

INFUSING LOCAL ETHIC INTO LEGAL EDUCATION IN ASEAN COUNTRIES

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ABSTRACT. *Law enforcement (today) is still apprehensive. The mechanism to secure justice (through court) is still (such) “transactional” between parties with economic power and ones with public power such as law enforcement, authority, and business actors producing the unfair and discriminative law enforcement agents. The conduct of the law enforcement from advocate, police, attorney, and judge in law enforcement remains the problems affecting many issues. Moral degradation (highly tends to be) in the law enforcement and justice, or what we call identity crisis. From the above aspects, the role of higher learning institutions is crucial as the manufacture of law enforcement candidates. Western philosophy become a dominant paradigm of many practitioners and academicians of law and even considered as the religion of modern humane since it institutionalizes its world perspective into a doctrine for the science. Legal education, at this condition, is then featuring more the Western image (science) rather than bringing up the issues of their own locals which in the end, the local ethic are marginalized. This research aimed to answer the questions on: a) how is the relation between legal education and local ethics? b) Is ASEAN local ethics significant to be infused in legal education of the countries?*

This research used philosophical approach of deconstruction and heuristic consisting of interpretation, induction and deduction, internal coherency, holistic, historical, idealization, comparison, and heuristic methods. Conceptual approach was also used to deduce abstraction which was a process of mental selection to isolate or separate certain aspect of reality from other aspects. It is to help in understanding the actual legal problems in law enforcement and the relation between legal education and local ethic. Another method used in this research was socio-legal approach to develop local ethic based legal education.

The research concludes that a) legal education in ASEAN is still under influence of Western hegemony and set asides their local ethical values resulting in law enforcement who are unaware and even ignorant to refer to the local ethical values in solving cases of law they handle. b) ASEAN countries are rich with living local ethical values and some are shared among them. However, local ethics has been overlooked in many legal education in ASEAN countries despite that it is relevant to the law and the society today.

Keywords: *Local ethics, legal education, ASEAN countries*

INTRODUCTION

Law enforcement (today) is still apprehensive. The mechanism to secure justice (through court) is still (such) “transactional” between parties with economic power and ones with public power such as law enforcement, authority, and business actors producing the unfair and discriminative law enforcement agents. Practice of mafia in the court is bad notes for the court because it ruins the integrity of the court, some judges even think that their duties are as profit-driven industry or the business to gain profit (Noor Aziz Said, 2011;131-132).

When judge’s decision is contaminated with the power needs (money and interest), the decision will no longer take side on the justice and people will no longer trust the court. People distrust can be manifested in the conduct of vigilante (*eigenrichting*) or contempt of court (obstruction of justice) (Nurhayati Mardin, 2007;279). Law enforcement, at the end, is merely a

justification, where instead, the court shall be the place where people seek the truth and justice. Law enforcement, ideally, is a process to uphold the legal norms in real as the guidance of conduct in the traffic or in the relation of law in the life of society and the country. (Jimly Asshiddiqie, 2017)

Law school is responsible for reforming the problems of attitude constituted by the moral crisis-perception crisis above. This responsibility can be actualized, one of which is through the development of legal education with character modelling to create law enforcement with integrity. Current legal education is not enough since the content focuses more on aspects of science and professional (Western) and is extremely formal touching less the local ethic and culture. Law school should develop alternative model (as complementary) in a form of legal education that is expected to be able to support the shaping of integrity and character of its graduates. Why clinical education? This model can be employed in a relatively short time, yet it has many pluses, especially the method and approach used including at least 4 basic aspects, such as theoretical study, experimental practice, and community service, and the aspect of reflective consciousness shaping (internal correction method).

Why local ethic-based clinical legal education? It is because the current model of clinical legal education in the law school (even though is quite rare), is more a Western version model of clinical legal education which the substance or foundation is the individual and liberal values. It may not fit the spirit of Asian people who are communal. Local ethic based clinical legal education is a modification and adaptation of the Western model of legal education that can be used not only in one law school but in law schools all over the world. As one of the alternatives and the complement to the current curriculum, this model is expected to be able to overcome the severe moral crisis resulting in the worst legal enforcement.

GOALS

The purposes of this paper are as follows:

1. To understand the relation between legal education and local ethics.
2. To learn about the significance of ASEAN local ethics to be infused in legal education of the countries.

