

Reconstructing the Constitutional Boundaries of the Noken Electoral System in Papua: Customary Consensus and Electoral Integrity

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Abstract

Introduction: The Noken electoral system represents a distinctive form of customary electoral practice in Papua that has been accommodated within Indonesia's constitutional and electoral framework. Its communal decision-making mechanism, however, raises questions concerning individual suffrage, electoral equality, ballot secrecy, and electoral integrity.

Purposes of the Research: This study examines the constitutional status of the Noken electoral system and determines the legal boundaries for reconciling customary communal consensus with the principles of constitutional democracy.

Methods of the Research: This study employs normative legal research using statutory, conceptual, and case approaches. Primary legal materials include the 1945 Constitution, electoral regulations, and Constitutional Court decisions concerning the Noken system, complemented by scholarly literature on customary law, legal pluralism, and deliberative democracy. The materials are analyzed through qualitative legal interpretation and constitutional harmonization.

Results of the Research: The study finds that constitutional recognition of the Noken system cannot be understood as an unconditional exemption from electoral principles. Its legitimacy depends on the continuing existence of genuine customary consensus and its compatibility with constitutional rights and electoral integrity. The study proposes a conditional accommodation model based on territorial continuity, authentic communal deliberation, informed and voluntary participation, documented consensus, independent electoral supervision, and effective remedies against coercion and manipulation. **Conclusion:** The Noken system may be constitutionally accommodated as a form of legal pluralism, but its application requires enforceable legal boundaries. Where customary consensus is demonstrably replaced by coercion, vote buying, or systematic manipulation, the state should activate a legally defined transition mechanism toward the standard voting system.

Keywords: Noken Electoral System; Constitutional Democracy; Customary Law; Legal Pluralism; Electoral Integrity.

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INTRODUCTION

The Indonesian Constitution protects the right to vote, requiring all general elections to strictly follow the universal principles of being direct, general, free, secret, honest, and fair.¹ However, a unique legal exception exists in the Central Papua Province and Highland Papua Province known as the *Noken* system, a customary mode of voting rooted in local

¹ Fritz Edward Siregar, *Hukum Partai Politik dan Pemilihan Umum* (Jakarta: Konstitusi Press, 2026).

cultural practice.² The 1945 Constitution of the Republic of Indonesia, specifically Article 18B paragraph (2), explicitly guarantees the state's recognition of indigenous rights and legal pluralism, "The State recognizes and respects indigenous customary law communities and their traditional rights, as long as they remain in existence and are consistent with the development of society and the principles of the Unitary State of the Republic of Indonesia, as provided for by law." Within the context of Indonesian electoral jurisprudence, this specific constitutional article serves as the fundamental normative basis for legally accommodating customary practices, such as the *Noken* system, and integrating traditional deliberative consensus into the national democratic framework.

In practice, this traditional electoral mechanism operates through two distinct variations: *Noken Ikat* and *Noken Gantung*. The *Noken Ikat* model functions on communal consensus, often adopting the 'Big Man' system where a tribal chief casts a collective, binding vote on behalf of the entire community following customary deliberations. Meanwhile, the *Noken Gantung* model preserves individual voting rights, wherein citizens directly place their ballots into hanging woven bags representing specific candidates in an open, public setting. Despite diverging from the standard national principle of a secret ballot, this dual-faceted system has been recognized by the Constitutional Court as a constitutionally valid manifestation of customary law. This legal accommodation serves two main purposes: it protects indigenous voting rights and helps prevent conflict between tribes, while at the same time allowing local democratic practices to be gradually integrated into the modern framework of constitutional democracy. This voting method is used in several regencies across Central Papua Province and Highland Papua Province, Indonesia.

Three significant rulings by the Constitutional Court gradually established the legal validity and development of the *Noken* system's application inside the national election framework. First, in Decision Number 47-81/PHPU.A-VII/2009, the Constitutional Court set a significant legal precedent by formally acknowledging the *Noken* system as a valid communal agreement mechanism intended to avoid horizontal conflicts and uphold legal pluralism in accordance with Article 18B(2) of the 1945 Constitution. This constitutional status was later reaffirmed in Decision Number: 1/PHPU.PRES-XII/2014, where the Court rejected the idea that an election pattern that results in an absolute or unanimous vote under the guidance of a Big Man is inherently and legally protected.

