



Unraveling the Importance of Democracy in Formation Legislation

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<http://dx.doi.org/10.47814/ijssrr.v5i4.254>

Abstract

Understanding formation of laws and regulations is not just applying what is contained in law but wanting to know what democracy means properly. Understanding of democracy because people in Indonesia tend to glorify democracy as a good thing. Then when the artificial goodness of democracy exists, it is possible to be unfair to oneself. That possibility tends to lead a person's incompetence when society's wishes are not met or conflict with his own. Of course, democracy doesn't always mean same when applied. Different definitions of each regime is a circle that must be passed by a country.

Keywords: *Democracy; Formulation Legislation*

Introduction

Aristotle explained that democracy is an important thing in life of the state. He interprets that justice becomes.

1. Different types of justice: complete justice
2. Partial justice: just action as division and rectification
3. Fair action as justice in distribution
4. Fair action as rectification
5. Fair action as reciprocity in economic life of the country
6. Fair in political sense.
7. Just by nature and just according to consent.
8. Different levels of responsibility for just and unjust acts
9. Intentional and unintentional in just and unjust acts and suffering
10. Balance and fairness
11. Is it possible to be unfair to yourself?(Aristoteles, 2004)

The meaning of democracy that leads to justice comes from many things, but in this paper, the author tends to lead to "is it possible to be unfair to yourself?" (Michael, 2020) this will cause legal problems because a statutory regulation tends to be affiliated with political situation in a country. According to La Porta's thinking intuitively, large arrangements, such as states, state laws, and institutions, are more likely to affect other entities such as corporations and their governance mechanisms, than other way around. This because the state closes itself to what is around it. Regardless of how sophisticated the governance mechanism within firm, corporate governance is likely to fail when strong rule of law is lacking.(Chen & Yang, 2017) Closing oneself means negating what is there and holding what is not there.

This confirms that democracy is the best but more best form of government that is said to have undergone fundamental changes. Crucial thinking and various approaches seek to demonstrate democracy in highest class of forms of government. Compliance with such an understanding will make a formation of laws and regulations wrong in initial context.(Mendoza-de-Jesús, 2021)

Reading Runciman through Blanchot's tacit engagement with Heidegger, we might describe democracy's progressive descent into mechanized "slow death" in terms of disaster, rather than death, understood both biologically, ie, as the cessation of life, and phenomenologically, ie, as the ontological end of Dasein that grounds its existential constitution as a finite, mortal being. Blan-chot's disaster thus provides a better category than death to account for the way in which, according to Runciman, democratic institutions and norms across the globe appear to remain "intact," in spite of the fact that they are losing any vital force and therefore any life and any death worthy of the name. In other words, the disaster that is befalling democracies across the world is not so much condemning democracies to death, as it is depriving democracies of the possibility of both life and death, understood not simply in biological terms, but also in the phenomenological terms whose deactivation Blanchot's disaster names and enacts. In stopping all coming, in interrupting the very opening of temporality that is the hallmark of proper existence and thus of a proper life, disaster would be preventing democracy from coming again to its own, thus depriving democracy of any future life, and depriving our lives of any democratic future.

This paper will answer importance of democracy when formation of legislation is final path taken by the state.

Discussion

Democracy in Aristotle's Thought

Reading literature in Indonesian, Aristotle's thoughts are often equated with Socrates and produce confused thoughts. Such understanding forms a mindset to reject reading material that at least supports the argument. Starting from the meaning of "is it possible to be unfair to yourself?" Specific representation of legal function, defined as direction of legal influence, which is in accordance with its meaning so that it creates a legal conflict.

