

IMPLEMENTATION AND CHALLENGES OF DEMOCRATIC PRINCIPLES IN THE 1945 CONSTITUTION

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Abstract: Like other sovereign countries, the discourse on the idea of democracy is a discourse that has experienced a long journey and ups and downs in Indonesia. Based on that, by referring to the 1945 Constitution, this study intends to answer in a normative legal manner how the principle of democracy is implemented according to the 1945 Constitution and what the challenges are. To answer these two main problems, normative legal research was conducted with a legislative approach and a conceptual approach based on doctrines in legal science. Data collection was carried out through document studies or literature studies. The results of the study indicate that the principle of democracy that is to be implemented based on the legal norms of the 1945 Constitution is Pancasila Democracy and/or Constitutional Democracy which prioritizes the supremacy of law and culminates in constitutional democracy (the 1945 Constitution) and Pancasila as the grundnorm which is the source of all sources of law. Or democracy within the framework of a state of law. A country whose governance is based on law is not necessarily automatically a democratic country. If the law does not originate from or reflect the will of the people and is not made for the benefit of the people, then what governs in a constitutional state is no longer the law, but rather power using the law as its tool. "The rule of law" could slip into "the rule by law." This is the biggest challenge for a constitutional democratic state.

Keywords: *Implementation, Challenges, Principles of Democracy, 1945 Constitution.*

Introduction

The discourse on democracy is something that is always developing and will continue to evolve following the development of society. Although it is based on the same basic idea, namely the sovereignty of the people, its application can differ from one place to another. A country can implement the idea of democracy with different characteristics or characteristics than other countries. In liberal countries, for example, there is a different understanding of democracy from communist countries. Liberalism is closely related to capitalism. In liberal countries, democracy is based on prioritizing freedom and equal rights. Freedom from fear, freedom of thought and opinion, freedom of religion, association and assembly, freedom from government interference regarding personal matters, equality before the law and so on. Meanwhile, in communist countries, the understanding of democracy is to oppose capitalism and form an economy controlled by the state. The means of production are controlled by the state whose purpose is for the benefit of the people. The state's interference in the people is very strong.

As with other countries in the world, discourse on the nature of democracy also colors the history of Indonesian state administration. This is especially seen in the early days when the founding fathers would formulate what kind of democracy would be applied to the Indonesian state which was formed in 1945.

Soekarno emphasized his idea of democracy on the spirit of family (gotong royong). This emphasis on the spirit of family was reflected at least since he published a writing in

1926 entitled Nationalism, Islam and Marxism. This writing idealized the importance of the link between three revolutionary forces which he called the "Spirit of Asia" which became the lifeblood of the movement in Indonesia. According to him, these three forces, although they have the same meaning, have three characteristics: Nationalistic, Islamic, and Marxist (Yudi Latif, 2011).

Like Soekarno, Mohammad Hatta also flatly refused to follow the model of democracy (especially liberal democracy) as it developed in the West. According to him, democracy as established through the French revolution in the 18th century only brought French society to political democracy per se which to a certain extent only benefited the bourgeoisie and marginalized the common people. And, such democracy was considered incompatible with the ideals of the Indonesian struggle which aspired to the implementation of the basic principles of humanity and social justice. Therefore, alongside political democracy, economic democracy must also apply. Otherwise, humans are not yet free, equality and brotherhood do not exist. Therefore, the ideals of Indonesian democracy must lead to social democracy which encompasses the entire living environment that determines the fate of humans.

Another idea came from Sutan Sjahrir. Somewhat deviating from the mainstream stance of the nation's leaders who rejected the parliamentary system because it was considered an extension of individualism and liberalism, Sjahrir actually supported the parliamentary system which he saw as a form of devotion to the development of humanity. In addition to reflecting his hostility to all forms of violence and dictatorship in a government, Sjahrir also believed that a parliamentary democratic system was a requirement that must be met to achieve a welfare state.

Starting from the discourse on the idea of democracy in the world and specifically in Indonesia, this article is intended to answer in a normative legal manner how democracy is implemented according to the 1945 Constitution and what the challenges are.

