



Election of Regional Representative Councils Members with Noken System in Election Principle Perspective

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Abstract

The holding of General Elections, including the election of members of the Regional Representative Council in parts of Papua, has its own character because its implementation is different from the general election. If all this time we only know that, the implementation of the General Election is carried out in a "direct, general, free and secret manner", then there are some areas in Papua that still use the general election with the noken/tie system. This is because the culture of indigenous peoples in the Papua region in terms of decision-making concerning common interests is carried out through deliberation meetings involving members of the community as a whole or certain people ("Men with authority" or "The Big Man") only as representatives to take a decision. This is also corroborated by the Constitutional Court Decision Number 47-81 / PHPU.A-VII / 2009 which basically states that they do not question the voting system used by indigenous peoples in the central highlands of Papua, because the essence of the General Election process is that everyone can exercise direct, public, free and confidential voting rights. With the implementation of the General Election (including the election of DPD members) with the noken/ikat system, it does not provide guarantees and legal certainty for the constitutional rights of voters to determine for themselves who they think is best based on their rational logic. Honesty does not only mean that no provisions in the General Election are violated or simply that no votes are manipulated. Honesty must also be interpreted as the system that most allows the people to elect candidates according to their conscience based on the capacity and integrity of the candidates.

Keywords: *General Election; Regional Representative Council; Noken System*

Introduction

Indonesia is a democracy. As a democracy, the protection of civil and political rights of citizens and their basic freedoms takes the highest place. This protection is actually an embodiment of the 4th Precept of Pancasila which reads: "Population led by wisdom in deliberation/representation". In the construction of these precepts, the character of democracy implies that to make political decisions it is

used directly by citizens, or it also implies that these rights are exercised through people's representatives (Maran, 2001).

The understanding of the 4th Precept above shows that it is the people who hold power, determine political decisions, and at the same time exercise control over the exercise of State power. Frans Magnis Suseno stated that in a democratic country there are 5 main characteristics, namely the existence of law as commander in chief, control of the government, guarantees of the basic rights of citizens, the principle of majority, and free elections (Suseno, 1997).

As mentioned above, one of the main features of a democratic country is the implementation of free elections. Universally, the international community has agreed on the main standards in elections, namely: the structure of the legal framework, the election system for the Election, the right to vote and to be elected, election management institutions, voter registration and voter lists, access to votes for political parties and candidates, democratic election campaigns, media access and information disclosure/freedom of opinion, campaign funds and campaign finance, voting, vote counting and tabulation, the role of representation of political parties and candidates, election observers, and election law enforcement and compliance. These standards, according to Powell, must also be supported by other instruments, as he said (Fogg, 2002).

Elections are not the only democratic instrument. Elections must be supported by other instruments and arranged to promote communication and cooperation. Even so, elections remain the most basic democratic instrument, because they form a system that forces / encourages legislators to pay attention to the aspirations of the people. A collective consensus calls for competitive elections, so as to be able to give birth to a country that has a democratic political system". Just like Elections in other regions, in the noken system, elections are also held to elect members of the Regional Representative Council of the Republic of Indonesia (DPD RI). As previously mentioned, the presence of the DPD RI is the result of amendments to the Constitution.

There are 2 (two) articles that talk about the DPD RI, namely Article 22C and Article 22D of the 1945 Constitution of the Republic of Indonesia. In these articles, it can be seen that DPD RI members are representatives of each province, who are elected through the General Election. As representatives of each province, the DPD RI members should be representatives of the people of the provinces they represent. Uniquely, except for the issue of voting representation requirements, there are no significant requirements regarding biological and genealogical origins to become a member of the DPD RI, as stated in Article 182 and Article 183 of Law Number 7 of 2017 concerning Elections. In fact, in the framework of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (the Special Autonomy Law), this requirement is significant so that Indigenous Papuans (OAP) get their representatives in parliament. Based on this description, this article discusses the General Election of Regional Representative Council Members with the Noken System in the Perspective of Election Principles.

Methods

According to Peter Mahmud, "Legal research is a process to find legal rules, legal principles, and legal doctrines in order to address legal issues at hand" (Marzuki, 2013). The legal research method is a procedure or procedure or a technique used by researchers to answer the problems to be discussed. Therefore, the use of research methods should always be adjusted to the needs of the researchers themselves so as not to experience difficulties in finding and collecting legal materials, as well as comparative studies in the field as a comparison.

