

Analysis of Open and Closed Proportional System General Elections From a Democratic Perspective

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ABSTRACT

The implementation of general elections is one of the characteristics of a democratic country as a form of people's sovereignty. There are various types of general election systems throughout the world, including open and closed proportional systems. The normative legal method is based on the absence of norms in Law of the Republic of Indonesia Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections into Law, where this Law only regulates the open proportional general election system and there is no regulation on the closed proportional system. The problem discussed in this study is how is the analysis of the open and closed proportional general election system from a democratic perspective? and which general election system is better to use for Indonesia and other democratic countries?.

INTRODUCTION

One of the characteristics of a democratic country is the implementation of general elections to determine the leaders who will play a role in leading the organization of a country. A democratic country and the implementation of general elections are two things that cannot be separated and are dependent on each other. The implementation of democratic general elections is the main requirement in a democratic country, with democratic general elections the sovereignty of the people in the country can be guaranteed.

A democratic country is a country where the system of government and decision-making is based on democratic principles, and the ultimate sovereignty lies in the hands of the people. The characteristics of a democratic country are the holding of free and fair general elections which are held periodically as a manifestation of the sovereignty of the people, citizens are given freedom of opinion without fear of intimidation and intervention, there is a guarantee for the press to broadcast news, the government is implemented based on the constitution and law, and equal treatment for every citizen regardless of background. Some countries that adopt a democratic system are Australia, Canada, the United States, and Indonesia.

In democracy, the principle of popular sovereignty is a fundamental principle that affirms that the highest power lies in the hands of the people. In the concept of popular sovereignty, the people have the right to determine the direction of policy and government through various means such as participation in the legislative process, referendums and general elections. There are several important elements in popular sovereignty, including freedom of expression, community participation in state administration, the existence of people's representation in government, and the implementation of general elections to elect people's representatives through free, fair and democratic procedures.

Democratic general elections are an election mechanism in a country with the aim of electing leaders or representatives in a transparent, free, fair manner, and in accordance with democratic principles. Democratic general elections provide citizens with the opportunity to express their will to elect a leader and how policies will regulate their lives in the country. Democratic general elections are a manifestation of the fulfillment of citizens' rights in the political field in a democratic system. Democratic general elections not only aim to provide legitimacy to the winner of power in the success of the election, but also to apply democratic values in the implementation process through various principles. By adhering to the principles of democratic elections, it can be ensured that the results of the election can be accounted for and the resulting leader has strong legitimacy.

Here are some principles in democratic general elections, including:

First, the election process is carried out by an independent organizing institution that is free from intervention from various parties. An independent institution that is free from intervention has the responsibility to implement, regulate, and supervise the election process fairly, transparently, and free from

the influence of certain parties, especially political parties participating in the general election and the government. Some examples of general election organizing institutions include: Election Commission of India (ECI), an independent institution that organizes general elections in India, Federal Election College (FEC), an institution that organizes general elections in America, and General Election Commission (KPU), an independent institution that organizes general elections in Indonesia. These institutions have the authority to organize fair and democratic elections. The independence and freedom from intervention of independent election organizing institutions is an important pillar to maintain democracy and ensure that the people's voices are always respected and given justice in the general election process.

Second, it is implemented in a direct, general, free, secret, honest and fair manner. Direct means that voters give their right to vote directly without going through an intermediary. General means that every citizen who has met the requirements to vote is given their right fairly without any discrimination. Free means that every voter is free to give their right to vote to the candidate they want without any coercion, threats, or pressure from any party. Secret means that every choice chosen by the voter is kept confidential to avoid intimidation of their choice. Honest means that the general election process is carried out with full integrity, without manipulation, cheating or breaking the law. Fair means that all political parties and candidates are given equal opportunities to compete and participate. The principles of direct, general, free, secret, honest and fair are the main basis for maintaining public trust in the implementation of general elections and ensuring that the process is in accordance with the wishes of the people.

Third, all stages of the general election are carried out in a democratic, transparent, accountable and procedural manner. Democratic general elections give the right to citizens who have met the requirements to participate, the process is carried out openly and can be monitored by the public, the organizing institution is responsible during the general election process, and is carried out in accordance with applicable rules and laws. Transparent, accountable and procedural general elections are very important in ensuring election results that truly represent the interests of the people.

Fourth, emphasizing the principle of one person, one vote, one value. One Person means that each voter casts one vote in the election and no one can cast more than one vote without going through a legitimate procedure. One vote means that each voter only has one chance to play a role in influencing the outcome of the election. One value means that all votes cast by voters have the same value without any distinction based on background and other social status and are free from discrimination. The principle of one person, one vote, one value is very important to maintain the justice and integrity of the democratic system and ensure that every citizen has an equal opportunity in the political process.

