

General Election System In Papua Indonesia

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ABSTRACT

Elections in Papua are held based on Law Number 7 of 2017 concerning Elections. In the Papuan elections as an approach to cultural values and ethnicity through noken. The basis of modern law, and local wisdom. This model of indigenous peoples even though it contradicts the principle of election turns out to be a democratic process and provides a sense of justice for local indigenous peoples. This study will examine the electoral mechanism in Papua by prioritizing the mechanism of indigenous Papuans. The results showed the construction of electoral law in Papua, in accordance with customary law accommodated by the community in positive law in Indonesia.

Keywords: General Election-Noken-Papuan Indigenous Peoples.

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INTRODUCTION

Local wisdom (local indigenous) of the people of Papua especially in the geographical region of the Central Mountains through the noken system in practice reaps controversy and criticism as well as discussion that never breaks up to the last post-conflict local election held in 2018. The noble value referred to in this noken system is utilized without being utilized wisely by parties especially those participating in the election contestation. At least highlighting two things about the negative impact of the implementation of this noken system, namely the utilization by greedy candidates, for personal interests and transparency which is done by opening up space for anyone to find out who the candidate chosen has resulted in openness also for the opposing party to ensure parties who oppose his side and take countermeasures in the event of defeat (Katharina, 2017).

The practice of deliberative democracy that is by prioritizing the principle of deliberation and deliberation in deciding public problems, social problems and political issues actually cannot be separated from the history and cultural roots of the nation which is still widely practiced today. In democratic processes at the most micro level in the constitutional hierarchy arrangement such as at the village or kelurahan level, the implementation of deliberations as an embodiment of deliberative democracy is the main media used by the government and citizens to come up with important agreements or policies for the public. Entities outside the context of the state at the most micro level also prioritize deliberation as the main media to decide on their organizational problems. The organization can be based on social, religious, educational and so on.

The constitution of the Republic of Indonesia in Article 22E paragraph (2) 1945 Constitution has regulated about Regional Legislative Institutions (DPRD) Election which states: Elections are held to elect members of the People's Legislative Assembly, Regional Representative Council (DPD), President and Vice President, Regional People's Representative Council (DPRD). The DPRD is domiciled at the provincial and district/city levels whose members are elected through direct elections by the people in the region. The DPRD whose members are the people's representation in this region is located as an organizer in the provincial and regency/city level government that functions as the regional legislator, discusses and approves regional revenue and expenditure budgets, and carries out a supervisory function on the implementation

of regional policies carried out by the governor or regent/mayor.

Completion of DPRD membership is done through political parties participating in the election chosen through general elections, legal instruments used through Law Number 7 of 2017, Regarding General Elections. In this law, the DPRD membership election has been affirmed once every five years through parties in a general election. In the nomination of Political Parties participating in the General Election, the candidates for the candidates for the Provincial DPRD shall be held democratically and openly in accordance with the Statutes and Bylaws of each Political Party.

In contrast to other provinces in Indonesia, the appointment of DPRD members in Papua Province is carried out in two different selections. The first election is carried out through the elements of political parties in the National Election in accordance with the provisions of national legislation to elect candidates for the DPRD members submitted by Political Parties from both indigenous Papuans and migrants who have become Papuan residents. *The second* election is carried out through an appointment mechanism regulated through Special Regional Regulation (Perdatus) Number 6 of 2014, concerning the Membership of the Papuan People's Representative Council, which is determined through the Appointment Mechanism. This election is to elect DPRD members as many as $\frac{1}{4}$ (one quarter) or the equivalent (14 seats) of the number of seats assigned to the provincial DPRD nationally (56 seats), and candidates nominated are only from indigenous Papuans who are from indigenous elements.

RESEARCH RESULTS

In the tradition of the life of the Papuan mountain people, noken is one of the cultural objects that cannot be separated in the routine life of the community. Noken is one of the objects used as a symbol of welcome, goodbye and a sign of giving gifts to other relatives by tribes in the central mountains (Dekme, 2015, pp. 1-12). At marriages or even at death ceremonies, this noken always gets a place to be cult like the use of a bag woven with pandanus in the Malay community. In the context of communal decision making, the election noken system is then interpreted as political commitment, collective agreement and giving a full vote (support) to certain candidates with mutual consensus. Supporters of the Noken system consider that the decision of every citizen to submit his

choice to someone he believes is a personal decision that is put together together into a community agreement symbolized by Noken. This is a form of sovereignty of the people of the central mountains of Papua (Katharina, 2017).

