
The Dynamics of Constitutional Court Decisions on Open Proportional, Closed Proportional, And Limited Open Proportional Electoral Systems

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Abstract

This research discusses the electoral system as a way to regulate citizen participation in electing legislative and executive members. According to the Constitutional Court of the Republic of Indonesia's (MK-RI) decision on Law No. 7/2017 on Elections made on 15 June 2023, the open proportional electoral system will still be applied in 2024. Legal experts gave their opinions on open proportional, closed proportional, and limited proportional systems during the MK's decision-making process. This research uses a normative juridical method by identifying issues related to the background of the judicial review petition, alternative electoral systems, and judges' considerations of the Constitutional Court's decision on the electoral system. It is expected that the results of this research will show that the Constitutional Court's decision on the electoral system will show the advantages and disadvantages of open and closed proportional systems, which reflect the relationship between the democratic aspirations of the Indonesian people and other democratic aspirations.

INTRODUCTION

A system is a set of interrelated or integrated elements that are intended to achieve a goal. (Kadir, 2014). Meanwhile, according to Fatansyah that "The system is an order (integration) consisting of a number of functional components (with specific functions and tasks) that are interconnected and together aim to fulfil a certain process"(Fatansyah, 2004).

From the two (2) definitions of the system above, the system is the largest part of the elements, a set of elements, functional components that work together and interact to achieve certain goals. In the context of the above system, the purpose of General Elections is clearly to elect representatives of the people to form a government, maintain independence, and defend the integrity of the Republic of Indonesia. (Muhammad Ibrahim Rantau, 2019).

Thus, an electoral system can be defined as a method of organising citizens' participation in electing representatives of the people in the Executive and Legislative Institutions. The electoral system has two main functions. First, as a procedure and mechanism for converting voters' votes into seats in legislative and/or executive institutions, both at the national and local levels. Second, as an instrument to build a democratic political system by involving every aspect of the electoral system to various elements in a democratic political system. (Asgar, 2023; Dedi, 2019; Riskiyono, 2019; Roziqin et al., 2023; Sulistiono & Boediningsih, 2023).

In general, electoral systems in the world can be categorised into three types. Firstly, there is the plurality/majority system where the territory of the country is divided into electoral districts based on population, and each district is represented by one representative. The candidate who receives the most votes in that district wins all the votes. Secondly, the proportional system allows the proportion of seats won by a political party in an electoral district to be proportional to the proportion of votes obtained by the party. Finally, the mixed system is a combination of proportional, plurality/majority systems, which creates a model that unites the two principles. The current electoral system in Indonesia is the Open Proportional system, a system that allows people to directly elect legislative candidates (candidates) or representatives of the people in an electoral district (electoral district) offered by the party. (Erlina, 2023; Kurnianingsih, 2020).

In general, proportional systems in the context of general elections can be divided into two types, namely open proportional systems and closed proportional systems. Both systems have been applied in Indonesia with their respective advantages and disadvantages. The Closed Proportional System has been used in the 1955 General Elections, the New Order Elections, and the 1999 General Elections, while the Open Proportional System was applied in the 2004, 2009, 2014, and 2019 Legislative Elections. In conclusion, Indonesia has implemented these two proportional systems in its electoral history, reflecting the diverse experiences and political dynamics in various time periods. (Firdausy & Riswanto, 2019).

The idea of a judicial review at the Constitutional Court (MK) emerged from Yusril Ihza Mahendra's consideration in the MK trial. He highlighted that Article 168 of Law Number 7 Year 2017 on Elections directly reduces the position of political parties as election contestants, by shifting the right to place candidates from political parties to the quantity of the most votes. This is considered to violate the concept of popular sovereignty stipulated in Article 1 paragraph (2), (3), Article 6A paragraph (2), Article 22E paragraph (2), (3), and Article 28D paragraph (1) of the 1945 Constitution. Article 1 paragraph (2) of the 1945 Constitution confirms that the sovereignty of the people is exercised in accordance with the mechanism established by the Constitution, namely through political parties in elections to elect the DPR, DPRD, President and Vice President. The Constitutional Court, as a judicial review institution with absolute competence, has the function of resolving disputes between laws and the Constitution. Therefore, the Constitutional Court can examine disputes over legal products, such as the incompatibility of laws with the Constitution, through a judicial review process. (Jimly Asshiddiqie, 2005). Among them is a request for *judicial review of* Article 168 of Law Number 7 Year 2017 on General Elections against Article 6A paragraph (2), Article 22E paragraph (2) and paragraph (3) of the 1945 Constitution.

