

The Usage of Noken as an Alternative of the Ballot Box Replacement in the Middle Papua Mountain Area

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Abstract

Noken is a tool of culture of Papuan that is more than just a tool or a means. It is more than that, as it has a philosophical meaning that sticks firmly within the people of Papua especially those who stays in the middle mountains area. The usage of this tool, specifically as a replacement for the ballot box is a form of appreciation towards the cultural value and local wisdom of the people. Historically, the usage of Noken in an election is a spontaneous reaction of the people in a “bakar batu” party and it is still not clear who proposed the idea and when does it actually starts. From the legal aspect, this has not been regulated yet by the statutory provision, however the only legal basis that can be used as an official reference is the Decision Number of Indonesian Supreme Court Number 47-48/PHPU.A-VII/2009 about the result of a legislative election of Yakuhimo district and the Decision Number 1/PHPU.PRES-XII/2014 about the Presidential and Vice-Presidential election in 2014. With the usage of this Noken, the role of the tribal chief is very central in terms of accommodating and distributing the rights to vote of the people. That is why; the thing that needs to be controlled and supervised is the utilization of the tribal chief by the elite politician in gaining or ruling the voting in an election.

Keywords: Noken, Alternative for the ballot box replacement.

1. Introduction

Noken is used in an election system not only as a tool or a measure, but also it is the expression of a cultural value that has been integrated within the life of the Papuan and has been continued from generation to generation. Noken therefore is systematic value entity that has been integrated within the life of the Papuan especially those who lives in the middle mountains.¹

The relevance amongst legal countries focus on between constitution, regulations and sovereignty of the people that is run through a democratic system. The state needs to focus on the participation and the interest of the people. This argument is highly relevant with the Papuan especially those who lives in the middle mountain areas during the election. It has already developed a democracy through adopting a local system - called the Noken democracy. The Noken Democracy is a forum and discussion in an election with using Noken as a tool or a measure to channel the aspiration.

From the historical perspective of democracy and election, the reformation era has marked a new chapter for the election system in Indonesia. It is shown by the amendment of the system such as an existence of a tri party system to a multi-party system, a choosing images to self-pictures, and a representation election system to a direct election system. One of the important and interesting aspects is the adoption of a local system and wisdom to the election mechanism. In the context of Papua, the adoption of election using “Noken” as a replacement of the ballot box has been normatively seen as a respond or appreciation towards the local culture especially those who live in the Middle Mountain Area.

The election in the reform era, whether it is the general election for President and Vice President, the election for regional leaders (hereinafter Pilkada in Bahasa), or the election for the legislative representation (hereinafter Pileg in Bahasa), or the General Election held in 2004 and 2009 does not seem to be known by the government both central and regional, and even politician, that the province of Papua has been using Noken in the election. However, the 2014 election became a trending topic among the people of Papua especially the supervisor of politics and democracy in all over the country as it was announced through various media such as newspaper and electronics that has been published locally, nationally, and even internationally, which states that Papuan people held election for the President and Vice President using Noken as a tool for their ballot box.

The usage of Noken in the election system becomes interesting because juridically it has not been formally regulated yet within the regulations, the law of election, and other political provisions in the country. Even so, the usage of Noken in election has been exercised since a very long time for all categories and levels of election i.e. Legislative Election and Regional Election. The usage of Noken in the election system is seen as an approach towards the local culture of Papuan native or as something that is good and fair. The usage of Noken mechanism is a development of tradition for the tribal chief election through a consensus reached in a forum.

¹The Middle Mountain Areas in Papua is a region that consist of a couple districts including : Jayawijaya, Yahokimo, Tolikara, Puncak Jaya, Bintang Mountains, Lani Jaya, Yalimo, Middle Memberamo, Nduga, Intan Jaya, Deyai, Dogiyai. These districts is an expansion of two main districts, which are Jayawijaya and Nabire district.

Such mechanism is developed so that the elected tribal chief can ensure the peacefulness and the lives of native society.

Seeing the philosophy of Noken usage above, it can be seen as something that is in line with the basic principle of democracy which in the end that the ultimate and final decision falls in the hands of the people. Meanwhile, the ballot box that is generally used by the urban society is essentially a vessel or a place that functions similarly like Noken. Therefore, there should not be any challenges or opposes for the usage of Noken in election. The problem actually lies in the principle of confidentiality, in which the ballot box is entirely closed in nature meanwhile Noken is transparent in nature.