Conceptually, an election is the means of implementing people's sovereignty, with the election of the legitimacy of the power of the people partly handed over to its representatives in parliament or in the government and will be held accountable at any time with the mechanism as determined through the legislation. Experts give a very diverse definitions of the general election, but in substance the definitions are the same. Rush Michael and Althoff Philip gave an understanding of the Election as a means of exercising sovereignty based on representative democracy, therefore elections can be interpreted as a mechanism of selection and delegation, or the transfer of sovereignty to people or parties who are trusted. The person or party that is trusted then controls the government, thus through elections it is expected to create a representative government. General election is essentially a democratic process to elect a number of leaders and people's representatives.

While Jimly Ashidique, he defines General Election as an organized way to democratically elect people's representatives. Jimly departs from the concept of popular sovereignty with a representative system or what is called representative democracy. In the practice that carries out people's sovereignty are the people's representatives who sit in the people's representative institution called parliament. The people's representatives act on behalf of the people, and it is the people's representatives who determine the pattern and manner of the operation of the government, as well as what goals are to be achieved both in the long term and in the relatively short term. For people's representatives to truly act on behalf of the people, the people's representatives must be determined by the people themselves through general elections). Normatively, the notion of elections as referred to in the law is a means of popular sovereignty to elect members of the House of Representatives, members of the Regional Representative Council, President and Vice President, and to elect members of the Regional Representative Council, which is carried out directly, publicly, freely, confidential, honest and fair in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The various definitions of General Election above confirm that an election are a very important element in carrying out democracy or people's sovereignty, because in democracy sovereignty is in the hands of the people, and ensures that the government of a country must be limited because these restrictions are the basic foundation of a democratic country.

In carrying out people's sovereignty through the democratic process of the Indonesian state, there are two ways: first, through the General Election (PEMILU) nationally to elect members of the DPR, DPD, President and Vice President and DPRD; second, at the local level it is carried out through the Election of Regional Heads and Deputy Regional Heads (PILKADA), to elect the Governor and Deputy Governor; Regent and Deputy Regent; and the Mayor and Deputy Mayor, as regional leaders. Both the General Election and the Election of Regional Heads and Deputy Regional Heads are a must for the Indonesian government to carry out once every five years.

Elections have an important meaning in the administration of government because the implementation of elections and local elections has become a symbol and benchmark of a country that is considered a democratic country. The implementation of the General Election and Regional Election also stated that the sovereignty of the state is in the hands of the people, carried out by the people and controlled by the people. Elections are the highest concept that ensures that the power of government must be limited. Elections put the people as the main point holding primary sovereignty.

Particularly related to the General Election for members of the Regional People's Representative Council (DPRD) or in the province of Papua is known as the Papua People's Representative Council (DPRP) nationally based on Law Number 7 of 2017, Regarding General Elections. In principle, the implementation of elections is held every 5 (five) years, held simultaneously throughout the territory of the Indonesian State. Election participants are political parties that meet the requirements of a legal entity, have a Party Articles of Association, have management at the central and regional levels, have a 30% management representation, have 1/1000 members of the population, register at the KPU. Candidates for DPRD members are proposed by political parties through a democratic and open selection.

Indigenous people or often called traditional communities or in English are called the indigenous people in everyday life are called "indigenous peoples. according to the definition given by *UN Economic and Sosial Council* (in Keraf, 2010: 361) "Indigenous peoples or traditional communities are tribes and nations who, because of their historical continuity with the community before the invaders entered the territory, consider themselves to be different from other groups of people living in their territories.". In his book entitled *Beginnelsen en Stelsel van het Adatrech*, Ter Haar gives the sense that indigenous peoples are organized groups that are consistent with self-government that have material or immaterial objects (free translation). While Hazairin outlines in more detail and provides a definition, that customary law communities such as the village in Java, the clan in southern Sumatra, the country in Minangkabau, the curia in Tapanuli, Wanua in South Sulawesi are social units that have the facilities to be able to stand alone namely possess legal unity, unity of authority and environmental unity based on common rights to land and water for all members of the community, the legal form of the family (patrilineal, matrilineal, or bilateral) influences the system of government mainly based on agriculture, animal husbandry, fisheries and the collection of forest products and produce the water is added a little to the work of wild animals, mining and handicrafts. All members are equal in their rights and obligations. Their livelihood is communal in character, where mutual cooperation and always have a big role.

