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The Idea of The Right To Recall Constituents' Vs The Principle Of Secrecy In The Election Law: The Death of The Right of Constituents In Positive Law

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Abstract: This article examines the paradox of democracy in the Indonesian electoral system through the conflict between the right of recall by constituents and the principle of secrecy regulated in the Election Law. Normatively, the principle of secrecy is intended to protect the political freedom of voters from pressure and intimidation. However, in practice, this principle has lost its substantive meaning when people's political choices become public consumption and are even used as a tool for political transactions. At the same time, the people as constituents do not have the constitutional right to withdraw the mandate against the people's representatives who are not trustworthy, because the power of recall is entirely in the hands of political parties. This study uses a juridical-normative approach with conceptual analysis and case studies to examine the principle of secrecy that is no longer appropriate in the legislative election system and the mechanism of recall of the principle of people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution. Using the perspective of legal positivism, this study found a gap between the formal legality of the electoral system and the morality of democratic justice. The positivization of election law that places the party as the owner of the people's representative seat has shifted the sovereignty of the people to the sovereignty of the party. The results of the study show that the death of constituent sovereignty is the result of political party dominance over the representation mechanism and weak protection of people's political rights after the election. The right of recall should be returned to the people (constituents) as the owners of the legitimate political mandate through a constituency-based recall (people's recall right/constituency recall) with the mechanism of 1) recall petition; 2) public ethics and fact testing by independent institutions; and 3) political parties cannot reject or hinder the submission of recall if they have met the constitutional and administrative requirements. Political parties should only play a role, as facilitators, not executors.

Keywords: Constituent Recall, Principle of Secrecy, Elections, Positive Law, People's Sovereignty.

INTRODUCTION

General elections in Indonesia are a means of implementing people's sovereignty as mandated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which affirms that "sovereignty is in the hands of the people and is carried out according to the Constitution." Through elections, the people channel their political rights to elect their representatives in the legislature and executive leaders, based on the principle known as LUBER JURDIL (direct, public, free, secret, honest, and fair) as affirmed in Law Number 7 of 2017 concerning General Elections. Article 2 of Law No. 7 of 2017 states unequivocally: "general elections shall be held based on the principles of direct, general, free, confidential, honest, and fair." This Law comprehensively regulates the following:

1. Election Implementation (President/Vice President, DPR, DPD, DPRD Provincial/Regency/City)
2. Election organizers (KPU, Bawaslu, and DKPP)
3. Election participants (political parties and individual candidates for the DPD)
4. Campaigning, funding, and election bans
5. The process of collecting, calculating, and determining election results
6. Election disputes (including administrative, criminal, and dispute over results at the Constitutional Court)

This principle is the basis and spirit in all elections in Indonesia. However, in practice, these principles of electoral democracy often lose their substantive meaning. The secret principle, for example, has suffered a degradation of value due to the public disclosure of political affiliations, money politics, and campaigns that normalize the disclosure of personal choices. This phenomenon makes the principle of secrecy of political choices no longer running as it should, thus opening up space for political transactions and *vote buying practices* that morally and legally harm the principles of *honesty and fairness* (Budiardjo, 2008). The election turned into a procedural ritual without any awareness of ethics and democratic integrity.

The crisis of honesty and justice in the implementation of the LUBER JURDIL principle has implications for the emergence of a democratic paradox where the people as the holder of the highest sovereignty actually lose control over their elected representatives. After the election process is completed, political power over the people's representatives completely passes into the hands of political parties as supporters. Based on Article 239 of Law Number 7 of 2017, the Interim Replacement (PAW) mechanism for legislative members can only be carried out by political parties, not by constituents who elect them. Therefore, it has happened as a "misguided thinking of democracy" because the people give the mandate, but the party has the right to revoke the mandate. This is not just a logical flaw, but also a flaw of substantive democracy.

The "*recall by party*" system has caused two adverse effects in the life of Indonesian democracy. *First*, it weakens the responsibility of the people's representatives to the voters, because their orientation and loyalty have shifted from the people to political parties (Asshiddiqie, 2019). *Second*, it creates an oligarchy of political parties, because the party holds full power over the legislative seats, not the people's vote (Gerung, 2018). As a result, the people's representatives lost their political independence in carrying out their representative functions, and Indonesian democracy slowly shifted to a *partitocratic system*, where political sovereignty was actually in the hands of the party elite, not the people.

The social phenomena that have emerged recently, such as the destruction or looting of the homes of members of the House of Representatives due to public statements that are considered provocative and hurt the people's sense of justice, reflect a serious crisis of political legitimacy. The action, although legally unjustifiable, represents a form of collective public anger against the people's representatives who are considered untrustworthy and do not represent public aspirations (Kompas, 2025b). The absence of a formal mechanism for the

people to revoke the political mandate of representatives who are no longer trusted has frustrated democracy and weakened trust in political institutions.