The implementation of democracy can be divided into two types, namely direct democracy and indirect democracy. Direct democracy is a democratic system where the people in realizing their sovereignty are implemented

directly such as the election of the executive and legislative. While indirect democracy is a democratic system where the people in realizing their sovereignty do not deal with the executive directly, but are implemented through representative institutions. This type of democratic system is also called representative democracy.

General elections as a manifestation of democracy in its implementation are divided into two types, namely general elections with open proportional and general elections with closed proportional. Indonesia as a democratic country in implementing general elections also experienced changes in its system, where during the New Order era in electing the president was carried out by a representative institution, namely the People's Consultative Assembly (closed proportional), but after the 1998 reformation the election of the president and legislative institutions was elected directly by the people without going through intermediaries (open proportional). Of course there are various advantages and disadvantages of both open proportional and closed proportional elections.

Law of the Republic of Indonesia Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections into Law (hereinafter referred to as the Election Law) Article 168 Paragraph (2) states that "Elections to elect members of the DPR, provincial DPRD, and district/city DPRD are carried out with an open proportional system". In the provisions of Article 168 of the Election Law, it is not stated how the provisions for elections with a closed proportional system are. There are pros and cons to the implementation of the general election system in Indonesia, so that several political party factions have filed a judicial review with the Constitutional Court for the implementation of elections with an open proportional system. To discuss further regarding the advantages and disadvantages of the general election system, both closed and open proportional from a democratic perspective, the problem can be formulated as follows: How is the analysis of the open and closed proportional system general election from a democratic perspective and which general election system is better to use for Indonesia and other democratic countries

THEORETICAL REVIEW

One of the characteristics of a democratic country is the implementation of general elections to determine the leaders who will play a role in leading the organization of a country. A democratic country and the implementation of general elections are two things that cannot be separated and are dependent on each other. The implementation of democratic general elections is the main requirement in a democratic country, with democratic general elections the sovereignty of the people in the country can be guaranteed.

General elections as a manifestation of democracy in their implementation are divided into two types, namely general elections with open proportional and general elections with closed proportional. Indonesia as a democratic country in implementing general elections has also experienced

changes in its system, where during the New Order era in electing the president was carried out by a representative institution, namely the People's Consultative Assembly (closed proportional), but after the 1998 reformation the election of the president and legislative institutions was elected directly by the people without going through intermediaries (open proportional). Of course there are various advantages and disadvantages of both open proportional and closed proportional elections. Law of the Republic of Indonesia Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections into Law (hereinafter referred to as the Election Law) Article 168 Paragraph (2) states that "Elections to elect members of the DPR, provincial DPRD, and district/city DPRD are carried out with an open proportional system". In the provisions of Article 168 of the Election Law, there is no mention of the provisions for elections with a closed proportional system.

Regarding the absence of norms in the Election Law, a legal construction is needed to provide an understanding and solution to the problems faced, especially related to the regulation of elections with a closed proportional system. The relevant theory used to construct this absence of norms is the construction theory with the *argumentum a contrario* method. The construction of *argumentum a contrario* norms is carried out by providing an abstraction of a regulatory provision and then the principle of the provision is implemented in a contradictory manner. This aims to provide a contradictory meaning to a concrete event that has not been regulated in a provision.

Legal construction *a contrario* is a method of interpreting law by drawing conclusions contrary to existing legal rules. This interpretation is used for something that is not regulated in a regulation which is then drawn a conclusion that has the opposite meaning from the regulation.

METHODOLOGY

This study uses a research method with a normative legal type because it starts from the absence of norms in the Republic of Indonesia Law Number 7 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2022 concerning Amendments to Law Number 7 of 2017 concerning General Elections into Law (Election Law), where this Law only regulates the open proportional general election system and there are no regulations for a closed proportional system.

The approach used is the legislative approach, the study material is the Election Law, the case approach, and the comparative approach, namely comparing the implementation mechanism of the general election using an open proportional system with a closed proportional system. This study uses secondary legal materials in the form of books, journals and articles. The data collection technique uses literature studies and the technique for analyzing data is descriptive analysis.

RESULTS

Analysis of Open and Closed Proportional General Election Systems from a Democratic Perspective

The general election system in Indonesia is regulated in Article 168 Paragraph (2) of the Election Law which states that "Elections to elect members of the DPR, provincial DPRD, and district/city DPRD are implemented using an open proportional system", this means that the general election system used in Indonesia is an open proportional system. There are several advantages and disadvantages of the open proportional system which will be explained in more detail so that a comparison can be made with the implementation of closed proportional elections.

