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Chapter 4

The *Noken* System and the Challenge of Democratic Governance at the Periphery: An Analysis of Free and Fair Elections in Papua, Indonesia



Tri Efriandi, Oscar Couwenberg, and Ronald L. Holzacker

Abstract Since the post-Suharto era in 1998, decentralization has been established as the major institutional reform in Indonesia. It has been implemented as the policy framework which aims not only to generate development but also to promote democratization through the establishment of direct elections for local executive leaders. In fact, promoting democracy by establishing local executive elections in Indonesia is challenging. The inability of national policy to adapt to the local customary practice creates a barrier in implementing the ideal concept of democracy, namely free and fair elections. This chapter addresses the problems of free and fair elections by examining the practice of the “noken” system in Papua, the name of a traditional bag which evolved as an election mechanism in several districts in Papua’s central highland area. This research utilizes eight indicators of free and fair elections to analyze the problems in every stage of election: before the election, on the election, and after the election. Based on the literature, policy-study, and data from newspaper articles, this research argues that the practice of noken system contravenes with the principles of democracy. The absence of law and regulation to standardize this customary practice becomes a major drawback in promoting democratic governance at the periphery region.

Keywords Political decentralization · Local direct election · Papua · *Noken* system · Democracy · Free and fair election

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4.1 Introduction

The relationships between decentralization and democratization have emerged as one of the major debates both in academic literature and government practice in many developing countries. Decentralization not only becomes as a means in achieving democratization (Agrawal & Ribot, 1999; Hutchcroft, 2001) but, in reverse, decentralization also needs democracy in order to reach its potential (Faguet, 2014). However, how this symbiotic relationship could be achieved is still unclear. Proponents of decentralization argue that by constituting government closer to the people would increase government accountability and responsiveness to the citizens (Blair, 2000; Grindle, 2007; Manor, 1999). Nevertheless, critics over decentralization claim that this system might be accompanied by more corruption at the local than at the national level (Prud'Homme, 1995). Next, the creation of a smaller and homogenous society through decentralization creates a greater potential for local elites to use their powers, resources, and social influences in affecting policy for their own favor (Bardhan, 2002; Bardhan & Mookherjee, 2000; Verbrugge, 2015). These pros and cons indicate that the success and failure of decentralization are various and contextual.

Indonesia, in this case, experienced an important reform in 1998 after the fall of highly centralistic and authoritarian system during the Suharto's regime, known as the New Order, for more than 32 years. The establishment of decentralization in 1999 becomes a major institutional reform in devolving a greater political, administrative, and fiscal authority to the local government. Furthermore, the arrangement of local direct elections in 2004 is also marked as a major political leap of Indonesia's transition process to democracy. In fact, however, the transition process from an authoritarian regime to democracy through decentralization is challenging. Local direct elections as one of the implementations of political decentralization are still hindered by the several malpractices such as money politics, patronage, and clientelism that hampered the democratization process in this country (Aspinall & Sukmajati, 2016).

This chapter aims to examine the problems of political decentralization in Indonesia by analyzing the practice of the *noken* system during the local direct election in several regions in Papua. The Constitutional Court acknowledges this system for elections as a way to preserve the local customary practice. Nonetheless, this traditional system intersects with the national electoral system which allows only one man, one vote, and one value, while the *noken* system accommodates the community consensus where a tribe leader can vote on behalf of the community (Nolan, 2016; Nolan, Jones, & Solahudin, 2014). In this chapter, the problem of the democratic election on the *noken* system is analyzed by using the dimensions of free and fair elections. This chapter argues that the *noken* system contravenes with the principles of democracy due to the gap between the national election policy and the customary practice. This policy barrier then creates confusions and potentially triggers conflicts on the election. It thus suggests that adopting the values of democracy

in a democratic transition country with a high cultural diversity is hard to comprehend.

The overall structure of the chapter takes the form of four sections. The first section of this chapter gives a brief overview of the research background. The next section discusses the theoretical framework and methodology for this research. The third section is concerned with the analysis of free and fair election principle to explain the hindrance of the *noken* system. Finally, the last section concludes the research.

4.1.1 Noken System and the Challenge of Democratic Governance

As a country with a high cultural and ethnic diversity, the issue of indigenous people and ethnic minorities has always been problematic to be accommodated in the policy-making in Indonesia (Duncan, 2007). Although 1945 Constitution articulates that the state acknowledges and respects the indigenous peoples along with their traditional rights and cultural identities,¹ giving certain ethnic groups special legal privileges in the political process is complicated (Duncan, 2007). For example, acknowledging the practice of the *noken* system on the elections. Originally, *noken* is the name of a traditional bag that has been made from the tree bark (Nolan, 2016). This bag has been used by several tribes in Papua, particularly in the central highland area, to carry a variety of goods, e.g., agricultural products, animals, or firewood.² During the election, this traditional bag turns into a customary practice. The bag for each of the candidates is hung on a stake or on the neck to replace the ballot box at the polling station.³ On the other hand, the *noken* system has also been practiced through the *ikat* system. In this system, the decision-making process on to whom the votes from a clan will be given is implemented in two different mechanisms. The first is the Big Man mechanism. In this method, the tribal leader will determine by himself to whom the votes will be given, without the deliberation process with his clan members. The clan members have given a mandate to a tribal leader to become their representative in electing a candidate. The second mechanism is the consensus-based arrangement. In this mechanism, consensus among clan members has been made through deliberation process in determining how many votes will be given to certain candidates.