This condition shows that Indonesian democracy is experiencing a dissonance between idealism and reality. Democracy that is supposed to guarantee the participation and sovereignty of the people is actually trapped in a *partitocratic system*, where political power is more on the side of party interests than the will of the people. Therefore, an in-depth academic study is needed to review the implementation of the LUBER JURDIL principle, criticize the logic of representative democracy that removes the sovereignty of the people, and initiate the possibility of the existence of a *people's recall right/constituency recall mechanism*, namely the people's right to revoke the mandate against representatives who are no longer trusted as a form of correction to the paradox of electoral democracy in Indonesia.

It must be realized that there has been a degradation of the meaning of the secret principle in the practice of elections in Indonesia. Normatively, the principle of secrecy is intended to protect freedom of choice, but empirically, it is often distorted by pragmatic and transactional political behavior. The author tries to raise this analytically from three points of view: (1) juridical, (2) sociological, and (3) ethical-philosophical to prove that the principle of secrecy in the current Indonesian election is more formalistic than substantial. The confidentiality intended by the lawmakers can no longer be fully enforced, because:

1. The private political space has shifted to the public space (social media, communities, and even economic transactions),
2. The ethics of democracy have not been firmly embedded in society,
3. The system of supervision of money politics has not been effective.

Therefore, from the description above, the author raises with the title "The Idea of the Right to Recall Constituents vs the Principle of Secrecy in the Election Law: The Death of Constituents in Positive Law."

METHOD

Research Methods

This study employs a normative juridical approach supported by conceptual and sociological approaches. The normative juridical approach (doctrinal research) is utilized to examine the positive legal norms prevailing in the Indonesian electoral system, particularly those that regulate the principles of LUBER JURDIL (direct, general, free, confidential, honest, and fair elections), the people's right to vote, and the recall mechanism by political parties. The main legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, Law Number 2 of 2008 concerning Political Parties as amended by Law Number 2 of 2011, the regulations of the Electoral Commission (PDP), and relevant Constitutional Court decisions. The conceptual approach is applied to analyze the fundamental concepts of democracy, people's sovereignty, and political representation in the context of Indonesian elections. Through this approach, the study aims to understand how the principles of substantive democracy often conflict with transactional and oligarchic political practices. Meanwhile, the sociological approach is used to observe the empirical reality in society—specifically, how the LUBER JURDIL principle is implemented in practice and the social impact of the recall system by political parties on the legitimacy of people's representatives in the eyes of the public. Data were collected through literature studies, media reports, and analyses of actual national political phenomena. Furthermore, the types and sources of legal substances used in this study include: (a) primary legal materials such as laws and regulations, court decisions, and official documents of election organizers; (b) secondary legal materials such as constitutional law books, scientific journals, research findings, and academic articles related to democracy and elections; and (c) tertiary legal materials such as legal dictionaries, encyclopedias, and other supporting informational sources.

Data Collection and Analysis Techniques

Data was collected through library research and analyzed in a qualitative descriptive manner, namely by interpreting legal norms, comparing theory and practice, and drawing logical conclusions about the existence of a democratic paradox in the Indonesian electoral system.

RESULTS AND DISCUSSION

LUBER JURDIL Basics

The principles of LUBER and JURDIL are not only regulated in the 1945 Constitution, but are also described and reaffirmed in Article 2 of Law No. 7 of 2017 concerning Elections. This principle is the basis and spirit in all elections in Indonesia.

1. Immediately

Voters cast their votes directly without intermediaries, meaning they should not be represented or manipulated by other parties. The goal is to guarantee the rights of individual citizens in electing people's representatives and national leaders. Each vote has the same value (*one man, one vote*). The legal basis is Article 22E paragraph (1) of the 1945 Constitution and Article 2 and Article 3 of Law No. 7 of 2017 concerning Elections.

2. Common

Every eligible Indonesian citizen has the same right to vote and be elected, without discrimination on the basis of ethnicity, religion, race, gender, social status, or political opinion. The goal is to uphold the principle of inclusivity and equality of political rights for all citizens. The legal basis is Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution and Articles 198 and 240 of Law No. 7 of 2017 (concerning voter and candidate requirements).

3. Free

Every voter has the freedom to make his or her choice according to his or her conscience, without pressure, intimidation, coercion, or misleading persuasion from anyone. The goal is to guarantee citizens' political freedom as a form of human rights (HAM). The legal basis is Article 28E paragraph (3) of the 1945 Constitution and Article 280 of Law No. 7 of 2017 (prohibition of campaigning with pressure or threats).

4. Secret

The choice of each voter should not be known to the other party, either during or after the vote. The ballot box and voting booth are arranged so that the confidentiality of the choice is completely guaranteed. The goal is to protect citizens' political privacy and prevent social or political pressure after voting. The legal basis is Article 22E paragraph (1) of the 1945 Constitution and Article 353–358 of Law No. 7 of 2017 (concerning voting procedures).

5. Honest

All organizers, participants, and voters must adhere to honesty, integrity, and moral responsibility. There should be no fraud, data manipulation, money politics, or violations of the law in the electoral process. The goal is to uphold the legitimacy of the election results so that they truly reflect the will of the people. The legal basis is Article 3 letter f of Law No. 7 of 2017 and Articles 280, 284, and 523–531 of Law No. 7 of 2017 (concerning the prohibition and sanction of election violations).

