

Pancasila Democracy and the Implementation of an Open Proportional Electoral System

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Abstract: This research focuses on the constitution-based election system. Theoretically, there are two general election systems: the district and proportional. Proportional systems aim to reflect the statistical portrait of the population in the representation body, while the district system adheres to the 'one man one vote' principle. The open proportional electoral system, mandated by Constitutional Court Decision No. 22-24/PUU-VI/2008, aims to provide voters with a direct and open choice in selecting legislative candidates.

Purpose: This article endeavors to scrutinize the congruence between the implementation of the open proportional electoral system and the essence of Pancasila democracy, the fundamental principle underpinning Indonesia's legal and political framework.

Design/Methodology/Approach: This legal inquiry employs a normative approach, analyzing secondary data and legal principles to investigate the implementation of the open proportional electoral system and its compatibility with the tenets of Pancasila democracy.

Findings: The open proportional electoral system, as mandated by Constitutional Court Decision No. 22-24/PUU-VI/2008, underscores the active involvement of citizens in the selection of legislative representatives. This system establishes a more direct and accountable linkage between voters and their elected representatives, thereby aligning with the foundational principles of Pancasila democracy.

Originality/value: This research underscores the significance of examining the correlation between the

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proportional electoral system and the essence of Pancasila democracy. It posits a compelling argument in favor of aligning the electoral system with the principles of democratic representation and citizen participation in the Indonesian context.

Keywords: electoral system; proportional open; Pancasila democracy; legislative representation

Paper Type: Research-Article

Introduction

Exploring the two theoretical electoral systems: the district and proportional systems (Aminah 2012; Asshidique 2016). While each country may choose between these systems, variations exist from one country to another. The proportional system, at its core, mandates that the number of representatives in people's representative institutions reflects a statistical portrait of the population, establishing a correlation between the proportion of the population and the number of representatives. On the other hand, the district system underscores the mandate of people's representatives based on the 'one man one vote' principle (Aminah 2012).

Proportional systems are perceived as providing robust safeguards to uphold plurality, allowing for a diverse range of political parties. This is attributed to the absence of invalid votes and the potential for each political party in an electoral district to secure representation in representative institutions, regardless of their numerical strength (Simatupang and Kokpan 2023). In contrast, the district system operates on a 'winners take all' principle, where a simple majority of votes will enable only one political party to represent the people (Aminah 2012). This system ensures that many votes go unrepresented, compelling political parties to form coalitions rather than being entirely unrepresented.

The adoption of the open proportional electoral system stems from the Constitutional Court Decision Number 22-

24/PUU-VI/2008, issued on 3 December 2008. This decision outlines that elections for members of the House of Representatives (DPR), Provincial People's Representative Council (DPRD Provinsi), and Regency/City Regional People's Representative Council (DPRD Kabupaten/Kota) should be conducted using an open proportional system. Under this system, individuals have the freedom to choose and determine the legislative candidates they wish to elect (Kansil and Haga 2023). This approach simplifies the process of identifying the candidate with the highest popular support, making it easier to determine the rightful election winner. With the direct empowerment of the people to choose candidates based on popular votes, it not only provides convenience to voters but is also perceived as a fairer system for both candidates and the public, regardless of their political party affiliation (Nuna and Moonti 2019). Victory in elections is no longer solely contingent on the political party's involvement but rather on the level of popular support garnered by the individual candidate.

The open proportional system maintains the rights of political parties in the process of selecting legislative candidates and forming the list of serial numbers for these candidates (Q. Zaman 2023). While individual candidates participate, they are still affiliated with political parties, as outlined in Article 241 paragraphs (1) and (2) of Law Number 7/2017 concerning General Elections (hereinafter referred to as Law No. 7/2017). According to this law, political parties engaged in the elections democratically and openly select legislative candidates for the House of Representatives (DPR), Provincial People's Representative Council (DPRD Provinsi), and Regency/City Regional People's Representative Council (DPRD Kabupaten/Kota). This selection is guided by the articles of association, bylaws, and/or internal regulations of the political parties involved in the elections. Consequently, political parties

possess complete authority in determining the selection of legislative candidates, creating a list of serial numbers for these candidates, and deciding which candidates are worthy of election, including identifying the best party cadres selected by the party (Riyadh and Sukmana 2015).