The government has established the national policy to create a uniformity for the election system all across the country.⁴ However, the *noken* system which is different

¹The 1945 Constitution of the Republic of Indonesia article 18B section (2) & article 28I section (3).

²Papua Election Commission, Decision No. 01/Kpts/KPU Prov.030/2013, 12 January 2013.

³Ibid.

⁴Constitutional Court, Decision in case No. 31/PUU-XII/2014, 11 March 2015, p. 15.

with the national election policy has still been practiced during the election in several regions in Papua. This local customary practice is not only incompatible with the national election policy but also potentially triggers conflicts over the election process. In many cases, elections in Papua often lead to conflicts. The diverse clans in this region, particularly in the central highland area, create a traditional political structure in the form of trapezium which means that there is no figure that can unite different tribal groups. This fluid political condition creates frictions among political elites on the election time could easily turn into a communal conflict between societies (UP4B, 2014). Moreover, high illiteracy in several regions in Papua causes difficulties for society in understanding the democratic elections. This condition makes the community more vulnerable to be provoked by political elites or candidates which then often lead to violent conflicts between supporters.

In 2017, the Election Supervisory Agency of Indonesia (*Badan Pengawas Pemilu*, Bawaslu) releases the Elections Vulnerability Index for local executive elections (*Pemilihan Kepala Daerah*, Pilkada) in 2018. This annual publication measures the potential problems of democratic election in regions that will hold local leader elections in a given year by using three dimensions: implementation, contestation, and participation. The index places the Papua as the province with the highest vulnerability index from in total 17 provinces that will hold election in 2018. Furthermore, at the district level, three districts in Papua are also ranked as the regions with the highest vulnerability index from in total 154 districts and cities that will hold local leader elections in 2018.⁵ The practice of the *noken* system becomes one of the factors of the high vulnerability index in this region.⁶

In short, the customary practices during the election become a dilemma for democratization process in Indonesia, particularly in this case is in Papua. The transition process to democracy in this region is still undermined by the gap between the national election policy and local customary practice, namely the *noken* system. The legal vacuum of this system is vulnerable to be exploited by political elites in affecting the election results (Nolan, 2016). Consequently, it could violate the principles of democratic election and trigger conflicts among society. On the other hand, in a unitary country with 1127 ethnic groups and 328 local languages, accommodating local customary practices to the election system is burdensome, as it might pose a potential threat to political stability if each ethnic group practices their local custom on the election.⁷

⁵Election Oversight Committee (Badan Pengawas Pemilu, Bawaslu), Indeks Kerawanan Pemilu Pemilihan Kepala Daerah 2018.

⁶“Gunakan sistem Noken, Pilkada 2018 di Papua dan Papua Barat Rawan,” Tempo.co, 23 October 2017.

⁷Constitutional Court, Decision in case No. 31/PUU-XII/2014, 11 March 2015, p. 14.

4.1.2 Research Question

To examine the challenge of political decentralization and democratic governance in Papua this chapter offers the following research question: *Is a free and fair election possible under the Noken system in Papua?*

4.1.3 Social and Scientific Significance

Scientifically, this research aims to fill in the gap in the existing literature on decentralization and governance particularly in the developing countries. Faguet (2014) explained that many studies on decentralization are focused on the output of decentralization by using the socioeconomic indicators such as economic growth, poverty rate, health, and education, while only a limited number of studies explore the effect of decentralization on the quality of governance. Furthermore, the problems in Papua have inspired scholars to analyze the obstacles from different perspectives. Several studies discuss nationalism and conflicts (Chauvel & Bhakti, 2004; McGibbon, 2004), while another study examines the output of development in this region (Resosudarmo, Mollet, Raya, & Kaiwai, 2014). However, these previous studies make no attempt to address the question of how decentralization is implemented and what is the challenge of governance in Papua. Therefore, to offer a different perspective, this chapter highlights the problems of local direct election as the institutional framework of political decentralization and considers the implications of this framework for the democratization process in Papua.

Scholars have debated the impact of decentralization on democracy and development. It has commonly been assumed that decentralization and democratization are the preconditions for successful development (Sutiyo & Maharjan, 2017, p. 2). Nevertheless, the successes and failures of decentralization in Indonesia are various and very contextual. In Papua, despite greater authority due to the decentralization scheme, the development and democratization progress is lagging compared to other regions. Hence, one purpose of this chapter is to offer an explanation that is important for policymakers in designing policies for distinctive communities, especially in an underdeveloped area.

4.2 Literature Review

4.2.1 Political Decentralization

Political decentralization refers to the establishment of an institutional framework to devolve political authority or electoral capacities to subnational actors (Falleti, 2005, p. 329). It is established as “a strategy of governance to facilitate the transfer

of power closer to those who are most affected by the exercise of power” (Agrawal & Ribot, 1999, p. 475). Devolving the political power is implemented in various forms, for instance, the establishment of local direct election or the creation of local representative institutions (Cheema & Rondinelli, 2007; Schneider, 2003).

The direct election provides an instrument for local citizens to oversee the performance of local officials. This, in turn, produces the relationship between the local officials and citizens that can be conceived as a principal-agent one. The local leaders act as the agent while the community stands as the principal. The principal can sanction the agent if the agent does not accommodate the principal’s interests. For this relationship, election then emerges as the most visible sanctioning mechanism from the principal to their agents (Fischer, 2016). However, the effectiveness of this aim can be attained when two conditions are met: when local governments are downwardly accountable to their constituents and when constituents can utilize accountability as a countervailing power for local governments (Agrawal & Ribot, 1999, p. 478).

