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DEMOCRACY AND PUBLIC ACCOUNTABILITY IN DIGITAL ERA

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Design of Moot Court Practices in Universitas Terbuka's Learning Services

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Abstract

Learning services for Universitas Terbuka's students are Face-to-Face Tutorials and Online Services (e-learning), incompleting the courses taken. One of the courses inlaw school is the Moot Court Practice which requires each participant of the tutorial to be able to follow observations inthe Court by following 2 civil cases and 2 criminal cases which are tried and then making a simulation file as the final assignment of each student. The designs that have been carried out so far only provide the task of paying attention to how the trial after trial while the practice of loading criminal and civil simulation files is not done inthe online tutorial. There should be an assessment design/format so that online tutorial students can conduct independent observations and make simulations of criminal and civil case files to be assessed by tutors. The research method used is the empirical research method that will form the procedure experience inthe Online Tutorial to be maximal as well as face-to-face tutorial (TTM). The pattern of guidance carried out by the Offline and Online Tutorial (TUTON) Tutorial pattern must be synchronized and formulated tasks in8 Meetings inOnline Tutorial so that the achievement of competency targets to be achieved is carried out well in order to compete with other students both nationally and internationally.

Keywords: Moot Court, Online Tutorial, Cases, Filing.

A. INTRODUCTION

Students are ready-made human resources that are prepared to solve problems that occur in the community according to their respective fields of interest. Like law students, of course, they must have competition in the practice of legal settlement, namely the field of consultation and legal assistance. To prepare competitive scholarship candidates, they will be pursued through courses in practical experience in each court. According to Government Regulation No. 42 of 2003 on the terms and procedures for granting legal aid and legal assistance fund distribution then the student is possible to follow the judicial process both litigation and non-litigation either as assistant or paralegal advocate so that the students have a good competence in the practice of litigation (*Moot Court*).

Law Study Program students at Universitas Terbuka as one of the requirements to complete the study are to attend the Practice Experience course. To attend the Practical Experience Course (PPB HKUM4410) course, students have taken a minimum of 90 credits and have or are currently pursuing Agreement Law (HKUM4402), Legislation Theory (HKUM4404), Civil Procedure Law (HKUM4405), Criminal Procedure Code (HKUM4406), Arbitration, Mediation, and Negotiation (HKUM4409), the condition is intended so that the final student who takes the course has already passed the basic course and the practical support course so that they can easily understand and do the practice. The practice of experiential experience provides various competencies, including knowledge / theoretical competencies, skills competencies, and attitudes⁵.

The purpose of the practical course of experience is not only so that students know about the judicial process but also know how to simulate and become one of the roles of the judicial process. The stages that must be passed by the students in this course are first observing the trial process which then aims to find out the description of the proceedings both in the district court, religious court, state administrative court or the Indonesian National Arbitration Board. After that, the students simulate and demonstrate it in a quasi-court.

⁵ Bahan ajar cetak Praktek Pengalaman Beracara Universitas Terbuka (HKUM4410), p. 2.

E-learning as a learning aid service must bring the Face-to-Face class atmosphere into its virtual class, so of course a virtual class design must be designed so that students can interact directly with classmates who can independently simulate the practice experience like a conventional class consists of groups of ≤ 10 people then will act as Prosecutors, Judges, Lawyers, clerks, defendants (criminal justice), Plaintiffs, defendants, judges and clerks (Civil Justice, Constitutional Law, Constitutional Court).

B. DISCUSSION

1. Judicial System in Indonesia

The Indonesian constitutional system adhering to a system of separation of powers means that the power of the state is separate in several parts, both about the person and about its function⁶. While the division of power means that power is indeed divided into several parts, but not separated. This brings the consequence that among those parts it is possible to have cooperation. The theory of separation of power was popularized through the teachings of *Trias Politica* Montesquieu in his book entitled *L'Esprit des lois (The Spirit of Laws)* that is to state institutions into 3 parts, namely: executive (government), legislative institutions (institutions Forming Laws) and judicial institutions (Judiciary). In Indonesia, it can be seen implicitly that Indonesia applies a division of power. This is clear from the division of chapters in the 1945 Constitution. For example Chapter II concerning the People's Consultative Assembly, Chapter III concerning the Power of State Administration, Chapter VII concerning the House of Representatives and Chapter IX concerning Judicial Power. Legislative power is exercised by the President together with the DPR. Executive power is carried out by the President assisted by ministers, while judicial power is exercised by the Supreme Court and other judicial bodies⁷ stand-alone without any intervention from the executive or legislative.

