

ENSURING SOCIAL JUSTICE PRINCIPLES FOR PEACEFUL SOCIETY

Indonesian Perspective

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Opening Statement:

***“Ensuring social justice
is one of the paramount
foundations of the
Republic of Indonesia”***

**It's part of constitutional
obligations as well as
part of state's foundation.**

Preamble of the Constitution of 1945, paragraph four:

Subsequent thereto, to form a Government of the State of Indonesia which shall protect the whole nation of Indonesia and the entire motherland of Indonesia and to advance public welfare, to educate the nation's life, and to participate in the maintenance of the world order based on independence, perpetual peace, and **social justice**, the National Independence of Indonesia shall be elaborated in a Constitution of the State of Indonesia which shall be structured in the form of the Republic of Indonesia with people's sovereignty based on Believe in God the Almighty, Just and civilized humanity; the Unity of Indonesia and Democracy with the guidance of wisdom in assembly/representation and by realizing **Social Justice** for all the people of Indonesia.

Pancasila: Five Basic Principles

Pancasila, is the state foundation of Indonesia. The term refers to five basic principles constituting the foundation, which are expressly stated in the Preamble of the country's Constitution mentioned above, *i.e*:

1. **Believe in God the Almighty;**
2. **Just and Civilized Humanity;**
3. **The Unity of Indonesia;**
4. **Democracy with the Guidance of Wisdom in Assembly/Representation;**
5. **Social Justice for All the People of Indonesia.**

What Is Social Justice?

There is no universally accepted definition and/or scope of social justice.

Historically speaking, however, the majority of experts and social activists agree that the problem of social justice can be traced back to the era of industrial revolution in the early age of 19th that “created” social stratification in society between those who were rich and poor (and the sharp and keep widening gap between the two).

By then, those who supported the idea of social justice, at first, focused their attention primarily on three leading issues: capital, property, and distribution of wealth.

Entering the middle of the 20th century, the problem of social justice developed wider than the earlier one, which was emphasized on economic issues, so as to include various social problems such as environment, race, gender, and all other kind of injustices (and their causes). At the same time, efforts in realizing social justice also developed from efforts that previously solely taken nation-states (or governments) to a wider dimension so as to include humanity in universal sphere.



Problems of social justice might exist, practically, in relation with any aspect of society where injustices may arise as the results of prejudices or unjust policies.

The type of social injustice can be figured in two categories (though they sometimes co-dependent): inter-social treatment and unequal government regulation. The former covers treatments toward group (or groups) of society driven by personal suspicions and prejudices. These suspicions and prejudices frequently emerge in various sociological categories, such as race, gender, age, sexual orientation, religion, nationality, physical and mental capacities.

While, the latter (unequal government regulation) covers laws and regulations which, intentionally or unintentionally, create conditions that hamper, limit, or deny access of a group (or groups) to equal opportunity and natural resources in relation with other groups of society. These laws (and regulations) explicitly or impliedly create conditions of social injustice.

Principles of Social Justice

Despite the lack of an agreed definition or understanding pertaining to social justice, experts and activists are in agreement on minimum principles that must be attributed to social justice. The principles are:

human rights,

participation,

access,

equity.

(1) Human Rights

There is a strong belief that human rights approach is pivotal when working for social justice. Up to now social justice is still mostly associated with social and economic rights. Experts believe that it'll become more powerful when it encompasses all human rights

It is said that social justice goals are clearer when framed with international human rights standards. That's the main benefit. In addition, by framing social justice issues as human rights issues, it will give more pressure on governments and institutions to address their failings.

(2) Participation

Principle of participation means that every one should be able to participate in the processes that affect their lives. All individuals must be given opportunity to participate.

Because injustice is complex and multifaceted, diversity has significant role. Hence, increased participation means increased diversity and it'll accordingly increased alternative solutions for the multifaceted social injustice.

(3) Access

Principle of access means that to build and achieve a just society there must be principle that services and resources are available to all, not just a few.

In other words, every one must have equal access to services and resources.

The failure to fulfil this principle means widening equality gap in a society for only those who are already privileged get the resources they need to improve their lives.

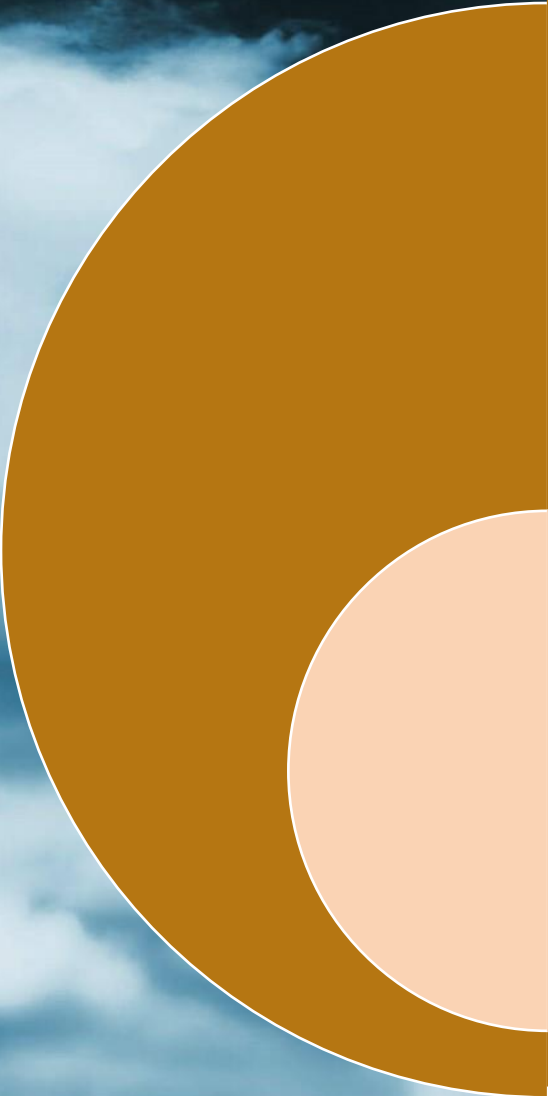
(4) Equity

Equity means fairness or justice or rightness.

