SOCIAL JUSTICE IN THE CURRICULUM OF LEGAL EDUCATION: QUO VADIS?

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ABSTRACT

Objective: The purpose of this study is to This writing brings up the study on what is necessary to be included in the conventional curriculum of legal education to be able to produce law graduates who can be agents of change in the social construction of social and justice that is impaired.

Method: The research methods used are conceptual approach, socio-legal approach, and hermeneutic to portray and analyze, and also to dissect the problems in curriculum of legal education and social justice education in particular as an attempt to answer the problems of law in the society.

Results: Legal education is one of the vehicles to achieve the socially just society through the infusion of values and social justice study in the learning curriculum of law in law schools so that the institutions of legal education can create reliable profiles of graduates in practicing law in a sense that these graduates hold legal and social capacity to construct a socially just society.

Keywords: legal education, social justice, curriculum.

JUSTIÇA SOCIAL NO CURRÍCULO DA EDUCAÇÃO JURÍDICA: QUO VADIS

RESUMO

Objetivo: O objetivo deste estudo é Este escrito traz à tona o estudo sobre o que é necessário incluir no currículo convencional do ensino jurídico para poder formar graduados em direito que possam ser agentes de mudança na construção social da justiça social. isso está prejudicado.

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Método: Os métodos de pesquisa utilizados são a abordagem conceitual, a abordagem sócio-jurídica e a hermenêutica para retratar e analisar, e também para dissecar os problemas do currículo do ensino jurídico e do ensino para a justiça social, em particular, como uma tentativa de responder aos problemas do direito no sociedade.

Resultados: A educação jurídica é um dos veículos para alcançar a sociedade socialmente justa através da infusão de valores e do estudo da justiça social no currículo de aprendizagem do direito nas faculdades de direito, para que as instituições de ensino jurídico possam criar perfis confiáveis de graduados no exercício da advocacia em uma sensação de que esses graduados possuem capacidade jurídica e social para construir uma sociedade socialmente justa.

Palavras-chave: educação jurídica, justiça social, currículo.

1 INTRODUCTION

Teaching and learning law is not a mere studying information through activities of comprehending symbols like words, terms, definitions and regulations by memorizing them. Learning the law is more as learning about behaviour (Suprijono, 2012) (Hesti Septianita, et. al., 2022). Satjipto Rahardjo argued that learning the law is not meant for the law itself, but rather it serves for higher purposes, vaster and concrete that is man and humanity (Rahardjo, 2009) (Hesti Septianita, et.al, 2021), in which learning is a process beyond the mastery of legal materials, ideas and techniques. Learning process is the process of constructing the character of man, which at the end, to be able to interact with other human being to build the social sensitivity.

If law is a tool to uphold justice for all mankind, legal profession and everyone related bear extraordinary duties to make sure large number of people are not isolated from the process and its service (Pandey dan Shukkur, 2011).

Law school curriculum seems to continuously struggle with how to produce law graduates who are excellent in practicing in the court rooms, become notary and representing high profile clients. Legal education seems to forget its fundamental purpose that is legal profession itself attributed to adagium Officium Nobile saying that legal profession is a noble profession which legal experts advocate the justice, not only legal justice but also social justice through legal aid provided (Hesti Septianita, et.al., 2023). Law school graduates ideally are agents of change since the upright of justice, legal and social, cannot be detached from the role of legal scholars. Justice and social justice are not the privilege for those who can pay high but also the right of people who cannot afford legal service, of people who do not have access to law and justice, and of people who do not have privileges.
Law school curriculum, naturally, teaches the humanity values, social justice values in addition to practicing, speaking and linguistic, research, and problem-solving skill which according to Pandey (Pandey, 2020) (Hesti Septianita, et.al., 2023) can be obtained by applying experiential learning.

This learning methodology is recognized globally as clinical legal education (CLE). CLE has become a global movement initiated since 1976s in United States of America and spread around Europe and Asia. With this methodology, students are exposed with problems of law and injustice in society through in-person interaction with people that have no access to justice and to develop social sensitivity and pro-social behavior in law students.

The characteristics of law enforcement and social justice in United States of America and Europe is quite different from ones in the countries of Asia for the economic aspect, living condition, and education of people living in American and European continents are more settled comparing to most Asian countries and people in these countries are more aware of their social rights. Therefore, the focus of legal aid is also different. In developed countries, legal aid is provided more in the form of case representation while in some countries of Asia, legal aid is not only about case mitigation but also legal and right education.

The role of legal education is more vital in socializing law and right in society as a educational institution which naturally is useful, not only for the civitas academia, but also for the society. Therefore, the curriculum of higher education which in this case, the curriculum of legal education in particular should be integrated and infused with social justice values to be able to create skillful lawyers and advocate of social justice in the society as well.

