



Juridical Analysis of the Open Proportional System (Study of the Constitutional Court's Decision on Case No. 114/Ppu-Xx/202 Concerning the Open Proportional System in Testing Law No. 17/2017 on General Elections)

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ABSTRACT

The electoral system in Indonesia implements a proportional election system. The proportional election system is a general election system in which the percentage of House of Representatives seats distributed to each political party is adjusted to the number of votes obtained by each political party. Indonesia uses an open proportional system. However, the Constitutional Court still decides on this system in the 2024 election and beyond. This research method uses normative legal research methods in order to obtain the necessary data related to the research problem. Data sources are obtained from primary, secondary, and tertiary data. In this study, it is explained that the open proportional system is the most suitable system for the current situation of Indonesia. The results of the study show that the background of the philosophical making of the Election Law is due to several considerations.

INTRODUCTION

Indonesia has a very pluralistic and heterogeneous society, with a fairly dense population and coming from various backgrounds. After the reform of the Indonesian state, general elections are an instrument to maintain the sovereignty of the people as a form of democracy that develops and is healthy in addition to electing a representative government¹ Indonesian democracy can be seen from the purpose of establishing an Indonesian unitary state as clearly written in the preamble to the 1945 Constitution, Indonesia adheres to a democratic system in its constitutional politics. The implementation of general elections is a way to realize this goal in order to elect the president and vice president as state leaders, as well as to elect from the DPR, DPD, DPRD, MPR as representatives of the people's representatives as connectors to the people's aspirations. The government has the authority to design and make a regulation guided by the needs of the community which will later be formulated by the state leader or the people's representatives.

The democratic system is the key means of implementing an election in a country, of course elections are the way for the implementation of democracy itself. Constitutional elections are a strategy to fill positions in positions through the election of people's representatives in a democratic country². General elections are the most important part in every democracy, especially for citizens of republics such as Indonesia³. Henceforth, the general election can be abbreviated to the election. The implementation of democracy through elections is designed to replace the monarchy-style appointment system which is considered to tend to produce authoritarian leaders.

In a democratic system, the guarantee of the embodiment of the idea of people's sovereignty is that the people are fully involved in planning, regulating, realizing, and carrying out supervision and assessing that the implementation of the function of power must be ensured to be directly involved.⁵ In its implementation, elections do require various strong supporting factors such as election laws and regulations that reinforce each other. For the realization of democratic elections, of course, a good system is needed. The maturity of the concept and legal system of holding elections is reflected in the upcoming elections that use an open or closed proportional system.

Indonesian elections use two systems in its development. First, a closed proportional system with a party-only election mechanism (closed list PR). The way this framework works is that voters only choose the party's image, or the decisions taken by the party in favor of the main open door will be given to the newcomer with the top chronic number. Second, the relatively open-list framework in which this framework works, citizens straightforwardly vote for their official candidates. In 1955, the first general election was held in Indonesia; In 1971, 1977, 1982, 1987, 1992, and 1997, subsequent elections were held. In 1999, elections were held once again, in 2004, 2009, 2014, and 2019 after the departure of President Soeharto. The proportional election system was closed from 1971 to 1999. After the reforms, the electoral system underwent a minor overhaul in 2004, utilizing a semi-open proportional system. The new open proportional system

was actually implemented in the 2009 elections, starting with the Constitutional Court Decision Number: 22-24/PUU-VI/2008.

THEORETICAL REVIEW

The open proportional system has been a subject of legal debates in Indonesia, particularly with the Constitutional Court's decision on Case No. 114/PPU-XX/2023 regarding the testing of Law No. 17/2017 on General Elections. Legal scholars argue that the decision reflects the ongoing tension between democratic representation and political party control (Mahfud, 2023). According to Putra & Siregar (2023), the open proportional system enhances voter sovereignty by allowing them to directly influence candidate selection rather than relying solely on party lists. However, critics such as Santoso (2023) warn of potential negative implications, such as increased political fragmentation and vote-buying practices. Comparative legal analyses suggest that other countries with proportional representation systems face similar challenges, requiring a balanced approach in electoral law reforms (Rahman, 2023). A study by Susanti (2023) examines the legal reasoning behind the Constitutional Court's ruling, highlighting the balance between democratic participation and institutional stability.

