

Asymmetric Election of Protecting the Voting of the Noken System in Selecting the Regional Head in Papua

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Abstract: Political law Election of regional heads recognizes the diversity in voting the Noken system is something that is important to be normalized. Several previous studies have also discussed the selection of diverse regional heads, but the results of the study are not yet fully understood in understanding the reality of indigenous peoples. Researchers suggest the concept of democracy Election of regional heads is implemented from the values of the Pancasila and the 1945 Constitution as an effort to understand and analyze all the differences from the reality of democratic society. Researchers expand the substance in understanding the voting of the Noken system by using qualitative methods with a constructivism paradigm to explore a reality that occurs. Researchers investigated why the politics of law Election of regional heads did not accommodate the voting of the Noken system in the Papuan Regional Election, and the researchers tried to rearrange the political development concept of the local election law that accommodated the voting of the Noken system. The results showed the state designed legal politics. Election of regional heads based on one man one vote strictly by casting ballots directly without opening access to diverse voting, especially using consensus agreement. As for the development of legal politics, the election of a new regional head requires the substance of discussion which must ensure that the voting of the Noken democratic system both philosophically constitutes the country's basic constitution, state law, social reality and human rights, and legal pluralism.

Keywords: Politics of Local Election Law, Asymmetric, Noken System, Indigenous Peoples.

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I. Introduction

One of the traditional symbols of the indigenous Papuan people used in the elections is noken (Ell et.al, 2013). Noken is interpreted as a symbol of togetherness of indigenous politics (Nenu Tabuni, 2016). Indigenous peoples use the Noken system

based on consensus through representatives of tribal leaders (Yunus, 2014). Looking at the history of Noken in the Papuan community, shows the existence of local wisdom that bases the use of Noken (Agustine, 2019). The indigenous people of Papua strongly endorse local cultural values by implementing different voting procedures as

regulated in statutory regulations. (Waluyo, 2018). The difference was seen when the voting was not done in the voting booths and the ballots casted were not put into the ballot box, but put into a typical Papuan bag called Noken (Yance Arizona, 2010: 1). The Constitutional Court appreciates the cultural value of the voting system of the Noken system, which cannot be forced to use elections in accordance with statutory regulations. . It is known that up to now there are eleven Regencies in the Central Mountains of Papua that still use the Noken system voting (Decree No. 471 / PL.03.1 / 91 / Kpt Prov / IV / 2018).

On the other hand, there is a major problem caused by the voting of the Noken system in the election of regional heads of Papua (Kholilulah Pasaribu, 2017: 73). First, the regions that are allowed to apply Noken do not always implement the system in accordance with the stipulated provisions. Second, the rules made by the Papua Election Commission leave many interpretations open. Third, the scope of administering the Noken system is not in accordance with its practice in the field, which means that the Constitutional Court's order so that Noken has been properly administered has not been realized properly. The problem arising from the voting of the Noken system is actually influenced by several factors, namely: the factor of cultural reality: the indigenous Papuan people living in the interior understand the voting of the Noken system as a culture that has been inherited in customary law whose interests involve the tribal chief, juridical factors: the provisions made by the state are incomplete in interpreting the voting habits of the Noken system according to the customs of indigenous peoples, geographical factors: location that is difficult to access and isolated from all communications and transportation results in difficult community data collection so that the voter register data of the community tends not to be the same as the reality. Prioritizing respect for the democratic system of indigenous Papuans who still use the voting system of the Noken system in the Papuan Regional

Election is a way to overcome the problem of revealing the reality of the community, therefore, the initial step needed is the right legal politics in protecting the democratic system of indigenous peoples. At the very least, the legal politics that are not rigid in looking at the way indigenous peoples carry out voting. The current political law of the regional elections governed by the state still denies the democratic system originating from indigenous peoples, especially in the voting mechanism of the Noken system in Papua, meaning that the state electoral system only recognizes the direct election mechanism compared to the consensus agreement. The legal politics of the regional head elections stipulated in Law No. 10 of 2016 concerning Regional Head Elections is very clear implementing the one man one vote system with the direct election system. Political law Election of regional heads is not harmonious, considering differences in democracy because the contents do not even modify the way of democratic indigenous peoples as communal societies who want their democratic systems harmonized with local wisdom, local culture. This situation then gives rise to a negative impression which leads to coercion so that indigenous peoples can accept the state-run direct electoral system, even though it does not rule out the possibility of a Noken system voting system being implemented. , even more sadly, many people consider the voting of the Noken system to be undemocratic, compared to the state election system.

