

Noken System in Indonesian General Elections

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ABSTRACT--*Local wisdom values prevailing in a customary community have been included in the general election system in Indonesia, in the highland areas of Papua, in which a “noken system” is implemented in the democratic fiesta of the election of leaders of the central government and regional governments, to be precise. The noken system has been juridically recognized under the Decision of the Constitutional Court of the Republic of Indonesia (MK), but the House of Representatives (DPR) and the General Elections Commission (KPU), institutions given regulatory authority, have yet to follow up the aforementioned decision by regulating the noken system in laws and regulations, making the implementation of the noken system in the general election unbased on legal provisions and vulnerable to misuse. This is a normative and empirical study aimed to determine and examine the legal substance, legal structure, and legal culture of the noken system implemented in Indonesian general elections. The objective of this research is to figure out the legitimacy of the noken system in Indonesian general elections and the relevance of the noken system in the democratic system prevailing in Indonesia.*

Keywords: *general elections, noken system, legal legitimacy, local wisdom*

I. INTRODUCTION

The Constitution of the Republic of Indonesia (UUD 1945) asserts that Indonesia is a nation based on the rule of laws, in which all state/government measures must be based on the rule of laws as valid legitimacy of power. Given that, the founders of Indonesia applied the prevailing legal foundation, Pancasila, as a guiding star to reach the objective of improving people’s welfare. In the development of Indonesia’s legal system, Pancasila has two roles, namely as a source of laws in Indonesia and as a way of life of the people to live the life of a nation. All have positive characteristics originating from the local wisdom values existing in Indonesia [1].

The plurality of local wisdom values existing in Indonesian communities has penetrated the general election system in Indonesia. During the organization of direct, one-man-one-vote elections in the Province of Papua, particularly in the customary area of central highlands, the people implement the noken system to cast their votes.

The noken system has been implemented in general elections in the Province of Papua, Indonesia, since the

introduction of general elections in the Province of Papua (formerly the Province of Irian Jaya) in 1971. Prior to the year 2009, the implementation of the noken system in general elections was not doubted either by voters, community members or general election experts in Indonesia.

It was not until the organization of members elections of House of Representatives (DPR), Regional Representatives Council (DPD), and House of Regional Representatives (DPRD) in 2009 that problems with the use of the noken system in general elections occurred. Back then, one ticket questioned the implementation of the noken system and filed the issue to the Constitutional Court of the Republic of Indonesia with Case Number: 47-81/PHPU.A-VI/2009, dated 9 June 2009. The issue in question was the implementation of the noken system in general elections, which was considered as illegal or contradictory to the Law No. 10 of 2008 on General Elections (now Law No. 7 of 2017). It was regarded as contradictory or violating to the said law as it is not regulated under any laws or regulations of General Elections Commission, the general election organizer authorized to make regulations. Moreover, the noken system also violates the principles specified under laws and regulations, namely the principles of directness, generality, freedom, secrecy, honesty, and fairness.

After the decision of the Constitutional Court recognizing the legality of the noken system in Indonesian general elections was issued, the Government, the House of Representatives, and the General Elections Commission that have the authority to regulate the noken system in general elections did not draw up any regulations on the noken system. The noken system in general elections, therefore, has been implemented without any regulation. Consequently, the noken system has been constantly questioned in every general election in Indonesia and triggers conflicts among customary communities. This results in weakening local wisdom values in the customary communities in Papua.

II. PROBLEM STATEMENT

The organization of general elections in the Province of Papua, Indonesia, in some customary areas of central highlands, to be precise, using the “noken system” apparently causes conflicts between those who endorse the system and those who reject it on the grounds that the noken system implementation is considered as contradictory to the prevailing laws and regulations as well as democratic principles in general elections. This paper was written to figure out the legitimacy of the noken system in Indonesian

general elections, the relevance of the noken system in the democratic system, and the threat to local wisdom in the midst of democracy.

III. RESEARCH OBJECTIVE

The objective of this research was to figure out which legal instruments that should be used in the implementation of the noken system in general elections in the Province of Papua so that the noken system as a piece of local wisdom can be accepted in the modern democratic system.