6. Fair

All participants and voters receive equal treatment, without discrimination or partisanship. The organizers are obliged to be neutral and not take sides with one of the election participants. The goal is to ensure equality *of opportunity* between all election participants and ensure that the results are morally and legally acceptable. The legal

basis is Article 2 of Law No. 7 of 2017 and Articles 93, 94, and 95 of Law No. 7 of 2017 (concerning the neutrality of organizers).

The LUBER JURDIL principle is the soul of the electoral democratic system in Indonesia. This principle is not just a legal formality, but reflects the moral values, justice, and sovereignty of the people as affirmed in Pancasila and the 1945 Constitution.

Juridical, Sociological, and Ethical and Philosophical Perspectives Degradation of the Meaning of the Secret Principle.

Legally, the principle of secrecy is regulated in Article 2 of Law No. 7 of 2017 and Article 22E paragraph (1) of the 1945 Constitution. This means that legally, the state guarantees the confidentiality of voters' votes. However, these guarantees only apply in the technical context of voting, such as:

1. Voters cast their ballots in closed voting booths,
2. Not to be photographed,
3. The committee cannot look at the voters' choices.

The problem arises after leaving the polling station, because:

1. The law cannot regulate the expression of personal choice in public spaces,
2. There is no prohibition for a person to admit or flaunt his own choices,
3. In fact, many parties consciously expose their choices on social media.

So juridically, the secret principle is still formally valid, but it does not have full social effectiveness.

Sociological Point of View In practice, violations of *the principle of secrecy* arise from several social phenomena:

1. A transactional political culture where many voters sell their votes (*vote buying*) in exchange for money or goods. In order for the transaction to be "guaranteed", voters inform certain parties of their choice. This makes the principle of *secrecy* turn into pseudo-transparency which actually destroys the integrity of democracy.
2. Social or political pressure
In some areas, voters feel social pressure (for example, fear of not getting social assistance, jobs, or village facilities if they do not vote for a particular candidate). As a result, voters do not feel free, and ultimately do not keep their choices confidential.
3. The phenomenon of identity politics and open campaigns
Many voters expressed their support openly on social media. Even though it is the right to expression, it causes a domino effect, namely political choices become public consumption, no longer a personal matter.

From an ethical and philosophical point of view, the secret principle is a manifestation of individual freedom in a democratic system. However, when people are proud to show their choices for social or economic interests, it means that democracy turns into a formal ritual, no longer a manifestation of free will, the political morality of citizens shifts from civic *virtue* to materialistic (pragmatic) awareness. In this context, the secret principle loses its substantial meaning. All that remained was a formal form in the voting booth while his moral spirit had faded. The confidentiality intended by the lawmakers can no longer be fully enforced, because:

1. The private political space has shifted to the public space (social media, communities, and even economic transactions),
2. The ethics of democracy have not been firmly embedded in society,
3. The system of supervision of money politics has not been effective.

So, the secret principle is undergoing an erosion of value. The solution is not just to increase the rule of law, but to build a political culture that is ethical and with integrity, through:

1. Continuous political education,

2. Strict law enforcement against money politics,
3. An example from the political elite and election organizers.

The Constitutional Dimension: The Reduced Sovereignty of the People

Article 1 paragraph (2) of the 1945 Constitution states:

"Sovereignty is in the hands of the people and is exercised according to the Constitution."

Philosophically, it means that the people are the holders of the highest power, while the people's representatives are only the mandate (delegates) of the people's sovereignty. However, in practice, our system places political parties as mandatory intermediaries between the people and their representatives (Article 22E paragraph (3) of the 1945 Constitution). As a result, the sovereign is effectively not the people directly, but political parties. So there is a "misguided thinking of democracy" because:

1. The people who gave the mandate, but
2. The party has the right to revoke the mandate.
3. not just a logical flaw, but also a flaw of substantive democracy.

Normatively, based on Law No. 2 of 2008 in conjunction with Law No. 2 of 2011 concerning Political Parties and Law No. 17 of 2014 (MD3 Law), it is true:

1. Members of the House of Representatives can be dismissed by their party (through the *recall mechanism*).
2. The people have no formal legal mechanism to recall their representatives.

However, from the perspective of political mandate theory, this system is distorted. In classical theory:

"The political mandate comes from the people, the representative is only the executor of the will of the voters (*mandans*)."

So, in theory of democratic law, the one who has the right to revoke the mandate is the mandate giver, namely the people, not the party. The "*recall* by party" system has two adverse effects:

1. Weakening the responsibility of the people's representatives to the voters, because their loyalty has shifted to the party, not the people.
2. Creating a political party oligarchy, because the party holds full power over the seats, not the people's vote.

