

Noken Voting System in the Yahukimo Regency Election, Papua: An Analyzes

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Abstract: The utilization of the noken voting system in general elections within Yahukimo Regency, Papua Province, is deeply rooted in Papuan cultural traditions, specifically employing bags made from orchid fiber. However, its incorporation into the electoral process has raised concerns regarding its compatibility with democratic principles and constitutional legality.

Purpose: This study aims to examine the constitutionality of the noken voting system in Yahukimo Regency, Papua, particularly focusing on its adherence to democratic principles and the secrecy of votes.

Design/Methodology/Approach: a normative legal research approach, this study analyzes primary and secondary legal sources to evaluate the legal framework surrounding the noken system. The examination delves into its alignment with constitutional principles and electoral laws.

Findings: The noken system, while significant culturally, poses challenges to the secrecy principle crucial to democratic elections. Its open display of votes contradicts constitutional mandates for free, fair, and secret elections. Despite Constitutional Court validation, concerns persist regarding its compatibility with democratic norms and constitutional standards.

Originality/value: This research contributes to the discourse on the intersection of cultural heritage and democratic principles, particularly in the context of electoral processes. It underscores the necessity for legal enhancements to ensure the harmonization of the noken system with democratic and constitutional imperatives.

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Introduction

The utilization of the noken voting system in general elections within Yahukimo Regency, Papua Province, is grounded in the tradition of employing bags as receptacles. Noken, crafted from orchid fiber and woven into bags, holds significant cultural significance within the local Papuan community (Ronsumbre 2019; Elopere, Pati, and Liando 2023). Traditionally utilized by women, particularly mothers, for daily tasks such as transporting goods, firewood, and attending to infants, the noken assumes a multifaceted role within the societal fabric. The incorporation of noken in the electoral process is deemed to possess sacred connotations, particularly within the framework of Indonesian democracy, and is closely linked to electoral principles (Agustine 2019).

Reforms within electoral systems, encompassing party structures, electoral procedures, and political representation, are pivotal agents of political transformation entailing the safeguarding of human rights. The protection of the populace's right to elect leaders and representatives, including regional executives and legislative members, constitutes an integral facet of such political metamorphosis. The noken voting system, owing to its cultural heritage in Papua, stands distinct from the electoral mechanisms stipulated in national legislation. Unlike the conventional election system governed by national law, the noken system entails the tabulation of votes at polling stations utilizing noken as receptacles for ballot storage.

The implementation of the noken system occurs through two primary modalities: direct submission of votes to traditional leaders or their proxies, and the suspension of noken for public scrutiny during the process of placing votes into designated party receptacles. Although officially sanctioned solely within select

districts in Papua Province, such as Yahukimo, and in practice since the 1971 elections, the legitimacy of its application has been reinforced by the Constitutional Court. This validation is underscored by Decision No.47-48/PHPU.A-VI/2009 concerning General Election Results Disputes within Yahukimo Regency and further consolidated through Decision No. 06-32/PHPU-DPD/XII/2014 regarding the conduct of the 2014 General Election (Mulyani, Nuswanto, and Sukimin 2020). These judicial rulings affirm the conformity of noken usage with the legal framework, while the Papua Province General Election Commission regulates its procedural implementation through Directive No. 1/Kpts/Kpuprov.030/2013 on Technical Guidelines for Vote Counting Procedures Utilizing Noken as a Ballot Box Substitute.

Nevertheless, controversies persist concerning the compatibility of the noken system with the prevailing electoral conditions stipulated in the 1945 Constitution of the Republic of Indonesia and the regulations of the General Election Commission. Constitutional Court decisions underscore the necessity for further examination regarding vote collection procedures in elections, particularly with regard to the principle of confidentiality. Elections, as instruments of democratic sovereignty, necessitate a robust legal framework to ensure equitable and democratic implementation, notwithstanding existing shortcomings in the noken system requiring further scrutiny.

Thus, the utilization of the noken system for vote collection raises pertinent inquiries concerning the principle of ballot secrecy in elections and its constitutional legitimacy. This discourse underscores the imperative of ensuring alignment between the noken system and electoral principles and laws in force.

