

## CHAPTER TWO LITERATURE REVIEW

### A. Democracy

Democracy has always been a highly contested concept<sup>12</sup> and thanks to recent developments in world politics the struggle to define democracy has even more than before, become a major ideological battle.<sup>13</sup> In the history of the west, the ancient Greek democratic theories represent the cooperation model, while the ancient Roman republicanism represents the competition model. Greek democratic theories, whether they support or criticize democracy, usually took democracy as a decision-making procedure by the majority rule. The Roman republicans, on the other hand, focused on the peaceful competition for public offices and the power balance between different offices. In the modern time, philosophers like Rousseau and Rawls favor the cooperation model, while philosophers like Locke and Hayek endorse the competition model.<sup>14</sup> It was only at the end of the 19th century that constitutional democracy was carried out as a concrete political program and system.<sup>15</sup>

The theory of democracy might categorized into two models. The first model focuses on the majority rule as a decision-making procedure: When a group of people need to make a decision over a matter of public good, the opinion that wins

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<sup>12</sup> Jimly Asshiddiqie, 2005, *Konstitusi dan Konstitusionalisme*, Jakarta, Konstitusi Press, p. 141.

<sup>13</sup> Robert Dahl, 1989, *Democracy and its Critics*, New Haven, Yale University Press, p. 105.

<sup>14</sup> N.M.L Nathan, 1993, "Democracy", *Proceedings of the Aristotelian Society*, vol. 93, Oxford University Press, p. 124.

<sup>15</sup> Robert A, 2001, *Perihal Demokrasi – Menjelajah Teori dan Praktek Demokrasi Secara Singkat*, Jakarta, Yayasan Obor Indonesia, p. 11.

majority support will be the final decision of the group.<sup>16</sup> The second model has a characteristic that distinguishes democracy from despotism: Democracy prohibits the monopoly of political power; it endows political power to "the people," who are supposed to be the real "owners" of power, and "leases" political power, with limited terms of office, to persons who have won the public support through elections and other empowerment procedures. The second takes the majority principle as an empowerment procedure, not a decision-making procedure.<sup>17</sup>

Various countries have implemented their definitions and criteria regarding democracy, which not a few of them actually practice very undemocratic methods, even though on paper they call "democracy" a fundamental principle. Therefore, studies on politics arrive at the identification that the phenomenon of democracy can be differentiated into normative democracy and empirical democracy. The idea of normative democracy lies in the value of democracy in the realm of philosophy, while empirical democracy is its implementation does not always parallel with its normative ideas.<sup>18</sup>

There are two types of modern democracy based on the mechanism of channeling people's will. The first is Direct Democracy, which can be defined as

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<sup>16</sup> A. Przeworski, 1999, *Minimalist Conception of Democracy: A Defense*, Cambridge, Cambridge University Press, p. 24.

<sup>17</sup> Shaomeng Li, 2011 "Cooperation Competition and Democracy", *Frontier of Philosophy in China*, vol.6 no 2, p. 274.

<sup>18</sup> Ni'matul Huda, *Hukum Tata Negara Indonesia*, PT Raja Grafindo Persada, Jakarta, p. 260.

a democratic system that involves all people directly in determining various general policies, state affairs and consultations within a country. The second is Indirect Democracy is a system of democracy to channel the wishes of citizens or their people through representatives of parliament.<sup>19</sup> Democracy is known to have various types in various countries that adhere to it, but broadly it can be grouped into two types, namely Constitutional Democracy and Communist democracy.

