
THE NOKEN SYSTEM AS A SYMBOL OF THE SUPREME DELIBERATION OF INDIGENOUS PEOPLES IN PAPUA ANTHROPOLOGICAL STUDY OF LAW AND CONSTITUTIONAL LAW

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Abstract

An electoral system used specifically for a number of districts in the Central Highlands region of Central Papua and Mountain Papua, Indonesia is called the noken system. The noken system is directly related to traditional leaders/traditional elders/tribal chiefs which of course is related to several reasons for holding noken elections both geographically, human resources, socio-culturally. In the tradition of indigenous Papuans, noken is interpreted in the value of elections by making mutual agreements and establishing intact / support for certain candidates with consensus deliberation. In other words, the noken system is a symbol of the highest deliberation for opinion determination in Papua without secrets and is more concerned with deliberation in tribal communities in Papua. The study of Legal Anthropology focuses on the socio-culture of indigenous Papuans, if in making decisions collectively collegially both in life, and in social relations both ideas, ideas in deliberation become absolute decisions, and are officially declared by their tribal chiefs (bigman), because traditional Papuan / inland communities adhere to traditional politics (bigman). So that noken is a cultural object, a community routine that is interpreted in electoral values by making mutual agreements, voting as a whole/supporting certain candidates with consensus deliberation. Thus, the use of noken means that Papuan indigenous elements are respected and obedient people to participate in elections, and to position noken to respect the entire life of indigenous Papuans. This reality underlies the opinion that noken is part of the local wisdom of indigenous Papuans who should be respected, fostered, maintained, preserved, cared for and maintained in their existence to maintain customary law in indigenous Papuans. The study of Constitutional Law focuses on a regulation to determine the noken election to be valid, with the issuance of Constitutional Court Decree Number 47-48 / PHPU-A-VII / 2009 concerning the Noken System Election in Papua. The Constitutional Court understands and appreciates the cultural values that live in indigenous Papuans that are distinctive in elections with the "Citizen Agreement" system that based on the agreement of the community understand noken as a change in object, namely the form of the KPU ballot box replaced with the form of hanging noken and contains philosophical meanings namely opening, filling and binding in the political practice of elections held on indigenous Papuans

Keywords: Noken System in Papuan Indigenous Peoples, Legal Anthropology Studies, Constitutional Law Studies.

INTRODUCTION

The noken system does not apply real democratic practices (Pamungkas, 2017), because this system uses bigman or tribal chiefs to claim the votes of one village and is given to one candidate from several candidates who are considered in Papua Province to be inconsistent in their role as guardians of the constitution, the rule of law, and democracy and human rights in Papua Province. In other words, the use of noken in the electoral system in Papua causes discrimination between tribes in Papua Province, because it violates the principles of the rule of law, democracy and human rights (Landman, 2018).

Election makers and administrators must not violate the recognition and protection of the unity of indigenous peoples and their traditional rights as guaranteed in Article 18B of the 1945 Constitution, because voting in elections is not carried out by voting/voting but by voting or acclamation or agreement under the name of the Noken system as a practice based on local customs guaranteed by the 1945 Constitution (Brown et al., 2019).

The noken system, which was originally really pure with local wisdom, turned into something that was manipulated either because of violent pressure or money intervention (Nugraha, 2021). which should be adapted to practices that better protect citizens' rights from the political practice of money or bribes to tribal chiefs. In other words, this noken system is very prone to fraud in the implementation of Papuan regional elections leading to disputes over election results in the Constitutional Court (Suparto & Chaidir, 2019). The dispute over the election results occurred due to objections from people whose votes were represented by the Tribal Chief and in reality the noken system was followed by the practice of intimidation, violence and buying and selling votes, so it was found that there was manipulation when collecting votes through the vote representation system through the representation system and should pay attention to the local wisdom of the Papuan people.

Result this research What is the noken system in the perspective of Legal Anthropology and Constitutional Law and How is Noken the highest symbol of deliberation for indigenous Papuans.

METHOD RESEARCH

Legal Anthropology Studies (Roberts, 2013): views that legal events or legal facts / realities that occur in the community are carried out by observing / observing informants directly (data source interviews), concrete data in the field when research is carried out to answer problems in research that are identical to the behavior of indigenous Papuans, Noken and the Implementation of Elections in Papua and Handling Legal Cases in indigenous Papuans if there is an election dispute at any time districts in the customary territory of Papua and study this in the perspective of Legal Anthropology called the Empirical Approach to Legal Anthropology. Constitutional Law Review: governance with the principle of prudence in the implementation of the noken system based on citizen agreement and focusing on regulations / rules based on applicable legislation, namely Constitutional Court Decree Number: 47-48 / PPHU-A-VII / 2009 concerning the Election of the Noken System in Papua.

