done in order to promote clinical legal education to gain the information regarding the need of legal material has to be mastered by student, ensuring the sustainability of the clinic, and raising the student awarness of the current legal issue so they can provide a huge contribution in justice reform process.

Modern legal education has brought up at least two components in their methodology: academic development and practical training. A school could not be regarded as a professional law school unless they meet several criteria as follows;

- a. Lecture;
- b. Case Method;
- c. Moot Court;
- d. Discussion;
- e. Dialogue;
- f. Intuitive;
- g. Clinical Legal Education.²

However, in a country like Indonesia, where both the student and professor (especially they who serve as civil servant) could not represent their client unless they have the license to practice the law, where they need to completing professional education and pass the bar exam. Such condition occured, after the law that regulates advocat profession ratified. Before it, Indonesian law student has the access to conduct advocacy under the supervision of their professor and the professional lawyer, so they could represent their client under tight supervision of their professor and the professional advocate. In the context of changing the concept of legal education and improving the

² Shiwen Zhou, The Reform Strategy of Legal Education in China, 2009. P. 69.

quality of legal professionals, the current legal education is far removed from legal practice with serious deficiencies in teaching practice have to be reformed.³ Such measures like establishing Legal Aid Unit has to be performed in minimizing the problematic conditions.

Even Indonesia has ratified Legal Aid Law (law No. 16 of 2011) that provides access to justice for the vulnerable groups, especially the poor as one of the implementations of Article 16 and Article 26 of ICCPR (International Covenant on Civil and Political Rights) which requires countries that ratifying it to provide assurance for all their citizen to have the rights access of legal protection and being protected from any form of discrimination, it does not fully support the need of legal experiential learning of the Law School. In fact, on 2015, 4 years after the law enacted, 310 Legal Aid Organization are registered in Indonesia, and among of them, 270 Legal Aid Organization are in the form of legal entity and therefore based on the law, having the capacities to conduct legal aid for the vulnerable groups that has the right to be represented, as Legal Aid Provider.⁴

Law school as a HEI has the capacity in conducting legal aid for the vulnerable groups, share the same interest with other Legal Aid Organisation, especially in the context of providing student the experience of handling real live client as clinician. Several particular courses in the legal clinic with subject such as Law and Ethic for instance, which is compulsory for all of law student in the practical context to broaden the knowledge of how the law in practice, ethical duty for jurists based on the code of conduct for legal professional. Therefore, the method in delivering such courses cannot only rely on classical learning that has limited in theories and ethical regulation for legal profession. By forming a legal clinic student could play in a better roles in serving the vulnerable groups as legal aid recipients in representing their rights in order to provide them access to justice, in the same time student will gain the opportunity in expanding both practical aspect of law and ethic for legal profession and lawyering skills they experienced from handling real case in return.

In order support it, the approach that could be done by law school is by neutralizing and broaden the substantive for the methodology in delivering the course material, by enacting not only clinical legal education, but also continuing legal education.

³ *Ibid.*, P. 73

⁴ Enny Nurbaningsih, Rule of Law and Its Development in Indonesia, 2005, P. 3

⁵ American Bar Association, Model Rule for Minimum Continuing Legal Education, 2017, P. 1.

Continuing legal education itself defined as legal education program taught by one or more faculty members that has significant intellectual or practical content designed to increase or maintain the lawyer's professional competence and skills as a lawyer.⁵ Both clinical and continuing legal education are believed as a key factor of the development of legal education and social change in the positif term as in America, US, Eastern Europe and South Africa. On the other hand, both continuing and clinical legal education as a series of legal education process will also bring a positive impact on the reputation of the legal higher education providers. Since the user of school of law's graduates that may represent various aspect from business entities, the students should understand of the professional duty not merely the written law, but also unwritten law, not only the litigation process, but also the non-litigation process in every aspect of law. Law school students are expected to be knowledgeable of the professionalism and legal ethic for various profession not only based on code of conduct that exist, but also the alternative for dispute resolution for the profession that has no written code of conduct. By neutralizing and broaden the substantive of the course, law students will have the knowledge of what they can do and what they cannot do as a professional in their future career in law.

2.2 Restructuring the Legal Clinic and Promoting Continuing Legal Education for Law School

The process of school of law shaping the images of good, competent, and ethical lawyering in law students is even more evident in live client, in-house clinical courses where law teachers are actually practicing law and representing clients with their students.⁶ The externship program in School of Law, tends to address those problems by giving the law students a compulsory externship program. However, the substantive of the course should be broadened and integrated with the externship program in order to maximize the student's comprehension of the course' substance, and restructuring it in order to provide student with the more applicable substance needed for their potential careers.

