

**IMPLEMENTATION OF THE CONSTITUTIONAL COURT DECISION NUMBER  
47-81/PHPU.A-VII/2009 RELATED TO THE LEGITIMACY OF THE NOKEN  
SYSTEM IN THE 2024 ELECTION IN PAPUA**

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**Abstract:** This research analyzes the Constitutional Court's legal considerations in legitimizing Papua's noken system and its implications for the 2024 Election. Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 recognizes the validity of the "community consensus" or "acclamation" system as a legitimate voting method in Papua, despite differing from direct, general, free, secret, honest, and fair principles in Article 22E of the 1945 Constitution. Using normative juridical methods, this study reveals three Constitutional Court considerations: juridical (legal certainty), sociological (utility), and philosophical (justice). Research findings indicate the Constitutional Court's erga omnes decision provides constitutional legitimacy to the noken system as protection for Papua's indigenous community rights based on Article 18B paragraph (2) of the 1945 Constitution. Juridical considerations emphasize the need to accommodate this system to avoid social conflicts, sociological considerations acknowledge Papua's geographical and cultural uniqueness, while philosophical considerations uphold justice for indigenous communities practicing consensus traditions. The decision's implications create dualism in the national electoral system, accommodating local wisdom. This ruling becomes jurisprudence, providing a strong legal foundation for implementing the noken system in subsequent elections, including the 2024 Election. However, implementing the noken system in the 2024 Election faces challenges in guaranteeing voter privacy, given that the collective and open characteristics of traditional deliberation systems led by big men. The General Election Commission developed adaptive efforts through technical regulations and integrated monitoring, yet tensions between modern vote secrecy principles and traditional transparency remain fundamental issues in Papua's democratic implementation.

**Keywords:** noken system; constitutional court; local wisdom; indigenous community rights; Papua democracy



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## INTRODUCTION

General elections represent the manifestation of people's sovereignty and serve as an important milestone in Indonesia's democratic system. Elections, which constitute the mechanism for implementing democracy, originate from a governmental system rooted in the Greek words "demos" (people) and "kratos" (government or power), indicating that sovereignty lies with the people. According to Arbi Sanit's perspective, general elections are institutions that realize democracy,<sup>1</sup> while Valentino Larcinese states that the level of public participation in general elections serves as a measure of the quality of that democracy. The implementation of a system by the people, of the people, and for the people experienced significant advancement in the 20th century, with its etymological roots indicating that power truly lies in the hands of the people<sup>2</sup>. Although the noken system is not regulated in official regulations, it has developed into a real electoral implementation rule in the lives of Papua's communities<sup>3</sup>. The noken system serves as a complement to written law, bridging the gap between official regulations and actual social practices in general elections.

This reflects the notion that political practices and daily customs can complement legal texts that may not fully align with social conventions. In other words, unwritten law can overcome the limitations of written law in regulating spontaneous community compliance and is more effective in accommodating the specific needs of local communities<sup>4</sup>. This practice reflects strong communal values and social hierarchy within Papuan society.

The noken system, a unique voting method, was still used in the 2024 Elections in several Papua regions, particularly in Central Papua and Highland Papua provinces. The General Election Commission (KPU), through KPU Decision Number 66 of 2024, announced 11 regions, including Puncak Jaya, Puncak, Paniai, Intan Jaya, Deiyai, Dogiyai regencies in Central Papua, as well as Yahukimo, Jayawijaya, Nduga, Central Mamberamo, Lanny Jaya, and Tolikara in Highland Papua<sup>5</sup>.

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<sup>1</sup> Sanit, "Sistem Pemilihan Umum Dan Perwakilan Politik" (Universitas Negeri Jakarta, 2009), 74.

<sup>2</sup> Constitutional Court of the Republic of Indonesia, *Hukum Acara Mahkamah Konstitusi. Sekretariat General and Registry of the Constitutional Court* (Jakarta, 2010), 213.

<sup>3</sup> Sulaeman Affan, "Demokrasi, Partai Politik Dan Pemilihan Kepala Daerah," *Cosmogov* 1, no. 1 (2015): 12-24., <http://jurnal.unpad.ac.id/cosmogov/article/view/11857/5528>.

<sup>4</sup> H. L.A. Hart, "Positivism and the Separation of Law and Moral," in *Law and Morality*, 2017.

<sup>5</sup> Erwina Rachmi Puspapertiwi, "Apa Itu Sistem Noken Yang Dipakai Masyarakat Papuan Untuk Pemilu 2024?," *Kompas.Com*, last modified 2024, accessed May 5, 2025,

The use of this system raises various issues related to implementation mechanisms, the principle of vote secrecy, and the KPU's responsibility in ensuring electoral integrity. The noken system has gained legal legitimacy through Constitutional Court decisions. However, this system also generates controversy as it is considered to limit individual voting rights and potentially trigger conflicts between community groups. One of the main issues is the matter of vote secrecy. The principle of vote secrecy, which is one of the pillars of democratic elections, becomes blurred in the noken system because others can know voters' choices<sup>6</sup>.

