MAINTAINING THE CONSTRUCTION OF THE LEGAL STATE THROUGH POLITICS OF LEGAL RENEWAL BASED ON DEMOCRACY

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A. Introduction

Discourse on political issues, legal reform, has recently received public attention. The Bill on Family Resilience, the Criminal Code Bill, and the Bill on Work Creation are part of the "proposals" or political initiatives for the reform of national law. This discourse shows that the differences of opinion in Indonesian society have not yet died. They still care about their potential threats against their rights.

In a country that continues to develop or experience a dynamic process such as Indonesia, the policy of legal reform is actually a necessity, because in addition to the several substances in the previous norms that are considered to be deficient, there are also many Muslim civilians who are colonial (Dutch) legacy.

In the consideration of Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations it is stated that the development of a planned, integrated and sustainable national law must truly reflect the sovereignty in the hands of the ralryat and guarantee protection. the rights and obligations of all the people of Indonesia based on the 1945 Constitution of the Republic of Indonesia.

The consideration is clear, that the sovereignty of the people, which as a mirror of democracy should be the main foothold in politics of legal reform so the "project" the formation of laws and regulations in this country should ideally be based on the constitution. The problem now is, is it true that the politics of legal reform in this country are based on democracy? How would this affect the rule of law construction if it was not based on democracy?
To answer these problems, the authors use the normative descriptive method in this presentation. This means that the writer describes the norms with the support of selected literatures that are relevant to the interests of the discussion (problem) being presented.

B. DISCUSSION

Philosophy of truth, democracy

Democracy genus means government by the people, thereby basing matters of state on the power of the people so that the people are sovereign [1]. Democracy has an important meaning for the people who use it because with democracy the right of the people to decide for themselves the course of state organization is guaranteed. Therefore, almost all the meanings given by the term democracy always provide an important position for the people [2]. The significance of those who use this is determined by the absence of a satisfactory or minimal implementation that takes into account the basic principles of the people. People who do not get the right are, for example, identical with not recognizing that the people are the spirit of democracy. The rights of people are very many, including the right to fulfill the aspirations of honesty, transparency, democratization, and justice in politics, the formation of laws and regulations.

Election of regional heads, for example, which is a democratic election, is regulated by the constitution also in essence to place or recognize the privileges of the people, so that automatically anyone and anyone who is involved in election activities or plays an important role in the implementation of regional elections, including those that form the norms of democracy in terms of respecting the schedule of implementation, must comply The political rights of the people are the spirit that determines the quality of the implementation of the democracy. There is no point in taking into account the fact that the people in politics do not consider their existence.
In a democracy, politics cannot arbitrarily lay down laws even though law in democracy arises from the political process in shaping public opinion. Today, the law can uphold human rights and done in democratic procedures. Democracy will be a mere justification, if it is not based on the rule of law and is limited by law. A decision that is obtained by a democratic (based on the will of a majority vote) solely, can be overturned by the court if there is a violation of nomocracy (legal principles) which can be legally proven in court [3]. This presentation does not remind us that democracy or the

people are fundamental in relation to vegetable norms or constitution. The juridical norms that are formed must be the same norms as justice and egalitarian (for example in politics / government). Such is the significance of this sentence, among them can be read in Article 6 paragraph) 1) Law Number 12 of 2011 concerning the Establishment of Legislation (this Law has been amended with Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations (this Law has been amended with Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations), which states, -The legislation must reflect the principles of: a. protection; b. humanity; c. nationality; d. kinship; e. archipelago; f. Unity in Diversity; g. justice; h. equality of seat in law and government; i. legal order and certainty; and / or j. balance, harmony and harmony.

In addition, more concise provisions are already remembered in the constitution. It is stated in Article 1 paragraph 2 of the 1945 Constitution "sovereignty is in the hands of the people and is exercised according to the constitution". This principle is commonly referred to as constitutional democracy, namely democracy based on law. The principle of people's sovereignty does not stand alone but is also related to the principle of a rule of law as regulated in Article 1 paragraph 3 of the 1945 Constitution which reads "Indonesia is a state based on law". This provision is juxtaposed, which indicates that democracy as a form of people's sovereignty cannot be based solely on political sovereignty. The principle of democracy will always be related to the principle of the rule of law [4].

People can change, but the law as a whole system is expected to remain upright as a common reference and grip. This principle is called "nomocracy" or power led by the value of law (nomos) as a companion to the concept of "democracy". If in a democracy what is idealized is leadership from the people, by the people, for the people, and even with the people, then in a nomocracy, what is idealized as a leader is law. The meeting point between the two lies in the principles of democracy based on law, and the principles of nomocracy or a democratic rule of law. The point is that in a rule of law, law must be developed and developed in a democratic manner and follow the logic of democracy from below. Laws should not only be created by the rulers themselves, and their implementation and enforcement should not be based solely on unilateral interpretations by those in power.[5]

Above all, democracy will only grow if there is democratic consciousness, an attitude of responsibility in democracy (democratic responsibility). Democracy is not just a means of gaining power but as a means of bringing about public welfare in democratic ways.[6] Awareness of democracy is not limited to who vote or choose parties with fairness, but also how to make rules (regulations) which are also fair and egaliary, and mainly on the basis of democracy when compiling (forming) law.

