

## CLINICAL LEGAL EDUCATION IN INDONESIA AND PROTECTION OF CONSTITUTIONAL RIGHTS

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### Abstract

The amendment of the 1945 Constitution (the 1945 Constitution) conducted in 1999 - 2002 has brought changes to many things. One of the most fundamental changes is the publication of the Human Rights that is part of the citizens' constitutional rights. Substantively, the 1945 Constitution contains 30% of the content material on human rights. Even though normatively has been contained in the constitution, but in the implementation need synergic, systematic, structured, and widespread efforts, in order to enforce the constitutional rights of the citizens. Such efforts can be made with Clinical Legal Education so that the protection of citizens' constitutional rights can be achieved completely. This article will explain the importance of clinical legal education to Indonesia in order to provide coaching clinic in the field of law especially for the protection of the constitutional rights of citizens. It is also expected to be useful for the renewal of the legal education system with the primary objective of improving the quality of the legal profession in the future in the field of protection of the constitutional rights of citizens, as well as the support and establishment of *pro bonos* and lawyers concerned with human rights issues in the community.

**Keyword:** Clinical Legal Education, 1945 Constitution, Constitutional Rights

### 1. THE AMENDMENT OF 1945 CONSTITUTION AND PROTECTION OF CONSTITUTIONAL RIGHTS

The original text of the 1945 Constitution contains 71 points of provisions, then, after going through four amendments, between 1999 and 2002, the material of content of the 1945 Constitution covers 199 points of provisions.<sup>1</sup> The amendment was stipulated and conducted gradually and became one of the agendas of the Meetings of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*) from 1999 until 2002.<sup>2</sup> It happened after the resignation of President Soeharto on May 21, 1998, that already in power for almost 32 years.<sup>3</sup>

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<sup>1</sup> Jimly Asshiddiqie, "Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945", paper was presented in the Symposium convened by the National Law Fostering Agency (Badan Pembinaan Hukum Nasional), the Department of Justice and Human Rights, 2003, p. 1 on Jimly Asshiddiqie, "The Role of Constitutional Courts In The Promotion of Universal Peace and Civilization Dialogues Among Nations", paper was presented in the International Symposium on "the Role of Constitutional Courts on Universal Peace and Meeting of Civilizations", Ankara, April 25, 2007, p. 6-7.

<sup>2</sup> *Ibid.*, p. 5.

<sup>3</sup> Moh. Mahfud MD, in his speech of the World Conference on Constitutional Justice, Cape Town 2009, states, "In the era prior to the amendments to the 1945 Constitution made in 1999–2002, authoritarianism had always been the actual

In the reform era, Indonesia has taken comprehensive reform measures by bringing the sovereignty back to the hand of the people. The peak of such efforts was the amendments to the 1945 Constitution which were made within four consecutive years, namely the First Amendment in 1999, the Second Amendment in 2000, the Third Amendment in 2001, and the Fourth Amendment in 2002. MPR). The objectives of the Amendments were to complement the basic rules of living as a state, which caused the abuse of power in the past.<sup>4</sup> These those amendments, according to Jimly Asshiddiqie, resulted in a blueprint of state administration system which is totally different from the previous one. Two of the fundamental principles adopted and reinforced in the new formulation of the 1945 Constitution are: (i) the principle of constitutional democracy, and (ii) the principle of the democratic rule of law or "*demokratische rechtsstaat*."<sup>5</sup>

There is a basic agreement for conducting the amendment using addenda gives rise to the consequence that the official text of the Constitution of 1945 consists of 5 (five) parts, namely:

- a. The Constitution of the State of the Republic of Indonesia of the Year 1945 (the original text);
- b. The First Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- c. The Second Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- d. The Third Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- e. The Fourth Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945.<sup>6</sup>

The First Amendment that stipulated on October 19, 1999 was conducted in the General Meeting of the People's Consultative Assembly in 1999 which covers Article 5 paragraph (1), Article 7, Article 9, Article 13 paragraph (2), Article 14, Article 15, Article 17 paragraphs (2) and (3), Article 20, and Article 22 of the 1945 Constitution. Under the provisions of the amended articles, the objective of the First Amendment to the 1945 Constitution is to restrict the authority of the President and to strengthen the position of the House of People's Representatives as a legislative institution.<sup>7</sup>

The Second Amendment that stipulated on August 18, 2000 was conducted at the Annual Meeting of the People's Consultative Assembly in 2000, which covers Article 18, Article 18A, Article 18B, Article 19, Article 20 paragraph (5), Article 20A, Article 22A, Article 22B, Chapter IXA, Article 28A, Article 28B, Article 28C, Article 28C, Article 28D, Article 28E, Article 28F, Article 28G, Article 28H, Article 28I, Article 28J, Chapter XII, Article 30, Chapter XV, Article 36A, Article 36B, and Article 36C of the 1945 Constitution. This Second

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practice, despite the fact that Indonesia adheres to a democratic system in the formal provisions of the Constitution. During this era, many legislations were deemed to be contradictory to the Constitution, but there was only one way to have them amended, namely through legislative review. It was difficult to do considering that the legislative body was politically dominated by the President, either due to his position as a state body which is also involved in the law-making process together with the People's Legislative Assembly or his cooptation of all political parties. Such executive heavy configuration placed the President as the determiner of all national political agenda." Moh. Mahfud MD, "Speech" in the World Conference on Constitutional Justice, Cape Town, 2009, p. 2.

