

The Concept of Democratization of General Elections Through the Noken System in Papua

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ABSTRACT: All countries often declare themselves as democratic countries, one of the characteristics of which is holding elections to elect people's representatives, both in legislative and executive institutions based on programs submitted by election participants. Noken is one of the concepts of democratization of general elections practiced in some regions in Indonesia (Papua). The problem is whether the noken system can reflect democratic general elections and also the constitutionality of the Constitutional Court's decision regarding the noken system. The research method used is the normative research method, namely research conducted referring to legal norms contained in laws and court decisions. The results of the study explain that the noken system has reflected democratic general elections, although different from the election system that applies nationally, because the noken system is a democratic system that has developed in the culture of the Indonesian nation. Constitutionally, the Constitutional Court has decided that voting with the noken system can be justified which only applies to people who hold fast to their culture such as in Papua.

Keywords: Democracy, General Election, Noken

I. INTRODUCTION

The state is the result of a collection of humans as social beings who have a tendency to live in groups and in society (zoonpoliticon). The state can be categorized as one of the social organizations because a state cannot run without a party that has the power and authority to carry out the functions of the state in order to achieve the goals and noble ideals of the formation of a state. Obtaining power and authority in a state can be obtained based on religious legitimacy, ideological legitimacy, and egalitarianism and pragmatic legitimacy. In the end, the development of these legitimacy tends towards absolute power because the authority possessed makes the three legitimacy into authoritarian power (Sinamo, 2010). Authoritarian power will not

occur if the limitation of power is carried out in order to build a government with the aim of the welfare of the people. The state is organized by the government with the aim of welfare, maintaining security and improving the standard of living of the people and in guaranteeing the interests of the state itself (Juanda, 2004).

The government as a party that is said to have authority is a manifestation of the people's sovereignty representative to regulate and provide protection to the community under the auspices of a country. Sovereignty is a concept related to the highest power in a state organization. This highest power is usually understood as something that is singular and indivisible and does not come from another higher power. This sovereignty is what then makes all actions and behavior of the state gain its legitimacy so that it can be carried out and implemented as it should be for what has been planned to then become part of the implementation of state power. This is because the rights of each human being cannot be achieved by each person individually (Jimly Asshiddiqie, 2015).

Efforts to realize people's sovereignty, then a social agreement is drawn up containing common goals, individual rights, and who is responsible for realizing people's sovereignty which is then known as the constitution which is a reflection of the values of a nation. This constitution then becomes the basis for the establishment of law in a country. Indonesia is a constitutional state, which means a country that is limited by the constitution (Asshiddiqie, 2006). The 1945 Constitution as a constitution is also an official political and legal document of a country which contains basic agreements about the state, regulates the organization of the state, the powers of state institutions, relations between institutions, relations between state institutions and citizens, and protection of human rights.

All countries often declare themselves as democratic countries. One of its main characteristics is the holding of elections to elect people's

representatives, both in legislative and executive institutions, based on programs submitted by election participants. Therefore, the purpose of holding elections is to elect people's representatives and to organize a government that is truly in accordance with the aspirations of the people. Elections in Indonesia were initially intended to elect members of representative institutions, namely the People's Representative Council, the Provincial People's Representative Council, and the Regency People's Representative Council, as well as the election of the President and Vice President. Furthermore, regional head elections are held, both regional heads at the provincial level known as Governors and regional heads at the Regency level known as Regents/Mayors. Through the Regional Head elections, at least three things can be achieved. First, with the regional head elections, the community can test their political rights massively and simultaneously. Second, the regional head elections are expected to result in a fair, open, and competitive political recruitment process at the regional level. Third, from the general elections, the community wants a peaceful pattern of power rotation.

In the implementation of the election system, not all regions apply the principle of one man one show, such as the regional elections in Papua which are carried out using a bag made of tree bark called noken as a place to put ballot papers that have been marked/ticked. In fact, in Papuan culture, noken is usually used to carry agricultural products and is a typical Papuan handicraft. In line with the opinion of Sheldon S. Wolin who stated that the processes in the election are assimilated into market practices. Candidates are marketed as commodities, elections are reduced to slogans and advertisements, and voters are considered consumers whose tastes can be controlled (Zamjani, 2009). In fact, this noken system is that the tribal chief will represent the community to tick the ballot paper. This is certainly contrary to the election procedures implemented in Indonesia, namely that one person may only use one vote.

