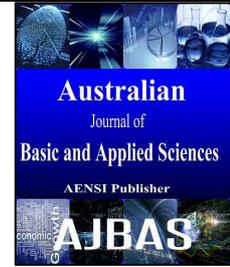




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### Democracy as the civil society based law system: Papuan People's Role Strengthen As The Civil Society

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#### ABSTRACT

Understanding of people's agreement to any public policy reflects the essence of law which is not common in our societies yet. Whereas the understanding like that forms the core of law in any democratic system. In other words, democracy is a system of law that limits the government's use of power based on people's agreement. The concept of governments refers to three branches such as legislative power, executive power and judicative power. Contrary the concept of the people refers to society who aware of their basic rights (*civil society*). This article aims at explaining democracy as a system of law that limits the use power by the government on the basis of the agreement people. Because of the law was the effective media to reach the social aim therefore, the law rules consist stay in law officer and the society. That way, the main was about the law was the law reformation that far away from "order" in that case to reach the matches between law and society because the development of law was not separate from the society. In that case, through reconstructive dialogue the society's participation will appear. Reconstructive dialogue was the translation to Habermas discourse ethics that use to viewed that Papuan society margin in many political and economical policy must be corrected by fixing the decision maker process that involve the Papuan society's agreement. This thing was termed the groups empowerment that organized as a cooperation network to fight or the society's rights must reflected in many policy, the implementation involved society, and the result must use for the Papuan society's prosperity.

#### INTRODUCTION

Democracy is a law system that form the border to the government's authorization which is not through the administration system that balancing three branches or institutions of the country through mechanism check and balances but also through the civil society who become aware about their rights involving. Awareness of the civil rights define that border forming of people's right by the country must agreed before by the society as the civil society. Also public policy was not formed by the government alone but must involve and get an agreement from the society. Thus democracy philosophy distinct that society agreement is the law base, legitimation principal, and law rationality. Democracy as law system conclude the society's desire as the point of authorization implementation. In other words the ocietyagreement become the principal to evaluate validity of government authorization. Law base definition and legitimation principal which set up upon society agreement is the rational claim about obtained law in modern society.

In connection with the importance of law in society, Efa Laela Fakhriah distinct that law is the effective tools to reach the social purpose because the law rule consist in law officer and society. Whereas in law reformation there are many law regulation made "by order" which caused unsuitable between law and the society while the law development is unseparated from the society. In many case society haven't understand

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and received the rights as society. According to Herdiansyah Hamzah, the government involved such as guaranteed the rights to unite is still low. That caused so many violation of laborer united rights. Those statements showed that law reformation has not produce a law regulation fits with Indonesian society condition including the civil society awareness.

The problem is that the awareness of society rights has not spread evenly in Indonesian society. Half of the misunderstanding about society rights were caused by the difference of education, economic, and political importance. Half more was come from the society unwilling to adopt the new point of view with value from outside and different from their habits. Papua societies are still in the transition phase from traditional to democracy life. In that kind of situation, creative energy to hasten the Papua societies ability to adopt by and adapt the democracy life are often crash with the political and economic importance of foreign country and society which cause the democracy that started to growing were being so weak and abortive. While Papua society are keep trying to pursue the fact of having fallen behind, their liberal burdened by any kind of political and economical pressure in their life zone with many policy obtained in the area without considering their urge. This situation was consider as unsafe, full of hypocrite and ironic in democracy literacy. The unsafe of democracy literacy because of the political and economical importance competition between the country and private institution caused insecurities to the socialization of democracy as the law system which caused by country and private business that is not focused on democracy empowerment through the quality education system. This kind of situation easy to caused suspicious and not trust to the government because everything idealized as democracy will turn into a lip service an unreal. Political and economical leadership was define as source of the hypocrite then political model minimized in society. The ironic thing is that Papua society increase their life quality from stupidity and poverty are the most embarrassing contrast because every day they have seen their nature assets was taken to the other prosperously without being asked.