Legal conflicts in democracy are correlated with legal conflicts caused by state so that legal principles are no longer included in it.(Domakov, 2020) Aristotle says that the number of citizens from 100 to 100,000 is considered the best assuming they know each other. This requires a truly wise leader with an aristocracy. This number of citizens can no longer be applied in any country in world because countries no longer have limited boundaries—all can be integrated with various aspects. It is absolutely impossible to know orthodox a number of citizens up to 100,000 due the tendency to know virtually. Above 100,000, then it is called a nation by Aristotle because the breadth that is owned will become public.(Topaloğlu, 2015)

Aristotle clearly says that this form of democracy hardly deserves to be classified as a form of government, even a heretical form. Because loss of identity of citizens. Tend to lead to an attitude of governing according his will and not according to law.(Smith, 2018)

However, for author, this thought is due to low level of community participation. In understanding of participatory democracy theory that citizens are widely dispersed is fundamental to legitimacy of democracy. However, this theory generally frames itself as an alternative theory of democracy that is fundamentally opposed to representative government. For example, democracy only favors a certain person or group but to achieve the results it requires participation of the community. A large capacity should produce a large one, but when it enters a certain person or group, the meaning of democracy becomes very subjective. Similarly, an important strand of last participatory theory that the essence of democracy is a widespread ethos of contestation. From perspective of elite democracy, such criticisms sound hollow because they impose on modern institutions external democratic ideals that are fundamentally incompatible with scale and pluralism of nation state.

Most citizens with a lot of needs in life will change the idea that democracy can work without their participation. Such public life will become an obstacle for the nation because if he returns with a population of 100 to 100,000, will be other residents. If this ignorance arises, is it still a part of democracy? This question always results in legal issues where the issue of convincing is to be done by leaders. Even if participatory ideals are persuasive in the abstract sense, democratic elites argue convincingly that any viable concept of democratic legitimacy in present day should focus on making elite institutions more transparent and accountable to citizens rather than against character of their elites as such. In such thinking, Aristotle explained that combination of elite government and democracy both provided good things for country, only definition of goodness was going to whom. Elite democracy is closely related to, but not synonymous with, political theory of liberalism, which holds that public institutions can be justified only in individual liberty. Liberalism is rightly understood as a theory of the balance between individual and state liberties, as distinct from balance of more and less power. Liberalism and elite democracy are analytically distinct, in that representative governments can be either liberal or authoritarian in principle, just as liberal regimes are governed in principle by a few or many. However, representative government has evolved historically in relation to liberalism and cannot be understood in isolation from its ideological context and powerful ways in which liberalism reinforces rule.(Barker, 2013)

Aristotle's political thought seemed to be open to idea of a democratic elite. As a student of Plato, perhaps the most vocal critic of democracy in history of political thought, Aristotle is also known for his critique of democracy. Aristotle places democracy as a tool of state to control the poor. Aristotle distinguishes between oligarchy and aristocracy, implying that elite government is not inherently oligarchic and that rule of virtuous elites is at least theoretically probable.

Is It Possible to Be Unfair to Yourself?

Such a question when it is associated with formation of legislation will give rise to a different legal perspective. The challenge is how a democracy that seems bad becomes good when laws and regulations don't match the legal basis. Referring to Preamble Law of Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Establishment of Legislations, it is stated:

- a. that development of a national law that is planned, integrated, and sustainable must truly reflect that sovereignty in the hands of the people and guarantee protection of rights and obligations of all Indonesian people based on 1945 Constitution Republic of Indonesia;

- b. that in order to strengthen the formation of sustainable laws and regulations, it is necessary to arrange and improve mechanism for the formation of laws and regulations from planning to monitoring and reviewing;
- c. that Law Number 12 of 2011 concerning Formation of Legislation still has shortcomings and has not accommodated the development of community needs so that it needs to be changed.

In philosophical basis, the meaning of sovereignty hands of people is legitimacy of power that has reciprocity. This means that when there is legitimacy from the community, that is where the state will carry out further legitimacy which has an impact on change for the community. Legitimacy is not something different from power because it is part of vital source of power. This means that when power is not related to society, there will be a political legitimacy that has an effect on society. (Reus-Smit, 2014) The close relationship between law and power can be seen in two ways: First, examine concept of sanctions. The existence of behavior that is not in accordance with rule of law causes sanctions to enforce rule of law, because sanctions are a form of violence, so their use requires juridical legitimacy in order to be used as legal violence. Second, examine concept of constitutional enforcement. The development of an orderly legal system in a country is governed by law itself, which is usually stated in constitution. The enforcement of constitution, including enforcement of correct procedures in law enforcement, assumes the use of force. This means that law itself must receive protection for its enforcement, namely power. (Astomo, 2021)

