

Assessing Constitutional Frameworks for Closed Proportional Representation in House of Representatives Elections

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Article history: Received: 21 September 2023, Accepted: 16 November 2023,
Published: 1 December 2023

Abstract: The electoral system in Indonesia has implemented two politically different systems, one of which is the proportional system. This proportional system is also divided into proportional with an open list and proportional with a closed list. The basic idea of a proportional system is that the composition of seats obtained by a political party in an electoral area will be in balance with the proportion of votes received by the political party concerned in the election. Even in this system, only a few votes are wasted. According to the provisions of Article 168 paragraph (2) of Law No. 7/2017, the electoral system for DPR members is open proportional with a majority vote. This system has a good level of representation because the people are free to determine their representatives who will sit in Parliament directly and can continue to supervise those they choose.

Purpose: This research aims to analyze the application of a closed proportional system in the DPR election from the perspective of the 1945 Constitution of the Republic of Indonesia; arrangements regarding the principles of elections in the constitution are regulated in Article 22E of the 1945 Constitution of the Republic of Indonesia.

Design/Methodology/Approach: The type of research used in this research is normative legal research, using statute and conceptual approaches.

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Findings: The results of this research indicate that the application of a closed proportional system is not following the Constitution of the Republic of Indonesia because it will close space for the people to make their own choices directly because in a closed proportional system the determination of who are the candidates for members of the DPR who will sit in parliament is absolute political party wishes.

Originality/Value: Debates about the constitutionality of open proportional and closed proportional systems always fill public spaces, especially before the election. Due to this issue, a fundamental question arises about whether the closed proportional system in the election of DPR members follows the Constitution of the Republic of Indonesia. This issue is the reason for research regarding the general election system for DPR members following the Constitution of the Republic of Indonesia.

Keywords: closed proportional; democracy; election

Paper Type: Article-Research

Introduction

Indonesia is a democratic nation with a republican government. In most nations worldwide, from a philosophical standpoint to practical application, the term "democracy" is well-known and frequently used (Maychellina, Sabina, and Wibisono 2023). Democracy is a popular political system because it is the needs and developments of society and, of course, can lead to the establishment of harmonious social relationships between individuals and the government (Nugroho 2012). The third amendment to the Constitution of the Republic of Indonesia 1945 changed the wording of Article 1 paragraph (2) to "sovereignty is in the hands of the people and is implemented in accordance with the Constitution," recognizing that democracy is a component of peoples' sovereignty. The People's Consultative Assembly (MPR) is no longer the single or complete executor of people's sovereignty, in accordance with the provisions above respecting the new sovereignty. According to Fikri and Ukhwaluddin (Fikri

and Ukhwaluddin 2022), the constitutional mechanism alone is responsible for exercising popular sovereignty. There are two constitutional principles, legal sovereignty, and popular sovereignty, as stated in Article 1 Paragraph (2) of the most recent Constitution of the Republic of Indonesia 1945 (Anwar C 2018).

As far as is currently known, direct democracy is no longer used; instead, indirect democracy, which has representatives in parliament, is currently used extensively. In a representative democracy, political representatives are necessary for the people to decide on policies or establish laws that govern daily life in the state. Direct general elections are one approach to showing that a nation has a democratic system in place (Fikri et al. 2022). Article 22E of the Republic of Indonesia's Constitution provides the legal framework for elections in that country. In addition, six democratic election principles were established, one of which is the general election to choose members of the People's Representative Council (DPR), mentioned in Article 22E, paragraph 2 of the Constitution of the Republic of Indonesia 1945. The Republic of Indonesia's Constitution further explains that "political parties" are "participants in the general election to elect members of the People's Representative Council and the Regional People's Representative Council" in Article 22E, paragraph 3 of its provisions. This unequivocally demonstrates the function of political parties in this context to elect legislators. Political parties serve as a bridge between the public and government agencies (Riqiey, Pramesti, and Sakti 2022). Two politically distinct systems, including the proportional system, were implemented during the evolution of Indonesia's electoral system. It is also separated into two in this proportional system: proportional with an open list and proportional with a closed list. when these two systems were implemented, people's opinions varied (Rahayu et al., 2017).