The implementation of the noken system in these regions often triggers conflicts. In the 2024 Elections, clashes occurred in the Nduga and Puncak Jaya regencies, resulting in casualties and injuries. These conflicts generally arise due to vote competition and agreements on vote distribution among groups. The noken system is also criticized for potentially reducing citizen participation and fostering money politics practices<sup>7</sup>.

The dominance of traditional leaders or "big men" in determining democratic aspirations is considered to limit individual voting rights. This raises questions about KPU's primary duty to provide equal electoral access for all Indonesian citizens and prevent practices that can disrupt electoral integrity.

Another challenge faced by KPU is ensuring accountability and transparency in implementing the Noken system. Given the unique characteristics of this system, strict supervision and verification mechanisms are needed to prevent potential fraud or vote manipulation. The General Election Commission must develop procedures that enable effective monitoring by various stakeholders, including political organizations, independent monitoring bodies, and active citizen participation.

In the context of the 2024 Elections, the implementation of the Noken system becomes increasingly complex, given the ongoing socio-

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<https://www.kompas.com/tren/read/2024/02/15/133000465/apa-itu-sistem-noken-yang-dipakai-masyarakat-papua-untuk-pemilu-2024-?page=all>.

<sup>6</sup> R. E. Lumbanrau, "Pemilu Sistem Noken Di Papua Pegunungan – Antara Kearifan Lokal Dan Bara Konflik Sosial Masyarakat," *BBC News Indonesia*, last modified 2024, accessed May 6, 2025, <https://www.bbc.com/indonesia/articles/clj9x03z7kro>.

<sup>7</sup> Tempo.co, "Kala Sistem Noken Dalam Pileg 2024 Di Papua Tengah Dirundung Masalah," *Tempo*, last modified 2024, accessed July 7, 2025, <https://nasional.tempo.co/read/1864462/kala-sistem-noken-dalam-pileg-2024-di-papua-tengah-dirundung-masalah>.

political dynamics developing in Papua. Prolonged conflicts and separatist issues in this region add layers of challenges in organizing credible elections. KPU must consider security factors and political stability in designing Noken system implementation strategies.

Another important aspect is voter education and socialization. Given the uniqueness of the Noken system, special efforts are required to ensure that Papuan communities, especially in areas implementing this system, understand well their rights and responsibilities as voters. The Chairman of Highland Papua Provincial KPU, Theodorus Kossay, stated that the polemic surrounding the use of the noken system continues to spark division and conflict within society<sup>8</sup>. However, he stated that this system cannot be immediately abolished due to several factors, such as the prevalence of communities whose members have similar backgrounds and greatly respect traditional leaders' authority, as well as the still high illiteracy rates in several areas.

This statement shows the dilemma faced by KPU in carrying out its responsibility to ensure voting that guarantees equal rights and democratic freedom amid complex socio-cultural conditions. Highland Papua Bawaslu Chairman Fredy Wamo sees that the first step in the transition process begins with implementing a one-person-one-vote system in the government center areas of each regency, "expanding outward to districts around the capital." This transition effort reflects the responsibility of electoral organizing institutions to improve the quality of democracy in Papua continuously.

Considering the complexity of the above challenges, KPU is required to develop a comprehensive and sensitive approach in implementing the Noken system in the Papua Elections. This requires close collaboration with parties involved in this process, including local government officials, local traditional leaders, monitoring institutions, and community groups<sup>9</sup>.

## **METHODS**

Research methodology constitutes a systematic procedure utilized academically to obtain data in accordance with expected purposes

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<sup>8</sup> BBC News Indonesia, "Pemilu Sistem Noken Di Papua Pegunungan - Antara Kearifan Lokal Dan Bara Konflik Sosial Masyarakat," *BBC*, last modified 2024, accessed July 6, 2025, <https://www.bbc.com/indonesia/articles/clj9x03z7kro>. Diakses pada 6 Juli 2025 pukul 22.14 WIB.

<sup>9</sup> I Ngurah Suryawan, *Suara-Suara Yang Dicampakkan* (Yogyakarta: Basabasi, 2017), 33.

and benefits. Methodological aspects in legal studies encompass systematic stages and methods for acquiring relevant information in resolving research problems. It represents a systematic approach in conducting legal studies aimed at discovering facts and truth through structured and methodological means.<sup>10</sup> Accuracy in selecting research methods becomes the primary factor for ensuring the validity and consistency of research results. Data collection techniques employed must align with research objectives, characteristics of the studied object, and available resources.<sup>11</sup> In this research, the methodology was selected considering the complexity of implementing the Noken system in the 2024 General Election in Papua and the role of the General Election Commission (KPU) in ensuring integrity, transparency, and accountability of the electoral process.