The noken system is considered a more democratic system because it is the original democratic system of the Indonesian nation that was born from the cultural values of the nation that live in society. By giving voting rights to tribal chiefs, the principles of people's sovereignty and people's representation are fulfilled, but there is a conflict in assessing the level of democracy of the election system that has been in effect so far. The problem is whether the noken system can reflect democratic general elections and also the constitutionality of the

Constitutional Court's decision regarding the noken system.

II. RESEARCH METHODS

The research method used is a normative research method, namely research conducted referring to legal norms contained in laws and court decisions. The research approaches used are the statute approach, the conceptual approach, and the historical approach. The statutory approach is carried out to examine the rules whose norms are conducive to the implementation of elections in Indonesia. The conceptual approach is used to understand the concepts to be studied regarding the implementation of the noken system in elections so that it is hoped that the norms in legal regulations no longer allow for multiple understandings and the historical approach is carried out to find out the history of the implementation of the noken system itself. The data for this research uses primary legal data, which is authoritative, meaning it has authority consisting of legislation and judges' decisions (Marzuki, 2013), and also secondary legal data, in the form of written literature related to the main issues in this research, whether in the form of books, papers, journals, research reports, newspaper articles and others.

III. RESULTS AND DISCUSSION

Noken in Papuan Indigenous Society

Papua Island, located at the easternmost tip of Indonesia, has the largest area compared to other islands in Indonesia, which is divided into six (6) provinces. Noken is a handicraft made from tree bark and has been used by the Papuan people for generations (Ronsumbre, 2019). In terminology, the word noken comes from the Biak language, namely from the word inokson or inoken, which means "bag" or "basket used by Papuan women" (Somantri, 2008). Historically, noken comes from the time of our ancestors in Papua. Hundreds of Papuan tribes have different terms for referring to this bark bag. The Dani tribe calls noken "su", while the Biak tribe calls noken "inokson", the Moor tribe calls noken "Aramuto". The Marind tribe in Merauke Regency calls noken "Mahyan" (Arizona, 2010). Papuan people usually use noken for various activities, large noken are used to carry items such as firewood, harvested plants, shopping items, or even used to carry children. While the small ones are used to carry personal items. The uniqueness of noken is also used as a souvenir gift for guests and used in ceremonies.

In the view of some traditional communities in Papua, humans are an integral part of their ecosystem. The manifestation of such a view is personification and the existence of such views and beliefs causes the formation of certain norms and values that function as social controllers as Roscoue Pound's theory states that law as a tool of social engineering(J.R. Mansoben, 2003). Noken is a cultural wealth and identity inherent in the people in the mountainous region of Papua. Culturally, noken contains the value of unity in belief and togetherness. Traditionally, noken is part of the cultural values that must receive attention. As one of the monumental symbols, the cultural value of noken is evidence of the existence of history in Papua. In Papuan indigenous society, noken has a fairly important position. As a symbol of peace and prosperity. In several tribes in Papua, the customary leader wears noken with different patterns and designs as a symbol of social status. Noken has a very important meaning in the structure of Papuan people's lives(Lahay & Mahmud, 2023).

Noken is one of the products created based on traditional knowledge and simple resources. Making noken using simple technology is a characteristic of the local wisdom of the Papuan indigenous people. Noken also has a sacred position for the community because it has many functions for most traditional communities in Papua. The function of noken which is an important symbol for the Papuan people contains very deep philosophical values(Persada, 2021). The attitude of independence and mutual assistance is one example of the meaning of noken which is also interpreted as a mobile house. The use of noken which contains various needs, especially when the harvest season arrives, usually noken is used to carry the community's plantation products. From a social perspective, noken functions as an identity of origin because each indigenous tribe has a different pattern, shape, and color of noken. The existence of this difference is interpreted that each indigenous tribe has different values and becomes a characteristic of a person when leaving their environment. In addition, noken has cultural value because this bag is usually used in several traditional ceremonies. When viewed from an economic perspective, noken functions as a place to store food ingredients that are prepared in case something happens beyond desire and urgent needs. Noken also has a political function by being used in the general election event that took place in the central highlands of Papua(Pamungkas, 2018).

