

A Juridical Review of the Open Proportional System in the 2024 General Election

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ABSTRACT

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*Election,
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The emergence of the petition for judicial review of Case Number 114/PUU-XX/2022 against Law Number 7 of 2007 concerning General Elections has raised the political temperature of the country. The petitioners argued that the open proportional system was contrary to the 1945 Constitution and should therefore be replaced with a closed proportional system. The petitioners, who are political party officials, feel that the open proportional system has harmed their constitutional rights. This study aims to determine the extent to which the implementation of elections using an open proportional system can make the implementation of elections more democratic or, on the contrary, has created corrupt elections. A better alternative electoral system needs to be encouraged to realise a higher quality democracy. In general, the research method used in this research uses normative research by prioritising literature studies. The study is directed to be able to answer various problems that have been formulated as problem formulations. The result of this research is that elections with an open proportional system in reality cause rampant *money politics*, this is as a result of the intense internal competition of political parties. Therefore, it is necessary to encourage alternatives to make changes to the electoral system. The benefits of this research are expected to provide input to all stakeholders in elections, both the House of Representatives of The Republic of Indonesia (DPR RI), the Government, election organisers and political parties.

ABSTRAK

Kata Kunci:
Perjanjian
Lisensi, Merek
Dagang,
Tanggung
Jawab
Hukum,
Sistem
Waralaba

Munculnya permohonan uji materiil Perkara Nomor 114/PUU-XX/2022 terhadap Undang-Undang Nomor 7 tahun 2007 tentang Pemilihan Umum cukup menghangatkan suhu politik tanah air. Para pemohon berpendapat, pemilu dengan sistem proporsional terbuka bertentangan dengan UUD 1945 dan oleh karenanya harus diganti dengan sistem proporsional tertutup. Pemohon yang merupakan pengurus partai politik ini merasa bahwa sistem proporsional terbuka telah merugikan hak konstitusinya. Penelitian ini bertujuan mengetahui sejauhmana pelaksanaan pemilu dengan menggunakan sistem proporsional terbuka dapat menjadikan pelaksanaan pemilu lebih demokratis atau justru sebaliknya telah menciptakan pemilu yang koruptif. Alternatif sistem pemilu yang lebih baik perlu didorong untuk mewujudkan demokrasi yang lebih berkualitas. Secara umum metode penelitian yang digunakan dalam penelitian ini menggunakan penelitian normatif dengan mengutamakan studi pustaka. Studi diarahkan untuk dapat menjawab berbagai problematika yang sudah dirumuskan sebagai rumusan masalah. Hasil penelitian ini adalah, pemilu dengan sistem proporsional terbuka dalam realitasnya menyebabkan maraknya money politics, hal ini sebagai dampak dari terjadinya persaingan internal partai politik yang begitu ketat. Oleh karenanya perlu didorong alternatif untuk melakukan perubahan sistem pemilu. Manfaat dari penelitian ini diharapkan dapat memberikan masukan kepada semua pemangku kepentingan dalam pemilu, baik Dewan Perwakilan Rakyat (DPR RI), Pemerintah, penyelenggara pemilu maupun partai politik.

1. INTRODUCTION

The emergence of the petition for judicial review of Case Number 114/PUUXX/2022 against Law Number of 2007 on General Elections has raised the political temperature of the country. As a legal debate, the lawsuit is natural, because the law always works in two sides, namely to guarantee and ensure the operation of legal order, but at the same time to protect the interests of society and the rights of individual freedom (Asshiddiqie, 2022). However, for most political parties this judicial review came as a surprise. In fact, there was almost no debate beforehand and political parties tend to be comfortable using this system. It is proven that the General Election Law, which is usually quite dynamic, is revised ahead of the election stages, political parties compactly use Law Number 7 of 2017 (Election Law), to regulate the 2024 elections.

According to the petitioners, the arrangement of a proportional system with an open list is contrary to the provisions of the constitutional norm, where the election participants are political parties (Saifulloh, 2022). However, the role

of political parties is distorted in an electoral system where the winning candidate is determined based on the majority vote of the candidates. The open proportional system has also led to unhealthy competition that emphasises aspects of popularity and capital strength in the electoral process.