<sup>4</sup> Moh. Mahfud MD, "The Role of the Constitutional Court in the Development of Democracy in Indonesia", paper is presented in the World Conference on Constitutional Justice, Cape Town, January 23-24, 2009, p. 1.

<sup>5</sup> Jimly Asshiddiqie, "Creating a Constitutional Court In a New Democracy", paper presented in Australia, March 2009, p.1.

<sup>6</sup> By standing on the said basic agreements, the Constitutional Court of Indonesia had publishes a compilation book containing the Constitution of 1945 in its standard official text namely by containing the composition of the text of the Constitution of 1945 prior to its amendment which is followed by the text containing the result of the amendment to the Constitution of 1945 in four stages as mentioned above. Nevertheless, besides containing the official text of the Constitution of 1945, this book also contains the Constitution of 1945 composed in one manuscript. The Chief of Constitutional Court in Foreword of the book said, "*To be known, the making of the Constitution of 1945 in the said one text was initially an agreement of the Ad Hoc I Committee of the Workers Body of the People's Consultative Assembly during its session term 2001-2002. In the said agreement, the Constitution of 1945 in the said one manuscript is not an official text of the Constitution of 1945, but rather minutes of the session of the plenary meeting of the Annual Session of the People's Consultative Assembly of the year 2002. Therefore, with the intention for the society to understand easier the Constitution of 1945 systematically, holistically, and comprehensively, this book contains the Constitution of 1945 in One Manuscript containing the material content of the articles of the text of the Constitution of 1945 which have not been amended as well as the material content of the articles as amended by the four amendments.*" Arief Hidayat, "Foreword of Compilation UUD 1945 and Constitutional Court Law", The Office of the Registrar and the Secretariat General of the Constitutional Court of the Republic of Indonesia, Jakarta, 2015, p. v-vi.

<sup>7</sup> Jimly Asshiddiqie, The Role of Constitutional Courts, p. 5.

Amendment covers issues regarding state territory and regional governance, perfecting the first amendment in the matters about the strengthening of the position of the House of People's Representative, and detailed provisions regarding Human Rights.<sup>8</sup>

The Third Amendment that stipulated on November 9, 2001, was conducted at the Annual Meeting of the People's Consultative Assembly in 2001, which amended and or added the provisions of Article 1 paragraphs (2) and (3), Article 3 paragraphs (1), (3), and (4), Article 6 paragraphs (1) and (2), Article 6A paragraphs (1), (2), (3), and (5), Article 7A, Article 7B paragraphs (1), (2), (3), (4), (5), (6), and (7), Article 7C, Article 8 paragraphs (1) and (2), Article 11 paragraphs (2) and (3), Article 17 paragraphs (4), Chapter VIIA, Article 22C paragraphs (1), (2), (3), and (4), Article 22D paragraphs (1), (2), (3), and (4), Chapter VIIB, Article 22E paragraphs (1), (2), (3), (4), (5), and (6), Article 23 paragraphs (1), (2), and (3), Article 23A, Article 23C, Chapter VIIIA, Article 23E paragraphs (1), (2), and (3), Article 23F paragraphs (1), and (2), Article 23G paragraphs (1) and (2), Article 24 paragraphs (1) and (2), Article 24A paragraphs (1), (2), (3), (4), and (5), Article 24 B paragraphs (1), (2), (3), and (4), Article 24C paragraphs (1), (2), (3), (4), (5), and (6) of the 1945 Constitution. The material for the Third Amendment to the 1945 Constitution covers the provisions regarding the Principles for the foundation of state affairs, state institutions, relations among state institutions, and provisions regarding the General Election.<sup>9</sup>