The adoption of an open proportional system in the law is a result of deliberations during the legislative process, considering the specific conditions of Indonesia's ongoing democratic transition. The country aims to strengthen various political sub-systems, including the party system, political culture, voter behavior, freedom of expression and opinion, ideological pluralism, and the representation of people's interests and political aspirations through political parties. This research recognizes the importance of investigating the correlation between the proportional system in general elections and the spirit of implementing Pancasila democracy. The study, titled "Pancasila Democracy and the Implementation of an Open Proportional Electoral System," explores this correlation within the Rule of Law principle framework. The fundamental question addressed is whether the implementation of an open proportional electoral system aligns with the spirit of realizing Pancasila democracy, the foundational principle of Indonesia's legal and political system.

Methods

The research methodology employed in this legal study is normative legal research, which involves the examination of secondary materials or data. As defined by Peter Mahmud Marzuki, normative legal research is a systematic approach aimed at identifying legal rules, principles, and doctrines (Marzuki 2016).

Discussion and Findings

Evaluation of Indonesia's Electoral System

Sahya Anggara asserts that one of the foundational principles of democracy is the *trias politica* principle, which

delineates the separation of the state's three political powers—executive, judiciary, and legislative—into distinct and independent institutions. These institutions operate in parallel, ensuring their alignment and independence. This separation is crucial for the institutions to effectively supervise and control each other, upholding the principle of checks and balances (Anggara 2013).

In the *trias politica* system, three state institutions hold distinct roles: government institutions endowed with executive authority, courts empowered to exercise judicial power, and people's representative institutions (such as the DPR in Indonesia) authorized to wield legislative power. Legislative decisions within this framework are either directly made by the people or through representatives. These representatives are duty-bound to align their actions with the aspirations of the constituents who elect them through the legislative election process (Rahmawati and Fikri 2022; Pamungkas 2009; M. Gaffar 2012). It is imperative that these decisions not only adhere to the law and regulations but also reflect the will of the people they represent.

In the 1999 general election, Indonesia employed a closed proportional system, commonly known as the *coblos gambar partai*, wherein the list of legislative candidates was disclosed at the polling station (TPS). The system evolved in 2004 to a semi-open proportional system, distinguished as semi-open because the determination of party representation in acquiring seats in parliament was not solely based on the most votes but still relied on serial numbers (Sulaiman and Rohaniah 2023; Makarim and Fahmi 2022; Riwanto 2015). By 2009, it transitioned to an open-list proportional election following a juridical review by the Constitutional Court. This review annulled Article 214 of Law No. 10/2008 on the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional Representatives Council, which stipulated the determination of

candidates based on serial numbers if they failed to meet the 30% of the voter divisor number. Consequently, candidates in 2009 were elected based on the most votes, effectively implementing open proportional representation. This change was deemed necessary as the provision contradicted the principle of popular sovereignty. The Constitutional Court Decision Number 22-24/PUU-VI/2008, initiated by Muhammad Sholeh, S.H., underscored that the determination of elected candidates for legislative members should be based on the majority vote. The open-list proportional system in 2009 can also be characterized as a semi-district system, blending the advantages of both the district and proportional systems while mitigating their respective shortcomings (Yuda 2010).

The debate surrounding the open proportional system and closed proportional system, as evidenced by the judicial review of Law No. 7/2017 at the Constitutional Court, is characterized by pros and cons. Both systems, open proportional and closed proportional, exhibit their own set of advantages and disadvantages (Kenedy Azis and Sihombing 2023). However, beyond the specific merits and drawbacks of each proportional system, the paramount consideration is to ensure that the sovereignty of the people remains intact and is not compromised by the interests of the political elite (Widiarto 2006; Isharyanto 2016). Several crucial points related to the advantages and disadvantages of open and closed proportional systems in elections include:

Advantages of the Open Proportional System:

- a. Selection of elected candidates based on the highest number of votes.
- b. Voters can assess the track record of the candidate.
- c. Direct participation of voters in electing representatives to parliament.

- d. Establishment of emotional connection between voters and candidates.
- e. Increased political participation of voters in elections.
- f. Encourages competitive dynamics among candidates within the party.

Disadvantages of the Open Proportional System:

- a. Requires significant political capital.
- b. Vote counting tends to be intricate.
- c. Cadre regeneration process may not be optimal.
- d. Challenges in implementing gender quotas due to the majority vote basis.

