

DIALECTICAL RELATIONSHIP BETWEEN DEMOCRACY AND LAW IN HO CHI MINH THOUGHT FOR THE RULE OF LAW

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Abstract: Democracy and law are seen as progressive values of humanity in the process of development. Democracy is a phenomenon that has emerged from primitive society and exists in the form of communal democracy on the basis of the original communist mode of production. The constitutional and law systems, so called the law, play an important role in defending the freedom of the individual and the fundamental rights in society, provided that the people are sovereign in society. Democracy and law have a dialectical, interrelated and interrelated relationship. Identifying precisely the relationship between these factors is a prerequisite for bringing positive solutions in the process of building and perfecting the rule of law in Vietnam today. This article deals with the basic contents of the relationship between democracy and law in the rule of law in accordance with Ho Chi Minh thought and to assert the important role of each component in the construction of the State. It also contributes to promote social development in general and enhances the process of perfection of the socialist rule-of-law in Vietnam in particular.

Keywords: Democracy, Legislative state, Rule of law, Dialectical relationship, Ho Chi Minh thought.

1. Introduction

Today, the process of democratization together with the role of the rule of law becomes a popular and indispensable trend in the country society and global society as humanity moves to the more equal rights, masterful and civilized society. This demonstrates the close relationship between democracy and the rule of law. Especially in the rule-of-law state, democracy and the rule of law are the modes of state and social management. Therefore, it cannot eliminate or eliminate each other when it comes to the common goal of building a just and equitable society, because human beings exist together and cannot be separated in one system. Mostly, the use of these two means is not allowed to conflict, to eliminate each other's effectiveness but to mutually support one another with a common goal. However, the different perceptions at different historical periods of democracy and the rule of law have created contradictions and disagreements in the process of

realizing these two factors. Rule of law sometimes confines and restrains democracy, and exercising undervalued democracy can lead to the breaking laws in the rule of law. In fact, if the process of democratizing the state and considering the constitution and the law is the most important means of implementing the process, and they are incompatible and synchronous, the implementation of them in a close relationship and the positive interactions between each other will become even more complicated.

In Vietnam, the process of building the rule of law country is essential for the aim of democratizing society on the basis of the constitution and the law. The process has achieved certain results, but the most inadequate is the phenomenon of loss of democracy, or formal democracy. The law has not been implemented thoroughly and synchronously. One of the causes of this situation is probably due to a lack of awareness about democracy, the law and the relationship between them. Thus, this paper analyzes the dialectical relationship between democracy and law in the rule of law with the aim of contributing to finding solutions to effectively accelerate the building process of the socialist rule of law in Vietnam.

2. Basic concepts related to research problems

Democracy: Historically, the term “Democracy” in the ancient Greek is “Demokratos” and was composed of two words “demos” and “kratos”. “Democracy means that the power belongs to the people. The concept of democracy can be simplified to different clauses: all power belonging to the people; state power of the people, by the people, and for the people. No democracy or opposition to democracy is dictatorship, in which power does not belong to the people and is not subject to any restriction for the purpose of ruling or suppressing the people. Accordingly, in a society divided into the oppressed people and the oppressors (i.e the exploited class and the exploitative class), there is never a government belonging to the people, which is characteristic of the nature of pre-socialist socialist regimes”[2].

The concept of democracy has so far been widely understood. From the point of view of the classes in society, there are different classes, which cannot be said to be purely democratic, but can be spoken by class-based democracy. Accessing to institutions, democracy is the social system, the state regime, the electoral system. For functional approach, democracy is seen as one of the ways of organizing and exercising the power.

The concept of democracy has been researched in this subject by Ho Chi Minh democracy, which means that the power in the state and in the society belongs to the people. The socialist rule of law in Vietnam that we are perfecting is a democratic state, a state of the people, by the people and for the people. Democracy is the goal and motivation for social development.

Laws: “The whole of the laws and regulations aim to regulate the relationship between people. Law means the ruling class in a given society is built into laws.

The concept of law in which the subject refers to is the constitutional and legal system in the rule of law, when that legal system is founded and implemented on the basis of democracy, or in other words it is the law”.[2]

Legislative State: “A state of the rule of law in the form of a republic country establishes the law to manage the society and places itself under the law. All State agencies must be organized and allowed to operate only within the framework of the law. Citizens comply, enforce and use the laws. Civil rights are recognized and protected by laws. In the rule of law, the three branches of establishing, executive and judiciary laws are independent. The role of the court is enhanced. The rule of law must have a complete, consistent, appropriate and timely legal system. This requires ongoing legislative work and codification. The rule of law is based on the principle of democracy. Democracy is the foundation for perfecting the law. Law is a tool to protect citizenship. The rule of law is a combination of the state and the rule of law”.[2]

3. Dialectical relationship between democracy and law in the rule of law based on Ho Chi Minh thought

The mutual necessity between democracy and the rule of law is reflected in the characteristics of the law-governed state according to Ho Chi Minh thought that the rule of law based on democracy, and the democracy must be based on the basis of the rule of law. The relationship between democracy and the rule of law is objective because, in a sense, democracy requires itself to the law because democracy is a way of organizing the state, so it must exist in the legal and constitutional forms. Democracy is seen as an internal factor, and the rule of law is external.

