

# The Reconstruction of General Election with “Noken” System on the President and Vice President Election in Indonesia

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## Abstract

The diversity of values that live in the community has entered into the electoral system in Indonesia. Direct election systems, in Papua - Indonesia, precisely in some customary areas, the community uses the “*noken*” system in elections. This research is a normative and empirical research to determine and examine the legal substance aspect and legal structure to the organizer of General Election in Indonesia. The results shows that the implementation of *Noken* system in the general elections in Papua Province use two systems in the general election, namely *Big Man* system and hanging or *noken* system. The *Big Man* system is done by means of all voting submitted to the chieftain while *noken* system the community comes alone to the polling station, see and put ballot to the party pocket that had previously been agreed. Both systems are just according to their will in accordance with the beliefs and customs of people in the mountainous region of Papua. *Noken* system in the *Big Man* system and hanging system or binding system by the customary law represents accommodation in consensus and agreement, based on indigenous values and local wisdom in indigenous cultures in the mountainous regions of Papua. This consensus process is interpreted as a democracy of indigenous peoples.

**Keywords:** General Election, Election System, Indigenous Peoples, Noken

## 1. Introduction

The State of Indonesia is a Constitutional State (*rechtsstaat*) as affirmed by the 1945 Constitution as Indonesia’s constitution. Indonesia as a constitutional State requires all actions of the State/government are always based on law. To achieve that goal, the founders of the State have also established Pancasila as a legal ideal (*rechtside*) and can be called as the light of a lighthouse that will guide the achievement of the State’s goal.

The position of Pancasila in the development of national law provides dual-benefit. Pancasila as a source of law, every positive law of Indonesia can be examined, and with Pancasila any positive law of Indonesia with forced-sanctions can be guarded toward a just law, that is laws containing positive characteristic that are explored from various sources of diverse customs.<sup>1</sup>

Observes the diversity of values that live in the community has entered into the electoral system in Indonesia. At the time of the majority of *direct election systems (one man one vote)*, in Papua, precisely in some customary areas, the community uses the “*noken* system” in elections. Historically, *Noken* became popular when a citizen who testified at the Constitutional Court in the 2009 presidential election that the vote in one sub-districts (districts) is using a *noken* system which means the chieftain receives a mandate from the local indigenous people to elect a candidate of president and vice-president that has been discussed by local peoples. Finally, the process of voting at the polling station is conducted by the chieftain by selecting the desired candidate pairs of indigenous peoples, so that the other candidates do not have vote at all. From this incident, the Constitutional Court issued a decision whose decision to accept the application of *Noken* system in the election as a constitutional right of the indigenous people of Papua.

*Noken* is a multifunctional knotted or woven bag, native to the Papua. Its distinctive usage, which involves being hung from the head, is traditionally used to carry various goods, and also children. In 2012, *noken* was listed in the UNESCO Intangible Cultural Heritage Lists as a cultural heritage of Indonesia.<sup>2</sup> In several areas of Papua, *noken* – instead of the usual ballot box – is preferred as a way to place ballots, where it is recognized as a ballot tool in the Papua regional leadership elections.

*Noken* system is a system used in special elections for Papua province. Up till now, *Noken* is only known as a bag of days made native Papuans from the threads come from the roots of trees. By the General Election Commission, *noken* became an important part in the implementation of Papua’ elections, especially for Papuans comes from mountain areas. In the technical guidance of General Election Commission of Papua No. 1 of 2013, *noken* is used as a substitute of ballot box.<sup>3</sup>

*Noken* system is a very democratic decision-making in determining the leader from lowest to highest leader, namely the Presidential and Vice-Presidential Election. However, the issue of this study is how far *noken* system

<sup>1</sup> Max Boli Sabon. 2006. *Reorientasi Arah Pembangunan Hukum Menuju Keadilan Sosial Bagi Seluruh Rakyat Indonesia*. BPHN. Page,14.

<sup>2</sup> Wikipedia. Available online: <https://en.wikipedia.org/wiki/Noken> Retrieved March 21, 2017.