Advantages of the Closed Proportional System:

- a. Facilitates the fulfillment of quotas for women or ethnic minority groups as the party determines.
- b. Helps in minimizing instances of money politics.
- c. Political parties play a role in the cadre regeneration process.

Disadvantages of the Closed Proportional System:

- a. Elected candidate determination relies on political parties.
- b. Voters only choose political parties.
- c. Limited role for voters in decision-making post-election.
- d. Distant relationship between voters and candidates after the election.
- e. Potential for oligarchy perpetuation as political parties are the determinants.
- f. Inevitability of money politics within parties, involving the buying and selling of serial numbers or the '*Nomer Piro Wani Piro*' slogan.
- g. Elected candidates may lack responsiveness to the interests of the people.

In the elections of 2004, 2009, 2014, and 2019, any surplus votes in an electoral district could not be transferred to other districts. The remaining seats were allocated to candidates with the highest votes, provided they did not reach the BPP (voter

divisor number). Analyzing the impact of the electoral system on party dynamics, Maurice Duverger contends that the district system inclines towards the formation of two parties, while the proportional system tends to foster a multi-party system (Duverger 1984). Proportional systems are more likely to promote fractionalism and the emergence of smaller parties, contributing to the development of multi-party systems (Yuda 2010).

To curb the proliferation of parties in a proportional system, Indonesia implements both the electoral threshold and parliamentary threshold (Fikri, Firmansyah, and Sabina 2023). In the 1999 elections, Indonesia enforced the electoral threshold as stipulated in Article 39 of Law No. 3/1999 on General Elections, which mandates that political parties must secure 2% of the seats in the DPR or 3% of the seats in the DPRD or at least half of the provinces and districts nationwide. Subsequently, the electoral threshold for the 2004 elections increased to 3% of DPR seats and 4% of DPRD seats in half of the provinces or regencies in Indonesia.

Concerning the limitation of political parties, Article 202 of Law No. 10/2008 introduced the implementation of the parliamentary threshold, leading to the gradual elimination of the electoral threshold provision. Subsequently, in the 2014 elections governed by Law No. 8/2012 concerning the General Election of Members of the House of Representatives, Regional Representatives Council, and Regional Representatives Council, the parliamentary threshold was increased from 2.5% in 2009 to 3.5%, aiming to streamline the composition of the parliament. Notably, the distinction between the 2014 and 2019 elections compared to previous ones lies in the rigorous verification process applied to all political parties, whether already in parliament or newly established. Initially, the parliamentary threshold was also intended to serve as the electoral threshold. However, following Constitutional Court Decision No.52/PUU-X/2012, all political

parties underwent verification stages, reinforcing the perspective of party simplification by eliminating the electoral threshold provision and replacing it with the parliamentary threshold alongside verification for all political (Budiono 2017).

The implementation of popular sovereignty in Indonesia, as mandated by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), is carried out through institutions that are formed and filled by representatives of the people or by the choice of representatives of the people (Isharyanto 2016). In essence, popular sovereignty in Indonesia involves the active participation of the people in selecting their representatives. This aligns with the doctrine of "the people, by the people, and for the people" advocated by the pioneers of popular sovereignty. Since the people are represented by institutions in the governance process, as outlined in the 1945 Constitution of the Republic of Indonesia, it is evident that the country employs an indirect democracy. This approach is well-suited to the characteristics of the Indonesian nation, characterized by a diverse demographic and expansive territory. Indirect democracy signifies that individuals exercise their rights and sovereignty by choosing representatives through general elections, who then articulate their opinions and make decisions on their behalf. In essence, indirect democracy acknowledges that people have rights and sovereignty, but these are expressed through elected representatives, making it a form of representative democracy (Budiono 2017; Syahrin and Sapitri 2020).

To ensure the election of representatives to govern, a mechanism is essential that ensures the expression of people's aspirations without discrimination. The mechanism stipulated by the 1945 Constitution to guarantee this is the general elections. Since the inception of general elections, Indonesia has consistently employed a proportional system with various additional district

nuances. Currently, Indonesia adopts an open-list proportional system with a majority vote as its general election system.