Bagir Manan said that the presence of democracy is not only measured by the existence of democratic institutions, such as the existence of a representative body, general elections are not a guarantee of the presence of democracy. Democracy is not just an institution or an institution. Democracy is also a mechanism, even if it is not an exaggeration to say, a democratic mechanism is a determinant for measuring the real presence of democracy, both in the life of the state or government and in the life of society in general. Culturally, democracy will be fertile if it is supported by democratic behavior such as readiness for differences of opinion, readiness to lose, readiness to compete honestly, peaceful attitudes and so on.[7] What was conveyed by Bagir Manan taught that in a democracy, every organization of state life, including activities such as politics, legal reform, differences are normal. However, such a foundation of honesty must be upheld.

Strengthening the Rule of Law Construction

The constitution established in a country, including in the state of Indonesia, is related to the interests of fundamental or human rights guarantees of the rights of citizens. Article 27 of the 1945 Constitution, for example, states that all citizens have equal position in law and government and are obliged to uphold the law and government without exception. Article 28 D paragraph 1 states that everyone has the right to just recognition, guarantee, protection and legal certainty as well as equal treatment before the law. Problems certainly arise when the norms established by the representatives of the state such as the legislative body do not form them democratically. It will not be possible for justice or legal equality to be realized in society. If the formation of the law is not in line with this state, the construction is a state of law that "has an image" of constitutionality

In the presidential election case in the 2019 Presidential Election, there was a serious discourse or reaction as a result of constitutional recognition or guarantees being limited to "on paper." fair and democratic treatment. What is the political right of every person or every citizen in the form of seeking and finding the ideal national leader becomes difficult to fulfill, because citizens

do not get the opportunity democratically to compete in exercising their rights.

The imposition of the presidential threshold when the value (can) castrate the political rights (the right to elect and vote) the people to get the best President and Vice President because they are constrained by this threshold. The philosophy of general elections concerns the right to be elected and to vote in accordance with the essence of a democratic state. In my opinion, the right to vote is directly proportional to the right to be elected, meaning that voters must choose candidates who are provided by a constitutional system and do not follow oligarchic political tastes. The right of voters is to gain access to many alternative presidential and vice presidential candidates according to the constitution. Implicitly, limiting candidates means limiting the political channels of voters and to a certain degree encouraging voters to turn out in the form of golput, because according to them the best candidate cannot be the real presidential candidate pair. and the vice president due to these restrictions. On the other hand, the elimination of the Presidential Threshold means opening up people's political channels and to a certain degree increasing voter participation due to the appeal of the presidential-vice presidential candidates who have more alternative choices.[8] Encouraging the occurrence of voters turnout clearly has an impact on reducing democracy. This reduction of democracy has had a further impact on destroying the authority of the rule of law.

Formally, the state that reads State of law as defined in the constitution does not exist, but when voters turn out increases because they feel that the people feel that they are not valued on the part of its constitutionality, therefore it has the right to strengthen the sensitivity when implementing this State, especially the lawmakers who are simply constrained by the implementation of this state.The point of emphasis in this context in between lies in the formation or makers of laws, which of course can actually work and can fulfill political reforms of national law, but how the legal products are able to provide legal certainty, one of which is a legal substantiation of protection of political rights.

Those of us who have studied law for a long time certainly understand that the Rechtsstaat was introduced from the ideas of Immanuel Kant and Frederich Julius Stahl, then developed in Continental European countries. The Rechtsstaat theory from Immanuel Kant, gave birth to thoughts about a formal legal state or commonly called nachtwakersstaat. In this sense, the state guarantees individual freedom as a member of society, the state is not allowed to interfere in the affairs of its citizens, therefore the rechtsstaat theory is called a liberal law state.[9] The Rechtsstaat theory in this formal sense places the state only as the guardian of public order. Even so, there is a message conveyed by Kant, that the state has a noble task if it wants itself to be stigmatized as a rule of law, namely the state must guarantee the rights of individual citizens. Such rights can vary, including rights in the political, economic, cultural, educational, religious and other fields.