This study employs a normative juridical approach to examine the implementation of the Noken system in the 2024 General Election in Papua.<sup>12</sup> The research focus encompasses analysis of election-related legislation, with the research object including Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 and KPU regulations regarding election administration in the Papua region. This research utilizes three approaches: the statutory approach, the case approach, and the conceptual approach.<sup>13</sup> Research data sources comprise primary legal materials consisting of regulations and court decisions, as well as secondary legal materials, including literature and legal research results. The research objective is to analyze the legal framework of the Noken system in Indonesian elections and examine its implications for democratic and just electoral principles.

The statutory approach is implemented by examining all regulations related to the legal issues being addressed. In this study, the statutory approach is used to analyze Law No. 7 of 2017 concerning General Elections, Constitutional Court Decision No. 47-81/PHPU.A-VII/2009, and KPU regulations related to election implementation in Papua. The case approach is applied through examination of various cases related to the issues being studied. In this research, concrete cases of Noken system implementation in Papua elections will be examined,

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<sup>10</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2007), 43.

<sup>11</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015), 13.

<sup>12</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2015), 156.

<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2011), 93.

including potential conflicts or disputes that may arise. The conceptual approach is based on various thoughts and teachings that have developed in legal science disciplines.<sup>14</sup> This research will analyze concepts such as democracy, voting rights, and local wisdom in the context of the Noken system.

Primary legal materials constitute fundamental sources with binding legal force. Primary sources in legal studies include applicable regulations, formal documents or minutes related to legislative processes, and various court decisions.<sup>15</sup> This study utilizes fundamental legal sources including the 1945 Constitution of the Republic of Indonesia, Law No. 7 of 2017 concerning General Elections, Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 regarding Disputes over DPD Election Results, KPU Regulation No. 8 of 2018 concerning Vote Collection and Counting in General Elections, KPU Regulation No. 5 of 2020 concerning Stages, Programs and Schedule of 2024 General Election Administration, KPU Decision No. 66 of 2024 concerning Technical Guidelines for Vote Collection and Counting at Polling Stations in General Elections, and other legislation related to election administration and Noken system implementation in Papua.

Secondary legal materials serve as supporting legal sources that function to explain primary legal sources utilized in this research.<sup>16</sup> These supporting sources encompass various legal literature by experts, legal journal publications, academic writings, research reports, and other scholarly works discussing the application of the Noken mechanism in Papua election implementation and the involvement of the General Election Commission. These supplementary legal sources will be used to provide exposition and analysis of primary legal materials, assist in interpreting legislation, and provide theoretical and practical context regarding the Noken system implementation in the 2024 Papua Election.<sup>17</sup>

Tertiary legal materials constitute third-level materials that provide guidance and explanations for understanding both primary and secondary legal sources. These materials serve as aids to clarify

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<sup>14</sup> Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana, 2018), 149.

<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 141.

<sup>16</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 13.

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 155.



understanding of other legal sources.<sup>18</sup> In this study, tertiary legal references utilized consist of the Indonesian Dictionary and Legal Dictionary, Legal Encyclopedia, English-Indonesian Dictionary, Election Terminology Dictionary, Electoral Glossary, Legal Magazine Index, Legal Bibliography, Legal Abstracts, Court Directory, and relevant internet sources that can be academically accounted for. These tertiary legal materials will be used to help explain legal terms, electoral concepts, and provide additional information related to the research object.<sup>19</sup>

The data collection method applied in this research is conducted through a literature review that collects and analyzes library sources related to the Noken system implementation in the 2024 Papua Election. Sources include regulations, court decisions, books, journals, and previous research. The process encompasses inventory, classification, and content analysis to identify relevant legal concepts and arguments. The study utilizes libraries, online databases, and other digital sources. Data collection techniques involve access to digital sources, including legal databases, academic repositories, official government websites, and electronic journals. The objective is to obtain a comprehensive understanding of legal aspects and practical implementation of the Noken system in the 2024 Papua Election.<sup>20</sup>

## **RESULT AND DISCUSSION**

### **Legal Considerations and Implications Following Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 on Noken System Continuity in Papua's 2024 Elections**

#### **1. Legal Foundation of the Constitutional Court's Legitimation of the Noken System**

The Constitutional Court's decision on case No. 47-81/PHPU.A-VII/2009 regarding the noken system in Papua demonstrates judicial courage in creating legal breakthroughs. As suggested by Satjipto Rahardjo, judicial work requires courage and intelligence in considering various existing aspects.<sup>21</sup> The Constitutional Court showed a profound understanding of Papuan society's conditions, aligning with modern legal thinking that prioritizes

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<sup>18</sup> Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2014), 52.