IV. LITERATURE REVIEW

A. Noken System

Noken is a representative handicraft of the customary communities in the central highland areas of one of Indonesian provinces, Papua. *Noken* takes the form of a multifunctional woven bag used by way of being hung on the human head or shoulders. Traditionally, *noken* functions as carriers of things (assorted vegetables) and babies. *Noken* is known to be made of fibrous orchid stems or tree barks, now also of manufactured yarn. In 2012, *noken* was included in the List of Intangible Cultural Heritage of the United Nations of Educational, Scientific, and Cultural Organization (UNESCO) as Indonesia's cultural heritage [2]. In the organization of general elections in some areas of the central highlands of Papua, *noken* functions as a substitute for "a ballot box" to which the ballots marked by voters are placed. By the General Elections Commission (KPU) *noken* is recognized as a logistic tool in general elections' voting. The noken system is a system exclusively used in 14 regencies within the central highland areas in the Province of Papua to date. The General Elections Commission acknowledged that *noken* is a central part of the organization of general elections in Papua, especially in customary communities living in the central highland areas.

In Indonesia, the noken system has been implemented in general elections since its introduction in Papua in 1971, and it had never been doubted until 2009 when it triggered a legal debate brought to the Constitutional Court. In practice, there are two approaches to the implementation of the noken system. The **first model** is the Bigman model (tribal chief), in which the voting is entrusted to the tribal chief/customary leader deemed to have contributed to the lives of the customary community members. A customary leader is not only recognized in general elections but also recognized as a responsible leader in every aspect of life, for example, the social, economic, cultural, and political aspect, including general elections at which national and local governments leaders are elected. In the Bigman model, customary community members fully entrusted their voting rights (constitutional rights) to their customary leader, who elects the ticket of a political party or an independent nominee representing his customary community members. Then, the customary leader brings the ballots to the general election

officers of the Village Election Committee (KPPS). The ballot is subsequently inserted into a *noken*, which is a substitute for a ballot box. In the **second model**, customary community members have a deliberation with their leader at the customary house or *para-para* (a place where customary community members gather) or at a place collectively agreed to determine the votes to be given to each ticket nominated by a political party or independent nominee. The consensus result is delivered to the Village Election Committee (KPPS), and the ballots are cast into a *noken* as a substitute for a ballot box. Afterwards, the votes are counted at the Voting Station (TPS).

B. Democracy

Indonesia is a nation of laws that adheres to the principles of democracy and people's sovereignty as formulated under the Constitution (UUD 1945), stating that Indonesia is a nation of democracy and laws. General elections are vital to the democratic legitimacy, and in this case, voters' participation serves as a determinant as it is an essential dimension of democracy quality [3], being a symbol and benchmark of a democratic nation while at the same time stating that the state sovereignty is in the hands of the people.

In this modern era, democracy has importance of giving sovereign rights to the people to autonomously determine the power of the state government. Thus, in democracy, people give the final say about main problems in their life, including the judgment of the state policies governing their life [4]. Democracy can also be seen in a broader sense as an institution, a way, a mechanism, and a system. It can also refer to an action, an attitude, and a thinking orientation. Democracy is regarded as an ideal government, which is a perfect option to be implemented in modern countries and is expected to be able to answer people's problems and uphold people's sovereignty. Dahl asserts that democracy is the best form of government. Public officials must be elected based on the most votes. Every citizen must have an equal opportunity to have influence on the government policies. The minority group must have the freedom to criticize the decisions of the majority group [5].

To maintain the continuity of democracy, attention should be paid to absolute majority, and the rights of the minority must be guaranteed. Furthermore, democracy must also be implemented by establishing institutions and procedures in a fair and representative way. The people hold the sovereignty in running a democratic government. There are two models of democracy: direct democracy and indirect or representative democracy. In today's modern countries, direct democracy is considered obsolete. What is commonly implemented is representative democracy. Representative democracy is formed and functions in the long term in a wide scope of area (Destutt de Tracy, 1811: 19). Thus, general elections in a modern country must be organized periodically

to allow the people to supervise policies of the state, which is represented by the government.

