

CHAPTER IV

FINDINGS AND DISCUSSION

A. *Noken* Vote Model Destroy Value of Local Wisdom

1. *Noken* Vote Model Overview

Noken Vote Model is an election model that uses Nokens (traditional bag) hanging on one of the wood to be used as a replacement ballot boxes. This model emphasizes traditional role in building democracy. The model of democracy adopted by the Papuan people especially those living in the Central Mountains Region namely mechanical solidarity community. This is because people are very structured and have a patron-client relationship between the chiefs and the people. So the role of a chief is very important in determining a policy. But, before the decision was carried out, there must be a process of deliberation between the chief and the member of tribe.

The tradition of the people of Papua to take a decision is usually conducted by deliberation that involved all communities. This mechanism is carried out so that the community has one view and one vote in barricading themselves from parties who have an interest. Noken vote model has been used in elections since 1971. Noken vote model carried out in the election process of the House of Representatives, Parliament, the

President and Vice President, Governor and Vice Governor, the Regent and Vice Regent. Noken vote model is considered as an important part in the general elections in the Central Mountains Region of Papua.

According to Latifa Anum Siregar¹, Noken vote model is a creation of the New Order government. This Model is also a proof of the political interests of President Soeharto. She said that, " ... At that time, when Suharto would come to Papua, with Noken vote model could be ascertained for that region how many would choose Golkar party in general elections. All that through chiefs, simply collect ballot papers then put into the Noken, then waited for the officer to come and then gave it to the officer and there was no voting. Then it had been asserted according to Decision of Constitutional Court in 2009. The Constitutional Court recognizes Noken vote model and then in 2013, the decision of the Election Commission on the technical instruction of noken vote model election was born ..."²

Based on the technical instructions of the Election Commission Number 01/ KPTS/KPU Prov.03/2013, Nokens were used as a replacement of ballot boxes by observing the Constitutional Court Decision No. 47-81/PHPU.A/VII/2009 relating to Dispute settlement of general election

¹ Direktur Aliansi Demokrasi untuk Papua

² Latifa Anum Siregar, Direktur ALDP, in Interviewed by athor in Aston Kuningan Hotel Jakarta, March 22th, 2017. Permission to quote has been given

result of Yahukimo that permits the use of noken vote model on the process of collecting vote in area inland of Papua.

The implementation of noken vote model is applied in some districts Central Mountains of Papua such as Yakuimo, Tolikara, Central Mamberamo, Lani Jaya, Puncak, Jayawijaya, Intan Jaya, through local wisdom. But, not all Regions in Papua using Noken's vote model, this model is only used in the area of central mountains of Papua. This is due to geographical factors that are difficult to reach. They still live without access to information, transportation communication devices, and have a low education. These factors make people get less socialization of general elections and socialization of the candidates, because to reach the areas of mountains needs high cost.

In Noken vote model, there are two things that need to be observed, if it is associated with the electoral system in Indonesia as stipulated in the regulations of the general election. *Firstly*, it is related to the principles of election carried out effectively and efficiently direct, general, free, secret, honest, and fair. *Secondly*, it is concerning with the procedures of method of collecting vote in regulation of election. Based on these two things, that in the Noken's vote model, people are not doing direct election but represented by chiefs election.

There are two things that are often carried out by people, particularly in the Central Mountains Region Papua. The first is the Big Man system. It means that the vote is turned in or represented by chiefs who they trust. The second is the *ikat* system, it means that people can be directly involved in determining a decision, there is consensus. The Big Man system is in contrary to the principles of the election because this system does not provide free to every people to conduct direct elections but to give complete confidence to the chiefs and the system does not recognize the principle of secrecy because the election conducted in opened or transparent, this is done for the common good.

The *ikat* system is also contrary to the principles of the election that is the principle of secrecy which in this system all of voters come together to place polling vote and watching the ballot papers that have been defined and inserted into Noken.

Noken as Symbol

Noken is a symbol of honor, for people who are respected because they have a positive contribution to Papua. For people who are given the

honor of with Noken, has a big and very heavy responsibility because Noken was not just any object, it is a symbol of local wisdom of papua³.

Problems arise when the Noken is used as a symbol in the election. Since the name of candidates for regional head or member of the legislature or the president and vice president have been set, the Papuan people in various villages in the mountains became involved in discussions, either spontaneous or planned. The discussions are conducted in honay, yard of church, and village hall. The discussions are led by religious leaders, youth leaders, teachers or civil servants that are trusted by the local communities. In those discussions, they share information about the track record of each candidate for election. They did not discuss the promises of the candidates because the promise cannot be held and difficult verifiable.