<sup>19</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016), 106.

<sup>20</sup> Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *FIAT JUSTISIA: Jurnal Ilmu Hukum* (2015).

<sup>21</sup> Satjipto Rahardjo, *Perang Dibalik Toga Hakim* (Jakarta: Kompas, 2006), 91.

respect for local values. This approach corresponds with Sudikno Mertokusumo's teaching that judicial decisions must be acceptable to all parties while remaining compliant with applicable regulations.<sup>22</sup>

The Court provided recognition of the noken system as a legitimate voting method under certain conditions. This recognition was based on the consideration that rejection of this system could trigger social problems. This aligns with legal science, which requires judges to consider the impact of their decisions. Mertokusumo's legal theory provides a strong foundation for this decision, emphasizing that judges must consider not only written law but also societal conditions, as seen in how the Constitutional Court combined local traditions with modern electoral systems.<sup>23</sup>

a. Juridical Considerations (Legal Certainty)

In the concept of legal certainty, every regulation must be implemented according to its literal meaning, referring to the principle "Fiat Justitia et pereat mundus," meaning that law enforcement must continue even if the world were to collapse. Under this understanding, judges serve as mouthpieces of legislation, applying law as it is written.<sup>24</sup> However, relating this principle to the noken electoral system in Yahukimo, where noken bags replace ballot boxes and voting is conducted openly through customary meetings giving decision-making authority to customary leaders, clearly contradicts Article 22E Paragraph (1) of the 1945 Constitution, which stipulates that "elections are conducted directly, generally, freely, secretly, honestly, and fairly every five years."

This deviation is further complicated by the non-application of the one-person, one-vote principle, which should guarantee personal rights in expressing choices, potentially categorizing this as a human rights violation. However, in the Constitutional Court's decision No. 47-81/PHPU-A/VII/2009, the constitutional judges permitted the use of noken as a ballot box substitute, considering that "out

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<sup>22</sup> Sudikno Mertokusumo, *Metode Penemuan Hukum* (Yogyakarta: UII Press, 2009), 35.

<sup>23</sup> Research Report, *Application and Legal Discovery in Judicial Decisions* (Jakarta: Secretary General of the Indonesian Judicial Commission, 2011), 7-8.

<sup>24</sup> S.M. Amin, *Hukum Acara Pengadilan Negeri* (Jakarta: Pradnya Paramita, 2009), 41.



of 6,543 polling stations spread across Papua Province, 150 polling stations including 90 in Yahukimo Regency could not conduct elections on April 9, 2009, and were only held on April 12, 2009, due to logistical delays."<sup>25</sup>

The subsequent consideration stated that "the Court can understand and appreciate the distinctive cultural values living in Papuan society that conducts general elections through a 'citizen consensus' or 'acclamation' system. The Court acknowledges this collective selection method accepted by Yahukimo Regency's community, considering that forcing election implementation according to applicable regulations might trigger conflicts among local community groups."<sup>26</sup> The Constitutional Court's decision recognizing the noken method's validity has created a dual condition where two different voting mechanisms operate within one national electoral system.

b. Sociological Considerations (Utility)

Social theory adherents in the legal context believe that "ideal judges are those who decide cases according to social realities or needs existing in society."<sup>27</sup> Related to this, it must be understood that the state has explicitly guaranteed recognition and appreciation for customary communities and regions with their own laws, as stated in Article 18B Paragraph (2) of the 1945 Constitution: "The state recognizes and respects customary law community units along with their traditional rights as long as they remain alive and conform to societal development and the principles of the Unitary State of the Republic of Indonesia as regulated by law."<sup>28</sup>

Papua represents a region with special status that has received official recognition through Article 18 Paragraph (1) of the 1945 Constitution, stating: "The state recognizes and respects regional government units that have

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<sup>25</sup> See Article 22E, *Constitution of the Republic of Indonesia 1945*.

<sup>26</sup> See Constitutional Court Decision No. 47-81/PHPU.A-VII/2009, 41.

<sup>27</sup> Constitutional Court Decision. Op. Cit. p.46

<sup>28</sup> Bagir Manan, *Menjadi Hakim Yang Baik, Makalah Pertama Kali Disampaikan Sebagai Ceramah Untuk Calon-Calon Hakim, Malang, September 7, 2006* (Jakarta: Pusdiklat Teknis Peradilan Balitbang Diklat Kumdil MA-R, 2008), 3-8.

specificity or privilege as regulated by law.”<sup>29</sup> Particularly, the Yahukimo area has a specificity officially recognized by the Constitutional Court regarding general election implementation using the noken system. This was emphasized by Constitutional Court Chief Justice Arif Hidayat, stating that “the use of the noken system in voting can still be justified, but in its legal considerations, the constitutional court emphasizes that the use of the noken system in elections is casuistic in nature, which at that time was still needed by some communities in Papua's mountainous regions.”<sup>30</sup>