The Fourth Amendment that stipulated on August 10, 2002, was conducted at the Annual Meeting of the People's Consultative Assembly in 2002. The Fourth Amendment covers Article 2 paragraph (1); Article 6A paragraph (4); Article 8 paragraph (3); Article 11 paragraph (1); Article 16, Article 23B; Article 23D; Article 24 paragraph (3); Chapter XIII, Article 31 paragraphs (1), (2), (3), (4), and (5); Article 32 paragraphs (1), (2), (3), and (4); Chapter IV, Article 33 paragraphs (4) and (5); Article 34 paragraphs (1), (2), (3), and (4); Article 37 paragraphs (1), (2), (3), (4), and (5); Articles I, II, and III of the Transitional Rules; Articles I and II of the Additional Rules of the 1945 Constitution. The provisions of the amendment in the Fourth Amendment are the provisions regarding state institutions and relations among state institutions, the elimination of the Supreme Consultative Board, provisions regarding education and culture, provisions regarding economics and social welfare, and transitional rules as well as additional rules.<sup>10</sup>

To safeguard the supremacy of the 1945 Constitution,<sup>11</sup> the Constitutional Court of Indonesia then formed as one of the judiciary authority organizing court proceedings in order to enforce the law and justice.<sup>12</sup> the Constitutional Court of Indonesia has four authorities and one obligation in accordance with those mandated by Article 24C (1) and (2) of the 1945 Constitution. Four authorities of the Constitutional Court of Indonesia are examining at the first and final level. The Court's decisions are final to judicial review the law against the Constitution; decide a dispute over the authority of state institution whose authority is granted by the Constitution; decide the dissolution of a political party, and decide a dispute over the result of the general election. Meanwhile, the obligation of the Constitutional Court of Indonesia is to provide decision-based on the Constitution over the opinion of the House of People's Representative regarding the assumption of violation by the President and/or the Vice President.

According to Jimly Asshiddiqie, based on its authorities, the Constitutional Court of Indonesia is the guardian of the constitution about above mentioned four authorities and one obligation. It also brings a consequence to the Constitutional Court of Indonesia to function as the sole interpreter of the constitution. Constitution as the highest law stipulates the state governing based on the principle of democracy and one of the functions of the constitution is to protect human rights which are ensured in the constitution. Based on this idea, human rights become the constitutional right of the citizen. Consequently, the Constitutional Court of Indonesia also has functioned as the guardian of the democracy, the protector of the citizen's constitutional

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<sup>8</sup> *Ibid.*, p. 5-6.

<sup>9</sup> *Ibid.*, p. 6.

<sup>10</sup> *Ibid.*

<sup>11</sup> In the era prior to the amendments to the 1945 Constitution made in 1999-2002, authoritarianism had always been the actual practice, despite the fact that Indonesia adheres to a democratic system in the formal provisions of the Constitution. Moh. Mahfud MD., "Speech of The Chairperson of the Constitutional Court at The World Conference on Constitutional Court", Speech in the World Conference on Constitutional Justice, Cape Town, South Africa, 23-24 Januari 2009, p.2.

<sup>12</sup> Jimly Asshiddiqie states, "It is necessary to establish a new institution that can play the role as the guardian of the constitution, the balancing power in majoritarian democracy, protector of the citizens' constitutional rights, the final interpreter of the constitution, and as the balancing agent in the checks and balances mechanism among state institutions and among the branches of national power. For that purpose, Indonesia established the Constitutional Court in addition to the already existing Supreme Court." Jimly Asshiddiqie, "Creating a Constitutional Court in a New Democracy", paper presented in Australia, March 2009, p.2-3.

rights, and the protector of the human rights.<sup>13</sup>

The creation of this Court and its role needs to socialize and teach especially for a law student. In the future, they will be able to become a defender of the constitutional right of the citizen as part of clinical legal studies program in Indonesia.

## 2. CLINICAL LEGAL STUDIES TO SUPPORT PROTECTION OF CONSTITUTIONAL RIGHTS IN INDONESIA

According to Article 28D paragraph (1) 1945 Constitution, every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as an equal treatment before the law. The guarantee of access to legal aid is explicitly stated in Article 28G paragraph (1), stating that, "every person shall be entitled to protection of his/her own person, family, honor, dignity, and property under his/her control, as well as be entitled to feel secure and be entitled to protection against threat of fear to do or omit to do something being his/her fundamental right". This is further strengthened in Article 28 H paragraph (2), stating that "Every person is entitled to receive ease and special treatment in order to obtain the same opportunity and benefit in order to achieve equality and justice". Substantively, the guarantee of access to justice through legal aid is a strict command in Indonesian constitution.<sup>14</sup>

Clinical Legal Education started in the United States since the 1960s. The component of legal practice is an obligation in the legal education curriculum of the United States. However, there is a growing need for additional service to the community. Legal lecturers began to develop a body of scholarship, an institution within the campus to develop awareness of social justice.

