

The Strengthening of Democracy in a Law State

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ABSTARCT

Democracy as a system of people's government is not limited to how to choose a leader, but the way he leads the government must be in accordance with his people's commitment. Democracy is not just a process but has norms that animate the life of the nation and state. Practicing democracy means that people must be free from fear and have the integrity to be able to work together based on equal rights. Democracy can develop if there are civil liberties that are oriented to the public interest. The desired freedom is civil freedom that gives birth to civic culture to strengthen and enhance the quality of democracy. Civil liberties foster citizen participation within the framework of demos, namely inclusive political identity as fellow citizens of this nation. Demo's consolidation needs to be proven by opening space for substantial democratic consolidation. In line with this, civil society continues to contribute to building deliberative democracy. The practice of democracy in Indonesia needs to be reoriented, the vision shifted to make room for the grassroots to express their aspirations. This idea is not just a counter-discourse, but to seek alternative praxis. Democracy is also a political method of organizing state institutions by state administrators. Because of this, the idea emerged that the way to limit government power must be through the Constitution. Executive power must be balanced by legislative power. This is what is called constitutionalism. The Indonesian legal state based on Pancasila adopts a prismatic concept to look for the good aspects of the legal tradition of civil law and common law. For Indonesia, democracy must refer to the principle of constitutionalism which limits power and prevents the tyranny of the majority.

Keywords: Strengthening Constitutional Democracy.

INTRODUCTION

In general, democracy is a people's government, which together elects some of them to become administrators of the state to serve all the people. Democracy is not just a process but has norms that animate the life of the nation and state. The implementation of democracy requires

consistency, which at first glance seems contradictory. On the one hand, a person must be consistent in his principles, but on the other hand, he must submit to a majority decision that is contrary to his principles. Practicing democracy means that the people must be free from fear or slavery. He must display cooperation based on equality, which responsibly requires freedom of expression. Democracy is also interpreted as state management through dialogue and voting. That means differences of opinion and changes in state officials must be resolved peacefully.

Dispute resolution can be done through public debate or voting, but the determination remains with the people as the holders of sovereignty. Democracy is the foundation of most countries. Research conducted by UNESCO in 1949, that for the first time in history, democracy was declared as the best way for all systems of social and political organization. Democracy has various meanings, at least there is ambiguity regarding the method used to implement the idea. Among the many schools of thought, there are two groups of the most important streams, namely constitutional democracy and democratic communism. Both of these groups come from Europe, but Indonesia chooses constitutional democracy.

The development of democracy in Indonesia has had its ups and downs. After the historic 1999 election, political analysts once praised Indonesia as a beacon of democracy, now Indonesia's democracy is experiencing a setback. Indicators of this decline can be seen in the strengthening of intolerance and sectarianism. Another trigger is the worsening of civil liberties and the ballooning of executive power which suppresses the opposition in an authoritarian way. This is a repressive action that kills the creativity of civil society. In Indonesia, society is fed up with mass democracy, which makes the oligarchic groups increasingly dictate civil society.

The freedom that should be developed is the civil freedom that gives birth to a civic culture in democratic life. Civic culture improves the quality of democracy and transforms mass democracy into deliberative democracy. Indonesian democracy that has been practiced so far needs to be reoriented. The vision must be shifted to make room for the grassroots. So far, it is the middle class that has hijacked democracy, so that democracy is further away from the issue of people's interests. Therefore, civic culture intended to give birth to alternative praxis, because the level of praxis requires the real involvement of civil society (civil society) to solve the problem.

Democracy has dynamics, and because of that Plato's critique of democracy in Athens is confronted with a decline in morality. This resulted in the law being seen only as an attack on people's liberties. This situation gave rise to anarchy which gave way to tyranny. The solution is that the state must be led by educated people, namely philosophers. Aristoteles developed Plato's thought by questioning the space for people's influence, especially in making laws. This consideration refers to the combination of monarchy and democracy which is characterized by the separation of powers.

The democratic system in Ancient Greece was a direct democracy, namely a form of government that involved all citizens directly in making political decisions based on majority procedures. In today's modern country, democracy is based on representation. The development of medieval democracy resulted in the Great Charter (Grand Charter). This document is the initial concept of modern democracy, as well as the antithesis of feudal monarchy. The Great Charter was interpreted as a counter-hegemony against absolute monarchy and a historical basis for the

birth of the English parliament in 1215. Starting from the agreement of the Great Charter, the world's first British parliamentary system of government was born.