General elections with an open proportional system are an election system where voters are free to choose the leader candidate they want directly. The right to vote is given directly to the candidate of their choice without any intermediaries and a fixed list of candidates. In addition, the open proportional system provides the possibility for independent candidates to compete in the election process, so that political pluralism can develop in the process. The open proportional system has various positive impacts on the existence of political parties, especially those concerning internal democracy, institutions and carrying out the functions of political parties properly.

The Republic of Indonesia has used an open proportional general election system since the fall of the New Order regime which began with the reform era. The general election from 2009 to the present has used an open proportional system following the Constitutional Court (MK) ruling Number. 22-24/PUU-VI/2008, where the legislative election system is chosen based on the most votes. Changes to this general election system are a way to bring legislative candidates closer to the community, increase the legitimacy of elected candidates, and increase the degree of representation chosen by the community. This is a form of fulfilling the principle of democracy where people can directly elect the candidates they want.

The characteristic of the open proportional system general election is that it provides space for voters to choose legislative candidates from political parties. The number of votes obtained in the election process greatly determines the number of seats in parliament. The legislative candidate who gets the most votes will get a seat in parliament first, but it does not rule out the possibility of a legislative candidate in a party that has a low ranking getting a seat if they get a lot of votes. The open proportional system provides flexibility for voters to vote for the political party they want while choosing legislative candidates who they consider competent and represent their aspirations.

General elections with an open proportional system have several advantages, including:

Strong level of accuracy in representing constituents' choices

The open proportional general election system provides the possibility for political parties with varying amounts of support in various regions to gain seats in parliament in accordance with the number of votes they receive. As constituents, voters have the opportunity to directly elect their representatives.

The relationship between constituents and prospective leaders becomes closer with the hope that the candidate can represent their interests, and reduce the dominance of political parties in determining who will be elected.

There is an increase in accountability from political parties

Voters can directly assess the candidates they will choose and determine which candidate is most accountable. Political parties are encouraged to nominate candidates who have a good track record and are representative of their constituents. Although this system provides the possibility to choose candidates directly, political parties still have an important role in determining policies, coalitions and strategic decisions. Candidates who are elected must be responsible for their campaign promises through real policies.

Voters have a more significant role

The votes given to a candidate can determine whether or not a candidate is elected. Because voters are given the freedom to choose the candidate they want, the relationship between candidates and voters becomes more personal. Candidates elected in an open proportional system tend to be responsive to the needs and aspirations of voters. By being given the right to vote for a particular candidate, the community can contribute directly to the candidate of their choice.

Giving space to independent candidates

General elections with an open proportional system provide space for independent candidates to participate in the election contest. Independent candidates can nominate themselves as participants in the general election without having to join a particular political party. Independent candidates provide an alternative choice for voters who are dissatisfied with political parties. In some countries with an open proportional system such as Europe and Latin America, sometimes independent candidates win the election process.

The disadvantages of general elections with an open proportional system are:

Increasing money politik potential

Compared to other election systems, the open proportional election system has a greater potential for money politics practices. This is due to the tight competition between candidates both internally and externally to the party. The success of a candidate depends on the number of votes from voters, therefore many candidates offer incentives in the form of money to voters who are willing to vote for them. The large amount of campaign funds and sometimes weak supervision make it possible for candidates to spend a lot of money. Campaign costs such as advertising, campaign materials, meetings with voters, and campaign distribution to various places encourage candidates to do unethical methods including money politics to win the election.

Candidates participating in the election need large political capital

In an open proportional election campaign, it is often carried out in heterogeneous and wide electoral areas, so it requires large funding sources because candidates must provide costs for travel, activities and other campaign equipment. As political capital, candidates must establish close relationships with potential voter groups, various organizations, and community leaders. This closeness can be political capital for candidates, but it takes time, energy and money to realize this. The existence of large political capital from a candidate can facilitate the formation of perceptions of their profile in the eyes of the public.

Complexity of vote counting results

The calculation of the results of the vote in an open proportional election system can be considered complicated and often causes injustice to some parties. This is because the votes obtained by each candidate are calculated and then accumulated into the party's votes, then distributed to the party based on the number of votes they receive and this process requires precision that often faces complex problems. Although this system is designed so that representation can be divided proportionally, distortion can occur if the votes obtained by small parties are not enough to get votes, so that their votes cannot be represented in parliament. The popularity and greater resources of a candidate play a very important role in winning the election even though their party gets less votes. On the other hand, candidates whose parties get a lot of votes but are less popular often lose, and sometimes this is considered unfair to voters.