CONCEPTUAL FRAMEWORK

Learning is man activity in its effort to understand the world. It is a continuous process and is experienced by man since he is in the mother's womb, in the cradle, and grows from infant, adolescent, to adult and to its grave, according to the lifelong education principle (Suyono and Hariyanto, 2016:1). The word learning is attached to the word teaching, Suyono dan Hariyanto (2016: 4) argued that these two activities exist together, for example the concept of Jean-Paul Martin who proposed the learning by teaching, *lernen durch lehren*. A teacher, naturally is a learner and vice versa. It means that in a teaching by a teacher, there is also a learning for the students, in a learning of students there will be a teaching to either the students or, in some circumstances, from the students to the teacher.

If we notice what Witherington argued as quoted in Suyono and Hariyanto (2016: 11) that in teachings there is a change of personality manifested as new patterns of response in the form of skill, attitude, customs, knowledge, and capability. Learning is not only to memorize the materials and the success of learning is measured by the capability of the learner to repeat the material addressed, however the essence of the learning should be the ability of the learner to absorb the essence of the lesson, that the lesson is learned, as a maturity.

Hardika (2012: 4) explained this concept of learning as a transformative learning. In the perspective of transformative learning, the success and failure of learning are measured by the learning process and not merely the end result of a learning. Learner should be provided with opportunity to improvise and to explore some sources of and strategy of learning available in its surroundings according to the needs and objectives of learning. Therefore, Hardika argued more, a teacher should have capacity and capability as learning facilitator and apply the principles of learning supporting the creativity and independency in learning of the learner (Hardika, 2012: 4).

The functions of facilitating are such as catalyst, resource linker, process helper, and solution helper (Havelock, 1995).

Law schools tend to see “the law” as the core subject of their educational mission and therefore tend to offer instruction that qualifies law students in an academic discipline rather than to practice in a profession. Therefore, it is important to highlight the need to focus law study not only on the concept of justice—as distinct from the law—but also on preparing future lawyers to root out injustice. The next questions are of how to place justice—and how to achieve justice—at the center of legal education concretely and pragmatically; what would such a law school look like? What would make such a transformation possible? Are there any models now in existence? What barriers would block such a transformation? (Bloch, Frank S:2011)

The answers to those questions can be started from transforming legal education into justice education—and the obvious choice of means to achieve that transformations was clinical legal education and its core methodology of actively involving law students in their future professional role (Bloch, Frank S:2011)

It seems that the concept of transformative learning and affective learning is practiced in clinical legal education. Much has been written about the suitability of clinic-based learning while at law school for fostering the ethical awareness and professional responsibility standards of practicing lawyers (Giddings, Burrige, Gavigan, and Klein (2011) arguing that *clinical movement* in legal law schools was to provide a curriculum that addressed the lives and areas of law that affected the poor and dispossessed while also challenging the legal profession to accept new ways and sites of providing legal services. Clinical legal education takes on the challenge to teach students about professional values, legal ethics, and a sense of social responsibility aside from lawyering skills (Yanmin and Pottenger, 2011: 101).

Training law students involves more than teaching them to think like lawyers, and more than teaching them the technical and doctrinal constituents of law practice. Law students must also be exposed to the ethical constructs and rules that confine the practice of law. Exploring and developing the ethical sensibilities of law students are among the most exciting and worthwhile aspects of law teaching. These ethical sensibilities help students to understand better the context of the other vectors of legal education: the sometimes technocratic vocational training and the vessel for intellectual development. They provide a foundation to help students maintain a principled approach when they enter practice. (Duncan and Kay., 2011)

Chief among the responsibilities of legal education is the preparation of professionals for the practice of law. Nonetheless many jurisdictions do not require ethical training as part of the required curriculum for law students. Even among those jurisdictions that do require ethics training, there is considerable variance in their chosen modes of teaching ethics and professionalism. The responsibility for addressing professional ethics lies with different participants in different jurisdictions. For example, in the United States, where legal education is entirely postgraduate, students may practice law with neither further training nor experience once they have completed their law degree and the appropriate state bar exam. One of the few compulsory elements of the curriculum is training in professional responsibility. (Duncan, and Kay., 2011).