Democracy is also interpreted as a political method that seeks to organize state institutions to arrive at political decisions. Here, individuals gain the power to make decisions in a competitive struggle. Therefore, to exercise political rights effectively, the idea arose that the best way to limit government power was through the Constitution. The Constitution guarantees political rights and regulates the distribution of state powers. Executive power must be balanced with legislative and judicial power. This idea is called constitutionalism, and the state that adheres to it is called a constitutional state or a rule of law state.

The notion of constitutionalism can be seen in the collection of governmental activities carried out on behalf of the people, but subject to restrictions to ensure that the powers conferred are not misused. The constitution is not only a document that reflects the division of powers but has the function of limiting the powers of the government and guaranteeing the human rights of its citizens. The constitution as the embodiment of the highest law must be obeyed by all elements of the state according to the argument that the government is based on law.

Initially, the idea of limiting power was formulated by Continental European legal experts such as Immanuel Kant and Friedrich Julius Stahl who used the term rule of law, while Anglo-Saxon legal experts, such as A.V Dicey, used the term rule of Law. rule of law has four elements, namely: (i) human rights, (ii) separation of powers to guarantee rights, (iii) government based on regulations (legality of management), and (iv) Administrative justice in disputes. The elements rule of Law proposed by A.V Dicey include (i) the rule of law (supremacy of the law), (ii) equality before the law (equality before the law), and (iii) the guarantee of human rights by laws and court decisions.

This formulation is very limited because the position of the state is only as a night guard with very limited space for movement. The new state acts if its security is disturbed. This flow is called liberalism, as the proposition states that "the least government is the best". Economic activity is controlled by the people let it be, where each individual is left to take care of his economy so that the state of the country's economy becomes healthy. This concept is included in the context of a classical rule of law state.

Broadly speaking, there are two concepts of the rule of law. The first concept is a formal legal state that appears together with the "modern" state around the 18th century. The modern state appears as a hegemonistic configuration of power. That is, the power that previously existed in society, was withdrawn, and included in the state. Then, the state makes regulations to protect the rights of its citizens.

It turns out that the benefits of a formal rule-of-law state are not felt, so the concept of a second rule-of-law country emerges, namely a substantive rule-of-law state with the core of justice and objective truth. Substantive rule of law countries is active in increasing the dignity of citizens in the economic, social, cultural, and political fields, and prioritizing human rights. The concept of a formal rule of law is only concerned with individual protection as outlined in regulations, procedures, and doctrines. It even emphasizes differences in citizenship status, so that not all people get fair treatment.

The concept of rule of law is always associated with the notion of "democratic" so the two terms are combined to form a democratic rule of law. The rule of law means that state power is bound by law. Not always a rule of law is a democracy. Even a monarchical government obeys the law, but a democracy that is not a rule of law is not democracy in its true sense. Democracy is the safest choice to control the rule of law. The concept of a rule of law must be understood as a condition in society, which is able to develop laws determined by the people through representative institutions.

The process towards democracy has complex challenges as Huntington's description of the "third wave of democracy" shows that in the 1980s and 1990s around 81 countries took steps towards democracy. This is due to the influence of globalization, so many countries experienced democratization. This is where the urge to rule emerges which is explicitly seen in the leader who leads the people. This reality requires control of power so that synergy between law and democracy is needed. That means every legal norm must have a solid constitutional basis.

DISCUSSION

Strengthening Democracy Through Empowerment of Civil Society

The term civil society translated as civil society which increasingly has a place in Indonesian political discourse. Understanding of the terminology is still developing. The draft of civil society originated from the historical process of Western society. Cicero started using the term civil society. Civil society is defined as an area of social life that is organized and characterized by volunteerism, self-sufficiency, self-sufficiency, and self-sufficiency that is opposite to the state, but accompanied by the attachment to legal norms followed by its citizens. Civil society guarantees independence that is not confined by material life and is not absorbed in the network of official political institutions.