However, the Court issued Decision Number: 06-32/PHPU.DPD/XII/2014, which set stringent geographic and temporal limitations in order to protect democracy and stop abuse by the political elite; This ruling forbids the restoration of the *Noken* system in places that have successfully switched to utilizing traditional ballot boxes and restricts its usage to mountainous areas where it has historically been used continuously. The Constitutional Court has effectively established a dynamic transitional legal framework through this set of decisions that both respects local cultural identity and gradually advances the community's political development toward universal democratic ideals.

Prior to the 2019 general elections, the *Noken* system operated within a distinct regulatory gap, as it was never formally codified within any national electoral statutes. The legal validity and operational framework of this customary practice relied exclusively on a fragmented hierarchy of laws. Specifically, its existence was anchored only in the broad

² Waluyo, "Model Pemilu dengan Sistem Noken Berbasis Budaya dan Kearifan Lokal," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 296.

mandates of the 1945 Constitution, the jurisprudence established by the Constitutional Court, and subordinate administrative instruments, such as General Election Commission Regulations and Decrees.³ This absence of formal statutory regulation meant that the national legislature effectively bypassed the issue, leaving General Election Commission with the heavy burden of translating abstract constitutional recognition into practical voting procedures. In an effort to bridge the regulatory vacuum surrounding customary voting, General Election Commission enacted Regulation of the General Elections Commission Number 10 of 2017. Specifically, Article 32 provided a formal administrative basis for accommodating the Papuan tradition of communal consensus and acclamation. To prevent electoral manipulation, the General Election Commission mandated a strict institutional safeguard, requiring explicit recommendations from the provincial General Election Commission and General Elections Supervisory Agency before the *Noken* system could be legitimately applied.

To operationalize this constitutional mandate within the electoral framework, General Election Commission has issued specific regulations authorizing the *Noken* system. Validated by the Constitutional Court, the *Noken Gantung* or *Ikat* system is a recognized form of local wisdom in the Papuan Highlands. To accommodate its use in elections, technical procedures are regulated under Regulation of the General Elections Commission Number 17 of 2024 on Voting and Vote Counting, alongside the implementation guidelines outlined in General Election Commission Decree Number: 1774 of 2024. Pursuant to these regulations, the *Noken* voting mechanism is officially sanctioned in twelve regencies spread across two newly established provinces: Central Papua and Highland Papua.

There are two important functions of these regulatory frameworks. First, they map the surviving traditional districts in the provinces of Central and Highland Papua legitimately and rigorously limit the use of the *Noken* system. In order to keep the system from spreading into regions that have already embraced conventional direct-voting procedures, this geographic restriction is essential. Second, these administrative measures indicate the state's endeavor to harmonize customary consensus with established national recapitulation norms. In order to ensure that the national election's integrity is not jeopardized by the accommodation of local wisdom, the General Election Commission aims to convert unwritten traditional agreements into an officially documented and verifiable administrative process through these laws.⁴ In the Central Papua Province, this traditional voting mechanism is implemented in six specific regencies: Puncak, Puncak Jaya, Intan Jaya, Deiyai, Dogiyai, and Paniai. However, the system is not applied universally across the entire province; the remaining two regencies, Nabire and Mimika, exclusively utilize the standard national direct-voting method. Meanwhile, in the Highland Papua Province, the *Noken* system is authorized in six regencies, though its application is sometimes mixed or limited to partial areas. These regencies include Yahukimo, Mamberamo Tengah, Lanny Jaya, Nduga, Tolikara, and specific districts within Jayawijaya. Similar to Central Papua, there are exceptions in this province as well: the Pegunungan Bintang and Yalimo regencies rely entirely on the standard national direct-voting system.

Existing literature on the *Noken* system has focused mostly on its sociological and political features. Cahyo Pamungkas, for instance, examined the system through the lens of

³ Jamaludin Lado Rua, "Dilema Praktik Sistem Noken Pada Pemilihan Umum Di Tanah Papua," In *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Pemungutan dan Penghitungan Suara*, ed. Masmulyadi (Jakarta: Badan Pengawas Pemilihan Umum, 2019), 297.