This fact donates the low of Papua society political knowledge as civil society. Papua as it can said is still far from many statements which has been informed before for many reason. First, separate stigmas of Papua from NKRI are dominating Public sphere of Papua which caused fear bigger than the great issue about Papua society strengthen role. Second, the multi ethnic reality from Papua society which got worn out by outer ethnic group who make the situation was hard to get an agreement of the importance of Papua society strengthen role as a citizen and national. Third, the low of standard and quality in Papua is one of the factors which hold the under-developed of Papua society to start discussing about Papua as a part of the society and citizen in the law country such NKRI.

This wrote aim is to explain democracy as law system defined by the knowledge of society's rights as the law base, legitimate principal, and rational law claim. By the theory of civil society, the understanding of democracy as law system based on society agreement will make the Papua society conditionable to evaluate, empowerment developing program, and step by step improving the ability to understand and life according to the democracy as law system based on society agreement. Method that can be used to democracy life empowerment in Papua is Reconstructive Dialog. Reconstructive dialog is the empowerment method of democracy life through critical and history awareness and also many policies to sort out the good to be kept and increased and evaluate the wrong to be avoided. Critical awareness about rights is an education process which involved many civil groups which organized to do it for free and together with the government and many economical group without focused on political and economical power.

### ***Society As Civil Society:***

Society awareness as citizen is a real substance of civil society which the society knows the rights as an individual family member, the group live together with other groups formed a society is different from government organization and economical/business organization.

#### ***A. Civil Society Definition:***

Society awareness as civil society is the main condition of their involving in political as democracy system implementation which is, a government system comes from the society, implement by the society to develop people's importance.

Civil society definition was appear in classic Greek political system, polis and adapted in European political system through history development Middle era, Renesan, and modern until contemporary. In Classical Greek way of thinking, polis was the space of public interaction in discussing about citizen importance and political decision making which is important for all the society. Plato has talking about this in his labor "Republic" and "Law". Aristoteles has also talking about society role as citizen in his labor named "Politica". In politica, Aristoteles has showed clearly a political building of a law country when the society is the author and that authority was used to developing society problems. The political philosopher in middle era was talking about political building from a country inspired by Christian revelation which is a church-country St. Agustinus discussing about ideal country in Heaven's life and eternal government that give a happy fulfill as human's goal. That society was called Heavenly citizen and church-country is the imperfect view (which will pursue its fulfill)

in world. The third kind of citizen is the secular citizen who will be saved (reach the goal) if unite their self with church-country. St. T. Aquinas was talking about a strong law base for good country to realized the aim, happiness. Aquinas has a different opinion from his ancestor St. Agustine. Aquinas was talking about human society that aimed to a plenary society must based on human law (*lexhumana*) which reflected law values that aimed valid rationally in plenary society *lexnaturalis*. The society management to reach the goal must based on fitted media then the positive law which reflect the human rights.

N. Machiavelli thought was the political theory thought peak in transition phase, from middle-era to modern-era (Modern and Postmodernism). *The Prince and The Discourse on Livy* were two important labor because viewing the contradiction between absolute power and cared to others freedom. The question is, was this mean that Machiavelli was not consistin his two labor? First thing is that Machiavelli want to tell us that law source is power. That means, to make the power realized the authentic then it should be an absolute power implementation.

The result is that law as device to make the power authentic must absolute. The absolute of law was sourced to an absolute power then it needs an authority to be a source who implemented law in his eagerness. Second of it, the rationality in society is become one condition to understand, accepting and implementing the authority. Machiavelli was not weakening his thought about his contrary authority but implanting his law awareness to the society as citizen to accept the authority as main terms to reach the citizen's goal.

