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## Effectiveness of Proportional Systems in Legislative General Elections In Legal Politics Perspective

Ichsan Maulana<sup>1</sup>, Muhamad Gary Gagarin Akbar,<sup>2</sup> Muhamad Abas,<sup>3</sup> Anwar Hidayat<sup>4</sup>

<sup>1</sup> Universitas Buana Perjuangan Karawang, Jawa Barat, Indonesia,

[ichsanmaulana@ptk.ubpkarawang.ac.id](mailto:ichsanmaulana@ptk.ubpkarawang.ac.id)

<sup>2</sup> Universitas Buana Perjuangan Karawang, Jawa Barat, Indonesia, [gary.akbar@ubpkarawang.ac.id](mailto:gary.akbar@ubpkarawang.ac.id)

<sup>3</sup> Universitas Buana Perjuangan Karawang, Jawa Barat, Indonesia,

[muhamad.abas@ubpkarawang.ac.id](mailto:muhamad.abas@ubpkarawang.ac.id)

<sup>4</sup> Universitas Buana Perjuangan Karawang, Jawa Barat, Indonesia, [anwar.hidayat@ubpkarawang.ac.id](mailto:anwar.hidayat@ubpkarawang.ac.id)

Corresponding Author: [muhamad.abas@ubpkarawang.ac.id](mailto:muhamad.abas@ubpkarawang.ac.id)

**Abstract:** The system used in the Indonesian Election is an open proportional system and a closed proportional system. The open proportional system that makes the winner of the most votes in the election creates an unfair competitive atmosphere between legislative candidates, this system dominates the practice of money politics and so on, the closed proportional system also has bitter experiences, the journey of elections since the New Order to the reformation which uses a closed proportional system based on serial numbers is considered to only produce people's representatives who are closer to the interests of political party elites and their groups who have personal interests. Legal Politics has a very important role as a basis for perspective in increasing the effectiveness of national legal development. This study uses descriptive and empirical socio-legal or non-doctrinal methods, applying special legal science research that combines legal norms with sociological aspects through the approach of legal principles and political behavior. To bring elections to an ideal level within the framework of democracy is not only limited to the election system, but must be in line with the awareness of moral values upheld by every citizen, both voters and election contestants. Therefore, an appropriate framework of thought is needed with the principle of appreciation in every norm of life. The open proportional system is more relevant to the principle of people's sovereignty, but improvements are needed to the mechanisms and technical provisions in its implementation. Improvements to the open proportional system are important to ensure that this system can run effectively and democratically.

**Keyword:** Proportional System, Legislative, Legal Politics.

### INTRODUCTION

A law-based state system that is in line with the concept and pattern of *rechstaat* and *the rule of law* related to norms of power ( *nomocracy* ) emphasizes the principle of legal sovereignty as the highest authority. The rule of law often gives birth to a democratic

system, and a democratic system cannot be separated from the rule of law, both are related to guaranteeing legal justice which must be built and upheld.

Because, the principle of legal sovereignty and legal sovereignty essentially originates from the sovereignty of the people. Therefore, the principle of the rule of law must be constructed and developed further in accordance with the principle of democracy or popular sovereignty (democratic rule of law).

Democracy in the context of popular sovereignty is expressed in the role of the legislature in every government decision making as the people's representative in government. This is a manifestation of the people as the owner of the highest power in a legal state. "Democratic countries always have representative institutions and are regulated by the constitution or basic law of a country. People's sovereignty as stated in the 1945 Constitution is realized through representative institutions consisting of the People's Consultative Assembly (MPR) and the People's Representative Council (DPR)."

Referring to the concept of sovereignty which is in the hands of the people, appropriate instruments are needed to ensure and protect the choice rights of every citizen in determining their choice as representatives of the people. In the democratic tradition, general elections are a prerequisite for a country to be called a democracy. Direct, open, free, secret, honest and fair general elections are an important prerequisite for the formation of people's representatives who have good quality, are reliable and are able to carry out the tasks of legislative organizations optimally (Jurdi, 2018).

However, in practice, elections which are created as an instrument to affirm people's sovereignty are often undermined by individuals who take advantage of regulatory weaknesses in the implementation of elections. The failure or success of elections can be viewed from the effectiveness of the system implemented. In the history of elections in the Unitary State of the Republic of Indonesia, there have been at least two systems used in elections, namely the open proportional system (open *list*) and the closed proportional system (*closed list*).