Methods

The research methodology employed in this study is legal research, specifically utilizing a normative legal research

approach. Normative legal research involves the process of identifying legal rules, principles, and doctrines to address legal issues encountered. The legal materials utilized encompass both primary and secondary sources (Marzuki 2016). Primary legal materials are authoritative documents endowed with legal authority. These include statutory regulations, official records, or minutes pertaining to the formulation of statutory regulations, and relevant judicial decisions concerning the noken system

Meanwhile, secondary legal materials serve to aid in the analysis and comprehension of primary legal materials. These materials comprise publications concerning law that are not official documents, such as textbooks, legal dictionaries, legal journals, and commentaries on court rulings. The analysis of these legal materials employs normative or prescriptive analysis techniques to address the problem formulations outlined in this research. Through this methodology, solutions to the legal issues at hand will be derived.

Discussion and Findings

Legal Framework Analysis: The Noken System's Role in Electoral Mechanisms

In the context of general elections in Indonesia, it is imperative to comprehend the diverse electoral systems employed across various regions, including indigenous Papuan communities' practice of the noken system (Azim 2013). While not formally regulated by law, this practice has become a significant aspect of the democratic process in certain regions. This article aims to delve deeper into the constitutionality of the noken system.

Papua, as one of Indonesia's provinces, boasts a rich inheritance of diverse cultures, including the noken system (Persada 2021), a tradition deeply intertwined with the lives of Papuan people for centuries. However, when discussing the constitutionality of the noken system, we are confronted with

crucial questions regarding its alignment with the values of the Indonesian constitution, while also considering the existence and interests of local culture in Papua. The Indonesian Constitution recognizes cultural diversity and protects the cultural rights of every citizen (Fikri and Wibisono 2023). In this regard, the noken system, as an integral component of Papuan cultural heritage, warrants protection and respect as part of its rich cultural identity (Wijaya 2017).

Simultaneously, the constitutionality of the noken system must be evaluated from the perspective of fundamental human rights (Azim 2013). It is essential to ensure that cultural practices like the noken system do not infringe upon the rights of individuals, including women, children, and minorities who may be impacted by this system. Moreover, the implementation of the noken system should not compromise the principle of ballot secrecy during elections. The active involvement of the Papuan community in the preservation and maintenance of the noken tradition is also a crucial factor in assessing its constitutionality. Community engagement is key to ensuring the sustainability and relevance of the noken system in the modern context, enabling Papuan people to participate fully in all political processes without diminishing their involvement in the political sphere.

The constitutionality of the noken system is also intertwined with the enforcement of fair and transparent laws. In cases of misuse or violations related to the noken system, the government must adhere to the principles of fair law enforcement to address these issues. While safeguarding cultural integrity, it is equally important to ensure that Papuan people have equal access to development opportunities compared to other parts of Indonesia.

As a country that upholds democratic values, Indonesia guarantees the right to vote and be elected as a constitutional right of its citizens, as enshrined in the 1945 Constitution of the Republic of Indonesia. However, certain regions in Papua, particularly

indigenous Papuan communities, maintain their local culture in distinct ways, leading to variations in the implementation of elections compared to legal regulations (Wijaya 2017).

In the political process, the role of the state is crucial in safeguarding the existence of local culture and recognizing the noken system (Waluyo 2019). The government must ensure that the noken system is officially recognized within the legal framework, while also protecting the rights of Papuan people to practice this tradition without intimidation or discrimination. Additionally, the state bears responsibility for facilitating dialogue and negotiations between the central government, regional authorities, and Papuan people to strike the right balance between cultural preservation and individual rights in the context of politics and national development.

The noken is an integral part of Papuan culture that deserves respect and protection within our country's legal system, especially in the conduct of general elections (Ariyanto 2023). Despite lacking clear legal regulation, the noken has emerged as one of the general election systems in several regions across Indonesia. The implementation of the noken system has been validated by Constitutional Court Decision No. 47-81/PHPU-A-VII/2009. In the electoral dispute case in Yahukimo Regency, the Constitutional Court acknowledged the collective election method embraced by the local community, thereby honoring the cultural values ingrained among the Papuan people.

Nevertheless, Constitutional Justice Hamdan Zoelva's viewpoint, posits that the noken system cannot be universally applied across Indonesia. The decision of the Constitutional Court is contingent upon the specific circumstances on the ground and does not constitute a general norm. Nonetheless, this decision underscores the state's respect for the cultural identity of Papuan indigenous people, as well as the Constitutional Court's role as a

guardian of the constitution and protector of citizens' constitutional rights.

It is important to note that the noken system is not a formally regulated system under the laws of the state. Nevertheless, this system has become an integral part of the democratic process in certain regions, particularly within indigenous communities in Papua. The Constitution of the Republic of Indonesia of 1945 recognizes cultural diversity and protects the cultural rights of every citizen. This is reflected in the preamble of the Constitution of the Republic of Indonesia of 1945, which states that one of the goals of the Indonesian state is to protect all Indonesian people and the entirety of Indonesian bloodlines, as well as to advance the public welfare. This means that every individual has the right to practice and engage in the culture and traditions that are part of their identity and beliefs, as long as they do not contravene applicable laws and do not infringe upon the rights of others (Rahayu 2017).