Civil society manifests in various organizations/associations made by the community outside the influence of the state. NGOs, social organizations, associations, and interest groups are institutional forms of civil society. Such organizations must be seen as pillars of democracy, which function as pressure groups against the state. The growth of civil society in Indonesia experienced progress after the revolution in the 1950s. During this period, the newly born state did not yet have the will to intervene, because the ruling elite tried to implement a parliamentary democratic system. Therefore, there is a grouping of community forces that can balance state power.

When the emergence of the New Order, the movement of civil society experienced lethargy. This can be seen from the acceleration of development which has succeeded in realizing economic growth. In the political segment, the New Order strengthened the position of the state while weakening the political participation of citizens. Penetration of the state through bureaucratic networks results in the increasing narrowing of free space.

The condition of civil society under the New Order displayed various paradoxes, namely the strengthening of the middle class seen in the capitalists. In the late eighties, the world witnessed a series of political events that are considered the beginning of democratization. The fall of the Berlin Wall, the rise of the workers' solidarity movement in Poland, and the fall of the socialist-communist regime in Yugoslavia have offered promises of further democratization. But, the atmosphere euphoria of this did not last long, because he receded into a repressive atmosphere.

The democratization process, which was initially expected to run smoothly, turned out to have to deal with various internal obstacles. Even so, democratization efforts continue. Those who follow the enlightenment paradigm see the process of democratization in the context of liberalism against the institution of despotic monarchy.

Liberals struggle to suppress state power to realize civil society liberties, without state intervention. Therefore, support for a market economy is an appreciation of private property. However, held combined liberal concepts with the Marxist tradition to arrive at democratic autonomy. Democratic autonomy requires recognition of human rights, and that everyone is allowed to participate in various fields to meet their needs. The study of democracy begins with the search for alternatives by the founding fathers to find genuine legacies. They conducted a study of enlightenment philosophy to be applied in the formation of a socio-political system for the new nation. The process of democratization in Indonesia cannot be separated from the influence of the enlightenment. Therefore, strengthening democracy through the empowerment of civil society is a relevant alternative.

The empowerment of civil society gained a significant place in the political context after being successfully implemented in developing countries. This strategy is popularized in various political statements delivered by pro-democracy activists. The birth of labour unions, alliances of independent journalists, and student discussion groups must be interpreted as the rise of the civil society movement to be involved in decision-making that has a public dimension in this country.

The empowerment of civil society as an effort to overcome the destructive aggressiveness of capitalism is a must. Therefore, it is necessary to make an analysis of various findings by elements of social movements. Each action agenda needs broad support. That is the challenge as well as the success of strengthening democracy. Democracy can develop if there are civil liberties that are oriented to the public interest. Civil liberties can foster civic participation within the framework of demos, namely the subject and identity of inclusive politics as citizens and nations.

Democracy in Indonesia is increasingly controlled by oligarchic forces. Almost all formal power holders at the executive and legislative levels open space for investors. This is the primary alliance for the benefit of political and capital accumulation that has succeeded in controlling the institutions and processes of democratization at various levels. As a result of this monopoly, public space is increasingly displaced. Public space must be a place where people's creativity is nurtured. To reclaim public space, demos must be re-initiated to restore its authentic meaning as an equal citizen entity. Depoliticization of demos can be measured by how much the increase in capacity to carry out de-monopolization in the political, economic, and social areas.

Consolidation of demos also needs to be proven by the opening up of space for substantial consolidation of democracy. The demonopolization process must involve civil society to fight against state authoritarianism. Process democratization is mixed with various issues that reflect pathological symptoms. The complexity of the relationship between the state, civil society, and the market gave rise to various forms of social movement. Such diversity should strengthen democratization. The agenda for democratization by involving civil society remains

relevant, but civil society is in a marginal position so the big agenda that must be prioritized is strengthening the bases at the local level.

Factually, civil society continues to contribute to building deliberative democracy. Therefore, ideas about civil liberties, civic participation, and the expansion of political public spheres are civic and must be strengthened again. Civil liberties and participation civic a new focus should be given to address issues of social injustice for local communities.