2 METHOD

This research uses conceptual approach to provide analytical perspective in developing social justice values necessary to be adopted in law school’s curriculum by presenting theories, doctrines related to social justice, legal education, and the curriculum itself. In addition, socio-legal approach is used to develop transformative and participatory learning concept to understand how legal education with social justice values is manifested in institutions of legal education. Other approach used is hermeneutic approach as the means of analyzing the limitations and the strength of the
model/concept/idea proposed to be the reference in comprehending legal education and values of social justice in the law schools’ curriculum.

3 RESULT AND DISCUSSION

3.1 DEFINING SOCIAL JUSTICE

The notion that all individuals own uniform humanity and the basic right as the consequence of their being human and that oppression and misery must not be a part of human condition is absorbed in collective conscious. The idea of social justice is relatively new. Plato, Aristotle, Confucius, and Ibn Rusyd, even Rosseau and Kant did not consider the necessary to perceive justice or to fix the injustice from the social perspective. This conception was born in Western paradigm and is a form of political language during the industrial revolution era and the development socialist doctrine at the same time. Following the series of revolution stroke Europe in the mid of 18th century, social justice was the continuous cry of the progressive scholars and political activists. Proudhon identified justice through social justice and social justice through the respect to human dignity (United Nations, 2006).

In Indonesian context, social justice is the term we often find. Even in Indonesian national ideology, Pancasila, this particular term is recognized as one of the vision and goals of the nation.

General definition of social justice is not yet determined and it is even more difficult to be implemented. In short, social justice is closely related to the justice equality, not only justice in court rooms but also justice of whole aspects in the society. This concept required everyone enjoying their rights and opportunity equally; everyone, from the poor and marginalized to those who are rich, are entitled to access the same playground (Halele D & Alexander, G., 2016) because to manifest a socially just society, justice is a conditio sine qua non (Zoller, Alber, dan Cochran-Smith, 2000) (Kathy Hytten & Sylvia Bettez, 2011).

Social justice is the sister to access to justice where social justice will be manifested when access to justice can be enjoyed by the whole layers of the society without discrimination. The reality is that the poor and marginalized level of people are often overlooked and cannot enjoy their supposed rights due to the access to those rights are closed for them. Even if the rights can be obtained, they have to bloodily fight for it.
Some argued on definitions attributed to social justice terminology even though many use the term without considering the definition because this term is considered self-explanatory. McKeown (2018) in Hesti Septianita, et.al., (2023) explained that definition of social justice is the equal right of all people and opportunity for all to enjoy the economic and social development through international collaboration. This definition leads to opportunity and difference in principle as argued by Rawls which according to Kathy Hytten and Sylvia Bettez (2011) is uncontestable. While Miller said that social justice includes Needs (basic necessity), Desert (benefit), and Equality (explaining that man is created equally (McKeown, 2018).

3.2 PROBLEMATIC LEGAL EDUCATION

The main duty of education, naturally, is to educate the life of man, to animate critical thinking through open and collaborative learning. In accelerating the purpose, vision, mission and its strategy, curriculum and method of learning must be adjusted to the needs and at the same time hold the idealism of academic freedom and the morality of reformers.

Mochtar Kusumaatmadja (1986) claimed that in the beginning of independence of the nation of Indonesia, legal education was a mere training program for students to memorize textual laws necessary for the job market. Therefore, law graduates were mere labors of law. However, along with the emerging of new paradigm, legal education slowly started to focus on the benefit for people (Anthon F. Susanto, 2021).

Law school curriculum seems to continuously struggle with how to produce law graduates who are capable to practice in the court rooms, become notary and representing high profile clients. They fed their students trainings on hard skill such as how to prepare legal documents that as if they trained them to be excellent litigator only. Legal profession is considered as materialistic profession, a glamorous job. In fact, law schools bear more obligation and responsibility as they as the corner stone in resolving moral crisis occurs in the society (Anthon F. Susanto, et.al., 2020).

Legal education seems to forget its fundamental purpose that is legal profession itself attributed to *adagium Officium Nobile* saying that legal profession is a noble profession which legal experts advocate the justice, not only legal justice but also social justice through legal aid provided (Hesti Septianita, et.al., 2023). Law school graduates ideally are agents of change since the upright of justice, legal and social, cannot be
detached from the role of legal scholars. Justice and social justice are not luxury only for those who can pay high but also the right of people who cannot afford legal service, of people who do not have access to law and justice, and of people who do not have privileges. Legal education is the vehicle to reform moral and at the same time is the entry passage for the change of world legal paradigm (Anthon F. Susanto, et.al., 2022) as education is a cultural process not only orienting to the development of individuals but also of society (Yudi Latif, 2020) (Anthon F. Susanto, et.al., 2022).