Based on this, the Constitutional Court believes that the noken system regulation need not be formalized in legal provisions, and its application is limited only to specific regions and periods. According to Hamdan Zoelva's perspective, “the noken representative election system cannot be applied to elections or regional head elections in other areas. The Constitutional Court provides constitutional recognition of the noken system, but this system cannot be implemented generally throughout all regencies/cities or provinces in Indonesia.”<sup>31</sup>

c. Philosophical Considerations (Justice)

In philosophical considerations regarding justice, situations often arise where legal provisions experience gaps, conflicts between provisions, or uncertainty in interpretation. Facing such situations, judges rely on the *ius curiae novit* principle, meaning judges are assumed to know all aspects of law.<sup>32</sup> Referring to the Judicial Power Law Article 16 Paragraph (1), which states that “judges are not permitted to reject a case due to the absence or unclear law. Judges are prohibited

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<sup>29</sup> See Article 18 B Paragraph of the 1945 Constitution of the Republic of Indonesia.

<sup>30</sup> Oly Viana Agustine, “Implementasi Noken Sebagai Hukum Tidak Tertulis Dalam Sistem Hukum Nasional,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. No 1 (2019): 70, <https://rechtsvinding.bphn.go.id/artikel/5>. Oly Viana.pdf.

<sup>31</sup> Waluyo Waluyo, “Model Pemilu Dengan Sistem Noken Berbasis Budaya Dan Kearifan Lokal,” *Jurnal Hukum Samudra Keadilan* 13, no. No 2 (2019): 296.

<sup>32</sup> Sukimin Mulyani, Tri., Nuswanto, A. Heru., *Sistem Noken Di Provinsi Papua: Kajian Putusan Mahkamah Konstitusi No. 47-81/PHPU.A-VII/2009* (Semarang: Faculty of Law, Semarang University, 2009).

from refusing to provide decisions on grounds that laws are incomplete or unclear."<sup>33</sup>

When confronting rigid legal regulations with unclear meanings, judges are given the authority to interpret such laws. Yahya Harahap argues that judicial discretion is not unlimited freedom, showing arbitrary behavior by exploiting such discretion to justify various actions. This discretion has a limited nature with guidance including implementing provisions from appropriate legislation in resolving handled cases, according to the principle that statute law must prevail.<sup>34</sup>

The use of noken as a ballot box alternative demonstrates the great enthusiasm of customary communities in contributing to the democratic system of the Unitary State of the Republic of Indonesia. Based on historical records, mountain communities in Papua had already implemented customary selection methods to determine tribal chiefs or customary leaders (acclamation) before national general elections were implemented. The distinctive characteristic of noken democracy is the stone-burning tradition that becomes part of the democratic celebration in the selection process.<sup>35</sup>

The acclamation process is implemented through collective discussion, which represents the selection pattern in Indonesia's democratic system. Currently, the consensus approach is gradually shifting to the national one-person, one-vote system because it is impossible to conduct general elections through collective consultation simultaneously across the vast Indonesian archipelago with its large population. Although the government strives to unify various regulations into one universally applicable positive law, reality shows that several regions in Indonesia

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<sup>33</sup> Nur Iftitah Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan," *ISLAMADINA* 18, no. No 2 (2017), <https://jurnalnasional.ump.ac.id/index.php/ISLAMADINA/article/view/1920>.

<sup>34</sup> See Article 16 Paragraph (1) Judicial Power Law, n.d.

<sup>35</sup> Abdul Latif, *Buku Ajar Hukum Acara Mahkamah Konstitusi*, 2009, 219.

still maintain customary functions in harmony with their culture.<sup>36</sup>

2. Implications Following Constitutional Court Decision No. 47-81/PHPU.A-VII/2009

The Constitutional Court decision in case No. 47-81/PHPU.A-VII/2009 established the re-implementation of voting and vote counting processes. Although fundamentally this dispute related to conflicts over election results for DPD, DPR, and DPRD candidates at provincial and regency/city levels, the main focus of discussion lies in the vote collection method applying the concept of “consensus” or “unanimous agreement” termed the noken system.<sup>37</sup>

In its decision considerations, the Constitutional Court appreciated the cultural uniqueness possessed by customary communities in Yahukimo Regency, Papua, stating that “in the Court’s view, election implementation in Yahukimo Regency did not follow applicable legislative provisions because it was not conducted by marking ballot papers, but used “citizen consensus” or “acclamation” whose results were then included in the vote collection recapitulation on May 6, 2009, at Papua Provincial KPU.”<sup>38</sup>