An open proportional system that makes the winner of the most votes the winner in an election creates an atmosphere of unfair competition between legislative candidates. This system dominates the practice of money politics in the form of cash, basic necessities and other assistance under the pretext of social service to get votes from constituents. So in the history of elections, implementing this system has made elections very expensive.

The practice of *money politics* carried out by individual election contestants is also one of the various election frauds with the aim of getting people's votes. The practice of money politics can damage and lower the level of democracy, and there is the potential for criminal acts of corruption to occur due to the need to "return capital" for campaign costs which are quite large. This practice can also damage the morals and paradigm of the people who are accustomed to choosing their deputy candidates and leaders because they have been given a certain amount of money.

Apart from money politics, popularity capital without capability is also a phenomenon that often occurs in elections, as a result, many people's representative candidates only have popularity without political experience and the ability and morality to prepare themselves to fight for the hopes of their people.

The closed proportional system also has bitter experience, the electoral journey from the New Order to the reformation which used a closed proportional system based on serial numbers was considered to only produce people's representatives who were closer to the interests of political party elites and their groups who had personal interests than the interests of the people they represented. A system that requires political parties to determine the winner through the placement of serial numbers may also narrow the opportunities for the nation's best sons and daughters who do not have close ties to political party elites to become people's representatives in government.

In a pluralistic country like Indonesia, bringing elections to the highest level of success within a democratic framework is not only determined by the electoral system, but must be in harmony with the awareness of the moral values that are upheld by every citizen, both voters and election contestants. So an appropriate framework of thought is needed to develop each legal umbrella through the rules used in elections.

Legal Politics has a very, very important role as a basic perspective in increasing the effectiveness of national legal development. The hierarchy of applicable laws has an inseparable essence so that the implementation of every state policy can achieve the nation's goals based on Pancasila and the 1945 Constitution. Therefore, General Elections held in Indonesia must be in accordance with the legal umbrella that has been created and agreed between policy stakeholders such as the President and the People's Representative Council as a representation of the people as a whole.

Thus, making regulations regarding elections in legal political theory must pay attention to the plurality of life norms adhered to by citizens as a whole, namely the commonality of views (Positifation), methods of resolution (moral, ethical and religious), and the common good (social). So that every provision that is used as a legal umbrella for the implementation of elections can cover the gap in negative symptoms regarding the lack of legal awareness of every citizen, for the voting public and election contestants.

## **METHOD**

This research uses descriptive and empirical socio-legal or non-doctrinal methods, applying special research in legal science that combines legal norms with various sociological aspects through approaches to legal principles and political behavior.

The approach used in this research is a *behavioral approach* and a political approach, namely the perspective used in studying political phenomena in constitutional reality. This research focuses on legal materials and library or documentary data sources (*library research*). The aim of library research is to obtain secondary data in the form of primary, secondary and tertiary legal materials, followed by inventory, research and examination of legal materials and documentary data relevant to the research object.

## **RESULTS AND DISCUSSION**

### **History of Elections in Indonesia**

Based on "Article IV, Transitional Rules, the 1945 Constitution, the Central Indonesian National Committee (KNIP) was formed which was then appointed and ratified and began carrying out its duties from 29 August 1945 to 15 February 1950." KNIP is an Assistant Presidential Body, whose members consist of community figures from various groups and regions, including former members of the PPKI (Indonesian Independence Preparatory Committee).

In carrying out its duties, KNIP is assisted by the Working Body which was ratified on 16 October 1945 and is responsible to KNIP. "In 1948, the KNIP Working Body passed a law establishing an indirect general election system based on proportional representation which gave the right to vote to all citizens over the age of 18." However, the idea of holding elections is not going smoothly, there are still many groups such as members of the temporary parliament and high-ranking cabinet officials who are pushing and making movements against the elections.

With various political crises at that time causing election plans to continue to be postponed, various changes to the election law were made. Formally, the plan to hold new elections became a reality after President Sukarno made and confirmed the political decision to form the Indonesian General Election Committee (PPI) on November 7 1953. After going through various obstacles the elections were held on September 29 1955, the first national elections (excluding West Irian) resulting in 257 DPR seats. Followed by 15 electoral

districts with a total of 43,104,464 Indonesian voters. Likewise with the election of 25 December 1955 which elected 520 members of the Constituent Assembly.