The function of noken can also be found in Article 1 Point 13 of the Decree of the Papua

Provincial Election Commission Number: 01/Kpts/KPU.Prov.030/2013 concerning Technical Instructions for Voting Procedures Using Noken. It is said that noken is a type of bag/bag made from woven orchid skin or spun bark or spun yarn used by some people in Papua as a place to carry agricultural or plantation products; a place to swing and/or carry toddlers for some ethnic members of the community in the interior of Papua; a place to fill in important letters; and a place for other needs according to the customs of certain community members in some inland communities that can be used as gifts in the form of affection, souvenirs, and symbols of brotherhood/kinship(R. Kogoya et al., 2023). Function in legislative elections, presidential elections, regional head elections, noken is also used as a substitute for ballot boxes to elect regional head candidates, President and Vice President, and representatives in legislative members at the regional and central levels. The election is carried out on the basis of a mutual agreement of a group of people led by local community leaders by requesting ballots according to the number of people present to be included in the noken to the candidate pair whose votes are given(Pamungkas, 2018).

Implementation of the Noken System Pattern

Factors that cause the implementation of the noken system include the fact that the general election in Papua has its own appeal due to the implementation of the noken system in several regions. This noken system allows Papuans to delegate their voting rights to others. For some people, the noken system is seen as reasonable because they see the character of Papuan society which is still dominated by tribal chiefs or "Big Men". In addition to being political leaders, tribal chiefs also lead the economy, social, and culture(Waluyo, 2018).The practice of implementing the noken system is nothing more than a substitute for ballot boxes with a voting system as stipulated in the laws and regulations. However, the noken system is attached to a different voting mechanism, namely "community agreement" or "acclamation", which is then known as the binding system. In the Papuan tradition, decisions are usually made in meetings or deliberations involving the entire community or certain people. The noken system is a system used in special elections for provincial areas on the island of Papua. The General Election Commission explained that noken is an important part of the implementation of regional head elections in Papua, especially for Papuans from mountainous areas. In the technical instructions of the Papua General Election

Commission Number 1 of 2013, noken is used as a substitute for ballot boxes.

There are two patterns of noken systems commonly used by people in the Pegunungan Tengah. First, the bigman pattern, where voting is handed over or delegated to the traditional leader. In this pattern, residents completely submit their choice to the leader as an expression of obedience. Second, the hanging noken pattern. The community can see the votes going into the pockets of the party/candidate that has been previously agreed upon. Both of these patterns set aside the principle of freedom and secrecy in elections. Even though it is considered to have weaknesses, supporters of this system believe that the decision of each citizen to submit their choice to someone they trust is a personal decision that is united together into a community agreement symbolized through the noken, and that is a form of sovereignty of the people of the Pegunungan Tengah of Papua (Yahya et al., 2023). In Sipadi Regency, located in the Pegunungan Tengah of Papua, it is an isolated area. The noken system has been in place since the elections in the era of President Soeharto. During that time, the noken system had no protection in this case, the Law. However, since 2009, there has been a Constitutional Court decision that legalized it. The noken system is associated with tradition or culture, local wisdom, especially in the Pegunungan Tengah area (Persada, 2021).

The noken system in voting has been known since the referendum in 1969 in Irian Barat which was later replaced with Irian Jaya and Papua. For the Election in Indonesia, the noken system was used in the 2009 election and is now recognized by the Constitutional Court in the 2014 Presidential Election. Thus, constitutionally it provides recognition of the protection of indigenous peoples and constitutional rights. The Constitutional Court has decided that the noken system is a legitimate system in elections. This is stated in the Constitutional Court decision Number 47-48 / PPHU A-VI / 2009 concerning the Mechanism for Using the Noken System in Papua on June 9, 2009 used in the voting for the Yahukimo district head election (Persada, 2021).

Implementation of the Noken System in General Elections in Papua

General elections are a process in which voters elect people to fill certain political positions. The implementation of the noken system as a democratic process according to Barnabas Suebu, that since the 1971 Election noken has been used as a substitute for ballot boxes. The General Election

Commission also stated that noken is an important part of the implementation of regional elections in Papua, especially for Papuans who come from mountainous areas noken is used as a substitute for ballot boxes. This is regulated in the technical instructions of the Papua General Election Commission Number 1 of 2013. According to the Constitutional Court Decision, that based on the statement of the Papuan People's Assembly, the general election model with the authority of tribal chiefs or representatives (noken) has been used since the first election in Papua. That is, both legislative elections, gubernatorial elections, even to presidential elections in several areas of Papua (Konstitusi, 2013). Elections are conducted through a tie or noken system, by mutual agreement (Konstitusi, 2009).