The legitimation of using the “Citizen Consensus” or “Acclamation” method termed the noken mechanism was established by the Constitutional Court through decision No. 47-81/PHPU.A-VII/2009 dated June 9, 2009, stating: “The Court can understand and respect cultural values developing in Papuan society that has uniqueness in conducting general elections through “citizen consensus” or “acclamation” methods. The Court approves the collective selection method that has become part of the Yahukimo Regency community, considering that if forced to follow applicable legislative provisions, it is feared it will trigger conflicts among local community groups.”<sup>39</sup>

All decisions issued by judges potentially become legal references that can be used as legal foundations. The word

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<sup>36</sup> Hans Kelsen, *Pure Theory of Law*, ed. Max Knight (Berkeley: University of California Press, 1967), [https://cdn.oujdaibrary.com/books/612/612-pure-theory-of-law-\(www.tawcer.com\).pdf](https://cdn.oujdaibrary.com/books/612/612-pure-theory-of-law-(www.tawcer.com).pdf).

<sup>37</sup> Constitutional Court Decision. Op. Cit. p. 46

<sup>38</sup> *Ibid*

<sup>39</sup> Ridwan, *Hukum Administrasi Negara* (Jakarta: PT Rajagrafindo Porsada, 2014), 64–65.

jurisprudence originates from the Latin term *Jurisprudentia*, meaning understanding of legal science. In a technical context, jurisprudence refers to court (judge) decisions consistently followed by subsequent judges in similar cases, categorizable as "Rechtsrecht" or "law created by judges/courts."<sup>40</sup> Furthermore, Hadjon explains that jurisprudence in a broad understanding means the judiciary, while in a narrow meaning refers to the legal doctrine formed within the judicial system and subsequently used as a legal basis.

The impact following Constitutional Court decision No. 47-81/PHPU.A-VII/2009 must be reviewed from Article 24C Paragraph (1) of the 1945 Constitution, in conjunction with Article 10 Paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, and Article 29 Paragraphs (1) and (2) of Law No. 48 of 2009 concerning Judicial Power, stating that "the Constitutional Court has authority to adjudicate at first and final levels with final decisions regarding testing laws against the Constitution, deciding authority disputes between state institutions whose authority is granted by the Constitution, deciding political party dissolution, and resolving general election result disputes."<sup>41</sup>

According to existing provisions, it can be concluded that Constitutional Court decisions have a final nature, meaning such decisions immediately obtain permanent legal force when finished being read in Constitutional Court sessions, with no possibility of other legal remedies afterward. Court decisions that already have permanent legal force are mandatory to be implemented, binding all Indonesian citizens. Such decisions apply as laws established by legislative institutions. In this context, judges have roles as negative legislators producing decisions with an *erga omnes* nature, having applicability for the entire society.<sup>42</sup>

Therefore, the consequence of Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 regarding the use of the token system in Papua Province has provided national legality for

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<sup>40</sup> See Article 24C Paragraph (1) Constitution of the Republic of Indonesia 1945. In Conjunction with Article 10 Paragraph (1) Law No. 24 of 2003 Concerning Constitutional Court, in Conjunction with Article 29 Paragraphs (1) and (2) Law No. 48 of 2009 Concern,

<sup>41</sup> Fajar Laksana Soeroso, "Pembangkangan Terhadap Putusan Mahkamah Konstitusi: Kajian Putusan Nomor 153/G/2011/PTUN-JKT," *Jurnal Yudisial* 6, no. No 3 (2013), doi: <http://dx.doi.org/10.29123/jy.v6i3.100>.

<sup>42</sup> Abdul Latif. Op. Cit. p. 219

this system and enabled it to continue and develop within Papua's customary community life. The implications following the Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 related to the noken system's existence in Papua Province, according to Article 24C Paragraph (1) of the 1945 Constitution, in conjunction with Article 10 Paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, and Article 29 Paragraphs (1) and (2) of Law No. 48 of 2009 concerning Judicial Power, state that Constitutional Court decisions have binding legal force applicable to all people (*erga omnes*), ensuring this system will continue to be implemented and develop within Papua's customary community life nationally.

### **Implementation Mechanism of the Noken System and KPU Efforts in Guaranteeing Voter Privacy in the 2024 Elections in Papua**

#### **1. Implementation Procedures and Methods of the Noken System in the 2024 Elections: Technical Procedures for Noken System Implementation**

The implementation of the noken voting system in Papua represents a unique convergence between electoral modernization and indigenous wisdom. While Indonesia has established the “Luber Jurdil” (Direct, Free, Secret, Honest, and Fair) principles in Article 22E Paragraph (1) of the 1945 Constitution, electoral practices in Papua demonstrate distinctive variations through the noken system that has been rooted since 1971 and now has a constitutional foundation as part of traditional indigenous rights.<sup>43</sup>

The Constitutional Court's legal legitimacy recognizes dualism in the application of the noken system. The first aspect relates to the function of noken as a substitute container for ballot boxes, which is applied differently in each region. The second aspect concerns the communal consensus mechanism led by traditional leaders or “Big Men,” where the results of deliberation become a representation of the community's collective will.<sup>44</sup>

##### **a. Operational Framework and Regulatory Challenges**

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<sup>43</sup> Otto Gusti Madung Annada Riyanto, Johanis Ohoitmur, C.B. Mulyatno, *Kearifan Lokal Pancasila Butir-Butir Filsafat Keindonesiaan* (Yogyakarta: PT Kanisius, 2015), 499.

