

Noken In Positive Legal Framework in The 2020 Election Of Regional Heads (Pilkada) In Indonesia

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Abstract. Noken is a special system applied in Papua in general elections, including presidential elections, House of Representatives (DPR), Regional House of Representatives (DPRD), Regional Representative Council and Regional Head Elections to reach voters in difficult demographic areas. This research was conducted to analyze the noken system based on the constitution and within the framework of positive laws in the 2020 Regional Head Election in Indonesia. This normative juridical research was done in the form of library research to analyze research materials that included laws and regulations, books and the results of prior research. Based on the analysis, the issuance of the Constitutional Court decision number 47-81 / PHPU-A-VII / 2009 concerning the Noken System Election in Papua was taken in regard to the respects toward local cultural values among Papuan community who have been familiar with "community consent" system or acclamation. The noken election system symbolizes the highest level of fair deliberation to make decisions within in tribal system. The system is also applied because geographic constraints make election logistics distribution quite challenging. In addition, most of community members did not have adequate understanding about election. Furthermore, socio-cultural decisions are rather absolute and officially declared by chiefs (big man).

Keywords: Noken; General Election; Positive Law; Socio-Cultural

1 Introduction

Indonesian general elections held every five years and based on direct, general, free, secret, honest and fair principles is a manifestation of the sovereignty of the Indonesian people. This general election is divided into two main branches, namely general elections that apply to the central government in a broader sense, the President, House of Representative (*Dewan Perwakilan Rakyat/DPR*), Regional House of Representative (*Dewan Perwakilan Rakyat Daerah/DPRD*) and Regional Representative Council (*Dewan Perwakilan Daerah/DPD*), and general elections for regional government, ranging from heads at the provincial, regency to city levels. In practice, general elections in Indonesia are carried out by referring to specific rules and decisions made by the General Election Commission (*Komisi Pemilihan Umum/KPU*).

A high-quality democratic election with the five principles mentioned is the right of every citizen. The rights have been guaranteed by laws and international conventions on civil and political rights. That is, every election must implement one person, one vote, as a channel of political aspiration both for voting and being elected. However, in Indonesia, although principally every citizen must come to the polling station (*Tempat Pemungutan Suara/TPS*) according to his population data (Identity Card/KTP) to cast his/her vote directly, this is not

always the case. In a province called Papua, general elections and regional head elections are carried out with an electoral system known as *Noken*.

The use of the *Noken* system is protected and guaranteed by the constitution, as stated in Article 18B, paragraph (2), of the 1945 Constitution that the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are still alive and following the development of society and the principles of the Republic of Indonesia regulated in law [1]. Since Law Number 7 of 2017 does not explain concretely how the general election is carried out with *Noken*, the General Election Commission of the Republic of Indonesia issued KPU RI Decree Number: 810/PPL.02.6-Kpt/06/KPU/IV/2019 dated April 5, 2019, concerning Guidelines for the Implementation of Voting with the *Noken* System in Papua Province in the 2019 General Election. Based on this provision, the *Noken* System can be applied only to some areas, namely Yahukimo Regency, Jayawijaya Regency, Nduga Regency, Central Mamberamo Regency, Lanny Jaya Regency, Tolikara Regency, Puncak Jaya Regency, Puncak Regency, Paniai Regency, Intan Jaya Regency, Deiyai Regency and Dogiyai Regency.

Noken system recognized by the Constitutional Court as a legal procedure in holding elections makes us rethink the social structure in society that must be responded to by the law. This is an object that is often analysed with the legal sociology and legal anthropology's perspectives. With this approach, the constitution as the highest legal norm is contextualized in various social fields. This recognition also reflects the commitment to building democracy in a pluralistic country like Indonesia. Democracy always places humans as the owner of sovereignty, which has become known as the principle of people's sovereignty [1].

2 Research Methods

This research applied the normative juridical research method based on rules and literature and a study of the Constitutional Court Decision in the 2020 General Election (Pilkada). The normative juridical research method is based on the main law by examining theories, concepts, legal principles, and laws. Therefore, this is a qualitative study using the deductive reasoning method or a way of reasoning by drawing a conclusion based on general premises that have been proven

3 Results and Discussion

There are two types of *noken* system, namely *bigman noken* and *hanging noken*. *Bigman noken* means that all votes are submitted or represented to the traditional leader. This type of *noken* is implemented by the people of Pegunungan Tengah and locally called *menagawan*, which means "authoritative person". An authoritative person achieves the status as a leader, not because of inheritance. This is a status that is achieved based on behaviour, actions, and efforts to win a competition from other competitors. In Papua, a leader in a village is not necessarily considered a leader in another village.