Machiavelli's thought was generated the social contact theory since T. Hobbes, J. Locke, and J. J. Rousseau. Social contact theory thinker was emphasized the civitas as political awareness development to give the independency to an organization rule upon each individual absolutely and through that absolute law practical the author guaranteed individual peace to do and reach their goals. *Civitas* are the realization of civil society concept. Which the political life stage was exceed the state of nature. Hobbes saw the citizen approval to live in a country was make a new understanding about individual of micro and macro level. As macro subject, country realized the aim as law in pronunciation and habits. *Leviathan* the labor of *Opus Magnum T.* Hobbes about law country centered to author's goal as an absolute law. Locke has developed social contact theory about civitas as civil society who shaped by free will of individual to live in a democracy system which is a government authority burdened by law as individual free will's reflection as civil society. Locke is the pioneer of social contract theory according to liberalism law paradigm. In that liberal law paradigm, thought about United States of America democracy system was based on Locke's thought above. Rosseau has developed the contractarian law state which emphasized social aspect of individual independency in law paradigm which republican oriented as practice in many European countries. Whether it's liberally law paradigm or republican is the foundation of democracy system or law state in representative system as applied in many modern countries this days. The representative of democracy system was political thought about civitas as civil society in secular law country. Hobbes thought of social contract was the law country prototype which happened and developed by political philosopher in modern days.

Kant has developed political philosophy inspired by social contract theory, especially Locke thought about individual independence base of *civitas* formed. *Civitas* concept is the reflection of free will individual as subject or agents who choose and agree freely to live In society or country. Those free will as *a priory* was conclude according to universal ratio that through law country who reflected the balancing of each individual desire. Therefore, a country as micro subject exceed individual as micro subject in formed general importance which valid to anyone. Country power through law upon individual was valid because the country has general importance include individual importance. Through Locke and Kant, law paradigm of liberal used to define a democracy system or law country as individual free will as citizen.

Hegel evaluated social contract theory of Locke and Kant about subject independency as speculative statement which formed individual independence abstract in universal ratio without noticing specific aspects which make ethical life together in society. That way, Hegel's thought about individual role in this social world must get an attention in order to define law paradigm, democracy system, or law country. Close to Rousseau's social contract theory, Hegel said that social ethics or ethical life of society as main principal to build democracy system or law country. Inspired by Rousseau, Hegel corrected subjective independence in Lockean and Kantian country philosophy to become intersubjective independency. Therefore, Hegel has developed republican law paradigm in building democracy system or law country.

Started with Hegel, the understanding about *civitas* as secular law country was formed from individual as family member, civil society, and country as power system based on laws.

Aristoteles's concept about country as social institution was formed of family united in community and become society and then those communities become inspiring country on theory development of social contract in Hegel political philosophy.

A family to Hegel is the smallest unit of the country because it was formed by individuals bond to family relationship under the leadership of family's head. Individual life in a country has marked private sector because individual values was protected in a family. The living way of somebody was influenced by family's value in private room.

Society is an individual interaction room in general area, economical and political. This interaction system is not able to base on values of jus one family or community but must based on laws. According to Hegel, the law that valid and bond everybody as civil society must the law reflected universal value which is ethical life value (*Sittlichkeit*) that accepted and valid in society. That kind of law has become prerogative rights of a country to arrange social life consist of individual as member of society and communities as society. So, to Hegel, a civil society is the citizen who interacted in public space in order to fulfill economical needs as individual, family member and member of a community.

A civil society definition must be understood in the early of modernism as an important social element in law country but not in the same position as country. Hegel putted the country above society but as ethical life manifestation and because of that reason it become source and implementer of main law and the only for everybody. In law paradigm of liberal and republican, a civil society concept was sope as individual free will manifestation in representative democracy system. By representative democracy system, legislative, executive, and judicative institution has create individual free will as civil society through checks and balances mechanism among those country institution. In that way, liberal or republican law paradigm has practiced democracy representative system in a law country that has not really reflected democracy activity as power from, by, and for the society. In other words, to revise a democracy system to law country creation which put a civil society importance ahead, then the first thing to do is redefinition of civil society definition.

### **B. Papuan society understanding of civil society:**

Indonesian society including Papua is so plural because according to Furnivall as Suparlan said, plural society former colonialism was has no united desire. But, according to Alfian Muthalib, even though the society was separated ut their languages was united in national system based on ideology, law, language, economical, and base law.

