

---

**THE POLITICS OF ELECTIONAL LAW IN INDONESIA**

---

Mohammad Indra Bangsawan<sup>1</sup>, Kuku Ari Febrianto<sup>2</sup><sup>1</sup> Muhammadiyah University of Surakarta ([mib136@ums.ac.id](mailto:mib136@ums.ac.id))<sup>2</sup> Muhammadiyah University of Surakarta ([C100182391@student.ums.ac.id](mailto:C100182391@student.ums.ac.id))

---

**ABSTRACT**

Less than a year from now the 2024 elections will be held. The preparatory stage is underway. That is, the election process has been running in such a way. The request to change the open proportional system seemed to be a stumbling block in the process of organizing the 2024 elections. Problems arose when a request registered with Case Number 114/PUU-XX/2022 which essentially requested Indonesia to switch to a closed proportional election system was filed with the Constitutional Court. The request was submitted by the PDIP, represented by Demas Brian Wicaksono and five other individuals. This request gave birth to a polemic in the community. The cause of changes to the main foundation in holding elections, namely the electoral system, will greatly affect the whole series of democratic parties. Departing from these problems, the authors conducted a series of critical analysis studies to examine these issues.

Keywords: Election, open proportional, closed proportional.

**INTRODUCTION**

As a benchmark for democracy, general elections are a crucial indicator in its implementation. Referring to the legal basis of Law Number 7 of 2017 concerning Elections, the Indonesian general election will be held simultaneously in 2024 with a mechanism and basis that is not much different from the 2019 general election. Heading into the political year, recently, electoral issues have been very much discussed, polemics, waves of enthusiasm and frenzied news regarding the current state of political parties have been widely discussed. This is no exception, the polemic about open and closed proportional electoral systems which has often disturbed the public recently.

The polemic began with the submission of a judicial review of Law Number 7 of 2017 regarding the constitutionality of the open proportional electoral system, which was then followed by a controversial statement that shocked the public from the Chairman of the General Election Commission of the Republic of Indonesia (KPU RI) Hasyim Asyari in the middle of the material review process of Law 7/2017, who said that it is possible that the next election will be held using a closed proportional mechanism. This is an odd statement from the leadership of the Indonesian KPU, as an independent institution that should carry out the mandate of statutory orders, instead of expressing opinions that deviate from the mandate of the Election Law.

When the leadership of the Indonesian KPU made a controversial statement that exceeded its authority as election organizer, on another occasion, the General Chair of the Indonesian Democratic Party of Struggle (PDI-P) Megawati Soekarnoputri was also absent from a meeting of political party elites which are factions in parliament, in order to declare their rejection regarding the implementation of a closed proportional election system on January 8 at the Dharmawangsa Hotel, South Jakarta. The absence of the PDI-P has actually confirmed its support for a closed proportional electoral system. So, what is actually the difference between open proportional and closed proportional electoral systems? Which electoral system is more appropriate to apply in Indonesia?, and who benefits from the two electoral systems?

## RESEARCH METHODS

This research is normative juridical legal research. Normative juridical legal research is legal research that establishes law as a constructive normative system, namely principles, standards, principles, legal norms, jurisprudence, agreements and doctrine, by conducting research using a social and legal approach. By using analytical methods in the form of legal principles that are used and applicable in society. The collection method involves collecting secondary data, in the form of scientific journals and writings and literature related to the object under study. Then it is analyzed descriptively to reveal the issues being studied in this research. In this normative juridical study, the author uses a legal approach (Statute Approach) and an analytical approach (Analytical Approach). With a statutory approach, the author uses related statutory regulations as an analytical tool in analyzing the problems raised by the author in a legal sense. The legal approach is taken by reviewing all relevant laws and regulations.

## RESULTS AND DISCUSSION

### Open and Closed Proportional Election System

The electoral system generally has 2 (two) forms of system, including the district or single member constituency/district system and the balanced or proportional representation system. The district system itself was once mentioned by J. Kristiadi as a political observer at the Center for Strategic and International Studies (CSIS), he stated that the district election system is not suitable to be applied in elections in Indonesia which is a plural nation where the district system here only considers one region (Kristiadi). : 2007). So, it is not surprising that the district system is not well known in Indonesia, seeing that until now, its implementation has never been implemented in Indonesian general elections. Meanwhile, the balanced or proportional representative election system itself is familiar in Indonesia, because it is often implemented and has become part of every general election held.