Since 2014, some districts have used Noken in the Presidential election, Legislative election, Provincial election, and Mayor elections includes Jayawijaya, Yalimo District, Yahukimo District, Tolikara District, Memberamo District, Lanny Jaya district, Puncak, Nduga, and Intan Jaya. In the context of the election's perspective, these districts are referred as "the Noken System Area". It consists of a communal and collective society and still holds to their cultural practices and value. They have the same type of Noken, geographically lives in the mountains, valleys, and villages located approximately 3500 feet above the sea level.

The usage of Noken as a measure to channel aspiration also has its pros and cons. Most of the people and even politician give various responses. Some of them responded well because they see it as cultural practices that need to be appreciated while some others responded negatively and sees the usage of Noken violates the law as it is an unregulated method within the election's provision. There are also those who see the Noken system as the tools orchestrated by the elite politician for their own political interest and it is against the principle of direct participation, general, and confidentiality. In this specific context, it is primarily about the confidentiality aspect.

The pros and cons above then find its way out in the trial process in the Constitutional Court (hereinafter MK), where the defeated President Candidate sued the other President and Vice President candidate that won the Presidential election in 2014. They argued that the victory of the latter candidate was caused by the existence of Noken system. The Constitutional Court then decided that the usage of Noken was allowed because it was a form of cultural expression and cultural traditions.

The pros and cons of Noken, within the election to the Constitutional Court, indirectly develop the argumentation for the usage of Noken in the election system. They sharpen the thoughts and understanding of such concept and perspectives for the legal standing and substantive values for the Noken situation itself.

2. Discussion and Analysis

2.1 Historical aspects of the Usage of Noken

There have not been any comprehensive discussions about who actually starts the idea of proposal of using Noken in an election and which tribes that starts it first. However, based on the interviews and the information spreading among the people, "the usage of Noken in an election started spontaneity and initiatives from a group of people that presented during the "bakar batu" ceremony¹ when they were discussing about replacing the ballot box with Noken. The idea was then accepted by everyone that is present during the festival. It was then discussed and socialized from mouth to mouth until it reached the Middle Mountains District. Finally, the tribal chief and some of tribal officials accepted the usage of Noken in an election. Therefore, the Presidential election since 2004-2014 in several districts has already used Noken.

However, it was known that during the district expansion in the mountains area, Noken has been used in the general election. The Law No. 22 of 1999 on the Regional Government replaced by The Law No. 32 of 2004 about Regional Government (recently changed with The Law No. 23 of 2014 about Regional Government which then again was revised to The Law No. No 9 of 2015) stipulates the allowance of using Noken in a general election. According to Kaloh (2008), in the reformation and regional autonomy era, the government and the local society support the direct democratic system, where the society directly choose their leaders according to their conscience in a fair system. Some of the districts in the mountains area are mostly consist of society groups that support the Noken system in Papua.

The election process in all districts located in the middle mountain areas of Papua uses the Noken system, except the Pegunungan Bintang District, Paniai, Deyai, and Dogiyai. The districts that already used Noken in elections since 2004 until today are Jayawijaya, Yalimo, Yahukimo, Tolikara, Mamberamo, Lani Jaya, and Puncak, Nduga, and Intan Jaya. In the election's perspective, these districts are referred as the "Noken system community" (hereinafter KSN). The Noken system community is a folklore community that has a collective communalism and has the same form of Noken, and geographically lives in mountains, valleys, and lives in a height approximately 3500 feet above the sea level.

¹Bakar batu is a cultural festival of the cultural society that lives in the mountain areas like Ngalum, Meck, Huwula, Lani, Yali, Nduga, Walak, Migani, Mee, and Amungme that is still exercised until now as it is passed down from generation to generation. This "Bakar Batu" festival is conducted when a member of the cultural society died, or during a farewell, marriage, and receiving a special guests that comes to that area for the first time.

2.2 Noken's Cultural Value

It is generally known that far before the state and the government of Indonesian Republic was formed, "Adat society" has already existed and lived with their own ethnicities including Papua and it also has evolved from time to time since the age of our ancestor until now. Hence, the cultural society's existence along with its various cultural values needs to have a special place within a country. According to the ILO 169 Year 1986, the definition of cultural society is as follow:

"Adat society is a group of people that has a trace of history with society prior to the invasion and colonialism that develops within their own region, and consider themselves different from other community that now exists within their territory or not a part of that community at all. They are not the dominant part of society and they intend to preserve, develop, and inherit their culture's territory and ethnic identity to the next generation, as a basis for their existence as a tribe or a nation, in accordance to their cultural pattern, social department and their own law."