General elections with an open proportional system provide greater freedom and control for voters to give their choice to their representatives. However, this system also has weaknesses related to the practice of money politics, the need for large capital if you want to participate in the election contest, and a fairly complex vote counting system. Strong reforms and regulations are needed to ensure this election system is transparent and fair so that the election process can run democratically.

A general election with a closed proportional system is an election system where the victory of the election participants is not based on the most votes obtained by the candidate, but is calculated based on the number of votes obtained by the political party. The selection of candidates who will occupy parliamentary seats is determined by political parties. In this election system, what the people choose is not a candidate but a political party. In the provisions of Article 168 of the Election Law, there are no regulations related to general elections with a closed proportional system. There needs to be a construction of Article 168 of the Election Law related to the closed proportional election system to provide legal certainty regarding how the election system is implemented. In addition, the construction of the void of norms in Article 168 of the Election Law will make the norm more relevant, adaptive, and more effective in providing solutions to problems that arise in society.

At the beginning of independence, Indonesia used a closed proportional general election system, specifically from 1955 to 1999. However, this closed

election system was changed to an open election system since the 2004 general election. There is no list of legislative candidates in this election system, voters only choose the political parties available at the time of voting.

General elections with a closed proportional system have several advantages, including:

Strengthening party consolidation

The role of the party in a closed election system is very important in determining the candidate candidates who will advance and enter the list of priorities in giving top priority to loyal cadres who are in accordance with the direction of party policy. Candidates are more likely to obey party policies because the acquisition of seats in parliament is entirely determined by the party. With the selection of candidates by the party, the strengthening of the party's ideology and identity becomes more cohesive. Elections with a closed proportional system can reduce conflict between candidates because there is no direct competition in obtaining votes from voters.

Maintaining political stability

Candidates are very obedient to party policy because the acquisition of positions is entirely the policy of the party. This allows for the strengthening of party discipline which has an impact on party stability. In a closed proportional election system, political fragmentation caused by small parties has obstacles in getting seats in parliament due to the lack of support from the base that elected them. This allows for a reduction in the number of parties in parliament, making the process of increasing stability and decision-making easier.

The disadvantages of general elections with a closed proportional system are:

Control from voters is less than optimal

In elections with a closed proportional system, candidates who are considered to represent the will of the voters cannot be elected directly, therefore voters do not have a direct influence on who their representatives are in parliament. In addition, candidates tend to be responsible to the party that elected them, resulting in a lack of accountability from the candidates. In this system, party elites have full control over who will be elected to sit in parliament, which allows the strengthening of party elites and the dynamics of democratic elections to be reduced. The large influence of party elites creates an atmosphere where important decisions are made by only a handful of people.

Increased potential for corruption

The determination of the candidate list position is very decisive for their electability in the election process, it does not rule out the possibility for candidates to play money politics practices to obtain the position. This system provides the possibility of collusion and nepotism practices to increase because the party elite who determine candidates are based on personal interests such as giving the main position to their colleagues and closest people. Party leaders

who also hold public office often misuse state resources for the personal interests of their chosen candidates, either through the provision of public facilities or illegal budget allocations. People's representatives elected by the party tend to give their loyalty to the party and provide support for policies that benefit the party elite. This allows for the creation of policies that are not in favor of the public and are full of corrupt practices.

There are several countries that use a closed proportional electoral system, including South Africa, Spain, and Indonesia (before the 1998 reforms). Political parties play a central role in these countries in determining who will be the people's representatives in parliament. In this system, political parties have full control over the candidates who will become people's representatives.

Overall, elections using a closed proportional system can support unity and stability for political parties. However, this system has several problems such as the lack of optimal democratic principles such as transparency and accountability in its implementation. It is important to implement democratic principles in the implementation of elections in order to create democratic elections.

DISCUSSION

A Better General Election System To Use For Indonesia And Other Democratic Countries

A democratic country is a country whose governance is based on the will and desire of the people. When viewed from a democratic perspective, it means that the state organizational system is carried out on the basis of the people's consent because in a democratic country the highest sovereignty lies in the hands of the people. In a democratic country, the people play a direct role in running the government or through officials they have chosen. In a democratic country, the organization of the state must be based on democratic principles in order to create a democratic state organization system.

The principles of democracy that must be implemented in a democratic country include: a. The existence of a division of power consisting of the executive, legislative, and judiciary, b. Government based on the constitution, c. Government based on law (the law has a high position and equal standing in the eyes of law and society), d. Government by the majority, e. Decision making is carried out through discussion, f. Guaranteed freedom of the press, g. Protection of Human Rights, h. State management is carried out openly by involving community participation, i. There is recognition of minority rights, j. There is more than one political party in carrying out its functions, and k. Free general elections are held. The principles must be implemented in every democratic country throughout the world.