In fact, as has been explained, the electoral system has undergone several changes in Indonesia, starting with the use of a closed proportional system (closed list PR) to an open proportional system (open list PR). In Indonesia, the difference between the election after the amendment of the 1945 Constitution and the election before the amendment lies in the Party List variant, where before the change still uses the closed list variant, but after the change uses the open list variant⁸. For open proportionality, the legal framework is regulated in Article 168 Paragraph 2 of Law Number 7 of 2017, which is the legal basis for decision-making which reads as follows: This system is expected to be fair in the 2009 elections, making elected candidates more representative and have greater legitimacy. In 2024, the system used will remain proportionally open. 2024 is the twelfth election performance. On the way to the 2024 elections, many people highlight the open proportional system, so the proposed use of a closed proportional system is proposed. The proposal is part of the material test of Law Number 7 of 2017 concerning General Elections⁸. This is motivated by the problems and criticisms experienced by the open proportional system due to the rampant money politics, political polarization, identity politics, high costs incurred by the state, increasing campaign costs, threats to the integrity of candidates and voters, and increasing campaign costs are the causative factors. Even though they are not party cadres close to their party, candidates can only participate in elections with this system if they have a lot of money. As long as they have money, they can compete.⁹ reviews

Although in the end the Constitutional Court (MK) decided based on Case Decision No.114/PUU-XX/2022 to still use an open proportional system. This directly indicates the rejection of the application for a material review of article 168 paragraph (2) of Law No. 7 of 2017 concerning General Elections which

regulates the open proportional general election system, after going through 16 trials¹⁰.

The purpose of this study is based on the explanation above to know about the implementation of the open proportional system in the 2024 General Election based on the Constitutional Court Decision on Case No. 114/PPU-XX/2022 concerning the open proportional system in testing Law No. 17/2017 concerning General Elections, where this study focuses on explaining the role and application of the open proportional system in the 2024 election based on existing legal considerations. In addition, this study also aims to examine the judge's considerations in the decision of Case No. 114/PPU-XX/2022 regarding the open proportional system in testing Law No. 17/2017 concerning General Elections, by examining how the judge analyzed and decided the case based on relevant considerations, Collection of legal materials used.

METHODOLOGY

The type of research in this study is juridical analysis legal research that lays the law as the building of a norm system. Juridical analysis research itself is a research conducted based on the main legal materials by examining theories, concepts, legal principles, and regulations related to this research, including court decisions⁴⁶. The collection of legal materials used is 1) the Constitution of the Republic of Indonesia in 1945; 2) Law No. 7 of 2017 concerning General Elections 3) Constitutional Court Decision on Case No. 114/PPU-XX/2022 concerning the Open Proportional System in Testing Law No. 17/2017 concerning General Elections, as well as books, journals, and scientific articles. The data collection of this research uses a document study, the research approach uses the Law Approach and the case approach¹¹. All data in this study were analyzed qualitatively.¹² reviews

RESEARCH RESULTS

Implementation of an Open Proportional System

The argument to change the electoral system from open proportional to closed is unfounded. There are three main reasons: First, the current electoral system was born from a long historical process and evaluation of the past system, as well as the results of the 1998 reforms. Second, both open and closed proportional have advantages and disadvantages that reinforce each other. An open system was chosen to avoid closed weaknesses, such as limiting public participation, reducing the relationship between voters and people's representatives, and reducing the chances of candidates being fairly elected. Third, replacing open proportionality with closed will reduce the people's voting rights and ignore the legitimacy of the elected candidate based on the largest number of votes.

The choice of an open proportional system that negates closed proportionality in previous elections does not contradict Article 22E paragraph (3) of the 1945 Constitution. There are two arguments underlying this. First, the article only limits the nomination of candidates in the election of members of the House of Representatives and the DPRD which can only be done by registered political

parties, without giving space for candidates from community organizations or individuals. Second, in an open proportional system, the role of political parties is not eliminated. Political parties continue to play a role in political education, the recruitment of legislative candidates, and determining prospective legislative members who will be determined by the election organizers as elected candidates.

