

Comparison Analysis of Open and Closed Proportional Election Systems in the Perspective of State Law in Indonesia

Samantha Elizabeth Fitzgerald¹ Nathanael Telaumbanua² Rasji³

Faculty of Law, Universitas Tarumanagara, West Jakarta City, Province of DKI Jakarta, Indonesia^{1,2,3}

Email: samantha.205210147@stu.untar.ac.id¹ nathanael.205210148@stu.untar.ac.id²
rasji@fh.untar.ac.id³

Abstract

The development of elections in Indonesia has two systems, namely, closed proportional system and open proportional system. Both electoral systems have their own advantages and disadvantages. The implementation of both electoral systems has significant legal and political implications in the context of state law in Indonesia. This background explanation illustrates the existence of legal problems related to the electoral system in Indonesia and the legal implications of the application of each electoral system. The research used in this research is a combination of conceptual approach with comparative approach. The comparative analysis of open and closed proportional electoral systems in the perspective of state laws in Indonesia is conducted. It can be concluded that the implementation of an open or closed system cannot be viewed as a single solution to all legal problems in the country. Decisions on the most suitable electoral system for Indonesia must consider aspects of democracy, political participation, justice, and political stability. The selection of the right electoral system will have significant implications in building a democratic and effective political system.

Keywords: Proportional System, Electoral System, Indonesia.



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INTRODUCTION

The position of President is the highest position in executive power in the Indonesian government system. Along with the four amendments to the 1945 Constitution, the presidential institution has undergone a significant transformation, affecting the election mechanism, position, authority and termination. This change is in line with the importance of the electoral system in maintaining the principles of democracy and political participation in Indonesia. Election itself is a *conditio sine quanon* for a modern democratic country, meaning that the people choose someone to represent them in the context of people's participation in the administration of state government, as well as a series of political activities to accommodate the interests or aspirations of the people (Andayani, et al: 2017). However, elections are not just a series of political activities, but are also an effective means of measuring the level of legitimacy of power obtained by leaders based on the participation of all levels of society. The success of democracy can be assessed through the level of public participation in elections, which reflects the extent to which citizens are actively involved in determining the direction and goals of the country's politics. More than that, political participation has an important role in increasing awareness of rights and obligations, creating a sense of responsibility for both the rulers and the people, and strengthening the foundations of democratic governance by broadening political understanding and insight.

There are several reasons underlying the need to hold regular general elections, namely (Asshiddiqie: 2016):

1. First, people's views and aspirations towards various aspects of common life are dynamic and continue to evolve over time. In a certain period of time, there may be a change in the majority of people in their opinions regarding state policies.

2. Second, in addition to changes in people's views, people's living conditions can also change both due to dynamics at the international level and internal and external factors within the country.
3. Third, changes in people's aspirations and opinions can also occur due to the increase in population and adult generations. Especially new voters or first-time voters, they may have different attitudes from previous generations, including their parents.
4. Finally, regular elections are important to ensure a change of leadership of the country, both at the executive and legislative levels.

In recent decades, the debate about open and closed proportional electoral systems has become a major concern in the context of state law. With the condition of Indonesian society that is very plural or heterogeneous with a fairly dense population with various backgrounds. To maintain this, a wise and able government is needed to be a representative of a heterogeneous society, both geographically and ideologically. One way to get leaders in government both in the Executive and Legislature who can be representatives of the Indonesian people is to conduct *General Elections*. General elections can also be an instrument to maintain people's sovereignty as a form of developing democracy after Indonesia's reforms. In Indonesia's pluralistic situation with high complexity in people's lives, elections are indispensable to find leaders with integrity to the people. In the development of elections in Indonesia has two systems, namely closed proportional system and open proportional. Indonesian elections have been held 12 times, the first election was implemented in 1955, after which its implementation was carried out constantly in 1971, 1977, 1982, 1987, 1992, 1997. After the end of the Suharto era, elections were held again in 1999, 2004, 2009, 2014, and finally in 2019. From 1971 to 1999 the electoral system used a closed proportional system. It then underwent little post-reform change in 2004 with a limited open proportional system. The open proportional system was only implemented in the 2009 elections, with the Constitutional Court Decision Number: 22-24/PUU-VI/2008.