Based on an application for judicial review of Law Number 7 Year 2017 on General Elections, the Constitutional Court (MK-RI) rejected the petitioners' application in Decision Number 144/PPU-XX/2022. In handling this case, the Constitutional Court considered that changes to the electoral system are not only influenced by the choice of the system itself, but also by the implications and implementation of the election. The Constitutional Court judges believe that improvements and refinements can be made in various aspects, such as parties, political culture, voter awareness, voter behaviour, and the rights and freedom of expression. Although the open-list proportional electoral system is considered closer to the principles of

the 1945 Constitution, Justice Arief Hidayat delivered a dissenting opinion arguing that evaluation, improvement and changes to the open proportional system need to be made, especially after four times its application in the 2004, 2009, 2014 and 2019 elections. (Mohamad Badrul, 2015) According to Arief Hidayat, switching the electoral system from an open proportional system to a limited open proportional system is necessary.

The Constitutional Court's decision on the Open Proportional Election system reflects a connection with the logic of stability and the aspirations of Indonesian political society. Support for this system is reinforced by various views, from experts, individuals, political parties, and coalitions of political parties, which state its relevance to be maintained. Despite the divergence of views, it appears that the decision is in line with the current aspirations of Indonesian political society. This is a major concern in the dynamics of decision-making at the Constitutional Court. This research attempts to unravel the background of the judicial review petition in the electoral system dispute, explain the alternatives of open proportional, closed proportional, and limited open proportional systems, and analyse the judges' considerations and the impact of the Constitutional Court's decision on the implementation of the 2024 elections.

METHODOLOGY

The approach method in this research is to use a normative juridical approach, which is a legal research method that examines library materials or secondary data, thus this research method is also often called doctrinal legal research, research that comes from secondary data, legal principles, positive legal principles from library materials, laws and regulations and court decisions. (Amirudin & Asikin, 2011).

RESULTS AND DISCUSSION

1. Background to the Application for Judicial Review of the Election System in 2024 at the Constitutional Court of the Republic of Indonesia

HM. Laica Marzuki revealed that General Election is a mechanism for determining people's opinions through a free and fair system, in accordance with the principles stated in the 1945 Constitution Article 22E Paragraph (1) and Paragraph (2). Elections are considered a means for the community to actively participate in determining the figure and direction of the leadership of the country or region within a certain period of time (Nanik Prasetyoningsih, 2017). Democracy has received widespread attention from the world community, and in this context, the holding of democratic elections is an important requirement in shaping the leadership of a country. The main function of elections is to produce leadership that represents the will and aspirations of the people, and to provide legitimacy to the elected government (Jimly Asshiddiqie, 2007). Therefore, elections are one of the most important means of establishing leadership that represents the will and aspirations of the people. Therefore, elections are one of the means of legitimising power.

Democratic and aspirational elections must fulfil several important requirements. First, elections must be competitive, with voters able to participate freely and autonomously. Secondly, they should be held at regular intervals, with a clear time gap, and thirdly, they should be inclusive, meaning that every section of society should have an equal opportunity to

participate in the electoral process. An election can be considered an aspirational and democratic vehicle only if it fulfils these three requirements (A Hevriansyah, 2021).

An election is an important event that is conducted periodically in accordance with the rules. There are a number of basic reasons for this. Firstly, people's opinions and desires about various aspects of living together in society are ever-changing and change over time. Secondly, people's living conditions may also change due to changes in the international world or internal factors within the country, whether caused by human factors or external factors. Thirdly, changes in people's desires may also occur. Fourth, the holding of regular elections is essential to ensure the turnover of the country's leadership at the executive and legislative levels with the aim of creating stability and continuity of government (Asshiddiqie, 2016).