The fundamental tenet of a proportional system is that the distribution of seats won by a political party in an electoral district will equal the percentage of votes that party garnered during the election. Only a small number of votes are lost even with this technique. According to Article 168 Paragraph 2 of Law No. 7 of 2017 Concerning General Elections (hereinafter referred to as Law No. 7/2017), the voting procedure for DPR members is open proportional with a majority vote. This system has good representation because the populace is free to choose their representatives, who will sit in parliament directly and continue to be under their supervision. The people now have full sovereign power thanks to adopting an open proportional system. Public areas are always filled with discussions about the constitutionality of open proportional and closed proportional systems, especially before election years. This problem raises whether the closed proportional method used to elect DPR members aligns with the Republic of Indonesia's Constitution. Hence, the electoral system used to elect members of the DPR, as mandated by the Constitution of the Republic of Indonesia, serves as the subject of study for this issue. When compared with similar research, discussions about closed proportionals mostly only discuss comparisons between closed proportionals and open proportionals (Azis and Sihombing 2023). Furthermore, some individuals solely engage in analyzing the benefits and drawbacks of adopting a closed proportional system. None of the existing studies on closed proportional systems have examined it from a constitutional standpoint (Kansil and Haga 2023; Pakaya, Katili, and Latuda 2022). Thus, this study examines whether the closed proportional system aligns with the 1945 Constitution of the Republic of Indonesia

Methods

The normative legal research method employed in this study likewise uses two approaches: the statutory approach and the conceptual approach.

Discussion and Findings

Understanding the Dynamics of the Election System in Indonesia

A general election is crucial for a democratic government transfer in a democracy like Indonesia. Elections in Indonesia are used to choose members of the DPR as well as the President and Vice President. As the people's representative, the DPR enjoys privileges and exercised strategic authority. The DPR is a body that functions as a conduit for public aspirations, oversees the executive branch, controls public funds, and creates laws and regulations. According to Law No. 7/2017, the General Election Commission (KPU) chooses candidates for DPR members based on the seats held by the political parties running in the election in the electoral districts chosen based on the number of votes cast. Additionally, this is governed by General Election Commission Regulation Number 5 of 2019 concerning Determination of Elected Candidate Pairs, Determination of Seat Acquisition, and Determination of Elected Candidates in General Elections (hereinafter PKPU No. 5/2019), which states that: election of members of the DPR based on the political party's acquisition of seats and the votes obtained in an open plenary meeting to win the candidate in each electoral district, the selection of candidates in each electoral district, and the election

Indonesia has held 12 (twelve) elections between 1955 and 2019. The electoral system utilized in these eras was a proportional electoral system, which evolved through time. Open proportional voting is now the electoral system in use. Typically, these electoral system developments include: On September 29, 1955, Indonesia held its first election. The people selected various candidates to

serve as DPR representatives, and on December 15, 1955, they chose a constituent assembly. In addition to using Law No. 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council as the legal framework for holding elections, this year's elections saw the introduction of a proportional electoral system (Arta 2020). Elections for DPR members were held on July 5, 1971, with Law No. 15 of 1969, Concerning the General Election of Members of the People's Consultative/Representative Body, serving as the election's legal foundation. Candidates for elections must be balanced with the strength of organizational representation in the DPR and DPRD, which was also introduced this year under the proportional representation electoral system with lists (Basuki 2020). This election marks the beginning of elections that will be conducted every five years, following six years of having elections. The truth is that following the 1977 election, the number of participants drastically decreased to just two parties and one group. Comparing this election to the one before it, there were still a lot of political parties, but later, the government ordered the political parties that took part in the 1971 election to unite. During this period, there were three political parties: Golongan Karya (Golkar), Partai Demokrasi Indonesia (PDI), and Partai Persatuan Pembangunan (PPP). This year's elections used a closed proportional election system under Law No. 4 of 1975 Concerning Amendments to Law Number 15 of 1969 Concerning General Elections of Members of the People's Consultative Body/Representative Body. The purpose of this year's elections, which took place on May 4, 1982, was to choose legislators. Since the election in 1977, the demographics have changed a little bit. A total of 364 members of the DPR were chosen directly by the electorate, and President Soeharto chose the other 96. The list and proportional systems used in the 1982 elections are the same as those used in the ones held in 1971 and 1977. The law governing

this year's elections, Law Number 2 of 1980 concerning Amendments to Law Number 15 of the Year 1969 concerning the General Election of Members of the People's Consultative/Representative Body as amended by Law Number 4 of 1975 (hereinafter referred to as Law No. 2/1980), states that each candidate is chosen from the list of party candidates for seats won by a political party (Hidayat 2019).

In 1987, the elections for this year, which were held to choose legislators across Indonesia, took place on April 23, 1987. The legal framework for this year's election is still the same as last year, namely Law No. 2/1980, and the electoral system utilized is still closed proportional (Selma 2009). On June 9, 1992, elections for this year were held. As in previous years, a closed proportional voting system was employed. In addition to electing legislators who would go on to serve in parliament, this election also served the goal of electing those members. Law no. was the legal foundation for this year's elections. (Rahayu, Tyesta, and Herawati 2017). In 1997, the mechanism of distributing seats in the legislature was not altered, and the closed proportional voting system employed in earlier elections is still in use. The New Order era's final election was held at this time. As of this year's election, the legal foundation is the same as in 1992 (Rahayu, Tyesta, and Herawati 2017).