The implementation of general elections as a manifestation of democracy is carried out in various countries including Indonesia. Currently the general election system used in Indonesia is an open proportional system. The open proportional system provides an opportunity for voters to directly elect the people's representative candidates they want. General elections in France are also carried out directly, plus the election is carried out in only one round, and the elected candidate will hold office for five years and is adjusted to the rules of

proportional representation based on the number of votes obtained. Parties that get more than 5% of the vote can have seats proportional to the number of votes.

The General Election with open proportional representation is also implemented in the Philippines, organized by Comelec. The legislative and executive elections in the Philippines are held simultaneously using the “first past post” system. Comelec conducts studies, provides facilities, and supervises the entire implementation of the election from start to finish. In the Philippines, dynastic politics are strictly prohibited, as regulated by the constitution.

Indonesia as one of the countries in Southeast Asia that adopts a democratic system in implementing legislative elections uses an open proportional general election system. The legal basis for implementing open proportional elections is the Constitutional Court Decision No. 114/PUU-XX/2022 concerning the General Election System. In this system, the people are given the freedom to directly elect people's representatives who will occupy seats in parliament and represent their aspirations. This system is well received and fully implemented by the General Election Commission (KPU) as an institution authorized to carry out general elections. The open proportional system is considered more democratic for the current state of Indonesian society because it is in accordance with the experience of Pancasila as a philosophy of life in the nation and state. The fifth principle of Pancasila contains the value of social justice, and to realize this justice, every legislative election and decision-making must involve public participation.

Unlike the open proportional system, the closed proportional system uses a method where voters can only choose political parties and cannot directly choose the candidates they want. In this system, political parties determine which candidates are entitled to occupy parliamentary seats according to the list of candidates determined by the party. In Indonesia, although using an open proportional election system, there has been a discourse to return to a closed proportional system as in the general elections from 1955 to 1999. This system is considered by political observers to be able to reduce the complexity of vote counting and is considered simpler.

Countries that use a closed proportional system in conducting elections include: the Netherlands, Portugal, Spain, where in this election system voters are given the right to vote for only one political party, then the political party provides a list of candidate candidates. The mechanism for implementing elections with a closed proportional system is by having the list of candidates ranked and published by each party. The public who vote give a sign of their support for a party through ballots and are not addressed to individual candidates. When the election results have been announced, the party fills in the number of seats they won from their candidate list in the electoral district that corresponds to the polling station.

Basically, both open proportional and closed proportional systems are applied in the election process. Both systems have their own advantages and disadvantages. Every country that will hold an election must adjust the conditions in the country with the relevant system that will be applied later. There is no ideal general election system, but what exists is a relevant election

system that is in accordance with the needs of a country where the system can be used as a set of instruments that can be adjusted.

CONCLUSIONS AND RECOMMENDATIONS

The implementation of general elections is the implementation of the election of candidate leaders as a manifestation of the principle of democracy in a country whose government adheres to a democratic system. There are various types of general election systems in various countries, including the general election system with open proportional and closed proportional. There needs to be a construction of norms for the Election Law, especially in Article 168, because currently there are only regulations related to elections with an open proportional system and have not regulated the election of a closed proportional system. This construction is necessary to provide legal certainty regarding how the election system is implemented. In addition, the construction of the absence of norms in Article 168 of the Election Law will make the norm more relevant, adaptive, and more effective in providing solutions to problems that arise in society.

An open proportional system is more democratic and allows for more choices to be given to prospective voters, but is prone to internal conflict in political parties and higher campaign costs. A closed proportional system is simpler and maintains the solidarity of political parties but provides less space related to voter involvement in determining the desired representatives directly. There is no ideal election in a country but what exists is an election system that is relevant to the needs of a country. It is important to note that the implementation of elections that prioritize efficiency in party management, accountability and transparency as an implementation of democratic principles.

General elections are the implementation of a democratic state to realize the sovereignty of the people. The implementation of general elections, whatever the type, must be in accordance with the principles of democracy, including the participation of the people, strong accountability and transparency from the initial stage until the election ends. It is important to implement the principles of participation, accountability and transparency so that the elected candidate has strong legitimacy when occupying office if he wins the election

FURTHER STUDY

This study focuses on how the mechanism of implementing elections with open proportional and closed proportional, its regulation, and the relevance of implementing the election system in Indonesia and other democratic countries. Further research can examine how the general election system is in various countries.

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