Demokrasi Pancasila, which is a unique Indonesian interpretation of democracy, blends liberal democratic principles with the cultural and philosophical values rooted in Pancasila, the foundational philosophy of the Indonesian state. In essence, it represents an attempt to harmonize universal democratic ideals with indigenous Indonesian values, ensuring that the political system resonates with the nation's diverse cultural landscape. From the perspective of Pancasila democracy, which embodies a distinctively Indonesian approach to democracy, the synthesis of liberal democratic principles with the cultural and philosophical values derived from Pancasila, the foundational philosophy of the Indonesian state, is crucial. An in-depth analysis of Pancasila democracy entails examining how universal democratic principles are implemented and adapted to the characteristics of Indonesian society, as well as how Pancasila values influence the structure and mechanisms of democracy in the country.

Within the framework of Pancasila democracy, fundamental liberal democratic principles such as the separation of powers remain esteemed. As articulated by Sahya Anggara, the *trias politica* is a cornerstone of democracy that delineates the division of power into three independent branches: executive, judicial, and legislative. This aims to prevent excessive concentration of power and ensures oversight and balance among these institutions. In this context, the analyzed open-list proportional electoral system should also be viewed as an endeavor to reinforce the underlying principles of liberal democracy inherent in Pancasila democracy.

Pancasila democracy emphasizes the importance of active participation of the people in the political process. This is reflected in electoral mechanisms that enable voters to directly elect their representatives, as outlined in the explanation of the open-list proportional electoral system. Furthermore, the concept of

popular sovereignty mandated by the Indonesian constitution emphasizes that power emanates from the people and must be exercised for the benefit of the people. Hence, it is essential to ensure that the electoral process reflects the will of the people and that elected representatives should represent the aspirations of their constituents.

Pancasila democracy acknowledges the cultural and philosophical values inherent in Pancasila as the foundation of the state's political system. This is reflected in efforts to uphold the sovereignty of the people and respect the cultural and social diversity in the political process. For instance, the emphasis on proportional representation in elections reflects the desire to ensure that various societal groups are heard and represented in the legislative bodies.

The concept of Pancasila democracy embodies Indonesia's quest for a democratic system that not only upholds universal principles but also remains deeply rooted in its cultural and philosophical heritage. By striking a delicate balance between liberal democratic principles and indigenous values, Pancasila democracy seeks to ensure a political framework that is both inclusive and reflective of the nation's identity and aspirations.

Open Proportional System in the Perspective of Pancasila Democracy

The proportional electoral system is a method where the seats in parliament are allocated to political parties based on the proportion of votes they receive (Asshidiqie 2016). In this system, each political party gets parliamentary seats in proportion to the number of votes they secure (Noris 1997). Proportional representation involves translating votes into parliamentary seats in line with the popular vote. There are two main types of proportional representation: list-based and single-transferable vote-based. Typically, open-list proportional systems feature

multiple candidates in a district, allowing more than one parliamentary seat to be contested.

In the open list system, voters have the option to not only vote for a preferred party but also for a specific candidate nominated by that party. If a candidate secures the highest number of votes, they become the elected representative for a particular region (Sulaiman and Rohaniah 2023). The open-list format is candidate-centered, leading to competition among candidates from the same party for votes. This dynamic has the potential to generate internal party conflicts and fragmentation among candidates. The open-list proportional system, as outlined in Law No. 8/2012, Chapter 2 Article 5 paragraph (1), mandates that elections for members of the DPR, DPRD Provinsi, and DPRD Kabupaten/Kota shall be conducted under an open proportional system. The implementation of the open proportional system reinstates sovereignty to the people, enabling them to vote directly and choose their representatives in parliament. Before the adoption of the open proportional system, people were considered complementary objects and spectators in the General Election. With the open proportional system in place, political parties now view the people as active participants in the election, as the success or failure of the election hinges on the active participation of the community.

In this system, individuals directly vote for candidates nominated by political parties, enhancing the accountability of representatives to their constituents. This direct connection ensures that people in a specific electoral district are well-informed about their representatives. Voters know the individuals who represent them and are responsible for articulating their concerns in parliament. During elections, people are familiar with the candidates they will vote for, making informed decisions about who best represents their voices in the government. The open proportional system, detailed in Article 168 paragraph (2) of

Law No. 7/2017, emphasizes that elections for members of the DPR, DPRD Provinsi, and DPRD Kabupaten/Kota are conducted using an open proportional system. In essence, this system grants people the direct right to choose and determine their preferred candidates for these legislative bodies. In summary, the open proportional system allows individuals to freely decide who deserves to be elected based on the candidate's popular support or the highest number of votes.