In 1999, voters this year only cast ballots for political party images while political party administrators and elites decided the candidate's serial number because in elections during this reform period, the proportion of seats won by political parties was determined. The election of legislative members was based on the results of regional head elections held in their respective provinces. Although the candidates for legislative office may be well-known and popular with the public, they will not influence party choices if they are not elected. Law No. 3 of 1999 concerning General Elections, the legislative foundation for this year's

elections, was revised in response to reform requests. Still, it employs a closed proportional election system (hence referred to as Law No. 3/1999) (Tanjung 2023). Before the 2004 elections, there was much discussion about the applicability of Law No. 3/1999 because the electoral system used in the previous election was still proportionally closed. This raised concerns in society and the government because Indonesia had made progress toward becoming a fully democratic nation and was characterized by the emergence of many new political parties. Ultimately, this led to an agreement to replace the previous electoral system. This election procedure is employed so that every voter who has earned the right to vote knows every candidate for whom they will cast a ballot, rather than just the political party elites. In 2009, this election can be referred to as competitive enough. The election uproar 2009 was caused by multiparty inconsistency involving neither lawmakers nor party politics, with the KPU serving as the organizer. For system constituency representative used For organize election For choose member of the Regional Representative Council (DPD), Law No. 10 of 2008 concerning General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council (hereinafter referred to as Law No. 10/2008) states system election proportional open For members of the DPR and DPRD. The previous government-initiated and -proposed Plan Election Law General Regional Heads were prepared utilizing an open proportional system, where each candidate was elected through a majority vote process. The Golkar Party and PDIP, the two largest parties in parliament, fiercely rejected the proposal. The two major parties frequently advocated for implementing a restricted open proportional system, and eventually Law No. 10/2008 adopted it. Related regulations pertaining to choosing candidates who win office depend on receiving at least 30% of the Electoral Divisors' votes.

From 1955 through 2009, a proportional method was still used to elect DPR members, albeit with several modifications according to the constantly shifting socio-political environment. A proportional system was employed in this election along with a representational version and an open list variant (Djuyandi 2014). Creating election regulations cannot be isolated from implementing the 2019 legislative elections. It all began with Law No. 7/2017, which featured simultaneous elections for the President and Vice President and the DPR, DPD, and DPRD. The KPU organized this election and followed the impartiality, proportionality, professionalism, accountability, effectiveness, and efficiency standards. This is due to the fact that the 2019 elections were the first simultaneous elections held in Indonesia. The DPR and DPRD seats are awarded to each legislative candidate with the most votes in their election district. Still, the parliamentary threshold is applied if a political party receives 4% of the legal national vote to acquire a parliamentary seat.

Balancing Democracy and Constitutional Principles: The Case of Closed Proportional System

Elections are held in democracies to choose the representatives of the government and the people in parliament; of course, a system is in place to control this. The people's votes might provide the administration leading or representing them tremendous legitimacy. Valina Subekti believes the electoral system is a tool with practical mechanisms for controlling the electorate's votes. The electoral system can decide the winner based on the number of votes received or distributed in representative institutions (Antari 2018). Kacung Marijan provided a second, nearly identical definition of the electoral system in his 2010 book, which is as follows: "The electoral system is a kind of instrument that can be used as a translator of the people's votes obtained in elections, this aims to calculate the seats won by political parties and legislative candidates." (Marijan

2010). Furthermore, several fundamental elements related to the electoral formula, voting procedures, and district size are required to translate the people's vote (Antari 2018).

The two electoral systems, mechanical and organic, are more commonly used to categorize the electoral process. In an electoral system known as a mechanical one, voters are seen as a collection of people who are similar to one another; as such, they participate in elections through political parties. The organic electoral system, on the other hand, views voters as partners and individuals, just like ancestry, social strata, and occupations. Generally speaking, this system values people and political parties highly, while on the other side. In contrast, an organic system places great importance on an alliance's election involvement.

In nations that support democratic values, mechanical election mechanisms are still extensively used. This also occurs in Indonesia, where political parties play a vital role in elections. The constitution also refers to political parties as organizations utilized to gain power and as candidates in legislative elections. The political party chooses its cadres to be considered for seats in parliament, especially at the national level, after winning the election with a majority vote. The mechanical election system has traditionally been the most popular option for conducting elections because it is thought to be more in keeping with the democratic environment while still accounting for the votes owned by the people, allowing citizens of voting age to determine the election results and participate in establishing legitimacy for the government that ultimately wins the election. The two variations of this mechanical election method are the district/majority representation system (single-member constituencies) and the proportional representation system.

