

# PROCEEDING



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FACULTY OF LAW SEBELAS MARET UNIVERSITY

## **CHALLENGE OF THE CONSTITUTIONAL COURT TO REINFORCE DEMOCRACY AND HUMAN RIGHTS: BETWEEN POLITICAL PRESSURE AND GOOD JUSTICE SYSTEM DEVELOPMENT**

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## **A small note from the Adat Communities to the Constitutional Court.<sup>1</sup>**

**By**

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At the beginning of the independence of Indonesia in order to formulate the country have a sense of unity and cohesion and strong in all aspects, one of our Founding fathers L. Soepomo suggested that an appropriate form for the people of Indonesia is a unitary state based on Pancasila as the shape of the Union could achieve the purposes set Opening Act on the basis of paragraph 1945 to IV. Theory is in line with the integrative theory that overcomes individualistic theory (Individual) and the theory Group or class.

Integrative theory (unity) is the theory that in the review of the angle between the government and people of integrity. That has meaning to the integral fabric of society and the close relationship between all parties. That's why even though Indonesia has happened Amendments to the constitution but the main basis of the nation's capital remains the nation's personal principles of Unity and Integrity. This can be seen clearly in Article 1 of Act of 1945. :

1. Unitary state of Indonesia is a country
2. Being the hands of the people's sovereignty and implemented according to the laws Elementary
3. Indonesian State is a State law.<sup>2</sup>

As a rule of law and the form of unity, then in fact this is something that should be aware of capital right by all components of the nation, yet we are often fooled by a group of people who we are by nature divisive fight at devide at impera ( incite). if us refer to this end we often witness or hearing conflicts in various regions. the conflict was rarely cause casualties. However, the most in the spotlight is the conflict between the tribes, a fellow ethnic, religious or anything close to Sara. Call it the conflict in

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<sup>1</sup> The paper is presented at the International Seminar on Challenge of the Constitutional Court to Reinforce Democracy and Human Right; Between Political Pressure and Good Justice System Development organized by the Faculty of University of Sebelas Maret Solo on October 1-2, 2011 in the Sunan Hotel Solo.

<sup>2</sup> Amendment of the 1945 Constitution.



Ambon, in the Poso conflict, conflict, ethnic Dayak and Madurese in the muara teweh, Dayak ethnic conflict with the Bugis in Tarakan and also in Chicago. The events of these events led to the disintegration of the nation's increasingly disturbed softly softly back. Unity value unity that became mentally spiritual capital of the nation had another great challenges and trials.

The events yesterday on 25 September 2011 to make us wake up again because there is a group of people masquerading as a church congregation at Bethel in Solo and conduct suicide bombings are the divisive impact our nation with the dotted pattern of pitting the diversity in Indonesia. Not only that there are many cases that damage the integrity of the nation, this conflict. The conflict occurs because of lack of integrity in all aspects that make the failed destination for national integrity, one of which is political integrity.

The integrity of the political elite and the masses in the sense that eliminates the differences that exist in groups that influence and are influenced, if we should look at the integrity of the ongoing process of many other elements that influence and perhaps determine the presence of mass and elite gap differences are territorial integrity is a process that facet of human life in terms of political, economic, social, and cultural aspects affecting the integrity of even such a decisive aspect of the process.

Two western scholars, James J. Coleman and Carl G. Rosberg, see the political integrity as a part of the national integrity. In their view at the National Integrity has two dimensions, namely the vertical, (elite mass) and horizontal (or territorial). According to them, the term political integrity is vertical, and aims to bridge gap differences may exist between the elites in order to develop a political process integrated in the political community who participated.

And that in referring to their territorial integrity is integrity in the horizontal plane with a view to reducing tension discontinuities and regional culture in order to the process of creating a homogenous society.<sup>3</sup>

To better understand more about the political integrity let's look at one of the elite events on the organization and the community in the city of Balikpapan, East Kalimantan which new cases occur in the middle of this year.