The information they are looking for and share the lives of the candidates. They want to find the candidates' job history, habits, hobbies, nature and character, their attitude toward others, as well as their universal values that are lived and fought. If the candidates comes from the village, the people held discussions, and they examined the candidates' contribution to the advancement of their original villages. By getting lots of information, the people started to get a picture of the candidate who is credible and

³ *Ibid*

worthy chosen. Every voter in the village started to take a personal decision about which candidate will be chosen.

Then people are starting to campaign for their candidates. They introduce their candidates to others to test the feasibility and get feedback. Thus, all of the candidates are mentioned for the voters, and are tested for feasibility by the people using cultural criteria. Testing through the discussion held until voters in a village reached an agreement. The contents of the agreement include a candidate who is credible. Therefore, it is feasible to give a vote to him, as well as how many votes can be allocated to him.

So, it became clear that the election results are the personal decision of each voter that are brought together into a community agreement, and are symbolized by the Noken. People can agree "Fill" all of the votes of the village in a Noken and submit the votes to the candidate who is trusted or divide the votes to some candidates⁴.

⁴ Pater Neles Tebay, Ketua Sekolah Tinggi Filsafat dan Teknologi (STFT) Fajar Timur dan Koordinator Jaringan Damai Papua.

2. Noken Vote Model is Not a Part of Papuan Culture

Noken vote model is not a part of Papuan culture. In Contrary, Noken is an important tool that is multi-functional. Noken in the value of cultural sociology has strategic value for the benefit of the cultural, economic, political, social, cultural, and defense and security. In the context of political values, Noken vote model is never used as the selection of the chiefs in the ethnical democratic system in papua. For example, the election of chiefs (big man) is never used noken vote model.

Since the New Order, Noken vote model has been forced in the system of democracy in Papua. Chiefs of *adat* are generally hereditary in nature and they got strong legitimacy from the community, without going through an election mechanism. Chiefs are the cultural heritage of Papuans in the mountains of Papua. Their existence is recognized. Natan Pahabol⁵ said that, "... Election with Noken vote model in Papua is something foreign, and can affect the horizontal conflicts in society, especially people in the mountains of Papua such as in election 2013..."⁶

⁵ The member DPR Propinsi Papua period of 2014-2019

⁶ Bintang papua news: *Pemilihan Dengan System Noken Bukan Budaya Orang Pegunungan Papua*, available in <http://bintangpapua.com/2013/08/pemilihan-dengan-sistem-noken-bukan-budaya-orang-pegunungan-papua.html>, access on March 29, 2017. At 14.00 p.m

The term general elections with Noken vote model is a foreign concept to the people of the mountains of Papua. Indeed, Noken is part of the culture of Papua which is inherited from ancestors, but the voting and ballot papers to enter into Noken openly are eliminating the principles of election. Socialization about how ballot papers can be filled into the Noken has not been done, so that when the election processes take in the village, people just choose based on the willingness of each party, for example, on the orders of the heads of the village or the chiefs. Accordingly it can produce horizontal conflicts in society. The conflict can be viewed in the forms of two things, namely the physical conflict and non-physical. Non-physical conflict is more dangerous, because for 5 years, the elected legislators or legislative candidates who fail do not care about the issues in society. There is intimidation and terror to the public, so that people become victims. What is the Noken function and how is the process of filling out ballot papers into the Noken? In fact, people in the mountains of Papua are still asking, from whom is actually the concept?

Meanwhile, in the interests of the election, the chairman of the the Election Supervisory Committee of Papua said that, "...The technical instructions on the mechanism of the Noken vote model cannot be used in the voting, because the influence of traditional system is more powerful than the formal legal system applicable in papua, this is also, because chiefs

has full authority and be heard by the people. Consequently, if a chief said that he has 1000 people, the ballots are provided the total 1000 ballots for votings ...”⁷

This statement is in contrast with reality in the field that, chiefs’ function was never and is not related to the election affairs. He focuses more on the public interest related to social issues, welfare, land rights of tribal warfare and others. Meanwhile, for village government affairs, the one who plays an active role is the head of the village, and in matters of elections, it is the task of the central and local governments.