General elections in Indonesia, as the implementation of the democratic system and the application of the fourth principle of Pancasila and Article 1 (2) of the 1945 Constitution, are a mechanism to elect representatives of the people in the Executive and Legislative Bodies at the central and regional levels. Since 1955 until the 2024 simultaneous elections, general elections have undergone various changes, including in the legal framework, organisation, stages, participants, institutions, violations, and implementation management. Facing the 2024 General Election, efforts to change the General Election system were carried out through a judicial review of Law Number 7/2017 on General Elections at the Constitutional Court of the Republic of Indonesia. Historically, the change in the electoral system from open proportional which was applied in the last four periods (2004, 2009, 2014, and 2024), seen from a philosophical and sociological perspective, aims to overcome problems in the implementation of the open proportional system which is considered to tend to be excessive and fragile. Liberal competition in the system, especially related to money politics and the potential for conflict, often forces a settlement through the Constitutional Court, showing the weakness of the institutionalisation of the system (Antari, 2020).

This elucidation states that General Elections (Pemilu) is a mechanism for determining the people's opinions through a free and fair system, in accordance with the principles of the 1945 Constitution. Elections are considered a means of active participation of the people in determining the leadership of a country or region for a certain period of time. The main function of elections is to produce leadership that represents the will and aspirations of the people, provide legitimacy to the elected government, and is a means of legitimising power. Democratic and aspirational elections should be competitive, periodic and inclusive. General elections in Indonesia have undergone changes since 1955 until the 2024 simultaneous elections, including efforts to change the system through a *judicial review of* Law Number 7 Year 2017. This change aims to address problems in the open proportional system that are considered excessive and fragile, with liberal competition and potential conflicts that force resolution through the Constitutional Court.

2. Open Proportional, Closed Proportional and Limited Open Proportional Systems as Alternatives and Comparisons in the Dynamics of Constitutional Court Decisions

Constitutional Law experts have expressed different opinions regarding the development of the upcoming General Election system, especially in the context of the judicial

review of Law Number 7/2017 on General Elections. (Muhdar & Susilowati, 2023). In Fritz Edward Siregar's view, changes in constitutional democracy are considered an important part of the process that supports the protection and promotion of sustainable democratic principles. According to him, these changes can contribute to the resilience of democratic systems if they are carried out through transparent, inclusive and participatory processes that respect constitutional norms and democratic values. Fritz Edward Siregar also highlighted the need for changes from an open proportional system, a closed proportional system, to a limited open proportional system to ensure the continued functioning and growth of constitutional democracy. ("The Future of the Indonesian Constitutional Court Conference Paper on the Constitutional Court and the Promotion of Citizens' Constitutional Rights," 2013).

Open Proportional System (OPEN SPT)

The implementation of an open proportional electoral system brings complexity to the voting, vote counting and vote recapitulation processes. The process is considered complicated, laborious, and has the potential for error. (Sirajuddin et al., 2021).. The selection of candidates with a list of names in the ballot increases the risk of invalid votes (Azis et al., 2019; Sobari, 2019).. In the 2019 election, the number of invalid votes reached 17,503,953, equivalent to 11.12%. (Ginting Manik et al., 2023).. Vote counting is also affected by the open proportional system, resulting in a long time because it involves recording candidate or party numbers (Djidar, 2023). (Djidar, 2023). The potential for vote manipulation arises in the counting process, especially in recording the names of candidates or parties. In addition, vote recapitulation at polling stations is often faced with the problem of vote transfers from one candidate to another candidate within the same party.

A problem that often occurs in an election is the high level of money politics. In the 2019 elections, there were 69 (sixty-nine) court decisions related to criminal offences of money politics (Abdussamad et al., 2023).. Much literature, both at home and abroad, shows how this phenomenon disrupts electoral integrity when talking about the impact of money politics on the electoral process. Agus Riewanto argues that open proportional electoral systems can weaken the structure of political parties in democracies. Due to the fact that the selection of legislative candidates is based on the majority vote rather than serial numbers assigned by political parties, the interaction between candidates and the legislature is usually unpatterned. In addition, legislative elections in Indonesia-especially in 2009, 2014 and 2019-are unconstitutional because the participants are not political parties, but individuals or candidates. The role of political parties is no longer important in this system as the determination of elected candidates depends on wealth and popularity rather than ideological ties or party structures. As a result, elected candidates are more likely to represent themselves rather than political party organisations. As a result, the authority of political parties becomes weaker and public participation becomes lower. In addition, this system destroys the authority of political parties, resulting in disloyal candidates who believe that political parties are merely tools and that their victory is determined by the voters, not the parties themselves. (Tanjung, 2023).