<sup>3</sup> Ahsan Yunus, Frans Reumi, Irwansyah. (2015). “Recognition of the Customary Court: A Review of Decentralization in Papua as Special Autonomy”, *Journal of Research in Humanities and Social Science* 3 (7), 57-69

can accommodate the essence of elections with integrity and realizing peoples' sovereignty.

## 2. Method of the Research

The location of research was conducted at General Election Commission of West Papua Province of Manokwari District, South-Manokwari District and Teluk Bintuni District. This research is a normative and empirical research to determine and examine the legal substance aspect and legal structure to the organizer of General Election. While, the aspect of legal-culture with various views of the circle that has related competence includes social, political, and economic aspects of the General Election by using empirical type to limiting the skill or competence.

Data analysis in this research is law material obtained from result of research then analyzed by using the basis of theory. Secondary materials obtained by conducting comprehensive and in-depth review with several theories presented to analyze the regulations applied to the implementation of the General Election.

## 3. Legitimacy of Noken System

As mentioned earlier, *Noken* is a traditional bag of Papua carrying by head and made from bark fibers. As usual bag, this bag is used to carry goods daily needs. Nowadays, *noken* is used for election activity and has new function as an umbrella to give political aspiration of local peoples which arise spontaneously in environment as a custom tradition which adopted from the way of their ancestors to vote leader of village or chieftain.

According to Waropen tribe, *Noken* made with various sizes and each size has a function like small size to store betelnut, cigarette, mobile phone, etc. Medium size to store school supplies and worship such as books, bible etc. Large size is used to store the plantation, firewood, etc. that have been used from generation to generation by Yapen tribes' ancestors.

In relation to the electoral system, *noken* is part of local wisdom in social democracy. The Constitutional Court also acknowledges and affirm that *Noken* system embraces the direct, public, free and open elections, in accordance with the decision of Constitutional Court No. 47-48/PHPU.A-VI/2009 as with Article 18B paragraph (2) of the 1945 Constitution that states:

*"The State recognizes and respects the unity of indigenous peoples along with their traditional rights as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia, as governed by the law."*

Problems arise when *noken* is used as a symbol in the election. Since the names of presidential and vice-presidential candidates have been established, Papuans in various villages in mountains have begun to engage in discussions, both spontaneously and planned. The discussions were held in traditional houses, religious hall, village hall, or certain courtyards, and led by religious leaders, youth leaders, teachers, or civil servants trusted by local people. In the discussion, they share information about the character of each candidate to be voted. They do not discuss the candidate's promises because the promise cannot be held and difficult to test the truth.

They seek information and share about the lives of candidates. They want to know the work, habits, hobbies, characteristics and character, attitude to others, and the universal values has ever done by candidates. Participants investigated their contribution to the progress of their village.

By getting as much information as possible, the villagers begin to get a picture of who the candidate can be trusted and deserves to choose. Every voter in the village begins to make personal decisions about the candidate to be voted. Then the candidate to be voted is notified to others to test the eligibility and get feedback. Thus, all candidates mentioned by voters are tested for eligibility by the people using cultural criteria. Testing through discussions takes place until voters in a village reach an agreement. The content of agreement includes a trustworthy candidate and, therefore deserves a vote to him, and how much votes can be allocated to him.

It becomes clear that the election result is a personal decision of every voter, united jointly into a community agreement, and symbolized through *noken* it means that the people can agree to "fill" all votes from their village in a *noken* and hand them over to the candidates/team as representative the trusted candidate or shared vote with several candidates. The peoples' agreement was set before the vote was held. They do not conceal their agreement about the candidate they vote. Instead, they tell their agreement to others. Therefore, usually people already know the results of election or candidate who will be elected by the people in the village before the vote is held. On the day of the vote only express their agreement.

In the mountains of Papua and West Papua, elections are conducted transparently on the basis of collective agreements that summarize the personal decisions of voters. Therefore, the people do not question the polling station. Ballot voting can be made for polling stations or in sub-district offices, but the results must be in accordance with the peoples' agreement. So, no people are rebelling when the ballot is not held at the polling station.