Talking about a balanced or proportional representation electoral system here certainly emphasizes balance and proportion, which concerns the proportion between the population and the number of seats in an electoral district and the proportion between the total votes obtained by a political party which are then converted into seats that will be obtained. by the political party. The proportional electoral system is generally re-described as a single transferable vote and a list proportional representative system. Single transferable vote gives voters the opportunity to choose the first, second and so on choices from the relevant electoral district. If the number of votes required to elect the first candidate is met, and if there are remaining votes, then these excess votes are transferred to the second candidate and so on.

There is also a list proportional representation system, which asks voters to choose among a list of candidates containing as many names as possible of the people's representative candidates who will be elected in the general election. The proportional representative system list indicates 2 (two) ways of implementing it, namely openly and closedly. So, there is an open and closed proportional electoral system, both of which have been applied in elections in Indonesia. If you look at the situation in Indonesia today, the issue of electoral politics is certainly increasingly coloring national news, including discussions about open and closed proportional electoral systems which were widely discussed after the judicial review of Law Number 7 of 2017 concerning Elections regarding open proportional systems was carried out at the Constitutional Court (MK). This certainly attracts public attention to the pros and cons of the two electoral systems.

THE DIFFERENCE BETWEEN OPEN AND CLOSED PROPORTIONAL SYSTEMS	
OPEN	CLOSED
Bringing transparency in voting because people can know who they choose to represent themselves	There is a lack of transparency when it comes to voting because of limited information about who will represent themselves, remembering that voters only choose political parties.
Providing an opportunity for the public to correct legislative members who do not side with the interests of their constituents, the public can consider voting for candidates in the next election.	There is a lack of opportunity for the public to correct legislative members because the corrective authority is held directly by political parties.
The minimal role of political parties in gathering people's aspirations is because legislative members are individual. People entrust their votes more to party members than to political parties.	Reaffirm the role and responsibility of political parties for the continuity of government because the votes cast by the public will be collected by the party.
Open	Closed
Political parties will tend to focus on providing legislative candidates with high popularity criteria to the exclusion of other criteria.	Encourage political parties to maximize their work to realize people's aspirations by presenting legislative candidates who have the same ideology as the party.
Legislative institutions can better represent the diverse characteristics of society. This is due to open access for all voters to choose legislative candidates according to his preference.	In this system, the legislative composition cannot represent all groups of society, considering that people only elect parties, not individuals.
Campaigns that use a personality-centered strategy often practice clientelism so that they require large capital in the campaign.	Can reduce the possibility of clientelism practices due to a more party-based campaign strategy. The practice of clientelism will be more centralized within the party.

The open proportional election system itself is an implementation of Constitutional Court Decision Number 22-24/PUU-VI/2008, where selecting legislative candidates is carried out using an open proportional system (Decision Number 22-24/PUU-VI/2008). An open proportional system essentially allows voters to choose their legislative representatives directly, so that the list of legislative candidates is not arranged based on serial numbers and the determination of candidates is determined based on the majority of votes. Open proportionality has the advantage of increasing the degree of constituent representation and also encouraging prospective candidates to compete through mobilizing mass support. However, on the other hand, open proportionality also opens the way for the metamorphosis of money politics because every candidate competes to try to woo constituents (Isabela: 2022).

Meanwhile, a closed proportional election system is being discussed again in Indonesia for the upcoming 2024 simultaneous elections when, some time before, a judicial review of Law no. 7 of 2017. The pros and cons began to emerge when the Chairman of the General Election Commission, Hasyim Asyari stated that this system might be implemented if the lawsuit was granted by the Constitutional Court (Asyari: 2023). Basically, a closed proportional system is defined as an electoral system in which legislative candidates are determined through political party votes. The list of legislative candidates is arranged based on serial numbers whose positions will be assigned after political parties reach the seat threshold (Arjanto: 2023)

Closed proportionality is considered less democratic, because it does not allow the people to directly choose prospective candidates. However, of course this will also make it easier to recapitulate votes in future simultaneous elections and when political parties have the authority to determine their legislative candidates, it will certainly have the opportunity to facilitate the fulfillment of quotas for women or ethnic minority groups in parliament. So far, the only party that supports a closed proportional electoral system is the PDI-Perjuangan Party, while the other parties want an open proportional electoral system to be implemented.

**Exploring the Feasibility of a Closed Proportional Election System in Simultaneous Elections**

Referring to the history of elections in Indonesia, the closed proportional electoral system existed when the Old Order regime was established, specifically in the 1955 general election. The closed proportional system also became a strong excuse for the shift in the political system from parliamentary democracy to guided democracy (Kherid: 2021). This resulted in a larger portion of executive power than the legislative and judiciary (executive heavy) which ultimately continued to be perpetuated in the New Order regime. The New Order regime also adopted a closed proportional system in carrying out general elections. Unfortunately, this actually eroded democratic values which resulted in the hegemony of large parties and the strength of the party oligarchy system.