In the *bigman noken*, citizens leave entirely the choice to the leader as an expression of obedience. However, the *noken* system is often multiply interpreted by the community: some people understand that the *noken* system is only a change in the object, namely the ballot box replaced with the *noken* hung during the election or *hanging noken*. Other people think that

the *noken* system contains philosophical meanings, namely opening, filling and binding. Nevertheless, the first election using the *noken* system was held in 2004 in 16 regencies in Papua Province. Here are several reasons for holding the *noken*-based election:

The first is the geographical reason. The distance to distribute election logistics and the terrain level in the outlying places of Papua is considered very challenging to access quickly. The mountainous and full of ravines topography and limited transportation in Papua (often using small planes are the only feasible means to reach a region) may result in postponing the national schedule. The second is human resources: some people in mountainous areas have not been touched by education and still live communally and traditionally. They do not understand the aims and objectives, and benefits of the election, so they need to be guided and directed through a process of collective deliberation in decision-making. Finally, there is also a socio-cultural reason.

In socio-cultural terms, people in the outlying places of Papua adhere to a traditional political system known as *bigman*. Every decision in the community is carried out collectively. For example, when something is to be carried out and related to social relations, the community will gather and deliberate. Every idea in the deliberation will then be accumulated into an absolute decision and officially declared by the head (*bigman*) of their tribe. At that time, those three factors were considered very relevant to be adopted into regulation to make the *Noken* election valid. The three factors above had a very positive contribution to the issuance of the MK decision number 47-81/PHPU-A-VII/2009 concerning the Election of the *Noken* System in Papua.

Regarding indigenous peoples, they are more likely to delegate their votes to their traditional leaders and community leaders. If this tendency is deemed insufficient with existing customary institutions, it will be added with other parties from the community determined by deliberation. Since deliberation is at the core of democracy for indigenous peoples, delegations must be accountable for the mandate they receive from the community. If the mandate given is only to take care of certain matters, what will apply is the imperative mandate.

There is a fundamental difference between the democratic model in indigenous peoples or eastern societies in general and the western democracy model or modern democracy. The development of modern democracy in Europe, which is in line with the spirit of individualism, prioritizes everyone's decisions in determining who their representatives are. This principle is known as one man, one vote. The basic assumption is the assumption of liberalism: the one who knows best what is best for a person is himself. That is, everyone is free to make their choice. Even though it departs from individualism, modern democracy also talks about the State's political structure, and this must be determined by the vote of each individual in the country. This idea developed quite strongly during the time of JJ Rousseau in the 18th century. The voices were gathered together to form a collective decision. This is how the sovereignty of the people is obtained.

The legal instruments widely used in recognition of the existence and rights of indigenous peoples are statutory regulations, starting from the 1945 Constitution to regional regulations. Several regions develop recognition of the existence and rights of communities through regional head decrees. Sometimes, several general court decisions also deal with issues related to indigenous peoples.

However, public courts often cannot be relied on to develop a legal breakthrough to recognize the existence and rights of indigenous peoples because they are still very much dominated by the legal-positivistic paradigm. This legal-positivistic view departs from the assumption that laws are general and can always be applied to every social condition in

society, including societies with “dishonesty” problems such as rampant judicial mafia and judges who can be bribed in handling high economic-valued cases.

4 Conclusion

In the tradition of Papuan highlands, noken is one of the cultural objects that cannot be separated from their everyday life. That object is then interpreted in the value of an election by making political commitments, mutual agreements, and giving total votes (support) to candidates. The noken election system symbolizes the highest deliberation in deciding important issues in Papua without secrets and is more concerned with deliberation within the tribe. Due to geographical, human resource, and socio-cultural reasons, noken-based election is recognized as a legitimate election procedure.

References

- [1] Sodiki, Ahmad. 2009. Konstitusionalitas Pemilihan Umum Model Masyarakat Yahukimo, Jurnal Konstitusi, Volume 6, Nomor 2.
- [2] Asshiddiqie, Jimly. 2005. Demokrasi dan Hak Asasi Manusia, Delivered in studium general on The 1st National Convergence Corporate Forum for Community Development, Jakarta, 19 December 2005.
- [3] Arinanto, Satya, 2008. Hak Asasi Manusia dalam Transisi Politik di Indonesia, Jakarta: Pusat Studi Hukum Tata Negara Universitas Indonesia
- [4] Arizona, Yance, 2009. “Hak Ulayat: Pendekatan Hak Asasi Manusia dan Konstitusionalisme Indonesia.” Jurnal Konstitusi, Volume 6 Nomor 2, Juli 2009, Jakarta: Mahkamah Konstitusi
- [5] Busroh, Abu Daud, 2008. Ilmu Negara, cetakan kelima, Jakarta: Bumi Aksara
- [6] Bentham, Jeremy http://en.wikipedia.org/wiki/Jeremy_Bentham, accessed on 18 march 2010. Komisi Nasional Hak Asasi Manusia, tanpa tahun, Lembar Fakta HAM, Edisi III, Jakarta
- [7] KomnasHAM. Noken dan Perempuan Papua, <http://budayapapua.wordpress.com/2009/06/12/noken-dan-perempuan-papua/> accessed on tanggal 9 April 2021.
- [8] Papua Pos, “Pemilu di Pedalaman Bisa Gunakan Noken”, 20 Februari 2009
- [9] Mahkamah Konstitusi Tokoh Ilmuwan dan Penemu, James Watt, <http://www.ceritakecil.com/tokoh-ilmuwan-dan-penemu/James-Watt-2>, accessed on 18 march 2010.