

An Employment Law Clinic: Developing of Student's Capacity through Clinical Legal Education in Employment Matters on ASEAN Economic Community Era

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Abstract

The legal clinic, a pivotal component of law school programs, offers law students valuable practical experience while providing pro bono legal services to diverse clients. In the context of the ASEAN Economic Community (AEC) Era, the challenges posed to regional communities, especially Indonesia, in navigating a free trade area underscore the importance of legal education in employment law. Given the heightened trade activities, a profound understanding of employment law becomes essential not only for practitioners but also for students and law school graduates. In response to the changing landscape, an employment law clinic emerges as a crucial resource, offering free legal advice on various employment matters to address the escalating drop in claims due to the introduction of employment fees. This service becomes indispensable in mitigating non-litigated violations of employment law resulting from financial barriers. This paper explores three key aspects: first, the role of an employment law

clinic in law school legal education as a foundational preparation for the AEC era; second, its utilization by students to enhance their capacity in employment matters; and third, its provision of legal services in the international trade law context, particularly focusing on labor and employment law issues. Emphasizing employment law issues such as illegal pay deductions, employment discrimination, unfair dismissal, zero-hour contracts, and trade union freedom in Southeast Asia, the paper advocates for collaboration between the clinic, companies, governments, practitioners, and lawyers to ensure its effectiveness and relevance.

Keywords

Employment Law Clinic, ASEAN Economic Community (AEC), Legal Service

I. Introduction

In *A Fair Globalization—Creating Opportunities for All*, the World Commission on the Social Dimension of Globalization (WCSDG), convened by the International Labor Organization (ILO) in 2002, emphasized that the current process of globalization is unfair and exclusive, and generates unbalanced outcomes both between, and within countries. The WCSDG seeks a globalization process with a social dimension, a globalization as seen through the eyes of women and men as regards to the opportunity it provides for decent work, amongst others. It stresses the urgency of nation states to strengthen regional and sub-regional cooperation as a major instrument or a stepping stone for a stronger voice in the governance of

globalization (WCSDG 2004). In short, nation states are called upon to reinforce the social dimension of integration. Labor as well as employment business, in many countries, especially in South East Asia, occur some problems for regional.

According to data ILO, this report—labor and employment condition—looks at the situation of the 10 ASEAN countries with a focus on employment and occupation drawing upon two major global indexes used to measure the achievement of gender equality. To get an overall picture of employment trends among ASEAN countries, let us go over the basic data on employment and migration. In terms of labor force participation rates (Table 1), Cambodia ranks the highest (82.8%), followed by Myanmar, Lao PDR, Viet Nam, and Thailand. Cambodia also ranked the highest in the female labor participation rates (79.3%), followed by Lao PDR, Myanmar, and Vietnam, with the lowest in Malaysia (43.7%) and the Philippines (49.5%).

TABLE 1. Population and Labor Force Participation Rate

Country	Population (in thousands)			Labour Force Participation Rates (LFPR) (2010)		
	Male	Female	Total	Male	Female	Total
Brunei Darussalam	205	201	406	76.8	55.7	66.3
Cambodia	7,003	7,303	14,305	86.6	79.3	82.8
Indonesia	120,819	121,507	242,326	84.2	51.0	67.4
Lao PDR	3,139	3,149	6,288	79.4	76.6	78.0
Malaysia	14,634	14,225	28,859	77.1	43.7	60.5
Myanmar	23,819	24,517	48,337	82.0	75.0	78.4
Philippines	47,567	47,285	94,852	79.4	49.5	64.3
Singapore	2,615	2,573	5,188	77.0	56.7	66.9
Thailand	34,157	35,361	69,519	80.2	63.8	71.7
Viet Nam	43,906	44,886	88,792	81.3	72.1	76.6

Source: Population Division of the Department of Economic and Social Affairs of the United Nations 2011, World population prospects: the 2010 revision, highlights and advanced tables, New York: United States, pp. 79-84. ILO, economically active

population, estimates and projections (6th edition, October 2011).

The problem of labor and employment, as showed on Table 1, explained that there is still problem in gender equality, discrimination, and fairness in employment business, especially for ASEAN countries.

II. Improving Students' Capacity on Employment and Labor Law through Clinical Legal Education

Clinical Legal Education, according to Bruce A. Lasky (2007, pp.22-23), is defined in many different ways throughout the world, and sometimes is defined differently at different law schools in the same country. As used here, the term “clinical legal education” is defined as

an educational program grounded in an interactive and reflective teaching methodology with the main aim of providing law students with practical knowledge, skills, and values for the delivery of legal services and social justice.