In the reform era, a closed proportional system was still applied in the 1999 general elections through Law no. 3 of 1999 (Law No. 3 of 1999). Meanwhile, the open proportional system itself has been implemented since the issuance of Law no. 12 of 2003 (Law No. 12 of 2003). However, as the era of simultaneous general elections approaches in a year's time, the open proportional system is starting to shift from being desired in the upcoming elections due to the discourse of re-introducing the closed proportional system. The discourse and pros and cons began with a lawsuit against the implementation of an open proportional system in legislative elections in the 2024 General Election and the implementation of Judicial Review of Law no. 7 of 2017 in case number 114/PUU-XX/2022, which as of Thursday (9/2/2023), the Material Review Session of the Law was still ongoing.

According to Political Observer at Gadjah Mada University, Mada Sukmajati, a closed proportional system is considered appropriate. When a country wants to hold simultaneous general elections, choose the simplest system, and this closed proportional system is a simple system from the voter's point of view (according to him, a closed proportional system is also appropriate). makes it easier for the election implementation committee because the recapitulation process is felt to be easier and simpler. The holding of the simultaneous general elections in 2024 itself is based on the provisions of Law No. 7 of 2017 Article 167 Paragraph (3) which reads: (Law No. 7 of 2017)

"Voting is held simultaneously on holidays or days that are closed nationally."

In essence, according to the Chairman of the General Election Supervisory Agency, Rahmat Bagja, the legal basis that will form the basis for the 2024 simultaneous general elections, is not much different from the legal basis that was used as the basis for the 2019 simultaneous general elections. The legal basis includes Law no. 7 of 2017 concerning General Elections and also Law no. 10 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors (Agusta: 2024). Regarding the election date, it has officially been decided that the presidential and legislative elections will be held on February 14 2024, while the simultaneous regional elections will be held on November 27 2024. Therefore, a closed proportional system is considered ideal because it is considered the simplest in making it easier for various parties to navigate the busy agenda of the 2024 simultaneous elections in the future. .

However, when starting to implement a closed proportional system, the internal political party candidacy process must fulfill the principles of accountability, transparency, education and participation. In ensuring the implementation of the above principles, UGM Political Observers stated that there is a need for certain mechanisms issued by the KPU to political parties participating in elections when a closed proportional system is implemented. Seeing that Indonesia is a democratic country, constituents need to be involved in all policies taken through these principles.

A few advantages of a closed proportional system have been explained previously with a solution that requires the fulfillment of democratic principles. However, will the decision to hold simultaneous elections in 2024 guarantee the opening of a more substantive democratic space or will it instead become a means of transitioning oligarchy into a more exclusive form? Can this system really reduce clientelism or even bring about the birth of clientelism from within the political party itself and even nepotism? It cannot be denied that Indonesia as a democratic country must strive to uphold the democratization process in order to fulfill the rights and sovereignty of the people. Of course, it is worrying that the

people's rights and sovereignty are difficult to guarantee.

According to the Indonesian Corruption Watch (ICW), the closed proportional system is an attempt to shackle people's rights and perpetuate money politics. (ICW:2023). This statement does not merely appear as an accusation, it appears as a symbol of people's concern over the many opportunities in a closed proportional system to reduce democratic values. Public participation in selecting candidates is actually increasingly remote, because the determination is only made within the party. Candidates who rely on a list of serial numbers are also likely to be exposed to nepotism and money politics, but not to the people, but to their own party. Thus, closed proportionality is considered to move the trend of money politics, not eliminate it.

The people as the main symbol of democracy are no longer the main axis for those who will contest. Those who are under party power will of course compete to build their image in front of the political party, which in the end will also be responsible to the political party for their performance when elected, so that they are no longer responsible to the people as the main constituent. The worry is that oligarchic networks will increasingly emerge in the process, thereby tarnishing democratic values.

#### **Advantages of a Closed Proportional Election System**

Submission of a judicial review of Law Number 7 of 2017 concerning Elections to the Constitutional Court (MK) regarding the constitutionality of an open proportional system has become a hot topic of discussion in the past three months. It is known that the application for Case Number 114/PUU-XX/2022 came from four civil society individuals and two political party cadres, including Demas Brian Wicaksono (PDI-P Probolinggo branch administrator), Yuwono Pintandi (Nasdem Party administrator at that time, now has been deactivated), Fahrurrozi, Ibnu Rachman Jaya, Riyando, and Nono Marijono. Apart from the petitioners, the Indonesian Democratic Party of Struggle (PDI-P) also openly insisted on pushing for a change in the electoral system from open proportional to closed proportional even though 8 factions in the DPR expressed their rejection.