In relation to the opinion as stipulated above, Bosko (2006) argues that native society has their own existence and identity that is inherited from their ancestor as it is passed down from generation to generation and it must be preserved. The further explanation of adat society in the context of Papuan society has been defined clearly in Article 1 sub-section (o) and (p) of the Law No. 21 Year 2001. It states that adat society is the native society of Papua living in their own territory, binding and complying to a particular cultural norms with a sense of high solidarity among their members. Therefore, 'adat' is a customary action that has been accepted and recognized, followed, developed, and preserved by the society in that area from generation to generation.

The explanation as mentioned above portrays that Noken is a tool of culture that is inseparable from the culture itself especially in the areas of middle mountains of Papua. Noken is an artifact that has a philosophical meaning, multi-values, and multifunction that is always carried and used by various needs be it as a mere accessory, to fill a certain object, and is sometimes used for a certain rituals. This customary practice has their own meanings. Philosophically, every member of the society feels and contemplates that they were born, rose, and grew with the help of Noken. This means that Noken is considered to be an important element of someone's life and community since their birth until they died.

This customary practice of using Noken in the middle mountain area of Papua as a result of the discussion and meetings held by the native society then extends as far as replacing the ballot box used by modern society in election. The process of such meetings and discussion does not give any harm according to the democratic perspectives of the Papuan society especially those who live in the middle mountain area of Papua. This is because the principle behind democracy that is accepted universally such as tolerance, pragmatism, working together and consensus, minority's rights, people's sovereignty, the fundamental principle of democracy: First, the acknowledgment of people's participation in governance, such as representation of the society in a legislative body; second is the acknowledgement of people's pride, in the instance of government's action to protect human rights for the collective interest.

The decision of using Noken as explained above is based on a couple of aspects originated from the cultural society that lives in the middle mountain areas, including solidarity, togetherness, social responsibility, family, and brotherhood. These values are the inheritance of Papuan ancestor especially the ones that lives in the middle mountain area of Papua. The tribal chief or a figure becomes the main role model for their morality, norms, and culture. With the existence of such figure, a condition of a good social, cultural, economic, and security aspects is going to be created for its people, as the figure is the manifestation of the people's power.¹

2.3 Running the Election Using the Noken System

During the election in several districts in the middle mountain area of Papua that used the Noken system, in Pisugi area located in Jayawijaya district for example, there are 4 (four) parties play an important role in socializing the election - namely the Society's Cultural Body, Church, Youth, and Mothers. These four components conduct an intervention to the people and told them that the upcoming election in Pisugi area needs to be held peacefully and it needs to be done in order.

The Noken system election is very simple. It does not have to wait for a very long time since the cost is relatively cheaper in terms of logistical means considering the potential challenges due to the field and terrains in Papua is quite extreme. Therefore, the society that lives in the indigenous area's decision to use Noken as a tool

¹Theo Kossay in Suaka Papua magazine explains that: A leader is the manifestation from gods and goddesses and also kings and queens. At first, the society in every ethnic community has a gods and goddesses, kings and queens (and there are still many other terms used that vary from one culture to the other) in their mythological stories is seen as the leader of their community and clans. This community is then sees that the gods and goddesses as the origins of their community's life which is why these gods and goddesses, kings and queens has full control over their community. Humans understands that gods and goddesses, kings and queens, has the characteristics of possessing a supernatural power that acts as a savior, forgiving figure, helper, etc. These characteristics and natures is then manifested and realized in humans nowadays. Currently, if any humans have the nature of gods and goddesses, then that person is seen as a leader that will act as a savior.

to replace the ballot box is rational idea.

The technicalities of using Noken can be done in several ways. The first one, Noken can be hung on someone's neck so that the main part that acts like a bag is located precisely in front of the cast of the person. Second, Noken is hung on a wood that has been stocked on the ground. And third, if the venue for the election is located inside of a building, then the Noken is going to be hung on the wall of that building.

In the process of voting in the mountain areas, it was done through various ways. For instance, in the Pasugi area, the usage of Noken as mentioned above allows the society to make sure who vote for whom. If the general methods of voting in Indonesia hold the value of direct, general, free, and confidential, this method used by the Papuan is considered to be direct, general, free, and transparent instead of confidential.