4.2.2 Electoral Accountability

In decentralization, the local election has two different but related functions: firstly, election as one of the implementations of political decentralization (Agrawal & Ribot, 1999; Shah & Thompson, 2004) and secondly, election as a mechanism of accountability (Bovens, Goodin, & Schillemans, 2014). Election as the mechanism of accountability is known as the electoral accountability (Ashworth, 2012; Przeworski, Stokes, & Manin, 1999). It is also known as downward accountability (Agrawal & Ribot, 1999; Devas & Grant, 2003; Francis & James, 2003). As marking the ballot paper gives an opportunity for citizens to give rewards and punishments of the officials, the election becomes a mechanism of control in selecting and sanctioning the local elected officials (Fearon, 1999). In ideal conditions, this mechanism might lead to good governance (Ashworth, 2012) and to improve the quality of the local democratic process (Cheema, 2007).

4.2.3 Free and Fair Election

As indicated previously, the local direct election is established as the mechanism of accountability in political decentralization. Nonetheless, the elections in a local region cannot guarantee that the election process will be implemented democratically. In a study which sets out to determine the indicators of democracy, Dahl (1973) identifies free and fair elections as one of the elements of democracy. It indicates that by just establishing the election policy and arranging the election at the local level are deficient for democracy. In reaching its potential, elections should be managed in free and fair process.

Elklit & Svensson (1997, p. 35) define freedom as “the right and the opportunity to choose one thing over another.” They explain that “the freedom is related to the voter’s opportunity to participate in the election without coercion and restrictions.” These definitions indicate that in a competitive election, voters have a freedom to exercise their political rights in selecting a candidate. Furthermore, Elklit & Svensson (1997, pp. 35–36) defined fairness as impartiality. It is classified into two elements: regularity and reasonableness. Regularity means “impartial application of the election law, constitutional provisions, and other regulations,” while reasonableness means that relevant political resources are distributed equally among political competitors. In conceptualizing the free and fair dimensions, Elklit and Svensson (1997) assessed the free and fair dimensions in each period of election: before polling day, on polling day, and after polling day.

In contrast, Bishop and Hoeffler (2016) distinguished the free and fair dimensions based on the time period of election. They describe freeness as “the rules of the election and the process leading up to the election” and fairness as “the events on the election day” (Bishop & Hoeffler, 2016, p. 608). Hence, they did not analyze the free and fair process in every and each period of election as Elklit & Svensson did, but they frame “free” as the process before the election time and “fair” as the process on the election time. Moreover, based on the Bishop and Hoeffler (2016) the dimensions to assess the freeness are legal framework, electoral management bodies, electoral rights, voter register, ballot access, campaigns process and media access. In terms of fairness, the indicators to assess the fair process on the election days are voting process, role of officials, and counting of votes. This system of classification is useful to examine the process before and on the election days. However, it has a limitation to analyze the process after the election days. Therefore, to examine the process after the election, the following dimensions of free and fair by Elklit and Svensson (1997) will be analyzed: legal possibilities of complaint, official and expeditious announcement of election results, impartial treatment of any election complaints, impartial reports on the election results by the media, acceptance of the election results by everyone involved.

4.3 Methodology

In this chapter, we analyze the barriers of democracy in the *noken* system by using the dimensions of free and fair elections. This research combines the free and fair dimensions by Bishop and Hoeffler (2016) to analyze the pre-election and on the election time. Whereas, for the process after the election, the dimensions by Elklit and Svensson (1997) will be utilized. Nevertheless, due to data limitations, not all of the dimensions can be examined. In this research, the dimensions that are analyzed to measure the freeness before the election process are: legal framework, electoral management bodies, electoral rights, and voter register; The dimensions to measure the fairness on the election time are: voting process and counting of votes; and lastly, the dimensions that will be used for to analyze the process after the

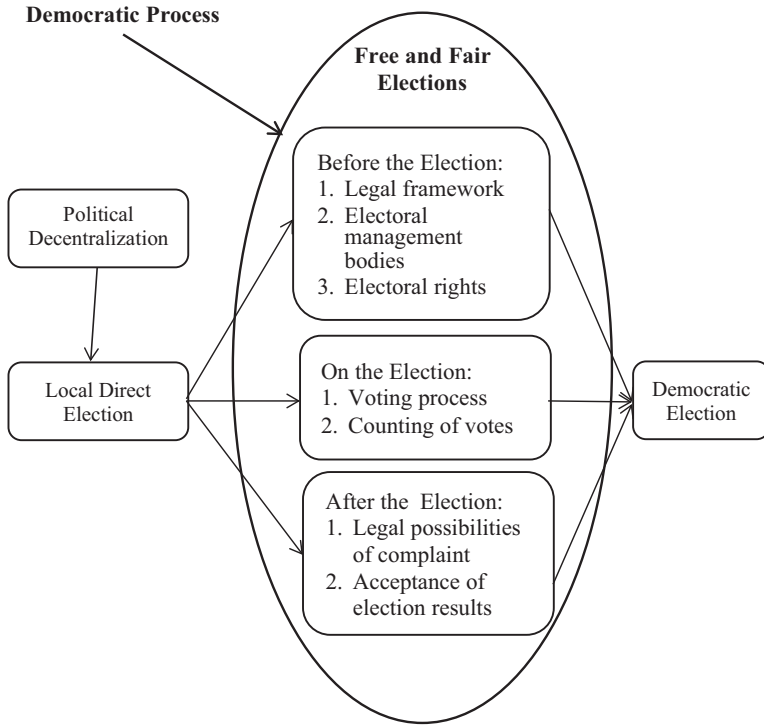


Fig. 4.1 Conceptual framework on political decentralization and democratic election. (Source: Based on Bishop and Hoefler (2016) and Elklit and Svensson (1997))

election are: legal possibilities of complaint and the acceptance of the election results by everyone involved. Overall, the conceptual framework of this research is presented in Fig. 4.1 below:

4.4 Analysis

4.4.1 Before the Election

4.4.1.1 Legal Framework

Election in Indonesia can be divided into three different forms: presidential election, legislative election, and election for the local government heads. Presidential and legislative elections are regulated in Law 7/2017 while local leader elections (e.g., provincial governors, district heads, and city mayors) are regulated by Law 10/2016, the latest law after several amendments from 2014 to 2016. However, these election laws do not regulate the practice of the *noken* system. Hitherto, the

technical guidance for this practice was only regulated by the decision of Papua provincial election commission in 2013. The consideration of this decree is based on the Constitutional Court decision in 2009.⁸ The constitutional court acknowledges the implementation of the *noken* system as an effort to preserve the local customary practice (Nolan, 2016; Nolan et al., 2014). Their argument on preserving the local customary practice is based on the article 18b paragraph 2 of constitutional law that states the local customary rights in the community were acknowledged and respected by the state and protected by the constitutions. The dispute in 2009 legislative election becomes the starting point of the problem over the *noken* system. The disputes over the *noken* system continue in 2011 on the election for district head of Yahukimo, the election for district head of Dogiyai in 2012, the 2013 Papua governor's election in 2013, and the 2014 Presidential election.

Although this system had never been regulated by any election laws, it is continuously practiced in the election. There is a concern if this system is formally regulated, it would trigger other regions to demand the similar circumstances (Nolan, 2016, p. 404). This legal vacuum also creates a polemic on which parties who are responsible for drafting a regulation for this practice. National general elections commission argued that the responsibility for regulating the *noken* system belongs to the district general elections commission.⁹ Moreover, in 2016 the provincial general elections commission stated that they would abolish the *noken* system on the elections in 2017,¹⁰ whereas, in contrast, national general elections commission stated that they would facilitate the implementation of this system on the elections in 2017.¹¹

This legal vacuum problem not only created ambiguities but also generated opportunities for potential fraud during the elections. For instance, the lack of details in indicating the tribal chief who will act as the community representative during the election elicits the opportunity for everyone to claim to be the tribal chief.¹² Another problem is in defining the territory of a customary region (*wilayah adat*) where a tribal chief will represent on behalf of his community. Nolan (2016) explained that there is no clear definition to determine the areas and boundaries of customary regions which then caused difficulties in constructing a compatibility between administrative regions (e.g., districts, sub-districts, and villages) and customary regions (e.g., clan and sub-clan). During election time, this incompatibility creates ambiguity whether a tribal chief represents the electorates in an administrative region or electorates in a customary region because there is a possibility of more than one tribe living in an administrative region.

⁸ Constitutional Court, Decision in case No. 47–81/PHPU.A-VIII/2009, 9 June 2009.

⁹ "Sistem noken dipermasalahkan, KPU serahkan pengaturan ke daerah", [Kompas.com](#), 19 November 2015.

¹⁰ "KPU Papua akan hapus sistem noken dalam Pilkada 2017", [Kompas.com](#), 12 March 2016.

¹¹ "KPU akan fasilitasi penggunaan sistem noken di Papua saat Pilkada 2017" [Kompas.com](#), 28 November 2016.

¹² "Noken dan Ikat, Praktik Adat dan Kerawanan Pemilu", [Kompas.com](#), 11 February 2014.

4.4.1.2 Electoral Management Bodies

The electoral management bodies which are responsible to conduct elections in Indonesia are divided into three different commissions that is based on the tier of government: national general elections commission (*Komisi Pemilihan Umum*, KPU), provincial general elections commission (*Komisi Pemilihan Umum Provinsi*, KPU Provinsi), and district general elections commission (*Komisi Pemilihan Umum*, KPU Kabupaten/Kota). According to the Law 7/2017 on General Election, national and local election commissions are responsible to organize presidential, legislative, and local executive elections. The national election commission has a predominant role in presidential and legislative elections, and for local executive elections, national elections commission is more functioned as regulators (Hillman, 2011). Besides the election commissions, there is also elections supervisory committee at national, provincial, and local level to supervise the election process.

At the local level, the major problems of the local electoral bodies are independency and the overlapping responsibilities between the electoral bodies (Hillman, 2011, p. 303). The problem of neutrality is caused by the dependency of local election commissions on the local executive government's resources (Hillman, 2011). This dependency then creates an opportunity for fraud as the incumbent candidates might use their influence on the budgetary system to ensure that local electoral bodies would secure the votes for them (Nolan, 2016). Whereas, the problem of overlapping responsibilities is caused by the weakness of authority of the supervisory committee, as this supervisory body only files a report to the local elections commission or to the police if there is a criminal or administrative violation during the election, but they cannot enforce to ensure the local elections commission or the police will follow up their report (Hillman, 2011, pp. 318–319).

In Papua, the independency of local electoral commissions is even more problematic. In 2017, 11 districts in Papua region held an election for local executive leaders and nine out of these 11 districts filed a case against disputes over election results to the constitutional court. It becomes the highest case of disputes among other regions that at the same time also held an election for local executive leaders. One of the main factors of this dispute is the allegation of vote inflation.¹³ From these nine districts, only the case in three districts, i.e., Tolikara, Puncak Jaya, and Intan Jaya, were accepted and followed up by the constitutional court because the rest six districts did not meet the requirements of voter threshold as regulated in the Law.