The pretext that underlies PDI-P's stance that a closed proportional system can be a solution to reduce election fraud and costs, is not enough to ward off the fact that space for nepotism and money politics trends will actually occur within the party. It is not impossible that with a closed proportional system, party elites will have more freedom to determine their representative candidates in the legislative body, especially candidates who have relations with party elites who can easily get certain serial numbers. So you can imagine, still only in the nomination stage, the process of selecting candidates for legislative members is very closed. How do we ensure that the legislative candidate proposed by the party is a competent candidate and can represent the people, if the final determination of the candidate's electability is under the party's authority? Moreover, if we look back at the 2019 legislative election, PDI-P haphazardly nominated 72 legislative candidates who once held the status of corruption convicts. Using the same logic, in fact it is difficult to trust political parties to determine their own elected candidates through a closed proportional scheme.

PDI-P is considered to have other strong reasons behind its desire to return the electoral system to a closed proportional one. As a large party that is close to power and has a high electability rate of 20 percent, an open proportional system that emphasizes the popularity strategy of each legislative candidate figure in order to gain votes is no longer a necessity. In contrast to PDI-P, the electability of other parties is still very fluctuating. One of the causes of the rise and fall of this party's votes is largely determined by the figure of the legislative candidate being put forward. Thus, for medium-sized and non-parliamentary political parties, the use of an open proportional system is an important part of obtaining maximum votes in elections.

If this closed proportional system is implemented, PDI-P will be the only party that will benefit greatly from the votes. Meanwhile, it will be increasingly difficult for small parties to compete with PDI-P to enter parliament, because as a party they have a moderate to low level of electability and the strategic approach of using the popularity of legislative candidates to increase votes can no longer be implemented. Through a closed proportional system format, the battle to gain the number of votes which was initially carried

out between individual candidates in a particular political party becomes purely a battle between political party elites, the candidates are no longer powerless to take an active role in socializing themselves, because in the end the greatest power lies in hegemony political parties.

## CONCLUSION

The debate about implementing elections with an open and closed proportional system has still not found any clarity, both electoral systems are considered to have their respective advantages and disadvantages. Of course, every political party must have preferences and schemes for these two electoral systems. Political parties that rely on gaining votes through popular legislative candidates usually tend to choose an open proportional system, where voters can directly elect their representatives in the legislature. Meanwhile, parties that have a stronger structure with high electability will choose a closed proportional system, where voters can only choose political parties without knowing who the representatives will then fill the seats in the legislature.

Even though both have weaknesses, the open proportional system is considered to be the best option and should be maintained. An open proportional system gives the community as constituents the right to determine which legislative candidate will be their representative in the legislature. Apart from that, the essence of elections for society is as an opportunity to provide rewards and punishments or a tool to assess who is considered worthy of being a representative and/or punishing representatives who do not work well by not being re-elected in the election.

With the return of elections with a closed proportional system, people's rights have been directly shackled and the reform process that prioritizes democracy and people's participation has been betrayed. This is because a closed proportional system tends to strengthen the oligarchic system within the party and will only give the party the power to determine who they want to sit in Senayan, not who the public wants.

## REFERENCES

1. Muhammad Nizar Kherid. (2021). *Evaluasi Sistem Pemilu di Indonesia, 1955-2019: Sebuah Perspektif Pluralisme Hukum*. Rayyana Komunikasindo.
2. Perdana, Aditya, Benget Manahan Silitonga, dkk. (2019). *Tata Kelola Pemilu Di Indonesia*. Jakarta: Komisi Pemilihan Umum Republik Indonesia.
3. Buccola, Nicholas. *Abraham Lincoln and Liberal Democracy*. (2016). Lawrence: University Press of Kansas.
4. A., Espirito-Santo, Sanches, E.R. (2018). *Looking for locals under a closed-list proportional representation system: The case of Portugal*. Electoral Studies, Hal. 2-3.
5. Al-Hamdi, Ridho, Sakir, Tanto Lailam. (2021). *Evaluating Closed-List Proportional Representation System and its Compatibility in Contemporary Indonesian Elections*. International Research Conference (IRC) Proceedings, Hal. 43-44.
6. Ali, Mohammad Mahrus, Meyrinda Rahmawaty Hilipito, Syukri Asy'ari. (2015). *Tindak Lanjut Putusan Mahkamah Konstitusi yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru*. Jurnal Konstitusi, Hal. 654.
7. I.P., Prasetya. (2011). *Pergeseran Peran Ideologi Dalam Partai Politik*. Jurnal Ilmu Politik dan Ilmu Pemerintahan, Hal. 30-40.
8. Malik. (2009). *Telaah Makna Hukum Putusan Mahkamah Konstitusi yang Final dan Mengikat*. Jurnal Konstitusi, Hal.91.
9. Pratiwi, Diah Ayu. (2018). *Sistem Pemilu Proporsional Daftar Terbuka Di Indonesia: Melahirkan Korupsi Politik?* Jurnal Trias Politika, Hal. 5-6.
10. Puspita, Nia Endra. (2012). *Strategi Politik dan Kemenangan Golkar di Semarang Pada Pemilu 1971*.



