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Embodiments of the Principles of Democracy in the Formation of Legislation in Indonesia

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Abstract: In The conception ² democracy in Indonesia is set forth in the Constitution of the State of the Republic of Indonesia 1945 Article 1 Paragraph (2) Sovereignty in the hands of the people is carried out according to the Constitution, then Article 1 paragraph (3) states that the state of Indonesia is a constitutional state, it means that the democratic system in Indonesia is placing the people as the highest power holders, its implementation is governed by the Constitution, thus the state of Indonesia is a constitutional democratic constitutional state. It means that it puts the constitution as the highest law in the legal order in Indonesia. The real ¹⁰ ion of the Indonesian legal system is stipulated in the form of laws and regulations as stipulated in Act No. 12 of 2011 concerning the Establishment of Laws and Regulations Article 1 Paragraph (2) of Laws and Regulations is "a written rule that contains the norm laws that are generally binding and established by state agencies or authorized officers through procedures established by law and regulation. The establishment of legislation in Indonesia based on Law No. 12 of 2011 is very concerned with the principles of democracy, this can be seen in: 1) The principle of the establishment of legislation, 2) The content of the content of regulations, 3) the procedure of formulating legislation especially Law legislation and local regulations must be accompanied by an Academic Manuscript. It is a draft of research results or legal assessment and other research results on a particular issue that can be scientifically accountable for the regulation of the matter in a Draft Law. The Draft of the Provincial Regulation or the Draft Regulation Regencies/Municipalities is as a solution to the problems and legal needs of the community, 4) any formulation of legislation should be through dissemination to the community, 5) the participation of the co mmunity in the process of formulating legislation.

Keywords: Principles of Democracy, Formation of Legislation.

I. INTRODUCTION

Talking about the state, law and democracy will always be a major theme studied by people. This is because there is no human being in this world whose life is not tied to the state, therefore people always strive for the power that is owned by the state. It serves as a vehicle democratically in the spirit of togetherness strives to realize the just welfare for all citizens, to open opportunities the same chance for the citizens in obtaining happiness. The study of the State, laws and democracy of the present era essentially has been started by the existing of the Renaissance. It is a movement supported by an ideal for the rebirth of free man, man who no longer feels bound by any authority, except the authority possessed by each individual. [1]

The essence of a democratic State is a community in which all institutional use of power derives its ⁵ legitimacy from the consent of the people as a whole. The citizens have equal rights to participate in political activity, so that the pluralistic aspirations of the people can be accommodated in the political structure. The duty of the state should be based, confronted and subjected to the rule of law with reference to the ideals of the state, the ideals of law, the purpose of the state. Therefore, it must be within the framework of the rule of law. In the 1950s a study sponsored by UNESCO concluded that the democratic system is the best form of all available alternatives which may all contain their own disadvantages. Perhaps for the first time in the history of democracy, it was seen as the most appropriate and ideal embodiment for all a modern system of political and social organization. [2]

One basic value of democracy is the intrinsic satisfaction, worth, dignity and fulfillment of the individual that derives from taking part in the affairs that govern his own existence and welfare. Nobody would naturally work against his or her own interest. It is through this personal participation in public decision-making that the individual ensures his own freedom, well-being and general pursues his aspirations. It is in this wise, Carlton R. [15] and others in their simple and straightforward work, Introduction to Political Science, assert that democracy - direct democracy though-is, in principle, the perfect expression of popular sovereignty. It is, likewise, on this score, perhaps, that, -popular participation in the making of Rousseau's social contract also means that government is legitimate only insofar as it operates according to the principles of popular sovereignty. [3]

Mahfud MD said the study of democracy as a political system cannot be separated from legal studies because both are likened to two sides of a coin. Unlawful democracy will not establish well, it may even cause anarchy. Otherwise the law without democratic politics will only become an elitist and repressive law. Therefore, according to Soetandyo one of the characteristics of the western legal system after the 19th century is the characteristic of Rechtstaat's doctrine, the basic doctrine of ordain as the only juridical reference to be obeyed, this doctrine teaches that anyone who lives in a state without exception must submit and obey rules of the Act. [4]

