

Studying the Fulfilment of Constitutional Rights by Implementing the Noken System in the General Elections in Papua

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ABSTRACT

The purpose of this research is to analyze the general election system in Papua that uses the Noken system, which is related to the realization of citizens' constitutional rights regulated by the Constitution of the Republic of Indonesia. The research method used is normative law using secondary data. The results of the study show that the Noken system in the implementation of regional elections in Papua is not democratic and is not in accordance with the principles of general elections, thus violating Article 43 of Law Number 39 of 1999 concerning Human Rights. "The Noken system in organizing regional elections has no place in the constitution in Indonesia. The implementation of the Noken system in the implementation of local elections is subject to money politics or buying and selling of votes carried out by political elites with the help of local traditional leaders. The law has not been implemented optimally. Political education is still not much known by the indigenous people of Papua.

Keywords: Election, Noken System, Papua, Pilkada.

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I. INTRODUCTION

Indonesia is a state of law, this has been determined in the constitution of the republic of Indonesia (Arief, 2021). The meaning of the rule of law embedded in the Indonesian state is that all state affairs and decision-making that have an impact on Indonesian society must be based on the agreed law (Soemarsono, 2007). Apart from being a legal state, Indonesia is also known as a democratic country in accordance with Article 1 paragraph (2), namely, "sovereignty is in the hands of the people and implemented according to the Constitution". Democracy is essentially a people's government (from the words demos = people and cratia = government). Substantively the reference is the principle of popular sovereignty. It is the people who are sovereign, not the authorities (Asshiddiqie, 2017). Democracy was born in ancient Greece around the fifth century BC, at that time the polis (city-state) of Athens practiced it with a population of around 20-40 thousand people (Swasono, 2008).

The journey of the Indonesian Democratic System has continued to experience changes and developments for quite a long time, starting from the Old Order Era, the New Order to the reformation period (Nuna, 2019). The development of democracy in the Reform Era is certainly different from the democratic system in the Old Order and New Order eras where the people made radical choices regarding decisions in the state by prioritizing human rights in Indonesia (Levinson, 2015).

One of the people's participation in making decisions is the Implementation of General Elections both at the central level to the regional level (Lim, 2014). Papua Province is an area that has the status of a special autonomous region through Law no. 21 of 2001 concerning Papua's special autonomy. Nationally, Papua is one of the regions that also participates in the General Election and Regional Head Elections (Berry, 2017). Even so, several regions in Papua do not all carry out direct elections, but use the Noken / Tie system where the voice of the community is represented by the Traditional Head / Tribal Head (Sitaraman, 2021). This is based on the Decision of the Constitutional Court. Through the Constitutional Court's decision number 47-81/PHPU-A-VII/2009 that the Noken system is one of the voting methods in regional elections in Papua, and this system is officially permitted by the Court Constitution (MK) through MK decision No. 47-81/PHPU-A-VII/2009 states "Considering that the Constitutional Court can understand and appreciate the culture that lives among the people of Papua which is typical in holding general elections by means or system of 'citizens' agreement' or acclamation (Jamaludin, 2018).

During its journey, the Noken system in the implementation of elections in Papua has received criticism from the public because the use of this system is often used by candidates for Regional Heads / Irresponsible persons. This kind of thing certainly makes the democratic system run unhealthy, besides that it is also not in accordance with the principles contained in Article 2 of Law No. 7 of 2017 concerning General Elections, which says that Elections are carried out based on the principles of Direct, General, Free, Confidential,

Honest, and Fair (Satria, 2019). This can be seen from several decisions of the Constitutional Court, totalling 9 decisions, the nine decisions were issued based on disputes over election results and local elections in all districts of the mountainous region related to the Noken System election material. In addition, the application of the Noken system in elections has also received criticism from a number of people, this can be seen in both print and online media, one of which is with the title: "The tug-of-war of the Noken system in Papua" and online news sources with the title: "Bawaslu reveals problems with Bawaslu reveals Potential Problems with the Noken System in Papua in the 2019 Election." Regarding the description above, basically it has been described and identified the issues to be studied. Based on the things that have been described above, how can the public's understanding of the Noken system for the General Elections-Pilkada be formulated in Papua? legal review of elections using the Noken system?

II. METHODOLOGY

It is the normative juridical research method that is used in this study, based on the applicable statutory analysis approach (Efendi 2018). The research data used is legal data which consists of primary legal materials (Suteki & Taufani, 2020), namely laws and regulations, including; The Constitution of the Republic of Indonesia and regulations on human rights and regulations on general elections as well as jurisprudence on Constitutional Court Decision Number 47-81/PHPU-A-VII/2009 Regarding the Use of the Noken System in Papua (Sonata 2014). The main data used in this study is secondary legal data obtained through library research (Benuf & Azhar, 2020).