In exercising democracy through general elections, customary communities have their own system, which is based on values, ethics, and legal norms prevailing and developing in them. The election system they implement is adhered to, and believed, as the right step and way for them to exercise their constitutional rights. For customary communities, the election system applied in general elections is not only a way to cast their votes for the existing leader candidates, but also a philosophy and understanding that they believe on how to elect a good and right leader who will be able to perform people's mandate and improve his or her people's welfare. Philosophically, leader election in the rapidly developing democratic realm has a more pressing purpose, namely to elect a leader who will be able to maintain balance so as to preserve the prevailing values in the community and to avoid boxing his or her people in individual or group conflicts due to the general elections.

C. General Elections

To reach political decisions meeting the will of the people with respect to the direction and policy of the state, general elections are implemented as a mechanism for delegating the sovereignty of the people as their participants. General elections are defined as media provided for the people to exercise their sovereignty rights to elect government leaders of their preference for the purpose of satisfying their aspirations, and they occupy the core of modern democracy [6].

General elections are instruments for realizing people's sovereignty, forming a legitimate government, and articulating people's aspirations and interests. The state of Indonesia involves its people in the state administration. People's sovereignty is exercised by people's representatives sitting in the House of Representatives under the representative or indirect democracy system. People's representatives are elected by the people through general elections held periodically to fight for the people's aspirations. According to Soedarno, general elections constitute the minimum requirements for the existence of democracy, and they are intended to elect people's representatives at both central and regional level [7].

V. METHODOLOGY

This is a normative study which reviews laws and regulations as well as other sources of regulations relevant with general elections in the field implementation of the noken system.

VI. DATA ANALYSIS

Not all districts (*kecamatan*) in the central highland areas in Papua apply the noken system. In general, the noken system is not applied only in districts located in the regency capital. The noken system is only applied in general elections in 14 out of 29 regencies in the Province of Papua, and the 14 implementing regencies are situated in the central highland area. In the capital of the 14 implementing regencies, the General Elections Commission (KPU) as the organizing commission provides *noken* hung on a wood log, and the number of *noken* corresponds to the number of ticket pairs racing in regional elections or presidential elections as well as legislative elections based on the number of parties participating in the general elections.

VII. DISCUSSION AND CONCLUSION

As previously described, *noken* is a traditional bag unique to central highland areas of Papua used by way of being hung on the head and made of tree bark fibres (orchid fibres). Normally, this bag is used to carry daily items of a customary community. Today, *noken* is used as a substitute for a ballot box in general elections as a customary tradition adopted from their ancestors' way of selecting their leaders (tribal chiefs) to express the political aspirations of customary (local) community.

The Constitution of the Republic of Indonesia indirectly acknowledges that the noken system constitutes direct, general, free and open, honest, and fair elections. This is reflected in the consideration of the Decision of the Constitutional Court Number 47-48/PHPU.A-VI/2009, which is based on Article 18B paragraph (2) of the 1945 Constitution, stating, "The state acknowledges and respects the unity and traditional rights of communities adhering to the customary law as long as they are still alive and fit with development of the communities and the principles of the Unitary State of the Republic of Indonesia as specified under laws." [8]

Noken is used as a symbol in general elections as the names of prospective leaders or regional heads and deputies have been set by the General Elections Commissions (KPU) on the proposal of a Political Party or a combination of Political Parties. The customary communities in different villages within Papua's central highland areas have been involved in communal discussions, either directly (in a planned way) or indirectly (between people). Discussions are held at customary houses (*para-para*), houses of worship (churches), village offices, or houses of customary leaders. The discussions are headed by the customary leaders and followed by religious figures, youths, females, teachers, and civil servants trusted by local communities. [9] In these discussions, they share information on the characteristics of an aspiring leader determined as the prospective elected

leader. They do not, or seldomly, discuss candidates' promises as those promises can hardly be fulfilled, and it is difficult to test the genuinity of those promises. It is deemed more important to find information on which contributions candidates will make to the development of the communities' village. It is also deemed necessary to find out which candidates have a relationship with their tribes. With as much information as possible, the villagers or customary community members will have a picture about which candidate can be trusted and is eligible to choose. Every voter in the village makes his or her personal decisions on which candidate to choose.