The objectives of CLE are multiple—it aims at teaching theories of law, practical lawyering skills and professional responsibility, as well as introducing student to issues of social justice through their experience of lawyering for the disadvantaged groups. It lays a foundation for law students to carry with them throughout their professional careers as attorneys a greater sense of professional commitment to the ethics and values of public service.

It provides needed legal services to the community outside of the law school in an almost limitless array of doctrinal areas of the law. It immerses the legal academy—both students and teachers—in the world as actors, not merely observers. The key element to the implementation of CLE is to create a legal clinic, a law office run by students and their supervisors that is regulated by the same rules as those outside the law school. Legal clinics are usually linked to the law school as the base of operations (Lasky, 2007, p.21).

The goals of clinical legal education are many. *First*, however, clinics seek to provide a structured educational opportunity for students to observe or experience actual or simulated client representation and to extract appropriate knowledge, skills, and values from that experience. *Second*, clinics aim to provide an important supplement for the provision of needed legal services to persons who would otherwise not have access to these services. *Third*, clinics try to inculcate in students a spirit of public service and social justice and to build a base for the creation of a responsible legal profession. *Fourth*, clinical professors make important contributions to the development of scholarship on skills and theories of legal practice that can provide closer links between the bar and the academy. *Fifth*, the use of interactive and reflective teaching methods animates students to perform and engage with the law in ways that theoretical lectures or readings often cannot. This reflective learning, moreover, has been shown to be one of the most effective means of lasting adult learning. *Last*, clinics seek to strengthen civil society itself, through nurturing lawyers' professional responsibility and through provision of much-needed legal services to build and protect underserved and vulnerable populations (Lasky, 2007, p.25).

III. The Labor and Employment Law Clinic: The Existence of Clinic in some Law Schools

The Labor and Employment Law Clinic at Cornell Law School for example, offers students a distinctive chance to enhance their comprehension of the substantive laws and procedures governing organized labor. Through hands-on experience, students delve into researching various labor and employment law issues, offering advice, and providing representation to unions. Complemented by a classroom component, this program not only deepens students' substantive knowledge of the field but also hones their practical skills. Engaging directly with clients, students develop proficient interviewing and counseling abilities. For select students, there is the potential to take on roles involving representing a union in arbitration, providing an opportunity to cultivate trial advocacy skills. This comprehensive approach ensures that students in the Labor and Employment Law Clinic not only grasp theoretical concepts but also gain invaluable practical insights, preparing them effectively for the complexities of the legal landscape surrounding organized labor.

To further enrich the learning environment, there will be panel discussions offered featuring experts in the field, with topics such as the National Labor Relations Board/Public Employment Relations Board, collective bargaining and international law. Students will also observe labor arbitrations and hearings during the course of the semester.

The myriad labor issues that could surface in any given semester are likely to relate to: (1) Organization activities, (2)

Unfair labor practices, (3) Union elections, (4) Collective bargaining, (5) Contract interpretation, (6) Grievance resolution/arbitration, and (6) Statutory employment claims of members and/or union members.

In some certain universities, employment and labor law was very close to human rights issue, such as, on Harvard Law School which is this Clinic called as The Employment Civil Rights Clinic, which focuses on rights in the workplace, with a particular emphasis on state and federal laws that prohibit discrimination, harassment, and retaliation based on race, sex, disability, and other protected characteristics. Work may also address issues such as unemployment benefits, wage and hour claims, severance negotiations, union issues, workplace safety, and more.

It was quite different with Law Schools in Indonesia, such as Universitas Indonesia. The specific clinic for employment and labor law is not provided, but some issues concerning to labor and employment law reflects in some clinics, such as Private Law Clinic (*Klinik Hukum Perdata*), Mediation Clinic (*Klinik Mediasi*), and Criminal Law Clinic (*Klinik Hukum Pidana*). Universitas Padjajaran, Bandung, provide same condition with what provided by Universitas Indonesia, they only provide criminal law clinic, private law clinic, and anti-corruption clinic in the framework of clinical legal education (*pendidikan klinis hukum*).

IV. Some Model of Clinical Legal Education: How Can this Used for Improving Student Capacity

1. Individual Service Model

Individual Service Model legal aid clinics aim primarily to provide traditional legal services to poor or exposed people in general. This is perhaps the most classical model and is widely practiced in for example in US, South Africa, and also some regional of ASEAN, as well as Indonesia.

The educational goals of individual services model clinics tend to be more general than with community or specialization clinics. Rather than focusing on the legal needs of a particular community or on particular areas of the law the individual service model clinics concentrate the students' attention on the core issues of law practice, what lawyers do, that come from the experience of working with a client on just about any type of case.