The philosophical and ethical dimension of democracy without people's accountability, the principles of democracy require vertical accountability from the people's representatives to the people. However, the Indonesian system creates horizontal accountability from the people's representatives to the party. When the people cannot revoke the mandate, but the party can, then the people's sovereignty has been "contracted" to the political parties. According to Jean-Jacques Rousseau's term, this means that the "*volonté générale*" (common will) has been betrayed by the "*volonté particulière*" (interests of the party) (Rousseau, 1995). Or in John Locke's logic, "*mandate without accountability*" means the *abuse of trust* betrayal of the social contract (Locke, 1967).

The people as constituents should have the right to withdraw the mandate from their representatives if they are proven to be untrustworthy, corrupt, or hurt the public's sense of justice. This is because democracy without the right of recall of the people is a pseudo-democracy that only gives the people power once every five years, then closes access to accountability during the term of office. The author in this article makes the idea of the idea of reform:

First, it is necessary to have a Limited Amendment to the 1945 Constitution, especially Article 22E and the MD3 Law, in order to:

1. *Recall* can not only be done by the party,

2. But also by constituents in constituencies through legal mechanisms (e.g. electoral district people's referendums).

Second, the application of "*People's Recall/ constituency recall*" based on ethics and evidence, for example if a member of the House of Representatives:

1. Violating the oath of office,
2. Issuing public statements that degrade the dignity of the people,
3. Proven to be involved in corruption, or
4. Not carrying out its representative function (absent, not absorbing aspirations).

Third, people's participation after the election needs to be institutionalized, not only in the form of social protests, but a formal legal mechanism recognized by the constitution. The idea of the right to *recall* by voters (*People's Recall Right/constituency recall*) is a legal mechanism that gives the people the right to revoke the mandate of the people's representatives if they are considered untrustworthy, corrupt, or violate public ethics.

The Paradox of Democracy in the Indonesian Election System

Democracy is conceptually a form of government in which the highest power is in the hands of the people. The basic principle is *government of the people, by the people, and for the people*, as stated by Abraham Lincoln in his Gettysburg address in 1863 (Lincoln, 2011). Democracy affirms that the people are not only objects of power, but subjects who have the right to determine the direction of state administration. In the Indonesian context, this principle is affirmed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "sovereignty is in the hands of the people and is exercised according to the Constitution."

However, in Indonesian constitutional practice, democracy tends to be understood procedurally, not substantively. Procedural democracy emphasizes formal mechanisms such as the holding of general elections, the existence of political parties, and the fulfillment of legality aspects (Dahl, 2008). Meanwhile, substantive democracy requires social justice, welfare, and protection of people's rights which are at the core of sovereignty itself. This difference between procedural and substantive democracy is what gives birth to the paradox of democracy namely when an electoral system that appears to be formally democratic turns out to give birth to political practices that are far from the values of democracy itself (Huntington, 1991).

Elections in Indonesia are actually the main manifestation of the implementation of people's sovereignty. Through elections, the people give a mandate to their representatives in the legislature to fight for the aspirations and interests of the public. However, in reality, the people lost control of their representatives after the election process was completed. This phenomenon indicates that democracy in Indonesia has undergone a distortion of meaning, from *people's sovereignty* to *party's sovereignty* (Asshiddiqie, 2019).

Political parties as an instrument of democracy actually take over the sovereignty of the people by fully controlling the process of nomination, winning, and dismissing legislative members. The power of *recall* or interim replacement (PAW) given to political parties based on Law Number 2 of 2011 concerning Political Parties has strengthened the party's position as the owner of power over parliamentary seats, not the people. Thus, Indonesian democracy becomes paradoxical, which means that the people vote, but lose sovereignty, while the party holds the mandate, but is not responsible to the people.

In Jean-Jacques Rousseau's view, the sovereignty of the people is absolute and cannot be delegated (Budiardjo, 2008). Rousseau asserted that the powers delegated to the representatives were only administrative, not substantive. However, in a modern political system like Indonesia, the people hand over their sovereignty to representatives through an election mechanism, but do not have the space to control the course of the representatives. As

a result, the relationship between the representative and the *represented* loses its moral and political meaning.

This paradox of democracy is also exacerbated by the increasingly rampant phenomenon of transactional politics. General elections are often no longer a place for political rationality, but rather an exchange of interests between legislative candidates and voters. In such a situation, the people's voice becomes a commodity, and democracy turns into a political market (Rousseau, 1995). As a result, elections are only a formal ritual that fulfills the principle of legality, but ignores moral legitimacy.

Thus, Indonesian democracy faces a fundamental contradiction between legality and legitimacy, between procedure and substance, and between people's sovereignty and party domination. Democracy that has formally met the requirements for the legality of elections has actually lost the substantive justice that is its essential goal. Therefore, it can be concluded that the paradox of Indonesian democracy does not lie in the absence of law, but in the weakness of moral values and the substance of justice in the implementation of the law itself.