Literature Review

History and Principles of Democracy

From the historical traces that can be recorded, democracy has a fairly long historical trace that stretches back to the ancient Greek era around 2500 years ago, namely the period of the implementation of the direct democracy system in the city of Athens. The term democracy itself comes from Greek, namely "demos" which means people, and "kratos" which means power, so democracy is interpreted as the power of the people. Power or government is carried out by the people with full direct participation by the people. In the Ancient Greek model of democracy, the arrangement of life together with citizens was carried out together involving the participation of all citizens although it cannot be said to be comprehensive for all citizens or not yet applicable to all citizens. Citizen participation has not included city residents from among women, slaves and children (citizens who are not yet adults). They are considered not to have the right to participate in the political life of the country.

This Ancient Greek direct democracy model underwent changes entering the Middle Ages. This era was marked by the birth of a feudal social structure controlled by the Pope and church doctrine. One of the important events in this century was the birth of the Magna Charta Charter in 1215 which contained an agreement on the division of power between King John and the Nobles. Magna Charta limited the power of the king, the king respected the rights and freedoms of the church, a person could not be arrested, detained without a valid legal reason. In addition to limiting power, this Charter also contains respect and protection of human rights.

In the Renaissance era which was followed by the Enlightenment era, people began to free themselves from the influence of church doctrine and this era was marked by the prioritization of reason. Resistance emerged against the absolute power of the king. Therefore, the king's power must be limited. In this era, the concept of Trias Politica or separation of powers emerged which aimed to prevent absolute power. The concept of Trias Politica was introduced by Montesquieu. This concept separates state power into three types of power, namely executive, legislative and judiciary.

In the twentieth century, after World War II, the idea of democracy has spread to all corners of the world so that more than half of the world's population has implemented democracy in organizing their national life.

In its ideal form, the doctrine (democracy) voices freedom and equal rights for all citizens of a nation state to organize political and economic life according to their abilities. This doctrine guarantees freedom of thought, speech, and assembly so that there are no obstacles to the full development of human abilities. Democracy is admired as an effective remedy against despotism (tyrannical rule) which was common to past political institutions, such as monarchy, aristocracy and oligarchy (Hendra Nurtjahjo, 2008).

In the context of a democratic state, Franz Magnis Suseno mentioned five essential characteristics of a democratic state, namely 1. A state of law, 2. A government under the real control of the people, 3. Free general elections, 4. The principle of the majority, 5. There is a guarantee of democratic rights. Magnis emphasized that a state of law does not have to be democratic. A monarchical or paternalistic government can also obey the law. But democracy that is not a state of law is not democracy in the true sense.

Method

A study cannot be said to be research if it does not have a research method (Simatupang, 2024). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Rahimah, 2022). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Koto, 2021).

Result and Discussion

In Indonesia, since the release from the shackles of colonialism and the formation of the Republic of Indonesia in 1945 until the reform era (1999 - present), democratic life has experienced ups and downs. During that period, various forms of democracy have been implemented in Indonesia, such as: liberal/parliamentary democracy, guided democracy and constitutional/Pancasila democracy. The period 1945 - 1959 was a period of liberal democracy marked by the strong role of political parties and parliament, also known as the period of parliamentary democracy. According to Mahfud, in such a configuration, it appears that political parties play a very dominant role in the process of formulating state policy through its constitutional forum, namely parliament. Along with that, the executive institution is in a "less strong" position compared to the parties so that the government always falls and the political situation is unstable (Mahfud MD, 2012).

The period 1959-1966 is called the guided democracy era. Beginning with the issuance of the Presidential Decree on July 5, 1959 by President Soekarno, this era was marked by the dominance of the president, the limited role of political parties, the

development of communist influence, and the role of ABRI as a socio-political element that was increasingly widespread (Kaelan and Achmad Zubaidi, 2017). During the guided democracy era, the political configuration displayed was an authoritarian configuration. In it, Soekarno became the main actor in the national political agenda so that his government in this era was characterized as an authoritarian regime.