<sup>44</sup> See Constitutional Court Decision Number: 06-32/PHPU-DPD/XII/2014, 2014, 23.



The main challenge faced by the KPU lies in voter privacy aspects, considering the characteristics of the noken system that prioritize openness and collectivity. This condition creates tension with the principle of vote secrecy in elections, as each individual's political choice becomes information accessible to all community members.<sup>45</sup>

The noken voting system has specific procedures and mechanisms regulated in various regulations. The main provisions for implementing this system are based on KPU Decision Number 810/PL.02.6-Kpt/06/KPU/IV/2019, which specifically regulates guidelines for implementing voting with the noken system.<sup>46</sup> The technical steps in applying the noken voting method include:

- 1) Verification Process: KPPS officers are required to carry out double verification by registering attendance and examining the identity of every individual who has voting rights and is officially registered. This step is a preventive effort to avoid vote count duplication while providing protection for the political aspirations of Papua's indigenous communities.<sup>47</sup>
- 2) Documentation Requirements: In carrying out their duties, KPPS is obligated to complete the C2-KPU document with detailed information regarding the profile of big men or tribal heads participating in the noken system voting process. This documentation must contain a comprehensive description of the role of indigenous leadership in the election process, accompanied by quantitative data on community

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<sup>45</sup> Achmad Sodiki, "Konstitusionalitas Pemilihan Uma Model Masyarakat Yahukimo," *Jurnal Konstitusi* 6, no. No 2 (2009), [https://www.mkri.id/public/content/infoumum/ejurnal/pdf/ejurnal\\_Volume\\_6\\_Nomor\\_2\\_Juli\\_2009.pdf](https://www.mkri.id/public/content/infoumum/ejurnal/pdf/ejurnal_Volume_6_Nomor_2_Juli_2009.pdf).

<sup>46</sup> Hugo Warami, "Noken Demokrasi" in *Prosiding Seminar Nasional Konsep Dan Implementasi Sistem Demokrasi Pancasila Dalam Bidang Politik Dan Ekonomi* (Manokwari: UNIPA-SETJEND., 2015).

<sup>47</sup> Andri Sutrisno Herdianto, Rizky, "Penerapan Standar Pemilu Internasional Dalam Penegakan Hukum Pemilu Terkait Penggunaan Sistem Noken Di Kabupaten Pegunungan Arfak Provinsi Papua Barat Pada Pemilu 2024," *J-CEKI: Jurnal Cendekia Ilmiah* Vol 3, no. No 5 (2024), <https://journal-nusantara.id/index.php/J-CEKI/article/view/5034>.

members who surrender their voting rights to these traditional leaders.<sup>48</sup>

2. General Elections Commission Efforts in Guaranteeing Voter Choice Confidentiality

a. Integrated Monitoring System Implementation

Facing this reality, the KPU initiated an integrated monitoring system that partners with independent observers with a deep understanding of Papua's locality. This step is strengthened by preparing operational guidelines that cover every electoral stage. Nevertheless, the fundamental characteristics of the noken system that prioritize transparency and collectivity still create conflicts with the principle of protecting individual political rights.<sup>49</sup>

The implementation of voting in Papua applies a unique approach through the noken system, which presents a dilemma between preserving local wisdom and fulfilling contemporary electoral standards. Despite various security initiatives launched by the KPU, this method still leaves problems related to voter preference protection. The characteristics of collective decision-making in this system result in personal choices merging into communal consensus under traditional leadership authority.<sup>50</sup>

b. Legal Framework and Constitutional Challenges

The national electoral legal foundation, as stated in Law No. 8/2012 regarding Legislative Member Elections, mandates that every citizen cast their vote directly by marking on the ballot. However, field practices show the dominance of customary deliberation that precedes the formal voting process. This phenomenon underlines the prevalence of the "single authority over vote accumulation" model that contradicts the

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<sup>48</sup> See *General Election Commission of the Republic of Indonesia Decision Number: 810/PL.02.6-Kpt/06/KPU/IV/2019 on Pedoman Pelaksanaan Pemungutan Suara Dengan Sistem Noken/Ikat Di Provinsi Papua Dalam Emilihan Umum Tahun 2019*.