The Crisis of Legitimacy of People's Representatives and the Erosion of the Secret Principle in the Implementation of Legislative Elections

The principle of *secrecy* in the implementation of legislative elections in practice actually experiences a degradation of meaning, when people's political choices become public consumption and a tool for electoral transactions. As stated by Teguh Prasetyo, the principles of the election are the embodiment of *the nation's Volksgeist* that should be obeyed absolutely, not just a legal formality procedure. Prof. Dr. Teguh Prasetyo in his book *Philosophy of Elections* explained that elections are not just a political procedure, but also a moral and philosophical event that contains the values of justice, honesty, and respect for human dignity as a subject of law. One of the highest ethical values he emphasized was the "inner freedom" of the voter manifested through the principle of secrecy. According to Teguh Prasetyo, the principle of secrecy does not only mean the technical concealment of choices in the voting booth, but also the protection of the moral autonomy of voters so that they are free from social, economic, and political pressure. In this context, the secret principle is the manifestation of the human right to freely make political choices without intimidation, coercion, or material reward (Prasetyo, 2018).

However, when election practices are colored by the openness of political preferences, open campaigns that personalize choices, and the practice of *money politics*, the essence of the secret is lost. This is in line with criticism that secrecy in Indonesia's elections is now pseudo-formal, but not substantive. Teguh Prasetyo even emphasized that "*when secrets turn into transactions, what happens is not elections, but harassment of democracy.*" (Prasetyo, 2018). This statement is in line with the analysis of the shift in the meaning of the LUBER JURDIL principle, where the secret principle that should ensure the purity of the people's voice actually becomes a space for power co-optation and the practice of money politics. Prof. Dr. Teguh Prasetyo explained that:

"If examined carefully, the principles of the election are in accordance with the provisions of Article 22E of the 1945 Constitution, that the election to elect the President and Vice President, members of the House of Representatives, members of the DPD, and members of the House of Representatives is held based on the principles of direct, general, free, secret, honest, and fair. There is no specific explanation regarding the meaning of the principles of holding the election. The explanation of Article 2 of the Election Law only contains a statement that is 'quite clear'. In law, the so-called phrase 'quite clear' in the formulation of the provisions of the Election Law (Explanation), is the same as or follows the dictation of the law in the principle of *in claris non interpretatio*. In principle, it is commonly understood that in *in claris non interpretatio*, what is clear should not be explained further. So, is it enough for an understanding in the

Philosophy of Elections that the principles in question point to an order according to the soul of the nation (*Volksgeist*), that full and absolute compliance or unconditional compliance with the content and implementation of the Election Law as well as with the content and implementation of the implementing regulations mandated as *delegated legislations* of the Election Law, including Court Decisions which are legal findings by judges related to the Election are laws that must be obeyed and are the intent, the nature *or ontology* of the principles formulated in Article 2 of the Election Law above." (Prasetyo, 2018).

Thus, the book Philosophy of Elections reinforces the argument that the principle of secrecy has a deeper philosophical and ethical dimension than just procedural. This violation of this principle is not only a technical violation of elections, but also a betrayal of the basic values of democracy, namely individual freedom and the sovereignty of the people. The principle of LUBER JURDIL in the implementation of General Elections in Indonesia was first affirmed in the 1971 Election, and then strengthened in Article 22E paragraph (1) of the 1945 Constitution, which states that "General elections are held directly, publicly, freely, secretly, honestly, and fairly every five years." This principle marks the nation's commitment to a healthy, transparent, and dignified democracy, where the people have absolute freedom to make their political choices without pressure or coercion from any party.

However, in the development of post-reform democracy, the substantive meaning of this principle has shifted. Normatively, the principle of secrecy is still upheld, but factually degraded due to transactional political behavior, weak integrity of election organizers, and low public political awareness (Haris, 2020). The phenomenon of *money politics* and open campaigns that display excessive personal support have undermined the principle of "secret" and "free" in elections. The principle of "secret" (*secret ballot*) should be that voters have the psychological freedom to make their choices without social, political, or economic pressure (Budiardjo, 2008). But in practice, the secrecy of choices is often revealed openly either through social media, peer pressure, or political promises. Many voters even consciously display their political choices to the public in the hope of gaining certain advantages. This makes the principle of "secret" lose its substantive meaning and turn into a mere administrative formality. Furthermore, the principles of "*honest and fair*" have also eroded due to the increasing practice of fraud and inequality of political access between candidates (Nasution, 2010). Elections are often colored by the manipulation of vote data, money politics, and the non-neutrality of officials or organizers. This condition weakens the legitimacy of the election results, because political victory is no longer seen as the result of the will of the people, but as a consequence of the dominance of capital and party power.