Different with the Pasugi district, in several other areas in the middle mountains of Papua in which the voting was done by the chief (big man) that acts as their representation. Writer calls such mechanism as "the big man mechanism" where it was done by entrusting all votes to the chief. Both of the system whether it is the hanging system or the big man system, is fair and safe according to the demand of the society because it is in line with their native belief.

2.4 Juridical Approaches for the Usage of Noken in the Election

2.4.1. The Indonesian Constitution of Republic of Indonesia 1945 (hereinafter UUD 1945)

UUD 1945 Article 18 B, chapter (2), Article 28 I chapter (3), Article 32 chapter (1) and chapter (2) explains that: a) Article 18 B chapter (2): The state acknowledge and respects a certain unity of cultural society and their traditional rights so long as they still lives and is not contradicting with the modern society and the principle of Indonesian Republic that is regulated in statutory provisions; b) Article 28 I chapter (3): The cultural identity and traditional rights is respected according to the development of the era and civilization; c) Article 32: Chapter (1) The state develops the culture of Indonesia to the world's civilization and guarantee the freedom of the people in terms of developing and preserving their cultural values; chapter (2): The state respects and preserve local language as a national culture.

UUD 1945 does not regulates anything about the Noken system election, but the articles within it clearly explains that traditional rights of cultural society, cultural identity of traditional society, development and preservation of cultural values as a right and cultural identity exist within UUD 1945. Because Noken is an element of Indonesian cultural artifact that is owned by the people in the middle mountain areas of Papua, Noken as a system and local culture is the right of traditional society in Papua. Therefore, the state has the obligation to provide a protection and to give some space in the form of appreciation in utilizing Noken for them.

2.4.2 The Decision of Indonesian Constitutional Court

The constitutional court have occasionally declares its desicion of election disputes in regional election, House of Representative (hereinafter DPR), House of Local Representative (hereinafter DPD), and Local of House representative (hereinafter DPRD) in a couple of districts located in the middle mountain areas of Papua that used the noken system election. In this context, writer focus on two specific disputes judgment from tens of other judgment made by the Constitutional Court of Indonesia, which are the Yahukimo 2009 legislative election and the Presidential election of Indonesia in 2014 as explained below:

- The Desicion No. 47-48/PHPU.A-VII/2009

In the Desicion No. 47-48/PHPU.A-VII/2009 concerning the result of legislative election in Yahukimo district is the beginning of the recognition and validity of the Noken election system in several districts in the middle mountain areas. The consideration of the Constitutional Court as written in the Desicion No. 47-48/PHPU.A-VII/2009 on 9th June 2009 showed that:

"Considering that the Court is able to understand and appreciate the value that lives within the Papuan society that is unique in running an election through a system of consensus or acclamation that has been accepted by the Yahukimo, if it was forced to them then it might potentially create a conflict among groups of society in that area. The court adjudged that it is better if they were not brought into a condition or a system where an internal rivalry or disintegration between natives that could disturbs their existing harmony."

The decision of Constitutional Court, as explained above emphasizes that Constitutional Court acknowledge the Noken system as a legitimate means or methods for election, especially for the Yahukimo society that still holds their cultural value as a part of constitutional acknowledgement towards the unity of cultural society that still lives. The Constitutional Court is able to understand and appreciate the cultural value that lives in the Papuan society that is unique in running an election with using the consensus or acclamation system, since the court adjudged that it is better if they were not brought into a condition or a system where an internal rivalry or a disintegration between natives that could disturbs their existing harmony.

- The Desicion No. 1 /PHPU.PRES-XII/2014

The Desicion No. 1/PHPU.PRES-XII/2014 concerning the Presidential election 2014, on Thursday August 21st 2014, on the structured, systemic, and massive fraud regarding the Noken system that is used on several regions

in Papua, the Constitutional Court of Indonesia adjudged that from the past elections that has been done, whether it is a legislative election or governor election, then the Constitutional Court argued that the Noken system can be considered as a legitimate and constitutional mechanism because it is considered as a traditional rights of the native society whereas even in the constitution of Indonesia acknowledge the principle of appreciating the exclusivity of the culture in a certain region. This is due to the reasoning of preventing a potential chaos caused by the change made to the cultural society's culture.

Similarly in the 2014 Presidential Election, the Court adjudged that the Noken system done in the election is considered constitutional and legitimate and it does not count as a strategized, systemic, and massive fraud as written on the applicant's charges.