III. RESULT AND DISCUSSION

A. Implementation of Democratic General Elections in Indonesia

With regard to the implementation of elections, Indonesia is a country that runs elections with a democratic system (Pawestri 2019), namely the implementation is carried out directly by the people, this can be seen in Article 1 paragraph (2), namely; Sovereignty is in the hands of the people and implemented according to the Constitution. In a person's right to vote and to be elected is a citizen's right that is regulated and protected in the Constitution of the Republic of Indonesia, namely the 1945 Constitution. Indonesia adheres to a direct democratic system which gives every citizen the right to jointly directly elect candidates-leader candidates, in this case the Regional Head (Benuf, 2018), and give the right to be elected to prospective leaders who have met the requirements. there are several provisions in the 1945 Constitution that can be used as a constitutional basis to guarantee political rights, especially the right of citizens to vote (Surbakti & Supriyadi, 2011).

Constitution as a constitution regulates a lot about the rights of citizens who are considered to be treated equally as citizens. One example of Article 27 paragraph (1) of the 1945 Constitution states that all citizens have the same position before law and government and are obliged to uphold law and government without exception. Then there is also Article 28D paragraph (1) which reads that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law, then Article 28D paragraph (3) which reads that every citizen has the right to have the opportunity the same in government. Based on the description above, it can be understood that every citizen has the same right to vote and be elected.

In realizing a legal state with a democratic system and respecting the rights of citizens as stated by Hatta in the book History of General Elections of the Republic of Indonesia:

"The principle of democracy means that sovereignty belongs to the people. All laws (recht, statutory regulations) must be based on the feelings of Justice and Truth that live in the hearts of the people at large, and the rules of life must be perfect and happy for the people if they are grounded in people's sovereignty." (Hatta, 1932)

Thus, elections are one of the main indicators that realize that a democratic political system lives and is used in a country, because in elections citizens have the right to participate and vote their votes regarding political issues." With the intended participation and voice of the people, elections become a mechanism for selecting and delegating people's sovereignty to people or political parties entrusted (Michael 2016).

B. Election-Electoral Relations and Human Rights

Since entering the Reform Era, the Implementation of the Democratic System through the implementation of the General Elections has undergone significant changes compared to the Implementation of the Old Order and New Order Era Democracy Systems by prioritizing the rights of citizens as a form of respect for human rights for every citizen in making his political choices. This is

contained in Law No. 39 of 1999 concerning Human Rights regulates the right to vote in Article 43 which stipulates that:

All Indonesian citizens without exception have the right to participate in general elections, both as voters and as elected (Zhao, 2019). The general election system carried out is a direct voting system by Indonesian citizens which is carried out directly, publicly, freely, honestly and fairly in accordance with Indonesian law (Lestari, 2017). The rights of the Indonesian people without exception are also in accordance with the internationally recognized human political rights as stated in International Covenant on Civil and Political Rights (ICCPR) (Daryl Levinson, 2015), which has been ratified by Indonesia through Law no. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, which in essence regulates that all Indonesian citizens without exception have the right to participate in general elections, both as voters and as elected (Lim, 2014). The general election system that is carried out is a direct voting system by Indonesian citizens which is carried out directly, publicly, freely, honestly and fairly in accordance with Indonesian law without unreasonable restrictions (Achwan, 2014). This is also in line with jurisprudence, namely the Constitutional Court Decision in Case Number 011-017/PUU-I/2003, dated 24 February 2004 stating that citizens' right to vote and be elected must be guaranteed by the constitution of the Republic of Indonesia.

This highlights the importance of citizens' rights in general elections in order to guarantee citizens' human rights as democratic ideals (Gambetta, 2002). Guaranteeing and protecting the rights and freedoms of citizens are the basic pillars of democracy. In this regard, the OSCE Office for Democratic Institutions and Human Rights (ODHIR) uses standard democratic elections (Sitaraman, 2021). The agency released what it called the Copenhagen Document, which includes the principles of democratic elections. The document contains nine conditions or principles for democratic elections, namely: elections shall be held within reasonable time, all seats in one chamber of representatives to be elected by the people, guaranteed by universal and equal suffrage, respecting the right of citizens to run for office, respecting the right to create political parties and to ensure that parties can compete on the basis of equal treatment before the law, to ensure that political election campaigns can be conducted in a free and fair environment without administrative actions, violence, threats or fear of reprisals from candidates, parties or subpoenas (Berry, 2017), and to ensure that access to the media is not impeded indiscriminately, to ensure that votes are cast by secret ballot, counted and reported honestly, the results are made public, and to ensure that candidates who win the necessary votes for election are duly certified and allowed to remain in office until the end of their term (Mas'ood, 1999).