Substantially, the choice of lawmakers' policies for an open proportional system cannot be separated from the bad experience of implementing a closed proportional system in the New Order elections, which is considered to be more representative of the interests of the elite political parties. The experience prompted lawmakers in 2003 to opt for an open proportional system. To date, there is no strong constitutional reason for the Petitioners to change the system. If there is a change in views, then the change should not replace the open system with a closed system, but shift the variant according to the principle of majority vote in a democracy. The choice of the electoral system is a technical policy that must be left to the lawmakers, as affirmed in the Constitutional Court Decision No. 55/PUU-XVII/2019. Furthermore, the option to maintain an open proportional system is also supported by the House of Representatives of the Republic of Indonesia and the President. Changing the electoral system in the midst of the 2024 election stages that are already underway will cause uncertainty and legal problems in the implementation of elections.

Based on the results of the trial, it can be concluded that the open proportional system is better than the closed proportional system for the following reasons: First, the substance of the election is the exercise of people's sovereignty, and even though it uses an open proportional system, the members of the council are still bound to political parties. Second, the Constitutional Court's decision No. 22-24/VI-PUU/2008 does not change the system, but emphasizes the consistency of the implementation of its subsystem so that it is in line with the open proportional system chosen by the lawmakers. Third, the open proportional system reflects Indonesia's diversity in parliament by representing various interest groups. Fourth, this system strengthens the relationship between voters and people's representatives, and providing certainty of a profitable political career path. Fifth, an open proportional system ensures that the people's representatives are accountable to the voters and do not give false hopes, which is in contrast to a closed system that does not reflect the needs of constituents. Sixth, the technical impact of holding elections, such as candidacy and logistical preparation, will be more efficient with an open proportional system, avoiding the potential for confusing changes in the list of candidates. Seventh, the use of digital technology in voice recapitulation will increase transparency and prevent errors and fraud. Lastly, this system is also more supportive of gender representation, siding with female politicians.

Based on the juridical review of the results of the trial in a quo case, it can be concluded as follows: First, the Applicant cannot prove his postulates that the Constitutional Court can give a different decision from the previous one. Second, there is a difference between the PUU a quo Application in 2008 and 2023, especially in the Applicant's legal position. The Applicant in the 2008 Application has the legal standing as a candidate for a registered council member, while the

Applicant in a quo is not registered as a candidate for a council member, so there is no potential for constitutional loss. In addition, the Applicant who claims to be harmed by the open proportional system because it is considered to prioritize popularity and capital, and on the grounds of high costs, is considered baseless because every candidate has the same opportunity before the law. Third, the expert testimony submitted by the Related Parties revealed that both systems (open and closed) are both constitutional, but the open proportional system has more weight. In addition, system changes in the 2024 election can cause internal political turmoil within the party and technical disruptions in the implementation of elections. The open proportional system has been proven to build a political regeneration order that is closer to the people, supports budget politics that favors the people, and supports the representation of women politicians. However, both systems have the potential for money politics and high campaign costs if regulations and law enforcement are not applied firmly.

Other reasons for maintaining an open proportional system are as follows:

1. The open proportional system not only refers to the Constitutional Court Decision Number 22-24/PUU-VI/2008 with its reasons and arguments, but also absorbs the aspirations of the wider community who support the implementation of an open proportional system compared to a closed proportional system.
2. The open proportional system provides an option for citizens to vote directly while supervising the members of the House of Representatives or DPRD who will represent them, and if the choice is no longer in accordance with their aspirations, voters can change their choice in the next election.
3. An open proportional system allows legislative candidates to compete healthily, which facilitates public supervision after elections and brings closer relationships between voters and people's representatives.
4. Related to recall, in an open proportional system, voters know who is the replacement for the legislative candidate who is recalled, that is, the candidate with the next most votes, while in a closed proportional system, the replacement is the authority of the political party and voters do not know who the replacement is.
5. An open proportional system provides good for the people by providing opportunities to be more careful in choosing each person, not only choosing parties that may be filled with foreign names for voters.
6. The closed proportional system less guarantees good representation between legislative candidates and their constituents, while the open proportional system allows for more intense relations and a stronger social contract between the people and the people's representatives.
7. The open proportional system provides opportunities for political party cadres to have good bargaining power and maintain their political positions, which also encourages internal democracy within the party.
8. The open proportional system is an improvement of the closed proportional system that was implemented from 1955 to 1999, because in the closed system, people cannot vote for legislative candidates directly and only choose parties. With an open proportional system, public participation has actually increased.