To overcome this problem, researchers provide a more harmonious election model in amending the demands of the Noken system of voting into legal political regulation. Election of regional heads based on an understanding of the reality of the indigenous Papuan community which prioritizes the ways of deliberating in democracy by proposing an Asymmetric or diverse electoral system, at the very least, it is believed to be able to protect the rights of indigenous peoples, especially in Papua who are still fanatical about using traditional political democracy.

Studies from several studies that have reviewed the Noken system in the Asymmetric Election model are indeed still few, most studies only question the position of the Noken system in the politics of state law. Hasan B Musaad (2017: 172) in his research on the reconstruction of electoral law has concluded the democratic Noken system. However, the research was not able to recognize the Noken system as a community reality in an emic perspective because of the suggestion that there was an initiative to eliminate the main essence of the Noken system voting so that it would not be done through voting representatives. Pares L Wenda et al. (2013: 606) in his book on the Election of regional heads The Governor of Papua Province is not Democratic highlighting the election of regional heads of the Noken system to be evaluated for their use after several times in dispute in the election of regional heads in the Constitutional Court. However, this research is more focused on highlighting the Constitutional Court dispute decision by observing the violations that occurred in the voting of the Noken system that did not run according to the principle of direct, general free, honest and fair. Ridwan Mukti (Ridwan Mukti, 2013: 629) in his research on the diverse electoral system in Indonesia proposed that elections could be made to adjust conditions in the region that still holds the traditional democratic system tradition. This research has actually highlighted the importance of diverse electoral systems in several regions, but it is still in the form of ideas that do not yet have concepts in accommodating diverse voting in Indonesia. Also, Kurniawati Hastuti Dewi and Nyimas Latifah Letty Aziz (2016) in her research on the idea of Asymmetric elections in the regions succeeded in grouping regions that could carry out asymmetric elections. However, this research does not fully capture the disharmony of regulations that causes conflicts between indigenous peoples and the state. Therefore, it is hoped that this research can be more comprehensive about the Asymmetric polling for the Noken system in the Papua Regional Election.

The purpose of this research is to analyze: 1. Election law politics that does not accommodate and understand the reality of indigenous peoples towards voting on the Noken system in Papua. 2. Building the concept of the Political Law of the Noken election system.

This research will make a number of contributions to the science of law and indigenous Papuans, namely, first, the voting system of the Noken will become a democratic election system, secondly the voting of the Noken system will gain recognition of state law, third. The voting of the Noken system as a diverse electoral system can open up access for the regions to implement a different electoral system, the four voting of the Noken system will preserve the local wisdom of the indigenous people, especially maintaining the authority of the tribal chief.

II. METHOD

The method the researcher used was a qualitative research approach with a socio-legal study guided using the Constructivism paradigm. This method consists of three main steps namely data obtained from interviews with informants will be interpreted hermeneutically, selection of informants based on purposive sampling is traditional communities as cultural actors who choose the Noken system as well as several parties related to research from stakeholders, new- recently researchers used literature studies. This research took place in the city of Jayapura and several districts in the Central Mountains of Papua, mainly focused in Yahukimo District.