The judiciary, which is a justice enforcement agency, has a system in place to resolve legal issues before the court. The judiciary can be interpreted as everything related to the task of deciding cases by applying

⁶ Moh. Kusnardi dan Ibrahim Harmaily, 1988, *Hukum Tata Negara Indonesia*, Jakarta: Pusat Studi Hukum Tata Negara FH UI, p. 140.

⁷ Miriam Budiardjo, 2008. *Dasar-dasar Ilmu Politik*. Jakarta. Gramedia Pustaka Utama, p. 156.

the law, finding the law *in concreto* in maintaining and guaranteeing the obedience of material law, using procedural means determined by formal law.⁸, whereas according to the Indonesian language dictionary, the judiciary is everything about the court case then the court can also be interpreted as a process of providing justice in an institution⁹.

According to Philipus M. Hadjon¹⁰, division of competence (distributie van rechtsmacht) between 4 (four) judicial environments, by adhering to the principles outlined by Law Number 14 of 1970 concerning Basic Provisions for Judicial Power jo. Law Number 35 Year 1999 concerning Amendment to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power, namely the first principle contained in Article 12 of Law Number 14 Year 1970, namely, power and events of judicial bodies regulated by law, the second principle is that special courts only handle certain cases stipulated by law. With these two principles, general justice competency is determined by using residual theory, which is a field that is not submitted to special courts, by itself including the scope of the competence of the general justice.

The legal justice system in Indonesia is divided into four judicial environments, namely¹¹ :

- a. General Justice Court, namely the authority to examine, hear, and decide on criminal and civil cases in accordance with the provisions of legislation.
- b. Religious Court within the jurisdiction, to decide and resolve cases among people who are Muslims in accordance with the provisions of the legislation.
- c. Military Court has authority to examine, hear and decide cases military offense under the provisions of legislation.
- d. State Administrative Court has authority to examine, hear, decide, and resolve disputes in accordance with the state administrative provisions of the legislation.

⁸ Sjachran Basah, *Mengenal Peradilan di Indonesia*, Raja Grafindo Persada, Jakarta, 1995, p. 9

⁹ Mohammad Daud Ali, *Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia*, (Jakarta: PT Raja Grafindo Persada 2005), p. 278.

¹⁰ Philipus M. Hadjon. *Perlindungan Hukum Bagi Rakyat di Indonesia*, 1st edition, PT. Bina Ilmu, Surabaya, 1987, p. 116.

¹¹ Article 25 paragraph (1-4) of Law Number 48 of 2009 concerning Judicial Power.

- e. Then special judiciary, namely the judiciary of the Constitutional Court which was formed based on Law number 23 of 2004 concerning the Constitutional Court.

The four court environments, each of which has a first-level court institution and an appeal court. At the appeal level, all culminate in the Supreme Court (MA).

When the first-degree judicial decision is deemed unsatisfactory for each party, an appeal can be made, namely the process of formally opposing legal decisions. Appeal procedure, including whether a defendant has an appeal right, varies from country to country. In Indonesia an appeal is filed in the High Court located in the provincial capital, if the appeal is filed the case becomes *raw* again. Appeal is carried out by interested parties (parties who are defeated by the decision of the District Court). An appeal to complete if the PN decision (District court) is wrong or incorrect and reinforces the PN decision if the PN decision is correct. The appeal period is 14 days since the announcement of the PN decision. In the United States, the legal system knows two types of appeals: *de novo trials* or appeal on the record. The *de novo* court, all evidence can be brought back, as if it had never been submitted. In appeal on the record, what is used is usually a precedent¹².

The first and second level courts in the four court environments are:

- a. The District Court (PN) and the High Court (PT) in the general court environment;
- b. Religious Court (PA) and High Court. Religion (PTA) in the religious court environment; '
- c. Administrative Court. State (PTUN) and High Court. State Administration in the state administrative court environment; and
- d. Military Courts (PM) and Military High Courts in the military court environment.

In addition, today, there are also some special courts, both permanent and Ad Hoc, including: Human Rights Court, Corruption Court, Commercial Court, Fisheries Court, Juvenile Court, Labour Relations Court Industrial, Tax Court, Sariah Court of Nanggroe Aceh Darussalam Province, Customary

¹² <https://id.wikipedia.org/wiki/Banding>, accessed on 31 July 2019, at 12:18 WIB.

Court in Papua, Human Rights Court, Corruption Court, Commercial Court, Fisheries Court, Juvenile Court, and Court. Industrial relations.

The diversity of judiciary in Indonesia causes students to be demanded even harder in understanding and knowing each authority and function of the judiciary, not only in general justice and special courts but also in other courts, so that students can no longer only understand and practice criminal cases and civil cases but it will be more developed into the judiciary such as the case of State administration which is still under the Supreme Court and the Court of the Constitutional Court (MK) which is a court that has special authority outside the Supreme Court (MA).