In the district of Tolikara, for example, the dispute arises because the local election disregarded the recommendation from the election supervisory committee to do a re-voting in 18 sub-districts from in total 46 sub-districts in Tolikara. The local elections commission kept counting the votes in these 18 sub-districts and set the incumbent as the elected candidate. The constitutional court through the decision 14/PHP.BUP-XV/2017 then instructed the Papua election commission to do a

¹³“Pertarungan calon abdi daerah di MK”, *Majalah Konstitusi*, No. 122, April 2017, p. 12.

re-voting in these 18 subdistricts.¹⁴ Another example is the case in Puncak Jaya district. During the vote counting process, the local elections commission only counted the voting results in 20 subdistricts from in total 26 subdistricts. The election commission argued that they did not count the results in six districts because the document of recapitulation results is insufficient, as many of these documents are missing, damaged, or incomplete. The candidate number 1 then filed a case to constitutional court and during a hearing, the attorney from the candidate number 1 argued that election committee in six sub-districts relocated the votes from candidate number 1 and number 3 to candidate number 2. The local election commission Puncak Jaya also admitted that voting documents from these six districts were damaged as the voting numbers were deleted and replaced with other numbers or letters.¹⁵ On their decision, the constitutional court then instructed the Papua provincial elections commission to hold a re-voting in these six subdistricts.¹⁶

Those two examples above show the institutional problems on the local election bodies. In the case of Tolikara, due to the weakness of authority from the supervisory committee, the local elections commission did not follow a recommendation from the supervisory committee to re-vote the election in 18 districts. The provincial elections commission then took over the responsibility to conduct the reelection process based on the instruction from the constitutional court. In the case of Puncak Jaya, the administrative violations by changing the electoral votes in official tally documents in favor of one of the candidates show how the issue of independency is still the fundamental problem for election bodies at the local level.

4.4.1.3 Electoral Rights

Bishop and Hoeffler (2016) explained that establishing a legal framework which ensures the electorates' rights to vote does not guarantee the voters can exercise their rights on the election. The voters, de facto, should get an "equal and effective access to polling stations" and they "have been informed effectively about how and where to vote" (Bishop & Hoeffler, 2016, p. 611). Law 7/2017 on General Election regulates that the voters are Indonesian citizens who have aged 17 years old or more, there is also a possibility for citizens less than 17 years old to vote but only if they are married or had been married. The law guarantees the electoral rights for each voter, thus voters have a freedom to vote their favor candidate directly without coercions from any party, without being represented, and secretly which means that only the voters know their vote preference.

In the *noken* system, the democratic principle of "one man, one vote, one value" is violated, as this system is based on the consensus where a clan chief will represent his community in electing a candidate. The Indonesian Human Rights

¹⁴Constitutional Court, Decision in case No. 14/PHP.BUP-XV/2017, 3 April 2017, pp. 165–166.

¹⁵"Puncak Jaya PSU di 6 distrik," *Majalah Konstitusi*, No. 122, April 2017, p. 28.

¹⁶Constitutional Court, Decision in case No. 42/PHP.BUP-XV/2017, 4 April 2017.

Commission argued that this practice not only contravenes the principles of democracy but also violates the human rights principles because each voter in the community lost their opportunity to participate and to vote directly.¹⁷ This electoral rights issue is closely related to the legal vacuum of the *noken* system. There is no clear technical guidance on how the consensus will be reached among the clan members, or how if some clan members have a different preference over the candidate and want to use their own votes directly to the polling station without being represented.

However, the electoral rights issue should also be examined by looking at the obstacles in its community itself. The difficult geographical conditions compounded by the limited infrastructures particularly in the central highland regions causes limited access for communities in receiving information about the election mechanisms and in recognizing the candidate's background. The other shortcoming is low literacy; for instance, in the district of Tolikara and Intan Jaya. In 2013, the percentage of literacy in these two districts were only 33.56% and 28.08%, respectively. This low literacy causes difficulties for people to actively participate in the election process. These difficulties not only tend to cause poor understanding of the election mechanism but also how to use and defend their electoral rights in the election process.

4.4.1.4 Voter Register

The voter registration process is one of the major drawbacks for elections in Indonesia. The inaccuracy and invalidity on the numbers of voters in the final voter's list (*Daftar Pemilih Tetap*, DPT) have always been the source of disputes. Unregistered voters, multiple voter data, or the migration data of the voters that not recorded correctly are several problems on the voter registration. In compiling the voter data, several parties are involved and several stages also need to be followed. As the first stage, Ministry of Home Affairs provides the data of potential voters to the KPU 6 months before the election. On the next stage, KPU analyses the data from the Ministry of Home Affairs and then distributes the analysis results to the KPUD Provinsi and KPUD Kabupaten/Kota. KPUD Kabupaten/Kota follows up the data by arranging the updating process which is undertaken up to the neighborhood level. This stage is arranged to get the latest data about the voter existence, for example, if the voter has passed away or has moved to another address. As the next stage, the updated results are then compiled into the temporary voters list (*Daftar Pemilih Sementara*, DPS). This temporary list is then rechecked and coordinated again with the local civil registration agency and as the last stage, the list will be fixed into the final voters list (*Daftar Pemilih Tetap*, DPT) through an open plenary meeting.

¹⁷“Komnas HAM minta KPU dan Bawaslu tolak sistem pemilu noken”, Kompas.com, 3 February 2014.