The period 1966-1998 is called the Pancasila Democracy period and this period marks the period of power of a regime called the New Order. According to Kaelan and Zubaidi, democracy during this period was constitutional democracy that emphasized the presidential system. The formal basis of this period was Pancasila, the 1945 Constitution and the MPRS/MPR Decrees in order to straighten out the deviations from the 1945 Constitution that occurred during the Guided Democracy period. However, in its development, the role of the president became increasingly dominant over other state institutions. Looking at the practice of democracy during this period, the name Pancasila was only used as a political legitimacy for the ruler at that time, because in reality what was implemented was not in accordance with the values of Pancasila.

The period 1998 - present, namely the Pancasila Democracy era of reform. Kaelan and Zubaidi argue that democracy in this era is rooted in multi-party power that seeks to restore the balance of power between state institutions, between the executive, legislative and judiciary. During this period, the role of political parties is prominent again so that the democratic climate gets a new breath. If the essence of democracy is power in the hands of the people, then the practice of democracy during the election is indeed like that, but in its implementation after the election, many policies are not based on the interests of the people, but rather more towards the division of power between the President and political parties in the DPR. In other words, the current reform era democracy model is less based on social justice for all Indonesian people (welfare state).

People's sovereignty, this is the term used by the 1945 Constitution in relation to the term democracy. Citing Soehino's opinion, Hendra Nurtjahjo argues that sovereignty is a legal construction of power. In other words, sovereignty is power from a legal perspective. The matter of democracy is about the implementation of power in the history of human political life (zoon politicon). Sovereignty as a legal expression of the highest power becomes the framework where the idea of democracy can be found in "the highest power in the hands of the people" (the theory of people's sovereignty). The basic idea is very simple, that the people must be the source of the highest power in a country - others, not. The people have independent power over themselves.

In general, the principle of popular sovereignty or democracy actually means that the people themselves have the authority to determine how they want to be led and by whom. Because all members of society have the same status as human beings and citizens, and based on the belief that no person or group of people simply has the right to rule over others, the authority to rule over society must be based on the assignment and agreement of the citizens themselves. This principle is based on the right of every person to determine themselves and to participate in the decision-making process that concerns the entire society.

To understand how the principle of people's sovereignty or democracy is implemented in the 1945 Constitution, it is necessary to first state that the body of the 1945 Constitution, the Preamble to the 1945 Constitution and Pancasila are an inseparable whole. Therefore, a normative discussion on how to implement the principle of democracy in the 1945 Constitution cannot be done only by looking for legal norms that regulate it in the body, but must also relate it to the Preamble to the 1945 Constitution and Pancasila. The legal norms contained in the body are a further elaboration of the contents of the Preamble to the 1945 Constitution and also the values of Pancasila contained in the Preamble to the

1945 Constitution. Although unlike the body which contains articles of legal regulations, the Preamble to the 1945 Constitution has an important meaning because it contains principles that are the philosophical basis for the legal norms contained in the body and contains Pancasila as the basis of the state in it. Just like the torso, the Preamble to the 1945 Constitution and Pancasila have legally binding force.

In the Preamble to the 1945 Constitution, the matter of democracy is stated in the fourth paragraph which reads, "Then from that, to form a Government of the State of Indonesia that protects all the Indonesian people and all of Indonesia's homeland and to advance public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace and social justice, then the independence of the Indonesian nation is formulated in a Constitution of the State of Indonesia which is formed in a structure of the Republic of Indonesia with people's sovereignty based on the One Almighty God, just and civilized humanity, the unity of Indonesia, and democracy guided by the wisdom of deliberation/representation, and by realizing social justice for all Indonesian people."

Based on the fourth paragraph of the Preamble to the 1945 Constitution, it can be seen that the Republic of Indonesia that is to be built is a Republic of Indonesia with people's sovereignty based on the values of Pancasila and it is regulated in a Constitution. Or in other words, a Pancasila Democracy State and/or a Constitutional Democracy State. It should also be stated that the Pancasila Democracy State and/or a Constitutional Democracy State as referred to in the Preamble to the 1945 Constitution are not goals, but rather tools used to achieve the goals of the state, namely to form an Indonesian state government that protects all Indonesian people and all Indonesian blood and to advance public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace and social justice.