- The United Nations on International Labor Organization Convention (ILO)

The United Nation and the ILO Convention 169 regarding the natives and cultural society¹ on Article 2 chapter (1) and (2) section b explains that: a) Article (2) Chapter 1: The government have the responsibilities to arrange, with the participation of the relevant cultural society, to ensure the respects towards their unity; b) Article 2 Chapter 1 Section : To ensure the full realization of economic, social, and cultural rights of the cultural society with a full respect upon their social identity and culture, norms, traditions, and their institutions.

- The Law 21 of 2001 concerning Special Autonomy for Province of Papua

In Article 1 subsection (p) and (g), The Law 21 of 2001 regarding the Special Autonomy for Province of Papua in relations to the law and the cultural society explains that: a) Subsection P, that culture's law is a settings of rule or norms that are not written but lives among the nature of cultural society as it regulates, binds, defended, and has a sanction; b) in subsection q it is explained that the cultural society is a group of native Papuan that, since their moment of birth, lives in a certain region of Papua and is obliged to comply with a certain cultural laws with a sense of solidarity among their members.

Within the statutory provisions explained above, the word "Noken" is not used in terms of a general election. However, there is an interpretation that within the implicit context of understanding the Article (1) Subsection p and q suggesting that there is a possibility of cultural society to support their local culture and practices that has a value and meaning to support their activity in answering the needs of their laws and culture, answers to the needs of cultural protection, preservation of their traditions under the Indonesian Republic's government. One of the interpretations is the needs for Papua's culture preservation including Noken that is used in an election.

- The Desicionof The General Election Commission of Papua

The Desicion of The General Election Commission of Papua No. 01/KPTS/KPU.Prov.030/2013 on the technical supports regarding the procedures of using Noken as a replacement for the ballot box in election. It is then realized that the Commission does not have the authority according to the statutory provisions to make a standard of procedure for an election, but with a coordination with the Central General Election Commission of the Republic of Indonesia, has issued a policy regarding the issue of using Noken in several districts in the middle mountain areas of Papua. Therefore, some of the districts in the middle mountain area implement the Noken system in their election. Which means, the policy made by the Papuan Commission, Noken has become the logistic replacement tools instead of ballot box in the Governor's election in 2013? Furthermore, in the 2014 Presidential Election Noken has also been used as the replacement of the ballot box as explained above.

- United Nations Educational, Scientific, and Cultural Organization's (UNESCO)² opinion about Noken

Noken is categorized as an international cultural heritage of the international community that receives their recognition from UNESCO about Noken in December 4th 2012. It was then decided that Noken is one of the cultural heritage in the world by UNESCO in France, by Arley Gill as the Chair of the Committee, with the purpose of protecting the culture of Dani's tribe.

The acknowledgement from UNESCO for Noken does not have anything to do with the election, however the values, meanings, functions, and philosophy of the Noken itself provides a nuance for the democratization in Papua. This means that Noken is identical with the symbol of identity of the Papua and that indirectly means that the Noken system also expresses the identity of Papuan society.

¹The International Labor Organization was founded in 1919. ILO is one of the most active special agents of the United Nation in promoting the rights of the society including the cultural society, especially in regards to the economic and social rights of the culture society. ILO have played an important role in forming the international standard in regards to human rights with creating a couple of international instruments like the United Nations Convention on the Rights of Indigenous People 1989 (Number 169)

²UNESCO is a specialized agency within the United Nation that was founded in 1945. The purpose of this organization is to support peace and security through the cooperation between countries in education, knowledge, and culture to increase respects that is based on justice, rule of law, human rights, and freedom

3. Conclusion

The usage of Noken as one of the logistic tools in election especially as a replacement tools for the ballot box is not just a mere tools or a means. It is more than that as Noken has a strong philosophical and cultural standing within the lives of Papuan society. The justification or legalization of using Noken in election primarily is the judgment of Indonesian Constitutional Court, and it is also considered to be an indicator of appreciation from the state especially the judicial body towards the Papuan cultural practices and values as a form of special regional autonomy.

Noken has been used as a means in the political world especially in election is expected to be free from the elite politician's phenomenon that tends to utilize all methods to achieve their goals. It needs to be remembered that the philosophy of using Noken is a part of an identity's expression of the Papuan society.

The pride for the local culture and practices within the usage of Noken in an election however, should not affects society's critical thinking ability towards the usage of Noken and also the involvement of all chiefs as a role model that has a strategic role in addressing and accommodating the interest and demands of the society and it should not be manipulated by elite politicians for their own personal interest.

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