These events started from the feud the two groups namely the mass organizations Indigenous Youth Movement of East Kalimantan (Gepak) and mass organizations that then skew Lagaligo sara issue; Bugis-Makassar versus Dayak in the city of Balikpapan, Borneo Timur. Lagaligo is one of the new organization that has not whole corn and almost failed to declare himself on June 25, 2011 due to strong opposition to its establishment by the people Gepak, Lagaligo even this organization is actually not much different from the Gepak as Chairman of its Board of Trustees is Andi Burhanuddin Solong what is now the City of Aberdeen and Chairman of the Parliament elected through the Golkar Party, the Board and membership Lagaligo Sulawesi were dominated by "Bugis-Balikpapan"

Gepak felt-making organization Lagaligo violated ethics and no sense of respect for indigenous organizations in the area of Kalimantan, (Gepak, koppad, defense Assembly indigenous Dayak) or just ask permission of the customs area as it is done by Manguni Brigade (headquarters in Minahasa) Other Lagaligo not concentrate as its regional organizations in the area of central Sulawesi, but its center is made in the area kaltim to become a big question. For what makes the troops in the area of Kalimantan. As from the date of July 4, 2011, FKMaSAK (Forum Communications indigenous communities kalimantan) gives a grace period of 3 x 24 hours to the mayor to disperse Lagaligo, so pretty quiet chicago condition until the date of July 4, 2011 and the Police were providing security very seriously. On the evening of July 4, 2011, no messenger came to the house Gepak Chairman Lagaligo and still provide the same demands. Wonder of this case is so incessant that issue Bugis, Dayak will wake up to war, this story is

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<sup>3</sup> Coleman, James J.,; Rosbedrg, Carl G. Political Parties and National Integration in Tropical Africa (Berkeley, Los Angeles, University of California Presss, 1964,page 8-9.



growing among many city dwellers Chicago and district / city neighbor even up to Banjarmasin South Kalimantan, there seems to be the element of intent from certain parties to direct this conflict an issue sara like Sampit incident several years ago and Tarakan few months ago.

Post-demonstration, the City of Aberdeen again conducive, the activities of people went back to running as usual today. The climax on Tuesday July 12, 2011, this organization came to the offices of the City of Aberdeen. claims whatsoever not change the sup Organizations Lagaligo, Lower and fire Solong Andi Burhanuddin Chairman of the Parliament of the Chair City of Balikpapan in East Kalimantan following Members of Parliament involved in the mass organizations at 12.00 pm LaGaligo. Hingga normal running conditions Gepak but after the organization started to move from the demonstration site conditions began to change because the movement moved westward through the City of Aberdeen Road and will be the area where oil is the area or region of PT. Pertamina. such as the name of the street, the area is certainly a central office of PT. Pertamina and PT processing. Pertamina and the area is the reason dubbed as the city of Balikpapan in Oil City so that the security forces are also giving special attention to this region which is one of the state assets whose value is so great. This event lasts until sunset call to prayer, and subsided after the arrival of the father of Aberdeen Police Chief Adjunct Senior Commissioner Supriyono Patience. Hopefully Balikpapan City government can solve this problem, before there were no casualties among the two organizations, especially the victims of people who do not know, or not involved in this conflict.

#### **Legal issue :**

The description at the preliminary draw for the review based on political review the law, because the two Organizations is the same as feeling entitled to ekisis as community organizations on the one hand represent gepak FKMaSAK feel heard and in gubris as indigenous peoples on the one hand to feel valid legal Lagaligo just because it is in the

NKRI to association and assembly. What steps are steps that can be done in city government and based chicao what legal options are taken by the ruling class and the theory of what a knife analysis.