⁴ Fritz Edward Siregar, *Hukum Partai Politik dan Pemilihan Umum* (Jakarta: Konstitusi Press, 2026).

deliberative democracy, finding it vulnerable to manipulation by local elites rather than conducive to genuine public participation.⁵ Similarly, Yerianto Tarima et al. analyzed the socio-political role of tribal chiefs within the *Noken* system, emphasizing how customary authority overshadows formal state law in local elections.⁶ Despite these valuable sociological and political insights, existing literature lacks a strict constitutional law framework for practically harmonizing the *Noken* system with modern electoral standards. Specifically, prior studies have not critically evaluated the boundaries set by Constitutional Court jurisprudence, nor have they provided a definitive legal threshold for when customary practices become unconstitutional due to elite manipulation. This paper bridges this gap by offering a critical legal evaluation of these court rulings and introducing a novel legal harmonization model that defines exactly how and when customary communal consensus can coexist with – or must yield to – modern democratic integrity and individual suffrage. This research seeks to answer the following questions: 1) First, how does the constitutional framework accommodate the *Noken* system within the principles of modern democracy; 2) Second, what are the legal implications and boundaries required to prevent the degradation of democratic values in the implementation of the *Noken* system.

LITERATURE REVIEW

Constitutional democracy is fundamentally anchored in the rule of law, individual voting rights, and electoral integrity.⁷ This democratic framework necessitates that political decisions and electoral procedures are governed by established legal frameworks that guarantee equal participation, freedom of expression, and the secrecy of the ballot.⁸ Consequently, within this system, elections serve as the primary vehicle for popular sovereignty, requiring robust procedural mechanisms that protect citizens from coercion and ensure honest representation.⁹ However, the universal application of these rigid procedural principles often encounters complex challenges when integrated into societies governed by profound customary traditions.¹⁰

Under Article 18B paragraph (2) of the 1945 Constitution, the Indonesian legal framework formally protects customary law, ensuring traditional community rights are respected as long as they remain consistent with national values and societal progress. Unlike individualistic models, this traditional approach is rooted in communal rights and consensus-driven democracy, placing a premium on collective harmony and established hierarchies. Ultimately, this system of legal pluralism embraces local wisdom, with the strict stipulation that such practices do not violate fundamental human rights or overarching state regulations.¹¹

⁵ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, 'Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)' (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 11-12.

⁶ Yerianto Tarima, Piers Andreas Noak, and Muhammad Ali Azhar, 'Peran Kepala Suku dalam Sistem Noken pada Pemilukada di Distrik Kamu Kabupaten Dogiyai Provinsi Papua Tahun 2013' (Thesis: Universitas Udayana, 2013).

⁷ Waluyo, "Model Pemilu dengan Sistem Noken Berbasis Budaya dan Kearifan Lokal," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 304.

⁸ Cahyo Pamungkas, "Sistem Pemilu Noken di Papua: Demokrasi Deliberatif dalam Tradisi Orang Asli Papua," *Jurnal Masyarakat & Budaya* 19, no. 2 (2017): 221, <https://doi.org/10.14203/jmb.v19i2.389>.

⁹ Fritz Edward Siregar, *Hukum Partai Politik dan Pemilihan Umum* (Jakarta: Konstitusi Press, 2026).

¹⁰ Waluyo, "Model Pemilu dengan Sistem Noken Berbasis Budaya dan Kearifan Lokal," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 305.

¹¹ Muhammad Erfan, Nor Fadillah, and Fitriah, "Hukum Adat di Indonesia: Aspek, Teori, dan Penerapan," *Maqashiduna: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 141-142, <https://doi.org/10.47732/maqashiduna.v2i2.568>.

METHODS OF THE RESEARCH

The research method used in this study is normative legal research using a statute approach and a conceptual approach. This research focuses on the analysis of written legal norms related to the constitutional legality and certainty of the *Noken* system in general elections, as well as examining relevant legal concepts such as communal deliberative democracy versus procedural democracy to find a more comprehensive understanding. The data collection technique is carried out through a literature study of primary legal materials in the form of the 1945 Constitution, electoral laws, and Constitutional Court decisions, secondary legal materials in the form of literature, journal articles, and related research results, as well as tertiary legal materials such as legal dictionaries. All data is then analyzed qualitatively by examining, interpreting, and systematizing legal rules, then linking them to the theory of legal pluralism and the customary legal values that live in indigenous Papuan society. Thus, this research seeks to present a legal construction that can guarantee electoral integrity and legal certainty while accommodating substantive justice and traditional rights in the practice of the *Noken* system.