At the same time, it is subjective because both democracy and the rule of law are valuable products in the course of human history, and both are aspirations, aspirations, The goal of the activity is subjective in human. Not only does democracy need the rule of law, but the rule of law also needs democracy. When the rule of law with the constitutional system and the law are considered the will of the people, they must be built on their own on the basis of democracy. Democracy can only be based on the supremacy of the law and the exercise of human rights and the constitutional system, so the law of the rule of law cannot be contentious and democratic. The objective necessity between democracy and the law is that the law is a legitimate role for the power of the rule of law and an important means of exercising democracy. The basis for the existence of the law, and the law should be developed and implemented in a manner and in the form of instructions and corrections that are available in the law. The rule-of-law state according to Ho Chi Minh thought is that the state considers the law to be an important means of social management, but the legal system is established and operates on the basis of law.

The content of the relationship between democracy and the rule of law

Under the current state of the rule of law, constitutional and legal systems exist and develop depending on the powerful influence of democracy. The content of this relationship is shown in the following key aspects:

First, democracy is the basis of the rule of law: this is democratically proven as a decisive way, and the aim and content of the rule of law and democracy is the most important content of the law. .

The rule of law is basically embodied in the three legislative, executive and judicial activities in which legislative activity is one of the most important processes that affirms the superior nature of the rule of law. Therefore, this activity desperately needs democracy and considers democracy as the decisive mode. For this activity, according to Ho Chi Minh in a democratic system, the people have the supremacy in the legislature through Congress - the highest authority. Accordingly, those who represent the will, rights and interests of the people elected by the electorate will present their voice in legislative activity. Therefore, democracy in this process should be ensured in the true democratic way as a result of the discussion and deliberation of people's representatives. Moreover, the lawmaking activity is not limited to the operation of the mission, but it should extend the broad participation of the people in this activity as well as the mechanism and conditions for such participation, and it should work effectively. In the making of legal decisions, the democratic principle is fundamental in line with the rule of majority and minority respects, but it is important to ensure that the majority of the changes and the representation of minorities are in the body judicial decision. Law enforcement also manifests itself as a process of legal decision making and therefore needs to be implemented in a democratic manner.

In contrast, the side influenced by decision-making in law enforcement activities will respect legal decisions and implement them more thoroughly and voluntarily when the decisions that apply to them are democratic. In accordance with the democratic order, as the provisions of the constitutional system and the law are in created by the people and adopted either directly or indirectly. Moreover, the rule of law that wants to survive sustainably must be created on the mass bases, based on the will of the mastery of the society in which the present democratic state is the people. Therefore, democracy is the decisive way to rule the rule of law.

For the goal of the rule of law, we all know that in the rule of law according to Ho Chi Minh, "all power are in the people" [7]. Therefore, to build a socialist rule-of-law state, it must be based on the basis of democracy and, in other words, to take "the people as the root" because the rule of law that we are aiming to complete is real. It is the rule of law of the people, by the people and for the people.

Law is considered as a means of social management, typically in the history of human thought with the "rule of law" of the French school that sub-representative of the thinker Han Phi Tu. However, the law is also based on democracy or its content is democratic. Certainly, the law is classed and it has the will of the ruling class in class-rivalled societies. Law in the socialist rule-of-law state is of a democratic nature, with the constitutional system and the law, which are founded on democracy and the purpose of law to protect the democratic foundation. This represents the superior character of the socialist rule of law.

We all know that the purpose of building and setting up a legal system is to build a legal order, when that order is established, it will create the stability within the society. In the rule of law, the law is the will of the people because the legal system will serve the interests of the people. This is perfectly legitimate, and its demonstration is that people are allowed to do all under the law. Thus, democracy is seen as the purpose of the law.

In addition, the role of democracy is reflected in the fact that it is an important part of the law. Laws are the rules governing social relations. These rules help the society to be stable and make everything in order. To create the fundamental stability, the content of the law must be democratic. On this, the President Ho Chi Minh paid particular attention from the early days of building a democratic state in Vietnam. He pointed out the need to build the highest legislative body, the National Assembly, by the General Election of the country. The birth of the legislature agency on the basis of democracy to perform the legislative tasks must also be based on democracy and the content of the Constitution. The law must also rely on the basis of such a new democracy. Expressing the true nature of the democratic state that we are building and perfecting, the Constitution and the law is an important legal basis for the protection of human rights.