The crisis of the legitimacy of the people's representatives then emerged as a direct result of the violation of the principle of LUBER JURDIL. According to Max Weber, the legitimacy of political power depends on the public's trust in the moral basis of that power (Weber, 1978). In the context of elections, the legitimacy of the people's representatives comes not only from the victory of the vote, but also from the public's belief that the victory was obtained honestly and fairly. When the election process is injured by transactional practices, the moral legitimacy of the people's representatives is weakened. The people may recognize victory legally, but reject it morally and socially. The phenomenon of weak moral legitimacy of people's representatives is increasingly evident in various cases of controversial statements by members of the House of Representatives that offend or hurt public feelings. For example, statements about the amount of allowances, facilities, and lifestyle of the political elite that show insensitivity to the social conditions of the small people (Kompas, 2025a). The paradox of democracy in the context of *recall* is evident in the case of Wahyudin Moridu, a member of the Gorontalo Provincial Parliament from the Indonesian Democratic Party of Struggle (PDIP). After a video of his statement "*wanting to rob state money*" went viral on social media, the party immediately fired the person concerned and proposed an Inter-Temporal Replacement

(PAW) to the legislature (Hukumonline, 2025). The strong public reaction to the statement shows that there is a psychological gap between the people's representatives and the people they represent. It is at this point that substantive legitimacy collapses, because the people's representatives are no longer seen as representatives of the interests of the people, but as symbols of power alienated from social reality.

This crisis of legitimacy illustrates the shift in the function of political representation from *public representation* to *party representation* (Asshiddiqie, 2019). The people's representatives no longer feel responsible to the voters, but to the political parties that support them. In classical political representation theory, Edmund Burke asserts that the people's representatives are actually trustees of the interests of the people, not just an extension of a particular party or group (Burke, 1949). However, in Indonesia, the political system dominated by parties causes political loyalty to shift from the people to the party. This confirms a new paradox in democracy, namely the legitimacy of representatives of the people who are legally legitimate, but morally and socially weak. In the theory of representative democracy and the social contract (Locke, 1967; Rousseau, 1995), it is the people who are the source of the legitimacy of power. The political mandate given to the people's representatives comes from the "common will" (*volonté générale*), not from the party as a political intermediary. Thus, political parties are only mediums, not sovereign holders. When the party monopolizes the right of recall, then philosophically there is a *deprivation of the people's sovereignty by political organizations*.

The people, who are supposed to be the givers and pullers of mandates, lose the right to evaluate their representation in parliament. John Locke called this situation a form of *abuse of trust*, abuse of trust, because the power given by the people for the public benefit is used for the benefit of certain groups (Locke, 1967). The *recall mechanism* by political parties gives birth to two bad consequences:

1. Erosion of vertical accountability

The people's representatives are more accountable to the party (who can dismiss them) than to the voters. As a result, political decisions are determined more by party direction than by the aspirations of the people in the constituency.

2. Oligarchy and political party cartelization

The party becomes the dominant institution that holds full control over a person's political career. This gives rise to the phenomenon of *party oligarchy*, where the elitist internal structure of the party determines the fate of the people's representatives and the direction of public policy.

As stated by Jimly Asshiddiqie, the representative system in Indonesia has changed from a *representation of the people* to a *representation of the party*, so that the people are only objects in the democratic party, not the subject of sovereignty (Asshiddiqie, 2019).

The right of *recall* should be returned to the people (constituents) as the owners of the legitimate political mandate. This mechanism can be formulated through:

1. The constituency-based *recall* model (*people's recall right/constituency recall*), where voters in a particular area can file a petition or referendum to withdraw their representative who is considered untrustworthy.
2. Mechanisms by which the people have the right to appeal to public officials who violate political promises or the ethics of office.

Thus, the will of *recall* that is currently monopolized by political parties is not in line with the principle of people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution. In the concept of *people's recall right/constituency recall*, political parties should only play a role, as facilitators, not executors. The author provides the following concept:

1. As a provider of administrative channels for recall submissions by constituents (e.g. through forms, registration mechanisms, or mediation);

2. As an ethical liaison between the people's representatives and the community, without having the authority to decide the results of *the recall*.
3. The final decision should be on a public evaluation mechanism (e.g., an electoral referendum or a constituent petition with a certain minimum number of signatures).
4. A fair and democratic recall model to prevent the abuse of *recalls*, the system can be designed with proportionality requirements, such as:
 - a. Recall petitions can only be initiated by a minimum percentage (%) of constituents in the relevant constituency;
 - b. There is a mechanism for public ethics and fact testing by independent institutions (e.g. Bawaslu or parliamentary ethics institutions) before *the recall* process is passed;
 - c. Political parties cannot refuse or hinder the submission of a *recall* if they have met the constitutional and administrative requirements.

Reformulation towards *people's recall right/constituency recall* is needed so that the democratic system returns to the spirit of the constitution Article 1 paragraph (2) of the 1945 Constitution, that sovereignty is in the hands of the people and is implemented according to the Constitution. The model of *people's recall right/constituency recall* with a limited role of political parties reflects the balance between party discipline and people's sovereignty. By transferring the authority of *recall* to its constituents, Indonesia can correct the distortions of electoral democracy, strengthen the accountability of the people's representatives, and prevent the practice of political oligarchy that often makes the party the "gatekeeper" of power, not the facilitator of people's sovereignty.

Recall System by Parties and Loss of Voter Sovereignty

One of the fundamental problems in the political representation system in Indonesia is the existence of a recall mechanism or interim replacement (PAW) by political parties against legislative members. *Recall* is a form of party intervention against the position of elected representatives through the election process. This provision is explicitly regulated in Article 239 of Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD (MD3 Law), which gives political parties the authority to withdraw their members from the membership of the legislative body.