Nevertheless, as explained earlier, those series of registration process still leave various problems and trigger dispute over the election results; for instance, the dispute over the local executive election in the district of Tolikara in 2017. During the hearing at the constitutional courts on 21 March 2017, the local supervisory committee of Tolikara gave a statement that the local election commission never gave a notice of the schedule for updating the voter list to the local supervisory committee. Therefore, the supervisory committee has difficulties in doing surveillance on the voter registration process. Furthermore, the local supervisory committee also stated that the elections commission of Tolikara did not deliver the documents of temporary voters list to them, while the regulation obliges the local election commission to submit the voter's list to the local supervisory committee. Thus, the election supervisory committee can submit a feedback if there are mistakes on the recapitulation list.¹⁸

In addition to those coordination problems, problems occur during the plenary meeting to finalize the voter list. The local supervisory committee disagrees with the local election committee over the total number of voters on the list, because compared to the 2014 presidential election data, the number of voters in several subdistricts increased significantly from 20 to 100%. On the other hand, in several districts, the number of voters were reduced from 500 to 2000 voters.¹⁹ Furthermore, if we compare the DPT for 2014 presidential election and DPT for 2017 local executive election, for less than 3 months from June 2014 and December 2016 the number of voters fluctuate significantly. In sub-district of Yuneri, the number of voters is increased more than 200% from 2203 voters in June 2014 to 6638 voters in December 2016. Another example is in sub-district of Nunggawi, the number of voters is raised more than 100 percent from 5371 voters in 2014 to 11,190 voters in 2017. In contrast, in the sub-district of Timori, the number of voters decreased significantly from 6079 in 2014 to 3407 in 2016.²⁰

There are five factors which determine the increasing or decreasing the number of voters: mortality, immigration, emigration, marriage, or the addition of the young voters. As have been explained earlier that voters are citizens who have minimum aged 17 years old or less than 17 years old but married or had been married. Therefore, there is also a possibility if the number of voters is changed not only by mortality or migration but also due to the marriage rate or the addition of 17-year-old population. Nevertheless, the significantly increasing number of voters up to 200 percent in the sub-district of Yuneri, or by contrast declined by 2672 voters in the sub-district of Timori is questionable. The data from Central Bureau of Statistics indicate that the percentage of population growth in Tolikara is only 2.98% between

¹⁸National Election Commission (Komisi Pemilihan Umum, KPU), Decision No. 2/2017, 8 June 2017.

¹⁹Mahkamah Konstitusi, Decision in case No. 14/PHP.BUP-XV/2017, p. 135.

²⁰National Election Commission, Daftar Pemilih Tetap Pemilihan Presiden 2017 (<https://data.kpu.go.id/ss8.php>); Tolikara Election Commission, No. 33/Kpts/KPU-Kab. Tlk/XII/Tahun 2016, Penetapan Daftar Pemilih Tetap (DPT) Kabupaten Tolikara pada Pemilihan Bupati dan Wakil Bupati Tolikara Tahun 2017.

2014 and 2015 and 1.87% between 2015 and 2016. Hence, how the number of voters could increase or decrease significantly in the last 3 years is doubtful.

The problems on the accuracy and validity of the voter number can be explained into two factors: administration factors and institutional factors. Administration factors are due to the demography data that has not been recorded completely and accurately. The implementation of the national single identification number still experiencing some difficulties, such as some citizens could have two different identification numbers whereas there are also some citizens that have not been recorded on the population data system. Another factor is the institutional problem. The data of voters is provided by the Ministry of Home Affairs, while the obligation to update the data becomes the responsibility of the Elections Commission.²¹ The problem which then emerged is who will be accountable if there is a problem with the voter registration process (Hillman, 2011, p. 323). Such as if the voters are not recorded on the single identity number data or if there is a miscalculation on the voter's list.

4.4.2 On the Election

4.4.2.1 Voting Process

In the *noken* system, the voting process is the stage when the implementation of the system can be clearly seen. The *noken* bag will replace the ballot box at the polling station. This traditional bag is hung on a stack or around the neck of an official. However, due to the absenteeism of legal basis which regulates this system, it is not really clear how the system works during the voting process, either the system only means that the *noken* bag will only replace the ballot box at the polling station or at the same time the system also establishes a mechanism where a tribal leader could represent their clan members in selecting a candidate at the polling station. Furthermore, as no law that regulates on which region that use this system, it is difficult to determine which districts or sub-districts that can use this system. The Constitutional Court only regulates that only regions that have ever used this system are allowed to use this system in the next election, while the regions that never system this system are not allowed.²² Nevertheless, this verdict did not determine which regions can establish the *noken* system. Constitutional Court argues that they do not have an authority to determine which region can use the *noken* system during the election.²³

According to the principals of the democratic election, there are some weaknesses in the *noken* system during the voting process. Confidentiality, for instance, is one of the principals that has been violated. In general practice, voters come to the polling station, get the ballot paper, go to the polling booth to punch the ballot

²¹ Law 7/2017 on General Election Article 12, Section d.

²² Constitutional Court, Decision in case No. 31/PUU-XII/2014, 11 March 2015, p. 34.

²³ Ibid.

paper, and then put the ballot paper into the ballot box. Whereas in the *noken* system, the secrecy has been contravened because the ballot box is replaced by the *noken* bag for each candidate. Therefore, the voter's preference for a candidate can be seen publicly as the voter will place the ballot paper in one of the bags that is featured with the candidate number.