Arief Sidharta said that within the framework of constitutional constitution occupies the highest position in the hierarchy of legislation. The fundamental element in a democratic constitution is the responsibility and supervision of the government. Therefore today's country in any part of the world says itself as a constitutional and constitutional democracy, even though its state is an authoritarian state, although totalitarian countries often claim to be democratic. For them more democracy lies in the substance to build the welfare of its people and not on a plural and competitive mechanism in the determination of public policy. The thinking of democracy will always develop in accordance with the development of its society, and implementation in different countries increasingly gives the color of democracy itself, whose impact also occurs on the development of thinking about the concept of state law and constitution. For example, Indonesia affirms its choice as a democratic nation and wants to continue to unite, then we had set the basis and ideology of the state of Pancasila which is chosen as the basis of unifying and binding which then gave birth guiding principles in social life, politics, and law.[5]

The conception of democracy is set forth in the Constitution of the State of the Republic of Indonesia of 1945 Article 1 Paragraph (2) Sovereignty in the hands of the people is carried out according to the Constitution, then Article 1 paragraph (3) states that the state of Indonesia is a constitutional state, the democratic system in Indonesia is to place the people as the highest power holders, whose implementation is governed by the Constitution, thus the state of Indonesia is a democratic constitutional state constitutional democracy [10]. Thus, it is to put the constitution as the highest law in the legal order in Indonesia, as regulated in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations Article 1 paragraph (2) of laws and regulations is a "written regulation which contains binding norms in general, established or established by a state institution or authorized official through procedures set forth in the rules of law. Article 7 paragraph (1) Types and hierarchy of legislation, including:[6]

1. The 1945 Constitution of the State of the Republic of Indonesia
2. The Decree of the People's Consultative Assembly of the Republic of Indonesia (MPR)
3. Law/Government Regulation in Lieu of Law
4. Government Regulation
5. Presidential Regulation
6. Provincial Regulations
7. Regency / City Regulations

Furthermore, the principle and constitutional mechanism to guarantee democracy shall be regulated in the 1945 Constitution of the Republic of Indonesia as stated in:

1. Opening of Paragraph IV, Then the national independence of Indonesia was formulated in a Constitution of the State of Indonesia that sovereign people, based on the Supreme Godhead, a just and civilized Humanity, Indonesian Unity, Democracy led by the wisdom of wisdom in the deliberation of representatives, and by realizing a social justice for all Indonesian people.
2. Article I (2) Sovereignty in the hands of the people shall be carried out in accordance with the Constitution.
3. Article I Paragraph (3) The State of Indonesia is a state law.
4. Article 28 I Paragraph (5) In order to uphold and protect human rights in accordance with the principles of a democratic constitutional state, the implementation of human rights is guaranteed, regulated, and set forth in legislation.

Democracy as a state concept in its application has parameters as a measure, whether a country either citizen or government can be said democracy or otherwise. At least there are three aspects that can be used as a basis to measure the extent to which democracy is running in a country. These three aspects are: [7]

1. Elections as the process of forming the government, until now the general election is believed by many circles of the world as one of the important instruments in the process of change of government.
2. The composition of state power, ie the power of the state is run in a distributive manner to avoid the accumulation of power in one hand or territory.
3. Control of the people, which is a power relation that runs symmetrically, has a clear connection, and the existence of mechanisms that allow the control and balance (check and balance) of the executive and legislative and judicial power executed.