The definition of customary law is often equated with the understanding of the customs or culture of a traditional society that is in an area that is remote from an urban, even though Indonesian law has recognized that customary law is one of the legal systems in Indonesia that is applied side by side with other legal systems such as civil law system, and Islamic legal system. Many experts provide definitions related to Customary Law including: van Vollenhoven which gives an understanding of customary law is that the overall rules of positive

behavior on the one hand have sanctions (because it is called law) and the other party is not codified (because it is called customary). The definition of van Vollenhoven is the same as the understanding put forward by Prof.M.M.Djojodigono, SH, which states that customary law is a law that does not originate from the regulations.

Based on the aforementioned notions, it can be seen that the law applicable to a society will grow and develop closely related to the growth and development of a culture embraced by the community concerned, this condition will result in differences in the law of a community. Customary law, which is the crystallization of the values of a society embraced and regulates the community, is one aspect of the culture of a society that must be recognized and respected and maintained.

As an embodiment of respect, recognition of the existence of indigenous peoples and their customary norms in the implementation of legal pluralism in Indonesia, there is a need for guarantees from the state or government as the basic rights of indigenous peoples that must be protected, which are formulated in basic norms or other positive legal norms as the implementation. In this context the Indonesian constitution (1945 Constitution) has included in Article 18B paragraph (2), Article 281 paragraph (3) and Article 32 paragraph (1) and paragraph (2) of the 1945 Constitution (Second Amendment) which states: The State recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia which are regulated in laws. In addition, the laws and regulations have also been put in the formulation of norms in recognition of indigenous peoples and the values contained therein, such as contained in Law No. 5 of 1960, concerning Basic Regulations on Agrarian Principles; Law No. 32 of 2004 concerning Regional Government as amended by Law No. 23 of 2014, concerning Regional Government, as amended by Law No. 9 of 2015, concerning Second Amendment to Law Number 23 of 2014, about the Regional Government. Other laws governing the existence and rights of indigenous peoples are Law No. 41 of 1999, concerning Forestry; Law No. 39 of 1999, concerning Human Rights; Law No.22 2001 concerning Oil and Gas; Law No 20 of 2003, concerning the National Education System; Law No. 24 of 2003, concerning the Constitutional Court; Law No. 27 of 2003 concerning Geothermal Energy; Law No 7 of 2004 concerning Water Resources; Law No 18 of 2004 concerning Plantations; Law No. 31 of 2004 concerning Fisheries; Law No 26 of 2007 concerning Spatial Planning; Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands; Law No 30 of 2009 concerning Electricity; Law No. 32 of 2009 concerning Protection of Environmental Management; Law No. 16 of 2014, concerning Villages; Law No. 21 of 2001, Concerning Special Autonomy for Papua Province; Law No 11 of 2006 concerning Aceh Government; and Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta.

Indigenous peoples in their lives have the right to carry out activities in political, legal, economic, social and cultural life. Referring to the opinion of Ter Haar above, indigenous peoples have a holistic, communal, transcendental, and sustainable perspective. Their view of life is not fragmentary and temporary, they think of the consequences of community actions as a whole not only in the present but also in the future, hereditary and

sustainable. Therefore, the existence of indigenous peoples must be protected, because without protection, it will destroy the joints of life and livelihoods of indigenous peoples, thus the role of the state becomes very important in the context of protecting the existence of indigenous and tribal peoples. In the political context and the election of members of the Papuan People's Representative Council (DPRP), indigenous and tribal peoples in Papua have political rights in legal pluralism and have local wisdom values which in their implementation are guaranteed and protected by the state constitution and in their implementation have their own ways different from other regions, thus becoming their own characteristic.

However, substantively the practice of implementing noken in the administration of elections when juxtaposed with the principle of individual freedom, the principle of one man one vote and protection of civil political rights is contradictory and has the potential to violate human rights. Voting and also one of the principles of elections is direct and confidential so that the implementation of Noken is contrary in principle to the principle of freedom and political rights of the citizens of the country. Therefore, the adjustment to the principle of political freedom with the noble values contained in the Noken system and vice versa must be the concern of all parties. Synchronizing and harmonizing the law to bridge the two interests then becomes the work of all parties so that both interests can be fulfilled.

CONCLUSION

Implementation of the noken system in elections in a number of districts / cities, especially in the Central Mountains region in the province of Papua in a normative or formal legal manner has been declared as part of the technical implementation of a valid electoral system. Likewise, if viewed from the perspective of community culture, the manifestation of deliberative democracy symbolized by the use of the noken system in various sectors of traditional Papuan community life is part of local culture that has long been practiced in moments of joint decision making outside the context of elections. This reality underlies the opinion that this noken becomes part of local wisdom that should be respected and nurtured or possible to be maintained.

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