**analysis:**

In solving the problem of conflict society organizations in the city of chicao, chicao city government should be more observant in seeing local wisdom and centered on Pancasila as the container that builds unity of Indonesia, most recently in the local or central disintergration the nation began to waver and thin most groups or individuals to reap personal desire to take advantage of community organizations so that the unity of the nation's unity is threatened as a result we are further away from the goals of our country the rich get richer the poor getting poorer the more advanced tribes and other tribes further lagging far behind . Theory in use in solving this problem is the Theory Integralistic (unity) this theory is the theory that the terms of the integrity between the government and the people. That has meaning: the integral fabric of society has meant a close relationship between all parties. This theory was originally instigated by Benedictus de Spinoza, Adam Muller, F.Hegel.and then at the beginning of the independence of Indonesia in order to formulate the state has a strong sense of unity and in all aspects (given at the beginning of the independence of the community. Indonesia fights frequently in sheep, there was a desire to become the nation state) then according to this theory is L. Soepomo as the founding fathers suggested that the State of Indonesia which is exactly unity is based on Pancasila state to achieve the 1945 goal at the opening to paragraph IV, defeating the theory of individualistic (Individuals) and theory of category or class .

Structure of the Integral community must come to understand, the soul and characteristics of indigenous communities in the area. Local knowledge on indigenous tribes still see as the substantial capital and unifying container between groups in the area. Confidence brought by the indigenous Dayak people that they are as native borneo should be especially appreciated in the 1945 Amendment to Article 18 b of paragraph 1 of the State recognizes and respects units of local government units that are special or extraordinary in the set with the laws. Verse 2: state recognizes and respects the unity of



the Dayak community in all aspects of their development is far behind the other ethnic tribes who settled in East Kalimantan unlike in Central Kalimantan. both in terms of tablespoons or in other areas but in terms of receiving another tribe to enjoy the natural wealth of the country east Kalimantan they are very welcome call it the greatest ethnic Javanese city of chicago keep the 29.76% is in the thank residents in the city of chicago because dayak how their manners and respect for indigenous people in there even if you are so tolerant city of Balikpapan on the road almost all the street names using the name java example jln.karang Rejo and so on Bugis tribe is the third largest tribe after tionghoa but who have access to a large control of the town chicago from government thugs in the market until the market or at airport ticket scalpers Sepinggan. therefore chicago city government should embrace the mass organizations to bridge the Second Article of the Constitution on hold by the two camps with the theory that the underlying Integralistic by Pancasila for purely State achievement .. sit together with the soul of the deliberations of local wisdom.

For according to Prof.. Dr.Suwoto Mulyo Sudarmo SH. Msi in understanding and problematic legal writings he explained that:

In order to realize a society that aspired to by the Indonesian people make choices in ways that correspond to the values contained in Pancasila. decision to take Pancasila as a way to realize a just and prosperous society that is "political law", but set the Pancasila as the choice of building a national law that is directed to the achievement of purpose which are being formulated in the preamble of the 1945 Constitution it is the politics of law.

#### **Notes and Hopes for Indonesian Constitutional Court.**

Departing from one of the least problematic of the above problems represent events similar events in the regions outside Java thing that we can take is to involve two issues of Political Integrity

1. How to make people submissive and obedient to the demands of the country.
2. How to improve the normative consensus that govern the political behavior of members of the community.

The first problem has been discussed in the description above regarding the settlement of issues including the recognition of the rights of the people will have rights in the country and the people must obey it, strong solidarity contained in any group or society tend to influence the process of political integration. Solidarity, which is not based on primordial ties, contained in small groups in both formal and informal organization, was born in a situation where the group members need to defend the interests of the group. The existence of this kind of solidarity, on the one hand, facilitate the process of integration in society. Solidarity In this case it brings a positive influence to the process of political integration. Instead the strong solidarity that arises in any group can also threaten political integration. This happens when Solidarity was to distinguish, or sharpen the differences that exist, something the group with other groups. In fact, the presence of sub-group solidarity within a group can also reduce the solidarity that should exist in the overall group. That, too strong solidarity in the sub-groups can lead to a weakening of solidarity at the group level. This situation tends to cause delays in the integration process.<sup>4</sup>

whereas the second problem is the problem that is fostering a consensus among fellow citizens about political behavior in the political system need to be running well, Speaking of fostering agreement among citizens that means we provide guidance to the public how the law is what makes leadership so that political integrity does not stray far from the base of our country. (the Constitution).