It is clear that the election results are made up of personal decisions of individual voters (customary community members), combined with other voters' decisions as a communal decision and symbolized by *noken* to represents that all individuals agree to "cast" votes into *noken* and deliver the votes to a candidate as a trusted representative, or divide their votes to other candidates. Community members' agreement is usually reached before voting is held.[10] Normally, customary community members do not conceal their decision regarding their elected candidate and share their decision with other customary community members, instead. Therefore, community members usually have been informed about the election results or the number of votes of the candidate they elect and those they do not elect before the voting. On the voting day, the community members' votes after an agreement are delivered by the tribal chief or a proxy to the Village Elections Committee (KPPS), usually together with those who are able to come to the voting stations.

In Papua's highland areas, elections are conducted transparently based on deliberation and collective agreement that can be said to have summarized personal decision of each voter. [11] Thus, the community members are not concerned about whether there is a voting station or not. Voting can be held at the voting station or district office, but the results must be as agreed by the customary community members. Hence, no customary community member protests if voting is not held at certain voting stations that must be prepared in appointed villages.

In voting, the *noken* system is not necessarily used by all voters listed on the Permanent Registers of Voters (DPT), and can be executed by a person trusted to represent the customary community members and respected by the community members thanks to his or her contributions to their people's lives. This person is called the tribal chief or customary leader, who is responsible for his people's affairs, including their political life. Tribal chiefs are trusted by not only their people but also government officials at the central, provincial, regency, and district level, who frequently ask for their favour in matters relating to people's interests, for example, general elections, and they believe that tribal

chiefs' choice represents the choice of their people (voters in their villages). [12] Therefore, if the number of votes gained in a general election corresponds to the number of votes given by the tribal chiefs, this number has been agreed by the people as voters and no one dares to protest or oppose the general election result. The core concept of democracy is related to people's participation in elections. The *noken* system has constituted a democratic element in elections as in this system, all customary community members have actively participated in the decision-making concerning the candidate they choose, although the vote casting at voting stations (TPS) is not conducted by every individual.

The agreement of a customary community is symbolized by *noken*, which reflects political participation and emancipation. The people have stated their sovereignty in choosing a candidate they believe is right. Thus, whatever the result of elections using the *noken* system reflects the people's sovereignty. In an open, direct, free, transparent, honest, and fair deliberation, a customary community member makes a decision together with other community members, and the consensus result is entrusted to the tribal's chief. In other words, the election result gained using the *noken* system can be seen as the execution of people's sovereignty function.

After the decision of the Constitutional Court was issued, sufficient attention is not given to the implementation of the *noken* system in Indonesian general elections by the Government, House of Representatives, and General Elections Commission as state institutions authorized to draw up laws and regulations on general elections. [13] None of the three institutions has issued any regulation specifically setting out the *noken* system in general elections. In practice, the implementation of the *noken* system in general elections, both national and local elections, is still allowed and proceeds as it did before the decision of the Constitutional Court on the *noken* system was issued, and it is not based on any norm regulated under prevailing laws and regulations. Consequently, the implementation of the *noken* system in general elections is highly vulnerable to manipulation, either by tickets, political parties or general elections organizers, especially at the regency KPPS, PPK, or KPU level.

The fact in the field is that in every general election in Indonesia since 2009, the *noken* system has been questioned and become a legal issue at the General Elections Supervisory Body (Bawaslu), the State Administrative Court (PTUN), and the Constitutional Court level. This condition arises out of the fact that the implementation of the *noken* system in general elections is not regulated in details in any general elections norms. As a result, the implementation of the *noken* system has frequently faced abuse as outlined below.