Kompas (2023) reported that eight political parties, namely, the Golkar Party, Gerindra, Nasdem, National Awakening Party (PKB), Democrat, Prosperous Justice Party (PKS), National Mandate Party (PAN) and United Development Party (PPP) moved quickly to respond to this situation. They gathered and agreed to reject the discourse on changing the electoral system from an open proportional to a closed proportional system. Only Indonesian Democratic Struggle Party (PDIP) was not present and actually supported the discourse of returning to a closed proportional system (Hendarto, 2023).

It is very important to use this momentum to conduct a study of the advantages and disadvantages of the two systems. Moreover, the implementation of elections using an open proportional system also contains many weaknesses that need to be evaluated (Subekti, 2015). Some of the weaknesses that tend to be overlooked include the complexity of voters in exercising their rights during the voting process, election organisers who are overworked due to the complexity of the vote counting process in simultaneous elections and the rampant money politics that is almost uncontrollable. This massive money politics has violated the principles of free and fair elections, so a solution needs to be found so that the quality of democracy can be improved (Goodwin-Gill, 2006). Money politics has also resulted in the destruction of community morals (Feinig, 2022). Because bribery is no longer a criminal act, it follows the mindset of a society that is starting to be permissive and considers everything to be normal.

However, any decision to be made by the Constitutional Court must be prepared in anticipation of a better election. Each electoral system chosen will have its own advantages and disadvantages. A wise attitude from policy makers is very important to realise a better democratic system.

2. RESEARCH METHOD

In determining the research method, it is considered important, because there is a close relationship between the type of research and systematics and methods. As well as data analysis in order to achieve a high validation value of both the data collected and the final results of the research (Suratman & Dillah,

2013). This type of research is normative legal research. In normative legal research, it explains that library materials are basic data which in (science) research are classified as secondary data (Soekanto, 2012). The approach used is the *statute approach*, namely by examining the laws and regulations relating to the legal issues under study (Marzuki, 2011). This research focuses on regulations governing elections that use a proportional system with an open list. Data analysis in this research uses a qualitative method. The qualitative method is to describe the data in the form of sentences that are regular, logical, and do not overlap (Sugiono, 2010).

3. RESULTS AND DISCUSSION

Democracy is essentially an understanding of the principle of popular sovereignty, which is simply defined as a government by the people, from the people and for the people (Firdaus, 2011). In our country, the essence of democracy is outlined in the 1945 Constitution Article 1 Paragraph 2 whose text reads as follows: "*Sovereignty is in the hands of the people and is exercised according to the Constitution*". Article 1 Paragraph 2 is the result of the 3rd amendment of the 1945 Constitution.

One of the procedural manifestations of democracy is elections, where elections are basically a means to build democratic political institutions. This means that elections are actually held to ensure that the process of competition and change of power can run safely, peacefully and professionally. Therefore, various regulatory and ethical tools must be built to ensure this goal, so that elections will not only be able to take place honestly and fairly, but also be able to produce new leaders who are credible, trusted by the community, and able to solve various national problems.

The choice of elections as a system to manage the succession of political leadership, according to Kristiadi, is actually not because it is the best system, but because other existing systems are considered worse. These other systems include authoritarian, military, oligarchic, revolutionary and others (Huda, 2017). This is because there is almost no guarantee that the systems mentioned can be run safely, fairly and professionally and that violence is minimised. Therefore, although elections always have a connotation of being wasteful, complicated, complex and inefficient, they are still the main choice in various countries including Indonesia. Meanwhile, Fattah said that elections are a means, not an end. They are held to give people the opportunity to decide who

is worthy of holding their mandate to become public officials (members of the House of Representatives (DPR), Regional People's Representative Council (DPRD), and Regional Representative Council (DPD), as well as the President-Vice President). Elections are the best way and there is no other alternative (Chandra & Ghafur, 2020).