RESULTS AND DISCUSSION

A. The Constitutional Basis and Recognition of the Noken System

Decision Number: 47-81/PHPU.A-VII/2009, which resolved a parliamentary electoral dispute originating in the Yahukimo Regency, established the fundamental jurisprudence that gives the *Noken* system legal legitimacy. The Constitutional Court recognized the *Noken* system as a traditional method of acclamation and group consensus, in this historic decision, contending that forcing traditional, legal national election processes on these particular indigenous communities could lead to horizontal conflicts and social disintegration. In order to preserve communal harmony and uphold customary legal pluralism within the Unitary State of the Republic of Indonesia, the Court concluded that the state must accommodate local cultural wisdom, citing Article 18B Paragraph (2) of the 1945 Constitution.

However, from a strict perspective of constitutional democracy, this decision introduces a profound legal paradox that continues to challenge the national electoral framework. While the ruling upholds customary legal pluralism, it effectively suspends the universal constitutional mandate that elections must be direct, general, free, secret, honest, and fair. By prioritizing social harmony over procedural integrity, the Court created a *Noken* system that operates in a legal vacuum. Without established legal safeguards, the electoral process is highly vulnerable to arbitrary interpretations. As a result, local political elites can readily take advantage of community consensus, undercutting actual electoral fairness.

The constitutional standing of the *Noken* system was further tested and unequivocally reaffirmed in Decision Number: 1/PHPU.PRES-XII/2014 during the adjudication of the 2014 Presidential Election dispute. The petitioners alleged that the *Noken* system inherently facilitated structured, systematic, and massive electoral fraud, citing statistical anomalies where a presidential candidate received 100% of the votes in certain Papuan districts through the unilateral directives of tribal chiefs. The Constitutional Court categorically rejected these allegations, declaring that the unanimous allocation of votes is an inherent, culturally anticipated, and constitutionally protected characteristic of the *Noken* system.

Thus, the Court dismissed the claim that such communal voting patterns legally constitute electoral fraud.¹²

This decision greatly strengthened the *Noken* system's legal stability within the country's electoral framework, but it also heightened scholarly discussion on the conflict between individual suffrage and indigenous deliberative democracy. By supporting the outcomes of the model in which tribal leaders "Big Man" have the authority to cast collective votes on behalf of their constituents, the Court effectively approved a socio-political patron-client relationship that gravely jeopardizes the confidentiality and total freedom of the individual voter. While the decision safeguards the collective cultural uniqueness of the Papuan highland communities, it highlights the urgent need for a robust legal harmonization plan to prevent the degradation of fundamental, individual democratic rights under the guise of customary consensus.¹³

In a subsequent effort to establish clear legal boundaries and mitigate the potential for electoral abuse, the Constitutional Court issued Decision Number 06-32/PHPU.DPD/XII/2014, which imposed a crucial geographic and temporal restriction on the application of the *Noken* system. In this decision, the Court ruled that the *Noken* system is only constitutionally permissible in specific regions that have continuously and historically practiced it without interruption.¹⁴ Crucially, the Court made it clear that districts or regions that had previously successfully adopted the traditional direct voting method could not reinstate the *Noken* system.¹⁵

The Court's transitional jurisprudence is reflected in this progressive restriction, which shows an intention to strike a balance between the need to promote contemporary procedural democracy and the constitutional obligation of upholding customary law. The Court suggests that the eventual course of Indonesian electoral law must progress toward universal adherence to the direct, general, free, and secret voting principles by legally restricting the growth of the *Noken* system and preventing regression in democratized areas. Although customary law is guaranteed by the constitution, this movement in jurisprudence indicates that it must adapt to the changing political maturity of indigenous populations and the general democratic norms of the national legal system.¹⁶

B. Regulatory Framework and Ethical Enforcement by Electoral Management Bodies

The General Election Commission has persistently attempted to codify *Noken* procedures through technical guidelines. This is evident in General Election Commission Decree Number: 810/PL.02.6-Kpt/06/KPU/IV/2019, which regulated the technical implementation of the *Noken*/Ikat system in Papua during the 2019 elections.¹⁷ Most recently, to accommodate the establishment of new autonomous provinces, the General

¹² Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, "*Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)*" (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 11-12.