- In the *noken* system, the people's vote authority is handed over completely to the tribal chief (customary leader).

Thus, many a time, numerous political parties or ticket pairs approach the tribal chief (customary leader) with a compensation of a sum of money with the purpose of winning his vote.

- The number of votes (customary community members' choices communicated to the tribal chief) obtained using the noken system can be altered by the tribal chief and organizers (be it regency KPPS, PPK, or KPU), because in the noken system the ballots given by the tribal chief (customary leader) to the KPPS are in the total number of ballots without any list of voters. This alteration is made in accordance with the deals between the organizer and the ticket.
- In the noken system, the people as voters do not come to the voting stations (TPS) and are represented by the tribal chief. This may lead to manipulation of the number of voters.

The absence of detailed arrangement of the general election implementation using the noken system may also lead to the following:

- A conflict between the customary community members entrusting their rights to the tribal chief and the tribal chief due to the abuse conducted by the tribal chief (customary leader);
- Potential intertribal conflict because in the field, the majority group often intimidates the minority group in the candidate election;
- The erosion of local wisdom values by pragmatism of general election actors as a result of money politics in the noken system. Consequently, some horizontal conflicts between customary community members may arise, and this will lead to disintegration within the community because the kinship values built in the customary community civilization are destroyed by the influence of the modern general election system.

Considering the Decision of the Constitutional Court that legalizes the noken system in the implementation of general elections in Indonesia and the fact that the Government and House of Regional Representatives have yet to follow up the aforementioned Decision of the Constitutional Court by including the noken system in a law, the General Elections Commission (KPU) as a general election organizer and an institution authorized to make regulations for the organization of general elections can base on Article 12 letter c to issue a Regulation of the General Elections Commission (PKPU) to fill the legal gap left by the legislative body to prevent any abuse in the implementation of the noken system in general elections and prevent any horizontal conflict within Papuan customary communities. [14]

In fact, the noken system is not recommended by the General Elections Commission. This noken system relies on a "bigman" or tribal chief. A tribal chief is not only a leader in

the political aspect who sets a rule that must be obeyed by every tribal member, but also a leader in the economic, social, and cultural aspect. His power is not derived from bloodline, but from his influence, charisma, and leadership that are respected and occasionally feared. His people have obligations and rights. A bigman is responsible for the availability of basic needs of his people, for example, food and health needs, and the people should have faith in his decisions. [15] The Bigman political system has been prevailing in Papua for hundreds, or even thousands, of years. The implementation of the noken system in conjunction with the implementation of the Bigman system takes place during general election moments.

The aim of the state as contained in the Preamble of the 1945 Constitution is "to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate towards the establishment of a world order based on freedom, perpetual peace, and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God, just and civilised humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia."

The goal of the State in the government of the Republic of Indonesia is to protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people, and to participate towards the establishment of a world order based on freedom, perpetual peace, and social justice. [16]

Pancasila serves as a foundation and legal basis for governing the community to reach the goals of the state. The reform agenda in the legal field was started more than two decades ago and has brought significant changes, especially in the context of legal enforcement in Indonesia [17]. The dynamics of legal policy [9] move rapidly and are accompanied with some changes in the constitutional system of the Unitary State of the Republic of Indonesia fundamentally. With a Constitution, a state as a community will have a goal that is clear and useful for guiding the way to reach what is aspired [8]. In a concrete sense, the constitution that governs the life of a nation is inseparable from the existence of the state constitution that is related to the concern with its roles and functions as a base and reference for the state administration to reach the desired goals [18].

As *philosophische grondslag*, Pancasila basically serves as a source of legal order in Indonesia. Pancasila becomes a source of elaboration in the process of law formulation in

Indonesia. Pancasila contains religious values, moral law values, natural law values, and religious sources as a source of legal materials for positive law in Indonesia. The legal logics set by the court are based on laws and regulations irrespective of social reality during elections.