Papuan society has a different history with other area in Indonesia. That makes the civil society movement in Papua has just started in the early of independence day of Indonesia Republic through an education done by Protestant and catholic church. Through boarding school manage by zending (Protestant) an mission (catholic) borned an awareness about rights an balancing even though still in embrional form which by Bernada Meteray in her book "Nasionalisme Ganda Orang Papua" was called "pesemaian" of awareness of education and freedom grows and develops together.

Awareness development of education and independence are together in this time process has turned into double awareness which become Papua characteristic and Indonesian nationalism awareness. After fifty years of Papua integration into NKRI on 2013, the strains between characteristic of Papua and nationalism of Indonesian has strengthen by society movement divided into groups of organization that wants Papua to be free as a country and groups who support Papua united in NKRI. Meteray's research about Papua double nationalism has giving positive contribution to the understanding of problems happens in Papua which forgotten and government effort to increase Papua integration in NKRI in the other side. In Wanaha examination said that militarism and human rights violation happens in Papua are bond to political status of Papua. Papuans opinion that political status of Papua was the source of the entire militarism problems bond to multinational Corporation.

First, Papua society's experience that have been forgotten in many political policy upward to Papua integration to NKRI between the government of Dutch and government of Indonesia in many negotiations caused trauma in a long time because after Papua integration to NKRI there is no mutation which means Papuans from rural area come into the middle of political processes happened in NKRI. This experience has make Papuan still feel different Papua identity from other people in this country. In this situation, an effort to invest nationalism awareness has become longer in time, expensive in cost, heavy as political responsibility.

Second, Indonesian nationalism effort by NKRI to Papuan society as civil society needs comprehensive planning, integration programs implementation transparency, honest, and accountable.

1. A comprehensive planning was mean as strategic steps to the future must reflect a historical experience of Papuan society since colonization, integration beginning, and present situation. Papuan awareness development historical which grow through an education must be taken as a part of integration awareness in NKRI. In this relationship, the involving of traditional, religion, and society figures is one of the main term to find easier formulation to the acceptance of integration programs or Indonesian nationalism education by the government will run better.

Entering the reformation year on 1998, the difference started happened in Papua. Reformation has produce democracy and centralized political in regency. Political authority transfer from central government to regency government was expected to bring the better life for society in regency. Special for Papua, beside autonomy as well as other region, was get a special autonomy. Based on Otsus law No. 21/2001, the native Papua must get a special concern. Special autonomy has instructed the development in Papua expected to make a better life and make the native Papuan society useful. This special autonomy's term was not just a popular culture but also affirmative which mean supportive to native. This has began to realized in special autonomy to Papua province which basic is the awarding of wider authority to Province and Papua to arrange and taking care of their self in

NKRI. This authority means a great responsibility to province and Papuan society to organized the government administration and arrange the used of nature assets in Papua Province to the prosperity of Indonesian appropriate to the law. The transparency of planning and implementation of integration programs or Indonesian nationalism was the key to society trust of the importance of Papua in Bhineka Tunggal Ika bond for real and not just a lip service. This transparency means an opportunity given to the society to get involved in main role of integration programs implementation of Indonesian nationalism that will develop a sense of belonging to NKRI.

2. Honesty was the important human value to the success of integration programs or Indonesian nationalism. Honesty defined as truth then the political communication was conditioned a treatment to the partner as subject and autonomy person so the public policy contents will easily acceptable because it's right.

3. Accountability today has accepted as *conditio qua non* in the implementation of good governance then the relationship between civil society and public authority defined by society's right relationship to organized management by the representative of public authority. The collusion, corruption, and nepotism lusterhas scraped the society's trust that caused apathies to respond positively the integration programs of the country.

Society organization network in all over Papua area has showed the multicultural awareness that should be a modal to be used in order to strengthen the civil society in Papua in increasing the national integration. Papua as complex society that consist of hundreds culture and languages was abundant by the entering of foreign society with vary background has make Papua the development place of potential civil society to thought about nationalism and democracy law country. That way, Meteray's has wrote about double nationalism in Papua was not a threat to integration or Indonesian nationalism but the knot of intellectual labor that opened to objective useful to implement the civil society in Papua, and process nationalism of Indonesia strengthen through the comprehensive planning, transparency, honesty, and accountable.