¹³ Cahyo Pamungkas, "Sistem Pemilu Noken di Papua: Demokrasi Deliberatif dalam Tradisi Orang Asli Papua," *Jurnal Masyarakat & Budaya* 19, no. 2 (2017): 229, <https://doi.org/10.14203/jmb.v19i2.389>.

¹⁴ Abdul Razak, "Penataan Pemilihan Kepala Daerah dengan Sistem Noken di Tanah Papua," *Proceeding APHTN-HAN* 3, no. 1 (2025): 17.

¹⁵ Muhammad Malikul Lubbi, "Analisis Sistem Pemilihan Umum Noken di Provinsi Papua dalam Prinsip Demokrasi dan Sistem Hukum Nasional," *Dharmasiswa: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 2 (2021): 910, <https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss2/25>.

¹⁶ Waluyo, "Model Pemilu dengan Sistem Noken Berbasis Budaya dan Kearifan Lokal," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 307.

¹⁷ Agil Yahya, Dyah Adriantini Sintha Dewi, and Dilli Trisna Noviasari, "Politik Hukum Sistem Noken Pemilihan Kepala Daerah di Papua dalam Konsep Negara Hukum Pancasila," *Borobudur Law and Society Journal* 2, no. 2 (2023): 87, <https://doi.org/10.31603/9468>.

Election Commission issued General Election Commission Regulation Number 17 of 2024 and General Election Commission Decree Number 1774 of 2024. These regulations legally map and restrict the application of the *Noken* system specifically to remaining districts in the Central Papua and Highland Papua provinces. These administrative efforts represent the state's attempt to harmonize customary consensus with standardized national recapitulation protocols.

The General Elections Supervisory Agency encounters severe structural obstacles in monitoring the *Noken* system, primarily due to the complete eradication of individual voting secrecy. To address these critical vulnerabilities and establish standardized supervisory protocols, General Elections Supervisory Agency enacted General Elections Supervisory Agency Regulation Number 1 of 2024 concerning the Supervision of Voting and Vote Counting in General Elections. As a foundational line of thought to address this legal vacuum, General Elections Supervisory Agency advocates that the *Noken* system utilized in Papuan elections should be formally regulated as an elaboration of Article 18B of the 1945 Constitution of the Republic of Indonesia. By anchoring the *Noken* system to this constitutional mandate, General Elections Supervisory Agency aims to ensure that customary election practices are harmonized with positive state law, ensuring that legal pluralism does not compromise national democratic standards. Despite these regulatory efforts to standardize supervision, General Elections Supervisory Agency continues to face critical structural challenges. On the other hand, because the system relies on open communal declarations or the absolute mandate of a Big Man, the constitutional right to a free and secret ballot is structurally nullified.¹⁸ This collective voting model inevitably fosters vulnerabilities to double-claiming by competing candidates and intense electoral fraud.¹⁹

The Election Organization Ethics Council exposes systemic electoral malpractice where regional General Elections Commission and General Elections Supervisory Agency officials exploit the *Noken* system for political brokerage.²⁰ Empirical evidence from past elections demonstrates extreme ethical breaches: electoral logistics are deliberately withheld from polling stations, and local elites engage in illicit negotiations in hotel lobbies to divvy up tens of thousands of communal votes for financial gain, treating the indigenous voters as mere spectators.²¹ Furthermore, the Big Man system is regularly exploited by regional political elites. They coerce tribal leaders to deliver a unanimous vote on behalf of the community, effectively degrading genuine deliberative democracy into a mere mechanism for political hegemony.²²

C. Assessing the Compatibility of the Noken System with Democratic Principles

The constitutional framework of Indonesian elections is fundamentally anchored in procedural democracy, heavily relying on the "One Man, One Vote, One Value" principle to guarantee equal political participation. The *Noken* system creates real friction with this

¹⁸ Abdul Razak, "Penataan Pemilihan Kepala Daerah dengan Sistem Noken di Tanah Papua," *Proceeding APHTN-HAN* 3, no. 1 (2025): 18.

¹⁹ Fritz Edward Siregar, *Hukum Partai Politik dan Pemilihan Umum* (Jakarta: Konstitusi Press, 2026).