Great demand as well as challenge came up against education, in this context, legal education to be able to adapt, anticipate, and accommodate the change in education which is essential to the process of humanizing of civilized nation (HAR Tillar, 2009) (Anthon F. Susanto, et.al., 2022) because legal education cannot only produce graduates with only professional skill, but also constructing human who puts respect to another human’s right of freedom. This concept is derived from Paulo Freire’s claiming that education is the mean to free from all forms of oppression known as education for the marginalized (Paulo Freire, 2019).

Orientation towards social justice values in education actually has been done by educators. Murphy argued that social justice is one of the three amazing synthetic paradigms in the school of character. Often, we are lost in what is defined with social justice and how this vision influences education, in this case is legal education like one in curriculum, laboratory practice, philosophy of education, and social perspective (Murphy, 1999) (Kathy Hytten dan Sylvia Bettez, 2011). Basically, the discussion on including social justice issue in education is not only in legal education, it has been done since long, Count (1932) as cited by Kathy Hyteen and Sylvia Bettez (2011) from Dewey’s work encouraged educator to build social structure by referring education to vision of democracy that is rich and participatory in critical and multicultural pedagogy to create educational climate that is social empowering that has been long marginalized which is the challenge for unfair social structure and offers strategy and vision to create a more just world.

Legal scholars indeed think about the method of learning and way to learn that can construct values of social justice in students in the hope to produce law graduates that can apply their knowledge to not only reach for fame and money but also to narrow the gap of justice in society. However, as mentioned by Adrian Evans (2011), not many legal institutions including law schools and training provider of law procedure perceive
themselves as organization responsible of running social justice education—legal education and legal profession that is socially responsible.

Legal education movement adopting social justice values has been started in 1970s era in United States of America which then develops globally to all countries of the world. This movement tries to educate people about law and social justice and access to justice by moving class rooms in law schools to meeting rooms, fields, class rooms in community where students introduce law and social rights of citizen to the society under the lecturer’s supervision.

It is considered effective as legal literacy method for people and as learning method for students and to develop social sensitivity in students through student interaction with socially and legally marginalized society. Basically, Jean-Paul Martin, pioneering the learning by teaching, lernen durch lehren, argued that an educator, naturally, is also learner and vice versa. This can be interpreted that in a teaching process by an educator, there is a learning process for learners; in the process of learning by students, there are also a learning activity for educator (Suyono; Hariyanto, 2016) (Hesti Septianita, et.al. 2021).

Unfortunately, many institutions of legal education believe community legal education as a mere community service activity and detach it from their curriculum. In fact, values added to students sit in the community will influence their ways of thinking and perspective towards law enforcement: not only positivistic but also sociological.

Bell (1997) (Kathy Hytten & Sylvia Bettez, 2011) characterized social justice education as “a process and objective at the same time with full and equal participation from all groups of society that mutually is formed to fulfill their needs.” Hence, legal education should include social justice issues in its curriculum to achieve the purpose of the professional law graduates with good morality as the agents of change in the society.

3.3 SOCIAL JUSTICE IN THE CURRICULUM OF LEGAL EDUCATION

Education should take part more in the construction of human resources who are more sensitive towards social problems and focus more on the creation of job opportunity and care more about the marginalized communities. Legal education through social justice education is the step to reach the goals where people collaboratively involve in learning process. Community involvement should be full in activities developing collective concern and realizing better life.
Hackman (2005) claimed that social justice education incites students to actively take part in their education and also to help educators in constructing an empowering, democratic, and critical environment.

In the context of legal higher education, social justice values should be the soul in every process of learning. Ideally, social justice education should be a mandatory course subject, not an elective one even though social justice issues tend to be controversial (Wasley 2006) because education that is rooted to the commitment of justice and development of democracy for all citizen deemed to be exaggerated, complicated and even threatening for all policy makers and pressure groups that consider curriculum that does not apply basic literacy and numeric as inappropriate and rubbish (Michelli & Keiser, 2005).

As mentioned earlier, social justice education movement has long been developed. In the context of legal education, this global movement was started with applying clinical method of learning, known as clinical legal education where law schools develop legal aid clinics, not only providing case mitigation but also literacy of rights.

In these clinics students apply on hands their professional skill in addition to the instructions on professional and public responsibility that should be held by legal experts. Students also learn about their local community and their needs of law and how legal professionals answer to the needs (Frank Bloch, ed., 2011).