The fundamental difference between those two groups are constitutional democracy aspires to a government that has limited power, for a country that implements European-continental, the country will apply all elements that exist in *rechtsstaat*, namely the recognition of basic human rights, the existence of division of power, government based on regulations, and the existence of a State Administrative Court.<sup>20</sup> While for Common Law countries, the elements to be applied are elements of the rule of law, which are the supremacy of law, equality before the law and constitution based on human rights.<sup>21</sup> Democracy that bases itself on communism, aspires that the government of its power is unlimited (*machtsstaat*) and is totalitarian.<sup>22</sup> Modern democracy is a stage or a process that must be passed by a state to get welfare.<sup>23</sup> The concept of a welfare state inspired and became the obsession of activists of the Indonesian independence movement,

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<sup>19</sup> C.S.T. Kansil and Christine S.T. Kantil, 2006, *Pokok-pokok Etika dan Profesi Hukum*. Jakarta, PT Pradnya Paramita, p. 70.

<sup>20</sup> Omar Seno Adji, 1966, *Prasarana Dalam Indonesia Negara Hukum*, Simposium Universitas Indonesia Jakarta, p. 24.

<sup>21</sup> Diana Halim Koentjoro, *Hukum Administrasi Negara*, Bogor, Ghalia Indonesia, 2004, p. 34.

<sup>22</sup> *Ibid*, p. 263.

<sup>23</sup> Jean Jacques Rousseau, 2007, *Du Contract Social*, Jakarta, Visimedia, p. 113.

which later resulted in the concept of the Pancasila Democracy.<sup>24</sup> Pancasila is the philosophy of the state which, according to Hans Kelsen, is a grundnorm. Grundnorm may be defined as the highest norm, abstract in nature and becomes the basis for concretely underneath norms.<sup>25</sup> Therefore all regulation and its enforcement shall refer to the Pancasila.

Democracy may be defined as government by the people and for the people, which then constitutes a fundamental understanding and definition that has been widely used.<sup>26</sup> The implementation of government by the people is by electing representatives of the people or national leaders through a mechanism called general elections. General elections become like a transmission of belt, so that power originating from the people can turn into state power which then manifests in the form of governmental authorities to govern and regulate the people. In the relationship between democracy and economic prosperity, Robert Dahl assures that experience in the 19th and 20th centuries shows that democratic countries are more prosperous while non-democratic countries are generally poor. According to Klitgaard, Maclean-Abaroa and Parris, a multi-party system and a free market will increase the power of competition and accountability so that it can ultimately reduce corruption.<sup>27</sup>

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<sup>24</sup> Niarso Ridwan dan Ahmad Sodik Sudrajat, 2009, *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, Bandung, p. 24.

<sup>25</sup> Hans Kelsen, *General Theory of Law and State*, New York, Russell & Russell, 1945, p. 35.

<sup>26</sup> Liphart, Arend, 1984, *Democracies: Patterns of Majoritarian and Consensus Government in TwentyOne Countries*, New Haven, Yale University Press, p. 1.

<sup>27</sup> Litgard, Robert, Ronald Maclean-Abaroa, and H. Lidsey Parris, 2005, *Guidance to Elimination of Corruption in the Regional Government*, Jakarta, Yayasan Obor Indonesia, p. 110.

## B. Party System

The definition of a political party system has become diverse due to developments in society. There are even some circles of scholars, today, who are questioning the position of political parties in the repertoire of politics.<sup>28</sup>

According to R.H. Soltau, the definition of political parties is:<sup>29</sup>

" Political parties are a group of citizens who are more or less organized, who act as political entities and use their power to vote, aim to control the government and implement their general policies".

According to Jimly Asshiddiqie, political parties are associations of citizens and because of that, they are as legal entities (*rechtspersoon*). However, as a legal entity, the political party does not have other legal entities under their rights. Those who can become members of a political party are individual citizens (*natuurlijke personen*). The status of political parties as legal entities is very important in relation to the position of the political party as the subject of legal traffic.<sup>30</sup> Law number 2 of 2008 on Political Parties states that political parties are organizations that formed by a group of Indonesian citizens. Citizens voluntarily grouped themselves based of the same will and purposes to fight for and defend the political interests of members, society, nation and state and maintaining the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. From the above definitions, it

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<sup>28</sup> Hans Daalder, Richard Gunther, Jose Ramon-Montero and Juan J. Linz, 2002, *Parties: Denied, Dismissed or Redundant? A Critique*, in *Political Parties: Old Concepts and New Challenges*, Oxford University Press, p. 19.

