

CHAPTER I

INTRODUCTION

A. Background of Research

A state may be recognized as a democratic state if it has fulfilled the valid requirements to be the reality of a democratic state without any influence of another state system. It is correct that the primary requirement that shall be fulfilled by a state for becoming a democratic state is by exercising the election contestation either a general election or appointment in parliament or deliberation, it started from the highest level to the lowest level of election, it may be like the election of President, Governor, House of Representative (Dewan Perwakilan Rakyat / DPR), Senate (Dewan Perwakilan Daerah / DPD), Regent or Major, Sub-district (Camat), up to the lowest election, namely the election of Head of Village as the first and only government system that exists before the existence of a state.

Indonesia recognizes the Head of Village is in two-three types as it mentioned in law No. 6 Year 2014, the Head of Village may consist of Indigenous Head of Village (Kepala Desa Adat), Administrative Head of Village (Kelurahan), and Village Government (Kepala Desa Otonom) both of which are a continuation of the district or city government in which the election or process of democracy is based on national regulation, namely Law No. 6 Year 2014 concern on Village.¹

¹ Miftah Thoha, 2009, *Indonesian Government Bureaucracy in the Reform Era*, Second Printing, Jakarta: Kencana Prenada Media Group, p. 37

In other words, Indonesia is categorized as one of the states which extremely rich in culture, language, as well as customs. It has brought Indonesia into a condition of having two kinds of village, namely customary village, and administrative village. Regarding the structure and administration of Regional Government, after the amendment of the 1945 Constitution of the Republic of Indonesia, Village regulation or referred to by any other name in terms of governance refers to the provisions of Article 18 Paragraph 7 which confirms that "The structure and procedures for implementing Regional Government-regulated in law". This means that Article 18 Paragraph 7 of the 1945 Constitution of the Republic of Indonesia opens the possibility of a government structure within the Indonesian government system.

It mentions Law No. 6 Year 2014 Article 1 Paragraph 1, 2, 3, and 15. Paragraph 1: Village is a village and customary village or what is referred to by other names, hereinafter referred to as *Desa*, is a legal community unit that has territorial boundaries which are authorized to regulate and administer government affairs, the interests of the local community based on community initiative, rights of origin, and/or traditional rights. Recognized and respected in the government system of the Unitary State of the Republic of Indonesia.²

Paragraph 2: Village Administration is the implementation of government affairs and the interests of the local community in the government system of the Unitary State of the Republic of Indonesia. Paragraph 3: Village

² Erliyana, Anna, "Administrative Requirements and Violations in Pemilukada: Administrative, Law Review", *Pelita Harapan University Law Faculty*, Vol. III, No. 3 (March 3, 2009), p. 9

Government is the Village Head or what is referred to by any other name assisted by Village officials as an element of Village Government administrators. Paragraph 15: Regional Government is the Governor, Regent or Mayor and regional apparatuses as elements of the administering of the Regional Government.

Based on the 1945 Constitution of the Republic of Indonesia, Article 18 paragraph 1 and paragraph 5 states that: (1) The Unitary State of the Republic of Indonesia is divided into provincial areas and provincial areas are divided into regencies and cities, each of which provinces, regencies, and cities have regional governments, which are regulated by law, and in paragraph (5) states that: Regional governments carry out the widest possible autonomy, except for governmental affairs which are determined by law as the affairs of the central government.³

The democratic process that runs at the level of village government, especially the election of Head of Indigenous Village and other types of the village do not seem to have reaped the results that expected by the state in recent times due to the purity of customary values that actually shall be attached to the administration of indigenous village has been colored by various interventions from the government either regency or city to the extent that customary values and village purity are adopted as a pure customary government system. This is because the election of a village head is not only a process of fulfilling

³ Hanif Nurcholis, 2011, *Growth and Implementation of Village Government*, Jakarta: Erlangga, p. 72

democracy, but it also related to the dignity of a particular clan, ethnicity, or tribe which is under with the customary and cultural values of an area, so it is very sensitive and easily causes the dispute.

According to the Directory of Decisions of the Supreme Court of the Republic of Indonesia, there have been 1404 cases of Village Head Election disputes in recent years. The dispute of Election of the head of village is still happening as a frightening specter in Indonesia due to the government of Indonesia has not been found a great solution to create a better democracy.

Disputes in the election of the Head of Village, including those that occurred in Tual City since the past and in the last few years have hurt the spirit of democracy at the level of village government in the City of Tual, the problems that occur are caused by various reasons, including the process of the recommendation of deliberations to determine the candidate that has a straight lineage that did not match expectations, the mechanism of an election that was deemed inadequate, as well as the debate process to seek historical truth to carry potential candidates, which ended in the green table of the court.⁴

It has even been told as a historical fact that there was one village, namely Kaimear Village, which made a dark history regarding the dispute over the village head which lasted for approximately eight years, and there was also another village whose dispute did not end until village officials were positioned as a replacement for the village head. This interesting historical fact is what then

⁴ Adisasmita Rahardjo, 2011, *Regional Government Management*, Yogyakarta: Graha Ilmu, p. 84.

makes the issue of the election of the Indigenous village head in Tual interesting to be researched.

B. Statement of Problems

Based on the background above, the writer can formulate problems that will become a reference in the study, namely:

1. How is the mechanism of Head of Village Election in Indigenous Village at Tual City?
2. What are the problems of Head Village Election in Indigenous Village at Tual City?

C. Objectives of Research

Based on the problem of formulation above, the research does have some objectives, the research would focus more on the head of village election in Indigenous Village at Tual City by analyzing and identifying the problems and mechanism.

1. To identify problems of Head of Village Election in Indigenous Village at Tual City
2. To analyze the mechanism of Head of Village Election in Indigenous Village at Tual City

D. Benefit of Research

The research does have two kinds of benefit, which are:

1. Theoretical Aspects

Theoretically, all results of the research may provide prestigious benefits in the development of legal science, especially in the field of Constitutional Law that is related to the legal profession.

2. Practical Aspects

The research is expected certainly to provide good information that will give a prestigious recommendation to the local government in having a better policy on Head of Village Election in Indigenous Village at Tual City.