Voting should not be attended by all voters because voting can be done by people representing them. The people did not call customary leaders or chieftain, not because they did not believe, but because they respected it. Usually people ask for help from people they trust, either one of them, or even an election organizer, to vote in

accordance with the peoples' agreement. If the election results are in accordance with their agreement, no people are raging. The essence of democracy is the participation of all people. Thus, in democratic elections, all citizens must participate actively in making-decisions about the candidates they elect.

The agreement of peoples is symbolized through *noken* reflects political participation and emancipation. The people have declared their sovereignty in choosing a presidential candidate who they believe. On the basis of this sovereignty, the people in Dogiyai district expelled out Dogiyai's regent out from room because he invited them to vote for a presidential candidate contradict to the peoples' agreement. Thus, the results of presidential election using *noken* system, whatever the result, reflect the peoples' sovereignty. The people have directly, publicly, freely, transparently, honestly and fairly. Thus, sue the election results on the basis of the use of *noken* in Papuan mountains means disputing the people's sovereignty.

#### 4. *Noken* System as a Form of Democracy

The system has been applied since 1971 and in 2009 is disputed in local elections. *Noken* itself varies, there is a *noken* system and there is a bonding system. *Noken* system used the agreement from the local community was held at the polling station with ballots filled in *noken*. But there is also a binding system where agreements in one village vote to the candidate pairs, how many the number one, and how many the number two.

Indonesia as a unitary State divided into provincial, district and municipality, where each region has authority to govern and manage own-affairs of government based on the principle of autonomy. Autonomy in this case is not independence but autonomy. This autonomy is autonomy in order to regulate and manage the region in a way, creating legal product and in this case the local regulations are adapted to the specific conditions of the region without prejudice to compliance with legislation and higher public interest/ethics, so that local regulations that contain directions of regional development can be consistent with the direction of national development which basically aims to achieve state goals together.

The purpose of State as contained in the Preamble of the 1945 Constitution, to protects all Indonesian people and the entire land of Indonesia and to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice, National Freedom of Indonesia is prepared in a Constitution of the State of Indonesia, formed in a structure of the State of the Republic of Indonesia with people sovereignty based on the One Supreme God, Just and civilized humanity, Indonesian unity and Democracy lead by wisdom in Deliberation/Representation, and by realizing a Social justice to all Indonesian people.

In the governance of the Republic of Indonesia, the purpose of State is to protect the people of Indonesia and the country of Indonesia, promote the general welfare, educating the nation, participates in the world orderliness based on freedom, lasting peace and social justice. In effort to achieve the objective of State, Pancasila became the foundations, for which the need for order and the rule of law in regulating society and the State, in order that these objectives can be achieved.

Reform agenda in the field of law that initiated more than two decades, brought significant changes, particularly in the context of law enforcement in Indonesia.<sup>1</sup> The dynamics of legal policy<sup>2</sup> is move rapidly and accompanied by changes in the constitutional system of the Unitary of the Republic of Indonesia fundamentally. With the Constitution, a state as a community has a clear goal and will guide towards what aspired.<sup>3</sup> Concretely, the constitution regulate national life cannot be separated from the existence of the state constitution is concerned with the attention to the role and functions of the constitution as a basis and reference for state administration to achieve the aspired goal.<sup>4</sup>

As a *philosofische grondslag*, Pancasila essentially as a source of legal order in Indonesia. In its position, Pancasila as source of elaboration in the process of law drafting in Indonesia. Pancasila that it contains religious values, the value of moral law, the value of natural law, and religious value as a legal source material for the positive law of Indonesia.

The logic of law that established by the Court contained in its consideration by legislation and regulations alone, regardless of the social reality in the elections. Election issues are so complex only approached through written law alone. Court shuts them and did not dare to explore values that live in the community. Whereas Article 5 (1) of Act No. 48 of 2009 regarding Judicial Power, as legitimacy and legal substance of Judge in discovering the law and justice, it is stated: "*Judge and constitutional judges shall explore, follow, and understand the values of law and a sense of justice in the society*".

The direct elections in optimistic can be said as a form of affirmation of the people autonomy in the region

<sup>1</sup> Ahsan Yunus. (2011). "Analisis Yuridis Sifat Final dan Mengikat (*Binding*) Putusan Mahkamah Konstitusi" *Jurnal Konstitusi*, 3(2): 115-138.