In addition, the international community has also formulated other principles which are more commonly known as fair elections is campaign by The United Nations Democracy Fund (UNDEF), Open Society Foundation, and TIRI (Lestari, 2017). The following are the principles of holding fair elections with the following meaning: Integrity, this principle is an important element based on the spirit of honesty and accountability which is the spirit of the entire electoral process. Participation the principle that states that people's voices must be heard, valued and properly represented (Dremluga, 2020). Moreover, in a representative democracy system, citizen participation is the key to the success of democratic representation. Law enforcement. Law enforcement must be firm in order to strengthen the illegitimacy of the representative democratic process. Every voter for the people's representative candidates is guaranteed justice in their eyes law. Professionalism is the holding of elections requires technical knowledge of election administrators who are qualified and I have the incompetence to explain the process. All party organizers for parties who have authority in the administration of elections must be independent (Nonet and Selznick 1978). Transparency. is the main element that serves to disclose all relevant information about the election process. Timeline the importance of consistency in planning the holding of elections. Non-violence. All electoral processes must be free from elements of violence, intimidation, coercive action and corruption (Dahl, 2011).

Article 2 of Law 7 of 2017 regarding elections, which is: Elections are conducted according to the principles of direct, open, free, secret, fair and impartial. Each of these principles has the following meaning: Direct people, as voters, have the right to vote according to their conscience, without intermediaries. in general, every citizen who fulfils the conditions defined in this law has the right to participate in the elections. Of course, universal suffrage means that opportunities should be guaranteed to all citizens regardless of race, religion, nationality, class, sex, region, profession, or social status. freedom, every citizen has the right to vote freely without pressure from anyone. in exercising their rights, every citizen has the right to vote according to their wishes and conscience. Secretly, when voting, we guarantee voters that their vote will not be known in any way. Voters vote on a paper that cannot be recognized by others (Nuna, 2019).

It is not surprising that " Prof. Jimmy Asshiddiqie He said that human rights and democracy are concepts of humanity and human relations that have emerged in the history of humanity around the world. Human rights and democracy can be defined as the result of the struggle to preserve and achieve human dignity, because until now it has become clear that the concept of human rights and democracy is the only one that

understands and affirms the value of the human being (Ashsiddiqie, 2005). Therefore, we can say that the relationship between human rights (HAM) and democracy is immediate, because both see the values and interests of people respected and respected in the life of the state and government. Start with the company (Ni'matul Huda, 2017). Democracy and for the people with models of the people's own choice, this can only be achieved if the citizens of a country truly respect human rights. Democracy can thrive when human rights are respected, on the other hand human rights will be respected if democracy is practiced.

C. Implementation of Elections through the Noken System in Papua

In the Papuan context the term Noken refers to a cultural instrument in the form of a multifunctional bag for the daily lives of the Papuan people (Agustine, 2019). This bag has various sizes according to its operational function, for example, cultural identity, accessories, equipment for funerals, baby carriers, dowry, storage of food and other daily necessities, storage of important documents, etc. However, since 1971 until now, Noken has been used as a substitute for the ballot box in elections and local elections, in several areas in Papua. If ballot boxes in general follow the standards set by the KPU RI, then specifically in Papua, ballot boxes are replaced with Noken bags. (Kanem, Veronika; Norris 2018)

Noken has been legitimized in the decision of the Constitutional Court (MK) through MK Decision Number 47-81/PHPU.A-VII/2009. The selection of this Noken model was contained in the trial case Number 47-81/PHPU.A/VII/2009 at the Constitutional Court, which was filed by two applicants, namely Pdt. Elion Numberi and Hasbi Suaib ST. What they are concerned about is the election results for DPD members, not constitutionality Noken as the selection model. But the selection of the Noken model is directly related to whether or not the election is valid and the number of votes in dispute, so that when the votes obtained from the Noken election model are declared valid, the Noken election model is implicitly recognized as one of the constitutional election procedures. Thus, the Noken system is certainly different from the voting system which is regulated in writing by election laws and regulations. Meanwhile, the Noken process is not regulated rigidly in legislation. Basically, the voting system using Noken is a system that has been used customarily from generation to generation based on local wisdom that exists in each region. In the implementation of elections and regional elections, Noken has a new function not only as a place to carry goods but also as a channel for the political aspirations of citizens as a customary tradition adopted from the way their ancestors choose village/village leaders and tribal chiefs (Pamungkas, 2017).