<sup>29</sup> *Op. Cit.*, p. 21.

<sup>30</sup> Jimly Asshiddiqie, 2006, *Pengantar Ilmu Hukum Tata Negara*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 69.

can be understood that political parties are formed to perform a number of functions. According to Nassmacher the function of political parties, namely:<sup>31</sup>

1. Parties mediate or arbitrate between a pluralistic society and its political institutions of government.
2. Parties organize political campaigns in order to mobilize voters to participate in an election.
3. Parties recruit political personnel by selecting and nominating candidates who stand for public office in an election.
4. Parties aggregate a plurality of interests into a reasonable number of political alternatives or policy options, and thus channel conflicts between government and opposition.
5. Parties enable people to generate a plurality of opinions in public debate, elaborate projects or proposals for society, and transform policy options into political decisions.

In a democracy, the party exists and operates in a particular party system. The party system provides an overview of the structure of competition among political parties in an effort to gain power in government. To look at a country's party system, there are three categories of legal rules in party arrangements, namely the

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<sup>31</sup> Karl-Heinz Nassmacher, 2003, "Introduction: Political Parties, Funding and Democracy, Funding of Political Parties and Election Campaigns", *International Institute for Democracy and Electoral Assistance*, p. 2.

monopolistic regulations, cartel regulations and egalitarian regulations.<sup>32</sup> The first category is monopolistic regulations that intentionally support the ruling party and limit critical groups. The second category is the cartel regulations. This category respects human rights but limits competition so that it gives benefits to existing parties in both parliament and government. The third last is egalitarian regulations. This category is designed to bring plural inter-party competition among many players who have equal access to the public and the slightest possible limitation for parties or candidates participating in the election.

Sartori divides the party system into 7 (seven) categories, namely: a single party system, hegemonic party, predominant party, two parties, limited pluralism, extreme pluralism, and atomized.<sup>33</sup> The seven party systems can be summarized in two broad categories, namely:

1. Non-competitive System

This system includes single parties and hegemonic parties. Non-competitive party systems are often called party-state systems. In this category, the existence of political parties is identical to the state, making it difficult to distinguish between political parties and the state. In other words, there is actually no party system in this condition because the

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<sup>32</sup> Pippa Norris, 2005, "Building Political Parties: Reforming Legal Regulations and Internal Rules", *International Institute for Democracy and Electoral Assistance*, p. 5-6.

<sup>33</sup> Sartori, Giovanni, 1976, *Parties and Party System: A Framework for Analysis*, Cambridge University Press, p. 55.

structure of the political system is centered on the state. The presence of political parties is identical to the interests of the state.

## 2. Competitive System

This System includes dominant party, two party, moderate pluralism, extreme pluralism, and atomized. In this party system, the state protects the rights of political parties to carry out their functions. The party system moves on a linear line, from atomic to single party, with driving factors for modernization, especially aspects of social mobilization, which have an effect on increasing public participation along with their ideas.

There are 3 (three) approaches that explain the formation of a party system. First, the institutional approach which based on the assumption that the party system is constructed by the design of the electoral system. Duverger introduced this approach in which the plurality/ majority system would form a two-party system (Duverger's Law), whereas in a proportional system it would tend to form a multi-party system (Duverger Hypothesis).<sup>34</sup> The creation of these relations is due to the mechanical effects and the psychological effects of the electoral system.<sup>35</sup>

First, the mechanical effects of the electoral system work on parties as a result of direct application of election rules in converting votes into seats. In the

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<sup>34</sup> Kenneth Bennoit, 2005, "Duverger's Law and The Study of Electoral System", *French Politics*, Vol.4, p. 69-83.

