

Legal Politics of Holding General Elections with an Open Proportional System

Beamezar Daffa Alkautsar¹⁾ & Denny Suwondo²⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, E-mail: beamezardaffa@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, E-mail: dennysuwondo@unissula.ac.id

Abstract. *The pure open proportional system was then applied in the 2014 election which stipulated that the most votes would be the terms and conditions for members of the DPR, Provincial DPRD and Regency/City DPRD to be elected. The development of election legal politics from time to time has experienced significant shifts. Elections are considered a real form of democracy and the most concrete form of community participation in participating in the administration of the state. This writing aims to understand and analyze the legal politics of organizing general elections with a proportional system in Indonesia, the problems and solutions for organizing general elections with a proportional system in Indonesia. The approach method used in this study is the normative legal approach method. Normative legal emphasizes more on the aspect of understanding a legal norm which includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research. The analytical tools in this writing use the theory of legal certainty and the theory of legal systems. The results of the study show that the legal policy of organizing general elections with a proportional system in Indonesia, the Constitutional Court (MK) emphasized that the Indonesian constitution never regulates the type of legislative election system (pileg). The problematic implementation of general elections with a proportional system in Indonesia, the design of the implementation of an open general election system is apparently close to the practice of money politics and identity politics. The ideal solution for organizing general elections in Indonesia is to implement a mixed proportional system that emphasizes a combination of open and closed proportional systems.*

Keywords: Election; Legal; Politics; Proportional.

1. Introduction

The sovereignty of the Republic of Indonesia is in the hands of the people and is implemented according to the Constitution, which is explained in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). As a unitary state in the form of a Republic and with sovereignty in the hands of the Indonesian people, it upholds the principle of democracy, the highest power is in the hands of the people, which is the true meaning of sovereignty being in the hands of the people.

The holding of general elections is evidence of the realization of the implementation of people's sovereignty in Indonesia. In a democratic system, the guarantee of the realization of the idea of people's sovereignty is that the people are fully involved in planning, organizing, realizing, and implementing supervision and providing an assessment that the implementation of the function of power must be ensured to be truly directly involved. As a container for managing the life of the state, the democratic political order becomes an accurate model. Democracy is not the only most perfect model used to regulate human life and this is realized by all parties. History shows that the smallest opportunity to discredit people's rights is through a good democratic system.¹

On the other hand, debates continue to fill the public space on the open proportional system used to elect members of the DPR. The resubmission to the closed proportional system began to be discussed through the discussion of the revision of Law Number 10 of 2008 concerning Legislative Elections into Law Number 8 of 2012. However, this was not achieved because not many supported the change back to the closed proportional system.²

The pure open proportional system was then applied in the 2014 election which stipulated that the most votes would be the requirement and condition for members of the DPR, Provincial DPRD and Regency/City DPRD to be elected as stipulated in Article 215 letter a of Law No. 8 of 2012 concerning the Election of Members of the DPR, DPD and DPRD. This provision is a continuation of the provisions that have been applied in the 2009 election and its regulations are regulated in Law No. 10 of 2008 concerning the Election of Members of the DPR, DPD and DPRD.³

¹Titony Tanjung, 2023, "Understanding the Open Proportional System in Indonesia Towards the 2024 General Election", *Multidisciplinary Journal of Science*, Vol. 2 No. 1, p. 125

²Muhammad Revan Fauzano Makarim and Khairul Fahmi, 2022, "Problems and Impacts of the Implementation of the Open Proportional Election System on the Political System", *Journal of Social and Policy Issues*, Vol. 2 No.2, p. 50

³Agus Riwanto, 2015, "Correlation of Open Proportional Election System Regulation Based on Most Votes with Political Corruption in Indonesia", *Yustisia Jurnal Hukum*, Vol. 4 No.1, p.92

The practice of money politics is basically not directly related to the existence of Law No. 8 of 2012 which stipulates an open proportional system, on the contrary, the practice of money politics continues to be carried out by the logic and psychology of pragmatic society, especially political elites who are unable to provide enlightenment, but instead adapt to unhealthy political conditions.⁴

Based on the background explanation above, the author formulates the problem as follows:

- 1) How is the legal policy for holding general elections with a proportional system in Indonesia?
- 2) How problematic is the implementation of general elections with a proportional system in Indonesia?
- 3) How the ideal solution for organizing general elections in Indonesia?