RESULT AND DISCUSSION

Noken System in The Perspective of Legal Anthropology and Constitutional Law

The noken system does not apply real democratic practices and even fraud occurs in Papuan regional elections which leads to the practice of intimidation, vote buying and selling and manipulation of vote collection through a representative system and does not pay attention to the local wisdom of indigenous Papuans (Kossay, 2014).

The study of Legal Anthropology focuses on the socio-culture of indigenous Papuans, if in making decisions collectively collegially both in life, and in social relations both ideas, ideas in deliberation become absolute decisions, and are officially declared by their tribal chiefs (bigman), because traditional Papuan / inland communities adhere to traditional politics

(bigman) (Pamungkas, 2022). So that noken is a cultural object, a community routine that is interpreted in electoral values by making mutual agreements, voting as a whole/supporting certain candidates with consensus deliberation (Earls & Carlson, 2020). Thus, the use of noken means that Papuan indigenous elements are respected and obedient people to participate in elections, and positions noken to respect the entire life of indigenous Papuans. This reality underlies the opinion that noken is part of the local wisdom of indigenous Papuans who should be respected, fostered and maintained in maintaining their customary law.

The study of Constitutional Law focuses on a regulation to determine the noken election to be valid, with the issuance of Constitutional Court Decree Number 47-48 / PPHU-A-VII / 2009 concerning the Noken System Election in Papua (Hasibuan & Ashari, 2020). The Constitutional Court understands and appreciates the cultural values that live in indigenous Papuans which are distinctive in elections with the "Citizen Agreement" system that based on the agreement of the community understand noken as a change in object, namely the form of the KPU ballot box is replaced with the form of a hanging noken and contains philosophical meanings namely opening Utami & Budiono, (2020), filling and binding in the implementation of elections or regional elections in the territory of indigenous Papuans.

The above is something that really needs to be analyzed in order to enforce election law in the territory of indigenous Papuans which provides a philosophy of upholding indigenous peoples in giving their opinions without having to be with the representation system carried out by tribal chiefs in indigenous Papuans (Mandasari, 2014). Although in reality the representation of indigenous women in Papua in the political sphere is only 30 percent, this violates the basic conception of indigenous women as human beings who have the right to have a choice in the noken system held by indigenous Papuans based on Law Number 21 of 2001 concerning Special Autonomy for Papua Province, "Adat, indigenous peoples, customary law, customary law communities as wisdom and glue in the cultural noken of indigenous peoples of Tanah Papua (Tarima et al., 2013).

The Noken System as a Symbol of the Highest Deliberation For Indigenous Papuans

Indigenous Papuans organize a noken system in local elections held in Papua. The Noken system as a symbol of the highest deliberation for indigenous Papuans to channel the aspirations of indigenous Papuans, so that they can get voting representation in regional elections that will be held in each indigenous territory of indigenous Papuans. The Noken system is closely related to traditional leaders who entrust decisions to the elders/tribal leaders/chiefs. The unity of customary law guarantees the original noken according to unwritten rules or norms that have lived, are ingrained binding and form the unity of life of the indigenous Papuan people themselves (Haliim, 2016). Customary law is an unwritten rule or norm that lives in customary law communities, regulates, binds, is maintained and has sanctions Pakage & Pekei, (2013), namely customary sanctions based on customary regulations of the Papuan people related to the noken and noken system in elections or regional elections in the Papua region.

Noken is a distinctive enclave that has a noble function and meaning for indigenous Papuans. Philosophically it becomes the meaning of social status, self-identity and peace.

Noken is legal because it has been guaranteed its existence by Article 18 of the 1945 Constitution. Noken was held for several reasons, namely:

First, geographical. The distance to distribute election logistics and the difficulty of the terrain in the interior of Papua are complicated to access quickly. (Majority of steep mountains, steep ravines, limited transportation access, small-bodied aircraft), resulting in inconsistencies in the national election agenda.

Second, human resources. Some people in mountainous areas have not been educated, live communally and traditionally, do not understand elections validly, aims and objectives, benefits so they need to be directed to joint deliberation to make decisions in voting.