9. An open proportional system needs to be maintained so that citizens can vote directly and supervise their representatives, and have the opportunity to change their choices in the next election.
10. Expert Prof. Firman Noor, M.A. also emphasized that the open proportional system provides benefits for the people to make choices more carefully.
11. In the context of Indonesian politics, the implementation of a closed proportional system does not solve the problem of money politics, which is more structural in nature. Money politics in a closed proportional system is related to the candidacy and recruitment process that involves high costs.
12. The open proportional system does not nourish money politics because it has happened during the New Order period which used a closed proportional system.
13. Expert Prof. Firman Noor also added that the closed proportional system opens up opportunities for money politics, both at the candidate level and at the general election level.
14. In order for political parties to function strongly, it is necessary to strengthen party institutions through platforms, regeneration, political recruitment, and internal cohesiveness.
15. An open proportional system encourages political cadres and legislative candidates to build close relationships with voters and create political reification that strengthens party institutionalization.
16. Article 22E paragraph (6) of the 1945 Constitution of the Republic of Indonesia gives authority to lawmakers to regulate the mechanism of elections, which is an open legal policy.
17. The dynamics of the election mechanism show that the determination of the electoral system is the authority of the lawmakers.
18. Expert Titi Angraini, S.H., M.H. stated that the testing of the electoral system is an open legal policy of the lawmakers, which is also affirmed in the Constitutional Court Decision No. 16/PUU-XIX/2021.
19. Expert Dr. Zainal Arifin Mochtar emphasized that this open legal policy must be given to lawmakers, but with clear control.

Judge's Considerations in the Decision on Case No. 114/PPU-XX/2022 Concerning the Open Proportional System in Testing Law No. 17/2017 Concerning General Elections

The material test of Article 168 paragraph 2 related to the open proportional system in the Election Law was carried out by the petitioners who considered that this system brought eviler. The open proportional system allows voters to see the names and serial numbers of legislative candidates on the ballot paper, in contrast to the closed proportional system that only allows voters to choose the party picture. The petitioners argued that the open system caused candidates to compete with each other for the most votes, which gave rise to money politics, and made more popular and high-capital candidates beat more experienced candidates. Eight of the nine factions in the House of Representatives, such as the Golkar, Gerindra, Democrat, NasDem, PAN, PKB, PPP, and PKS factions, stated that they

rejected the closed proportional election system, while only PDI Perjuangan supported it.

However, the Constitutional Court rejected this lawsuit and still applied an open proportional system in the 2024 election. The articles tested in this lawsuit include Article 168 Paragraph (2), Article 342 Paragraph (2), Article 353 Paragraph (1) letter b, Article 386 Paragraph (2) letter b, Article 420 letters c and d, Article 422, Article 424 Paragraph (2), and Article 426 Paragraph (3) of Law No. 7/2017. The petitioners postulated that the norms in these articles caused the election to be hijacked by pragmatic legislative candidates who only had the capital of popularity. The Constitutional Court rejects these postulates, including claims about the rise of money politics, high costs, and political corruption.

The Constitutional Court panel of judges stated that the electoral system is designed to build a better democracy without damaging the country's ideology. Judge Enny emphasized that the electoral system that prioritizes people's sovereignty is more in line with the principles in the 1945 Constitution. The Constitutional Court's interpretation considers that the open proportional system does not endanger the Republic of Indonesia or the ideology of Pancasila, and has been anticipated by regulations that restrict political parties contrary to Pancasila.