2. Research methods

The approach method used in this study is the normative legal approach method. Normative legal emphasizes more on the aspect of understanding a legal norm which includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research. Normative legal research or normative legal research is a legal research method whose research uses library materials or secondary data.⁵

3. Results and Discussion

3.1. Legal Policy of General Election Implementation with Proportional System in Indonesia

The closed proportional system is not a holy revelation from the spotless sky. In fact, through this system, money politics practices are perpetuated. Every election of legislative candidate numbers becomes an arena for money politics practices within the party. In addition, the emergence of "little kings" represented by political party leaders. As "kings" in their palaces (political parties), these elites play a very dominant role, especially in determining the legislative candidates who must be supported by the people. Oligarchic power is increasingly rooted within political parties, and democratic ideals are fading.

In 2014, the election with an open proportional system was estimated to have much higher campaign costs compared to the 2009 election, namely in 2009 the assumption was around 3.3 billion and in 2014 it rose to 4.5 billion and only the

⁴Abd Halim, 2014, "The Impact of the Open Proportional System on Political Behavior Case Study of Sumenep Madura Society in the 2014 Legislative Election", *Jurnal Humanity*, Vol. 9 No. 2, p. 10

⁵Johny Ibrahim, 2007, *Normative Legal Methods and Research*, Bayumedia Publishing, Malang, p.30

wealthy could compete with that much capital. The Center for Political Studies, University of Indonesia (PUSKAPOL UI) noted that more than half of the legislative candidates competing in the 2014 Election (58.86%) were businessmen or professionals. In 2019, the campaign costs of the legislative candidates were estimated to reach tens of billions for campaign equipment budgets and others with the aim of winning the hearts of the people.⁶

The debate regarding the implementation of the open and closed proportional system in the 2024 election is basically based on real problems in the practice of elections in Indonesia. Although the open proportional system has been established in recent years, the issue of the quality of political representation has not been immediately answered, there are still many laws that have been issued and have received negative reactions from the public. On the other hand, there are still many money politics practices that are a problem in the open proportional system, as well as candidates who are influential local figures who remain a priority in the election.⁷

There are at least five factors that have an impact on the quality of political representation in the implementation of open or closed proportional systems, namely:

- a. Freedom of voters and political representation, proponents of the open proportional system argue that the space to be able to directly elect candidates will provide a greater possibility for candidates to maintain accountability and be more responsive to their voters. The open proportional system also opens up space for candidates who are not favored by party elites to be elected.
- b. Party solidity and discipline, for supporters of the closed proportional system, the system will provide a guarantee of party solidity and discipline, considering that the party will have strong control over the candidates. The elected candidate is considered to have a strong mandate from the party so that he will be solid in fighting for the party's agenda. This is not found in the open proportional system, where the space for members to not be solid in following the party's will is open.
- c. The complexity of the election and voter education, some critics of the open proportional system state the problem of voter complexity. After all, the 2019 simultaneous elections were complicated elections because voters were asked to elect executives and legislators from the national to regional levels at one time. The level of education of the majority of voters is an aspect that is taken into

⁶Burhanuddin Muhtadi, 2019, "Money Politics and the New Normal in Post-New Order Elections," *Jurnal Antikorupsi Integritas*, Vol. 5, No. 1, p. 60

⁷Imawan and Ramadhan, 2021, "Beyond Money Politics: Case Study of Increasing Political Participation in the 2020 Medan Mayoral Election.," *Bawaslu Journal of Riau Islands Province*, Vol. 3 No. 2, p. 141

account, especially in the open proportional system which presents many names of legislative members.

d. The influence of party elites, for critics of the closed proportional system, this system is considered to be biased towards the interests of party elites, including in determining the order of legislative candidate numbers. However, for supporters of the closed proportional system, this system will allow parties to avoid political party fragmentation. Especially considering that the open proportional system opens up space for elected legislative members to prioritize their agendas over the party's agenda. Fifth, transparency and accountability, supporters of the open proportional system emphasize the sovereignty of voters over the candidates they will choose, so that legislative candidates will try to maintain their accountability to voters. On the other hand, the closed proportional system is considered not transparent and biased towards the interests of party elites.

These factors basically lead to the quality of political parties in Indonesia. The results of a national survey by the Populi Center in February 2023 showed that on a scale of 1 to 10 with a scale of 1 indicating very distrust and a scale of 10 indicating very trust, the level of trust in political parties was at 54.1 percent with an accumulation of a scale of 6 to 10. So far, political parties have not democratized the candidacy process,¹ while political party candidacy is an important key to seeing whether people's sovereignty can be maintained, either using an open proportional system or a closed proportional system.⁸

3.2. Problems of Organizing General Elections with a Proportional System in Indonesia

It is very unfortunate that the design of the implementation of an open general election system is apparently close to the practice of money politics and identity politics. The weakness of legal firmness and supervision causes money politics to occur frequently, thus giving rise to politicians who tarnish democracy.