²⁰ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, *Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)* (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 11.

²¹ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, *Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)* (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 11-12.

²² Robison Kogoya, Selvie Tumengkol, and Jouke Lasut, "Implementasi Kebijakan Sistem Noken Pada Pemilihan Umum Tahun 2019 di Distrik Gome Utara Kabupaten Puncak," *Jurnal Ilmiah Society* 3, no. 1 (2023): 2, <https://ejournal.unsrat.ac.id/v3/index.php/jurnalilmiahsociety/article/view/45141>.

procedural standard, particularly through the Big Man representational model. Under this model, the legitimacy of an election rests on the absolute secrecy, freedom, and directness of individual suffrage. *Noken Ikat* system, by contrast, gives a Big Man the authority to cast a single block vote on behalf of the entire community, which structurally removes individual voting rights and creates a clear tension between modern procedural election rules and indigenous customary governance.²³

However, critically analyzing this clash requires shifting the jurisprudential paradigm from procedural to substantive democracy. Within the socio-cultural context of the Papuan highland communities, the *Noken* system remains fundamentally democratic when viewed exclusively through the lens of communal, deliberative democracy. In this traditional framework, political decisions are inherently not individualized; rather, they are the product of rigorous collective deliberation aimed at maintaining communal harmony and social integration.²⁴ Therefore, the *Noken* system's departure from the "One Man, One Vote, One Value" principle is not innately anti-democratic. Instead, it represents an alternative democratic expression where the substantive value of collective consensus and tribal solidarity deliberately supersedes the procedural individualism of western democratic models.²⁵

When implemented correctly, the *Noken* system is the pinnacle of native Indonesian democracy, using the revered *Noken* bag as a profound cultural tool for shared identity, community cohesion, and genuine deliberative agreement in addition to serving as an administrative stand-in for a voting box.²⁶ However, the practical implementation sharply contradicts this philosophical ideal. The empirical realities dictate that the uncodified and open nature of the *Noken* system makes it highly susceptible to hijacking by transactional political elites and local oligarchs. By co-opting the Big Man through bribery, coercion, and political patronage, elites transform a sacred deliberative process into an instrument of hegemonic electoral manipulation.²⁷

In theory, the *Noken* system enriches Indonesia's legal pluralism and respects customary rights. In practice, however, it creates a profound empirical paradox. This reality compels us to reconsider how constitutional law should accommodate traditional practices, particularly when their negative impacts on electoral integrity become structural rather than incidental. Ultimately, any constitutional framework that protects collective cultural rights must ensure that such accommodations strengthen the foundations of democratic legitimacy. In situations where the *Noken* system's actual operation serves as a means of systematically denying individual voters of their right to vote, the constitutional agreement underlying Article 18B, paragraph (2), which solely recognizes customary law "as long as it remains alive and is in accordance with societal development" can no longer be presumed automatically satisfied. Even though the preservation of indigenous deliberative tradition is culturally significant, it cannot be viewed as a cost-free constitutional good. The integrity

²³ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, *Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)* (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 3.

²⁴ Cahyo Pamungkas, "Sistem Pemilu Noken di Papua: Demokrasi Deliberatif dalam Tradisi Orang Asli Papua," *Jurnal Masyarakat & Budaya* 19, no. 2 (2017): 232, <https://doi.org/10.14203/jmb.v19i2.389>.

²⁵ Yohanes Kayame, "Kearifan Lokal 'Noken' Papua bagi Nilai Demokrasi Pancasila di Indonesia," *De Cive: Jurnal Penelitian Pendidikan Pancasila dan Kewarganegaraan* 2, no. 12 (2022): 450, <https://doi.org/10.56393/decive.v2i12.1205>.

²⁶ Agil Yahya, Dyah Adriantini Sintha Dewi, and Dilli Trisna Noviasari, "Politik Hukum Sistem Noken Pemilihan Kepala Daerah di Papua dalam Konsep Negara Hukum Pancasila," *Borobudur Law and Society Journal* 2, no. 2 (2023): 86, <https://doi.org/10.31603/9468>.