Normatively, *the recall* is intended to maintain the discipline and political morals of legislative members to remain in line with the party's policy line. However, substantively, the practice of *recall* actually erodes the principle of people's sovereignty, which should be the main source of legitimacy of power in a democratic system (Asshiddiqie, 2019). Once a representative is elected through a general election, his or her political mandate has legally shifted from the party to the people who vote. Therefore, the withdrawal of people's representatives by parties without the involvement of the people of the electorate is a form of violation of the principles of representative democracy.

The Indonesian Constitution clearly states in Article 1 paragraph (2) of the 1945 Constitution that "Sovereignty is in the hands of the people and is exercised according to the Constitution." This means that the source of legitimacy for political office does not come from political parties, but from the people. However, with the authority of *recall*, political reality shows a shift in *the locus* of sovereignty from the people to the party. Political parties, through legitimate legal mechanisms, become *the sole owners* of the people's mandate, and legislators are practically only representatives of party interests, not public interests.

From the perspective of positivism legal theory, this condition shows the supremacy of positive norms (*positive law*) over the value of substantive justice. According to Hans Kelsen, law is a hierarchical and autonomous system of norms, where the validity of an action can only

be measured based on its conformity with higher legal norms (Kelsen, 1967). Within the framework of *Stufenbau des Recht* (a tiered legal structure), a *recall* by a party is considered valid because it is based on the provisions of the applicable law (MD3 Law). Thus, as long as the *recall* is carried out according to legal procedures, the action is legal, even though it is morally contrary to the spirit of democracy.

Legal positivism rejects moral judgments of positive laws. As **John Austin stated**, the law is an *order from a sovereign ruler* and must be obeyed regardless of the moral value in (Austin, 1832). In the context of *recall*, political parties as legally regulated and recognized entities are given full authority by the state to attract their representatives. Thus, based on the theory of positivism, these actions are valid and must be accepted as a product of the applicable legal system. However, this positivistic approach actually raises philosophical problems in the practice of democracy. Legalism that emphasizes *law as it is* has ignored *law as it ought to be*, which is a law that is supposed to guarantee justice and sovereignty of the people. Lon L. Fuller criticized positivism by stating that a law without morality would lose its "soul" and its social purpose (Fuller, 1964). *The recall* may be legal, but it violates the moral values of democracy that places the people as the holders of supreme sovereignty.

In addition, *the recall* shows the paradoxical face of Indonesian democracy where people are given the right to vote, but not given the right to defend their choices. After the election is over, the representative relationship between the people and their representatives is severed by a legal mechanism that benefits the party. In practice, *recalls* are often used as a political tool to remove legislators who are critical of party policies or who are deemed "disloyal." (Kompas, 2025c).

This condition emphasizes that Indonesia's political system has not fully embraced *representative democracy*, but rather *party-centered democracy*, where parties function as the main holder of control over public office. This has direct implications for the decline in people's trust in the legislature and the increase in public cynicism towards politics. People's sovereignty becomes symbolic, while real power passes into the hands of political parties.

Therefore, to restore the principle of people's sovereignty, it is necessary to reformulate the law on the *recall* mechanism to be in line with the spirit of constitutional democracy. The withdrawal of people's representatives should only be done through ethical and judicial mechanisms, not solely based on internal party decisions. In this context, legal positivism must be limited by the principles of morality and constitutionality, as Gustav Radbruch put it, that "when the distinction between law and justice becomes too sharp, then positive law must yield to justice." (Radbruch, 1946).

Thus, *the recall* by the party is a form of distortion of the people's sovereignty legalized by a positive legal system. It is legal according to the law, but it is morally flawed. This phenomenon shows how legal positivism, when applied without moral correction, can be a tool of legitimacy for the domination of power and the denial of basic democratic principles.

Theoretical Synthesis: The Paradox between Legality and Democracy Justice

Indonesian democracy on paper stands on the principle of people's sovereignty, as affirmed in Article 1 paragraph (2) of the 1945 Constitution, that "*Sovereignty is in the hands of the people and is implemented according to the Constitution.*" But in practice, sovereignty is often reduced to mere procedural formalities due to the dominance of a positive legal system that emphasizes legality, not substantive justice. This paradox is what gives birth to the gap between procedural democracy and substantive democracy, between the legality of law and the justice of the people.

The principle of LUBER JURDIL which is the moral foundation of elections actually demands the implementation of democracy that upholds honesty, justice, and freedom of choice. However, when this principle is applied only to the fulfillment of formal procedures

(for example, the holding of regular elections), without paying attention to the moral values behind it, then democracy loses its substantive meaning (Asshiddiqie, 2019). Elections remain "legally legitimate", but fail to deliver social justice and moral legitimacy.