In Indonesia, Clinical Legal Education was known since the 1970s but more directed to the contribution of legal education for the community by the establishment of Legal Aid Institute in campus (LBH Campus). According to Uli Parulian Sihombing, in the Introduction of *Pendidikan Hukum Klinik, Tinjauan Umum* (2009), at that time, Clinical Legal Education was more emphasis on strengthening and formation of LBH Campus and has not been able to connect it with curriculum and teaching methods.<sup>15</sup>

Clinical Legal Education can be defined as a learning process with the intention of providing law students with practical knowledge, skills, values in order to bring about legal services and social justice, conducted on the basis of interactive teaching methods and reflective.<sup>16</sup> From its shape, Clinical Legal Education consists of three components, namely planning (preparing and planning for the required experience), practice (testing ability, interview, advising clients, representing clients in court, etc.), and reflection (reflection and evaluation ability). Therefore, the key element of educational implementation is the establishment of the legal clinic (LBH Campus).<sup>17</sup>

Based on the location of the practice, the legal clinic is done in law faculty (in-house clinic) and outside the law faculty (out-house clinic). In-house clinic program can be done by Externship, ie students working in a law office or government office under the supervision of practicing lawyers or government officials; Community Clinic, where students work directly in the community; Mobile Clinic, ie students visiting the community to give legal opinions and/or notify the community of their rights, or provide advice on certain types of legal issues and how to solve them. In-house clinic program can be done by: "life client" / "real client" clinic, ie students provide legal services directly to clients; Simulation Clinic, the student simulates real life on the basis of role-playing with the aim to train students' ability in general, with real cases.<sup>18</sup>

There are at least six objectives to benefit of clinical legal education: *First*, the Legal Clinic program is aimed at providing structured educational opportunities for students, to augment the student experience in real

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<sup>13</sup> Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, (Jakarta: Setjen dan Kepaniteraan MK RI, 2008), p. 39.

Petra Stockman wrote, "The Court can become firmly rooted in the Indonesian political system and in Indonesia society and contribute its share to enhancing democracy, rule of law, and human rights protection." Petra Stockman, *The New Indonesian Constitutional Court, A Study Into Its Beginnings and First Years of Work* (Jakarta: Hans Seidel Foundation, 2008), p. 105.

<sup>14</sup> Derry Angling Kesuma, "State Responsibility to Provide a Free Legal Aid Access for the Poor and the Obstacles in the Implementation", International Conference on Clinical Legal Education, Vol. 1 No. 1, 2017. Semarang: Faculty of Law Universitas Negeri Semarang, pp. 301-316.

<sup>15</sup> Luthfi Widagdo Eddyono, "Pendidikan Hukum Klinik yang Ideal", [<http://luthfiwe.blogspot.co.id/2010/02/pendidikan-hukum-klinik-yang-ideal.html>], accessed 30/12/2017.

<sup>16</sup> Open Society Justice Initiative, *Pendidikan Hukum Klinik, Tinjauan Umum*, The Indonesian Legal Resource Center (ILRC), July 2009, Jakarta, p. 2.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

memorization practice or through simulation of clients, as well as to gain knowledge, expertise, and values from that experience; *Secondly*, the Legal Clinic is intended to supplement support for legal assistance to marginalized communities; *Thirdly*, the Legal Clinic is intended to instill a spirit of public service and social justice, and to establish the basis for the development of legal profession responsibilities; *Fourth*, the supervisor lecturer at the Legal Clinic contributes to the development of a scholarship on the expertise and practical legal theories that link to the world of academics to the proximate organization closely; *Fifth*, the use of interactive and reflective teaching methods that motivate students to carry out the above-mentioned activities not obtainable in college; *Sixth*, the Legal Clinic is aimed at strengthening civil society, taking care of the professional responsibilities of lawyers through emphasizing the need for legal assistance to protect marginalized communities.<sup>19</sup> In order to improve the role of Clinical Legal Education and LBH Campus then in the future, it needs to connect with curriculum and teaching methods

### 3. CLOSING

Regardless of the benefits that can be gained, based on experience, the development of legal clinic in Indonesia, especially after the amendments of 1945 Constitution, has been challenged as well. The main challenge is to strike a balance between educational and service goals. There is a risk of placing a student in winning the number of cases he or she handles without supervision or supervision from the lecturer because the excessive handling of the case cannot be an important lesson in practicing law. Thus the legal clinic should be seen as part of the entire access to justice strategy, but not the main component. Other challenges are the resistance of the legal profession and law faculty, the development of teaching materials, financial issues, and human resource development.

The Clinical Legal Education program is indeed a tool for reforming the legal education system with the primary objective of improving the quality of the legal profession in the future, the support and formation of *pro bonos* and lawyers concerned with legal aid and social issues in the community. Thus, the application of Clinical Legal Education becomes an opportunity also to test the legal education system in Indonesia especially in supporting the constitutional rights of the citizen.

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<sup>19</sup> *Ibid.*, p.6-7.