Most jurisdictions have adopted a regime similar to either the United States, United Kingdom, or Australia and most of these regimes are enforced by the relevant licensing or supervisory authority within the jurisdiction. While there is diversity in the approaches for mandatory ethical training taken by the various jurisdiction, all seem to lack pedagogical creativity (Duncan, and Kay.,2011) and does not even include the ethical values that live among the people to whom the students will bring the legal service.

Learning and teaching ethics and law do not merely learn about information of understanding the symbols such as terminology, definition and rules in the form of memorizing, but rather a learning about attitude (Suprijono, 2015: 8). Attitude learning activity or what is known as affective learning focuses on the pattern of actions of students in responding certain stimulus, the tendency of the consistent sense and action of an individual (Suprijono, 2015:9).

All this time, lesson on ethics and professional responsibility in curriculum of law in general focuses too much on doctrinal course (doctrinal rules-oriented course). In fact, according to Lerner (Lerner, 1999), students should combine and use what they learn where they learn better

if they are engaged in an “active learning”. Through active learning, students are not only passive recipients, but rather participating actively in the process of identifying, absorbing, and understanding the materials. This active learning is adopted by clinical education through simulation, internship, real client clinic, and other experiential approaches.

In Indonesia, as well as many ASEAN countries, legal education still adopts western legal education that teaches western morality. Eventually, the result is legal education with western ideal of morality. Legal education never or seldom or few touches local ethics. In our experience, legal education, especially in Indonesia, focuses its study on legislations and legal principles that adopts liberal, secular, and individual perspective. Meanwhile, in the society where the law is applied, they embrace different values such as traditional, religious, and communal.

Legal education does not exclusively study legislations, legal principles, and/or legal theory, but also attempts to transform the learner to inherently develop honesty, sensitivity, empathy, spiritual quality, manner. This when legal education intertwines with ethical study and since local ethic are rich in above traits, this research strongly urges to infuse local ethic into legal education.

METHODOLOGY

1. Method of Approach

This research employed multi-disciplinary approaches such as:

- 1.1 Philosophical Approach:** Philosophical approach is a study using deconstruction and heuristical method to lead the way to find the new way, or to solve the new problems, or to create a new model. This method is expected to develop new creativity through what was developed by Anton Bakker and Achmad Charris (1990; 41-54) that is the fulfillment of general methodological elements for a philosophical research consisting of interpretation, induction, and deduction, internal coherence, holistic, historical sustainability, idealization, comparison, heuristics, inclusive or analogical language, and descriptive. Those elements are supporting tools for the researcher to reveal various variables of the problem in this research in a more focused way.
- 1.2 Socio-Legal Approach:** Socio-Legal Approach in this research is an open study especially to develop the local ethic-based clinical education (law). This approach is transformative and participatory with character of mixed method (Adrian W. Bedner, et. al; 2012). This approach helps to understand the problems in law enforcement in daily life, the relation between legal education, law enforcement, and the creation of law enforcement. This method also works to see the effectiveness of legal education in its relation with its ecological context.

2. Data Collecting Technique

Data collecting technique was done through the study on various literatures (library) that was secondary data which were relevant to the research/study. The analysis of secondary data were used as preliminary study of all research activities done. The secondary analysis included the textbooks, journals, scientific papers, and other relevant literatures. The study was then followed with Focus Group Discussion gradually with experts to study di fundamental aspects of this research. FGD was done with (a) academicians; (b) legal professionals; (c) expert in ethics and culture

3. Technique of Data Analysis

This research will develop the qualitative data analysis; it can be seen as follows:

- a. Deconstructive analysis (philosophical) attempts to separates each element from the whole systems which constitute it.
- b. Normative Analysis: reconstructing and combining new elements, it is conducted by infusing innovative aspect of value into a novel system.
- c. Heuristic analysis model that includes Model (1) description of scientific context of justification; (2) critique on scientific paradigm; (3) invention of novel solution; (4) construction toward creativity;
- d. Multi-discipline socio-legal analysis: Data analysis is done through the process of interpretation, internal coherence, comparative and heuristic and the preparation of

conceptual model. The flow of qualitative analysis can be explained as follows, first is data reduction, it is defined as the selection process, focusing on simplification, abstraction and data transformation that emerged from the records during the study. In other words data reduction is a form of analysis that sharpens, classifies, directs, discards the unnecessary and organizes the data in such a way that the final conclusions can be drawn