The same statement with chairman of the the Election Supervisory Committee of Papua, the Chairman of the Papuan People's Assembly (MRP) said that,”... Noken vote model has been used by the people of mepago and lapago (central mountains) long before the Constitutional Court Decision. Where, in the original culture of Papua, in decision-making in the common life, it used the Noken vote model. In this system, the people first were led by chiefs to conduct deliberations, but here the chiefs have the highest authority in decision-making, because chiefs are the ones who are authoritative in the traditional order of the people of Papua. Under the

⁷ Bintang Papua News: *Panwas Akui, Juknis Sistem Noken Tak Sesuai Mekanisme*, available in <http://bintangpapua.com/2013/03/panwas-akui-sistem-noken-tak-sesuai-mekanisme.html>, access on March 29, 2017. At 23.00 p.m

authority of the chiefs, the General Election in 1971 enacted Noken vote model in which in election the ballot papers agreed and then put into one Noken, the method according to the culture considered legitimate...”⁸

It is very contrast because ethnical governance system and the government are very different. The 1945 constitution guarantees specificity. Specific mandate must be translated by the traditional authorities and submitted to the government to be authenticated, not the government that is legalized and then force people to accept it. The government can legalize what has been administered by the traditional governance, but so far, the government undermine the culture of Papua. Papuans in traditional organizations joined in the traditional council of Papua (DAP) of all districts / cities in Papua. But the government made a new traditional organisation in form of institutions which is called traditional institutions of Papuan (LMAP). Papua traditional Council is politicized as a part of the Free Papuan movement (OPM). The traditional institution of Papuan was considered pro Indonesia, both organizations are busy with their own affairs. They do not try to resolve the problems faced by the tradition people’s concern on Noken vote model.

⁸ Bintang Papua News: *system noken sudah menjadi budaya masyarakat pegunungan*. Available in <http://bintangpapua.com/2013/03/system-noken-sudah-menjadi-budaya-masyarakat-pegunungan.html>, Access on March 29, 2017. At 11.00 a.m

The implementation of democracy in Papua on one side and the local wisdom in the context of the Noken vote model system on the other side needs to reconsider the Decision of the Constitutional Court in 2009. Noken vote model has never been a culture of people of Papua. Proven in the democratic process in the New Order era, based on the statement of the chairman of Papuan People's Assembly said that the Noken system started in 1971. In that year, where is a year in the history of communities of Papua recognize the democratic election system in the election of President Soeharto. According to the history of usage of Noken vote model and the birth of a chiefs are very different. The existence of Chiefs is carried out of hereditary in the mountain community of Papua and in the history of elections of chief (big man), noken vote model is never used⁹.

What Is the Role of Chief (Big Man)?

The role of chiefs in Papua, especially in the mountainous region of Papua. In his capacity as a big man have the duty and responsibility to overcome the social and economic problems. The social and economic problems refer to the settlement of the problems of adultery, fights, killings, documenting the history of the ancestors, organizing economies, setting war strategy and others. This is the domain of chiefs.

⁹ *Ibid*

Chiefs will be responsible fully for all the problems that they signed from the beginning until the end. Usually there are things that can not be handled by custom. The chiefs would be handed over to the police or the local governments to meet the needs of tradition peoples.

From this context, it clearly shows that there is a clear difference. The case of the murder of Jason Karoba¹⁰, cases of torture and murder was resolved by custom. This action obscure the subject, at the time the victim was tortured and killed in a Democratic Party event organized by the government and not the traditional government event. It definitely hurts the universal democratic principle, so it makes the crime democracy systematic and structured. Why say so, because before there was a strong presumption that the people in the district have agreed with a single candidate. If there are other candidates, it must be killed so that the implementation of the regional elections in the district filled with intimidation and terror carried out by the organizers¹¹.

Noken vote model in the democratic process in Indonesia needs to be reviewed or need re-examined. Noken value which has become a world

¹⁰ The member of DPRD Kabupaten Tolikara

¹¹ Pares L Wenda Dkk, 2013, *Pemilukada Gubernur Provinsi Papua Tidak Demokratis*, Jayapura, Lembaga Intelektual Tanah Papua, Page. 178

cultural heritage by UNESCO. Therefore Noken cannot be used into political event in Papua.

Noken should be maintained its preservation and used for things that are humanitarian, culture and economy needs. If the Noken vote model still exists today in the mountainous region of Papua and is legitimized the existence of Noken vote model through a decision of the Constitutional Court, so the government has addressed their failure to build a modern society in Papua.

The Indonesian government through the Constitutional Court only legalize a system which they has started since 1971, did not legalize a cultural heritage of Papua in the mountainous region of Papua. Even if the government is willing to admit the Noken vote model into cultural of Papua, the concept must come from the owner of the culture itself. The government has heard only one or two regions into their political interest then it is determined as Noken vote model is a cultural heritage of the mountains of Papua¹².

It is not the same with recognition by UNESCO which has established Noken as a world cultural heritage. In this case, the government fight Noken through the ministry of tourism, in order to the existence of

¹² *Ibid*, Page. 180

Noken is recognized by the world. Noken is already in the mountains of Papua culture and the existence is recognized and currently proposed by the government to be recognized by the world organization. But the Noken as a system of democratic elections of chiefs in Papua had never been there.