The system applied in the 1955 elections was a system of proportional representation or balanced representation. Balanced representation is a system where parties compete for seats in the central parliament in general elections based on the votes they get. In this system, political parties compile a list of candidates which will then influence which candidate is elected. The number of DPR and Constituent Assembly seats is distributed to political parties or organizations participating in legislative elections at that time, depending on the votes obtained by the party. The 1955 elections were carried out very orderly and safely, this was due to the high level of awareness of healthy competition, so that praise came not only from within but also abroad.

The hope of changing the nation's stagnation during the 1955 elections raised public awareness and enthusiasm which influenced the level of voter participation. However, this experience which was considered successful did not have a substantive impact, political turmoil in the elite order still had an impact on national stability.

Periodic elections every 5 years were held after the third election from 1977 to 1997 using a closed list balanced and proportional representation system. Various regulations through the electoral law and its derivatives were formed as a reference or legal umbrella for the implementation of elections. The difference in the proportional system occurred radically in the 2004 elections which implemented "Law Number 12 of 2003." "Article 6 paragraph (1) states that *elections to elect members of the DPR, Provincial DPRD and Regency/City DPRD are carried out using a proportional system with an open list of candidates.*"

The Proportional Election System with a closed list, which was implemented from the start of the Election, was changed to a semi-open proportional system by applying the Voter Dividing Number (BPP) *Hare Quota method* for the Number of Seats as well as the threshold for legislative candidates to then be determined as winners according to serial number. This change is an attraction for the public to participate in the elections, because they can see the list of legislative candidates and directly vote for candidates for people's representatives who will serve in parliament on behalf of the people, even though the results of their votes depend on the serial number.

The 2004 elections were successful, smooth and peaceful, but there were still many legal violations in practice. "Ahead of the 2009 elections, the Constitutional Court granted a *judicial review* which abolished article 214 of Law Number 1 of 2008 concerning the regulation of determining legislative candidates based on serial numbers if they do not meet the standard provisions of 30% of the BPP." So the 2009 elections implemented an open list proportional system with a system for calculating the majority of votes because it was considered relevant to the concept of democracy by and for the people.

The open list proportional system was also implemented in the 2014 and 2019 elections, but in 2019 the method for calculating the number of votes no longer used the *Hare Quota method*, but used the clump divisor or *Sainte Lague muni method*. Proportional open lists purely aim to emphasize the legitimacy of the people and represent the diversity of opinions and interests of the community in representative institutions. However, in its implementation, this system has given rise to many problems and friction between legislative candidates in the same political party and electoral district (dapil), also resulting in the emergence of various frauds that use money and popularity to win the hearts and votes of the people in order to win seats in parliament.

### **Closed and Open Proportional Systems**

In the history of the continuity of elections in Indonesia, there have only been 2 systems used, namely proportional closed list and proportional open list. In a closed list proportional system, people who have the right to vote only vote by voting for their party.

Meanwhile, in implementing an open proportional electoral system, the public as voters can directly choose the people on the ballot paper to become the people's representatives. The closed proportional system was applied in the 1971 elections to the 1999 elections. "There was a change to the system to semi-open proportional in the 2004 elections which refers to changes in provisions in Article 6 Paragraph 1 of Law Number 12 of 2003 concerning General Elections for Members of the DPR, DPD, and DPRD where legislative candidates can get seats obtained by the party if they win a number of votes in the quota price for one seat which is called the voter divisor number (BPP)."

Pure open proportionality was then applied to the 2009 elections based on changes to statutory provisions implemented through "MK Decision Number: 22-24/PUU-VI/2008." Until now, elections still use an open proportional representation system, meaning that the public/citizens can directly choose who they want to serve as their representative in the legislature and their leader in the executive. It is hoped that a purely open proportional system will produce elected legislative candidates who are legitimate and have the full trust of the public, so that they are able to maintain the commitment of the people in carrying out their duties, especially in terms of conveying the aspirations of the people who have entrusted their trust and hopes for the life of the nation and state.

**Table 1. Proportional closed and open election periods 1955-2019**

1955-1999	: Proporsional tertutup
2004	: Proporsional terbuka terbatas (berdasar nomor urut)
2009-2019	: Proporsional terbuka (berdasar suara terbanyak)

*Sumber: Kherid, 2021*

## **Advantages and Disadvantages of Closed and Open Proportional Systems**

### **1. Closed Proportional System**

In a country that implements a democratic system, the existence of political parties is a necessity, as one of the elements of a legal state, political parties act as an important instrument to achieve ideal state life based on popular sovereignty. In the context of elections, political parties are obliged to prepare human resources or what are usually called "cadres" as well as possible, so that they have moral and social responsibilities that are in line with the state's goals in Pancasila and the 1945 Constitution.