1) Money Politics

Money politic is an intentional act of giving or promising money or other materials to someone so that they do not use their right to vote or choose a particular election participant, or use their right to vote in a certain way so that their ballot becomes invalid or intentionally receiving or giving campaign funds from or to parties prohibited by law or intentionally providing false information in the election campaign fund report. Money politics is also the exchange of money with the intention of determining someone's position, policies to be issued and political

⁸Andreas Daniel Adi Vibhisana, et al., 2023, "Under Public Control: Critical Analysis of the Implementation of Open and Closed Proportional Systems on Opportunities to Strengthen Public Control in the 2024 Election", Bawaslu Journal of Riau Islands Province, Vol. 5 No. 1, p. 29

decisions in the name of the people's interests but in fact only for personal, group or political party interests.⁹

Political contests in democratic countries in various parts of the world certainly require costs. The purpose of these costs is mostly used as an instrument to market themselves as candidates for executive and legislative officials. By promoting themselves during the campaign period, each candidate tries to compete for power. It's just that in practice some candidate candidates use shortcuts in gaining votes to win electoral contests. Money politics here is the shortcut, by "buying" votes with money or other objects. Even though this method does not necessarily provide a definite victory for the candidate who owns the capital.

2) *Identity Politics*

Identity politics is a political action that brings ethnic, racial, and religious sentiments to gain support from the community. In essence, identity is a good thing, because it is attached to oneself, such as attached to a city, village or other things that are our originality. However, identity can be a tool to divide the nation, when that identity becomes politics or the politicization of identity carried out by political elites.¹⁰ Where identity is used as a basis for gaining power and becomes the basis for mobilizing politics to achieve a certain goal that may conflict with existing laws and regulations.

The characteristics of identity politics are easy to see, such as in the symbols of ethnicity or religion used during the campaign or programs offered that favor one ethnicity, race or religion. Identity politics can occur due to several factors, namely tight competition between candidates, polarization of ethnicity and religion of candidate pairs, and polarization of ethnicity and religion of voters.¹¹ According to the general election regulations there is no prohibition on identity politics, because basically identity is inherent in human nature. However, the dominance of identity politics that is too high can be dangerous and threaten the unity of the nation and state, this is because the issue of division that arises during the campaign can potentially continue, even though the campaign has ended.

The problems in organizing elections with an open proportional system when analyzed using the theory of the legal system do not fulfill the elements of a good legal system. Thoughts and powers outside the law make the legal system stop

⁹Tjahjo Kumolo, 2015, *Legal Politics of Simultaneous Regional Elections*, Bandung, PT Mizan Publika, p. 155

¹⁰Aryojati Ardipandanto, 2020, "The Impact of Identity Politics on the 2019 Presidential Election: A Populism Perspective". *Politica Journal Dynamics of Domestic Political Problems and International Relations*. Vol. 11 No. 1, pp. 43-63.

¹¹Agung Wibiyanto and Wahyu Tri Hastiningsih, 2019, "Issue Management of the 2019 Indonesian Presidential Election in the Media in Central Java", *al-Balagh: Journal of Dakwah and Communication*, Vol. 4 No. 2, p. 70

and move. These three elements, continued Lawrence Milton Friedman, can be used to describe anything that is run by the legal system.¹²

1) The legal structure is all existing legal institutions and their apparatus. The legal structure in the implementation of elections is still unable to enforce the law against money politics practices.

2) Legal substance is the entire legal rules, legal norms, and legal principles, both written and unwritten, including court decisions. The legal substance regarding the implementation of elections is still unclear, not discussed explicitly such as identity politics. Legislation does not provide a detailed definition and does not include identity politics as a violation or election crime.

3) Legal culture is the opinions, beliefs, convictions, habits, ways of thinking, and ways of acting, both from law enforcers and from the community, about the law and various phenomena related to the law. Legal culture in the implementation of elections is increasingly a public trust issue towards candidates because some elected leaders do not carry out and break their promises during the campaign. The practice of money politics has become commonplace in society, some people are happy to accept money from prospective leaders.