3. The Mechanism of Noken Vote Model

The mechanisms of Noken vote model is made by the General Election Commission of Papuan based on Decision of Constitutional Court No. 47-81/PHPU.A/VII/2009 related to the dispute results in the legislative elections in yahukimo. Mechanism of Noken vote model is made in the form of technical instruction of General Election Commission of Papua in 2013 with No. 01/KPTS/KPU Prov.03/2013.

In the technical instructions of General Election Commission of Papua No. 01/KPTS/KPU Prov.03/2013 regarding the procedure How to vote by using Noken as a replacement of the ballot box. The use of this Noken vote model can be used in the general election president and vice-president, legislative elections at local and national level, and the local election¹³.

¹³ Article 1 point 13 huruf d, Decision of General Election Commission of Papua No. 01/Kpts/KPU Prov.03/2013

Noken vote model is conducted based on mutual consent with people led by local community leaders by asking the ballot paper conform to the number of people which are there to be input into the Noken based on candidate¹⁴.

The following mechanism of Noken vote model based on Decision of General election Commission of Papua No. 01/KPTS/KPU.Prov.03/2013 as follow:

1. Group and / or community members who use Noken voters can provide the piece of wood in the plug / planted in vote area with instructions of chairman of officer whose function is to tie the Noken on the pole during the voting or by other means in accordance with local customs like hang the Noken on neck;
2. Voters who are willing to use Noken can insert the ballots into Noken for candidates who want or be represented and / or to the customary chiefs which thrive in the community for this;
3. During the voting process, Noken which have already contained the ballots papers unjustified to be opened, counted and taken by community leaders / chiefs who represent it. Noken can only be opened and counted by polling officer;

¹⁴ *Ibid*,

4. During the voting proses, Noken stay on a pole or person's neck. Not move to other place as instructed by chairman of officer¹⁵.

This mechanism becomes a reference in the elections using Noken vote model. From this mechanism produce the number of votes then based on technical instructions, the officer will vote the ballots papers in front of the candidate witnesses, Supervisory Committee, and community leaders / chiefs.

Here is a mechanism of the voting process with the Noken vote model:

1. Calculation of ballots is started by counting the number of the ballots that are within noken;
2. After being calculated, the number of ballots for the candidates, the designated officer must punching one by one ballots counted in the Noken in accordance with the people's choice for their chosen candidate. It is done in the presence of witnesses candidates, the Supervisory Committee and chiefs;
3. The number ballots in the Noken is added to the result of the people's choice / voters in the ballot box for the candidates and

¹⁵ Article 3 of Decision of General Election Commission of Papua No. 01/Kpts/KPU Prov.03/2013 on the mechanism of Noken Vote Model

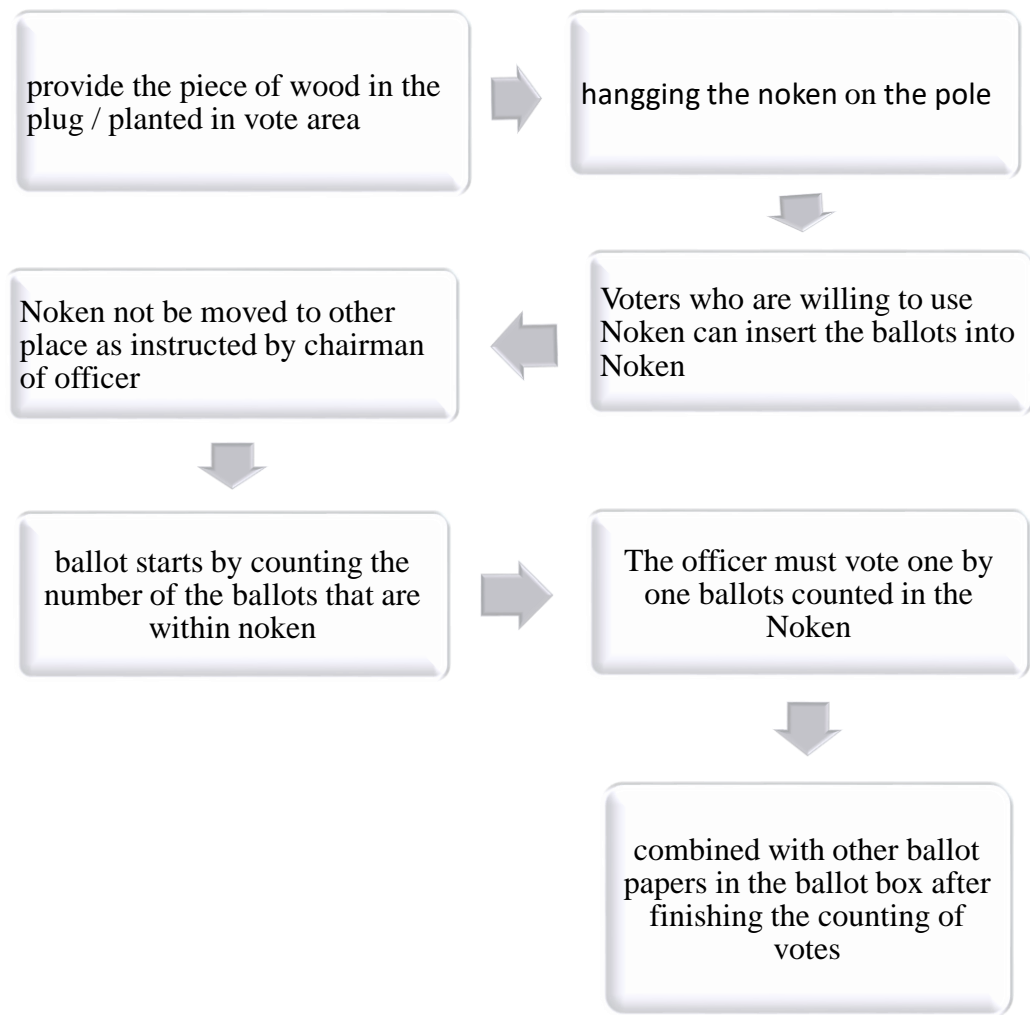
set in official report C model, the model of the C1-KWK KPU, Annex models of C1-KWK KPU and models C2-KWK KPU full size;