This condition clearly shows the clash between two major dimensions in legal theory: legality according to legal positivism and justice according to democratic moral theory. According to Hans Kelsen, law is a system of norms that applies without considering moral values, the validity of the law depends only on its conformity with the higher norms in the regulatory hierarchy (Kelsen, 1967). In this logic, *recalls* by political parties are legally valid, because they are stipulated through the applicable law (MD3 Law). However, from the perspective of democratic morality, this action is unjust, because it negates the principle of people's sovereignty which is the highest source of legitimacy.

Legal positivism as stated by John Austin also places the law as *the command of the sovereign*, an order of the ruler that must be obeyed without judging its morality (Austin, 1832). This view is very strongly colored by the Indonesian legal system which emphasizes *rule by law* rather than *the rule of law*. This means that the law is used as a tool of legitimization of power, not as a means to guarantee substantive justice for the people. Paradox arises when formal legality (*recall* is legal legal) is contrary to substantive justice (the people lose control of their representatives). This is where the importance of the synthesis between positivism and legal morality as put forward by Gustav Radbruch through the *Radbruch Formula*. He stated that "positive law must be subject to justice if it consciously rejects the principle of justice." (Radbruch, 1946). In other words, when a law is lawful according to procedure but causes injustice to the people, then it loses its moral legitimacy.

A similar criticism was also conveyed by Lon L. Fuller, who emphasized that good law must not only be procedurally valid, but must also have *an inner morality of law*, namely internal morality that reflects the values of honesty, justice, and social responsibility (Fuller, 1964). If the law only regulates the procedure without regard to its moral substance, then the law becomes a means of justification for the practice of injustice. *The party's* recall is a clear example: the procedure is legitimate, but it substantively hurts the principle of democratic justice and betrays public trust.

In the context of Indonesian democracy, this paradox shows that the sovereignty of the people has been held hostage by a legal system that is too positivistic. The people are given the right *to vote*, but they are not given the right *to recall*. As a result, democracy runs without the moral control of the people, and political parties become the dominant actors who control political representation. This condition gives birth to a legal oligarchy, where the law is more on the side of the power structure than on the people who should be the main source of sovereignty (Fuller, 1964).

Therefore, the theoretical synthesis between legality and democratic justice must be directed at the reformulation of the democratic legal paradigm that places the people back as the main subject of political sovereignty. Election law must accommodate the people's right not only to vote, but also to assess, reprimand, and even revoke the mandate of their representatives if proven to be untrustworthy. Thus, democratic justice does not stop at procedural legality, but develops towards substantive justice rooted in political morality and people's participation. By integrating the theory of legal positivism and the theory of moral justice, it can be concluded that laws should not only be legitimate because they are made by an authorized institution, but also just because they are on the side of the people. Legality without justice is only a form of moral stagnation, while justice without legality is anarchy. The balance between the two is an absolute condition for the realization of true democracy: a living, moral, and people-friendly democracy.

CONCLUSION

The constitutional application of the principle of confidentiality has long been in place, but it is no longer relevant in the current Indonesian context. This is because secrecy in the conduct of legislative elections is not only fraught with transactional elements but also invalidates the notion of constituents' constitutional right to withdraw their votes. Indonesian democracy faces a fundamental paradox between legality and substantive justice. Normatively, the electoral system has been regulated based on the principle of LUBER JURDIL, which affirms the principles of directness, publicity, freedom, confidentiality, honesty, and fairness as the pillars of electoral democracy. But in practice, the principle has been reduced to mere procedural rituals, losing its moral and political ethical meaning. The phenomenon of open political choices, transactional campaigns, and money politics shows that the principles of secrecy, honesty, and fairness are no longer maintained as the noble value of democracy, but manipulated as an instrument of power. The crisis of the legitimacy of the people's representatives has deepened the wounds of democracy. The people as the holders of supreme sovereignty lose their substantive role in controlling and reprimanding untrustworthy representatives. After the general election ends, the relationship between the people and their representatives is severed by a legal system that gives political parties absolute power to revoke or maintain the mandate. As a result, the loyalty of the people's representatives shifted from the people to the party, and the public's trust in representative institutions was further eroded. In this context, democracy that is supposed to uphold the will générale (common will) of the people has been betrayed by the volonté particulière (the interests of political parties). Therefore, the author proposes the idea that the right to recall should be returned to the people (constituents) as the owners of the legitimate political mandate through constituency-based recall (people's recall right/constituency recall). A legal mechanism that gives the people the right to revoke the mandate of the people's representatives if they are considered untrustworthy, corrupt, or violate public ethics. The recall system by political parties is a tangible manifestation of the dominance of positive law over democratic morality. From the perspective of legal positivism, the recall is considered valid because it has a legal basis in the MD3 Law. However, substantively, the mechanism is contrary to the spirit of constitutional justice and the principle of people's sovereignty as mandated in Article 1 paragraph (2) of the 1945 Constitution. This paradox shows the tension between law as it is and law as it ought to be between a valid positive law and a just moral law. With the application of the principle of secrecy in the Constitution and the Election Law, constituents are not given the space to evaluate and punish their choices which are part of the implementation of people's sovereignty.

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