- Journal of Indonesian History, Hal.32-33.
11. Syaiful, Mohammad. (2018). *Penataan Sistem Pemilihan Umum Yang Berkeadilan Untuk Penguatan Sistem Presidensiil Di Indonesia*. Yuridika, Hal.301-302.
  12. Tabrani, Sayed Rafli, Irwansyah. (2023). *Tinjauan Fiqh Siasah Dan Yuridis Terhadap Wacana Sistem Proporsional Tertutup Pada Pemilu 2024*. Jurnal Hukum Unissula, Hal. 124-127.
  13. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
  14. Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.
  15. Undang-Undang Nomor 8 Tahun 2011 tentang Mahkamah Konstitusi.
  16. Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
  17. Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2022 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
  18. Peraturan Dewan Kehormatan Penyelenggara Pemilu Nomor 2 Tahun 2017 tentang Kode Etik dan Pedoman Perilaku Penyelenggara Pemilihan Umum.
  20. Penjelasan atas Undang-Undang Nomor 10 Tahun 2008 tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah.
  21. Permohonan Nomor 114/PUU-XX/2022 terkait Pengujian Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
  22. Anggaran Dasar Partai Demokrasi Indonesia Perjuangan Tahun 2019-2024.
  23. Arjanto, D. (2023, January 2). *Mengenal Sistem Proporsional Tertutup yang Diusulkan Agar Dipakai di Pemilu 2024* Tempo. <https://nasional.tempo.co/read/1674987/mengenal-sistem-proporsional-tertutup-up-yang-diusulkan-agar-dipakai-di-pemilu-2024>
  24. *Hindari Salah Penerapan Hukum di Pemilu Serentak 2024, Bagia Minta Penyelenggara Pemilu Kuasai Aturan UU Pemilu dan UU Pilkada*. (n.d.). Badan Pengawas Pemilihan Umum Republik Indonesia. Retrieved February 12, 2023, from <https://bawaslu.go.id/id/berita/hindari-salah-penerapan-hukum-di-pemilu-serentak-2024-bagia-minta-penyelenggara-pemilu-kuasai>
  25. Hamdi, I. (2023, January 3). *Menakar Peluang Perubahan Sistem Pemilu*. Koran Tempo. <https://koran.tempo.co/read/nasional/479347/peluang-mengubah-sistem-pemilu-dari-proporsional-terbuka-ke-proporsional-tertutup>
  26. Hamdi, I. (2023, January 2). *Menengok Asal Gugatan Sistem Pemilu*. Koran Tempo. <https://koran.tempo.co/read/nasional/479347/peluang-mengubah-sistem-pemilu-dari-proporsional-terbuka-ke-proporsional-tertutup>
  27. Herdiana, I. (2023, February 9). *Winter is Coming di Tahun Politik*. BandungBergerak.id. <https://bandungbergerak.id/article/detail/15037/winter-is-coming-di-tahun-politik>
  28. Media, K. C. (2022, February 22). *Perbedaan Pemilu Sistem Proporsional Terbuka dan Tertutup*. KOMPAS.com. <https://nasional.kompas.com/read/2022/02/23/01150081/perbedaan-pemilu-sistem-proporsional-terbuka-dan-tertutup>
  29. *Pengamat Politik UGM: Sistem Proporsional Tertutup Paling Cocok untuk Pemilu Serentak | Universitas Gadjah Mada*. (2023). Ugm.ac.id. <https://www.ugm.ac.id/id/berita/23344-pengamat-politik-ugm-sistem-proporsional-tertutup-paling-cocok-untuk-pemilu-serentak>
  30. *Polemik Sistem Pemilu Proporsional Tertutup: Upaya Belenggu Hak Rakyat dan Ruang Gelap Politik Uang | ICW*. (n.d.). Antikorupsi.org. Retrieved February 5, 2023, from <https://antikorupsi.org/id/polemik-sistem-pemilu-proporsional-tertutup-upaya-belenggu-hak-rakyat-dan-ruang-gelap-politik-uang>