The authority that give to Papua means authority to use social and culture potential and economic of Papua society, including role given to native Papuan through vice of culture, religion and woman. Role that has been done is to follow up the region policy formulation, defined the development strategy by commit to concern about balancing and compound of Papua society life.

Even though the special autonomy has ongoing, there are still many criticized from society that until this far special autonomy implementation is still weak and if we look from the reality that local community in Papua has not changed too many and has not accept the straight benefit from Otsua implementation for 5 years. Also, the Papuan society life was not getting better in time. There is no policy way and the clear of special autonomy implementation and centralized and less transparency in financial.

Anthonius Aryobaba said that since it was implemented on January, 1<sup>st</sup> 2002 until 2011, speial autonomy law has no showed the real progress. There are many cases happened. Even according to LIPI, the special autonomy implementation from 2001 until 2004 was not caused many significant differences in Papuan society. The spirit of Papua development by special autonomy was not maximal, the journey to create and socialized special autonomy law was not compare to the result achieved and felt by society. According to Bambang Sugiono said that the governor and its vice election on 2006 use a weak basic law and different from condition even it finally received by society.

While Melkias Hetharia distinct that special autonomy to Province of Papua was meant to implement justice, the maintenance of law supremacy, human rights achievement, economical development acceleration, and prosperosity of other Papuan society outside Papua.

That way, Anthonius Aryobaba and Melkias Hetharia thought about special autonomy in Papua was the implementation of the democracy in Papua but the support to society has not appeared. Was this because of the less understanding by the people about democracy as citizen or government?

### C. *New Concept About Civil Society:*

Democracy as political system that bond the government authority was develop from social contract theory philosopher in two democracy systems, liberal and republican and produce two form of law country that practice the representative principal through three nation organization. Felt that representative democracy practicalin a law country liberal and republican system has showed the meaning and value limitedness as power from, by and to the society. This reality push effort to redefine democracy definition which possible to civil society as source, implementer, and law country law aim.

#### 1. *John Rawls:*

John Rawls was the contemporary political philosophy brain ware of United States of America that talked about political system as liberal law country management. His thought about civil society influenced by his thought about public space dynamics according to philosophy paradigm of Kantian, which is, the use of public reason. Public reason is the concept about individual free will based on logic and accepted by anybody. According to his mind, in a manageable democracy system in a well-ordered society, the important political decision reflected and based on rationally accepted by society without getting involved in political process that influenced by pluralism in society. If social system was managed rationally then the society functions in social

system will going well as the aim. In his opinion, political authority in three authorization organization of the country will function well according to law to get into reality the public policy according to public ratio. Especially, the law implementation was the prerogative rights for the judges to make fair law decision; independently; and fit to every people. In this perspective, the civil society was the democracy life element that expected to be functioned well because the political system will run fairly. The infirmity of *Rawls* thought was the law society's situation that haven't reached the well-ordered society like United States of America that thing will be difficult to imagined.

## 2. *N. Luhmann:*

N. Luhmann was one of the famous sociology philosophers of Germany law-political. He emphasize the rationalization of political organization so it can be functioned maximally to support the democracy system like a management system of law country that efficient and effective. Especially in administration of justice, judge independency must keep well so the decision was totally free from public intervention. That will caused representative democracy system continued as a closed system between one organization to the other. This system was called operative closure because in that system, democracy process has reached a good quality because the objectivity of judge decision was kept to continue according to system mechanism valid and not because of the political goal. Closed law mechanism will produce a mechanistically law practice because only judge made the decision. Judge's authority in deciding the case was auto poetic because that decision was made through jury's prudential mechanism that only known by judge and not influenced by other power.

Like neo-Kantian and others, Luhmann reduce civil society citizen's role into representative democracy system that continued without the citizen involving directly. Ratio public principal was take as the support to representative democracy system because the democracy system performance continue as the representative of general aim in thought and organization decision of country organization.