The open proportional system outlined in Article 168 paragraph (2) of Law No. 7/2017 ensures a high degree of representation in General Elections. In the electoral context, the supreme authority is vested in the people who meet the specified requirements. As the ultimate sovereign entity in the electoral process, the people have the exclusive right to determine credible, capable, and morally upright representatives, granting them the authority to choose legislative candidates. Consequently, voters gain a precise understanding of the track record of their elected representatives in the DPR and DPRD, enabling them to select individuals who will effectively advocate for their aspirations. With such a system, people can directly oversee their representatives in the legislature. If representatives deviate from or neglect the aspirations of the people, voters can hold them accountable in subsequent elections by choosing not to re-elect them in the next period. This mechanism empowers the electorate to actively participate in the democratic process and ensures that representatives remain responsive to the needs and wishes of the people they serve.

In formulating the fundamental principles of the state, Indonesia regards Pancasila as the primary pillar embodying the values of social justice, democracy, unity, humanity, and divine omnipotence. With the evolution of the political landscape, the open proportional system has emerged as a relevant aspect in interpreting and implementing the principles of Pancasila in the

nation's life. Through a comprehensive analysis of the correlation between Pancasila democracy and the open proportional system, researchers can investigate how these two concepts mutually reinforce each other, establishing a robust foundation for democratic governance in Indonesia. Pancasila democracy underscores the active involvement of the people in the decision-making process. This value aligns with the principles of an open proportional system that grants voters greater control over their political representatives. In this system, voters not only cast ballots for political parties but also possess the ability to elect candidates whom they believe can embody the Pancasila values they support. This fosters a strong connection between the government and the people, exemplifying the democratic spirit of Pancasila, which advocates for active participation.

Secondly, an open proportional system inherently promotes more equitable representation for various societal groups. This notion aligns with the social justice spirit of Pancasila, which advocates for equal treatment for all Indonesians. By allocating proportional representation in parliament to each political party, the system can more effectively mirror the diversity of views and interests present in society. In this regard, the open proportional system serves not only as an electoral method but also as a means to attain the objective of social justice championed by Pancasila.

Thirdly, government stability emerges as a crucial aspect when examining the correlation between Pancasila democracy and open proportional systems. An open proportional system is inclined to generate a more representative parliament, mirroring the political diversity inherent in society. The political stability fostered through proportional representation can be seen as an embodiment of Pancasila values, which promote harmony and unity in diversity. In essence, this system not only establishes a robust government but also aligns with the spirit of Pancasila unity.

Fourthly, the safeguarding of human rights, a cornerstone of Pancasila democracy, finds accommodation through an open proportional system. This system, by ensuring enhanced representation for minority groups, contributes to the protection of their rights, aligning with the human rights values enshrined in Pancasila. The open proportional system serves as a mechanism to prevent the dominance of the majority group, thereby embodying the principles of Pancasila that acknowledge and protect the rights of every individual.

Fifthly, the active involvement of the state in the development and safeguarding of society, as stipulated by Pancasila, can be bolstered through an open proportional system. In this regard, the system can facilitate the establishment of more inclusive policies, aligning with the principle of a just and prosperous state in Pancasila. Political parties representing diverse societal perspectives can play a role in shaping policies, laying the groundwork for sustainable and equitable development.

Hence, the connection between Pancasila democracy and an open proportional system transcends mere theory; it serves as a guiding compass steering Indonesia on its democratic trajectory. Aligned with the ethos of diversity and active involvement, the open proportional system emerges as a potent instrument in actualizing the tenets of Pancasila. Through ongoing comprehension and fortification of this relationship, Indonesia stands poised to establish a government that not only mirrors the people's will but also fosters the essence of unity in diversity. This underscores the notion that Pancasila democracy and an open proportional system constitute robust foundations for a more democratic future.

Conclusion

The implementation of an open proportional system is perceived to align with the ethos of Pancasila democracy,

empowering the people to directly choose legislative candidates. While political parties retain a role in candidate selection, this system bestows greater authority upon voters to decide who gets elected. Furthermore, the open proportional system is viewed as bolstering the accountability of people's representatives to their constituents, as it enables individuals to directly identify the candidates they endorse.

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