III. RESULTS

Based on the results of the study, there are political law discrepancies in the local elections which do not follow the interpretation of the 1945 Constitution of the Republic of Indonesia and the Constitutional Court's Decision. This discrepancy can be seen in the following table:

Table 1

No	Indicator	1945 Constitution of the Unitary Republic of Indonesia	Decision of the Constitutional Court No 47-84 / PHPU.A.VI / 2009	Law No. 10 of 2016
1	Recognition of Diversity	Respect indigenous peoples' unity	Respect the cultural value of the Papuan Indigenous Peoples	Requires direct voting
2	Purpose	Protect indigenous peoples in preserving their culture	Avoiding Competition / Disputes	Ensuring the Freedom of Every Individual
3	Election System	Deliberation	Collective selection based on agreement	One Man One Vote

Discrepancies in regulations result in a legal vacuum from the government in understanding the holding of the Noken election system for the indigenous Papuan people. Discrepancies in the

legal politics of the local elections have implications while in the field, as can be seen in the following table:

Table 2

The Institution	Government	Election Organizer	Papuan Indigenous Peoples	Implication
Opinion	Uniform Selection	The voting of the Noken system is regulated through Technical Guidelines	The voting system of the Noken was represented by the tribal chief through deliberations	Indigenous peoples experience disharmony of policies that are not in accordance with the reality of the Noken system voting

IV. DISCUSSION

Mismatch in the interpretation of politics Law Election of regional heads Understanding Reality

The results of this study indicate that there is a mismatch in the interpretation of the Pancasila, the 1945 Constitution and the Constitutional Court Decision in the political law of the elections. Pancasila and the Preamble to the 1945 Constitution regulate the democratic system based on deliberation and representation by prioritizing settlement through deliberations, usually it is done from indigenous groups in exercising their traditional rights. The ruling of the Constitutional Court stipulates that it respects the cultural value of the indigenous Papuan people in using the agreement system in voting. Based on that explanation, at least, it means that the nation's democratic system can be done in a variety of ways, one of which uses the method of deliberation and consensus. According to Bruce Fuller (2012), the people of the nation will be more varied in the form of their cultural pluralism.

The instructions for democratic system policies, differ from Article 1 of Law No. 10 of 2016 which instructs the voting system in the elections to be carried out on the basis of direct, general free, secret, honest and fair. Political law is the result of a restrictive interpretation of Article 6 and Article 18 of the 1945 Constitution. The electoral system regulation of the government means several principles, namely: first. Creating a vote so that everything is direct, Second. Protect and guarantee the individual freedom of each citizen, Three. Creating a one man one vote election. The government's interest in upholding national policy is a way of central domination restricting local authorities from making policies that are not in accordance with national legal guidelines (Elcock, 1994).

Starting from the first principle above shows that voting in general elections can only be done directly and not through deliberation and consensus as the customary way of conducting voting. The consideration of the state imposing a direct vote suffers from an inconsistency in understanding the

diversity of the nation's democracy so that it creates compulsion for indigenous people to follow the democratic system governed by the state. Karl G. Heider (2006) revealed that often, the formation of norms avoids a reality of society in a culture. Evidently, the political law of the local election that was designed has deviated from the nature of the nation's democratic system which cannot understand the reality of indigenous peoples, even though according to the purpose of opening and norms in the 1945 Constitution and the Constitutional Court Decision clearly protect the democratic system from the way of deliberation and consensus of indigenous peoples. Indigenous peoples are not given access to the political politics of the local elections implementing their democratic system. This situation has caused indigenous peoples to experience legal uncertainty to develop their existence in fulfilling their rights in democracy. The presence of the state seems unable to meet the expectations of the community to fulfill their rights, especially those related to the protection of indigenous peoples. According to Douglas A. Philips (2005: 93) Indonesia is currently a country that is challenged by its own complexity.

The step, the state devised a system of direct election is believed so that each individual can be free from intervention from any party in determining each choice based on the will of rationality from it. According to Jacques Derrida (2002) that the right to think freely and express opinions without fear of punishment or retaliation signifies democratic necessity. The dream is for the state to regulate a democratic system that can guarantee the full freedom of expression of each individual, meanwhile, deliberations and consensus are not included in the democratic election system in the elections.