The type of research used is normative legal research whose material object is legal norms. The focus of study in normative legal research is a law that is conceptualized as a norm or rule that applies in

society and becomes a reference for everyone's behavior, so that normative legal research focuses on inventorying positive law, legal principles and doctrines, legal findings in concrete, systematic cases. law, level of synchronization, comparative law, and legal history (Muhammad, 2004).

In principle, legal research finds the truth of coherence, namely is there a rule of law in accordance with legal norms and is there a norm in the form of an order or prohibition in accordance with legal principles, as well as whether a person's actions are in accordance with legal norms (not only according to legal rules) or legal principles (Marzuki, 2013).

The method or method used in normative legal research is carried out by examining existing library materials or documents, namely using various secondary data such as statutory regulations, court decisions, legal theory, and can be in the form of opinions of scholars. The characteristics of this research include normative legal research whose material object is legal norms. Approaches in this research: philosophical approaches, historical approaches, and conceptual approaches. The research analysis uses election theory, democracy theory, human rights theory, and legislation theory. The technique of collecting legal materials is literature study or documentation. Meanwhile, the analysis of the legal materials was carried out in a qualitative prescriptive manner.

Results and Discussion

Election with the Noken System

The Papuan people, particularly Yahukimo, conduct deliberations to determine which party and who will be elected as their representative in parliament. After deliberation, the chief was assigned to represent the voters in screening. The checkered paper is put into the noken based on the agreed choices. A big enough hole filled with stones and put pigs and tubers and firewood, after the pigs and tubers are cooked, the people start to have a happy party. For the Yahukimo people, elections are synonymous with joyous parties. The head of the tribe is no less busy checking ballots for parties that have been determined based on the ballot papers that are put into the pockets called "noken". The letters are checked, then recapitulated on form C1. The tribal chiefs in Yahukimo are of the opinion that elections should not leave hostilities between them. The people of Yahukimo do not want to be divided because of different choices, therefore, they first discuss who or which party will be elected.

The deliberations held by indigenous peoples in Yahukimo are a form of customary constitutional law that characterizes Indonesian constitutional administration. Deliberation is needed so that the aspirations of each member of the community are absorbed and then agreed upon in a decision-making forum. Deliberation can also be used as a medium to limit the power of parties who are too authoritarian, with deliberation an agreement will be obtained that can be accepted by its members (Agustine, 2019).

The process of implementing the noken is carried out in various ways. One of them is with the community to gather together to deliberate to determine choices by first having deliberation to determine who is the parent in the group who is assigned to channel political aspirations on behalf of the community.

Elected elders have the duty to cast ballot papers according to the agreed candidate pair witnessed by the KPPS officer. The punched ballots are then delivered to the nearest TPS to be put in the ballot box. There is also a way in which elders who are mandated by the community directly enter the voting booth and receive ballot papers as many as the number of voters registered at the TPS from the KPPS officer. The ballot papers are punched and handed back to the KPPS officer to be put into the ballot box and then proceed with the vote count at the TPS.

The results of the deliberations that have been agreed upon must be obeyed by all communities without exception because the results of the decisions of customary deliberations are the highest decisions that have been

valid from generation to generation. In addition to the voting represented by the tribal chief on the agreement of the local community called the big man, the process of implementing the noken can also be carried out by hanging on one of the wood instead of the ballot box which is often called the hanging or tie noken system. In the Noken system by hanging or binding the community can see the sound that has been agreed upon entering into the previously assigned Noken. Although technically there are differences in the implementation of the noken between the ikat system and the big man system, both are carried out with the role of the tribal chief (traditional elder). A tribal leader in the customary government structure has an important role.

The important role of a Tribe Chief is not only at the customary level but also at the level of state government. A chieftain becomes a leader who has authority in giving orders and the community submits and obeys a tribal chief without coercion. The power of a tribal chief in adat can be categorized into authority. The authority possessed by the chief of the tribe is traditional and charismatic authority. This is based on customary rules passed down from the ancestors. In this authority, a chieftain has authority based on patriarchy which has inherited authority, namely the reduction of a power based on lineage.

Judging from the tradition of leadership elections and general elections with the practiced noken system, it is clear that the noken system is a form of deliberation/representation as stated by the Pancasila Fourth Principle. According to Azim and Siregar, the idea of deliberative democracy which is based on consensus can be implemented in which everyone who has the right to express an opinion gets the opportunity well. If the opposite happens, it means that there will never be consensus. Because it was related to the operation of deliberative democracy, Hatta suggested the need to refer to the village consultative tradition. Hatta reminded that not everything that is good about village democracy is used in the life of a state (Azim & Siregar, 2014).