DISCUSSION

The Relation Between Legal Education And Local Ethics

Law schools tend to perceive law as the core of their education mission, and the consequence is that their students have more qualifications as academics rather than professionals. What is important is to prepare students not only about justice, which is different from law, but also to shape future law school graduate to deal with injustice. The next question is how to position justice, and how to get it, in the center of legal education in actual and pragmatic way, how does the law school supposed to be? Is there any way to create such transformation? Is there any applied model yet? What are the obstacles? (Bloch, Frank S:2011).

The answer proposed is to begin with transformation process from legal education to justice education, and vivid option upon method for the transformation is clinical legal education, in which the core process is actively involving students in the role of their future profession (Bloch, Frank S: 2011).

In Indonesia, as well as many ASEAN countries, legal education still adopts western legal education that teaches western morality. Eventually, the result is legal education with western ideal of morality. Legal education is never or seldom or less touched local ethics. In our experience, legal education, especially in Indonesia, focused its study on legislations and legal principles that adopt liberal, secular, and individual perspective. Meanwhile, in the society where the law is applied, they embrace different values such as traditional, religious, and communal.

The relation between mankind and nature under modern perspective requires us to study its philosophical assumption, which is the dualism of body and soul, according to René Descartes. For Descartes, our body is separated from our soul. *Res Cogitans*, the thinking thing, possess absolute truth beyond any doubt compared to the body, *res extensa*, or mere extension of thing. (Descartes, 2008:15). His famous *cogito ergo sum*, has reduced the modern way of thinking about human and his natural world. Sonny Keraf (2014:56) argued that under this idea mankind is reduced to a mere rational aspect, meanwhile the body, feeling and intuition that followed and experienced by a subject are negated and became insignificant. Body, in Cartesian view, includes all physical appearance from human body to the natural environment in which the subject exists. (Descartes, 2008:15). Under the philosophy of Decartes, nature is subjected by reason. Fritjof Capra (Keraf, 2014:57) argued that dualism of body and soul has created a mechanistic point of view upon nature. Nature is merely machinery. There is no purpose, life, or spirit within matter in nature (Keraf, 2015:61).

The idea of Cartesian mechanistic nature was later given its mathematical structure by Isaac Newton. With physics in which he developed, Newton stated that the mechanics of nature can be determined under exact laws. Nature now is deterministic, everything happened as cause and effect, and there is no coincidence. (Keraf, 2014:63). Max Weber, an early 20th Century sociologist suggested that through rationalization under guidance of science, mankind has disenchanted the natural world (Gane, 2002:29-30).

Capra analyzed that the reductionist understanding *à-la* Descartes and Newton toward nature has created a relation of domination, power, and control by human upon nature. He wrote: “our science and technology, which is based on 17th Century belief, assume that understanding the nature meant taking control over nature by men combined with mechanistic model of nature and overzealous determination on linear thinking, has created a behavior and inhuman technology that solely purposed for control, mass production, and standardization” (Keraf, 2015:67).

This kind of understanding is in contrast with traditional belief of Indonesian people, and perhaps, many ASEAN countries. Traditional, religious, and communal society can be found not only in Indonesia, but also in ASEAN. Our perspective is that people in ASEAN countries still

rich and conserving local values. However, as we said before, studies on these local values are secondary or just an addition to already established legal education, and thus it becomes eclipsed by western ethics. The character of legal education become incomplete since it only adopts western value and overlooks local values; despite, in fact, both values have universal character. Eventually, this character leads to the way on how the process of law enforcement behaves.

Such law enforcement conditions are triggered by many factors, at least due to several major factors, namely the legal aspects, the law enforcers, the supporting facilities and the legal culture of the community. These four things need attention so that quality and dignity of law enforcement can be achieved. But of all the aspects described above, the law enforcement crisis is triggered by law enforcement behavior. The behavioral crisis is essentially triggered by a moral crisis which then cause a large multi-dimensional (crisis) impact. Multi-dimensional crises occurred in various fields is triggered by moral crises, it is the impact of the perception crisis, triggered by a very severe crisis of identity. In such conditions of law enforcement, the likelihood of a response arising from society is puritan / conservative and fundamental or permissive and indifferent attitudes or commitment.