The Constitutional Court as one of the judicial authorities has an important role to hold the judiciary in order to uphold law and justice. The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final in order to test the Law against the Basic Law, decide on the authority dispute of state institutions whose authority is granted by the Constitution, decide upon the dissolution of political parties and decide disputes about election results¹³.

The procedural law of the Constitutional Court regulates law enforcement whose material has been determined in its material law – *het materiele recht moet 'gehandhaafd' worden en dat gebeurt in een proces*. Thus, the material law must be upheld and it happens in an event. The law that governs this event is called '*formeel recht*' atau '*procedural law*'¹⁴.

Specificity of the Constitutional Court procedural law must be studied by open law students in completing studies at Universitas Terbuka. Not yet the inclusion of the Constitutional Court Procedural Law into the catalogue of legal study programs, of course, it must be reviewed so that there is a renewal of the courses at the Law Study Program in Universitas Terbuka.

2. Concepts and Development of Practical Experiences in Face-to-Face Learning services (TTM)

Guidelines for the practice of the experience of Universitas Terbuka are very good and well organized both in reference to the implementation of the

¹³ Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia NRI Jo Law Number 24 of 2003 concerning the Constitutional Court.

¹⁴ <http://lab-hukum.umm.ac.id/files/file/Buku%20Hukum%20Acara%20MK.pdf>, accessed on July 31, 2019, at 11:14 WIB page viii.

PPB (HKUM4410), guidelines in the PPB guiding process (HKUM4410), guidelines for evaluating and checking PPB reports (HKUM4410). Students are required to observe the judicial process which includes aspects, namely the process of handling cases in the judiciary at the place of practice and the judicial process of 2 (two) criminal and civil cases, including: Types of Cases and description of proceedings which students are required to make reports and make simulation of criminal files such as Minutes of Investigation (BAP), Charges, Exception, exception responses, interlocutory decisions, letters of claim, pledging, replication, duplicates, and verdicts while civil cases of students are required to file summons, power of attorney, lawsuit, tort answer, replicate, duplicate, proof, conclusion and decision. Student report file which includes Report on Observation of Criminal and Civil Case Judicial Processes, Criminal Case Report and Civil Procedure Case Report collected when face-to-face tutorials end (8th meeting)¹⁵.

Implementation of practical experience of events that began in 2015 up to now, of course, needs evaluation and improvement so that the student competencies that UT wants to achieve are achieved and implemented properly. Some findings that need to be followed up in the implementation of current practice experience:

- a. Guidance Concepts between Supervisors, Criminal Instructors and Civil Instructors which often clash like the example: First, in the stages of observation whether the supervisor is present or instructor 1 and instructor 2 are present during observation. Secondly, with the assumption that the supervisor is the leader of instructors 1 and 2, analogous to the value given by the instructor sometimes contributes and the counsellor provides value with his own point of view, namely seeing the final report rather than the guidance process conducted by instructors 1 and 2.
- b. The demands of the report files produced by each student seem very heavy because it is seen from all the efficiency of the work on case files that require assistance (consultation), the intensity of other course assignments taken in the same semester and busy work / student activities that result in and grow the potential for

¹⁵ *Bahan ajar cetak Praktek Pengalaman Beracara Universitas Terbuka (HKUM4410).*

reports to be made by students to other parties outside or with their own instructors or mentors.

- c. The lack of competency in the practice experience of the program which has the aim of students having field experience in experiential learning for students to apply various knowledge, attitudes, and skills in learning as a whole and integrated in real situations so that the concept of simulation (Moot Court) is not carried out and what is seen is only student reports that do not present the experience of the courtroom by students acting as judges, prosecutors, lawyers, plaintiffs and defendants as well as those who are being convicted in court.
- d. No inclusion of reports on the results of the State administrative court which at its position has a fundamental difference from civil and criminal justice and students should be required to observe TUN cases and make TUN judicial reports.
- e. Simulation of Practice Experience in the Constitutional Court as one of the tasks in this course or made in a special course of the Constitutional Court Procedure Law which gives a picture to students (observation) directly, but with limited distance and time of Open University students, of course observation must be designed through Video Conference in collaboration with the Constitutional Court in order to broadcast the trial situation of the Constitutional Court through the development of e-learning application of Universitas Terbuka.

The results of these findings certainly provide input to make better improvements in the implementation of practical experience, namely:

- a. The Clear Guidance concept between the counsellor and the criminal and civil instructor is to accompany the observation in the district court (criminal and civil) and religion (civil) who have the task is the supervisor while those responsible for guiding in class and outside the class to make criminal file reports are instructor 1 and civil file report are instructors 2, then the hours are adjusted to TTM class hours (2 hours) sharing 1 instructor hour 1 and 1 hour instructor 2 so that they have a clear schedule in orderly administrative guidance (absenteeism and mentoring journals)

in their instructional reports. At the end of the report the supervisor only recapitulates the report (aggregate) the values given by instructors 1 and 2 and then must be attached when each supervisor and instructor reports to the local UT UPBJJ.