4. Not justified Noken which already contain ballot papers taken by the chiefs;
5. The ballots have been counted in the Noken and punched by the officers for a particular candidate as voted by the public / voters combined with other ballots in the ballot box after finishing the counting of votes;
6. Noken must be returned to the people / owner after finish¹⁶.

¹⁶ Article 3 of Decision of General Election Commission of Papua No. 01/Kpts/KPU Prov.03/2013 on the mechanism of Noken Vote Model

Figure 4.1

**The Mechanism of *Noken* Vote Model According to the Technical
Instruction of Election Commission**



Source: Decision of General Election Commission of Papua No. 01/Kpts/KPU Prov.03/2013

4. The Interpretation of *Noken* Vote Model

Elections held in Yahukimo since 1971 used his own way that polling ballot papers were represented by the chiefs. Polling did not do in

the voting booth and ballot papers were ticked are not included in the ballot box, but put in a typical bag of Papuans called "Nokens".

Such the procedure that is known as the model selection Noken which is traditional election system. This is the vote model in the hearing of the Constitutional Court when the Dispute Election Results (PHPU) filed by Ps. Elton Numberi and Hasbi Suaib, S.T. in fact disputed by the applicant are of a dispute the election results for DPD members, not the constitutionality of the Noken as a model election. However, the model selection Noken is directly related to the validity of the election and the amount of the disputed vote.

In addition, when the voting results obtained from the Noken model selection declared valid, then the Noken model selection implicitly recognized as one of the procedures for the election and it is constitutional¹⁷. In its decision, the Constitutional Court stated that was based on the legal facts of Yahukimo elections were not conducted by using of polling on the ballot, but based on "community agreement" or "acclamation".

The Constitutional Court assessed the need for respect of cultural values that live among the people of Papua are typical in organizing elections by Method or system of "community agreement" or "acclamation".

¹⁷ Yance Arizona, *Op.Cit.* Page. 109-132

The Constitutional Court received a collective election method ("community agreement" or "acclamation") that has been accepted Yahukimo society. They are to conduct forced an election in accordance with the legislation it would probably arise a conflict between local community groups.

The Constitutional Court is of the opinion that they should not be involved or brought into the system of competition or divisions within and between groups that can disrupt the harmony that has become their tradition. The Constitutional Court has used a progressive legal paradigm by not only considering law on formal approach, but also accommodate or accept the law which is existing in the community. In other words, the Constitutional Court recognized the living law in the community¹⁸.

In fact, the Constitutional court has never made noken vote model as a new norm in the election mechanism. However, the Constitutional Court has used their power as the interpretation of the Constitution by recognizing the existence of noken vote model as the existing tradition in the papua community.

¹⁸ Ahmad Zazili, "Pengakuan Negara terhadap Hak-Hak Politik (Right to Vote) Masyarakat Adat dalam Pelaksanaan Pemilihan Umum (Studi Putusan Mahkamah Konstitusi No.47-81/Phpu.A-Vii/2009)", Jurnal Konstitusi, Volume 2, Nomor 1, (March 2012). Page 21-22

As stated by Anthon Raharusun¹⁹, "The decision of the Constitutional Court is associated with Noken system in Yakuimo case. The Court actually did not conduct an examination of a law, which means the Court did not conduct a Judicial Review, but the Court settled an election disputes. Thus, the decision did not produce a norm. If the Court conducted a decision in the testing of the statute or the Judicial Review, then the Court will be produced a norm. Norm is used as a standard"²⁰.