The explanation by Firman Noor underlines that the electoral system is the real manifestation of the implementation of democracy. (Argawati, 2023). The main challenge lies in building an electoral system that can strengthen democratic values and institutions, as well

as the continuation of the implementation of democracy itself. Although elections are not the only measure of the existence and quality of democracy, the existence of democratic elections is considered crucial to give substantial meaning to the quality of democracy in a country. (Zairudin, 2021).

Some of the principles of a democratic electoral system include aspects of transparency and the right to information. According to the Institute for Democracy and Electoral Assistance, clarity of information is a key element in democratic elections. Incomplete information can open up opportunities for representation that is not in accordance with the wishes of the people (Natalia, 2012). (Natalia, 2012). Regarding representation, criticisms of the closed proportional system include the inadequacy of building closeness between candidates and their constituents.

The open proportional system is considered to have a positive impact on the existence of political parties, especially in relation to internal democracy, institutions, and the implementation of political party functions. This system is considered to support internal party democracy by giving cadres the power to maintain their position in the electoral district. This is considered to encourage the success of a cadre in building community support and maintaining their political position. Although not yet provided for in the constitution, the determination of electoral systems is recognised as the domain of the law, and the choice of electoral system has a significant impact on the overall electoral legal framework.

Closed Proportional System (SPT)

The Closed Proportional Electoral System was implemented in Indonesia between 1955 and the 1999 General Election, Indonesia briefly used a closed proportional electoral system. However, this system changed in the 2004 elections until the 2019 elections, which used an open proportional electoral system. (Djidar, 2023).

The closed proportional system is one type of balanced representation system, where voters can only vote for political parties as a whole and cannot vote directly for candidates. On the ballot paper, only the name of the political party is listed and voters vote through the party's image or symbol. (Raden, 2021).

In this system, the power to determine the list of candidates and elected candidates is entirely in the hands of political parties. For example, if a political party obtains 2 (two) seats in an electoral district (Dapil), then candidates number 1 (one) and 2 (two) from the party will be elected. If the party only gets 1 (one) seat, then only candidate number 1 (one) will be elected. (Pardede, 2014).

The closed proportional system has several advantages that have been considered in disputes at the Constitutional Court (MK). Firstly, this system is considered capable of suppressing money politics and political corruption due to more economical election costs compared to an open proportional system. Secondly, political parties play a central role as carriers of ideas and programmes into parliament. Thirdly, full responsibility in determining the list of candidates and elected candidates is given to political parties, strengthening their control over the

cadres who will sit in parliament. Fourth, the public can easily assess the performance of political parties in this system based on the composition and quality of elected cadres. (Suhariyanto et al., 2023)..

The closed proportional system has disadvantages that can be identified as follows. Firstly, the system is prone to oligarchic practices and nepotism, where the power of political parties in determining the list of candidates can produce inequality and prevent democratic progress. Secondly, there is no personal closeness between candidates and voters, as voters do not have a direct choice of a particular candidate. As a result, voter trust and engagement with candidates can be reduced. Third, candidates tend to be less aspirational because they are determined by political parties, focusing on party interests rather than individual voter aspirations, reducing the quality of political representation. Fourth, in this system, people tend to only vote for political parties as a whole, reducing political awareness and active participation in the selection of individual candidates.

Limited Open Proportional System (SPTT)

The limited open electoral system, which was proposed as a middle ground in the initial draft of the Election Bill, focuses on the nomination and voting patterns. In a limited open proportional system, a proportional system is used with an open list of candidates and a bound list of candidate numbers based on the determination of political parties. Voters vote by casting a single vote on the party number or image mark, and a vote on the list of legislative candidates is considered invalid. (Romli, 2018).