Another democratic principal violation of the *noken* system is the direct principal. The principals of one man, one vote, and one value are not applicable in the *noken* system as voters cannot use their votes directly and be represented by the tribal leaders at the polling station. Although there is a deliberation process in the clan community before determining to which candidate the votes will be given, the procedure on how the deliberation process will be arranged in the clan community and how the voting authority will be given from the clan members to their leader is unclear. In many cases, this obscurity becomes the source of conflict over the election results. In the district of Tolikara for example, during a hearing at the constitutional courts the candidate number 3 argued that in the sub-district of Bokoneri, the clan leader represented their members on the election process without the consent of voters in his community.²⁴ Furthermore, Nolan (2016, p. 405) explained that the *noken* system opens a possibility for a brokerage system. This is happened because the bloc-voting system through *noken* will open an opportunity for the tribal chief to do a political transaction by negotiating with candidates on to which candidate the votes from his clan will be given (Nolan, 2016, p. 399). The reciprocal benefits that the tribal chief leader will get are not only in direct rewards such as cash money, but also will be rewarded in the future benefits such as "future investment in road or buildings in return for votes" (Nolan, 2016, p. 409).

As has been explained earlier, the absence of regulation particularly the indicators in figuring out a clan leader who has authority to represents his community on the election becomes a potential for everyone to claim as the representative from a clan on the voting process. The absence of regulation also cause difficulties to ensure from which clan a tribal leader comes from, or how many clan members that will be represented by a tribal leader. In some cases, this vagueness produces a discrepancy on the number of voters between the total number of clan members that have been represented and the total number of voters that have been recorded in the official final voter list.²⁵ This is often leads to conflicts between supporters of candidates in claiming the votes, especially when a candidate that should get a certain number of votes, but instead recorded as the acquisition of another candidate.²⁶

²⁴Constitutional Court, Decision No. 14/PHP.BUP-XV/2017, 3 April 2017, p. 17.

²⁵"Bawaslu: Pemilu dengan noken di Papua tidak demokratis", Kompas.com, 20 Agustus 2013.

²⁶"13 daerah di Papua dinilai rawan konflik saat pilkada", Kompas.com, 19 November 2015.

4.4.2.2 Counting of Votes

The counting of votes is arranged in several stages. When the time limit to vote is reached, the counting of votes will be started in each polling station and the tabulation process will be finalized at the district level. Election officials in each level are responsible to calculate the voting results and as a way to legitimate the counting process, the witnesses from each candidate should attend in every counting stage. In the *noken* system, however, this counting process has a drawback because the number of votes will be calculated in the voting bloc as the tribal chief will deliver the votes as many as their clan members. It is then not surprising if in several districts the turnout rates reached 100 percent on the final tally results (Nolan, 2016). On the election for district head of Tolikara, for example, in the sub-district of Wunim, from total 5985 voters on the list, all of the 5985 votes has been recapitulated on the election result and all of these votes are obtained only by one of the candidates, while other candidates did not get any single votes.²⁷

4.4.3 After the Election

4.4.3.1 Legal Possibilities of Complaint

The mechanisms of complaint about the election implementation process are arranged in several ways and involve several parties. Election oversight committee is responsible to resolve disputes before the election and on the election time, whereas the constitutional court has an authority to adjudicate disputes over the election results (Hillman, 2011, p. 316). Furthermore, there is also an honor council which is responsible to investigate and to impose sanctions over the violation of ethics by the election organizers.

On local executive elections, the complaints about the administrative and criminal violations on all election stages will be resolved hierarchically. As the election oversight committees are established in each administrative region, the alleged violation reports at certain administrative region will be received by the oversight committee on that certain region. For example, the violation reports at the sub-district level will be received by election oversight committee at sub-district level. These reports then will be forwarded to the election oversight committee at the district level which will determine whether the report is valid or not (Hillman, 2011, p. 318). If the report is valid, the election oversight committee will forward the report to several bodies according to the type of violation, administrative violations will be forwarded to the local election committee, whereas criminal violations will be forwarded to the police.

Nevertheless, the mechanism for election disputes that has been explained above still has an institutional problem on the implementation. The district election

²⁷ Constitutional Court, Decision No. 14/PHP.BUP-XV/2017, 3 April, 2017, p. 33.

oversight committee only has an authority to receive, analyze, and forward the violation reports, while the authority to respond the complaints belongs to the police or the district election commission. For administrative violations, the authority to resolve this misconduct becomes the responsibility of district election commission. However, “where complaints or administrative violations involve improper conduct on the part of local election commission staff, the local election commission is usually declined to follow up” (Hillman, 2011, p. 319). This weakness of authority hinders the role of election oversight committee in enforcing the law for any misconduct in each election stages.

Compared to the administrative violations, the procedure to resolve the election criminal violations is clearer. The law 1/2015 on local executive elections has established procedures and time limits for the police, the public prosecutor, and the district court in handling the criminal violation during the local executive elections. The criminal violations will be handled by the police before it is submitted to the prosecutor. After the maximum 5 days since the case has been received, the public prosecutor should submit the case to the district court, and in 7 days the district court will investigate, adjudicate, and deliver the decision over the election criminal case. Furthermore, if there is an appeal against the district court’s decision, the further investigation then will be conducted by the high court. The high court will adjudicate and decide the final verdict on the criminal violation case. This final verdict is the last and binding decision which no other appeals can be made.

Disputes over the election results will be adjudicated by the Constitutional Court. The court has been managed the disputes over election results since 2008. However, in 2014 the constitutional court abolished its authority to adjudicate disputes over local executive election results. They argued that the 1945 Constitution only allows the Constitutional Court to adjudicate disputes for presidential or legislative elections, not local executive elections. In 2016, the law on local executive elections gave the mandate again to constitutional court to resolve the disputes over local executive election results until the special judicial bodies which function to adjudicate disputes over local executive election results is established.