Strengthening Constitutional Democracy

The views of moral and political philosophy provide the basis for thinking about the state. In terms of political morality, there are four main reasons for obliging the state to carry out its duties, namely: (i) certainty, (ii) demands for equal treatment, (iii) democratic legitimacy, and (iv) demands of reason. On this basis, the state has characteristics, including: (a) power is exercised in accordance with positive law; (b) state activities are under the control of the judiciary; (c) guarantees for human rights, and (d) there is a division of powers. This characteristic of the state permeates the conception of a rule-of-law state.

The task of the state correlates with the strengthening of democracy. This is motivated by the process of industrialization in the capitalist system, the spread of socialism that requires an equal distribution of wealth, and the victory of several socialist parties in Europe. The initial idea, that the government is prohibited from interfering in the affairs of citizens in the economic field, gradually turns into a government that is responsible for the welfare of the people.

In that context, the juridical substance in a classical rule of law needs to be reviewed. Therefore, the International Commission of Jurists in its conference in Bangkok in 1965, broadened the understanding of the Rule of Law and triggered a concept, that apart from political, social, and economic rights, basic social and economic standards must also be recognized and maintained. The implementation of a democratic government based on the Rule of Law is (i) constitutional protection; (ii) An independent and impartial judiciary; (iii) Free general elections; (iv) Freedom of expression; (v) Freedom of association and opposition; and (vi) Citizenship education.

The basic principle of a democratic political system is that a government in making political decisions must go through representatives elected by the people through elections. This is what is called representative democracy. According to the International Commission of Jurists, in this system the power in the hands of the majority is carried out with a legal concept accompanied by constitutional restrictions to ensure that certain fundamental rights do not depend on the majority group. Thus, the human rights of minorities are still guaranteed.

The draft of the Rule of Law developed evolutionarily, while the concept *rechtsstaat* was born from a struggle against absolutism, so it is revolutionary in nature. The draft of *rechtsstaat* rule relied on the legal system, while the concept of the Rule of Law relied on the legal system of common law. The characteristic of civil law is administrative, while the characteristic of common law is judicial. Legal certainty is born from a tradition of thinking about civil law that grew up in the European Continental legal culture. The concept of freedom of judges was born from a tradition of thinking common law, which grew up in an Anglo-Saxon legal culture. The concept of legal certainty also underlies the formation of justice, which underlies the

administration of a rule of law (*rechtsstaat*) and gave birth to a system of separation of powers in the administration of the state.

The concept of freedom of judges is based on the main objective of law, which is to achieve justice. This concept underlies the administration of a rule of law, which gave birth to the system of checks and balances. In reality, it turned out to be a legal tradition of common law that relies on the role of judges and is less developed in Indonesia. The role of judges in legal discovery is minimal, even though the character of cases continues to develop. Actually, the legal tradition of common law provides space for the creation of substantial justice. The legal tradition of civil law developed in European Continental countries. When the Dutch carried out colonialism in Indonesia, legal traditions of civil law dominated the way of law in Indonesia. Consequently, in the Indonesian legal system, legal certainty relies heavily on written legal provisions. In fact, the method of law combines legal traditions of civil law and common law in a balanced manner should be realized. The Indonesian legal state based on Pancasila takes the prismatic concept of these two legal traditions. The principle of legal certainty in *rechtsstaat* combined with the principle of internal justice rule of law. In this context, Indonesia incorporates good elements from the two legal traditions. This prismatic concept becomes necessary because it is difficult to draw substantive differences between *rechtsstaat* and the rule of law. Legal certainty must be upheld to ensure that justice in society must also be upheld.

In the four stages of amendment to the 1945 Constitution, the term *rechtsstaat* is no longer listed in the 1945 Constitution. This further strengthens the prismatic concept. At the beginning, *rechtsstaat* stated in the explanation of the 1945 Constitution, "Indonesia is a country based on the law (*rechtsstaat*), not based on power alone (*machtsstaat*)". After the amendment to the 1945 Constitution, the explanation was abolished and the normative contents were included in the body. The rule of law provisions was included in Article 1 paragraph (3) of the 1945 Constitution which reads "Indonesia is a country based on law". This designation is more neutral, without naming *rechtsstaat* and Rule of Law.

Legal development must combine law as a means of social change and law as a reflection of public awareness. Therefore, whatever social system a society adheres to, its rights and dignity must be guaranteed by the constitution. Here, there must be mutual cooperation among members of the community, helping each other in advancing various aspects of life so that the rights of the people are realized.