The UK Higher Education Academy published a study entitled 'Employer preferences in UK Legal Education: A Synthesis of research' which provide

⁶ Peter A. Joy, The Law School Clinic as a Model Ethical Law Office, 2003, p. 8

evidence that "... practitioners want more emphasis 'hard skills' such as document drafting and problem-solving..." in law schools. Moreover, based on the study seems that law firms are concerned over trainees' lack of understanding of substantive legal ethics.⁷ Such condition believed also applies many countries, especially in Indonesia. Since law school lacking in provide student the applicable substance needed for law school graduates to pass the bar exams, such policy where law school graduates are not directly eligible to take bar exams unless they took the special education conducted by the bar association before. Thus, existing condition will not occur if law school could provide their student applicable skills and theories for their future legal profession career.

The purpose of clinical legal education can be summed up in two ideas: developing and training students' professional skills, and providing legal assistance to socially vulnerable groups, which imparts in students' sense of social responsibility and career honour.⁸ To address those issue, law school clinics should play some important role in making access to justice a reality for many low-income people. It's not only exposing law students to the legal problems that the poor faced but also allowing students to solve substantive problems of the indigent and "inferior" group by using "unique" approach to respond the need of access to justice. The result that should be achieved by conducting such clinic should, at a minimum, lead to greater sensitivity of clinic graduates toward social justice issue, and to find resolutions for legal problems that may occur by using legal clinic to provide it.

Clinical legal education provides a learning experience that is difficult to gain by merely using classical teaching method. By performing CLE approach in every aspect of law school teaching, such benefit could be achieved:

- a. students can see how their work directly benefits a real person, and thus obtain personal satisfaction from impacting positively on someone's life;
- b. students can see the vocational significance of the skills they are developing;

- c. students are given 'responsibility and empowerment', and feel a duty towards their clients;
- d. the 'energy of firm meetings frequently compares favourably to the apathy-induced somnambulism pervasive to more traditional seminars';
- e. students grow in confidence because of the 'close-knit' community of clinics;
- f. students develop assertiveness skills;
- g. students frequently do not achieve their potential in seminars by not participating in discussion, whereas clinics require full participation; and
- h. by applying the law to an actual case, students understand concepts previously less clear to them.⁹

Therefore, there are several conditions that have to be concerned before choosing the appropriate clinical model that can be implemented. Those are; the features of the clinical model and the similar conditions and facilities that could be provided by school of law. For a Higher Legal Education Institution that has not well experienced in conducting a legal clinic, one of clinical legal education model implemented in Latin America, as a model that was developed in a conditions that occur in several developing countries can be an appropriate model of CLE since this model at first developed in a developing country, where legal problems such as legal pluralism and limited acces to justice occurred. The form of legal clinic's model that has been used in Latin America, especially in Argentina, Chile, Columbia, Mexico provide students with trainings such as strategic litigation and the use of unique academic laboratory setting before students facing real case. This model started with the emergence of clinical programs based on the ideological and practical tenants of Public Interest Law (PIL), which in the further development have been particulary fertile. As the result, the clinic reformed, and began to reconsider their role in both legal education and professional practice.¹⁰ Therefore, the clinical legal education model in Latin America also required their students to conduct research, prepared court presentation, and collectively look strategic decision.

⁷ Ronan Fahy & Mireille van Eeouch, *Clinical Legal Education A Review of the Literature*, Institute for Information Law, University of Amsterdam, 2015, P. 4-5.

⁸ *OpCit.*, Shiwen Zhou, P. 71.

⁹ J. Marson, A. Wilson and M. Van Hoo, in Ronan Fahy & Mireille van Eeouch, *Clinical Legal Education A Review*

of the Literature, Institute for Information Law, University of Amsterdam, 2015, P. 5.

¹⁰ Erika Castro EtAll, *The Grolbal Clinical Movement in Latin America: Toward Public Interest*, accessed from <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195381146.001.0001/acprof-9780195381146-chapter-5> on November 22th, 2018.

In reforming the teaching methodology, based on the Carnegie authors that toward the goal of knowledge, skills, and attitude, education to prepare professionals jurist involves six points such as:

1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research.
2. Providing students with the capacity to engage in complex practice.
3. Enabling students to learn to make judgments under conditions of uncertainty.
4. Teaching students how to learn from experience.
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community.
6. Forming students able and willing to join an enterprise of public service.¹¹