Second, the rule of law is a means of practicing democracy and a measure of democracy in society. Fundamentally, in the interplay between democracy and law, democracy sometimes plays a predominant role compared to democracy, and it is closely linked to the role of the organization and exercise of state power. In contrast, law is often present as a form of the organization and exercise of state power in general and the exercise of democratic state power in particular. The role of the law is primarily a means of exercising democracy, the exercise of democratic power and the goal of democracy.

In the rule of law state, mastery belongs to the people, and the people exercise their rights to mastery through two forms: direct democracy and indirect democracy. Overall, in whatever form, democratic rights must be enforced by law because the people are equal under the law and are allowed to do all under law. At another point of view, the law has the power to limit abuse. Mastery belongs to the people, in the form of indirect democracy, and the people delegate their representatives when they participate in the state apparatus and exercise democratic rights. However, the condition leads to the abuse of power by the trustees, who are considered on behalf

of the people. In consequence, the law is seen as strict regulations for the design of power, that is, to regulate what is to be observed by both the public as well as the public officials appointed by the people. This does not conflict with democracy when it seeks to limit the power of law, which in essence constitutes the foundation for democracy.

Law is the means to practice democracy, everyone is equal under the law. Ho Chi Minh early recognized the role of law for the establishment of a legal foundation in Vietnam. In the process of building the state, he was particularly interested in constitutional issues. Immediately after the birth of the Democratic Republic of Vietnam, he paid close attention to building a legitimate, constitutional state with the birth of the highest authority organ of Congress. On January 6, 1946, Vietnam's first parliamentary election was held nationwide, including those struggling with the spirit of excitement in the highest democracy day of all citizens. The victory of the General Election led to the first session of the National Assembly, which is an important step forward of the organization of the highest state agency in Vietnam. There have been many important decisions made during the session: electing the standing committee led by the scholar Nguyen Van To as head of the government, formally establishing the Government - the Union of Resistance Warfare held by President Ho Chi Minh. The Democratic Republic of Vietnam has the highest authority body, the National Assembly, and the highest administrative organ of the Government, expressing the nature of the nation, by the nation, and for the nation.

Congress is the highest authority body that drafts and approves the first Constitution of the Democratic Republic of Vietnam. The 1946 Constitution was considered to embody the right of national independence, unification and territorial integrity, and the building of a democratic Republic - a regime that guarantees the freedom of every Vietnamese citizen. President Ho Chi Minh also stated that this is the first constitution in the history of the country and also the first constitution in Southeast Asia. The 1946 Constitution upheld the tight unity of the ethnic minorities in Vietnam and a sense of integrity and equality of the class.

Not just a means of practicing the democracy, the law is one of the important criteria to evaluate a progressive and developed society to a level. In the history of humanity, the idea of using the law to rule society appeared very early, but the law was created by anyone for the interests of which class is in society. From the Feudalism of China, the ruling School had formed the idea of rule of law, which was considered as one of the advances of the era of state management, especially Confucianism. It has existed for a long time. Yet, it is inevitable that there is some limitation when the law lacks objectivity, and it is created only by the most powerful person in the society, the King. It presents the inflexibility when the law is only prone to punishment for the purpose of deterrence. There, the law is the tool of the state, and the authorities are even relied on the power of the law.

In the history of Western thought, many ancient thinkers have come up with the idea of a relationship between power and law, as well as the idea of a rule of law founded against authoritarianism coupled with the establishment of democracy. This is due to the fact that justice and law are inherent properties of the ancients of Earth. Law is a manifestation of social justice. This great thought was continued by the great philosophers and politicians such as Plato, Kant, Locke, Montesquieu, Hegel ... The development of the idea of the rule of law in the view that the rule of law state is always opposed to the authoritarian state, autocracy, the state of the police. This state has always been closely connected with democracy. The doctrine of the rule of law makes three important meanings as follows: first, the law is a power regulator of the government; second, all bodies are equal under the law; third, the jurisdiction has to comply with the previous set of proceedings.

Up to now, the doctrine of the rule of law can be understood in many different ways and depends on the use of the term. First of all, "the rule of law in the United States" states that the law of justice is justice and equality in society. No one has the right to stand out of the law. Laws must express the will of the people, not the will of the authorities. Social justice is created when people build it, but at the same time it must be done in a serious way.

The term "the rule of law" in the views of Germans is basically expressed in four factors:

- Legality: the constitutionality of the state, the association of the state with the law; monopoly of force; protection of the legal rights of each person.
- Decentralization: executive, legislative and judiciary separation in which independent judges are emphasized.
- Legal equality: no privilege or priority. Everyone is equal under the law
- Freedom insurance: basic human rights are ensured.