Gradual adjustment is necessary, because one aspect is interrelated and inseparable with another. If we look in sequence of relations between the factors above (law, facilities, law enforcers and community legal culture), then the human aspect, that is law enforcement, holds a very important role. Renewal of human resources can affect the other three aspects of legal aspects, facilities and legal culture of society. Therefore, law enforcement must prioritize the aspects of human resource development, namely to build and create law enforcer with integrity and morals.

Significance of ASEAN local ethics to be infused in legal education of the countries

The adoption of clinical learning in ethics and law is expected to shape the attitude and character of the students. After becoming a graduate of law faculty, they become people who care and can reflect on the social environment besides having a reliable legal knowledge. They are able to position themselves and understand the nature of society.

The survival of human life on earth is largely determined by its involvement with the natural surroundings. Relations between the two are mutually interconnected and cannot be separated. How humans perceive and treat nature determines the survival of human life in nature. Culture with which humans develop and religious systems they believed also affect the way of view and patterns of human interaction with the environment and natural surroundings. In traditional societies that are magical-religious, primarily human and natural relationships become the point of the philosophy of life and religious system which is still largely preserved.

Taken as example is Sundanese people in Indonesia. Sundanese are attached to their cultural system and the environment. The fertile land on West island of Java also builds the character of the Sundanese. Moreover, based on their local wisdom, they draw relation between human and nature (animals, plants, etc) in a pattern called *Tri Tangtu*. For them, interaction with nature is manifested through experience, followed by interaction between nature, human and knowledge to shape wisdom, and interaction between, nature, human, experience, and wisdom are shaping morality (Hadi, Andri, 2011: 2)

In his book "Etika Lingkungan," (Sonny Kerat, 2002), Kerat purposed local wisdom as all manifestation of knowledge, belief, understanding, and horizon along with behavior or ethics to guide human life in ecological community. This entire wisdom is embraced, practiced, taught, and inherited from one generation to the next, and at the same time it shapes pattern of human behavior for them to interact in society or with supernatural beings.

Local wisdom is an attitude towards nature in the life of community of certain area. Thus, it refers to certain area or locality. Putu Oka Ngakan on Andi M. Akhmar dan Syarifudin (2007) described it as system of value or ethics of local community to interact with the environment. So, local wisdom can be different in one place and another time and another tribe to another. What makes those differentiation is mainly because natural barrier and basic needs. As a standard for behavior, local wisdom never be static, but it changes through time and depends on system and social bond.

Local wisdom contains but not limits itself as ethics, but also includes norms, behavior and customs. It acts like religions, meaning local wisdom provide guidance for community on how they should behave in everyday routine or in future civilization.

To include topics of local ethics in legal education becomes necessary to shape a complete and wise character of future law enforcer. Products of this kind of legal education are hoped to be agents of law enforcement who are able to see each legal issue as not merely individual dispute but it can also affect the community as a whole. Law should not be viewed as product of mere secular thinking but also an infusion of the religious dimension of society. Law must be able to induct upcoming values that fit people's need without having to erode the genuine traditional values of a nation.

CONCLUSION

Until now, the study of local ethics is still a secondary study in the legal education system of Indonesia, as well as ASEAN countries. There is a disconnection between legal studies that adopt western values to become dominant by setting aside exploration of local ethical and values. Law is living in society; as well as law enforcement, local values are still recognized but begins to be marginalized by the hegemony of western legal concepts. Higher Legal Education is currently inadequate, because it just emphasizes aspects of scientific and professionalism (Western) in a very formal way, little has touched the areas of ethics and local culture. Current Legal Education is lacking in a curriculum loaded with ethics and local culture

We believe that a model of legal education which, in addition to studying positive law, explores and adopts local ethical values can be an alternative to create law enforcement candidates who have a responsibility to contribute to the behavioral issues triggered by the moral crisis - the perceptions crisis above. The responsibility can be actualized, one of them is through the effort of developing a model of legal education that has character, in order to form law enforcement with integrity. Law School should develop alternative model (in addition) in the form of legal education that is expected to support the establishment of integrity or character of the graduates.

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