Indonesia has held elections 12 (twelve) times, once during the old order in 1955, six times during the new order in 1971, 1977, 1982, 1987, 1992 and 1997, while in the post-reform era it has been held 5 times, namely 1999, 2004, 2009, 2014 and 2019. Like a pendulum that keeps moving left and right, it is always looking for a balance point, so is the electoral system used in organising the election, it also keeps moving to find the most ideal point. Historically, a closedlist proportional system was applied in the Old Order elections, all elections of the New Order era and once in the post-reform era, namely in the 1999 elections. The 2004 elections used a semi-open proportional system, while the 2009, 2014 and 2019 elections used a pure open proportional system.

This pure open proportional system was tested through Case Number 114/PUU-XX/2022, in which the applicant argued that the norms governing the open proportional system that prioritised the highest number of votes in the election of candidates for DPR/DPRD members deviated from the intent of the norms determined by the Constitution, where the election participants were political parties. However, the role of political parties is distorted in an electoral system where the winning candidate is determined based on the highest number of votes. The open proportional system has also led to unhealthy competition that emphasises popularity and capital strength in the electoral process. This has caused pure cadres from political parties who struggle on a daily basis to manage political parties to lose competition with newcomers who have strong capital even without ideology and special ties to the party.

The implementation of democracy cannot be separated from general elections, because general elections are a logical consequence of the principle of popular sovereignty in the life of the nation and state. The basic principle of democratic state life is that every citizen has the right to actively participate in the political process. The importance of elections as a means of exercising popular sovereignty can be traced from the beginning of the establishment of the Republic of Indonesia until now (Jaang, 2023).

Lijphart in (Gaffar, 2005) defines the electoral system as a set of methods or ways for citizens to elect their representatives. Furthermore, he also said that

the things that really need to be considered in preparing the electoral system are as follows: *First*, what is called the electoral formula, namely whether to use a district system or a proportional system with various variations. *Second*, the district magnitude, which is the number of people's representatives elected in a district. While the third thing is the electoral threshold, which is the minimum amount of support that must be obtained by a person or political party to obtain seats in representative institutions.

Meanwhile, according to (Budiardjo, 2008), in general, the existing electoral systems in this world can be classified into 2 (two) types, namely the district election system and the proportional election system. In detail, the two systems can be explained as follows:

1. District system: is where one electoral district elects one representative to the legislature. For this purpose, the territory of the country is divided into a number of districts equal to the number of representatives designed. This system has several disadvantages, namely: *Firstly*, it does not take into account small parties and minority groups, especially when they are scattered in various districts. *Secondly*, this system is less representative, candidates who lose in the district will lose the votes that support them. The advantages of this system are: *Firstly*, the elected representatives can be recognised by the residents of the local districts and thus have a close relationship with them. *Secondly*, this system encourages more integration of political parties because there is only one seat in each district. *Thirdly*, the reduction in the number of parties will facilitate the formation of a stable government and increase national stability.
2. Proportional system: a single electoral district elects several representatives. The basic idea is that the number of seats obtained by a group or political party corresponds to the number of votes obtained. The disadvantages of this system are: *First*, it facilitates party fragmentation and the emergence of new parties. *Secondly*, elected representatives feel more attached to their parties than the people who elected them. *Thirdly*, the number of parties will make it difficult to form a stable government.

There are various names to refer to the electoral system that applies in the world, for example, proportional system and district system, *single member*

constituencies system and *multi member constituencies system*, there are also *closed list system* and *open list system* (Pahlevi, 2014). *Single member constituencies system*, known as the one-member district system, while *multi member constituencies system* is a *multi-member district system*. The names of the systems mentioned above are highly dependent on the dimension or perspective from which the electoral system is viewed.

District and proportional systems are usually seen from the dimension of electoral districts, whether to use administrative areas or based on the population in a particular area. Meanwhile, *single member constituencies* or *multi member constituencies systems* are usually seen from the dimension of the number of candidates determined whether single or plural. Those who look at electoral systems from the dimension of nomination usually call *open list systems* for elections with open lists of candidates and *closed list systems* for elections with closed lists of candidates. We cannot say that any of the above is the best. This is because the best measure depends on the sociological and political conditions of the society concerned.