In political science, legitimacy is understood as a positive attitude of citizens a country, public opinion towards existing institutions of power and recognition of their legitimacy. The process of legitimacy are process of recognizing the actions of a political leader and the actions of rulers. In a situation where the government loses the trust of the people, there is a delegitimization of power. In process of legitimacy crisis, interests of political elite and people clash, conflicts occur between branches of government, the threat of nationalism increases, and so on. (Sitara Kadirova, 2020)

In this case, people are not able to do what they want. The determination of this principle of justice doesn't depend on its justification of a particular conception of good life. Kindness is defined here in sense of recognizing the fundamental purpose of society and state: to promote development of a common human nature. The liberal perspective questions idea of human nature shared by each individual, and instead emphasizes public neutrality in face of differing and sometimes conflicting empirical ideas about good, recognizing equal rights for all of them in view of their de facto existence. More than just kindness, the liberal State gives itself the goal of rationally accommodating these different ideas about the good life in order to inflame them all. The state type becomes "correct" because it provides the framework that governs competing game of values and goals. On the other hand, given the diversity of potential personal goals, the recognition of subject's rights apart from these ends presupposes that the self-determined subject is different from the goals he pursues. (Gutiérrez, 2020) In the end what is unfair to oneself is inability to fulfill society's wishes.

Closing

Understanding formation of laws and regulations is not just applying what is contained in law but wanting to know what democracy means properly. Understanding of democracy because people in Indonesia tend to glorify democracy as a good thing. Then when the artificial goodness of democracy exists, it is possible to be unfair to oneself.

That possibility tends to lead a person's incompetence when society's wishes are not met or conflict with his own. Of course, democracy doesn't always mean same when applied. Different definitions of each regime is a circle that must be passed by a country.

References

- Ali, A. (2002). *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*. Toko Gunung Agung.
- Aristoteles. (2004). *Nicomachean Ethics*. Teraju.
- Astomo, P. (2021). Legal Politics of Responsive National Education System in the Globalization Era and the Covid-19 Pandemic. *Yuridika*, 36(2), 401. <https://doi.org/10.20473/ydk.v36i2.25897>
- Barker, D. W. M. (2013). Oligarchy or Elite Democracy? Aristotle and Modern Representative Government. *New Political Science*, 35(4). <https://doi.org/10.1080/07393148.2013.848701>
- Chen, N., & Yang, T. C. (2017). Democracy, rule of law, and corporate governance – a liquidity perspective. *Economics of Governance*, 18(1). <https://doi.org/10.1007/s10101-016-0182-4>
- Domakov, V. (2020). Reflection of constitutional law and its «legal capacity». *National Security and Strategic Planning*, 2020(1), 53–65. <https://doi.org/10.37468/2307-1400-2020-1-53-65>
- Gutiérrez, J. J. G. (2020). Republican freedom and subjective legitimacy of power. In *Filozofia* (Vol. 75, Issue 6, pp. 460–473). Slovak Academy of Sciences, Institute of Theatre and Film Research of the Center for Research in Art. <https://doi.org/10.31577/FILOZOFIA.2020.75.6.3>
- Mendoza-de-Jesús, R. (2021). Another life. democracy, suicide, ipseity, autoimmunity. *Enrahonar*, 66, 15–35. <https://doi.org/10.5565/REV/ENRAHONAR.1316>
- Michael, T. (2020). Requirements for Death in Dismissal of Constitutional Justices. *Research, Society and Development*. <https://doi.org/10.33448/rsd-v9i10.9458>
- Reus-Smit, C. (2014). Power, legitimacy, and order. *Chinese Journal of International Politics*, 7(3), 341–359. <https://doi.org/10.1093/cjip/pou035>
- Sitora Kadirova. (2020). Legality, legitimacy and legitimation of political power: theoretical analysis. *International Journal on Integrated Education*, 3(10), 122–124. <https://doi.org/10.31149/ijie.v3i10.701>
- Smith, S. (2018). Democracy and the body politic from Aristotle to Hobbes. *Political Theory*, 46(2), 167–196. <https://doi.org/10.1177/0090591716649984>
- Topaloğlu, A. (2015). The Politics of Plato and His Objection to Democracy. *Annales UMCS, Politologia*, 21(1). <https://doi.org/10.2478/curie-2013-0005>

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