Third, Social Culture, a patent reference for the existence of noken elections in Papua, Papuan rural communities adhere to the traditional political system (Bigman / big man). Every decision of the community is carried out in a collegial collective (social relations, gathering, and deliberation) becomes an absolute decision and is officially declared by the Chief (bigman).

The three factors mentioned above, contributed positively to the issuance of the Constitutional Court Decree number 47-81 / PHPU-A-VII / 2009 concerning the Election of the Noken System in Papua, under the pretext that the Constitutional Court understands and appreciates the cultural values that live in indigenous Papuans that are typical in elections by means of "citizen agreement" or acclamation, that the noken system is a change in the object / form of the KPU ballot box hung during the election and aims to replace the ballot box to fill ballot in it. The Noken system contains philosophical meanings, namely opening, filling and binding. In the tradition of indigenous Papuans, noken is a cultural object that cannot be separated from the routine of indigenous Papuans in electoral values in making political commitments, collective agreements, and giving complete votes to certain candidates with consensus deliberation as a symbol of the highest deliberation of indigenous Papuans.

It can be concluded that the noken system can be aligned with the election system resulting from joint deliberations where indigenous Papuans can see the agreement (acclamation) and determination of their votes through Noken, in addition to the factor to reach the districts and distribution of indigenous Papuans who live in the mountains, thus making noken a voting tradition and giving confidence to leaders / elders / tribal chiefs to choose (representative system). The role of the chieftain is a social role and is not bound by formal law in a country. The compliance of indigenous Papuans is based on the obedience of a tribal chief in his customs including:

First, the chief must be able to solve customary problems

Second, the chief is in charge of regulating the customary system and solving problems related to customs. Thus, the deliberations applied at the time of determining the voting rights of indigenous Papuans (traditional communities) contain their own dimensions of historicity, rationality, actuality which are theoretically justified and practically realized. As a manifestation of the ideal of consultative democracy, the deliberative system applied in elections in Papua, which emphasizes the consensus aspects of political democracy in the framework of respect for individual rights and collectivism that protects communal rights and private rights as well as for its pluralist (prismatic) society.

This underlies that deliberation for consensus cannot be measured by whether laws and public policies are formulated based on the views of citizens in general and the equality of political equality of citizens, both indigenous Papuans and modern communities in Papua, is very important for decision-making in various institutions, people's representative institutions, courts, civil society, government departments and services, Village and other public spaces are carried out through deliberation / discussion based on rational reasons and considerations Surbakti et al., (2011) in order to create Democracy as also said by Amy Gutmann and Dennis Thomson, one of the most important values in democracy is the ability of every citizen to self-govern (self-government) which means rejecting tyranny but demanding accountability, and citizens obeying those rules (Chio et al., 2009). In line with the facts and characteristics of prescriptive legal science that studies the purpose of law, the values of justice, the validation of the rule of law, legal concepts and legal norms.

Election and regional elections conflicts are small-to-medium scale violent conflicts at every stage of elections, conflict-prone elections occur at stages: electoral formation, candidate registration, campaign period, quiet period, voting period, determination of results, determination of elected candidates after the decision of the Constitutional Court. A concrete example, the January 2013 incident, clashes between supporters of Yahukimo Governor candidates due to mutual ridicule and caused a policeman to be injured and 2 police firearms were lost and a campaign rampage against the Wamena Governor candidate's campaign committee for not getting money as promised and caused 8 residents to be injured.

This is very influential for the security of indigenous Papuans, because the existence of elections or regional elections in Papua is a symbol of the highest deliberation to realize a democratic party in the realm of the Land of Papua properly, so that honest, fair elections and enforcement of legal irregularities will be able to ensure the integrity of the election process or regional elections in indigenous Papuans.

In other words, the Noken system election model carried out by acclamation by indigenous Papuans is considered constitutional, the Constitutional Court has answered the commitment of the state, especially the judiciary, in respecting and protecting the rights of indigenous peoples recognized by the constitution. The implementation of the noken system in Papua actualizes the values of deliberation that have long been lived in the lives of the people of the archipelago which provides the practice of a consensus system in communal decision-making of indigenous peoples in the customary territory of Papua. Recognition of deliberation as the embodiment of multiculturalism democracy includes protecting the collective rights of cultural groups to maintain their identity and traditions (Haynes, 2000). Therefore, the recognition of the traditional rights of indigenous peoples is the answer, where the constitution as a social due contract (social contract) Kusnardi & Ibrahim, (1983) mentioned here that the legal framework of elections as a norm is formed through a political process that synergizes with democratic ideals, namely social justice.