The noken system, as part of Papua's cultural heritage, falls within the scope of protection provided by the Constitution of the Republic of Indonesia of 1945. As a practice that has been employed by Papua's communities during elections, the noken system holds significant historical, social, and cultural value for their identity. Therefore, the Constitution of the Republic of Indonesia of 1945 demands that the noken system be treated with respect and appropriate protection in accordance with its cultural identity. Protection of the noken system within the legal framework not only acknowledges cultural diversity in Indonesia but also demonstrates the state's commitment to preserving and safeguarding unique cultural heritage that holds value for its communities. By recognizing and protecting the noken system, Indonesia asserts that cultural diversity is a valuable asset that must be cherished and safeguarded for the interests of present and future generations (Faisal and Irwanto 2023). On that basis, the

Constitution of the Republic of Indonesia of 1945 provides a strong legal foundation for the protection and recognition of the noken system as an integral part of Papua's cultural heritage. This reflects Indonesia's commitment to respecting the cultural rights of every citizen while strengthening diversity and national unity (Faisal and Irwanto 2023).

Furthermore, the noken system is closely associated with Constitutional Court Decision No. 47-81/PHPU-A-VII/2009, which represents a significant ruling validating the implementation of the noken system in general elections within Papua. This Constitutional Court decision is pivotal as it provides legal legitimacy to the use of the noken system and offers crucial legal guidance for its implementation in electoral processes.

However, it is important to understand that this Constitutional Court decision is not universal. This means that the decision only applies to the cases brought before the Constitutional Court and cannot be considered as universally binding. Each case brought before the Constitutional Court for examination will be assessed based on the facts and laws existing at that time. Therefore, although Constitutional Court Decision No. 47-81/PHPU-A-VII/2009 validates the use of the noken system in general elections in Papua, it does not imply that the noken system can be automatically applied in all regions of Indonesia. Constitutional Court decisions heavily rely on specific circumstances on the ground, including cultural, social, and political contexts in each region. It is important to understand that Constitutional Court decisions are the result of judicial processes considering various factors and do not always create universally applicable rules. Nevertheless, Constitutional Court decisions remain an important guideline for the implementation of the noken system in general elections in Papua that adopt it, emphasizing the importance of respecting cultural values and diversity in Indonesia.

Most importantly, the Constitutional Court decision does not violate democratic principles and is not contradictory to the law. From the perspective of democratic principles, this principle emphasizes active participation of the people in political decision-making and recognition of human rights, including the right to vote and to be elected (Sumual, Lontaan, and Supit 2023). The principle of democracy is reflected in the Constitution of the Republic of Indonesia of 1945, which guarantees the rights of every Indonesian citizen to vote and to be elected freely and secretly. This ensures that every citizen has an equal opportunity to participate in the political process and has equal access to political representation (Tridewiyanti 2012).

The right to vote and be elected should not be restricted by cultural factors, including traditional systems such as the noken system. While culture and tradition should be respected, the democratic principles underlying electoral systems must be upheld. Therefore, adapting cultural practices to democratic principles is crucial. Although the noken system holds significant cultural value for Papua's communities, its implementation must still adhere to democratic principles such as freedom, equality, and accountability (Dedi 2021). This implies that elections using the noken system must still uphold democratic principles, including freedom and secrecy of the vote, and ensure equal rights to participate in the political process.

Does Voting Using the Noken System Contravene the Principle of Secrecy?

The noken system, a method of vote collection where votes are placed into a noken bag crafted from orchid fiber and hung openly for public viewing, has sparked controversy following Constitutional Court decision No.47-48/PHPU.A-VI/2009, as it challenges fundamental principles crucial to the conduct of general elections. Among these principles, the secrecy principle holds paramount importance, serving as the cornerstone of the

democratic process (Safwan et al. 2021). This principle not only safeguards individuals' rights to vote without external influence but also upholds the privacy and freedom of opinion of every citizen. By preserving the secrecy of one's political choices, this principle ensures that each vote is valued and considered without fear of coercion or undue external pressure.