## 3. *J. Habermas:*

J. Habermas evaluate that political practice in representative democracy system was the democracy practices that exceed the direct democracy system in polis country concept. This can be accepted because it is no longer in culture pluralism condition in modern society, direct democracy was impossible to implement. However, the authority principal from, by and for the society in every democracy system must be taking care. In other words, the elimination of civil society role by any excuse was not able to do from direct involving in public space and through statement that gathers the collective aim must be the political decision's terms that have the democracy character.

Habermas want to tell that in representative democracy system which is based on liberal law paradigm (a La Locke and Kant) or based on republican law paradigm (a La Rousseau and Hegel) must exceed to make the democracy system that have the authority from, by, and for society. In other words, a democracy system that considers the civil society role was the democracy system that expected. That democracy system was called as a deliberative democracy system. In that deliberative democracy system, the understanding about citizen as an active civil society that will participate in political process must supported to the level that possible to government implementation as an authority from, by, and for the society. In this case, Habermas talked about the importance of public space and social movement.

### a. *Public Space:*

Habermas was talked about public space as a development or transformation of private room to individual relationship network, family, and community in finding and forming together understanding about what better to all especially to the individual importance, family and community will face another and caused conflict that must be hold.

Public space first is not an adverb of time but the condition of together aim reaches. Habermas said that public space as social network among organization that struggle the rights of general as society then the bond in those relationship will not based on political authority ad money but language, together understanding, and solidarity.

### b. *Discourse:*

Discourse was the public space manifestation in public opinion formation that participated by many sides or groups in society. Discourse requires an opened, freedom, similarity that formed public opinion independently of certain group domination.

Public discourse was important because it permitted every people from many elements to participate. It was important as civil society as civil society to participate directly the democracy processes that will consider the public decision maker. Through public decision, the discourse in public space has put the central role of civil society to advocacy the authority the public importance by served the cases bond to public importance as public policy base maker. Representative function of three authority organization of country now has increasing public

policy through civil society involved was like the fourth organization in democracy system or law implementation that makes democracy as authority from by, and for the society can be stand and perfected.

Technology information development was possible to make the civil society in public space discourse that will get better, more efficient, and effective. Mass media use as formation of public will medium and also become the political process control medium will create the update a political transformation of representative democracy system become deliberative that suitable with the law country situation to pluralism of modern society. The use of mass media directly beside influence to public policy in political and economical area, mass media helps mobilization and solidarity among the citizen to do social movement.

### **c. Social movement:**

Social movement was the realization of civil society solidarity through social organization networks to form together wish in proposal of development program to government or others the together will to refuse many policy of government or economical that harmed the society.

Social movement has two shapes which are, offensive social movement and defensive as civil society solidarity pronouncement on local, national or international.

Social offensive movement was done by civil society in formed their wishes through proposal applied to government to implemented as the economical source of government or cooperation among society and government or organization of economical.

Defensive social movement was meant to refuse a government program that is not suitable to civil society importance. That rejection was done through policy revision or directly through civil disobedience.

Those two social movement was generally implemented on local level as society movement in handling the nature disaster, social conflict, and political conflict or the nature break down by the wild passionate and so all. On national level the social movement implementation was announce as across culture and nation solidarity to handle food defense, environment defense, and boundary cross defense by neighbor country. On international level, social movement take the cooperation among world society networks in Green Movement, Red Cross International, and humanitarian help to ethnical conflict, nature disaster, and others.

