

CHAPTER II

LITERATURE REVIEW

A. Democracy

In general, democracy is defined as a form of government where procedure formulation, directly or not (directly), is determined by a majority vote of community members who have voting rights in the election¹. Schumpeter in his book, *Capitalism, Socialism and Democracy*, said that: “The democratic method is the institutional arrangement for arriving at political decision which individuals acquire the power to decide by means of competitive struggle for the people vote”².

In a democracy as the will and the common good, the government (*demos*) by people (*cratos*), means that power comes from the people, when power is carried out with a random policy. It is possible, the authority mandated to the government could be drawn by the owner of true sovereignty that are the people³.

Democracy is defined as characteristics that must exist in democratic countries, such as: *First*, restrictions on government action to provide

¹ Leo Agustino, 2009, *Pilkada dan Dinamika Politik Lokal*, Yogyakarta, Pustaka Pelajar, page. 39

² See academia.edu, *Demokrasi sosialisme*, available on http://www.academia.edu/8907900/Demokrasi_Sosialisme, access on February 5, 2017, at. 11.00

³ Leo Agustino, *Op.Cit*, page. 40

protection to individuals or groups through how to prepare a periodic succession. *Second*, the tolerance of the opposite opinion. *Third*, equality before the law regardless of social position, economic and political. Fourth, the existence of free election and accompanied by a model of effective representation. *Fifth*, given the freedom to participate and the opposition political parties. *Sixth*, expressed respect for the rights of citizens to express their views. *Seventh*, respecting the rights of minorities and individuals with priority way of persuasion than the way of repression⁴

Among many flows of thought that are called democracy, there are two groups of the most important flows, namely a constitutional democracy and a group calling itself a democracy, but in essence the followers of communism. The fundamental difference between the two trends is democratic constitution envisions a limited government powers, which is a state based on the rule of law (*rechtsstaat*). On the contrary, democracy is which based on communism, aspire governance should not be limited authority (*machtsstaat*) and the totalitarian⁵.

Indonesia has already clearly used the stream a constitutional democracy. The characteristics of constitutional democracy in Indonesia are:

⁴ *Ibid*, page. 52

⁵ Ni'matul Huda, *Op.Cit*, page 265.

- a. The existence of a written constitution containing provisions on the relationship only between the rulers and the people
- b. The division of state power, which includes: the power of making laws that exist in the parliament, the judicial power is independent not only handle disputes between individual people, but also between the rulers and the people, and the government is based on its actions of enactment law (*wetmaking bestuur*)
- c. In recognition and protection the rights of freedom of people (*vrijheidsrechten van de burger*)⁶.

The practice of democratic life, as happened in many countries that are growing, including Indonesia often fooled on a format that seems to democratic politics, but in practice it seems to be intangible authoritarian. This can be seen when the 1945 constitution set back through a Presidential Decree of July 5, 1959, and determined to implement the 1945 Constitution and Pancasila. However, the implementation has not been able to materialize during the guided democracy (1959 - 1966) for the Old Order government at that time tended to concentrate power in the president alone, in late 1965 was on brink of destruction, whether political, economic, social, cultural and defense and security⁷.

⁶ *Ibid*

⁷ *Ibid*, page. 270

As a democratic country that is based on the law and as a democratic state of law, of course, democratic elections should also provide legal mechanisms to resolve potential violations of election violations and disputes over the results of the election.

B. General Election

As a form of implementation of democracy, elections serve as a platform that screen candidates of representatives or leaders of the country who really has the capacity and capability to be the name of the people. In addition to as a container that filters the representative of the people or the national leaders, the general election is also associated with the rule of law (*rechtstaat*), because it is through elections the people can elect their Representatives that entitled to create laws and control or implementation of the will of the people outlined by the people's representatives. With the general election, then the people's rights can be distributed, similarly with the right to equal before the law and government⁸.

In contrast with the 1945 Constitution before amendment, the Constitution 1945 after amendment (1999-2002), known as the 1945 constitutional of the Republic of Indonesia contains explicitly about the

⁸ M. Mahfud MD, 1999, *Didalam Buku Hukum dan Pilar-Pilar Demokrasi*, Gama Media, Yogyakarta, page. 221-222.

election⁹. Some articles of 1945 Constitution which contains the General Elections are as follows:

- a. Article 2 Paragraph (1): "People's Consultative Assembly consists of People's Representative Council and Members of The Regional Representatives Council is elected through a General Election and shall be established by law"
- b. Article 6A paragraph (1), "The President and Vice President are elected as a pair directly by the people"
- c. Article 6A paragraph (5): "The procedures for the election of the President and Vice President are further regulated in the law"
- d. Article 18 paragraph (3): "The Government of Provincial, District, and Municipal has People's Representative Council that is elected through elections"
- e. Article 18 paragraph (4): "The Governors, Regents and Mayors each as the head of the Provincial, District and Municipal are elected in a democratic way"
- f. Article 19 paragraph (1): "The members of People's Representative Council are elected through a general election"

⁹ Abdul Mukti Fadjar, 2013, *Pemilu, Perselisihan Hasil Pemilu, dan Demokrasi: Membangun Pemilu Legislatif, Presiden, dan Kepala Daerah serta penyelesaian Perselisihan Hasil Pemilu secara Demokrasi*, Malang, Setara Press (kelompok Penerbit intrans), page. 14

g. Article 22C paragraph (1): "The Member of Regional Representatives Council are elected from each province through general elections"¹⁰

In Article 22 E of the 1945 Constitution and confirmed by Law No. 15 of 2011 on the General Election in Article 1 Paragraph (1), Law No. 10 of 2016 on the second amendment of Law No. 1 of 2015 on the establishment of election governors, regents and mayors to become law in Article 2, Law No. 42 of 2008 on General Elections of the president and vice president in Article 2, Law No. 8 of 2012 on General Elections of members of People's Representative Council, regional representatives council and regional people's representatives council in Article 1, regulates on the principles of General Elections that shall be held by direct, general, free, secret, honest and fair principles in the unitary state of Indonesia based on Pancasila and the basic laws of the republic Indonesia 1945.