3.3. The Ideal Solution for Organizing General Elections in Indonesia

The implementation of an open or closed proportional system should consider the aspect of public control. Things that should be considered before choosing an open or closed proportional system include strengthening voters in Indonesia, the space for interaction between the chosen candidate and voters, and public trust in the implementation of the election. In modern democracy, these aspects cannot be avoided in the implementation of the election. Seeing the need to maintain public control and indirectly encourage the democratization of political parties, it is necessary to consider a mixed proportional system in the implementation of the upcoming election.

The mixed system emphasizes a combination of open and closed proportional systems. At the national level, a closed proportional system can be implemented with a focus on political parties having more control over their members, while in provincial and district/city level elections, an open proportional system can be used to encourage democratization from below. This is done based on several important considerations, namely:

1) From the aspect of the degree of political representation, the distance to accommodate public aspirations will be too far if it is based on members of the People's Representative Council (DPR) of the Republic of Indonesia.

¹²Achmad Ali, 2009, *Revealing Legal Theory and Judicial Theory Including Interpretation of Laws (Legisprudence)*, Kencana, Jakarta, p. 204.

Accommodation of public aspirations can be better accommodated by legislative members at the provincial or district/city level. A mixed system will force members of the Provincial and District/City Regional Representative Councils (DPRD) to interact more intensively with their voters.

2) Functionalization of DPRD and strengthening of regional autonomy, not all problems must be solved by the central government. Therefore, this system will encourage governors, regents, and mayors to be able to respond more quickly to solve problems in the regions. Not all problems are the authority of the president, in many cases the problems are the domain of the regional government. Therefore, a mixed system will be a way to maximize the function of the DPRD and strengthen regional autonomy which has also been widely criticized.

3) From the aspect of party ideology, the differences between political parties that have not been very visible in their attitudes in parliament can be overcome by encouraging higher control from political parties over their members at the national level. This means that the public can see the differences in attitudes, especially considering that the Indonesian House of Representatives has a strategic position in the aspect of law-making. Debates in the law will be more visible and easier to control if political parties become the actors in the spotlight, compared to members of the Indonesian House of Representatives who in some cases may be relatively independent of their political parties.

4) From the aspect of political career, this combination system allows politicians to build a career from the region. Members of the Provincial or Regency/City DPRD who are elected and receive positive assessments from the public are likely to be able to play a role as executive officials. This means that there is room for the public to exercise control, so that there is interaction that allows accountability to be formed between legislative members and voters.

The implementation of an open proportional system at the provincial and district/city levels also provides space for the inclusiveness of legislative candidates. A variety of interests and representation can be better accommodated at the provincial and district/city levels. Social ties based on social divisions can be better accommodated, on the other hand, this will further strengthen the aspect of political representation and closeness of identity that encourages political participation. At the same time, strengthening political divisions in the central parliament can still be created.

Election considerations using a mixed proportional system must be discussed thoroughly by academics and practitioners. This is done to improve the legal system in organizing elections in Indonesia. The theory of the legal system according to Lawrence Milton Friedman, that the legal system must include substance, structure, and legal culture. These three elements according to

Lawrence Milton Friedman in United States law are composed of the first is the legal structure followed by the substance and legal culture.

4. Conclusion

The legal policy of holding general elections with a proportional system in Indonesia, the Constitutional Court (MK) emphasized that the Indonesian constitution never regulated the type of legislative election system (pileg). Article 22E paragraph (3) of the 1945 Constitution which states "participants in general elections to elect members of the DPR and DPRD are political parties", is considered not to necessarily mean that a proportional legislative election system with a closed candidate list is desired, where voters only choose political parties on the ballot paper. After tracing the original intent and systematic interpretation of this article, the Court concluded that although the constitution does not regulate the type of election system, the proportional system with an open candidate list is closer to the constitution. In an open proportional system, voters can directly elect the desired candidate, voters can also choose a party, seat allocation will be based on proportional votes and based on the most votes for candidates. The problem of holding general elections with a proportional system in Indonesia, the design of the implementation of an open general election system is apparently close to the practice of money politics and identity politics. The weakness of legal firmness and supervision causes money politics to often occur, resulting in politicians who tarnish democracy. Money politics is an act of intentionally giving or promising money or other materials to someone so that they do not use their right to vote or choose a particular election participant, or providing campaign funds from or to parties that are prohibited by law or intentionally providing false information in the election campaign fund report. Identity politics is a political act that brings ethnic, racial, and religious sentiments to gain support from the community. The ideal solution for organizing general elections in Indonesia is to implement a mixed proportional system that emphasizes a combination of open and closed proportional systems. At the national level, a closed proportional system can be implemented with a focus on political parties having more control over their members, while at the provincial and district/city level elections, an open proportional system can be used to encourage democratization from below.

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