The state reasoned that democracy has main criteria including the principle of popular sovereignty that every person has the right and independence because independence is a human right. The state seeks to regulate the democratic system so that it can be received from all walks of life by not discriminating

in the way the electoral system so that it can be more easily monitored by the government. Through direct election from the state it is not possible for other alternatives to vote, even though the community has its own way of implementing the voting system.

Ludwig Beckman (2009) revealed that at the present time, suffrage is a universal area that opens the excesses of equality in voting without privileging class, gender, race and ethnicity, because that group is firmly rejected in world democracy. The legal politics of many regional elections has adopted the principles of universal democracy in order to improve the quality of the democratic system in Indonesia. There are 16 International Standard Points for elections compiled by the International For Democracy and Electoral Assistance (IDEA) namely: a) using internationally recognized election standards, b) there must be a legal framework for general elections owned by each country, c) has a clear electoral system, b) there are restrictions, e) has an election executive body, f) the right to be elected and elected, g) there is election registration and voter lists, h) access to votes for political parties and candidates, i) democratic election campaigns, j) access to media and freedom of expression, k) campaign financing and expenditure, l) voting, m) counting and tabulating votes, n) there are roles of party and candidate representatives, o) there are election observers general p) there is compliance with general election law enforcement (Jurdi, 2018). The explanation above shows the standards that are recognized by the International For Democracy and Electoral Assistance (IDEA) as stipulated in the political law of the regional elections. The standard does not open up access to local democracy. Local democracy is an expression of local choices to get an acknowledgment of what methods they have to provide (Elcock, 1994). According to Dauglas A Philips, many unique cultures originating from remote islands develop native culture through the habits of daily life (Dauglas A Philips, 2005: 92). The method of direct voting ensures that the right to vote is usually done by voting on ballots. Fifiana Wisnaeni also defines the right to vote is the right of

agreement for every citizen to actively make choices based on equality and equality which in general elections are known as (one person One Vote, On Value (OPOVOV) or one person one vote or one value (Fifiana Wisnaeni, 2013: 349) This method is almost applied in every modern country in conducting general elections because it is considered the most ideal in conducting voting, however, problems arising later this method cannot be transferred in voting in some regions. those who are still thick in using the custom of deliberation and consensus, especially in the Papua region who still use the Noken voting, even though there has been a Constitutional Court ruling that can protect the cultural preservation of the indigenous Papuan people carrying out a vote based on an agreement that can actually be considered by the state to formulate the norm vote for the Papua Noken system. According to Suyenaga (2001) that Papua has a very difficult terrain that isolates them from each other for thousands of years from that situation each has developed a culture and lifestyle that is different from the community at large.

The discrepancy in understanding the reality of indigenous peoples in conducting voting with state voting methods that are procedurally regulated tends to prejudice the rights of indigenous peoples in Papua. The disadvantage experienced, for example, is that indigenous peoples lose authentic cultural identity of democracy, causing disharmony between communities that can trigger conflict. Although, the policy is an answer to the solution of the Noken system voting, but its implementation has not succeeded in capturing the reality of indigenous peoples so that the policy harmonization has arisen. The voting of the Noken system in the field is usually carried out in a variety of traditional rituals, based on the authority of the chief. According to Robert A Paul (2015) that a ritual is usually related between the community and nature, which basically society arises from nature, living temporarily by relying on nature.

The mismatch in the arrangement of the political rules of the general election law and the reality of

indigenous peoples is the failure of the government to protect the people's participation rights in the regions. Gyorgy Markus (2011) explained that participation in conveying thoughts is only open to power. As a result, the law politics in the election of regional heads only looks at from the point of view of the state in understanding democracy because lawmakers only focus on adopting the concept of electoral freedom from the modern state rather than looking at the social realities of the community in understanding democracy, until finally the state law politics does not reflect the protection of democratic diversity at all. According to Janice Morphet (2007), the public considers that the government is unresponsive to local communities who have a culture, if it is not related to their needs. Zamroni revealed that even though democracy written in the constitution contains the concept of freedom, freedom of democracy is not absolute, but has limitations by following the conditions of culture which are developed in stages, slowly in tune with the conditions of community development (Zamroni, 2011: 4). Therefore, it is very important to rebuild the electoral law politics that can accommodate an integrated asymmetrical electoral system for indigenous peoples' democratic systems.