The implementation of Noken is done in different ways. One of them is with the people who gather together to find out and choose which of the elders of the party act as a channel for political proposals and later became members. Elected elders are responsible for voting on two candidates agreed upon by the KPPS Directors. The votes cast are then submitted to the nearest TPS and tallied. There is also a way for the elderly to be empowered by the community to enter the polling station and receive as many votes as the number of TPS registered voters from the KPPS directory. These votes are tallied and returned to the KPPS officer to put in the ballot box and continue counting the votes at the TPS. It is also done by hanging it on a tree like a standing ballot box which is often called hanging method or tying Noken. In the Noken system, by hanging or tying, citizens can ensure that agreed votes are placed in agreed upon pockets. Although the Noken system is used in general and local elections, the system is not strictly regulated by law or elections. The Noken primary election is therefore an electoral system that does not follow the laws of the country.

D. Noken Problems in Elections in Papua

In historical history, the use of the noken system once resulted in one pair of candidates obtaining a vote count of 100% so that some circles considered it a form of conflict with the principles of democracy. Elections held in Papua are considered undemocratic because of this. At first glance, the Noken mechanism seems inconsistent with the characteristics of democracy which highly upholds individual rights. Noken is an election that is not carried out through voting booths directly by voters but voting rights are delegated to tribal leaders (traditional elders) with votes put in a special bag for Papuans called Noken. Such a noken process often questions the validity of the results (Agustine, 2019). The opinion of some groups who state that there is a conflict between the Noken system and democracy in the implementation of elections in Indonesia is related to the principle of elections. It has been explained that elections must be carried out directly, publicly, freely, confidentially, honestly and fairly. Either in the tie system or with the big man system. Individuals as owners of voting rights do not vote directly, but are represented by tribal chiefs, so that they are considered contrary to the direct and secret principle. This is what is often debated because elections are a means of implementing people's sovereignty which are held directly, publicly, freely, confidentially, honestly and fairly based on Pancasila and the 1945 constitution (Aswandi & Roisah, 2019).

In addition, money politics (Wangga *et al.*, 2019) is also a critical issue in the application of the Noken system itself. Although routine, money politics has never been minimized by parties in Papua. From the point of view of criminality, this is a common thing because money politics is not only a local issue, but also a national and even international issue. It is just that money politics in Papua can be said to be structurally formed from the realities of people's lives, especially in districts/cities that are still far behind.

Money politics or vote buying are often carried out by political elites (Kanem *et al.*, 2018). Moreover, the education level of the people in the regency/municipal areas is not evenly distributed. Public understanding of the importance of selecting leaders based on the principles of good elections is definitely low. Papuan people are easily preyed upon by the opportunistic and pragmatic behavior of the political elite with material lures.

TABLE I: NOKEN SYSTEM IMPLEMENTATION MECHANISM BASED ON PRACTICES SO FAR IMPLEMENTED IN THE FIELD

No	Noken System Mechanism	Key Points
1	The tribal chief and his people hold a stone-burning party before the election/ local election. On voting day, voters are gathered around the TPS area, then the tribal chief asks for a number of ballots from the KPPS based on the number of participants in question, the ballots are put in Noken to be given to the party/candidate/ paslon at TPS.10.	Organizing a stone-burning party to determine the choice of party/candidate/ pair candidate. - Voters' position at TPS. - Voting is carried out by representatives. - Ballots are not punched by representatives. - Ballots are put in Noken. - KPPS votes ballots afterwards.
2	Voters held a stone-burning party in the village or in the district capital, then several of their representatives came to the TPS and asked the KPPS for a number of ballots on behalf of the number of people they represented, then the ballots that were not punched were immediately put into the Noken to be handed over to one party/candidate/ choice candidate.	Implementation of a stone-burning party to determine the choice of party/candidate/ pair candidate. - The position of voters outside the TPS. - Only representatives who come to the TPS and vote. - The ballots are not punched by the representatives. - The ballots are put in the Noken. - KPPS then punches the ballots.

Source: Ebook Noken and Election Conflict.

From the table above, it can be seen that the practices of the Elections- Pilkada with the Noken system were considered undemocratic and not in line with the principles of the Election, this can be seen in the points in the table where the voting was conducted by the KPPS.

IV. CONCLUSION

Political education can be said to be still low for some indigenous peoples in Papua. This affects the understanding of the Papuan people regarding the principles of elections that exist in the democratic system in Indonesia. Low political education can also lead to money politics or buying and selling of votes by political elites by using local tribal chiefs. Considering that the Noken system in the implementation of regional elections in Papua does not yet have a definite legal status in the Constitution in Indonesia, as well as its mechanism which is deemed not in accordance with the principles of national elections. It is better if this system is not used in the regional elections. Decision of the Constitutional Court (MK) Number 47-81/PHPU.A-VII/2009 concerning the legality of using Noken in regional elections needs to be re-examined by the Constitutional Court in practice by looking at citizens' rights in politics as a form of respect for human rights. The Noken system should be used by the people of Papua in the election of tribal chiefs, not in regional elections. Political Education needs to be improved or properly implemented through good socialization starting from villages to urban areas.

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