"Law number 7 of 2017 concerning General Elections states that political parties are one of the elements of election participants, there is a political moral responsibility towards legal political parties based on the mandate of the people through law, political parties must be institutions that prepare qualified cadres to be elected by the people as leaders of government and their representatives in parliament."

In general, a closed proportional system requires each political party to be able to determine who can be elected to occupy parliamentary seats by setting serial numbers based on party votes. This system gives authority to political party institutions which have the freedom to create internal mechanisms, one of which can regulate the assignment of serial numbers to legislative candidates. Thus, political parties should tighten the selection of cadres who will run as legislative candidates for their parties. So that the candidates with the top serial numbers as candidates with the highest potential to win are selected legislative candidates who are competent and have integrity.

However, the reality is not in line with the authority they have, quite a few political party leaders/elites actually take advantage of this freedom to carry out transactional politics by practicing buying and selling serial numbers to legislative candidates who will

run in legislative elections. So the legislative candidates who have the potential to become winners are legislative candidates who are corrupt and lack integrity.

In fact, elections that use a closed proportional representation system have been proven to give rise to several problems that weaken the sustainability of democracy, one of which occurred in the 1971 elections, where there were high-ranking state officials who sided with a political party called Golkar, something that should not have happened. A similar thing happened again in 1977, when political policies emerged that limited the number of election participants and again the Golkar Party dominated the elections, and was always the winner in the elections, as if other parties such as PPP were only complementary instruments without having a significant political role and ability. big.

In terms of the technical implementation of preparation, voting and vote counting, this system is more time efficient compared to implementing elections with an open proportional system, because the ballot paper model which only contains images/logos of political parties makes time and logistics work more efficient. Likewise, the voting and counting process does not take a day and a night, assuming the counting and recapitulation process for each model of ballot paper takes 1 to 1.5 hours, the total counting and recapitulation will take around 6 to 8 hours. This will of course affect the physical condition of the election officers/committee which will have an impact on the level of focus and accuracy in the vote acquisition data being summarized.

A closed proportional system morally requires each political party to prepare the best cadres to become people's representatives, cadres who have adequate experience and abilities in the fields of legislation and budgeting. So that every legal product and political policy produced becomes a quality legal product in accordance with the needs of the people and in line with the mandate of Pancasila and the 1945 Constitution.

Apart from that, the budget used in a closed proportional election system can be said to be quite smaller compared to an open proportional one, this can be seen in the difference in ballot papers which are more minimalist compared to ballot papers with an open proportional system which displays all photos of legislative candidates. In 2019, with 16 political parties participating in the election, the budget used to print ballot papers for the 2019 election was IDR 603,340,000,000.

## **2. Open Proportional System**

The implementation of an open proportional system is considered an antithesis to the closed system implemented before the 2004 elections. This system closes the gap in transactional politics and political control carried out by political party elites. Legislative candidates are also required to get closer and get to know the people, this of course makes it easier for the public to assess candidates for people's representatives by interacting directly, thereby minimizing candidates who only represent political party elites. "This is different from a closed proportional system where the public can only see the party's image on the ballot paper without knowing who the party will choose to be their representative based on the serial number determined internally by the party."

A system regulated by law certainly has various implications that will affect the technical implementation of the election stages relating to administrative requirements, time, procedures, facilities, budget and human resources who serve as election organizers.

In the 2019 elections, an open proportional system was combined with provisions for holding elections simultaneously with the election of the President and Vice President. The implementation which took quite a long time to carry out vote counting and recapitulation has set a bad precedent for democracy in our country. "There were 894 KPPS officers who died and 5,175 officers became ill."

After the 2019 Election, the consequences that have been experienced must be of concern to the drafters of election regulatory instruments, makers of laws and technical

procedures and must then pay attention to human rights principles holistically, Article 21 of the Universal Declaration of Human Rights ( *Declaration of Human Rights* ). has stated that respect for the right to life is the highest right that every human being has since birth. So that state institutions that have the mandate to make rules for organizing elections, such as the General Election Commission of the Republic of Indonesia (KPU RI), are not only obliged to protect the people's voting rights, but also must pay attention to and be responsible for the right to life of every organizing officer up to the TPS level.