This model can be implemented when the facilities for academic laboratory for clinical legal education that that can be used for strategy discussion with law firm concept provided. It may guarantee the possibilities for HEI to adopt since most of Law Schools have the academic laboratorium facilities when it used properly could role a big help for students to experience the actual career of law's atmosphere. The requirements for students to conduct research, prepared court presentation, and collectively look strategic decision can be the best way to introduce students to handle real case and in the same time provide the students with the problem-solving skills. In conducting Argentina's legal clinic model, basic skills for law clinic practice should be thought and observed thoroughly by the professor and supervisor, since the form of the clinic is in-house clinic. Students as the clinicians need to be taught lawyering skills such as:

1. Establish an attorney-client working atmosphere;
2. Elicit a description of the client's problem;
3. Elicit the client's goals and expectations;
4. Analyse the client's problem;
5. Allow the client to make an informed choice concerning the action to be taken; and to
6. Bring the interview to a satisfactory conclusion.¹²

In order to paved the way, Law school need to take a serious measures in reforming the teaching methodology which can ensure the goal achievable by

student. In order to mastering basic skills of lawyering, law schools should implant clinical legal education approach in every courses, so that such goals as mentioned in the contemporaneous Carnegie report, like: Broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; Integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and Give much greater attention to instruction in professionalism¹³ may possibly achieved.

In order to guarantee the professionalism of lawyers, the obligation of school of law, which also can be considered as school of thought, has to ensure lawyers works professionally in order to maintain the public confidence n the legal profession. On the other hand, the need of School of Law to maintain the strong bounding with their alumni, other legal institution, CSOs and other organisation related, can be paved by creating continuing legal education program. The continuing legal education program it self considered as the next step of clinical legal education, since the objective of the program is to maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices.¹⁴

2.3 Promoting Social Justice Aspect in Continuing Legal Education

Law schools have the responsibility to help students acquiring the attributes of effective, responsible lawyers including self-reflection in conjunction with the intellectual and analytical skills, core knowledge and understanding theories of law, ethic, professional skills, and professionalism.¹⁵ The social justice dimension of the practice of law and other professional values can find expression in other parts of the curriculum as well. Yet, only small number of "traditional" courses explored social justice issues in the latter part of the twentieth century, and those that did rarely explored the relationship between lawyers' pro bono mandatory and their obligation to improve the legal system. Rarer yet were law schools in which

¹¹ Roy Stuckey and Others, Best Practices for Legal Education; a vision and a roadmap, University of South Carolina, 2007. P. 15

¹² David McQuoid-Mason, Legal Aid Services and Human Rights in South Africa, p. 8

¹³ *OpCit*, P. vii

¹⁴ *OpCit*, 7 American Bar Association, P.1.

¹⁵ *Ibid*, P. 6

the curriculum as a whole reinforced both the social justice and professional values.¹⁶

The purpose of promoting Continuing Legal Education should refer to the history of how such program exist. Based on Aliaga “...CLE began as a voluntary scheme to assist attorneys returning from World War II in resuming practice after a lengthy military absence....”¹⁷ Furthermore, as a respond of it, in 1947, widespread acceptance of CLE began when the American Bar Association (ABA) entered into an agreement with the American Law Institute (ALI) in an effort to promotr a nationwide program comprised of correspondence courses and designed to encourage state and the local bar associations to promote Continuing Legal Education.¹⁸ The program then become acknowledge since there was growing public distrust of the legal profession as the result of increasing perception of incompetency and corruption in legal profession.¹⁹ The condition occured as a cause of the program developed in the mid 70’s in the United States also occur in some developing countries like Indonesia nowadays. Therefore, the idea on transplanting such program in a developing country like Indonesia has to take into consideration in order to mantain the public trust on legal profession.

According the John S. Roth, Note, Is Mandatory Continuing Legal Education Valid Under the United States Constitution?: Verner Vision and the Rationally related Competence Connection, the key factor that the program to be exist and could be approved for credit, Continuing Legal Education Programs must meet the following standards:

1. The program must have significant intellectual or practical content and be designed for a lawyer audience. Its primary objective must be to increase the attendee’s professional competence and skills as a lawyer, and to improve the quality of legal services rendered to the public.
2. The program must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, professionalism, diversity and inclusion issues, mental health and substance use disorders issues, civility, or the ethical

obligations of lawyers. CLE Programs that address any of the following will qualify for MCLE credit, provided the program satisfies the other accreditation requirements outlined herein:

- a. Substantive law programming
 - b. Legal and practice-oriented skills programming
 - c. Specialty programming
 - d. New Lawyer Programming
 - e. Law Practice Programming
 - f. Technology Programming
 - g. Interdisciplinary Programming
 - h. Attorney Well-Being Programming]
3. The program must be delivered as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component. The Sponsor must have a system which allows certification of attendance to be controlled by the Sponsor and which permits the Sponsor to verify the date and time of attendance.
 4. Thorough, high-quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees in paper or electronic format during or prior to the program.
 5. Each program shall be presented by a faculty member or members qualified by academic or practical experience to teach the topics covered, whether they are lawyers or have other subject matter expertise.²⁰

The Continuing Legal Education should also become a path to fulfil and implement the notion that the state acknowledges, protect and guarantee the rights of its people on their needs of access to justice and equality before the law, besides maintaining the competencies of lawyer. By providing the legal advice for legal aid recipients who cannot afford to hire a lawyer, the Continuing Legal Education will also able to maintain lawyer’s social responsibility and sense of justice during conducting their profession.