Organizing elections is not easy, given Indonesia's complex political landscape and the country's different socioeconomic realities. Indonesia has used two kinds of implementation along

the way. Let's start with a closed proportional system (closed-list PR), in which voters can only select their preferred party. The second is an open proportional system (open-list PR), in which voters can directly choose the parliamentary candidates they want to represent (Khairunnisa and Fatimah 2023). Political parties have the only authority to choose which candidates will sit in parliament, especially in a closed proportional system. However, this approach can reduce the amount of money politics in elections and the expenditures associated with organizing them. When an open proportional system—regarded as extremely expensive in terms of cost—cannot be used to achieve this.

Candidates frequently run party-based campaigns in closed proportional systems where voters only have the option of selecting a party; this occurred in the 1999 elections. Legislative candidates must promote party platforms while concentrating on serial numbers to be elected. They are vying for the "hat number" since it will likely be approved by parliament. Voters tended to be more loyal to political parties during the New Order era than to individuals running for elected office; in this situation, political parties played a very important and determining role (Muhtadi 2019). In this situation, there are numerous drawbacks to an electoral system that employs closed proportionality. There are at least seven drawbacks of a closed proportional system, including:

1. The oligarchy of political parties becomes immensely powerful.
2. In this system, political parties are the sole determinants.
3. The emergence of a problem for legislative candidates, in this situation every candidate who will serve in a representative institution is picked by only those political parties who are deemed proper and have strong ties to the party elite.

4. The people may become dissatisfied with a closed proportional system because it might create a barrier between voters and potential lawmakers.
5. limiting the involvement of all citizens.
6. Not appropriate for less well-known and relatively modest gatherings.
7. thought to be a setback for democracy.

Openness is, in theory, required in a nation that upholds a democratic system. Since the reform, Indonesia has seen a democratic atmosphere beyond freedom of association, assembly, and expression. But openness is also a goal when it comes to elections, especially general elections. A closed proportional system, obviously something to avoid, only enhances the position of political parties and can lead to oligarchy inside parties. According to Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, political parties must introduce prospective members who will work in representative institutions in addition to participating in elections. However, the people must be aware of who will serve as their representatives to represent their electoral district. Sitting in parliament, this cannot be accomplished if the election is conducted using a closed proportional system. This is because the party's strength completely determines the potential members who will sit in parliament; if these potential members do not reflect community values, the public may become distrustful and disappointed, and the legitimacy of the election will be called into question.

Comparatively, smaller political parties suffer greatly under a closed proportional system. Compared to well-known political parties with a long history in elections, smaller political parties will be less popular. It will be extremely difficult under this situation for the populace to start a new political party, which is undesirable because democracy gives everyone the greatest freedom to participate in elections. To put it simply, Article 22E paragraph (3) of the Republic of Indonesia's 1945 Constitution states that "participants in the general election to elect members of

the People's Representative Council and members of the Regional People's Representative Council are political parties." However, it is also important to note that Article 22E paragraph (6) of the same Constitution also calls for a closed proportional electoral system. Law No. 7/2017 Article 168 paragraph (2) specifies that "elections to elect members of the DPR, Provincial DPRD, and Regency/City DPRD are carried out using an open proportional system," confirms the election arrangements employing this method.

In addition, it is best to look at other provisions in the Constitution that also have continuity with general elections, such as Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "sovereignty is in the hands of the people and is implemented according to law," when understanding the provisions contained in Article 22E paragraph (3) of the 1945 NRI Constitution. If we apply the idea of popular sovereignty, it becomes clear that the Republic of Indonesia's 1945 Constitution preferred an open proportional electoral system. This is because elections and the popular sovereignty notion are inextricably intertwined. This means that, if you apply this understanding, elections using a closed proportional system are not compliant with the Republic of Indonesia's 1945 Constitution because they will eliminate the opportunity for the general public to determine their preferences directly. This is because, under a closed proportional system, the selection of DPR member candidates for parliament is determined unwaveringly from political party preferences.

Conclusion

It is best to look at other articles in the 1945 Constitution of the Republic of Indonesia that have continuity with general elections to fully comprehend the provisions in Article 22E paragraph (3) of that document. For example, Article 1 paragraph (2) of that document's 1945 Constitution of the Republic of Indonesia states that "sovereignty is in the hands of the people and

is implemented act If we apply the idea of popular sovereignty, it becomes clear that the Republic of Indonesia's 1945 Constitution preferred an open proportional electoral system. This is because elections and the popular sovereignty notion are inextricably intertwined. This means that, if you apply this understanding, elections using a closed proportional system are not compliant with the Republic of Indonesia's 1945 Constitution because they will eliminate the opportunity for the general public to determine their preferences directly. This is because, under a closed proportional system, the selection of DPR member candidates for parliament is determined unwaveringly from political party preferences.

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