## **D. Civil Society authentic, Aims, and Weakness:**

### **1. Authentic**

Habermas was talked about *civil society* as an organized society from autonomic individual who able to interact one to another independently in a public space and together with the government and economical institution was share to another about the solving of one problem through a good communication among all social elements in life. Habermas concept about public space was not only showing a place between family and country where individuals was able to interact one to another freely to a liberal political condition that possible to let the society argument about law that obtained or law that made with the government and economical institution as a partner. To Habermas, civil society and public space was two definitions that complete each other in understanding a democratic law. As an organized society, civil society formed in that public space and become as same as the government and economical institution as law creator partner through a discussion. Public space was the main term that able the law formed process based to general will through a general discussion. Relationship between civil society and public space was the main substance of deliberative democracy that centered to representative system in parliament not includes the society in law making process. In deliberative democracy, the society general will formation was based to two democracy principal which are justice and solidarity that in western system was implemented unfair in two democracy system liberal and republican. Deliberative democracy was the synthetic of democracy theory based on justice theory according to Kant law philosophy and democracy based on solidarity principal on Hegel law theory and also Marx opinion about class awareness. In deliberative democracy, justice was known as other side of solidarity that way the same treatment to individual according to individual concept about rights in liberal democracy and upon solidarity philosophy that practiced according to a social ethos of a society in republican democracy a la Hegel. Justice and solidarity principal was declared a social awareness that appreciate individual independence and social independence therefore awareness idea in deliberative democracy was social and answered class awareness in Marx democracy theory.

### **2. The Aim of Civil Society:**

The main aim of civil society was society participation in decision making relate to general importance. Then from the deliberative democracy, civil society was the autonomy principal realization of society in the relationship with law norm must agreed freely based to a rational arguments. Political autonomy principal in liberal democracy practice was representative in legislative, government, and law maintenance. In new paradigm of deliberative democracy, autonomic principal was not just representative by three branches in checks and balances practice but objectively announcement through organizations of society that organized in a society network with civil society awareness directly through media to control the government and economical

that fitted with general importance. Although those three government branches formed valid through election but to implement the society importance in their sector. However, the draft also far from the reality in articulation then it takes a monitoring system that involve the society directly to avoid domination of a branch of the country upon others and use in wrong way. In liberal democracy system, control to those three branches work was done through authority separation that guaranteed political autonomy society implementation maximally in realized general prosperity. The problem was how to control those three government branches in liberal democracy system formed to principal and rights of an individual meanwhile deliberative system must involve the social rights in effort to implement the general importance through together discussion directly. Because that kind of system was based on individual independence then it was oriented on economical benefit as the freedom and rights of individual got pressure more than freedom and rights. Explicitly, the justice principal was limited on behavior equal to everybody as individual and minimum of fair behavior was consider in relationship with social rights needs in solidarity implementation with the unlucky from the society. Republican democracy was based on social rights although limitedly understood to social ethos of society. Therefore, solidarity as togetherness principal without even culture limitation was not able to run by the liberal democracy or republican to produce law norm that will accepted to all groups in modern and complex society. Freedom orientation and individual rights also a social ethos culturally was strong enough to reflected subjective awareness. Universal law norm must orient on general importance as a society member that makes the foundation must be a justice and solidarity. Only based on those two principal, the universal law norm was able to produce in pluralistic society. Because the democracy deliberative was termed the civil society to coordinate the together act through public space to formed public opinion to law norm formation based on an agreement of all sides. So the civil society task was form the collective awareness through an agreement that produce through a different perspective change among all of groups involved, whether it was a society, political authority, or economic agent. Together awareness that have been agreed was valid claims which build the law norm. If the civil society was involved in cooperation argumentative together with the government and economical agent the universal law was able to realize. Civil society task was to influence the government and economical agent and it can only implemented if the civil society succeeds in catch more society organization in fighting for universal law in making a deal with the government and economical agent.

A strategy to get more members in organized groups of society is the empowerment to the forgotten so they will able to see their rights by getting involved in society's problems. To implement the task into empowerment process the mass media war has become important. The mass media was the media to tell about society's importance so the decision made will able to support the society. Mass media and civil society must complete in deliberative democracy struggle then an effort to institutionalize the civil society as government and economic partner in public space as decision maker. Admit the civil society's role was equal to accept the institutionalize of the independence to aspirate and organize as the "fourth" branch of the government that complete those three branches that conventionally admitted in liberal democracy system. The democratic checks and balances mechanisms to the government authority implementation was directly done by the civil society through the mass media use. Through mass media, civil society able to translate collective awareness that produce through public space discussion as an agreement rationally that motivate the legislation process that happened in political institution.