In legislative elections, presidential elections, regional head elections, noken is also used as a substitute for ballot boxes to elect regional head candidates, president and vice president, and representatives in the legislative members at the regional and central levels. General elections are carried out based on mutual agreement of a group of people led by local community leaders by requesting ballots according to the number of people present to be put in the noken for the candidate pair whose votes are given. The noken system will be considered valid if the noken is hung on wood and is in the Polling Station area. Voters whose voting rights are put in the noken as a substitute for ballot boxes must come to the Polling Station where they live and cannot be represented by others. After voting, the noken must be opened and counted on the spot and the ballots must be marked, not immediately taken as in other regional election mechanisms.

The Constitutional Court also acknowledged and ratified it on the grounds that the noken System adheres to a direct, general, free and secret election system in accordance with the Constitutional Court's decision number: 47-48/PHPU.AV12009 which is in accordance with the 1945 Constitution which states, "The state acknowledges and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law. The Constitutional Court also acknowledged that the noken system is implemented with two mechanisms. The first mechanism, the entire community around the Polling Station is gathered and asked for a certain number of ballots, then the ballots are put into the

available bags. The second mechanism, through a binding system, namely the number of votes is directly distributed to one of the parties/candidate pairs/candidates (Konstitusi, 2009).

Both mechanisms explain that voters do not directly mark their ballots and put them in the ballot box. This is different from the direct principle in general elections, because this principle requires voters to come directly to the Polling Station and mark their respective ballots, without intermediaries (Triwahyuningsih, 2019). However, the impact is that the people's agreement is determined before the voting is carried out. This is of course without any secrets about the chosen candidate, even the people tell the agreement to others. Therefore, usually people already know the election results or which candidate will be chosen by the people in the village before the voting is carried out. Voting does not have to be attended by all voters because voting can be done by people they trust to represent them. The essence of democracy is the participation of all people. A democratic election means that all people must actively participate in making decisions about the candidates they choose (Sulistiono & Boediningsih, 2023).

Second, the noken system is reviewed based on general principles, so there is no difference to the principles. The general principles require every voter to have the opportunity to participate in the election. This participation is carried out without discrimination based on ethnicity, religion, race, gender, and others. In the implementation of the noken system, there are actually no acts of discrimination against voters, and the most important thing in the system is that all voters obey the choice agreement that has been made during the deliberation with the tribal chief (Rahmayani & Jaya Wardana, 2023). The people's agreement symbolized through the noken reflects political participation and emancipation. The people have declared their sovereignty in choosing the presidential candidate they trust. The results of the presidential election using the noken system, whatever the results, reflect the sovereignty of the people. The people have carried out the presidential election directly, generally, freely, transparently, honestly, and fairly (Rahmayani & Jaya Wardana, 2023).

The noken system when reviewed based on the principle of free elections, there will be differences in its implementation, because in the implementation of the noken system, deliberation and decisions of tribal chiefs are always used as a measure in determining the choice of candidates. This is as stated by Timotius Murib that, the mechanism for decision-making through the noken

system and/or the ikat system above can be based on the results of joint deliberation or based on the decision of the authority of the tribal chief who is also a political representation of his community (Konstitusi, 2013). The role of the tribal chief greatly influences the choice of the people who use noken. This is certainly different from the principle referred to in general elections, because voters have freedom without pressure and coercion from anyone, even the state or tribal chiefs are not allowed to intervene in the choices of voters.

The implementation of the noken system also when reviewed based on the principles of honesty and fairness, it can be said that there is nothing contradictory at all. This is related to the election organizers and related parties acting honestly in accordance with the laws and regulations, so this honest principle does not violate the Election Law (Fatayati, 2017). Furthermore, the principle of fairness is also the same, because voters are treated fairly and free from fraud from any party, so this principle does not violate the Election Law. Violations of this principle will be proven in court. The principles of the election according to the noken system are to avoid conflict, because there will be conflict between supporters of legislative candidates, presidential candidates and vice presidential candidates if the results are not in accordance with what they want (Ronaldo & Darmaiza, 2021). Therefore, the noken system in Papua can avoid conflict due to election results, because the noken system is carried out based on a mutual agreement of the people before the election is held. In the Papuan Mountains, elections are carried out transparently based on a mutual agreement that summarizes the personal decisions of voters. Therefore, the people do not have a problem with the polling station, but the results must be in accordance with the people's agreement. So, no people rebel when voting is not carried out at the polling station.