Indonesia’s HEI has such an obligation named a *tridharma* of higher education, which states that there are 3 obligations including; education, research, and

¹⁶ New York State Judicial Institute, Introduction to Clinical Legal Education, 2005, p. 10

¹⁷ Rocio T. Aliaga, Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar’s Consideration of MCLE, 8 GEO. J. LEGAL ETHICS, 1995, P. 1148, in Chris Ziegler, Justin Kuhn, IS MCLE A GOOD THING? AN INQUIRY INTO MCLE AND ATTORNEY DISCIPLINE, 2007.

¹⁸ *Ibid*, P. 1149

¹⁹ John S. Roth, Note, Is Mandatory Continuing Legal Education Valid Under the United States Constitution?: Verner Vision and the Rationally related Competence Connection – A Fortiori or a lot of Alliteration?, 11 WHITTIER L. REV. 1989, P. 639-641.

²⁰ *Ibid*, P. 7-8.

community service. In regard of Article 14 point (3) of ICCPR stipulates requirements in regard to Legal Aid, namely: 1) in the interest of justice, and 2) unable to pay attorney fees. Therefore, as the implementation of the ICCPR, Indonesia as a country ratified the convention should implicate HEI who has the capacity in conducting the legal aid, which also can be merged with the *tridharma* of HEI, by implementing both clinical and continuing legal education.

In the context of legal pluralism that exist in Indonesia, cannot be ignored, since such condition must also be seen as the basic knowledge for law student, also for the lawyers when they deal with real case in practicing the law. State recognition for Adat Law (customary law in Indonesia, where many of the tribe applies such law in regards of the local wisdom) as an unwritten law, which applies for minor dispute has also be seen as one of the clinical and continuing legal education's component, since the purpose of legal education is to provide the skill and jurisprudence (theories of law) that professionally involved with law and justice. It may different with the settlement of legal cases that has the written law, the settlement of unwritten law that occur in Indonesia need the mastery of both structural advocacy methodology, theories of law, and lawyering skills (especially negotiation and social justice),²¹ that needed not only by the undergraduate degrees, but also the lawyers to maintain public trust and their professionalism. The local wisdom in order to reach the resolution based on the living law and the professor should also rely on their experience in the field and ties to local communities and legal professionals, which need such a broad range of knowledge has to be mastered by both student and legal professional.

3 CONCLUSION

The objective that should be set by Law School, should be adjusted with the clinical and teaching methodologies, in order to achieve professional jurist as the outcome of legal education conducted by law school. In the context of legal education, legal clinic that run by the law school as part of its curriculum should include a structured training and induction program, transparent assessment process, by infusing legal aid program as in-house legal clinic which also able to use the local wisdom in order to reach the resolution based on the living law. The perspective of

professional jurist should be broadened to be knowledgeable both legal pluralism as the result of multicultural condition, in the same time mastering law science and its rapid development. In reformulating legal clinic, team-teaching with clinically trained staff is encouraged so that former practitioners can learn how clinical values and techniques are developed so the law students who are clinics intern trained in the clinic course using PBL for delivering the course material. The need to formulate the most possible clinical model that could meet the need should not burdened only to the law school, but also relies on the collaboration of legal professional organization with the law school in shaping and formulating the more effective legal clinic which could address all the issues through legal clinic to execute an appropriate plan to solve problems in legal clinic that could guarantee the students in understanding the content of the subject matter deeper.

On the other hand, to guarantee the professionalism of lawyers, the obligation of school of law, is to ensure lawyers works professionally in order to maintain the public confidence in the legal profession. Continuing Legal Education, as a program that basically create to minimize public distrust on the legal profession as the result of increasing perception of incompetency and corruption in legal profession has to be seen as a solution and advanced program of Clinical Legal Education. Continuing Legal Education, as a program for lawyers in keeping their competencies sharp, also has to be equipped with social justice value, structural advocacy methodology, theories of law, and customary (Adat) law, since the state recognition of it. By implementing both Clinical and Continuing Legal Education, the participant of both program could reach a better understanding of the legal and social justice issues in lawyer's perspective at the same time legal ethics in a practical context.

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