As the discussion progressed, the limited open proportional system underwent adjustments, especially in the formula for determining elected candidates. If voters in an electoral district mostly choose the party symbol, the winner of the legislative election is determined through the candidate's serial number (closed system). On the other hand, if more voters choose candidates, the candidate who gets the seat in the electoral district is the candidate who gets the most votes (open system). Voting in this system gives voters the freedom to choose a party symbol or a legislative candidate.

The alternative of a limited open proportional system is not simply a direct translation of the original draft Election Bill submitted by the government. The final limited open concept emphasises that if there are more party votes, the determination of elected candidates will return to the parties to determine who will be represented or represented in the serial numbers. (Ramadhanil et al., 2019). This system illustrates an attempt to create a mechanism that is more flexible and responsive to the dynamics of the general election as well as paying attention to democratic aspects in determining the people's representatives.

In the context of the development of the Limited Open Proportional Election system, Constitutional Law experts are formulating a rational choice for an electoral

system that can be applied in the 2024 elections. This is considered as an alternative or supplement to the decision of the Constitutional Court (MK) Judge regarding the electoral system dispute. In this understanding, the electoral system can be divided into two main types: Open Proportional System for the election of executive political offices (President, Governor, Regent, and Mayor), where victory is based on the most votes with voters choosing the candidate's image mark; and Limited Open Proportional Election System for political offices in the legislature (DPR, DPD, Provincial DPRD, Regency/City DPRD), where control is fully in the hands of the supporting political parties.

The Open Proportional System gives voters the freedom to choose candidates directly by selecting the candidate's image, while the Limited Open Proportional Electoral System gives full control to the endorsing political party, where voters select the image of the political party. This understanding shows the principal difference between the electoral systems for executive and legislative offices. In both systems, proportionality remains the main focus.

With a simple overview of the development of the concept of a Limited Open Proportional General Election system, it can be seen that this discourse requires further debate and elaboration in various democratic forums. The goal is for this concept to grow and become a viable alternative to be considered in future general elections, especially in the context of the 2024 elections.

3. Consideration of Judges and the Impact of the Constitutional Court Decision on the Implementation of the 2024 Election

The Constitutional Court (MK) considered Law No. 7/2017 on General Elections through a judicial review process. The Court stated that a proportional electoral system with open lists is more in line with the spirit of the 1945 Constitution.

Conceptually and practically, MK realises that every electoral system, including proportional with open or closed lists, and districts, has its advantages and disadvantages. Therefore, lawmakers need to consider the dynamics and needs of election administration in determining the best system.

Lawmakers, for future improvement, are advised not to make frequent changes to the electoral system. Changes should be made earlier before the electoral stage begins, by maintaining a balance and continuity between the role of political parties, in accordance with Article 22E paragraph (3) of the 1945 Constitution, and the principle of popular sovereignty as described in Article 1 paragraph (2) of the 1945 Constitution.

In addition, changes should involve all those who care about electoral administration, applying the principle of meaningful public participation. This emphasises the importance of involving the public in decision-making regarding electoral systems.

In the context of a comparison between open-list and closed-list proportional systems, both have advantages and disadvantages. An open-list proportional system, for example, encourages healthy competition between candidates and allows voters to directly elect candidates who are perceived to represent their interests.

The advantage of this system is that it also involves voters directly in determining who will represent them in representative institutions. Voters have the freedom to choose candidates from a particular party without being bound to the order of the list of candidates set by the party. This creates a closer relationship between the voter and the elected representative. (Pratiwi, 2018).

Another advantage is that voters can participate directly in supervising their representatives in representative institutions. (Prayatno & Susilowati, 2023).. In this system, voters have the opportunity to involve themselves in monitoring the actions and decisions taken by their elected representatives, thus increasing accountability and transparency in the political system including increasing voter participation.

An open-list proportional system is considered more democratic because political representation is based on the number of votes received, providing fair opportunities for parties or candidates with significant public support. It encourages political inclusiveness, accommodates various interests, and prevents domination of government by one group. However, this system is prone to money politics and requires large political capital for candidacy. In contrast, a closed-list proportional system has advantages, such as political parties can more easily supervise their members, ensure conformity with the party's will, and encourage the best cadres. With a strict selection mechanism, this system can improve the quality of people's representatives, minimise money politics, and reduce negative campaigns that harm democracy. Despite their advantages, both systems have drawbacks that need to be considered in terms of law and political practice. (Muhammad, 2020).