Election is one attempt to influence people persuasively (not force) to perform activities of rhetoric, public relations, mass communication, lobbying and other activities. The candidates play an important role in influencing the people to be elected as a leader in the elections. Although agitation and propaganda in a democratic country was heavily criticized, in the general

¹⁰ See The 1945 Constitution of The Republic of Indonesia

election campaign, the techniques of agitation and propaganda techniques are still used by many of the candidates.

In the general election, voters in the elections are also called constituents, and unto them the electoral participants offer promises and programs during the campaign. The campaign is carried out during a specified time, on the eve of polling day. After the vote, the counting process begins. Election winner is determined by the rules of the game or the system of determining the winner who had previously been defined and approved by the participants, and disseminated to voters.

To operate in the elections are carried out effectively and efficiently based on the principles of direct, general, free, secret, honest and fair¹¹. The principle of direct means that voters do direct elections to choose candidates for candidates. The general principle means that the general election is followed by every person who has already been qualified. The principle of free means that each voter is free to do his election without any pressure. The principle of the secret means that anyone elected by the voters is secret, which only voters know, and the principle of free and fair are addressed to the organizer that is in accordance with the legislation in force¹².

¹¹ See Law No. 15 of 2011 on Organization of the Election.

¹² Methodius kossay, 2009, "Pemilu Sistem Noken Dalam Demokrasi Indonesia", (*Skripsi FH Universitas Admajaya Yogyakarta*), page. 10

C. Noken

1. Definition of *Noken*

Noken is a traditional bag brought of the Papuan. Noken is brought using head and made of bark fiber. How to make it? The bark is pounded, then do the pickling process that is by immersing into the water so that the bark fibers get stronger. Then, bark twisted into yarn like a small rope (string). Furthermore, the small rope woven into a *Noken*. When weave formed a "ring" and tied into a knot. In the area of Paniai, noken is ornamented to be more interesting. This ornament is made of the Orchid bark either yellow gold or black¹³.

Nokens is made from natural materials environmentally. Not only made of bark, noken is also made from cotton yarn even from wool yarn. *Noken* is same with a bags in general. This bag is used to carry goods for daily necessity. Papuans usually uses it to carry farm products such as vegetables, tubers and also to bring commodities to market. Because of its uniqueness that was brought by the head, *noken* is registered to UNESCO as one of the works of traditional and cultural heritage of the world and on 4 December 2012. *Noken* of the Papuan is designated as intangible cultural

¹³ Yance Arizona, "Konstitusionalitas Noken: Pengakuan model pemilihan masyarakat adat dalam sistem pemilihan umum di Indonesia", Jurnal Konstitusi Pusako Universitas Andalas Volume III Nomor 1, (Juni 2010). Page. 2

heritage of UNESCO. UNESCO's recognition would encourage efforts to protect and develop their cultural heritage of *noken*, which is owned by more than 250 ethnic groups in Papua and West Papua ¹⁴.

2. The Benefit of *Noken*

Noken mostly utilized by people in rustic or the mountains of Papua to carry crops, firewood, or animals being harvested for sale on the market. Many students are also used small size *noken* to carry books and stationery. The father is utilizing *noken* to carry betel nut and tobacco when they wanted to socialize with friends or relatives. Meanwhile the mothers is utilizing *noken* as a baby sling or baby carrier. A mother sometimes carries two *noken*s even more. When holding a baby, the burden is not on the shoulders. The tip of *noken* bags placed over the head near the forehead¹⁵.

3. The Uniqueness of *Noken*

One of the interesting things of *noken* is only women who live in the mountainous region of Papua. In Papua if a woman is able to make *noken*, it symbolizes the woman's maturity. Philosophy for women is the ability to

¹⁴ BBC Indonesia News: *Noken Papua mendapat pengakuan UNESCO*, available on http://www.bbc.com/indonesia/berita_indonesia/2012/12/121205_noken_unesco, access on October 18, 2016. At 11.30 am

¹⁵ Berita Kompas: *Noken Khas Papua Memang Multifungsi*, available on, <http://regional.kompas.com/read/2011/03/29/09105883/Noken.Khas.Papua.Memang.Multifungsi>, access on October 18, 2016. At 12.00 am

make *noken* is a measure of maturity. If a woman cannot make *noken*, she cannot be considered as an adult and it is a requirement to get married¹⁶.

¹⁶ See Tabloitjubi: *Noken: Simbol Perempuan Dan Kehidupan Orang Papua*, available on, <https://tabloidjubi.wordpress.com/2007/10/03/noken-simbol-perempuan-dan-kehidupan-orang-papua/>, access on October 18, 2016. At 11.55 am