Clinical method of learning applied in law schools in many countries is called Street Law that has strong dimension of social justice. This method is global in nature and can be applied in any kind of situation by little adjustment to the need of each community.

At the beginning, circa 1960s or 1970s, the movement of legal education with social justice traits was only a movement of community service influenced by social issues. For instance, this movement developed in USA with services of legal aid and social education was voluntary based. No academic credit was given to small number of students participated (Barry, et.al., 2000). Similar thing happened in Canada, however students started to commit to issues of social change, eradication of poverty, and law reform. Some community groups, also then headed towards works commitment through interdisciplinary approach and social policy (Zemans, 1978) (Garth, 1980) (Bloch, 2011).

It conforms with the idea thrown by Westheimer and Kahne (2004) of that educational institution, legal education in this context, must construct manpower with
justice orientation and pro-social behavior who advocate problems of social, politic, and economic systematically and who involve in collective strategy for the change.

Why study of social justice should be included into curriculum of legal higher learning? The answer has already been elaborated above that is legal education should be reformed because legal education is one involving human interaction where changes are constant and law should be the guardian of the change or development and be on the side of justice for the society.

In the context of curriculum, social justice education is responsible to understand the instruction of legal process. Extensively, the meaning of the term above is that the process is what legal scholars can and should take as the part of public profession. if the course subject and training related to certain skill are always the star of the curriculum in legal higher learning, clinical social justice education at least plays the role in the schools, outside the class room and places students and lecturer to directly engage with the community (Frank Bloch dan N.R. Madhava Menon, 2011).

The curriculum of legal education should set their objectives as Margaret Maisel (2011) and many other legal clinicians conformed, that is legal education should (1) improve access of justice for those who previously did not have; (2) develop legal education system which guarantee the creation of future lawyers whose knowledge, skill, and values necessary to help solving world complex problems; and (3) construct a more inclusive, skillful, and committed legal profession when providing social needs.

We have to admit, nonetheless, that one of the biggest obstacles to set social justice education as the course subject is the fund considering that students should be placed in the community for certain period of time to educate and advocate the law and social right of the community. World donors committed to social justice issues finds it also difficult to distribute the fund to all over places in the world based on their priority and ideology. Therefore, cooperation among locals, regionals and international play vital role in reaching out objectives and commitment towards these social justice issues.

Three strategies offered by Maisel (2011) are: firstly, amending the mandatory courses of law schools at national level to include clinical course subjects, either through state policy and or provisions of accreditation board; secondly, developing best practices of clinical legal education in every country; and thirdly, hiring and training staff members of the law faculties expert in delivering clinical learning. In addition, law schools need to extend and develop this clinical legal education and social justice before students graduate.
for it is important through which students can integrate their legal knowledge and skill with ethical, moral and social justice values and prepare them to face the real legal practice and, in addition, aware of legal necessity of the underprivileged and at the same time understand the social impact resulted from minimum access of justice. Maisel also mentioned, which I fully conform, that if social justice education with this clinical method is non-mandatory course and is voluntary-based instead, the gap in the quality of education among the graduates will occur.

4 CONCLUSION

Education should take more part in the construction of human resources who are more sensitive towards social problems and focus more on the creation of job opportunity and concern more about marginalized communities. Legal education through social justice education is a step to achieve goals where society collaboratively involve in its learning process. Community engagement should be full in every learning activity aiming the structure of global concern and the manifestation of better life.

Legal education should be able to create justice-oriented scholars with pro-social behavior perceiving problems of social, political, and economic systematically and involving in collective strategy for the change.

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In the context of legal higher education, social justice values should be the soul in every process of learning. Ideally, social justice education should be a mandatory course subject, not an elective one. Social justice education incites students to actively take part in their education and also to help educators in constructing an empowering, democratic, and critical environment.

Through clinical legal education, students can integrate their legal knowledge and skill with ethical, moral and social justice values and prepare them to face the real legal practice and, in addition, aware of legal necessity of the underprivileged and at the same time understand the social impact resulted from minimum access of justice. Maisel also
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REFERENCES


Anthon F. Susanto; Mella Ismelina Rahayu; Hesti Septianita; Rosa Tedjabuwana; dan Lia Sukma (2020), Pendidikan Hukum dan Keairfan Lokal, Logoz Publishing, Bandung.


Bryant G. Garth, (1980), Neighbourhood Law Firms For THE Poor, Sijthoff & Noordhoff.

Counts, G. S. (1932). Dare the school build a new social order. Carbondale, IL: Southern Illinois University Press.


Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, (2000), Clinical Legal Education FOR This Millenium: The Third Wave, 7 Clinical L. Rev.1.


New York: Routledge.