Thus, basically the law is associated with democracy which is viewed as the "midwife" of democracy. The more civilized society is, the more lawful and democratic it is. The law is the measure of democracy in society.

Expression of the relationship between democracy and the rule of law

The expression mode of the relationship between democracy and the law is a fundamental basis for identifying and evaluating them in practice. If viewed separately, democracy and the law have their own manifestations and may not be related to one another. Thus, the expression of the relationship between democracy and the law must be issues that are present as a result of the interaction between democracy and the law. Expression of the relationship is the content of democracy in the constitution, and the law directly regulates rights, democratic and democratic mechanism in the law development and implementation.

Through the Constitution and the origin and nature of state power in the constitution. It can be said that the problem of the origin and nature of state power in the constitution is considered the first and most fundamental content of the relationship between democracy and the law. The 1946 Constitution, article 1 states: "All right in the country belongs to the entire Vietnamese people, regardless of sex, wealth, class, religion" [7]. The issue of origin and nature is defined in the constitution as being more fully democratic when it is determined by the people through the constitutional process.

Democracy manifests in the origin and nature of state power at a high level, which must be determined directly by the people, not by anyone. The issue of the origin and nature of state power is closely linked to the supremacy of the constitution. The supremacy of the constitution partly originates from its content of the issue of the origin and nature of state power. Because the supremacy of the constitution is one of the most important aspects of the rule of law, democracy can always be associated with the rule of law or the supremacy of the constitution and the law.

The Constitution, the fundamental law of the state, fully determines the human rights. In the history of its birth, it is the product of the bourgeois revolution that overthrows the monarchy. It is the legal political text that ends the socialist regime's transition to citizenship. The constitution was born by the pressure for the need for democratic freedoms, and its content cannot fail to recognize and legally guarantee human rights and citizenship. The birth and development of the constitutions in Vietnam is an important demonstration of the development of democratic society, which is reflected in the human rights provisions of the Constitutions. The Constitution is consistent between citizen rights and human rights, and the right is more broadening even to mention the equal rights between men and women in society.

Building, perfecting and defending activities of the law: The legislative work done by the people is a manifestation of the relationship between democracy and the law. Legislation has emerged with the advent of law, but law development is democratic when democracy emerges. Thus, the methods of democratic development and way are important manifestations of democracy in legal activities. Starting from the requirements of law-making, the methods of legal development should be aimed at demonstrating the will of the people and the laws of social relations. In order to directly exhibit the full expression of the will of the people, the direct participation of the people in law-making is the best guarantee. If the people cannot always engage directly in building the entire legal system, people can participate directly in building the most basic laws, the constitution, and the important issues in the form of participation by voting the given solutions.

The implementation of the law in a democratic manner is seen as a manifestation of the relationship between democracy and the law because the relationship between democracy and the law is not just democratic in the law but also the implementation of those contents in practice. Law enforcement activities, especially in the application of laws mainly done by the state agencies,

perform in very diverse and complex ways at all levels. This activity also gives rise to legal rights and obligations for individuals and citizens, and it is difficult to ensure the direct participation of people in law enforcement. Thus, the method of implementing the law is democratic when it has control mechanisms and supervise the state power in law enforcement activities of state agencies. The basic requirement of monitoring and regulating law enforcement is to ensure legality and prevent violations. Moreover, it must also ensure the positive and active implementation of democratic law. In enforcing the law, the content, manner, and nature of the state power is the realization of the power control mechanism as a content of democracy in the law. In other words, the mechanism of controlling power in the law is manifesting democracy in the law, and its implementation is a demonstration of democracy in legal activity in reality. Monitoring and controlling the power in this area must be regular, diverse and challenging.

4. Conclusion

Democracy and law always go together, and cannot be inseparable from each other in building and perfecting the rule of law. Democracy is the basis of law formation, whereas the law is the means to practice democracy, a measure of democracy in society. This relationship demonstrates the objective need between them and the person as the subject of democracy and the law, which can influence the new relationship to be harmonious, consistent, and they can fully exhibit the role of each factor.

It should be aware and implement the relationship in a comprehensive, consistent manner. Basically, democracy needs to be done by law, which may be first from the constitution and by the constitution. On the other hand, the development and implementation of the law should be in democracy and by democratic manner. However, these two elements exist in one body that is the rule of law due to the rule of law built on the spirit of "the veneration of the rule of law". The legal system was born on the basis of democracy and for the people. Thus, law and democracy are almost the expression of coexistence, even though it is manifested as a contrast, and it is also a manifestation of the dialectical relationship.

Society needs to recognize and evaluate correctly in order to consolidate the relationship between democracy and the law, because both the democracy and the law are the products, the achievements of the development of human society. Consequently, the right understanding of the factors and especially the role of cohesion between these elements will contribute to promote the social development in general and the process of perfecting the socialist rule-of-law state in Vietnam in particular.

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