### **3. *Civil Society infirmity:***

Habermas theory of civil society was not a new at all. As the philosophy task to reflected the society problems rationally, he was tried to continue the rationality served by the philosopher before by keeping the rational situation and show and leave the infirmity in before argument. However Habermas thought about civil society concept since the 17<sup>th</sup> centuries until now was less infirmity. The noted thing as difference between countries in philosopher before was not able to separate. Those two concepts was not make the Habermas thought about civil society and the relationship with the country become sharp, clear and admitted. He still keep the understanding about civil society concept like any other philosopher in that age, that civil society concept was unable to released from the thought that humans are free as individual and those individuality was able to get through socialized process then the freedom was only understood by accepting social values. Those philosopher before has talked about the relationship between freedom and human sociality but those relationship was emphasize that caused the broke in an assumption that reduce sociality on individual independence vice versa. Those sociality reductions on individual independence produce an abstract and formalistic law so the political authority reduced in hands of the author or country by an absolute authority upon individuals. Otherwise, the individual independence on sociality has break inter subjective life that makes the private responsibility was not developed in political process and law formation. Country in philosopher opinion before has an absolute authority of law even though the main point was individual's rights. The thought's strengths of Habermas were on distinguished between freedom of individual, civil society, and the country. Justice as the same manner principal to everybody was completed by the solidarity in law formation efforts that fulfill the validity principal with independence or consensus agreement. In law consensus by the meeting of civil society

and country process as a co-original partner as law legislator of law through public space. This Habermas opinion was the characteristic of democracy thought on 20<sup>th</sup> centuries when the modern society formed from vary characteristics in many aspects. In universal political implementation effort according to Habermas opinion in social context recently, discourse was offer as a media that suitable the most. In recently political arrangement, deliberative democracy paradigm was the relationship among the society in civil society, the country, and economical. To run the organized society, the law was a fair media to guarantee the independence and social rights when the maing process involved many sides for an agreement so the implementation of law will have a legitimacy to force. This Habermas idea was seems ideal as an offer to taking care of normative law claim because the consensus in plural society was not easy as a concept. Then Habermas must revise the statement by the philosopher before, the direct society role through an argument. There was a statement that discourse theory difficulty in civil society of Habermas was an imagination of deliberative democracy that is not good to the reality to happen in public space. In public space of modern society, the equality problem was obstacle by many factors. Asymmetrical relationship was the reality that becomes a big question to deliberative democracy: how to equal the difference of gender, values of culture, communication skills, economical, and education in argumentative communication. Meanwhile, according to Budiawan, if the democracy needs to maximal then there should be a political participation of civil society political in wider understanding.

### E. Conclusion:

Because of the law was the effective media to reach the social aim therefore, the law rules consist stay in law officer and the society. That way, the main was about the law was the law reformation that far away from "order" in that case to reach the matches between law and society because the development of law was not separate from the society. In that case, through reconstructive dialogue the society's participation will appear. Reconstructive dialogue was the translation to Habermas discourse ethics that use to viewed that Papuan society margin in many political and economical policy must be corrected by fixing the decision maker process that involve the Papuan society's agreement. This thing was termed the groups empowerment that organized as a cooperation network to fight or the society's rights must reflected in many policy, the implementation involved society, and the result must use for the Papuan society's prosperity.

Democracy life that packed as a rational law system was one of the civil society's point which are, independence, respect, and solidarity. Independence is the rights for everybody as a civil society. Respect was the terms of morality to act equal to everybodys as it needs. Solidarity was the sociality that reflect social human authentic to always working together to finished problems especially the support to the poor as responsibility to universal humanity value.

The asymmetry of reconstructive dialogue was seen to special autonomy implementation in Papua. Although the democracy space has opened wide, but the unsuccessful of special autonomy for 12 years still not answer the native Papuan need. Even it caused more problems because it was not make a significant change in Papua society.

Many problems still happened such as education, healthy, and economic also the rights humiliation still continued then strengthen to Papuan society as an Indonesian citizen still become the problems. This condition showed that law was no longer the effective to reach the goal to prospered the Papuan society.

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