²⁷ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, "Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)," Universitas Nusantara PGRI Kediri, (2024): 12.

of democratic suffrage has a price, and in cases of systemic and irreversible abuse, it may be necessary to discontinue customary voting mechanisms rather than accommodate them indefinitely.²⁸

D. Legal Boundaries and Future Harmonization for Electoral Integrity

Legal Reconstruction

The enduring legal vacuum surrounding the *Noken* system, characterized by its heavy reliance on unwritten customary norms, fundamentally contradicts the principle of legal certainty within a modern constitutional state. To reconcile this tension, a comprehensive legal reconstruction is imperative. General Elections Commission must transcend the issuance of mere technical guidelines and formulate robust, codified regulations that legally harmonize customary practices with positive electoral law.²⁹ Currently, the absence of stringent, uniform administrative frameworks allows local political elites to exploit the ambiguity of indigenous consensus for transactional politics.³⁰ As a result, legislative reform must set rigorous procedural bounds that formalize the substantive values of indigenous deliberative democracy inside the standardized administrative framework of national elections, ensuring both legal certainty and civil rights protection.

To operationalize this legal reconstruction, it is critically recommended that the General Elections Commission establishes stricter regulations mandating written, verifiable documentation of the customary consensus prior to election day. Such regulatory improvements require that the deliberative process be undertaken in a transparent manner, publicly documented by official Minutes of Agreement, signed by authorized community members, and carefully witnessed by General Elections Supervisory Agency.³¹ This mandatory administrative prerequisite would ensure that the collective decision genuinely reflects the authentic, uncoerced political will of the indigenous electorate. By requiring verifiable proof of consensus, the legal framework can effectively dismantle the arbitrary, clandestine, and unilateral declarations often executed by the Big Man under the undue influence of political bribery.³²

Safeguarding Integrity

To protect electoral integrity, it is critical to implement a tight legal prohibition on expanding the use of the *Noken* system to administrative regions that have been integrated into the traditional national voting process. Constitutional Court jurisprudence explicitly limits the constitutional permissibility of the *Noken* system to specific customary territories such as the remote highlands of Mee Pago and La Pago that have continuously utilized the practice without historical interruption.³³ Consequently, attempting to reintroduce or systematically expand the *Noken* system into democratized districts that utilize ballot boxes directly contravenes this constitutional limitation and threatens to severely regress the

²⁸ Agil Yahya, Dyah Adriantini Sintha Dewi, and Dilli Trisna Noviasari, "Politik Hukum Sistem Noken Pemilihan Kepala Daerah di Papua dalam Konsep Negara Hukum Pancasila," *Borobudur Law and Society Journal* 2, no. 2 (2023): 91, <https://doi.org/10.31603/9468>.

²⁹ Agil Yahya, Dyah Adriantini Sintha Dewi, and Dilli Trisna Noviasari, "Politik Hukum Sistem Noken Pemilihan Kepala Daerah di Papua dalam Konsep Negara Hukum Pancasila," *Borobudur Law and Society Journal* 2, no. 2 (2023): 86-87, <https://doi.org/10.31603/9468>.

³⁰ Oly Viana Agustine, "Implementasi Noken sebagai Hukum Tidak Tertulis dalam Sistem Hukum Nasional," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 69, <https://doi.org/10.33331/rechtsvinding.v8i1.302>.

³¹ Abdul Razak, "Penataan Pemilihan Kepala Daerah dengan Sistem Noken di Tanah Papua," *Proceeding APHTN-HAN* 3, no. 1 (2025): 20.

³² Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, "Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)" (Thesis: Universitas Nusantara PGRI Kediri, 2025), p. 11-12.

³³ Abdul Razak, "Penataan Pemilihan Kepala Daerah dengan Sistem Noken di Tanah Papua," *Proceeding APHTN-HAN* 3, no. 1 (2025): 18.

political maturity of the Papuan electorate.³⁴ Strict spatial and administrative confinement must be unconditionally enforced to ensure that the overarching trajectory of Indonesian electoral law consistently advances toward the universal "One Man, One Vote, One Value" standard, thereby minimizing the immense risk of horizontal conflicts triggered by forced customary regressions.³⁵

Furthermore, the absolute preservation of electoral integrity requires the design and application of more stringent criminal and ethical sanctions against state apparatuses, electoral officials and politicians who systematically coerce or manipulate the indigenous consensus. The empirical evidence has consistently demonstrated that the *Noken* system is degraded largely through the orchestration of external transactional elites and corrupt bureaucrats involved in massive block vote-buying and the systemic intimidation of Big Man.³⁶ To counter this exploitation, national electoral law amendments should be made to explicitly qualify the manipulation, coercion or financial subversion of customary consensus as an aggravated electoral offence, punishable by harsh penalties. Correspondingly, Honorary Council of Election Organizers must impose maximal ethical sanctions including permanent dismissal and immediate referral for criminal prosecution upon any General Elections Commission or General Elections Supervisory Agency officials proven complicit in facilitating such structural electoral fraud.³⁷ Only through the rigorous enforcement of these punitive legal boundaries can the state genuinely protect the sanctity of indigenous rights and restore substantive justice within Papua's democratic process.