General election issues are extremely complex and approached exclusively through written laws. The court must not conceal such condition and must explore values prevailing in the community. Article 5 (1) of the Law No. 48 of 2009 on Judge Power states clearly, "Judges and constitutional judges must explore, follow, and understand legal values and the sense of justice prevailing in the community." This provision provides judges with legal legitimacy and substance in finding law and justice for the community. [19] The use of the noken system in general elections can be firmly said to be a form of affirmation of people's autonomy to choose a government leader according to their aspiration and to accommodate local wisdom values prevailing and developing in customary communities.

REFERENCES

- [1] Max Boli Sabon. (2006). *Reorienting the direction of the Legal Development into the Social Justice for all Indonesia societies*. BPHN, 14.
- [2] Wikipedia. Available online: <https://en.wikipedia.org/wiki/Noken> Retrieved, 19 Agustus 2018.
- [3] Altman, D, and Pérez-Liñán, A. (2002). *Assessing the Quality of Democracy: Freedom, Competitiveness and Participation in Eighteen Latin American Countries*. Democratization, 9 (2) : 85 – 100.
- [4] Dhal, Robert. (1972). *Who Governs?*. Yale University Press, 311.
- [5] Kuenzi, M., and Lambright, G. M. (2007). Voter Turnout in Africa's Multiparty Regimes. *Comparative Political Studies*, 40 (6): 665-690.
- [6] Soedarsono. (2006). *Constitutional Court as the supervisory body of the democracy for the settlement of disputed 2004 election results*. General Secretary and Registrar of the Constitutional Court of the Republic of Indonesia.
- [7] Ahsan Yunus. (2011). "Juridical Analysis towards the Final and Binding Judgement handed down by the Constitutional Court " *Constitutional Journal*, 3(2): 115-138.
- [8] Moch. Mahfud MD. (1999). *Political Competition in Indonesia*. Gama Media: Yogyakarta. p. 11-12, Compared to L.J. Van Appeldoorn. (2008). *Fundamental of Legal Science*. Pradnya Paramitha : Jakarta, 57 – 163.
- [9] Satjipto Rahardjo. (2009). *A Nation of Laws bringing happiness to its societies*. Genta Publishing : Yogyakarta, 81.
- [10] Donny Gahril Adian. *Law without Justice*. Kompas Daily dated 23 November 2009.
- [11] Donni Edwin et al. (2005). *Direct Election: Regional Democracy and Mythe of Good Governance*. Editor Pheni Chalid. Partnership for Governance Reform In Indonesia and Political Researc Centre, Department of Political Science Universitas Indonesia, 11.
- [12] Satjipto Rahardjo. (2004). *Legal Science; A Search, Release and Enlightenment*. Muhammadiyah Press University: Surakarta, 17.
- [13] Hendra Nurtjahjo dan Fokky Fuad. 2010. *Legal Standing of the Customary Community during the Litigation Process before the Constitutional Court*. Salemba Humanika. Jakarta. Pg.3.
- [14] National Education System, "UNESCO lists Indonesia's Papua Noken System as the Intangible Cultural Heritage", accessed from <http://www.kemendikbud.go.id/kemendikbud/node/905> on 12th May 2012.
- [15] Kurniawan Wawan. *Laws and Regulations Mapping on the Recognition of the Customary Community's Rights*. Pg.3.
- [16] Simarmata, Rikardo. 2006. *Legal Recognition towards the Customary Community In Indonesia*. Bangkok. RIPP UNDP.
- [17] Soerjono Soekanto, and Sri Mamuji. 2003. *Normative Legal Research; A Brief Review* 6th Edition, RajaGrafindo Persada. Jakarta. Pg. 14.
- [18] Valerine J.L. Kriekhof, et al., "Legal Research Method (Seri Buku Ajar)," Book A, Faculty of Law Universitas Indonesia, Depok, 2000, pg. 27.
- [19] Juournal of Ius Quia Iustum Law, Faculty of Law, Universitas Islam Indonesia. ISSN 0854-8498 l e-ISSN: 2527-502. Open access at: <http://jurnal.uui.ac.id/indek.php/IUSTUM>.