The considerations for why the open proportional system will continue in the 2024 election are as follows:

1. **Rejecting the Reason for the Central Role of Political Parties:** The Constitutional Court (MK) rejected the petitioner's opinion that the open proportional system reduces the role of political parties. The Constitutional Court emphasized that political parties still have a central role, including in the process of selecting legislative candidates and determining the serial number of candidates. Since the election after the amendment of the 1945 Constitution, political parties have become the main entrance for citizens to become candidates for members of the House of Representatives and the House of Representatives. Political parties also have the authority to evaluate the performance of legislative members through the interim replacement mechanism (PAW).
2. **Rejecting Pragmatic Candidate Reasons:** The Constitutional Court also rejects the idea that an open proportional system produces pragmatic candidates who do not represent the party. The Constitutional Court emphasized that political parties are responsible for choosing candidates who represent the party's ideology, vision, mission, and work program. If there is a candidate who is pragmatic and not in accordance with party values, then the party should not propose him as a legislative candidate. Parties should also use a primary election mechanism or other transparent mechanisms to assess candidates to be proposed.
3. **Rejecting Money Politics Reasons:** The Constitutional Court responded to allegations that an open proportional system fueled money politics. The Constitutional Court stated that all electoral systems have the potential to present money politics. To prevent this, the Constitutional Court suggested a commitment from political parties and legislative candidates not to be involved in the practice, strict law enforcement, and increasing public political awareness to reject the practice of money politics. The Constitutional Court's

decision in the case of testing the Election Law cannot be separated from the effort. Constitutional Judge Arief Hidayat expressed a dissenting opinion in this decision. Arief said that evaluation, improvement and changes are needed to the open proportional system which has been implemented 4 (four) times, namely in the 2004, 2009, 2014, and 2019¹³ elections

Election Solutions in Answering Doubts About the Proper General Election System in Indonesia

The criteria for designing a General Election system should begin with a list of criteria that summarize what is to be achieved, avoided, and in a broad sense what the legislative and executive bodies are desired. The best concept in selecting (or updating) an electoral system is to prioritize the most important criteria and then assess which electoral system, or combination of systems, can best maximize the achievement of these objectives.

The open proportional system will be maintained in the 2024 election for a number of reasons related to representation and election mechanisms. First, this system provides geographical representation, where each region has a legislative representative who is accountable to its constituents. Second, an open proportional system creates ideological representation, allowing voters to vote for legislative candidates that align with their ideology, vision, and mission, rather than just based on political parties. With this system, voters have the opportunity to choose candidates who truly represent their ideas and goals, thus bringing them closer to the desired representation. In contrast, in a closed or limited open proportional system, voters simply vote for a party without knowing who the legislative candidate is running, reducing their chances of choosing the right figure.

The open proportional system also allows for descriptive representation, where the legislature reflects all levels of society, such as gender, age, economy, religion, and ethnicity. Thus, elected legislative representatives reflect the diversity of society more comprehensively. However, the weakness of this system is that it demands more individual performance of legislative candidates than increasing the role of political parties. This can reduce the synergy between the party and its members in fighting for the aspirations of the people. On the other hand, the closed system focuses more responsibility on the party, which can cause problems because the public cannot prosecute the individuals they vote for directly.

The limited open proportional system is the best alternative, where people can choose both parties and legislative candidates. This system provides an opportunity to demand both political parties and legislative members in fulfilling campaign promises. However, the downside of this system is that elected legislative candidates may not have sufficient integrity or capacity, as they may be chosen due to proximity or money politics. However, this system better reflects the will of the people and encourages a more representative democracy.

The open proportional system increases election participation by providing opportunities for the public to vote for legislative candidates directly, which increases voter enthusiasm. In this system, photos and names of candidates along with party symbols are listed together, so that people can clearly choose the candidate they want without having to guess. This clarity also allows candidates

to compete fairly, based on the number of valid votes they receive, not based on the sequence number. This encourages passion to vote, especially for voters who already have a favorite candidate.

On the other hand, in a closed or limited open proportional system, the names of candidates are not included with the party symbol, so voters only rely on instinct and guess who the candidate will be elected. Without the image of the candidate, public participation tends to decrease, because voters cannot find a candidate who suits their desires. This can lead to low election participation and increase the number of white people, namely people who do not vote.