He further argues that in the present case, the Constitutional Court did not give a decision against the rule of law, but the Constitutional Court ruled in response of the local wisdoms. So that all parties must understand that in the perspective of the Constitutional Court interpretation.

Through its decision the Constitutional Court has also ruled out that to some extend, the Court has power to put a side the formal provisions of law in the light of finding a more substantive benefits to the society. This is what is called as substantive approach²¹.

The dispute settlement of the legislative elections of Yakuimo in 2009 has made controvercy. In the era of Mahfud MD, the Court has made

¹⁹ Wakil Ketua Perhimpunan Advokat Indonesia (PERADI) Jayapura (2013-2017) dan Direktur Papua Anti-Corruption Investigation

²⁰ AIDP: *Putusan Mahkamah Konstitusi Terhadap Sistem Noken Tidak Melahirkan Sebuah Norma*, available in <http://www.aldp-papua.com/anthon-raharusun-putusan-mk-terhadap-sistem-noken-tidak-melahirkan-sebuah-norma/>. Access on March 19, 2017. At 23.00 p.m

²¹ Ahmad Zazili, *Op.Cit.* Page. 16

a controversial decision. According to Refly Harun²², “In the era of leadership of Mahfud MD, in making a decision, the Court has mixed the element of law and politics, therefore it is potentially triggered polemic”²³.

Refly further emphasized that mixing law and politics. Sometimes can be a solution, but at the same time it may also create controversy.

B. The Problem Facing *Noken* Vote Model

1. The Problem of Citizen Administration

Almost all areas in the mountains use *Noken* vote model and the weakness of this model is that most population do not have E-ID. From the political perspective, the number of votes in the mountains based on permanent list of voter (DPT) are more than the coastal areas. In fact, the member of population in the coastal area are more than in the mountain area. This is the problems validity of voters.

For examples numbers Election Area (Dapil) 1, Election Area (Dapil) 2 and Election Area (Dapil) 3 in the coastal areas compared to Election Area (Dapil) 1, Election Area (Dapil) 2, and Election Area (Dapil) 3 in the mountain areas is higher in mountain areas. For instance in coastal

²² Pengamat Hukum Tata Negara, Staff Ahli Presiden, 2014 dan Komisaris Utama PT Jasa Marga (Persero), 2015

²³ Refly Harun, Pengamat Hukum Tata Negara, Penyampaian Materi Tentang HUKUM Acara Mahkamah Konstitusi Dalam Pendidikan Profesi Advokat (PPA) 2016 in Universitas Muhammadiyah Yogyakarta, December 24th, 2016, At 16.00-17.30 p.m

areas, it needs only 1000 votes for 1 member of provincial parliament. But, in the mountain, it needs 5000 voter²⁴.

One of the solutions to overcome the problem is by having a good administration of population because mostly in the mountain 75-80% of the population do not have E-ID Card. Yan Piet Rawar²⁵ said that, "In Papua, about 882.309 people who recorded the data for E-ID card. Meanwhile, the data recorded that around 2.21 million people of total of 3.1 million which are required to have an identity card. In other words, it is only 20% of Papuans who have E-ID cards. Rawar further states that most in Jayapura that are estimated around 79.157 people. While at least in the district of Deiyai there are around 327 people"²⁶

The condition has created problems for the implementation of the Noken vote model, because the demographic data is a vital element. Throughout the community does not have e-ID card, the data on the number of population is not clear, thus the permanent list of voters (DPT) is also unclear. In relation to that, Noken vote model is being questioned.

²⁴ Latifa Anum Siregar on Interview

²⁵ Kepala Dinas Tenaga Kerja dan Kependudukan Provinsi Papua

²⁶ CNN: *Sebanyak 2, 21 Juta Warga Papua Belum Rekam Data e-KTP*, available on <http://www.cnnindonesia.com/nasional/20160831133441-20-155099/sebanyak-221-juta-warga-papua-belum-rekam-data-e-ktp/>, access on maret 18, 2016. At 11.00 am

Number of residents in a village in the mountains are not more than 50 families, but the average in the village in the election ballots can reach 500 ballots. Whereas if it is only 50 families, the total voter must be only 115-120 voter²⁷.

2. The Variation of Noken Vote Model

In Wamena Noken vote model it is not just one kind as regulated in the technical instruction of the Election Commission, but it is various. During the first legislative election in 2013, at that time there were 12 political party, 12 Nokens were provide based the names of the political parties. But if there is a candidate coming from the village, the Noken was separated from political party noken. It is found that then there were 15 hanged Noken.