E. Conditional Discontinuation as a Constitutional Option

In addition to procedural safeguards, the study also implies that legal reform should consider the conditional discontinuation of the *Noken* system in those districts where systemic abuse has been empirically and repeatedly established. Constitutional justification for accommodating customary consensus where credible evidence shows sustained vote-buying, coercion of Big Man, or fraudulent unanimous outcomes manufactured by political brokers instead of real communal deliberation. In these cases, the state should not be constitutionally obligated to preserve a mechanism that has been hijacked by outside political interests at the expense of the very community for which it was created. A mechanism for operationalizing this principle, but without abandoning constitutional recognition of customary, would be a threshold-based one: the formal transition of districts with recurrent and verified electoral malpractice to the standard direct-voting system. A threshold-based mechanism, whereby districts exhibiting recurrent and verified electoral malpractice are formally transitioned to the standard direct-voting system, would operationalize this principle without abandoning constitutional recognition of customary law in districts where the *Noken* system continues to function authentically.

³⁴ Jamaludin Lado Rua, "Dilema Praktik Sistem Noken Pada Pemilihan Umum Di Tanah Papua," dalam Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Pemungutan dan Penghitungan Suara, ed. Masmulyadi (Jakarta: Badan Pengawas Pemilihan Umum, 2019), 297.

³⁵ Muhammad Malikul Lubbi, "Analisis Sistem Pemilihan Umum Noken di Provinsi Papua dalam Prinsip Demokrasi dan Sistem Hukum Nasional," *Dharmasiswa: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 2 (2021): 910, <https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss2/25>.

³⁶ Robison Kogoya, Selvie Tumengkol, and Jouke Lasut, "Implementasi Kebijakan Sistem Noken Pada Pemilihan Umum Tahun 2019 di Distrik Gome Utara Kabupaten Puncak," *Jurnal Ilmiah Society* 3, no. 1 (2023): 4, <https://ejournal.unsrat.ac.id/v3/index.php/jurnalilmiahociety/article/view/45141>.

³⁷ Ardi Tri Yuwono, Andi Sebastian, and Tung Ming De, "Sistem Noken dalam Pemilihan Umum di Wilayah Papua (1971-2024)," *Universitas Nusantara PGRI Kediri*, (2024): 12.

CONCLUSION

The *Noken* electoral system occupies a constitutionally recognized but conditional position within Indonesia's pluralist electoral framework. Its legitimacy derives not from an unrestricted exemption from the principles of electoral democracy, but from the constitutional recognition of customary communities and their traditional rights. Accordingly, the constitutional accommodation of *Noken* must be assessed through the interaction between customary autonomy, individual electoral rights, and electoral integrity. The study demonstrates that the principal constitutional issue is not whether customary consensus is inherently incompatible with democracy, but whether the consensus remains authentic, voluntary, participatory, and consistent with constitutional rights. *Noken* may therefore be accommodated where it reflects genuine customary deliberation, operates within constitutionally recognized territories, and is subject to transparent verification and effective electoral supervision. The study proposes a conditional constitutional accommodation model consisting of five safeguards: cultural continuity, authentic communal deliberation, voluntary participation, verifiable documentation and electoral supervision, and a legally defined transition mechanism. Where coercion, vote buying, external political intervention, or systematic manipulation demonstrably replaces genuine communal consensus, continued accommodation should be subject to judicially and administratively verifiable review. Accordingly, legal reform should not pursue either unconditional preservation or immediate abolition of the *Noken* system. Instead, it should establish clear constitutional criteria for its continued accommodation and a procedurally regulated transition to individual voting where the conditions of legitimate customary consensus can no longer be demonstrated.

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