The noken or ikat mechanism can be based on joint deliberation or the authority of the tribal chief who is a representation of the community's decision. The empirical reality of elections in Papua using the noken or ikat system began in the 1971 election where legislative elections, regional head elections or presidential elections were conducted through the noken system. Initially, the voting mechanism was based on local customary law and was not regulated in the election law, then the 1945 Constitution as the basic law and constitution provided recognition of the protection of indigenous peoples and constitutional rights (Syaputra & Nasution, 2019). The implementation of democracy

when applied to the pluralistic Indonesian society leaves behind lessons on the need to consider the conditions of communities and society that are relatively left behind in several aspects of life, whether social, educational, economic or political (Sodiki, 2009).

Ultimately, noken is used as a symbol in the implementation of elections, both for legislative elections, presidential elections and regional head elections (P. Kogoya, 2017). Therefore, since the names of regional head candidates or legislative members or president and vice president were determined, Papuans in various villages in the mountains began to engage in discussions, both spontaneous and planned. Discussions were held in traditional houses, places of worship, village halls, or certain home yards, and led by religious figures, youth figures, teachers, or civil servants trusted by the local population (Azim, 2013). In the discussion, they share information about each candidate they want to elect. They do not discuss the vision and mission of the candidates because the vision and mission cannot be held and are difficult to test for their truth. The information they seek and share revolves around the lives of the candidates. They want to know about the jobs they have done, their habits, hobbies, traits and character, their attitudes towards others, and the universal values they live and fight for. If the candidate comes from the village where the discussion is held, participants investigate their contribution to the progress of their home village.

The information that the public obtains as much as possible to get an idea of the candidates who are trustworthy and worthy of being elected. Each voter begins to make a personal decision about the candidate they will choose. Furthermore, the candidate of their choice is conveyed to others to test their eligibility and get feedback. Thus, all candidates mentioned by voters are tested for their eligibility by the people using cultural criteria (Pratiwi et al., 2020). Testing through discussion takes place until the voters in a village reach an agreement. The contents of the agreement include candidates who are trustworthy and, therefore, worthy of being voted for, and how many votes can be allocated to them. In the process, a deliberation is held first regarding the parties that will be elected later, the task of the tribal chief is to tick which parties are desired by the community. After the deliberation is complete, the community begins a people's party by cooking pork and tubers while the tribal chief has the task of ticking the ballot papers based on the results of the joint deliberation.

The practice of this type of election model has occurred in the Yahukimo community, and this is reinforced by the Constitutional Court that for the Papuan community, especially the Yahukimo tribe, elections are identical to happy celebrations (Zazili, 2016). Thus, it becomes clear that the election result is a personal decision of each voter, which is united together into a community agreement, and symbolized through the noken. People can agree to "fill" all the votes from their village in a noken and submit it to a candidate they trust or divide the votes among several candidates. The practice of noken still exists in several areas of the central mountains in Papua, due to geographical factors and the spread of society in the mountains, not all residents are able to come down to vote, also due to limited access to information (Haidar Adam, 2009). Democracy of this model is a form of sovereignty that then makes all actions and behavior of the state gain its legitimacy so that it can be done and implemented as it should be for what has been planned to then become part of the implementation of state power. Here the rights of each human being cannot be achieved by each person individually.

IV. CONCLUSION

The noken system is a result of the original culture of the Indonesian nation originating from the island of Papua which was then practiced in the political system, namely in realizing democratic general elections. The noken system can then reflect democratic general elections. This, although different from the election system that applies nationally, the noken system is a democratic system that has developed in the culture of the Indonesian nation. By implementing general elections with the noken system, it directly creates harmony and peace in society, especially in areas that practice the noken system, for example in the Papua Mountains region. Noken, which is local wisdom, can be a vessel that unites the nation, especially in Papua. Constitutionally, the Constitutional Court has decided that voting with the noken system can be justified, which only applies to people who hold fast to their culture, such as in Papua. Democratization of general elections by practicing noken is a necessity that applies to the people in Papua.

It is recommended that the House of Representatives create special regulations related to the rules for using noken in general elections as an effort to preserve local wisdom. This is also to protect the distribution of people's sovereignty, because the legal framework for elections has negated that voting must be done by each individual. Along with the recognition of the noken system as a

legitimate procedure in the implementation of people's sovereignty for the Papuan people, especially in the Yahukimo region.

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