In the presidential elections and the local elections only 2 were hanged and Noken are already put the Name of the candidates²⁸, but the procces same with the legislation election.

There are two kind of noken vote model in the practice, according to the technical instruction of the Election Commission of papua, such as:

²⁷ Latifa Anum Siregar on Interview

²⁸ *Ibid*

a. The Noken which Hanging on a Pole

Figure 4.2

Noken Which Hang On a Pole



Documentation of AIDP when elections in the Sogomo village district
Asotipo

This is noken vote model with Noken hanging on a pole. This vote model is in accordance with the general technical instruction of the Election Commission of Papua. The noken is bound and marked with a rope wrapped around Noken hanging.

b. The Noken Which Hang On Neck of People

Figure 4.3

Noken Which Hang On Neck of People



Documentation of AIDP when elections in the Sapalek village, Jayawijaya

In this Noken vote model with Noken hanged on people, even the children can do it. In the technical instructions of the Election Commission in 2013, there was not a single article that describes a category of people who would be used as an auxiliary in hanging the noken.

In practice before the election, there was a briefing by Election officers (KPPS²⁹). They read the names of candidates with the words that are “direct” the people to choose certain candidat. For example the officer announced some candidates from particular villages. That’s the way, with all the limitations, the voter did not get enough information about the capacity of the candidates, they chose not based on their knowledge of the capacity of a candidate, but they chose based on proximity (familiar) with the candidate, or they choose based on the name of the political party that

²⁹ KPPS is group of voting organizer

they often heard for example Golkar party, so they put the ballots in the noken of golkar party³⁰

Figure 4.4

Every witness of candidates occupy in Area of Noken hanged



Documentation of AIDP when elections in the Sogomo village district Asotipo

Disturbingly beside Noken hanged, there are the witness of the candidates, and then makes report the names of people who put Ballots in the Noken. If there are more Ballots, there will be negotiations between the big man and the Election Commite (KPPS), and usually there is debate among them and even contention. At the end, the rest of the Ballots will be halved³¹.

³⁰ *Ibid*

³¹ *Ibid*

Noken is cultural wisdom, a symbol of honor has gone with the practice of this noken vote model and may be said to have been very deviate even be misguided³².

Noken vote model make the Noken laden with fraud because the voting process is closed, so that the voting public cannot watch the process. Closed process makes this vote model become not accountable because there is negotiation, bargaining and vote-buying. Therefore, from the results of the voting, it is very hard to predict the result votes.

3. Contrary against the Principles of Election

Noken vote for the model in practice is in contrary to the principles of the election. Election is one of the means to realize the people's sovereignty in the government of the Republic of Indonesia based on Pancasila, as stipulated in Law No. 15 of 2011. The elections have organizing principles are:

1. Direct means every voter to vote directly without intermediaries.
2. General means all citizens who qualify are entitled standing for election.
3. Free means no coercion from any party in exercising its right.

³² Pater John Jonga, Human Right Activists in papua, in Interviewed By Author in Kramat Raya 7, Cenral Jakarta, March 23th, 2017. Permission to quote has been given

4. Honest means all parties involved in the electoral process that should act honestly in accordance with laws and regulations.
5. Secret means every citizen who choose will not be known about who is chosen (only he knows).
6. Fair means that every party involved in the electoral process should be given in accordance with applicable laws.

In fact, the Noken vote model is in opposition with the above principles of the general election as regulated in the 1945 Constitution³³ and the Election Law³⁴. In the practice, the principle of *direct*, the Papuan did not directly vote. It is the chairman of election committee who votes for the candidates. They only collect the ballots into the noken, they do not vote the candidate. *Free*, the Papuan are not free to express their rights to vote in election process. They get coercion from the Chief to vote in Election. As we know, there is deliberation among the *adat* community led by the Chief before voting process. *Secret*, there is no secret in process of noken vote model because it is done openly, one another knows their

³³ Article 22 E, Paragraph (1): “General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years”.

³⁴ Law No. 15 of 2011 on the General Election in Article 1 Paragraph (1), Law No. 10 of 2016 on the second amendment of Law No. 1 of 2015 on the establishment of election governors, regents and mayors to become law in Article 2, Law No. 42 of 2008 on General Elections of the president and vice president in Article 2, Law No. 8 of 2012 on General Elections of members of People's Representative Council, regional representatives council and regional people's representatives council in Article 1: “General Elections that be held by direct, public, free, confidential, honest and fair in the unitary state of Indonesia based on Pancasila and the basic laws of the republic Indonesia 1945”.

choice. *Honest*, in process of noken vote model, there is no guarantee of honesty because the result of election is not clear. The process of recapitulation of the ballots is closely done. There are many manipulations in this process. *Fair*, in process of noken vote model, there are intimidations for particular voters, because it is done openly. Therefore if there are Papuan voter that are not in line with the consent of *adat* community they will get terror even murder. In fact, the principles of election are not applied because the noken practices with the principle of transparency. This is not in line with the principle of election.