Equity is different from but related to, equality. It is said that equality is the goal, while equity is the method by which societies achieve that goal.


Since every society has its disenfranchised groups, the equity is said to be achieved when the specific needs of these disenfranchised groups are addressed.

The Role of the Constitutional Court



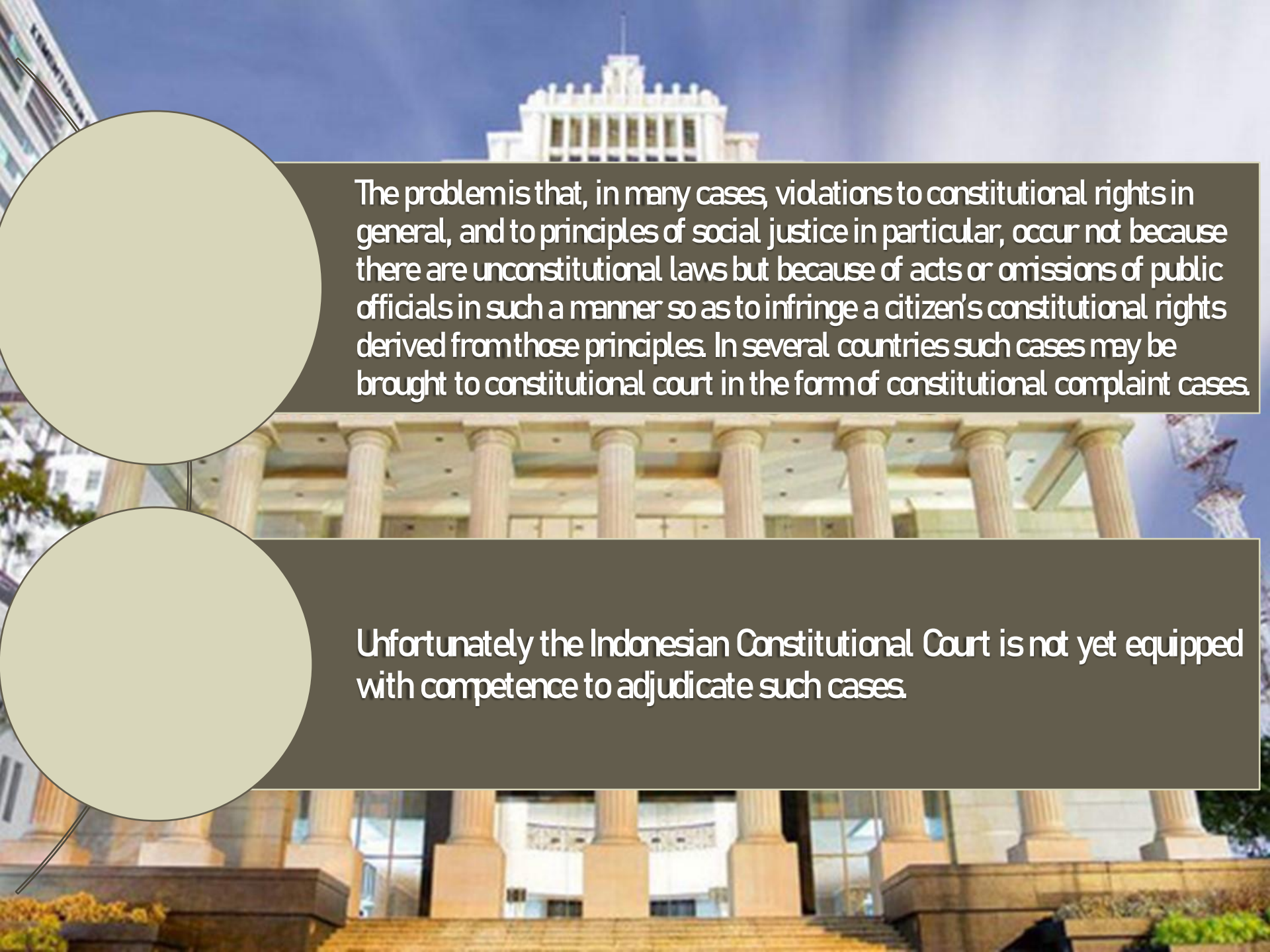
Generally speaking all the principles of social justice mentioned above have been enshrined and reflected in the provisions of the Indonesian Constitution. According to our legal system, the provisions of the Constitution have to be elaborated further and implemented by laws and regulations, including those principles of social justice.

The problem is how to ensure that the laws and regulations have properly elaborated and implemented those principles?



As far as laws are concerned, if there is a law that fails to address one of those principles of social justice, those who has the constitutional interests, even a single citizen of the country, may directly bring the law to the Constitutional Court and ask the Court to review the constitutionality of that law.

If Constitutional Court finds that the petitioners' arguments are reasoned, the Court will declare the law unconstitutional and at the same time the law loses its legally binding power.



The problem is that, in many cases, violations to constitutional rights in general, and to principles of social justice in particular, occur not because there are unconstitutional laws but because of acts or omissions of public officials in such a manner so as to infringe a citizen's constitutional rights derived from those principles. In several countries such cases may be brought to constitutional court in the form of constitutional complaint cases.

Unfortunately the Indonesian Constitutional Court is not yet equipped with competence to adjudicate such cases.



THANK YOU