<sup>2</sup> See Moch. Mahfud MD. 1999. *Pergulatan Politik dan Hukum di Indonesia*. Gama Media: Yogyakarta. p. 11-12, Bandingkan dengan L.J. Van Appeldoorn. 2008. *Pengantar Ilmu Hukum*. Pradnya Paramitha : Jakarta. Page. 57 and Page 163

<sup>3</sup> Satjipto Rahardjo. 2009. *Negara Hukum Yang Membahagiakan Rakyatnya*. Genta Publishing : Yogyakarta. Page. 81

<sup>4</sup> Donny Gahril Adian. *Hukum Tanpa Detak Keadilan*. Kompas Daily dated 23 November 2009

to determine the head of government. Ideally government elected directly and has a strong legitimacy will carry out the functions in accordance with the aspirations of the people, because the spirit of direct elections is the government closer to the people.<sup>1</sup>

The legal principle of freedom inherent in the way of someone who has the right to choose freely given protection to determine figures. Determination of regional leadership is freely principled and very doubtful its existence if confronted to the contestants who have strong influence with central and local government authority.

The application of legal principle of free elections is important for the Court as a means of achieving substantive fairness of the elections, by infiltrate the legal formalism. But not with the purpose of exercising the functions of any other competent authority, but possible to question along it have a strong relevance to the result of the counting. That is real of progressive philosophical law that aims to leads man to a fair and prosperous life.<sup>2</sup>

According to Hasyim who had been a member of the General Election Commission during eight-period, not all rural areas of Papua Mountain use the system. Of 29 districts, *Noken* is only applied in 14 districts and it is not entirely. In 14 districts it is not entirely, in the district capital being voted as usual, where the *Noken* and binding system are provided by the General Election Commission, but the *noken* is provided by the community, not the General Election Commission,” said Hasyim.

Actually, *noken* is not recommended by the General Election Commission. This *noken* system rests on the “*Big Man*” or chieftain. A *big man* is not just a political leader who determines the rules to be followed by tribal people, but also economic, social, and cultural leaders. His power is not derived from generation, but the influence, charisma, and his leadership is respected and sometimes feared. There are rights and duties among *Big Man* and its citizens. *Big Man* is responsible for the availability of basic needs of his citizens such as food, and health, but instead citizens should be loyal to any *Big Man*’s decisions. The political system of *Big Man* in Papua has been going on for hundreds or even thousands of years. The application of *noken* system in the election with *Big Man* system took place at the momentum of the general election.

## 5. Conclusion

The implementation of *Noken* system in the general elections in Jayawijaya district of Papua Province use two systems in the general election namely *Big Man* system and hanging system or *noken* system. The *Big Man* system is done by means of all voting submitted to the chieftain while *noken* system the community comes alone to the polling station, see and put ballot to the party pocket that had previously been agreed. Both systems are just according to their will in accordance with the beliefs and customs of people in the mountainous region of Papua. *Noken* system in the *Big Man* system and hanging system or binding system by the customary law represents accommodation in consensus and agreement, based on indigenous values and local wisdom in indigenous cultures in the mountainous regions of Papua. This consensus process is interpreted as a democracy of indigenous peoples.

*Big Man* system that contradicts to the principles of elections is direct and secret. The principle of direct in the *Big Man* system in question is that the *Big Man* system does not grant the freedom of peoples to vote directly but gives full confidence to a chieftain. While, the principle of secret that anyone elected by the electorate is a secret that only he knows, but in the *Big Man* system is not know the principle of secrecy because indigenous peoples in elect leaders must be open and transparent, there is no secrecy in elect leaders because for the common-interest. Similarly, with hanging system, the hanging/*noken* system is also contrary to the principles of elections is secrecy. The principle of secrecy that whoever is voted by the electorate is a secrecy that only he knows, but in the hanging/*noken* system, all voters come together and watch and see to put ballots in *noken* that have been hanged according to the agreement.

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<sup>2</sup> Satjipto Rahardjo. 2004. *Ilmu Hukum; Pencarian, Pembebasan dan Pencerahan*. Muhammadiyah Press University: Surakarta. Page. 17

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