The current open proportional election system is regulated in Article 168 Paragraph (2) of Law Number 7 of 2017 concerning Elections: "Elections to elect members of the DPR, provincial DPRD and district/city DPRD are carried out with an open proportional system". Currently the open proportional system is in the stage of examination in the Constitutional Court (*Judicial Review*), to be replaced again by a closed proportional system in legislative elections. However, it will be debated if the Supreme Court approves the use of a closed proportional system at the time of the 2024 general election because the closed proportional system is considered a system that illustrates a setback because this system is a relic of the new order. The government has announced the schedule for the election and regional elections to be held simultaneously in 2024. In accordance with PKPU No. 3 of 2022, voting will be held on Wednesday, February 14, 2024. This background explanation illustrates the existence of legal problems related to the electoral system in Indonesia. Therefore, researchers are interested in discussing several problem formulations, which are as follows.

Issues: What is the fundamental difference between open and closed proportional electoral systems? What are the legal implications of the application of each electoral system in the perspective of state law in Indonesia?

RESEARCH METHOD

The research method used in this paper is a normative legal research method. Normative legal research itself is legal research that puts law as a structured system of norms. The approach used in this research is a combination of conceptual approach with comparative approach. Secondary data obtained from literature studies are used to analyze and compare

open and closed proportional electoral systems. Thus, through research that has been conducted, researchers can explain how the impact of implementing an open and closed proportional election system in Indonesia.

RESEARCH RESULTS AND DISCUSSION

Differences between Open and Closed Proportional Electoral Systems

A closed proportional electoral system can also be referred to as a *multi-member constituency* electoral system or a balanced electoral system. An open or closed proportional electoral system is an electoral system in which the seats available in the central parliament to be contested in a general election are distributed to political parties or socio-political power organizations participating in the election according to the balance of votes obtained in the election. For example, the number of valid voters in a general election is 10,000,000 people and the number of seats in the people's representative body is determined at 100 seats, meaning that for one representative the people need 100,000 votes. To determine the number of seats in each constituency is usually determined by the number of residents who take part in an election. For instance, a constituency, because the population is quite dense, the number of representatives is set at 10 people where each seat must get 20,000 votes. After the election was held, it turned out that only 180,000 valid votes were cast. Thus, to get one seat requires 18,000 votes. Therefore, the minimum required vote income depends on the number of votes obtained by each political party that participates in the general election.

The proportional electoral system has advantages including:

1. There are so few votes wasted, that in a proportional electoral system no votes are wasted, if there is an excess of votes from the minimum voting revenue that has been set for one legislative candidate then the excess votes will be transferred to another legislative candidate.
2. The proportional system is very democratic, because no vote is wasted, in other words every vote cast.
3. All political parties or socio-political power organizations participating in the general election will have representation in the national representative body.

Although proportional systems have advantages, proportional systems also have disadvantages:

1. The proportional system facilitates party fragmentation and the emergence of new parties, but for Indonesia this weakness seems to have been anticipated by Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council.
2. Judging from the relationship between voters and people's representatives in the people's representative body becomes less close, because in general elections voters only choose political parties and voters do not know who their representatives are actually from their regions. In other words, voters only choose the political party's image sign (Closed Proportional System).
3. The power of political parties is very large, because ultimately what determines who the candidates are is the central leader of the political party concerned, so that legislative candidates elected by the central leader of the political party give their loyalty to the central leader of the political party rather than to the interests of the people so that the aspirations of the people cannot be channeled and fought.
4. The vote count is very convoluted.
5. Expensive cost.

6. People's representative institutions do not purely build the interests of the people because in one region there are three to four or even four to five people's representatives.