However, according to (Santos et al., 2015) the decision to choose an electoral system is often influenced by one of two things:

1. Political actors lack sufficient information and knowledge so that the various forms and consequences of an electoral system are not fully known, or vice versa;
2. Political actors use their knowledge of electoral systems to propose a particular electoral system, which they believe will benefit their side.

In Indonesia, various forms of electoral systems have been tried, closedlist proportional systems have been used for the old and new order elections, as well as once in the post-reform elections, namely the 1999 elections. Closed proportional system with the characteristic of choosing only the party's image sign. The 2004 election was the starting point for change, when an open-list proportional system was used for the first time. This means that the public can determine and choose the candidates who will represent them in the existing representative institutions. This open-list proportional system is expected to be an aspirational election format and produce more reliable representatives. In this system, because it is the people who decide, only people who are known and trusted by the constituents will be elected. That is, people who are close and with a good reputation. This is where a person's track record becomes very

decisive. Thus, an open-list proportional electoral system is considered better for democracy. Not buying a cat in a sack, was one of the strong demands that echoed at that time before the 2004 elections were held.

The results of the 2004 elections were far from what was expected, with the public's desire to choose their own candidates failing miserably. This was due to the provisions in determining elected candidates. The determination of elected candidates for members of the DPR, Provincial DPRD, and Regency/City DPRD is based on the acquisition of seats of Political Parties participating in the elections in an Electoral District, with the following provisions:

1. The name of the candidate who reaches the number of voter dividers (BPP) is determined as the elected candidate.
2. The name of the candidate who does not reach the BPP number, the determination of the elected candidate is determined based on the serial number on the list of candidates in the electoral district concerned. In reality, there are almost no legislative candidates who are able to reach the BPP number, so all the determination of elected candidates is based on the candidate's serial number.

Various problems in the 2004 elections were attempted to be corrected in the 2009 elections, especially in the determination of elected candidates. The technical variable provisions of the formula for determining elected candidates were revised and set out in Article 214 of Law Number 10 of 2008 on General Election of Member of the House of Representatives, Regional Representatives Council, and Regional People's Representatives Council, which stipulates that elected candidates are prioritised for candidates who obtain more than 30% of the Electoral Divisor Numbers (BPP), if there are no candidates who obtain more than 30% of the BPP, then elected candidates are determined based on serial numbers. However, before this paragraph had been implemented, the Constitutional Court had abolished Article 214 and declared it no longer applicable in the 2009 Legislative Elections. According to the Constitutional Court, the most democratic way to determine elected candidates is based on the majority vote. So it can be said that the implementation of elections with a pure open proportional system can only be implemented starting in the 2009 elections.

In practice, the implementation of elections with an open proportional system faces several problems, and people's hopes for democratic elections need to be postponed. A new phenomenon has emerged, namely the intense competition between internal candidates within 1 (one) political party. Any candidate with any number has the same chance of being elected as a member of the legislature if they get the most votes. Many unpopular candidates use all efforts to obtain votes from the public, including pouring in some funds. *Money politics* eventually emerged as a new plague that harmed the political process. The relationship between candidates and voters turns into a complicated relationship pattern, which is a kind of negative mutualism, or a relationship that uses each other and blackmails each other for momentary interests.

According to (Sapardiyono, 2015), the mode of *money politics* can be done in several ways as follows:

1. Using the campaign door of face-to-face meetings or limited meetings. The candidates introduced themselves and at the same time conveyed their vision and mission if elected as legislative members as well as distributing campaign props. After the meeting ended, each participant was given transport money, which varied in size.
2. By way of direct assistance, candidates provide direct assistance according to the results of negotiations with residents. Assistance can be in the form of cement for building materials, generators, wireless for loudspeakers, or it can also be a set of tents, the point is what needs are requested by residents.
3. By direct fire, we mean the terms commonly used in this method, such as dawn attack or dawn attack, but the most popular is bitingan. Bitingan is derived from the Javanese word biting, which means stick. One biting is one stick or one vote, one vote is worth a certain rupiah.