The advantages and disadvantages of open- and closed-list proportional electoral systems are undeniable, and each variant of the electoral system has implications and applications in the practice of election administration. The decision of the Constitutional Court (MK) in relation to the review of the Election Law includes dissenting opinions on the need for evaluation, improvement and changes to the open proportional system that has been used four times in the 2004, 2009, 2014 and 2019 elections. The transition from an open proportional system to a limited open proportional system is considered necessary from a philosophical and sociological perspective, because the open proportional system is considered to be based on a fragile democracy. The existence of competition without ethics, the potential for sharp conflicts, and internal conflicts within parties are the main reasons for changing the system. The picture of dissenting opinions between Constitutional Court Judges and Constitutional Law Experts influenced the Court's conclusions, with decisions in favour of continuing the open proportional system considered an effort to create

political stability and maintain the status quo, while dissenting opinions reflected the judges' freedom of thought that was not confined by public pressure.

The impact of the decision of the Constitutional Court of the Republic of Indonesia regarding the dispute over the 2024 general election system in Indonesia, as has been conveyed by PERLUDEM researchers in a hearing at the Constitutional Court of the Republic of Indonesia, states that the open proportional system as a system that is considered feasible in the implementation of the 2024 General Election which has been decided by the Constitutional Court of the Republic of Indonesia through the Decision on the petition for judicial review of the Constitutional Court of the Republic of Indonesia against Law Number 7 of 2017 concerning Elections dated 15 June 2023 stating that the 2024 Election system will continue to be implemented on an open proportional basis this decision has at least 3 (three) positive impacts including: The existence of political parties, especially in the context of internal democracy, institutions, and the implementation of political party functions, does not weaken political parties, as clarified by the Decision of the Constitutional Court of the Republic of Indonesia regarding the Open Proportional System. This decision has great potential to strengthen party institutions and encourage the implementation of political party functions. The impact is seen in the development of internal democracy, where the open proportional system provides opportunities for party cadres to maintain bargaining power and play an active role in politics without pressure or coercion from the elite or party leadership. Cadres who succeed in building good relationships with their constituents have the power to not be easily replaced in their electoral districts, reducing the risk of declining support and losing party seats in the area. As such, the Constitutional Court's decision creates an opportunity for more open internal party democracy, where the power of the leadership can be balanced with the capabilities of cadres in building a support base for the party and themselves. As a result, hard-working cadres will have strong bargaining power to defend their political positions and provide input without fear of disproportionate treatment.

CONCLUSIONS

The application for a judicial review of the 2024 electoral system at the Constitutional Court of the Republic of Indonesia demonstrates the importance of implementing a democratic system. Elections are an important process for electing members of the legislative and executive bodies at the central and regional levels. The legal framework, organisers, stages, participants, institutions, violations and management of elections have undergone major changes from 1955 to the 2024 simultaneous elections. Efforts to change the system through a judicial review of Law No. 7/2017 on General Elections emerged to improve the implementation of future elections.

The opinions of Constitutional and Electoral Law experts are divided into two axes in the Constitutional Court judicial process. First, there is the axis that maintains the status quo-the open proportional electoral system-as expected. Second, there is an axis that wants to change the electoral system because of important problems that have not been resolved in the open proportional system. According to the change group, in order to resolve the problems that have arisen, change is required.

To understand the impact of the decision on the 2024 elections, we must consider the decision of the Constitutional Court judges and the dissenting opinion of the Constitutional Court judges on the Election Law test case. The majority of Constitutional Court judges were of the opinion that improvements to the electoral system should take into account several things, such as safeguarding popular sovereignty, harmonising and aligning the roles of political parties, and encouraging significant public participation. However, there were Constitutional Judges who expressed dissenting opinions, emphasising that the open proportional system that had been used four times previously should be evaluated, improved and changed (2004, 2009, 2014 and 2019 elections).

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