In the context of granting voting rights in elections, the Noken (Ikat) system in Papua reinforces the notion that the diversity of laws in the midst of Indonesian society consists of various cultural backgrounds, not least in terms of decision making when the implementation of people's sovereignty is implemented as a living constitution. (living constitution) adopted by Pancasila and the 1945 Constitution of the Republic of Indonesia. Even though in a modern democracy it is known that wherever democracy is located, freedom and equality of political rights are finally manifested in political choices through the majority principle. and its actualization through the voting system, however, the actualization of the deliberation system in the implementation of elections is increasingly gaining a place in the Indonesian democratic process (Hendra, 2006).

Election Model with the Noken System

The general election model using noken reinforces the role of custom in building democracy. This model is carried out by means of deliberation between the tribal heads and the community. In the beginning, noken was a traditional Papuan handicraft in the form of a strappy bag that was carried around the neck or hung on the head on the forehead directed to the back. By the community, noken is used as a bag to carry daily necessities (Mandala, 2020).

Philosophically, Noken means a good life, peace, and fertility. Papuans, especially in the Puncak Mountains, such as the Damal, Yali, Dani, Lani, Mee, Moni, Bauzi, and several other tribes have from generation to generation the use of noken. Besides being used as a bag, noken is also used to store daily necessities, carry agricultural products, and bring merchandise to the market. In addition, noken is also used to carry firewood and carry children. However, noken actually has a broader and deeper meaning and function, such as social, economic, and cultural meanings (Agustine, 2019).

Procedurally, the selection of Noken in the central mountains of Papua uses 2 implementation procedures. First, the hanging system (colloquy), and the second is the Big Man (Chieftain) system. Second, this voting mechanism is not regulated in the election law but is based on local customary law. To be clearer, here is

the electoral system process or mechanism that usually takes place in the environment of indigenous Papuans (Kossah, 2017).

Election Legality with the Noken System

The legal basis for implementing elections with the Noken system in Papua is the Constitutional Court Decision No. 47-81 / PHPU.A-VII / 2009, which in principle granted Petitioner I's petition on behalf of Elion Numberi, namely re-voting in 37 districts, while recounting votes in 14 districts in Yahukimo Regency, Papua Province. These votes and recounts are taken in plenary sessions before the final verdict is passed. The general election that has been held in Yahukimo Regency since 1971 has used its own method, namely checking ballot papers by representatives of the tribal heads. The voting was not carried out in the voting booth and the checked ballot paper was not put in the ballot box, but was put in a typical Papuan bag called "Noken." This method is known as the selection of the Noken model which is a customary voting system. This election model was revealed in the Constitutional Court trial when there was a dispute over the General Election Result Dispute (PHPU) filed by Pdt. Elion Numberi and Hasbi Suaib, S.T.

Implications after the Constitutional Court Decision No. 47-81 / PHPU.A-VII / 2009 related to the existence of the noken system in Papua Province, referring to Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Juncto Article 10 Paragraph (1) of Law Number 24 2003 concerning the Constitutional Court, in conjunction with Article 29 Paragraph (1) and (2) of Law no. 48 of 2009 concerning Judicial Power, which states that, "The Constitutional Court's decision is valid and erga omnes in nature, so that nationally, it will continue to live and develop in the midst of the indigenous Papuan community". (Mulyani et al., 2020).

Even so, as described in the previous subsection, that the Constitutional Court decision which was final and binding, negatively meant shaking the electoral practice originating from other legal foundations in this case against demands for uniform election principles and principles in Indonesia. Because of that, the pros and cons of the Constitutional Court Decision No. 47-81 / PHPU.A-VII / 2009 immediately accompanied when it was delivered in the plenary session of the Constitutional Court.

Noken Sebagai Sumber Kotak Suara Pemilu

Technically, noken in the general election in Papua can also be seen as a city of votes. So far, noken is only known as the everyday bag made by indigenous Papuans from threads that come from tree roots. By the General Election Commission (KPU), noken is an important part of the implementation of the Papuan regional elections, especially for Papuan people who come from mountainous areas. KPU Papua Technical Guidelines (Juknis) Number 1 of 2013, used as ballot boxes.