II. RESULTS AND DISCUSSION

Etymologically, democracy is derived from the Old Greek, *Demos* means people, and *Cratos* which means power/government, which is translated as a state of Nation where in the sovereign system of government is in the hands of the people. Understanding democracy by term or terminology is expressed by many scholars. Joseph Schumpeter stated that democracy is simply a political method, a mechanism for choosing political leaders, the citizens are given the opportunity to choose one among the political leaders who compete for the vote, in the election subsequent citizens may replace their formerly elected representatives. Sidney Hook argued that democracy is a form of government in which important government decisions are directly or indirectly based on the majority agreement granted freely by the adult people. Philippe Schmitter and Terry Lynn Karl expressed democracy as a system of government in which governments are held accountable for their actions in the public domain by citizens, acting directly through competition and cooperation with their elected representatives.[8]

Democracy as the foundation of the life of the state gives the understanding that at the last level the people give provision in the main issues concerning their life, including in assessing state policy, because the policy determines the life of the people. So a democratic country is a state organized on the basis of the will of the people and the will of the people, or if viewed from an organizational point it means the organization of the state done by the people themselves or by the consent of the people, because of sovereignty in the hands of the people. Henry B. Mayo in his book Introduction to democracy theory gives democracy a sense: The democratic political system is where general policies are determined on the basis of a majority by representatives who are effectively monitored by the people in periodic elections based on the principle of political equality and held in an atmosphere of political freedom. (A Democratic political system is one in which public policies are made on a majority basis, by representatives subject to effective political controls and under conditions of political freedom).[9]

According to Robert Dahl democracy is the best way to govern the country when compared to other ways. It is based on several reasons; first, democracy helps the demise of government by the cruel and

cunning autocrats, throughout the history of human life ever cultivated by mad leaders, mental disorders, self-interested ideologies, nationalism, religious beliefs, inner feelings of excellence, or merely emotions have exploited the capacity of the state through the coercion and violence to achieve their personal goals. Second, the State guarantees its citizens a number of rights which are not granted, and cannot be granted by undemocratic systems. Third, democracy guarantees wider personal freedom for its citizens. Fourth, democracy helps to protect their basic interests, as almost everyone will need survival, food, shelter, security, family, satisfying work, as well as ensuring freedom to everyone to create various organizations.[10]

Fifth, only a democratic government can provide the greatest opportunity for people to give their own destiny their freedom that is to live under the law of their own choosing, in a democratic state a person will certainly have the opportunity to express an opinion, discuss, considerate and compromise in the best circumstances can create law that will satisfy everyone. Sixth, only democratic governance can provide the greatest opportunity for moral responsibility. Seventh, democracy fosters a more total human development, the Eighth, a democratic government that can foster the development of political equality. Ninth, modern representative democracies are not at war with each other. Tenth, countries with democratic governments tend to be more prosperous. Amin Rais in terms of democracy argues that there are at least three reasons why many countries after World War II considered democracy as the right political system: [11]

1. Democracy is the vital and best form for a government that may be created which is a sublime doctrine of benefit for most countries.
2. Democracy as a political system and government has a long historical roots, so that he can be resilient and can guarantee the implementation of a stable political environment;
3. Democracy is seen as the most natural and humane system, so that all people in any country will vote for democracy if they are given the freedom to do so.

Democracy and the state of law are two inseparable conceptions, in democracies contains the principles of popular sovereignty. On the other hand, in the state of law contains the principles of democracy, each of the two conceptions being run in tandem as two sides of a coin can be distinguished but cannot be separated. Such a state of law is known as "*democraties rechtsstaat*" or in constitutional form is called constitutional democracy. It is called a democratic constitutional state because it accommodates the principles of the rule of law and democratic principles. [12]

Therefore, the state of law must be supported by the democratic system because there is a clear correlation between the resting on the constitution and the sovereignty of the people. In a democratic system, popular participation is the essence of this system, but democracy without legal arrangement will lose its form and direction. Democracy and the rule of law are two inseparable conceptions, in democracies containing the principles of popular sovereignty, whereas in the rule of law it contains the principles of democracy, each of the two conceptions being run in tandem as two sides of a coin can be distinguished but cannot be separated. Such a state of law is known as "*democraties rechtsstaat*" or in constitutional form is called constitutional democracy. Referred to as a democratic constitutional state because it accommodates the principles of the rule of law and the principles of democracy:[13]

1. Principles of State law
2. The principle of legality, restrictions on the freedom of citizens (by the government) should be found essentially in the Act which is a general rule. The Will The law must provide guarantees (against citizens) of arbitrary (government) actions, collusion and misconduct, the imposition of authority by government organs must be returned essentially to written laws.
3. Protection of human rights,
4. Government attachment to law,
5. Monopoly of governmental coercion to ensure law enforcement, and
6. Supervision by an independent judge in the case of government organs enforcing and enforcing the rule of law.

