"Democracy for Sale" and Legal Deficits

In the viral debate which was judged without courtesy between Arteria Dahlan (DPR-RI member of PDI-P) and Prof. Emil Salim about weakening the Corruption Eradication Commission (KPK), the issue of democracy for sale began to be sued.

In fact, Prof. Emil wanted to present the latest research that was written by Edward Aspinall and Ward Berenschot, entitled Democracy for Sale (Indonesian Torch Library Foundation, 2019: 323) which told about the decay of democracy in Indonesia.

The study outlines how bitter democracy in Indonesia is because it is a product of Indonesia's political oligarchic character that is united with clientelistic election campaigns for our political elite.

There, the enormous campaign costs could explain the failure of Indonesian democracy to limit the political domination of the economic and business elite which had been forged for decades in the New Order era.

The politics of cukong become commonplace. A politician who does not have sufficient capital usually needs a funder to fund his efforts to enter parliament. But, as we know, there is never a free lunch.

Now, when the politician successfully escaped to parliament, there was a reply he had to return to pay the political costs borne by the lender. The payment is not in the form of money, but can help in a variety of things needed by the Funder related to business operations. Trade licensing, for example.

This pattern is what destroys the state order. This is what Prof. Emil wants to say about the crisis of confidence in the parliament which is banned by the Corruption of Operation (KPT). Unfortunately the viral discussion ended in a row, erasing traces of essence.

The position of law in a democracy

For the writer, the beginning of the post-New Order (New Order) anomaly in Indonesia is the separation of law from democracy.

When the elections were judged to be getting better, participation, transparency and access to information began to grow and develop, law enforcement instead experienced a severe slump. Then, unconsciously, the democracy we wrested from the New Order regime could painfully mutate into an oligarchy.

In fact, law is an original part of modern democracy. If the law is gone, there are only two choices: oligarchy or anarchy. What really happened? For writers, the authoritarian transition to democracy has never been complete.

Various post-reform regimes have always left abandoned legal development debt. Sometimes, even if the law is improved from one regime to another, it is always incomplete.

Often the law is simply interpreted as fabricating the law. Or in another phase it is defined as a licensing regime that disrupts investment. In fact, the law is not that narrow.

When referring to Bernard Arief Sidharta (Reflections on the Structure of Legal Studies, 2009: 116), law is a symptom in the reality of plural society. Has many aspects, dimensions and facets.

Law is rooted and formed in the process of interaction of various aspects of society (political, economic, social, cultural, technological, religious, etc.), formed and helped shape the social fabric.

The form is determined by the community with its various characteristics, but at the same time also determines the shape and nature of the community itself. On that basis, the law has a conservative tendency (to maintain and preserve what has been achieved) as well as modernism (bringing, canalizing and directing change).

In other words, discussing the law has its own complexity. When following the thoughts of Prof. Mochtar Kusumaatmadja (Legal Concepts in Development, 2013), discussing the law can be done in the context of examining the rules and principles that govern human life, it can also be in the context of institutions and processes.

When the law is mutilated just for example, for the writer, the law cannot work to realize the goal trilogy which is order, justice and certainty for the community.

Democracy continues to be improved. Institutional and system improvement. Elections are enhanced with various modifications ranging from representative elections to direct and simultaneous elections.

But when at the same time the law is left then the law can be slipped like a legitimate stamp of power. This is what the author worries, when the discourse of opposition in our government system begins to be ignored on the grounds of mutual cooperation. Therefore, the dominant group becomes the main public issue driver.

Marginal groups do not dare to speak out. Moreover, the law is not certain to protect them when choosing different opinions in a democracy without the law.

Responsive law

Landslides are increasingly dangerous when democracy enters the digital age. Anyone can take refuge in anonymous identities in cyberspace.

Those who are hiding can carry out opinion slaughtering to groups who speak differently. Social media (social media) becomes a kind of "new game and trap" when democratic values have not fully settled in the public.

When social media is filled with contempt, law enforcement is alleged to be discriminatory, then democracy can be bordered by a gap. There are hoarse voices that assume, (not necessarily true), that offenders who are close to power will never be touched by the law.

Conversely, if the offender is not part of the power, the raucous voice said, the court and prison as part of necessity. This makes the legal development agenda more complex.

Not to mention the fate of the Corruption Eradication Commission after the revision of the Corruption Eradication Commission Law. The presence of the supervisory board accused of having castrated the capacity of the KPK in carrying out its functions, duties and authority is often raised. The issue of weakening became a daily public discourse meal.

But we are losing space or space to discuss seriously - without conflicts of interest - about the future design of the KPK, for example. For the writer, it is time (and urges), the government focus on comprehensive legal reform.

How formers and law enforcers can encourage the spirit of responsive law that is based on the ideals of the Pancasila law. The presence of responsive law becomes important in the midst of anomalous democracy.

Through the concept of responsive law, (initiated by Nonet and Selznick in Law and Society in Transition, 2009), law is encouraged as a facilitation of social needs and public social aspirations. There are three urgent agendas of responsive law that are urgently pursued.

First, responsive law must be able to provide strong, clear, straightforward and clear tools to protect the public from the threat of a spiral of silence. Spiral silence will grow if there is criminalization of pluralism and differences of opinion.

Second, responsive law must be able to be a catalyst for the threat of corruption, radicalism and narcotics. The three terrible diseases must be overcome through responsive legal design both on the aspects of ontology, epistemology and axiology breathing the balance of the spirit of order, justice and legal certainty.

Third, reforming the mentality of the apparatus, awareness and legal culture of the community which is compatible with the development of the law itself.

Regardless of these issues, law is feared that only accessories are unable to grow and develop in the rigors of the flow of digital democracy.

Thus, through the development of responsive law based on Pancasila, the future of law is expected to be better. That way, prosperity physically and mentally as a state goal can be achieved.

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