Open and closed proportional electoral systems have fundamental differences in terms of the mechanism of election and determination of elected candidates. In an open proportional electoral system, voters have complete freedom to choose candidates individually, without having to consider political parties. In this case, voters can vote directly to the candidate they deem most qualified or best suited to their political preferences. Meanwhile, in a closed proportional electoral system, voters cast ballots for a political party, and the elected representatives of the political party are then determined based on the order of candidates predetermined by that party.

The advantage of an open proportional electoral system lies in giving voters the freedom to choose candidates individually. In this system, voters can choose candidates based on their personal qualities, political track record, or vision of the desired representative. In addition, an open proportional electoral system can also allow the emergence of independent candidates who are not affiliated with a particular political party. This can increase representation and political pluralism within representative institutions. However, the open proportional electoral system also has its drawbacks. Since voters have the freedom to choose individual candidates, it is possible for voters to be split among many candidates, which can reduce the proportionality of seat gains. In addition, with independent candidates, the risk of fragmentation and fragmentation of political parties also increases, which can reduce political stability.

On the other hand, a closed proportional electoral system gives a more dominant role to political parties in determining the elected candidates. In this system, political parties determine the order of candidates based on established party policies or internal processes. The opportunity to succeed in any struggle of highly diverse interests depends on the level of togetherness within an organization. That is why the advantage of this system is higher political stability, because political parties have greater control over the composition of their representatives. In addition, with this mechanism, political parties can more easily coordinate their political programs and platforms. However, the closed proportional electoral system also has its drawbacks. Reliance on political parties in determining elected candidates can reduce individual political participation and ignore voters' preferences for certain candidates. In addition, the system is also vulnerable to the policies of party elites that can influence the democratic process. If political parties ignore equal representation or reflect the interests of society, this system can reduce public trust in representative institutions.

Table 1. Differentiations Between an Open and a Closed Proportional Election System

Differentiating Points	Open Proportional Election System	Closed Proportional Election System
Implementation	Political Parties submit lists of candidates that are not arranged by sequential number and without a number in front of the name. (Alphabetical or lottery only).	Political parties submit lists of candidates arranged by sequence numbers determined by political parties.
Voting methods	Voters can choose one of the candidates' names or vote for one of the political parties.	Voters choose a political party
Determination of selected candidates	By most votes	Based on sequence number. If the party gets two seats, then the elected candidates are numbers 1 and 2
Degree of representation	Have a high degree of representation because voters are free to choose their representatives who will sit in the	Less democratic because the people cannot directly elect their representatives who will sit in the

	legislature directly, so that voters can continue to control the people they choose.	legislature. The choice of political party is not necessarily the choice of the voter.
Degree of equality of candidates	It is possible to have a cadre that grows and grows from below and wins because of the support of the masses.	Dominated by cadres who are entrenched to the top because of their closeness to the political party elite, not because of mass support.
Number of seats and list of candidates	The party gained seats proportional to the votes obtained.	Each party presents a list of candidates with more than the number of seats allocated to a single constituency or electoral district.
Advantage	<ol style="list-style-type: none"> 1. Encourage competing candidates in mobilizing mass support for victory. 2. Establishing closeness between voters and those elected. 3. Legitimacy between legislative candidates and voters. 4. Removing nepotism 5. Strong legitimacy 6. Strengthening the representation system in the DPR 7. The name of the DPR/DPRD candidate is offered to voters so that the people know who is their representative 	<ol style="list-style-type: none"> 1. Make it easier to fulfill the quota of women or ethnic minority groups because political parties determine their legislative candidates. 2. Able to minimize the practice of money politics and political corruption. 3. Political parties as the power of ideas. 4. Strengthen the responsibility of political parties. 5. Easily assess the performance of political parties.
Disadvantage	<ol style="list-style-type: none"> 1. The chances of money politics happening are very high. 2. Requires considerable political capital, systematic collusive corruption 3. The complexity of counting the results of the vote. 4. It is difficult to enforce gender and ethnic quotas. 5. Political contestation became liberal. 6. There is no standard of candidacy qualification. 7. Political parties lack ideas, there is deparpolisation. 	<ol style="list-style-type: none"> 1. Voters have no role in determining who is the representative of their party, because the name of the DPR / DPRD candidate is stored by the political party so that the people do not know who will be the people's representative. 2. Unresponsive to rapid changes. 3. Distancing the relationship between voters and people's representatives after the election. 4. Relying on oligarchy and nepotism. 5. Candidates for people's representatives are less aspirational. 6. Political education is reduced.
Implementing Country	Austria, Netherlands, Belgium, Brazil, and others.	South Africa, Argentina, Israel, Bulgaria, Ecuador, and others.
Its Application in Indonesia	2009, 2014, and 2019 legislative elections.	1955 elections, New Order elections, and 1999 elections.
Election System	Voters only choose political parties	Voters can choose: Party or name of candidate or party and name of candidate