<sup>49</sup> Agus Riwanto, "Pemilu, Seri Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Penegakan Hukum," <https://elib.bawaslu.go.id/detail/b6d020f8-bd3d-40bc-81b0-ec1cbb98a312-1718002845/serial-evaluasi-penyelenggaraan-pemilu-serentak-2019-perihal-penegakan-hukum-pemilu>.

<sup>50</sup> See *Attachment to Regulation of the Election Supervisory Board of the Republic of Indonesia Number 6 of 2020 on Rencana Strategis Badan Pengawas Pemilihan Umum Tahun 2020-2024*.

“one person, one vote” principle, which is a pillar of democracy.<sup>51</sup>

The existence of KPU Regulation 810/PL.02.6-Kpt/06/KPU/IV/2019 has not been able to provide a complete resolution to the problem of implementing the noken system in Indonesia's electoral landscape. This limitation arises because the regulation's status is only a *beschikking*, an administrative decision form that is considered inadequate to address the complexity of the noken system. This argument refers to the constitutional principle contained in Article 18B paragraph (2) of the 1945 Constitution, where the legitimacy of indigenous community rights should be regulated through legal instruments at the law level, considering its position as a fundamental norm in the national legal system.<sup>52</sup>

c. Dispute Resolution and Future Reforms

The consequences of the inadequacy of the noken system regulation are reflected in the surge in the number of election disputes entering the Constitutional Court. Analysis of the institution's documentation reveals that in the 2019 election implementation, there were 33 cases out of 180 decisions related to the application of the noken system, all originating from West Papua territory before the regional expansion policy was implemented.<sup>53</sup>

KPU has designed a series of breakthroughs to accommodate the uniqueness of the noken system. This includes establishing special supervisory bodies with a deep understanding of local culture, improving the legal framework related to the noken system, and strengthening the capacity of election organizers at the grassroots level. Nevertheless, the struggle to find common ground between the principle of choice confidentiality and preservation of customary values continues. The KPU is required to continue innovating in

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<sup>51</sup> See Article 18 B Paragraph of the 1945 Constitution of the Republic of Indonesia.

<sup>52</sup> Rahman Yasin, “Telaah Putusan MK Dalam Sengketa PHPU Pilpres 2004 Perspektif Negara Demokrasi Konstitusional,” *Jurnal Konstitusi* 11, no. No 2 (2014), <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1143>.

<sup>53</sup> Muhammad Malikul Lubbi, “Analisis Sistem Pemilihan Umum Noken Di Provinsi Papua Dalam Prinsip Demokrasi Dan Sistem Hukum Nasional,” *Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. No 2 (2021), <https://scholarhub.ui.ac.id/dharmasisya/vol1/iss2/25/>.

developing approaches capable of bridging modern electoral integrity demands with appreciation for customary practices that have obtained legal recognition.<sup>54</sup>

The reform efforts need to be directed toward harmonization between the noken electoral system and constitutional democratic values, while ensuring the realization of justice in the context of Indonesia's cultural plurality. Transformative regulation through legal instruments that have strong positions in the national legislation hierarchy is needed to provide comprehensive protection for Papua's indigenous people's political rights in channeling their political aspirations.<sup>55</sup>

## CONCLUSION

The Constitutional Court Decision No. 47-81/PHPU.A-VII/2009 successfully legitimized Papua's noken system as a constitutionally recognized voting method that balances indigenous community rights with national electoral principles. This decision created a dual electoral system that accommodates local wisdom while maintaining democratic integrity, providing legal certainty for the continued use of traditional consensus-based voting in specific Papua regions during the 2024 elections.

Despite constitutional recognition, the implementation of the noken system in Papua's 2024 elections presents ongoing challenges in guaranteeing voter privacy due to its collective and transparent nature. The KPU's efforts through integrated monitoring systems and adaptive regulations have not fully resolved the fundamental tension between traditional communal decision-making processes and modern democratic principles of individual vote secrecy, requiring continued innovation in harmonizing customary practices with electoral integrity standards.

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<sup>55</sup> Warami, Hugo. "*Noken Demokrasi*" in Prosiding Seminar Nasional Konsep dan Implementasi Sistem Demokrasi Pancasila dalam Bidang Politik dan Ekonomi, March 16, 2015. Manokwari: UNIPA-SETJEND.[https://www.researchgate.net/publication/344696976\\_IMPLEMENTASI\\_NOKEN\\_SEBAGAI\\_HUKUM\\_TIDAK\\_TERTULIS\\_DALAM\\_SISTEM\\_HUKUM\\_NASIONAL](https://www.researchgate.net/publication/344696976_IMPLEMENTASI_NOKEN_SEBAGAI_HUKUM_TIDAK_TERTULIS_DALAM_SISTEM_HUKUM_NASIONAL)

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