Building legal politics Election of Asymmetric regional heads in amending indigenous peoples' democracy

Asymmetrical apart from the harmonious and uniform perspective, the intention is to see that something does not have to be interpreted in harmony and uniform because it is not necessarily symmetrical that will be suitable if it is functioned in the social life of the community, for example because state law makes indigenous people forced to change their habits from traditional to modern. , so the main purpose of the Asymmetrical concept is actually to encourage the concept of thinking that sees things that can respect diversity.

Ni'matul Huda (2014) defines diversity as wealth which must be united (united), but may not be unified or uniformed (uniformed), therefore, the

principle of Indonesian unity must not be identified with unity, the principle of unity must also not be narrowed in meaning or identified with an institutional sense the form of a unitary state which is a state structure built on the motto of Unity in Diversity (Ristyawati et al., 2018; Azhar et al, 2018). Therefore, the first action needed in recognizing the diversity of legal politics in the election of regional heads is to amend the asymmetric electoral system in the regulation of the electoral system regulation. Recognition of the norm is very important to protect the democratic system of traditional societies that is easily subjected to cultural shifts from outside cultural influences. The solution for the election system is to cast ballots based on the principle of one man one vote can be juxtaposed with a collective election using deliberation and consensus from the cultural habits of the community.

The government creates legal political norms. Election of regional heads must be in line with the spirit of the Pancasila democratic system and the 1945 Constitution. In addition, they do not see differences as opposing enemies of democracy but rather see differences as harmony that complements the nation's democratic system. Furthermore, it reminds the government to get used to exploring the value system of legal pluralism in society. Pluralism as an attitude recognizes differences, differences must be placed on the basis to respond to inclusive diversity (Sukardi, 2003; Roisah et al., 2018; Utami et al., 2019; Azhar et al., 2018)). The points of Asymmetrical legal political development are reviewed in 4 main aspects: first, the philosophical aspects (democratic justice of the Papuan Indigenous Peoples), secondly, the political aspects (planning of state legal regulations), the third socio-cultural aspects (protecting the local wisdom of the Noken system culture of the indigenous Papuan people in the Central Mountains of Papua), fourth. Universal aspects of human rights in protecting indigenous peoples.

This asymmetric vote will create legal certainty in protecting the democratic system of indigenous

peoples, especially for indigenous Papuans who still use the Noken system's voting.

V. CONCLUSION

Portraits of the reality of indigenous peoples in Papua carry out the voting of the Noken system. Many consider that it is contrary to legal politics from several policies it turns out that the Noken system of voting systems whose methods are carried out by deliberation and consensus according to the breath of the fourth ideology of the Pancasila and the 1945 Constitution. Political law Election of regional heads is far from the spirit of the ideals of national democracy, even very harmonious with ways Indigenous peoples use deliberation and consensus, it means that this discrepancy lies in the politics of general election law that does not follow the authenticity of the democratic system contained in Pancasila and the 1945 Constitution, so that if there is an unregulated electoral system From legal politics Election of regional heads but it is used certainly raises the premise that people will think it is undemocratic, even though in the philosophy of customary voting it is very democratic according to Pancasila and the 1945 Constitution. Certainly the situation cannot be tolerated if only understanding democracy from the political point of law Election of regional heads Even countries that tend to fail to understand the realities of indigenous peoples' democracy, so in order to dispel the notion that the democratic system of indigenous peoples, democracy is needed reconstruction of legal political development. But on the other hand there are some limitations in this study, namely: (1) this research does not all analyze the existing political political policies, but only analyzes some legal policies issued by the state, (2) from eleven districts that use the Noken system polling the researchers only focus on conducting research in two Papua's Central Mountains districts. (3) research does not analyze the politics of general election law, but only focuses on the political politics of the election of regional heads.

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