Principally, referred to as the Laws and Regulations if a provision contains norms/rules that are general and binding nature. It means to contain rules of conduct that must be transferred and obeyed or implemented by everyone without exception. This argument derives from Satjipto Rahardjo's view that a legislation produces rules that have the following characteristics:[14]

1. It is general and comprehensive, which is thus the opposite of specific and limited traits.
2. It is universal. He was created to face future events that are not yet clear concrete form.

Therefore it can not be formulated to overcome certain events only. Thus, if there is a regulation not of such nature, then it certainly cannot be included in the category of legislation. Because it must be general in nature, then the laws and regulations must heed the foundations for its existence and strength. In relation thereto, a good legislation must at least contain the following grounds: a) philosophical grounds; b. sociological basis; c.reason of jurisdiction. Philosophical comes from the word philosophy, the science of wisdom. Based on this kind of root, the philosophical meaning is none other than attributes that lead to wisdom. Because the emphasis on the nature of wisdom, then philosophical is none other than the view of life of a nation that is moral or ethical values that contain good and bad values.[15]

In Indonesia, the value that becomes the reference in society is contained in the state base of Pancasila, because Pancasila is the nation's life view, ideals, and philosophy or way of life of the nation, and many others. Philosophy of life of the nation should be a reference in the form of law that will be used in running the life wheel of the people concerned. Therefore the rule of law established and contained in the legislation should reflect the nation's philosophy of life. The minimum rule of law that is formed is not contrary to moral values upheld in public life. Based on the understanding as mentioned above, then for the formation of Legislation in Indonesia must be based on the philosophical view of Pancasila: [16]

1. The values of the religiosity of the Indonesian nation are summarized in the Godhead of the Almighty God;
2. The values of human rights and respect for human dignity as contained in the principle of a Just and Civilized Humanity;
3. The values of the nation's interests as a whole, and the unity of national law as contained in the precepts of Indonesian Unity;
4. The values of democracy and the people's supremacy, as contained in the People's Precepts led by the wisdom of wisdom in deliberation / representation; and
5. The values of justice, both individual and social as stated in the Precepts of Social Justice for all Indonesian people.

The five philosophical principles mentioned above must be implicitly or explicitly contained in Legislation. Even the background or reason for the establishment of legislation must come from these five philosophical values. Article 2 of Law No. 12 of 2011 places Pancasila as the source of all sources of law, in its explanation it is mentioned that it places the Pancasila as the basis and ideology of the State as well as the philosophical foundation of the State, so that any matter of the content of statutory regulations should not be contrary to the values contained in Pancasila. A statutory legislation is established by the state in the hope of being accepted and obeyed by the whole society consciously without exception. [17]

This expectation has consequences that every Law of Regulation should pay more attention to every social phenomenon of a developing society. If such an understanding is ignored, then surely the effectiveness of the enforcement of a Regulation of the Constitution is clearly doubtful. In this connection, Eugen Ehrlich puts forward a very rational idea that there is a difference between positive laws on the one hand and living law on the other. Therefore, positive law will have an effective power of effect when it contains, or is in harmony with the laws that live within the society itself. A legal norm will be respected by the citizen if he has known, understood, and obeyed. That is, he can really feel that the law produces order and peace within himself. The law is not only related to the outward aspects of man, but also from the inner side.[18]