<sup>35</sup> *Ibid.*



distribution of seats, some parties, especially large parties, will get a greater proportion of seats than their votes in another words it is over represented and under representation for small parties. Second, the psychological effects of the electoral system derived from the reaction of voters and parties to the consequences that arise from the implementation of electoral rules. With the description above, it is clear that party systems are not static conditions, but a dynamics. Changes in party systems can be seen from several indicators, namely:

- a. Total volatility: vote aggregate changes between elections.
- b. Polarization: ideological distance between parties.
- c. The effective number of parties and the fractionalization index: a different measure (very high related) to the number of party weights with their seats in parliament.
- d. Electoral Disproportionality: the difference between the division of seats and party votes.
- e. Number of dimensions of issue: an indicator of the differentiating structure in a system.

Party systems are closely related to the stability and instability of government. This is related to the compatibility of the party system with the government system. The two party system is often referred to as the ideal party system for all government systems, both presidential and parliamentary systems. Whereas the multi-party system is only suitable for parliamentary systems. A multi-party system with a presidential system is considered an inappropriate combination.

The multi-party system in the presidential government results in the low sustainability of democratic stability.

The multi-party presidential system is endanger the democratic stability related to the absence of incentives to form coalitions, while in parliamentary systems at all times develop incentives to produce the majority coalition. In other words, the basis of parliamentary regime is cooperation and consensus, while the presidential regime is hidden conflict. There are three explanations why the presidential system does not provide incentives for the formation of coalitions.<sup>36</sup> First, the direct result of the principle of separation of powers: presidential occupational survivability does not depend on various types of legislative support; a president does not need cooperation with other parties except with his own party, and moreover the party does not support the government even though the parties join the government.

Second, the character of the presidential election also provides incentives to avoid cooperation. Co-operation requires compromise and the possibility of position modification to accommodate partners, a situation the president might reject. The president competed in a national district, in contrast to the legislature which was more parochial. Finally, presidential politics are zero-sum, winner take all, which makes it difficult to cooperate or form coalitions. In a presidential

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<sup>36</sup>Cheibub, Jose Antonio, 2007, *Presidentialism, Parliamentarism, and Democracy*, Cambridge University Press, p. 8-9.

system, the president's position is the highest award in the political process. Because the president is single, it becomes impossible to form a coalition.

The characteristics of power sharing in a parliamentary system provide incentives for legislators to cooperate, the end result is high party discipline. Conversely, the character of the separation of power from the presidential system results in low party discipline. The coalition in a multi-party presidential system still does not result in government stability because of its non-binding nature, while the multi-party parliamentary coalition produces a stable government because the coalition binds parties.

### **C. Electoral System**

The Electoral system is a method that regulates and allows citizens to elect people's representatives among themselves. In these elections citizens have the right to elect their deputy representatives who will sit in public positions. Election itself consists of two elements, namely:<sup>37</sup>

- a. Electoral Law are the rules of the game based on democratic principles that every election contestant must adhere to. There are two types of Electoral law, namely Plural Majority and Proportional Representation.
- b. Electoral Process is a method or rule for transferring voters' votes to seats in representative institutions. This Electoral process includes D'Hont, St. League, Electoral Threshold, and Parliamentary Threshold.

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<sup>37</sup> Badan Pengawas Pemilu Republik Indonesia, 2015, *Kajian system kepartaian, system pemilu dan system presidensiil*, Jakarta, Sekretariat Jendral Pengawas Pemilu Republik Indonesia, p. 17.

Elections must be conducted honest, fair and democratic. In order for elections to reach this level, some conditions or preconditions are needed to support them. The minimum requirements for an election are free and fair. To measure the quality of elections, several indicators are needed as benchmarks. The indicator is used to assess whether the electoral system is suitable for a country or not. These indicators are: accountability, representativeness, fairness, equality, locality, reliable, numerical. Electoral systems have a complex dimensions. Some of these dimensions includes:<sup>38</sup>

1. Balloting

Balloting is a procedure that must be followed by voters who have the right to vote. Balloting types are divided into two types, namely categorical (voters only choose one party or candidate) and ordinal (voters have more freedom and can determine preferences or order from the party or candidate they want).