Julius Stahl argued that what was different (although there were similarities in the matter of recognition of citizens' rights) from what was conveyed by Immanual Kant. According to Stahl, a rule of law must have the following elements:

(a). recognition of the human rights of citizens;

(b). there is separation or division of state power to guarantee human rights, which is commonly known as the Trias Politica;

(c). governance based on regulations (wetmatigheid van bestuur), and

(d). the existence of an administrative court in disputes.[10]

In line with Stahl's thought, D.H.M. Meuwissen was quoted as saying by Philipus M. Hadjon, that the Basic Law or the constitution is an element that must exist in the rule of law theory, because the constitution guarantees the protection of the basic rights of citizens. The complete features of Rechtsstaat are as follows:

a. the existence of a constitution or constitution that contains written provisions regarding the relationship between the ruler and the people;
b. there is a division of state power, which includes the power of lawmaking that is in the hands of the parliament, free judicial power which not only handles disputes between individual people but also between the rulers and the people, and the government which bases its actions on laws (wetmatig bestuur) ;
c. recognition and protection of people's freedom rights (vrijheidsrechten van de burger). This description of Stahl's thinking can be understood, that at least in a constitutional state building, the existence of the rechten van de burger must appear or succeed in manifesting in the activities of an agency that has the confidence to implement it. For example, the legislative body has, on the one hand, carried out the "work" or constitutional mandate by forming a law (juridical norm), but on the other hand, when what is produced turns out to be in favor of the exclusive interests of a group of people or parties, this can result in state construction porous law.

The guarantee that if the people are protected by their rights to freedom in choosing and exercising their freedom to work, have a culture, or realize other human interests as outlined by the constitution, it turns out that the lawmakers (DPR) will not be "voiced" continuously, because the DPR generally only approves juridical products that regulate exclusive interests, the regulation of which results in the rights of a person or a number of people, loses their constitutional rights, then such practice deserves to be categorized as marginalizing the people from their constitutional protection as sovereign subjects living in a rule of law. Scheltema, as quoted by B. Arief Sidharta, formulates the elements and The principles of rule of law cover five things as follows: (1) Recognition, respect and protection of human rights rooted in respect for human dignity. The principle of legal certainty applies. The rule of law aims to ensure that legal certainty is manifested in society. Law aims at realizing legal certainty and high predictability, so that the dynamics of life together in society are "predictable". The principles related to legal certainty are: a) the principles of legality, constitutionality and the rule of law; b) the principle of law stipulates various sets of regulations on the way the government and its officials carry out government actions; c) the principle of non-retroactivity, in which legislation, before binding, must first be properly promulgated and promulgated; d) the principles of free, independent, impartial, objective, rational, fair and human justice; e) non-liquet principle, judges may not refuse a case, because the statutory reason does not exist or is not clear; f) human rights must be formulated and their protection guaranteed in the constitution or law.

(2) The application of the principle of equality (similia similibus or equality before the law), that in a rule of law, the government may not prioritize certain people or groups of people or discriminate against certain people or groups of people. This principle implies: (a) the guarantee of equality for all people before the law and government, and (b) the availability of mechanisms to demand equal treatment for all citizens.

(3) The principle of democracy, in which everyone has equal rights and opportunities to participate in government or to influence government actions.

(4) The government and officials carry out the mandate as public servants in the framework of creating public welfare in accordance with the objectives of the country concerned. This principle contains the following: (a) general principles of proper governance; (b) the fundamental conditions for human existence with dignity are guaranteed and formulated in statutory regulations, particularly in the constitution; (c) the government rationally arranges every action, has clear goals and is effective (doelmatig). This means that the government is carried out effectively and efficiently.[12]

The presentation conveyed by Shidarto shows that a state-based building which is based on laws or a state that adheres to the supremacy of the constitution is a country that provides guarantees and realities regarding state or government activities based on and with a protective pattern of human beings (people). In such a sense, one priority is given to the normative power that supports it in the form of a traditional law that understands the aspirations (interests) of the people and is able to translate the interests of progressiveness which are included in the “content” of national legal reform.

In this context, the idealism of all competing parties in the political formation or reform of national law should be very understanding and intelligent, that if each of its products is not "in the same language" or at the same time with empirical (sociological) interests, it can clearly result in the construction of Indonesia as a legal state not only for the people.` In other words, the rule of law is in line with the politics of legal formation or reformation as a country that has a rule of game to organize or manage people's lives, but also describes how the people's spirit in a democracy that provides them with sovereign protection, really gets their rights.

C. CONCLUSION

The construction of Indonesia, which is constitutionally defined as a constitutional state by means of enforcing the supremacy of the constitution, could be crumpled because of the implementation of political law reform which is not based on democracy or ignores the reality of people's interests.

Various or a number of cases of serious discussions that still sweep the public about legislative products show that academics are being threatened by political struggles as appropriate to "competition" in the realm of exclusive interests that use legal reforms or a political agenda.

The policy of legal reform is actually a reflection of the strategic efforts carried out by the state such as the legislative body to realize the mandate of the constitution, but if it is not carried out or enforced, it should be identified as a form of betrayal or serious denial of democracy and the constitution.

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