Legal Implications of the Implementation of Open and Closed Proportional Election System in Indonesia

General elections have until now been recognized as legitimate democratic institutional instruments and become parameters for the working of a democratic political system so that the voice or will of the people becomes the basis for determining legislative and executive public officials. Since 1955 elections have been implemented in Indonesia using a proportional system. Basically, both the open proportional system and the closed proportional system have been implemented in Indonesia, the closed proportional system was used in the 1999 and 2004

elections, while the open proportional system was used in the 2009, 2014, and 2019 elections. After 2004, the open proportional system became a contradiction of the closed proportional system. An important aspect of implementing an open proportional system is to limit the control of political parties in determining the structural circulation of the legislature, in order to achieve people's sovereignty, candidates for legislative members can come into direct contact with the people, and the people can know and choose who the people expect to be representatives of the people in parliament. Another case with a closed proportional system where the people can only see the picture of the political party on the ballot and the people only choose which political party will field their legislative candidate to sit in parliament, so that the people cannot know who the party chooses to be the people's representative based on the order of numbers that have been determined by the internal political party so that the loyalty of legislative candidates or candidates for people's representatives is more inclined to The interests of political parties because those who have determined the order of candidates for people's representatives are at the top is the head of the political party.

In the 2009 elections, it is hoped that the proportional system can bring fair implications, so that the elected legislative candidates have more representative integrity and much stronger legitimacy because those who are entitled to seats in parliament are legislative candidates who get the most popular support. But after running from 2009 to 2019, the proportional system has not escaped from various problems. The implications are the opposite of what is expected: campaign costs are becoming expensive, the integrity of candidates and voters is at stake with the rise of *money politics*, political polarization, identity politics, and the costs incurred by the state are numerous. In this system, it allows only candidates who have large capital to be competitive in elections and even if they are not party cadres who are close to their political party as long as they have capital can compete for seats in elections.

Compared to the 2009 election, using an open proportional system, the 2014 election is estimated to cost much more campaigns, the 2009 election cost around 3.3 billion and in 2014 it rose to 4.5 billion and only the 'capable' people can compete with such capital. It is possible that these 'capable' people are not necessarily people who are experts in the field of Indonesian statehood, even the Center for Political Studies of the University of Indonesia (PUSKAPOL UI) noted that more than half of the legislative candidates who contested for parliamentary seats in the 2014 election or around 58.86% were businessmen or professionals. And in 2019, the campaign costs of legislative candidates reached tens of billions for the budget, campaign tools, and others with the aim of seizing people's day.

In the 2019 election, an open proportional system is implemented simultaneously with the presidential and vice presidential elections, where an election system regulated in the Law must have implications that will have consequences on the technical implementation of each stage of the election both in terms of administrative requirements, procedures, time, implementing personnel, facilities, budgets and support from other institutions. The hope of implementing an open proportional system is that people no longer vote for cats in sacks, because people know the identities of legislative candidates listed on the ballot and from the opening of legislative candidates on the ballot, the people can also recall the *track record* of legislative candidates. So that when elected, *accountable political relationships can be established*) between the people and the people's representatives.