Taken together, the explanations above identify that the legal system has already established a mechanism to resolve disputes or complaints about the local executive elections process. However, this mechanism of complaint, particularly for administrative violation cases, is still hampered by the institutional arrangement problems. This is due to the limited authority of district election oversight committee in enforcing the rules against violators. Therefore, an institutional reform by giving a larger authority to the district election oversight committee is essentially required (Hillman, 2011, p. 323).

Another institutional problem is the role of Constitutional Court in managing large numbers of dispute over the election results. From 2008 until 2017, the Constitutional Court has handled 903 cases.²⁸ These cases are only for local executive election not included the dispute on the parliamentary election (national,

²⁸“Pertarungan calon abdi daerah di MK,” *Majalah Konstitusi*, No. 122, April 2017, p. 12.

provincial, district) and the presidential election. As in 2027, Indonesia will hold simultaneous local executive elections for 34 provinces, 416 districts, and 98 municipalities, the establishment of special judicial bodies to administer the dispute of local executive elections is urgently needed.

4.4.3.2 Acceptance of the Election Results

The acceptance of election results by everyone involved is crucial because it potentially affects the political stability in a region (Elklit & Svensson, 1997). The acceptance of election results is marked not only by disputes over the election results at the court but also by violent conflicts between the candidate supporters or by the intimidation and physical violence against the election officials. According to the local election vulnerability index 2017 that is compiled by the national election oversight committee, four districts in Papua, Tolikara, Intan Jaya, Nduga, and Lanny Jaya sequentially become regions with the highest vulnerability index among 94 districts that held district head or city major election in 2017. And based on local executive election vulnerability index 2018, Papua is the province with the highest vulnerability index among 17 provinces in Indonesia that will hold governor election in 2018. For district election, four districts in Papua, Mimika, Paniai, Jayawijaya also become regions with the highest vulnerability index among 54 districts that will hold district head or city major election in 2018.

One of the indicators to examine the acceptance of election results is the number of disputes at the Constitutional Court. In 2017, from 11 districts in Papua that held an election for local executive leaders, nine districts filed a case of dispute over election results to the constitutional court. The disputes over the election result in this region are not only for 2017 local election, almost in every election such as presidential or legislative election, the used of *noken* system in several regions becomes a major cause of disagreement between the election contestants at the Constitutional Court. Nevertheless, in each decision from 2009 to 2014, the Constitutional Court always argue that in the name of acknowledging customary practice, the use of *noken* system for election is justified and acceptable (Nolan, 2016, p. 402).

The other indicator is the violent conflicts due to the dispute over election results. Various violent conflicts often occur during elections particularly in the central highland area that use the *noken* system. In Puncak Jaya, for example, clashes over supporters that arose during the re-voting time led to casualties. This conflict was caused by competing between the candidate's supporters over the votes in the *noken* bag.²⁹ Another instance is in Intan Jaya, riots that emerged during the local election committee plenary meeting also resulting in the death of a resident.³⁰ These violent conflicts show that how political contestation during local direct elections is

²⁹“Ricu PSU di Puncak Jaya, 3 polisi kena panah,” [Detik.com](#), 15 June 2017.

³⁰“Rusuh saat pleno KPU Intan Jaya Papua, Seorang Warga Tewas,” [Kompas.com](#), 24 February 2017.

susceptible to trigger horizontal conflicts in society. Provocation by the candidate over their supporters and the minimum number of officials to secure the election make the violent conflicts are prone to occur in Papua's central highland area.

4.5 Conclusion

Decentralization in 1999 became a starting point for a new phase of development of democracy in Indonesia. Political decentralization through the establishment of direct election for local leaders stands as a means to develop democratization at the local level after more than 32 years under the shadow of an authoritarian regime. Direct elections also give legitimacy for elected candidates in governing the community, as they are elected by the majority of voters who use their voice directly. In fact, however, the establishment of local direct election does not necessarily mean that the election will be implemented democratically. Local direct elections are still constrained by several problems in every election stage such as (1) institutional problems, i.e., the low capacity and overlapping responsibilities between electoral management bodies (Hillman, 2011) and (2) fraudulence practices such as money politics and vote inflation. The other challenge is the cultural constraint. This happens when the Western concept of democracy are unadaptable with the customary practice in a certain local entity.

This chapter identified the challenge of democracy at the periphery region by addressing the practice of *noken* system in Papua during the local election. This chapter has argued that free and fair elections as one of the principals of democracy are difficult to be achieved under the *noken* system. Based on the eight indicators of free and fair elections, we found that the absence of law to regulate the practice of *noken* during the election becomes the main factor why each free and fair dimension is violated. The incompatibility between the principle of democracy and the customary practice creates a potential fraud and is vulnerable to be misused by certain candidates to influence the voting results. Furthermore, this unregulated system also affects the political and social stability in Papua regions. The high number of violent conflicts during the election in this region also shows that how political contestations are susceptible to trigger conflicts in a heterogeneous community. Communities at the grassroots level with the low level of education and high illiteracy rates are vulnerable to be influenced by various interest groups during the election time.

The problems become a great challenge for government in synchronizing and integrating the uniformity of national policy with the cultural diversity at the local level. Designing a policy by only looking from above without recognizing the local context will have an impact on the policy failure when it is implemented. On the other hand, institutionalizing the customary law in a unitary state with high cultural diversities is also not an easy task. Therefore, the government should find a right formula to synchronize and integrate the intersection between the national law and local customary practices.

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