This understanding confirms that majority rule is only one of the rules of the game in democracy. Democracy does not always involve procedures, but democracy has basic principles that must be upheld in the life of the nation and state. Democracy is based on the principle of constitutionalism which limits power and prevents the tyranny of the majority. The constitutional basis for democracy in Indonesia as it applies now actually existed and was in effect long before 1965.

Momentum realizing constitutionalism in Indonesia began with the formation of a democratic constituency through the 1955 elections. Constituent members, totalling 544 people convened to formulate 24 main ideas regarding human rights, but this achievement was countered by a Presidential Decree of July 5, 1959, which dissolved the constituency. During the New Order era, efforts to realize constitutional democracy were also hampered. The New Order

government closed all channels and used its apparatus to infiltrate the deepest cavities of people's lives. Community activities are limited, if there is an attempt to exceed it is considered a subversive action.

When the 1998 reform took place, there was an encouraging development through the four stages of changing the 1945 Constitution. This momentum makes the faucet of democracy more open. The arbitrary and centralized power of the state has been dismantled. Freedom of citizens and regional autonomy are guaranteed in the 1945 Constitution. But along with that, problems arise when freedom is polluted by extremism in expression. Regional autonomy is underpinned by various sectarian interests that pass discriminatory local regulations.

In the context of regional autonomy, it turns out that there is no substantial explanation regarding decentralization. Even though the political centralism of the New Order ended, democracy and decentralization were unable to shift the predatory relationship that had previously taken root. The dynamics of the electoral, parliamentary, and party systems and their relation to the localization of power have failed to encourage the redistribution of power. On the other hand, it opened up opportunities for certain forces that were nurtured by the New Order to survive. Local politics in Indonesia have not experienced much change in strengthening democracy. This is due to regulatory changes in electoral politics and empirical data in the two decades of political decentralization showing the strengthening of predatory politics. In addition, there are structural obstacles economically, politically, and socially due to the formation of permanent local oligarchs.

The strengthening of the oligarchy in this country must be balanced with an awareness of strengthening the notion of constitutional democracy so that the integrity of this nation remains strong. Reality shows that this nation has achieved a lot of progress because it has succeeded in ending authoritarian and militaristic rule. The more democratic the state structure is the is woven into the recognition of human rights. Democracy and human rights are reflected in the direct presidential election system and regional heads.

The democratization process must also reduce central intervention in the regions, encourage bureaucratic reform, eradicate corruption, and increase transparency and accountability of public policies. Strengthening democracy must go hand in hand with increasing public legal awareness. The people must not be left ignorant and intimidated, because they are blind to the law. The urgent agenda for strengthening democracy is reforming the ranks of law enforcers. So far, the position of law is only subordinate to the interests of the authorities. As a result, a corrupt mentality spreads in the bodies of law enforcement officials and the ranks of the bureaucracy. At this level, the presence of societal institutions is urgently needed to contribute to the strengthening of constitutional democracy.

A democratic country requires freedom of assembly and association; therefore, people are encouraged to organize and discuss various problems in the life of the state. The increasingly modern world finally boils down to the choice of democracy so that law and power run on the right track. In the current era of democracy, the formation of laws is carried out through legislative institutions, where the interests of conflicting community groups are sought to be compromised to produce democratic legal norms.

Power and law are closely related because law contains orders from those in power and power has coercive power in law enforcement. Power must obey the law, not submit to the law. Power must be regulated by law and law becomes an instrument to control power. Power without a legal basis is arbitrariness. A democracy requires a separation of powers so that power is not concentrated in one hand. Power concentrated on one hand is contrary to democratic principles, as Lord Acton stated, "Power tends to corrupt and absolute power corrupts absolutely", meaning that power tends to be corrupt and centralized absolute power is corrupt absolutely.

There are two kinds of separation of powers, namely horizontal and vertical separation. Horizontal separation means the separation of powers over state institutions whose positions are equal in principle checks and balances. Meanwhile, vertical separation gave birth to a unitary state and a federal state. A unitary state is a state whose power is distributed to the regions through the granting of autonomy based on law. Granting regional autonomy is part of the implementation of substantial democracy, which requires recognition of people's rights in the regions.