The general election is one way to influence people. In the election, people are not forced to choose, but they are given the right and freedom to choose. People who engage in so-called constituency election candidates because they offer any good vision, mission and program in the election campaign. Organizing elections are carried out effectively and efficiently as described above and set forth in Article 1 of Law No. 15 Year 2011 regarding the General Election which is based on the principle of direct, general, free, secret, honest, and fair.

Usually the people ask for help them, either one of them or even the organizers of the election, to do the voting in accordance with the consent of the people. If the election results are in accordance with their agreement, there are no people who create protest and chaos. The essence of

democracy is the participation of the entire people. Thus, in democratic elections, all the people should actively participate in making decisions about the candidates chosen.

4. Noken Vote Model vs Regulation

Basically, noken vote model can be seen from two aspect, culture and government aspect. As organizers of democracy that become a bridge between the two is the law and the constitution of the State, not an ordinary agreement. In the 1945 Constitution Article 18 B, paragraph 1 and 2 said that: "(1) the state shall recognize and respect the units of the local government special or that are regulated by law. (2) The state shall recognizes traditional rights that are still in practice and in accordance with the development of society and the principles of the unity of the republic of Indonesia that are stipulated by law"³⁵.

The 1945 Constitution has ordered the government to make the Law No. 21 of 2001 on Special Autonom for Papua Province which means that it can recognize the area as a special area of Papua in Indonesia in accordance with the mandate of the 1945 Constitution. Law No. 21 of 2001 created the Papua People's Assembly (MRP) and the parliament of Papua (DPRP). In a way, they have never made specific local regulations

³⁵ The Indonesian 1945 Constitution, article 18B paragraph 1 and 2 on Special Region

legalizing the exercise of democracy with Noken vote model. Then it was also never submitted to the Papuan local parliament to make special regulations on Noken vote model. The local regulations never existed.

Elections are not a local domain. The domain is on the central government, because the constitutional mandate of the elections is the task of the Election Commission. In 2009 the Constitutional Court gives legitimacy of Noken vote model. In carrying out ruling the court, the Election Commission of Papua made a technical instruction as a guide of the implementation of the elections in Papua. What is the technical guidelines that can be carried on? While in Papua geographically hard, often the weather at that time was very extreme. It is not possible to District Election Commission to conduct a sufficient socialization.

Back to the performance of Assembly of the Papuan (MRP) and Papua parliament (DPRP) in the context of the mandate of the Law no. 21 of 2001 on Special Autonomy for Papua, everything should be applied by Papuan, of Papuan and for Papuan. This obsession is a decision of the Papuan that should be then submitted to the Assembly of the Papuan (MRP) and Papua Parliament (DPRP). Afterwards, it is set as a regulation that is implemented in Papua. If there is a problem in the future, then it can be reviewed through the legal process in the Constitutional Court. However, before achieving this step, the Papuans were surprised by the

Constitutional Court Decision which recognize the existence of Noken Vote Model in the mountainous region of Papua. This is a fact of irony of Law in Indonesia, particularly in Papua. It seems that the recognition of the practice of noken vote model by the Constitutional Court is not involved the aspiration of the Papuan at all. It is better if the government and DPR try to do a more serious research whether noken vote model is proper in the mechanism of Election in Papua.

The recognition of noken vote model is actually controversial idea because it is againsts article 67, paragraph 1, point a, b and f which states that: "(a) treat candidates fairly and equally; (B) establish standardization as well as goods and services related to the implementation of the regional head and deputy head of the affluent by legislation; (F) carry out all stages of the regional head and deputy head of the region in a timely manner"³⁶.

Looking at the performance of the Election Commission in Papua, there is a delay of distribution ballots boxes. It can be noted that it is a part of violation of Law which is structure, systematic and massive. Pro and contra of the system and how the Noken vote model are also misused by local elite groups. According to the head of supervisory committee of Papua, Ony Lebelaw said that, "recognizing Noken vote model is not in

³⁶ Law No. 32 of 2004 on Local Government, article 67 paragraph 1, point a, b, and f

accordance with the technical instruction in the implementation of the elections governor of Papua province. Noken vote model is already authorized by Constitutional Court, but it needs to be evaluated, because in practice, the noken vote model has been abused by the elite³⁷.

³⁷ Bintang Papua News, *Op. Cit*