2. Specialization Model

The legal aid mission of specialization model clinics is defined by a particular area of legal need, which may be identified by local communities just like the community-based clinics. For example, many clinics located in urban areas specialize in housing law, social security and welfare whilst clinics in communities with many immigrants may specialize in immigration law, as well as in employment and labor law. Specialization clinics can also focus on particular types of legal matters in order to address broader local,

regional, national, or even international, concerns, for example domestic violence, discrimination, unfair treatment for worker.

The educational take away for this type of clinic is that the students are consistently exposed to the same legal problem but from new of different perspective. This supports a deeper understanding for the legal complexity of the legal issues. Specialization clinics are also better prepared to take on more advanced legal aid cases due to their deep knowledge in that specific field.

3. Community Model

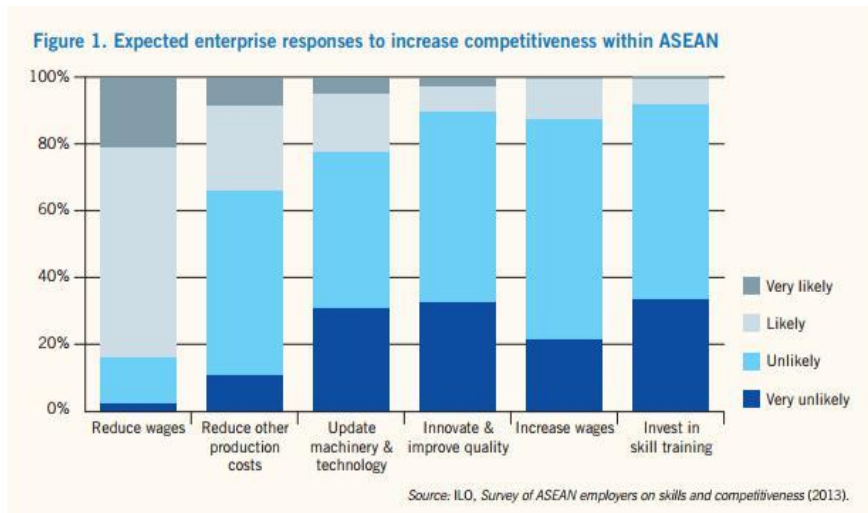
The key feature of community model legal aid clinics is their focus on geographic or the communities and that they guided by community priorities and are committed to working together with the communities that they serve and empowering it.

Community law clinics take multiple forms. Some focus on the representation of community enterprise—nonprofit organizations and small business primarily serving low-income communities. Others are rooted in particular communities and handle a variety of matters, basing their caseloads on the needs that community members deem most urgent. Some focus on particular problems, such as land or housing issues, or particular strategies, such as mobilizing communities through the building of coalitions designed to enhance the power marginalized groups.

V. ASEAN Economic Community and Its Challenge for Law Students

The ASEAN Economic Community (AEC) as highlighted by (Rynhart and Chang (2014), presents many challenges and opportunities for enterprises across the region. This report looks at ways to promote greater understanding among national business and employers' organizations (EOs), and their enterprise members, of the forces that are driving change, especially as these relate to how greater integration will impact workforces and enterprise operations and competitiveness. At this critical juncture, where new priorities and needs are emerging, the report seeks to guide EOs in remaining representative and relevant.

According to the International Labor Organization (ILO) Survey, nearly 90 per cent of enterprises said they were likely, with the advent of the AEC, to invest in a variety of activities to increase their competitiveness and output (see, Figure 1). Reducing wages was by far the least popular proposed measure. Conversely, increasing wages, investing in workers' skills, and boosting the quality of products and services through innovation were reported to be the most likely strategies (Rynhart and Chang, 2014, p. 7).



With the various problems on employment and labor business, the clinics, specific clinic for this issue will be one of solution both as a problem solving and improving the student capacity with the real experiences on clinical legal education.

Clinical legal education is one of the most successful innovations in legal education in the last thirty years. Throughout the world, clinics have emerged through student and faculty activism, usually as a response to the failure of the legal academy to engage fully in the legal and political life of the community outside of the law school. Students simply demand a role in carrying out the ideals and vision of law practice that normally draws them to become lawyers in the first place (Lasky, 2007, 26). Faculty of Law, Universitas Negeri Semarang itself, just established some certain clinics to answer the challenges of needs as well as to increase the capacity of law graduates in ASEAN Economic Community era.

VI. Conclusion

ASEAN Economic Community era challenge the stakeholders, as well as law students and law graduate to improve their capacity, not only to facing this era, but also to survive and to solve the problems happened. Clinical legal education on employment law or employment law clinics, can be used as way to give student real experiences soling the labor and employment problems in Indonesia. Some model can be used and adopted to enrich the method of clinical legal education, especially for Faculty of Law, Universitas Negeri Semarang

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