And this is a task that should be done regularly and continuously not only relies on a region or a province wrote but the whole society on the island of Indonesia Indonesian island so that no more people who are blind constitution. When we reflect back to the beginning of the beginning of the Constitutional Court and even a year old Indonesian

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<sup>4</sup> Nazaruddin Sjamsuddin, *political integration in Indonesia*, PT Gramedia, Jakarta, page.110



Constitutional Court then explicitly lay out the book *Keeping the pulse of the Constitution* (Constitutional Court Reflections one year) in the early writings of Prof. Jimly Asshiddiqie, SH which is a first step the Indonesian Constitutional Court sure in the eyes of the whole community that MKRI must have the support of the people as a state institution who were guarding the constitution. Socialization is also in tone to the socialization of the constitution, because the constitution is an icon, and constitution was the one who should be on guard by MKRI, so the effort to make the constitution as the supreme law is increasingly in the familiar, and increasingly accepted as the norm living, (the basic norms of living in society). in the early days MKRI already made the translation and the Constitution in various regional languages I think this idea needs to go back to wearing the friends of the court (such as APHMKA) to plunge into the tribal areas or tribal areas so that the integrity of politics can carried even further than that the Constitution could truly become the living heart and further from the norm was to be living, at least in the area there are areas that become pro-active information center that provides education and intensive socialization to the community about the constitution.

State of Indonesia which consists of a series of islands do have a very much cultural diversity and different mindset also different and interpret the political integrity Lagaligo existence is not separated by the strong solidarity of feeling Regional by Bugis tribe who only collected from some people who have bugis want powerful of these groups to advance in the political scene in east Kalimantan, if a case is widespread and the issue central on every tribe in the nation's interest in Indonesia, the National Integrity of our nation will be destroyed and the existence of the nation's vision and mission for the unity of the unity of Indonesia had become blurred . the integrity of the nations that understand the theory Integralistic will shift and proceed into the theory and the theory of individual. By therefore the spirit which emanated by the constitutional court in early stand as guardians of the constitution must still be made to be continue . the first forward made by the Court constitution at the beginning of the sometimes slow sometimes stumbling slowly sometimes seem only road in places and even sometimes fell on the way . But does not need to bother with because the most basic thing is how to stand back and continue the journey in carrying out escort duties constitution.

Now the Constitutional Court already has a magnificent building with nine pillars that signify the nine judges who are ready to maintain the purity of the Basic Law ( UUDNRI) .This in there building sophisticated facilities, all with a click and a one

touch we can spearhead the e-court as teleconferences in addition to the use there for need trial but also in use to provide information on law school faculties throughout indonesia, can receive college or acceleration information that is critical to the academic world, then there is a network Court TV (Court TV). but this is only a part of luxury and only in enjoyed by the academic elite who are part of the friends of the court (amicus curiae), such as experts, academics / lecturers, NGOs and journalists who interact much in the way the Constitutional Court today.

It is time for socialization Constitutional Court which is part of the correctional Constitution does not become part of the elite of the Constitution alone, but there is coordination of the Constitutional Court to clean up with fellow friends who were in the friends of the court (in this APHAMKA ) to socialize together more closely the Constitution introduces the hearts of the people present in the diversity of ethnic tribes constitution because we have to make icons, and even then we have to guard the constitution if the constitution is just a fragrant and academic elites in love then forever Law enforcement will not materialize , instead of introducing the subject but its object and it becomes a common concern of all citizens. It is time the Constitution was not only a living norm but also a living heart in the whole of society.

## CONTRIBUTORS

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