Violations of the secrecy principle, as exemplified by the noken system, pose grave threats to democracy. When votes are openly displayed through noken bags, individual privacy rights are compromised, and the potential for intimidation or coercion in voting becomes tangible. Moreover, erosion of public trust in the electoral process can undermine political and social stability, diminish governmental credibility, and undermine the legitimacy of democracy as an equitable and inclusive system.

The secrecy principle is intrinsically linked with other democratic tenets such as justice, freedom, and accountability (Fatayati 2017). Without a robust adherence to the secrecy principle, these principles lose their substance and devolve into mere hollow rhetoric. True freedom to select and express political preferences can only thrive in an environment where the secrecy principle is respected and diligently enforced. Upholding and safeguarding the secrecy principle is an imperative duty to ensure integrity and equity in general elections. Election oversight bodies and the judiciary must collaborate to uphold the sanctity of the secrecy principle.

In the context of general elections in Papua, particularly in Yahukimo Regency, the utilization of the noken system has attracted scrutiny due to its contravention of the secrecy principle, a cornerstone of ensuring the integrity and fairness of the democratic process. Despite historically serving as a local tradition to facilitate decision-making, this practice has stirred controversy by encroaching upon individual privacy rights and fostering unequal access to voting rights. Therefore, it is imperative to

consider the broader ramifications of this breach of the secrecy principle for political stability and public trust in the democratic process as a whole.

The implementation of the noken system in general elections in Papua contradicts the secrecy principle by infringing upon individuals' rights to privacy and the confidentiality of their political choices. In this system, votes are openly displayed through noken bags, undermining the assurance of free expression devoid of external pressures. This can potentially lead to coercion or intimidation in voting, while also compromising the integrity and fairness of the democratic process in its entirety. Violations of the secrecy principle within the noken system also jeopardize political and social stability and may diminish public confidence in the fairness and inclusivity of the general election mechanism. Furthermore, the open exposure of votes through noken bags not only compromises individual privacy rights and freedom of expression but also violates the principle of fairness in the general election process. Consequently, this practice not only tarnishes the integrity of democracy but also perpetuates inequality in access to voting rights, a universal entitlement for all citizens. Breaches of the secrecy principle within the noken system underscore the imbalance of political power susceptible to manipulation by vested interests, while sowing doubt and distrust in the outcomes of general elections, thereby jeopardizing the stability and sustainability of the democratic process within the region.

Researchers posit that the noken system is also at odds with Article 22E paragraph (1) of the 1945 Constitution, highlighting its incongruity with democratic principles mandated by the Indonesian constitution (Anggraini 2023). This article underscores the necessity for general elections to be conducted directly, publicly, freely, secretly, honestly, and fairly every five years. In this context, violations of the secrecy principle within the noken

system signal a departure from constitutional standards mandating fairness, transparency, and freedom in the expression of individual political choices. Hence, a noken system that flouts the secrecy principle not only compromises the integrity of general elections but also disrupts the democratic process in its entirety.

Violation of the principle of secrecy within the noken system poses a direct threat to individual privacy rights. In the noken system, individuals' votes are not kept confidential as their ballots are openly placed in the noken bags, which are open for public review. This means that the political choices of each individual are not protected and are open to scrutiny by anyone (Izzaty and Nugraha 2019), constituting a serious violation of privacy and individual freedom. The principle of secrecy is also crucial to ensure fairness and equality in the electoral process (Rais et al. 2021). Violations of the secrecy principle, as seen in the noken system, can lead to inequality in access to voting rights and the potential to influence or coerce individuals to vote according to specific preferences. This is contrary to democratic principles which mandate that every vote should be respected and counted without fear of external pressure. Thus, breaches of secrecy principles in the electoral process, such as those occurring in the noken system, not only threaten individual privacy rights but also can disrupt fairness and equality in the democratic process as a whole. Therefore, it is important to rectify and strengthen protections for secrecy principles in electoral systems to uphold the integrity and public trust in democracy.

Conclusion

The utilization of the noken system in general elections within Yahukimo Regency, Papua, underscores a significant cultural heritage, yet simultaneously raises apprehensions regarding infringements upon democratic and constitutional tenets, particularly concerning the confidentiality of votes. Despite its acknowledgment by the Constitutional Court, the adoption of

the noken system in the general election process has sparked controversy due to perceived breaches of vote confidentiality. Normative legal inquiries highlight the incongruity of noken with the prevailing legal framework, signaling the necessity for enhancements to ensure concordance with democratic and constitutional principles. Collaboration among the government, election oversight bodies, and the Papuan populace is imperative to devise solutions that honor both imperatives: the preservation of cultural heritage and the safeguarding of individual rights within the realms of politics and national development.

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