Legislation is said to have a sociological basis, if the provisions are in accordance with the needs, beliefs and legal awareness of the community. A Legislation, in its construction if not in accordance with the needs, beliefs and awareness of the community, will be useless because in its implementation cannot be maximized because it will not be obeyed by the community. Regulation is made must be in accordance with the living laws of the community. However, it does not mean that what is at one time and in a society will always be a reference value for the next life. Product Rules Regulations do not have to just record the values in a moment (moment op name).[19]

Inevitably, society will change, predict and then the values will change. Thus, future trends and expectations should be accumulated in future-oriented Legislation. Starting from the opinion of Bagir Manan, Law is made to achieve the purpose of law that is prosperity, happiness and welfare. The national legal system that characterizes the formation of legislation should not be closed from the influence of other legal systems, because actually as a legal system, especially the continental and Anglo-Saxon legal system itself gradually in line with the development of an increasingly advanced and modern civilization, the possibility of no longer showing any distinct differences as a result of the development of the two systems.[20]

The Indonesian legal system established in legislation is a mixture of various legal systems that grow from existing legal schools, the Continental and Anglo Saxon legal systems, as well as the Islamic legal system and customary law (Indonesian native law) has the ability and very high appreciation to reach ideals of justice and prosperity for all people of Indonesia. Thus the function of legislation is not only limited to complementary, but must be able to bring the aspirations of society and the original legal system (tradition) on the change to a more civilized, better, more prosperous, more orderly and more just and prosperous. In this regard, Soerjono Soekanto and Purnadi Purbacaraka put forward the theoretical foundation as the sociological basis of the enactment of a legal rule (including the Laws and Regulations), namely:[21]

- a. The theory of power (Machttheorie) sociologically the rule of law applies because the coercion of the ruler, regardless accepted or not accepted by society.
- b. Theory of Recognition (Annerkennungstheorie). The law rules apply according to the acceptance of the society in which the law applies.

Based on the theoretical basis, the enactment of a Legislation regulation in terms of sociological aspects, of course, is ideal if based on the acceptance of the society where the Regulations of the Laws apply, and not based on the coercive aspect of the ruler. From the foundation of the sociology, it is seen that there is a democratic principle in the formation procedure of regulation. Judicial basic, theoretically, the order of legislation can be attributed to Hans Kelsen's teachings on Stufenbau des Recht or The hierarchy of law which argues that the rule of law is a tiered structure and that each lower law rule is derived from higher rules. To better understand Stufenbau des Recht's theory, it must be developed with Kelsen's other teachings Reine Rechtslehre or The pure theory of law and that the law is nothing other than "Command of the soverwign" - the will of power.

The order or hierarchy of legislation in a legal order is Hans Kelsen called hierarchy of norm (Stufenbau des recht). Every rule of law must be an arrangement of rules. In Han Kelsen's stufentheorie suggests that at the top of Stufenbau there is a basic rule of a national legal order which is a fundamental rule. The basic rule is called "grundnorm" or "ursprungnorm". Grundronm are abstract legal principles, are general in nature, they are also contained in Law No. 12 of 2011 in Articles 2 and 3 and Article 7 paragraph (1), because the provisions of that Article are closely related, requires a proper study and understanding of the provisions formulated therein in the constitutional practice prevailing in the State of the Republic of Indonesia, particularly in the system of legislation.

III. CONCLUSION

The study determined that in the principle of democracy must be sustained by the legal state embodied in legislation. In the process based on Law No. 12 of 2011 that the formulation of legislation in Indonesia is very concerned with the principles of democracy this can be known in 1) Principles of formulation of legislative regulations, 2) The content of legislation content, 3) the procedure of regulation formulation the legislation, especially the Laws and Regional Regulations must be accompanied by Academic Paper, namely the research or legal review and other research results on a certain scientifically accountable matter concerning the regulation of the matter in a Draft Law, the Draft of Regional Regulation Provincial or District/City Draft Regulation as a solution to the problems and legal needs of the community, 4) any formulation of legislation should be disseminated to the community, 5) participation of the community in the process of formulation of legislation.

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