"Apart from that, the budget used for elections with an open proportional system in 2019 was relatively high, namely 25.7 trillion"

The journey of democracy in implementing an open proportional system has received a lot of criticism from various *stakeholders*, *money politics* has become a common thing that can be found in society. In fact, voters go wild and tend to receive lots of "envelopes" from legislative candidates and choose legislative candidates whose envelopes are large. This has then weakened the integrity of candidates and voters. An open system also makes campaign costs very high, this becomes an obstacle for the nation's children who have financial limitations to run as members of the legislature. Extreme political polarization also occurs in the implementation of open system elections which will damage diversity within the nation and state. "In the review hearing of Law Number 7 of 2017 concerning General Elections (UU Pemilu) which was held in the Plenary Courtroom of the Constitutional Court, the Constitutional Law Lecturer at the Indonesian Law College, Fritz Edward Siregar, and the Constitutional Law Lecturer, Faculty of Law, Sebelas Maret University, Surakarta, Agus Riswanto provided information regarding several factors of a closed proportional system: "

- a. The voting process in an open proportional system is so complex that it opens the door to fraud or invalid votes.
- b. Efforts to eliminate the practice of money politics in the election process.
- c. The existing system so far is designed to weaken the role of political parties, where;
- d. Candidates elected in legislative elections (caleg) do not respect political parties and are disloyal to politics or party organizations.
- e. Political parties in an open proportional system compete to recruit popular legislative candidates who have large capital and no political experience.
- f. The open system is considered to create unhealthy competition between legislative candidates, thereby encouraging legislative candidates to commit fraud by raising funds for organizer positions.

**Table 2. Advantages and Disadvantages of Open and Closed Systems**

Proporsional Tertutup	
Kekurangan	Kelebihan
Mengandalkan oligarki dan nepotisme	Menekan politik uang dan korupsi politik
Tidak ada kedekatan calon dengan pemilih	Parpol sebagai kekuatan gagasan
Calon kurang aspiratif	Menguatkan tanggung jawab parpol
Pendidikan politik berkurang	Mudah menilai kinerja parpol
Proporsional Terbuka	
Kekurangan	Kelebihan
Ongkos politik tinggi, korupsi kolusi sistematis	Legitimasi kuat calon lebih dekat pemilih
Kontestasi politik jadi liar dan liberal	Menghapus nepotisme
Tidak ada standar kualifikasi pencalonan	Legitimasi kuat
Parpol minim gagasan, terjadi deparpolisasi	Menguatkan sistem perwakilan di DPR

Sumber: Kherid, 2021

## CONCLUSION

If viewed from the perspective of the Indonesian constitution, in "Article 22E paragraph (1) of the 1945 Constitution, elections must be held directly, publicly, freely, secretly, honestly and fairly every five years." The principle of popular sovereignty is in line with the mandate of the 1945 Constitution which is not relevant to the use of a closed proportional system which limits the people from making their choices without being represented by anyone.

The same view is found in the decision of the Constitutional Court (MK) which was issued on June 16 2023, the MK rejected the application submitted by Riyanto and his friends regarding the review of "UU number 7 2017 concerning General Elections" which aims to replace the application of an open proportional system to closed proportional.

From the description above, the author concludes that to bring elections to a high level of effectiveness within a democratic framework, it is not only limited to the electoral system, but must be in harmony with the awareness of the moral values that are upheld by every citizen, both voters and election contestants. Therefore, an appropriate framework of thinking is needed with the principle of appreciating every norm of life.

In the context of implementing a proportional system in legislative elections in Indonesia, the author agrees with the ruling of the Constitutional Court which essentially emphasizes that legislative elections are a democratic instrument that must uphold the values of popular sovereignty, however, improvements are needed to the mechanisms and technical provisions in their implementation. In general, the author agrees with the suggestions and recommendations regarding the effectiveness of the electoral system from Puspooyo (2019), that:

1. Innovation of political institutions so they can operate within the framework of public participation
2. Emancipation and participation as a process of equalizing opportunities for citizens in formulating public policies, including in the process of political participation
3. Understanding the importance of living in a civilized country, so that political culture becomes important for perfecting political institutions so that political institutions become more democratic and civilized.

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