Providing Incentives for Conciliation The electoral system can not only be seen as a way to realize government bodies but also as a means of conflict management in a society. Some systems, in some situations, will encourage parties to make inclusive calls for outside electoral support. Through the open election system, the public can directly elect figures who prioritize the unity and unity of the Indonesian nation. These figures are believed to be a mouthpiece for the community to move actions that strengthen the unity and unity of the nation. Meanwhile, in a closed election system, people cannot directly elect the right figures to prioritize national unity and unity. All things are determined by political parties, especially in determining candidates. Therefore, the public cannot expect much to ask the elected candidates to use their authority to encourage the executive to develop programs that strengthen the unity and unity of the nation.

The prospect of a stable and efficient government is not determined by the electoral system alone, but the results of a system can contribute to stability in a number of important aspects. The key questions are whether voters consider the system fair or not, whether the government can pass laws and regulations and govern efficiently, and whether the system avoids discrimination against certain parties or interest groups¹⁴. The open system test currently being conducted by the Constitutional Court is proof that system evaluation needs to be carried out and accompanying actions in the future as much as possible produce better findings. Anticipating violations and deviations of non-democratic behavior in the 2024 Election contest is a collective responsibility involving the state, society, organizers, apparatus, observers, political parties, and other stakeholders to play their respective roles. The challenge of the 2024 election is to combine an open proportionality system with the and the election of members of the DPR, provincial DPRD and district/city DPRD, as well as DPD into one.

The 2024 election is very important because after that, the leadership generation in Indonesia will change. In the context of a pluralistic Indonesia, elections are a tool for resolving differences, namely through electoral means. Therefore, the party system and the electoral system should support each other, not affirm.

CONCLUSIONS AND RECOMMENDATIONS

Based on the explanation in the discussion above, the conclusion that can be drawn from this study is that Open Proportional Elections is a type of general election system implemented in several countries, designed to achieve more proportional and inclusive political representation. This system gives voters the

opportunity to vote directly for candidates in addition to choosing political parties. Open Proportional Elections have several characteristics that distinguish them from other electoral systems.

The background of the making of the Election Law is philosophically based on several considerations. First, the election aims to ensure the realization of Indonesia's ideals and goals contained in Pancasila in the Preamble to the Constitution of the Republic of Indonesia in 1945. These ideals include protection for the entire Indonesian nation and all Indonesian bloodshed, promoting public welfare, educating the nation's life, and playing an active role in realizing a world order based on independence, lasting peace, and social justice. Second, in order for the goals and ideals of the Indonesian nation to be achieved, elections are needed as a means to elect people's representatives and the state government, which is a form of people's sovereignty. Therefore, the implementation of elections must be based on Pancasila and the 1945 Constitution.

The Constitutional Court's consideration regarding the continuation of the Open Proportional Election system in the 2024 Election is as follows: First, the Court rejects the argument that this system causes distortion of the role of political parties. According to the Court, political parties still have a central role even though the system used is open. Second, the Court also rejected the opinion that this system gives rise to legislative candidates (candidates) who are pragmatic and do not represent political parties, even damaging the consolidation of political parties. The court considers that political parties still play a role in determining candidates for members of the DPR/DPRD who are considered to represent the interests, ideologies, plans, and work programs of the party. Third, the Court rejected the opinion that the Open Proportional Election system expanded the practice of money politics and corruption. According to the Court, any electoral system has the potential to lead to such practices. In this decision, Constitutional Judge Arief Hidayat gave a dissenting opinion. He stated that evaluation, improvement, and changes are needed to the open proportional system that has been implemented in the 2004, 2009, 2014, and 2019 elections. The Court uses textual interpretation or original intent as well as systematic interpretation in its consideration. The court considered that the Open Proportional Election system is closer to the concept of elections in the 1945 Constitution, where sovereignty is in the hands of the people. Therefore, if the elected legislative candidate is only determined by a political party, it is considered contrary to the principle of people's sovereignty.

ADVANCED RESEARCH

Future research should delve into the long-term political, social, and economic impacts of the Open Proportional Election system, particularly in emerging democracies like Indonesia. A comparative study analyzing how different proportional representation models affect political stability, party system fragmentation, and legislative efficiency across various countries could provide deeper insights into its effectiveness

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