All voters who get a voter card come to the Voting Place (TPS). In front of the booth, empty noken was prepared. The number of Noken hanged was unbeatable with the number of candidates for regional head. After confirming all voters from the village who were present at the TPS, the Voting Organizing Group (KPPS) announced to the voters (residents) that the voters who wanted to vote for the candidate, the row in front of the serial number one noken. Likewise, so on. After the voters lined up / sat in front of the Noken, KPPS immediately counted the number of people lining up in front of the Noken, if for example 3 people, the result would be 3 votes. For example, all voters from TPS / Kampung who pay attention to the line in front of serial number two, then all the votes from the TPS / village who listen are "unanimous" for serial number two. After that, KPPS immediately makes an official report and certification of vote count results signed by KPPS and political parties for the General Election.

The Noken system is legal if, Noken is hung on wood and is in the TPS area, voters whose voting rights are included in the Noken as a voting group must come to the TPS location where they live, and cannot be represented by other people. After voting, the ballot must be opened and counted at that place and the ballot papers must be punched, not immediately brought up like the previous regional elections.

The noken system is part of local wisdom in local social democracy. The Constitutional Court also acknowledged and ratified on the grounds that the Noken System adheres to the Direct, General, Free, and Open (LUBET) election system, in accordance with the Constitutional Court Decree No. 47-81 / PHPU.A-VII / 2009.

The noken model actually reinforces the meaning of representation. Strengthen relations between constituents and the candidates who represent them. Because, when talking about representation, there are three concepts that follow. First, pictorial representation, those chosen to represent must be the meaning it represents. Second, theater representation, the elected representatives must interpret, speak, and act for the parties they represent. Third, juridical representation, the elected representatives must act on behalf of those they represent with the consent of the mutual interest (Hidayat, 2019).

Noken as a system has fulfilled the three principles of representation. Every candidate who runs, is tested against cultural criteria by the community. Not only that, but the candidate's track record is also a consultant in the deliberation process. This makes candidates born from the Noken process a candidate who truly represents their constituents.

The General Election of DPD Members with the Noken System in The Perspective of the Principles of Elections

Elections are the main characteristic of a democratic country. Democracy is the goal of a country that we aspire to together, while elections are one way to achieve that goal. Elections are a means of people's sovereignty to elect representatives, the people's mandate to manage the country, formulate public policies, protect and serve their people in an effort to achieve democratic ideals, namely a just and prosperous society. Elections are not the only instrument in a democratic country. Elections remain the most important instrument of democracy. Elections are attached to the sovereignty of the people, while democracy makes the people the main and inseparable part of the election process (Brennan & Lomasky, 1997).

Elections will determine whether a country succeeds in realizing the ideals of democracy, namely the welfare and prosperity of the people or vice versa. The outcome or impact of the Election will largely depend on whether the Election governance is well processed or not. Experience in a number of countries shows that in fact, the elections did not make any changes. Elections that only legitimize old power or just give birth to changes in the structure of power are elections that lose the spirit of democracy. As a result, the country remains entangled in poverty, ignorance and underdevelopment because the candidates elected in the elections are apparently incapable of carrying out legislative and executive functions.

The Meaning of the Principle of Overflow and Fairness in Elections with the Noken System

The principle of Luber and Jurdil elections with the meanings described is the mandate of the constitution of the Republic of Indonesia. This means that all regulations regarding general elections in Indonesia are guided by the origin of the elections that have been outlined. Even so, the ideas in legal system theory according to Lawrence M. Friedman, state that the legal system is one of them influenced by legal culture or legal culture which is a form of ideas, attitudes, beliefs, expectations, and opinions about the law (Friedman, 2001). Departing from this, of course, there is a relationship between the existence of a community legal culture, in this case, the Papuan people, with the General Election (Election) in Indonesia.

In implementing the noken system, the community holds discussions. During the discussion, they shared information about the actions of each candidate who was about to be elected. During the discussion, a test was carried out until the voters in a village reached an agreement. The contents of the agreement include a candidate who can be trusted and, therefore, worthy of being cast for votes on him, as well as how many votes can be allocated to him. Thus, it becomes clear that the election results are the personal decisions of each voter, united together into a community agreement, and symbolized through the noken. The people, through the customary leader, can agree to "fill" all the votes from their village in a noken and hand them over to candidates they trust or share the votes with several candidates.

Mechanically, the Electoral System applied by the Papuan people in general elections is different from the electoral system that has been established nationally. However, in the selection of the Noken model, it does not eliminate the principle of democracy because individuals in their position as subjects in a democracy are not eliminated. In the case of the noken system, individuals are positioned as collective subjects. There is a limitation as an "individual subject", when a person merges into a "collective subject". Merging into the collective subject of mutual security and comfort can be maintained in a sustainable manner.