The idea of broad autonomy has been initiated since the enactment of the parliamentary system which requires direct regional head elections. At that moment, liberal democracy prevailed. At that time, political freedom was opened by the government which wanted DPRD as the backbone of regional autonomy. In the Guided Democracy era, regional autonomy legal politics experienced a turning point from decentralization to centralization. President Soekarno considered broad autonomy to threaten the integrity of the nation because it was adapted to the concept of Guided Democracy. In the New Order era, the legal politics of regional autonomy were again changed through the MPRS Decree Number: XXI/MPRS/1966 which emphasized that broad regional autonomy must be adapted to the principles of autonomy adopted by the MPRS Decree. But before that, there had been a change in the political configuration of the New Order from a democratic style to an authoritarian style.

Entering reform, Law Number 5 of 1974 concerning Regional Government was again questioned because it was considered an instrument of authoritarianism, so it was replaced with Law No. 22 of 1999 which laid down the principle of broad autonomy, which was preceded by a discourse on federalism, but was rejected. Neither the unitary state nor the federal state is directly related to the strength or weakness of the "unity" of a nation. Unity and oneness have different meanings. Unity refers to "psycho-politics" when the people want to unite in national bonds, while unity refers to the "political structure" regulated by the Constitution as a form of state.

The debate on unity and unity led this nation to choose a unitary state with broad autonomy, which divides Central and Regional affairs according to federalism and leaves certain matters to be taken care of by the centre. This difference is part of the process of democratization in a country that adheres to constitutionalism. Freedom of opinion must be positioned as a strengthening of constitutional democracy in the life of the nation and state. After the four stages of amendment to the 1945 Constitution, Indonesian democratic life grew better and gave birth to checks and balances principles proportionally in the Indonesian constitutional system. The result of the amendment to the 1945 Constitution is a political agreement (resultant) with

this nation which was determined by the MPR. This agreement is part of the democratization process in parliament.

Indonesian democracy based on Pancasila requires a harmonious relationship between the executive and the legislature. Thus, the government system must refer to the 1945 Constitution which places law as a tool to achieve state goals based on the principles of legal ideals, namely: First, the law must maintain national integration, both ideologically and territorially. That is, the law must be a social glue. There should be no law that has the potential to threaten national integration. Second, the law must guarantee the creation of social justice for all Indonesian people, meaning that the law must regulate the social and economic differences of citizens so that it benefits those who are less fortunate.

Third, the law must guarantee a democratic and nomocratic political and state order. Democratic means reflecting the interests of the people who are selected and determined together through honest and fair means. Nomocratic means that the implementation of all aspects of state life must be guided by the rule of law. Fourth, the law must be able to build equal religious moderation among its citizens. There should be no legal product that gives space to intolerant groups in religious life. In the context of democratization, freedom of religion is part of upholding human rights which must be upheld by all elements of the nation in this country.

CONCLUSION

Based on the descriptions above, this paper can be concluded as follows:

- a. Democracy as a system of government that elects state administrators must serve the people according to the will of the people. Democracy has values that animate the whole process of national and state life. The development of democracy in Indonesia has experienced ups and downs and even experienced setbacks due to the strengthening of intolerance and sectarianism.
- b. Strengthening democracy can be done through the empowerment of civil society as well as amendments to the constitution, with the aim of organizing the country so that all citizens are guaranteed their rights. From the perspective of national law, the 1945 Constitution has emphasized that law is a tool for realizing state goals as stated in Paragraph IV of the Preamble of the 1945 Constitution, therefore the 1945 Constitution is the main foundation for state administrators in running the wheels of government. This principle is in line with efforts to strengthen constitutional democracy in Indonesia.

SUGGESTION

The suggestions that the writer can put forward in this paper are as follows:

- a. The process of democratization in Indonesia requires the active participation of all parties, especially the press community, non-governmental organizations, trade unions, and farmers' unions as well as groups of human rights activists. These elements must be given a balanced space with the executive, legislature, and judiciary in promoting democracy in Indonesia.
- b. The law-making process in Indonesia must be oriented toward responsive law. Responsive law prioritizes accommodation to accept social changes to achieve justice and public emancipation, thereby opening space for the public to actively participate in the process of making public policies.

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