2. District Magnitude

District magnitude is how many members of a representative institution will be elected in an electoral district. District magnitude may be divided into two, namely single member districts and plural member districts. District magnitude affects the level of party

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<sup>38</sup>Arend Lijphart, 1990, The Political Consequences of Electoral Laws, *The American Political Science Review*, June, Volume 84, Washington DC, p. 78.

competition over the seats. The greater the magnitude of a district, the lower the party competition for seats and vice versa.

3. Division of the areas of district

There are two important things that must be considered in determining district boundaries, namely the problem of representation and equality of voting power.

4. Electoral Formula

The formula for the election is about translating votes into seats. In general, the selection formula is divided into three, namely plurality formula, majority formula, and balanced representation formula.

5. Threshold

Threshold is the minimum level of support that a party must obtain to get representation. The minimum limit is usually manifested in the percentage of the election results.

6. The Seats

How to determine the candidates.

Those six elements mentioned above create the formation the electoral system. How the electoral system will be used and for what purpose or interest the electoral system must be based on these six elements. Thus, this element is an important part of the effort in achieving certain goals or interests. The choice of an electoral system in a country is not an easy job. Several criteria

are needed to choose an electoral system to be applied in a country. The criteria for choosing the electoral system are:

a. Democracy Elements

The element of democracy aims to create a represented legislature, making accessible and meaningful elections, providing opportunities for conciliation, facilitating the creation of a stable and efficient government, creating accountable governments, encouraging 'cross-cutting' of political parties, providing opportunities for opposition, and considering administrative costs and capacities.

b. Stability

Stability is needed to regulate the influence of voters with political parties, maintain the simplicity of the system with opportunities to innovate, provide short-term solutions with long-term stability, build an electoral system based on systems that have never been imprisoned by the historical dimension of the system, and the electoral system is not the solution to all political problem.

c. The Impact

The impact on the political system here is intended to consider the level of proportionality of relations between the people and elected representatives, the format of the cabinet to be formed, the form of party systems by the number of political parties,

government accountability by the consensus or confrontation in the legislature and government, internal political party structure, level of citizen participation and changes in appearance or face of democracy.

The electoral system in the world is divided into 4 (four) categories, namely the district system, proportional system, mixed system, and system outside the three main systems. In detail the electoral system family can be explained in the description below:

1. District system

In this system the territory of the country is divided into several electoral districts which are usually based on population. Each district is represented by one representative, except for the variant block vote and party block vote. Candidates who have the most votes will take all the votes they get. This system is divided into first past the post, alternative vote, two round system, block vote.

2. Proportional system

In this system the proportion of seats won by a political party in an electoral district will be proportional to the proportion of votes obtained by the party. In this system the term district magnitude is known. Variations of this system are proportional representation and single transferable vote. There is a proportional system there are a number of mechanisms used to determine the acquisition of

seats. Broadly speaking the sound calculation technique is divided into two, namely the quota technique and the divisor.<sup>39</sup>

The quota technique, also known as the largest remainder, has several variants including the Hare and Droop variants. A common feature of quota techniques is the number of irregular voters, depending on the number of voters. The divisor technique, also known as the highest average, appears related to weaknesses found in the quota technique. Some variants of the divisor technique are D'Hondt, Saint Lague.

### 3. Mixed system

The mixed electoral system is a combination of joint application of a district system with a proportional system within a country. This system includes parallel and mixed member proportional systems.

### 4. Electoral system outside the three main systems

This system is a mixture of district and proportional systems. Variants of this system are non-transferable votes, limited vote, and borda count.

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<sup>39</sup>Arend Lijphart, 1995, *Electoral System and Party Systems: A Study of Twenty-Seven Democracies 1945-1990*, Oxford University Press, New York, p. 153.