In its elaboration into the norms of the body of the 1945 Constitution, the desire to build a Pancasila Democracy State and/or Constitutional Democracy State was then realized in the provisions of Article 1 paragraph (2) in conjunction with paragraph (3) of the 1945 Constitution. The teaching of people's sovereignty adopted in the Opening and Body of the 1945 Constitution is that sovereignty is generally interpreted as the highest authority that determines all authority in a country (competence de la competence). Regarding what kind of people's sovereignty is based on Pancasila, as in Soekarno's speech at the meeting of the Investigating Committee for Preparatory Work for Independence on June 1, 1945, it is a democracy that is not western democracy, but politiek economische democratie, namely politieke democratie with sociale rechtvaardigheid, democracy with welfare, which is called socio democratie. The people are sovereign politically and economically. Political democracy must be accompanied by advancing economic democracy aimed at realizing social justice, that is socio democracy. What Soekarno expressed was basically the same as Mohammad Hatta's opinion that western democracy born from the French revolution did not bring true people's freedom, but instead gave rise to the power of capitalism. Therefore, political democracy alone is not enough to achieve true democracy, namely people's sovereignty. There must also be economic democracy that uses the basis that all income that concerns the livelihood of the people must also be under the responsibility of the people. That Indonesia wants to move towards "true democracy", namely democracy that is oriented towards collectivity and not "western democracy", namely democracy that is oriented towards individualism that structures capitalism and instills the grandeur of autocracy in the economy. According to Hatta, capitalist democracy does not prevent "l' exploitation de l' homme par l' homme" (exploitation of humans by other humans; one human being becomes a "means" or tool that no longer has a human identity for another human being who is in

power). Furthermore, it is stated that the implementation of people's sovereignty is carried out according to the Constitution. This is closely related to the principle of a state based on law as stipulated in Article 1 paragraph (3) of the 1945 Constitution. A state based on law emphasizes the supremacy of law which culminates in the supremacy of the constitution (the 1945 Constitution). The implementation of people's sovereignty carried out according to the Constitution means that the 1945 Constitution becomes a guideline that regulates the scope and limits of how and by whom the authority to implement people's sovereignty in the implementation of state governance is given by considering the basic rights and constitutional rights of citizens.

The idea, ideal, or concept of the State of Law, in addition to being related to the concept of "rechtsstaat" and "the rule of law", is also related to the concept of "nomocracy" which comes from the words "nomos" and "cratos". The word nomocracy can be compared to "demos" and "cratos" or "kratien" in democracy. "Nomos" means norm, while "cratos" is power. What is imagined as the determining factor in the implementation of power is the norm or law. Therefore, the term nomocracy is closely related to the idea of the sovereignty of law or the principle of law as the highest power. In English terms developed by A.V. Dicey, it can be associated with the principle of "rule of law" which developed in the United States into the jargon "the Rule of Law, and not of Man". What is actually considered the leader is the law itself, not people.

In a constitutional democratic state, the challenge of implementing people's sovereignty lies in two poles of interest, namely the will of the people on the one hand, and state power on the other. Both poles of interest can equally use or use the name of the supremacy of law to perpetuate their respective interests. When the supremacy of law that is produced comes from the will of the people, then the goal of a constitutional democratic state will be achieved. However, when the supremacy of law that is produced comes from the orders of the ruler and is intended solely to perpetuate his power, then what happens is the arbitrariness of the ruler by using the law and at the same time becomes a sign of the collapse of the rule of law.

The collapse of the rule of law means the collapse of democracy framed in the rule of law. This is the biggest challenge in a democratic state based on law or constitutional democracy.

Conclusion

The idea of democracy termed as people's sovereignty in the 1945 Constitution is realized as a form of constitutional democracy, namely a country that realizes the will of its people with legal rules that culminate in the constitution (1945 Constitution) and Pancasila as the grundnorm which is the source of all sources of law. In a constitutional democracy, the supremacy of law that culminates in the supremacy of the constitution comes from the will of the people and is made for the benefit of the people, namely to limit state power in order to guarantee the basic rights of the people. In its implementation, the concept of a constitutional democracy also has its own potential challenges, especially if it turns out that the supremacy of law that is realized in the implementation of state power does not come from the people and is intended for the benefit of the people, but is applied by state power to the people by violating the constitutional rights of the people and is solely intended to perpetuate its power.

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