CONCLUSION

Enforcing the election law and the noken system in the territory of indigenous Papuans provides a philosophy that upholds the customary of indigenous peoples in providing

indigenous Papuans in terms of opening, filling and binding based on Constitutional Court Decree Number 47-48 / PHPU-A-VII / 2009 concerning the Noken System Elections in Papua.

The Noken system as the highest deliberation in indigenous Papuans reflects the synergy of community agreement and local wisdom of indigenous Papuans who can jointly provide democratic rights for indigenous Papuans, described that the community understands noken as a form of hung ballot boxes, as values, and the meaning of customary elements of indigenous Papuans to be able to maintain the customary laws of indigenous Papuans.

REFERENCES

- Brown, M., Hale, K., & King, B. A. (2019). *The future of election administration: Cases and conversations*. Springer Nature.
- Chio, A., Logroscino, G., Hardiman, O., Swingler, R., Mitchell, D., Beghi, E., Traynor, B. G., & Consortium, E. (2009). Prognostic factors in ALS: a critical review. *Amyotrophic Lateral Sclerosis*, 10(5–6), 310–323.
- Earls, F., & Carlson, M. (2020). *Voice, Choice, and Action: The Potential of Young Citizens to Heal Democracy*. Harvard University Press.
- Haliim, W. (2016). Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif. *Masyarakat Indonesia*, 42(1), 19–30.
- Hasibuan, R. P. P. M., & Ashari, A. (2020). Optimasi Peran Negara Menghadapi Pandemi Corona Virus Disease 2019 dalam Perspektif Hukum Tata Negara Darurat. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(7), 581–594.
- Haynes, S. (2000). *Etruscan civilization: a cultural history*.
- Kossay, M. (2014). *Pemilu Sistem Noken Dalam Demokrasi Indonesia (Studi Kasus di Kabupaten Jayawijaya Provinsi Papua)*. UAJY.
- Kusnardi, M., & Ibrahim, H. (1983). *Pengantar Hukum Tata Negara*. Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia.
- Landman, T. (2018). Democracy and human rights: Concepts, measures, and relationships. *Politics and Governance*, 6(1), 48–59.
- Mandasari, Z. (2014). Politik Hukum Pengaturan Masyarakat Hukum Adat (Studi Putusan Mahkamah Konstitusi). *Jurnal Hukum Ius Quia Iustum*, 21(2), 227–250.
- Nugraha, I. Y. (2021). Legal pluralism, human rights and the right to vote: The case of the Noken system in Papua. *Asia-Pacific Journal on Human Rights and the Law*, 22(2), 255–286.
- Pakage, N., & Pekei, T. (2013). *Menggali nilai budaya tradisi lisan dari Papua: kajian cerita rakyat suku Mee*. Direktorat Sejarah dan Nilai Budaya.
- Pamungkas, C. (2017). Noken electoral system in Papua deliberative democracy in Papuan tradition. *Jurnal Masyarakat Dan Budaya*, 19(2), 219–236.
- Pamungkas, C. (2022). Decolonising the (Indonesian)“Peace Concept” in West-Papua. In *Decolonising Peace and Conflict Studies through Indigenous Research* (pp. 195–214). Springer.
- Roberts, S. (2013). *Order and dispute: an introduction to legal anthropology*. Quid Pro Books.
- Suparto, S., & Chaidir, E. (2019). The Constitutional Court Decision Regarding Disputes of Legislative Election; From A Progressive Law Enforcement to The Recognition of Customary Law Communities in Democracy. 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019), 161–164.
- Surbakti, R., Supriyanto, D., & Santoso, T. (2011). *Penanganan sengketa pemilu. Kemitraan bagi Pembaruan Tata Pemerintahan*.

- Tarima, Y., Noak, P. A., & Azhar, M. A. (2013). Peran Kepala Suku dalam Sistem Noken Pada Pemilukada di Distrik KAMU Kabupaten Dogiyai Provinsi Papua Tahun 2013. Udayana University.
- Utami, N. S., & Budiono, A. (2020). Upaya Pembangunan Pendidikan Politik Melalui Pemilihan bagi Masyarakat Papua (Studi Penerapan Penggunaan Noken dalam Pemilihan Kepala Daerah).

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