- b. The concept of the report that must be simplified is by 1 report / group consisting of 5-8 students, in addition to minimizing the occurrence of transactions in making reports and reporting reports will be more quickly realized. In addition to criminal and civil reports, a report from the State Administrative Court was added.
- c. To see the behaviour of each student and then make a simulation schedule (practice experience), both in the UT studio and judicial studios that are transformed from the Face to Face room by adding inventory in the form of toga judges, prosecutors and lawyers who will be guided by instructors who are not will only guide the creation of files.

3. Concepts and Development of Practice Experience in E-learning services (TUTON)

The choice of learning services between Face-to-Face and E-Learning basically does not reduce the essence of the competencies to be achieved by the University to students, so there must be a common standard between practice experience in face-to-face and E-Learning, therefore a concept that both in the e-learning. Now students who take e-learning are students who in a certain area are not sufficient to make a TTM group and therefore must be done online.

The development of information technology certainly does not rule out the possibility of a face-to-face concept (observation to the court, simulation of practical experience, and reporting) brought into the virtual class. In the online class, students are only presented with judicial simulation videos from other universities, and each student is required to upload the task of making case files. The concept of Universitas Terbuka's e-learning must be interesting and varied so that students can be creative init. Form of development of technological innovation in the development of online classes such as:

- a. The face-to-face observation phase can also be presented in the tutorial class, by utilizing video conference technology, namely

Universitas Terbuka in collaboration with the judiciary to be able to broadcast directly or delay to students who follow the Online Tutorial on the trial. Adjustments to the show schedule must also be adjusted and announced to students taking courses in practical experience (PPB) aimed at increasing the participation of students who watch the live streaming and the assessment scores for students who follow have the same weight values as those who are observing at court.

- b. The use of short videos that show the whole stage of the proceedings starting from the way the clerk calls the panel of judges, the way the judge opens the court (tap hammer) and so on. This must be explained because the stages of observation through video conferencing can be a trial at an advanced stage so that to provide an overview to students need to be aware of the beginning of the process of the ceremony. Of course with creative videos, unique, have an explanation of each stage and have a relatively short duration will make students interested and pay attention to the video until it's finished.
- c. The division of online learning groups between 6-9 people that allows interaction between online students to provide feedback among fellow students who take online tutorials on learning experience and practice based on group work that has been shared among each student.
- d. Structured assignment design refers to the completion of a report on practice experience (PBB), namely by making a description case that requires students to make each file with instructions based on the description questions given in groups by division by a computerized system.
- e. Moot court simulation through independent application (virtual reality) that brings students as if indeed in the courtroom or the development of e-learning-based applications that allow students in one group to interact and choose to be parties to the trial before the court can then take turns choose the desired role in accordance with the instructions for conducting the practice.

The development of practical experience course (PPB) course must be supported by the development of a qualified IT application in order to be able to answer every challenge faced. These designs will certainly provide a new experience for students and it is not impossible that conventional practice experience (TTM) will be abandoned and future cyber students will prefer to go online with various types of features that are given such as Virtual Reality insimulation experience, the use of video conferencing as an observation monitoring tool at designated locations and so on.

C. CONCLUSION

The practice of litigation experience (PPB) must be evaluated and adjusted to the current development. The renewal must be in all lines of learning services owned by Universitas Terbuka, namely Face-to-Face and Online learning services (e-Learning). Renewing and evaluating the subject matter of practical experience in face-to-face learning services, namely:

1. A clear concept of Coaching between counsellors and criminal and civil instructors regarding each area of work and their responsibilities.
2. The concept of the report that must be simplified is by 1 report / group consisting of 5-8 students, to minimize the occurrence of transactions in making reports and the inclusion of the State Administrative Court report as the final report of the student.
3. The simulation schedule (practice experience) is done either in a UT court of justice or a judicial studio that is transformed from the Face-to-Face Tutorial room guided by the Instructor.

In addition to face-to-face tutorials, online learning services must also be evaluated from the current implementation, some concepts that must be in the online tutorial must be the same as face to face with added facilities that can be accessed by students such as:

1. Observe the practice of Litigation Experience (PPB) in the online services through video conferencing technology that cooperate with the court.
2. Use of short videos that show the whole stage of the creative and innovative session.

3. Moot court simulation through independent application (virtual reality) or e-learning development application.
4. Distribution of group assignments to each student and live chat services to students so that student interaction in a group is more interactive.

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