This third mode was most prevalent in the 2014 and 2019 elections, where people no longer cared about the track record of each candidate. Perhaps people no longer care about elections because whoever becomes a legislative member at any level, and from any party is the same. Politicians in all parties and at all levels commit corruption in congregation. This condition makes it difficult for the community to give *reward and punishment*, finally anyone who offers a certain amount of money will be elected, no matter which party they come from. The practice of *money politics* that has been so open, massive and

structured is impossible not to be known by election organisers. Bawaslu, which has devices up to the village level, certainly knows this. However, it turned out that they were helpless, the candidates and the community covered and protected each other, making it difficult to find evidence.

This reality has resulted in the open proportional electoral system becoming a very expensive electoral system in the history of elections in Indonesia. The high political costs of winning seats in the DPR and DPRD have led to corrupt behaviour among politicians, especially those who have been elected and sit in the DPR and DPRD. In the post-election period, political corruption committed by politicians has become stronger, partly because the political costs incurred during elections are not proportional to the income they receive during their tenure as politicians.

The election of legislative candidates with an open proportional system actually needs to be reviewed in depth whether it is effectively used in order to improve the quality of democracy in Indonesia, while the system has the disadvantage of causing the rampant practice of *money politics* which causes people to choose legislative candidates not based on quality but the ability to buy votes.

The closed proportional system is one of the options to reduce the practice of *money politics* so that transactional transactions that occur every election season do not occur. Although this system is also considered not to be able to erase *money politics* on all fronts. *Money politics* may only move into the hands of political party leaders to determine who will occupy the first serial number and so on. However, at least it can eliminate *money politics* at the grassroots, so that people are no longer involved in the process of deceit with the candidates.

The closed proportional system is also considered more suitable for the method of holding simultaneous elections. In Indonesia, simultaneous elections have only been held once in the 2019 elections. This simultaneous election made it more complicated for the officers to count the votes, especially at the polling stations (TPS), the polling station officers had to count 5 (five) different types of ballots and also the most complicated was to count the votes of each political party along with all the candidates. The exhaustion experienced by the polling station officers led to many deaths. The closed proportional system will make it easier for all officers in the vote counting process, because only the votes of each party are counted, so the time needed will be shorter.

On Thursday 15 June 2023, the Constitutional Court (MK) issued a decision on a petition to review Elections Law, Case Number 114/PUU-XX/2022: 114/PUU-XX/2022. The essence of this decision is to reject the petitioners' request for provision. The Petitioners essentially argued that the elections held with an open proportional system had distorted the role of political parties. With the rejection of this petition, the 2024 elections for members of the DPR and DPRD will continue to use a proportional system with open lists.

According to the Court, an open-list proportional electoral system is closer to the electoral system envisaged by the 1945 Constitution. However, conceptually and practically, any electoral system chosen by the legislator, whether it is a proportional system with open lists or with closed lists, even the district system, still has its own advantages and disadvantages. Therefore, as a choice of lawmakers, it remains open to the possibility of being adjusted to the dynamics and needs of organising elections.

With the issuance of the Constitutional Court's decision, it is clear that the system that will be used in the 2024 elections will continue to use a proportional system with an open list. Various kinds of problems that occur in organising elections such as *money politics* and the complexity of the vote counting process are likely to occur again. KPU and Baswaslu need to work hard to reduce every possible opportunity for fraud, which will automatically reduce the democratic level of the election. In the future, the DPR also needs to be encouraged to review the alternative of holding elections with a closed proportional system, if the open system of the 2024 elections turns out that the principles of elections such as direct, general, free, secret, honest and fair are violated due to the rampant uncontrolled *money politics*.

4. CONCLUSION

In reality, the open-list proportional system has many disadvantages, including the rise of *money politics* due to intense internal competition and the complexity of the vote counting process. A closed-list proportional system should be encouraged to close the gap on *money politics* and make the vote counting process easier. This system is more suitable for simultaneous elections.

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