The essence of democracy actually does not lie in the method of election (voting/polling), but the essence of democracy is the participation of the people in determining and taking part in government either directly or indirectly. In the conception of democracy, the principles of people's sovereignty (democratie) are contained, whereas in the concept of a rule of law there are principles of a rule of law (nomocratie), each of which is carried out simultaneously as two sides of one coin. This understanding of a rule of law is known as a "democratic rule of law (democratische rechtsstaat)" (Asshiddiqie, 2008). In this perspective, the practice of using noken in general elections in Papua shows a meeting point between democracy and nomocracy where the direct and indirect principle issues become relative in the face of the substance of democracy and nomocracy which aims to guarantee the fulfillment of people's sovereignty.

The Meaning of the Secret Principle in the Perspective of the Election with the Noken System

The explanation of the meaning of the secret principle in the noken system is also based on the same arguments as overflow and fairness, namely on the substance of the democratic system, namely the participation of all citizens and the existence of Papuans who practice the noken system as a collective subject in general elections. Because if you look at the mechanism, it appears that the Noken system actually applies the LUBET principle (Direct, General, Free, Open).

The strong current of recognition of the idea of colloquy can also be seen as an embodiment of the multicultural democracy introduced by Ch. Taylor and Kymlica. This teaching is a critical response to liberal democracy. Francisco Budi Hardiman explained that the multiculturalism-based democratic model requires the state not only to respect individuals regardless of their cultural background, but on the contrary, it must also recognize the cultural identity of groups in society. This includes protecting the collective rights of cultural groups to maintain their identity and traditions (Azim & Siregar, 2014).

In the context of democratic theory, according to Kossah, the question of democracy or not is the Noken election. The answer is yes, the Noken election is a democratic election. In the electoral element, there is an agreement with deliberation and consensus. Then the results of the deliberations were submitted to the tribal chiefs as representatives on their behalf (indigenous peoples). This election model is a democratic election model based on Pancasila democracy, a democracy that reflects the culture and personal identity of the nation from a long time ago as stated in the fourth principle: "Democracy is led by wisdom in deliberation/representation". Meanwhile, the principle of one man one vote in the legislation of general elections is a form of legal unification efforts by the government in guaranteeing the personal rights of all Indonesian people. However, the existence of

indigenous peoples must be respected and respected for the sake of the unity and integrity of the territory of the Republic of Indonesia and a sense of justice.

The principle of secret election means that a person's choice cannot be known by others. So that none of the voters may tell their choice to other people. The secret principle also means that a group or person is not allowed to impose his choice on other groups of people. The secret principle is one of the problems in the current election process.

Secret Principle, meaning that in casting their votes, voters are guaranteed the confidentiality of their choices. Voters cast their votes on the ballot in a way that no one else can tell whoever the vote is. According to Fajlurahman Jurdi, the principle of secret (*vertrouwelijk*) means that in voting, voters are guaranteed that their choice will not be known by any party in any way (Jurdi, 2012). The secret principle in elections is also aimed more at voters as voting rights holders than election administrators. Based on the Declaration on Criteria For Free And Fair Elections which was adopted from the Inter-Parliamentary Council at its 154th Session (Paris, 26 March 1994), the principle of secrecy is vital in the election process. The principle of secret is an effort to maintain the integrity of the Election so that it continues in the corridor of substantial democracy. However, the secret principle is a binding right in the implementation of the General Election. As a right, it can be released if the voter wants it.

Conclusion

In the context of democratic theory, elections with the Noken system are democratic. The noken system election is a democratic election. In the electoral element, there is an agreement with deliberation and consensus. Then the results of the deliberations are submitted to the Chief of the tribe as a representative on their behalf (the indigenous people). This election model is a model of local democracy election based on Pancasila democracy, a democracy that reflects the nation's culture and personal identity from a long time ago as stated in the fourth principle: "Democracy is led by wisdom in deliberation/representation". Meanwhile, the principle of one man one vote in the Election legislation is a form of legal unification efforts by the government in guaranteeing the personal rights of all Indonesian people. However, the existence of indigenous peoples must be respected and respected for the sake of unity and integrity of the territory of the Republic of Indonesia and a sense of justice. Carry out decisions based on honesty, unanimous decisions that bring honest consequences together. The value of identity is deliberation. Contains a populist principle, namely a sense of love for the people, fighting for the aspirations of the people, and having a populist spirit. The principle of deliberation and consensus, which is to pay attention to and respect differences, prioritizing the interests of the people, nation, and state.

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