General elections will be held again in 2024, but are still waiting for legal certainty from the results of the Constitutional Court's decision on which proportional system will be used. Article 168 of Law Number 7 of 2017 concerning General Elections is being tested in the Constitutional Court, because it is considered unconstitutional with Article 22E Paragraph 3 of the 1945 Constitution which states that election participants are political parties.

The results of Kherid's (2021) research show that closed proportions are more ideal to be applied with several improvements with notes:

1. In a closed proportional electoral system, only political parties vote. The list of Legislative Candidates is not contained in the voting, but is shown or displayed on the Polling Station board, so that people can see and consider starting from the performance and *track record* of the candidate they want before choosing a political party so as not to vote for a cat in a sack. This concept can also reduce logistics costs and simplify vote counting, as well as a middle ground between an open proportional system and a closed proportional system. So that this concept can have a good impact, there is no more competition for votes between candidates in one political party, no more buying and selling votes, no chance of instant candidates relying on counter-democratic elements to win parliamentary seats.
2. Each legislative candidate needs to pass an open survey or public test regionally in each constituency. So that it can open opportunities for anyone who wants to run as a legislative candidate, and can close the oligarchy gap and remove closed candidate determination and who take advantage of closeness with political party officials. This concept creates transparency to the people regarding the performance of legislative candidates, so that voters can also get to know their candidates further, not only during the campaign period.
3. The determination of legislative seats in parliament is left entirely to political parties: whether to use sequential numbers or rankings based on qualities that political parties think are the best, a track record of integrity, or certain qualifications. Seat assignment. As Kherid (2021) reviews from the meaning of Article 22E Paragraph (3) of the 1945 Constitution, seat determination is the right of political parties so that political parties should be in direct contact with voters, not candidates. The public can also assess the extent to which democratic mechanisms work in one political party in determining who sits in parliamentary seats.
4. By choosing a political party, the legislator's responsibility is entirely under the political party, so political parties will compete to place candidates who are truly electorally favorable to political parties. Otherwise, simultaneous elections as electoral courts will prove it. People can "judge" corrupt and underperforming political parties by not voting for them.
5. The calculation method was returned to the Hare Quota because it fit into a closed proportional system that only selects political parties.

The implementation of an open and closed proportional electoral system has significant legal implications in the context of state law in Indonesia. In an open proportional electoral system, legal protections of individual political rights, such as the right to vote and be elected, must be strengthened. A transparent, honest, and fair candidate selection mechanism must be guaranteed to ensure public confidence in the electoral process. In addition, legal regulations governing elections need to provide clarity on candidacy procedures and electoral mechanisms applicable in open proportional election systems. Meanwhile, in a closed proportional electoral system, legal aspects relating to the internal policies of political parties become important. Clear and unequivocal political party laws should regulate the mechanism of determining candidates and the order of candidates applicable in this system. In this regard, legal protection of political parties and party members must also be observed to prevent abuse of power or violations of internal party democratic principles.

In addition, in both electoral systems, legal arrangements related to election campaigns, election supervision, and sanctions for electoral violations must also be considered. Strong and effective electoral laws can ensure electoral integrity, encourage active political participation, and safeguard democratic principles in the political system. However, keep in mind that the

implementation of an open or closed proportional electoral system cannot be viewed as a single solution to all legal and political problems in Indonesia. There needs to be an in-depth study and discussion involving various stakeholders to evaluate the existing electoral system and find the best solution that suits the needs and characteristics of Indonesia.

CONCLUSION

Based on a comparative analysis of open and closed proportional election systems in the perspective of state law in Indonesia, it can be concluded that both electoral systems have their own advantages and disadvantages. Decisions on the most suitable electoral system for Indonesia must consider aspects of democracy, political participation, justice, and political stability. The selection of the right electoral system will have significant implications in building a democratic and effective political system in Indonesia.

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