

## **LEGISLATIVE ELECTIONS: AN OVERVIEW OF CLOSED PROPORTIONAL SYSTEM**

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**Abstract:** This study aims to analyze the constitutionality of legislative general elections with a review of the closed proportional system in the 1945 Constitution. The legislative election system is an important tool for maintaining democratic principles and fair representation in a country. The constitutionality of the closed proportional system has been the subject of ongoing debate. This study uses a qualitative approach with normative juridical methods to analyze the constitutionality of general legislative elections that use a closed proportional system. This approach involved collecting data from legal documents, literature studies, and court decisions that were relevant to this topic. The results of the study showed that the application of a closed proportional system in legislative general elections has several constitutional implications, such as the limitation of political access for individuals outside of political parties, which can be considered as a violation of the individual's constitutional right to participate in the political process. This research also showed that a closed proportional system can provide greater political stability and strengthen the role of political parties in the political system. This study also analyzed the implications of implementing an open proportional system in legislative general elections.

**Keywords:** Constitutionality, Legislative Elections, Closed Proportional System, 1945 Constitution, Political Freedom

**Abstrak:** Penelitian ini bertujuan untuk mengkaji konstitusionalitas pemilihan umum legislatif dengan tinjauan terhadap sistem proporsional tertutup dalam UUD 1945. Sistem pemilihan umum legislatif adalah aspek penting dalam menjaga prinsip demokrasi dan

keterwakilan yang adil dalam sebuah negara. Sistem proporsional tertutup telah menjadi subjek perdebatan yang berkelanjutan mengenai konstusionalitasnya dalam konteks UUD 1945. Penelitian ini menggunakan pendekatan kualitatif dengan metode yuridis normatif untuk menganalisis konstusionalitas pemilihan umum legislatif dengan menggunakan sistem proporsional tertutup. Pendekatan ini melibatkan pengumpulan data dari dokumen hukum, studi literatur, dan putusan pengadilan yang relevan dengan topik ini. Hasil penelitian menunjukkan bahwa penerapan sistem proporsional tertutup dalam pemilihan umum legislatif memiliki beberapa implikasi konstusional. Pertama, sistem ini dapat membatasi akses politik bagi individu di luar partai politik, yang dapat dianggap sebagai pelanggaran terhadap hak konstusional individu untuk berpartisipasi dalam proses politik. Penelitian ini juga menganalisis implikasi penerapan sistem proporsional terbuka dalam pemilihan umum legislatif. Penelitian ini juga menunjukkan bahwa sistem proporsional tertutup dapat memberikan stabilitas politik yang lebih besar dan memperkuat peran partai politik dalam sistem politik.

**Kata Kunci:** Konstusionalitas, pemilihan umum legislatif, sistem proporsional tertutup, UUD 1945, kebebasan politik.

## INTRODUCTION

The general election process is a strategic and crucial activity related to the representation of the people's voice in parliament or related legislative institutions in every form of democracy around the world. General elections are carried out to measure the quality of political participation in a country and to illustrate the quality of its democratic system. General elections must be carried out effectively to ensure that elected representatives can represent the will of the people. Although the general election system is the most commonly used system in Indonesia, there is still lots of debate and controversy surrounding it. Most people believe that Indonesia's general election system is still heavily influenced by financial interests, which can lead to corruption and vote buying. This debate is caused by a culture of lawlessness carried out by general election organizers and the community itself, this phenomenon can influence a clean election system into a dirty general election and is bad for the practice of democracy in Indonesia. Researchers and academics argue that Indonesia needs to implement a closed proportional electoral system to overcome the shortcomings of the current system. Legislative elections are the most important pillar of a democratic system, functioning to exercise legislative power and represent the voice of the people in making state policies. In Indonesia, the legislative general election system is regulated by the 1945 Constitution (UUD 1945).

A closed proportional system is an interesting alternative when discussing constitutionality in the context of general legislative elections. A closed proportional system is one in which voters cast ballots for political parties rather than individual candidates. Elections using this system influence how political representation is formed in parliament since the political party with the most votes wins seats and elects members of their legislature. In this system, the order of candidates on the party list is determined by the political parties themselves, and voters have no direct influence over the candidate elected.<sup>1</sup>

In paragraph three of Article 22E of the 1945 Constitution, it is stated that "Contestants in

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1 Syafruddin Muhtamar and Fahri Bachmid, "Constitutionality and Ideology in the Electoral System: Pancasila's Moral Interpretation on the Proportional Representation System" (2022) 3 SIGn Jurnal Hukum, p. 201. See also Ignatius Yordan Nugraha, 'Abusive Unconstitutional Constitutional Amendments: Indonesia, the Pancasila and the Spectre of Authoritarianism' (2023) 43 Oxford Journal of Legal Studies 379 <<https://academic.oup.com/ojls/article/43/2/379/7032258>>.with Indonesia as a case study. In Indonesia, there is a pervasive belief that the five fundamental principles of the state (the Pancasila

the general election to elect members of the people's representative council and members of the regional people's representative council are political parties", which may give rise to various understandings and interpretations. In this case, when election participants are referred to as political parties rather than individual candidates, this could mean that the application of a closed proportional mechanism is already closer for Indonesia than it may seem. However, the closed proportional system has been historically viewed as a detrimental interpretation of the mandate of Article 22E paragraph (3), with the open proportional mechanism becoming the established mechanism in present legislative elections.

By reviewing the potential for a closed proportional system within the 1945 Constitution, the researchers sought a better understanding of the legitimacy of legislative general elections. This review will serve as a foundation for contemplating adjustments or enhancements to the legislative election system based on democratic, fair representation, and effective political participation principles.

Article 22E of the 1945 Constitution clearly states that general elections must be held in a direct, public, free, secret, honest, fair, and periodic manner. These principles emphasize the importance of holding general elections that reflect the will of the people proportionally and fairly. In this case, closed proportional systems are one of the options that have historically been implemented in legislative general elections in Indonesia.

Voters in a closed proportional system vote for a political party rather than an individual candidate. The order of candidates who will hold parliamentary seats is then determined by the political party depending on the party's vote acquisition. In this system, the elected candidates are those at the top of the party list. This closed proportional system gives power to political parties in determining the people's representatives.

Both open proportional and closed proportional have their respective advantages and disadvantages. For clear democratic principles in Indonesia to be upheld, interpreting the articles in the 1945 Constitution in a concrete and comprehensive manner is mandatory. For the rule of law, stability and balance in the application of law, Indonesia's democracy must be returned to the will of the people as outlined in the 1945 Constitution. The process of obtaining that will should be determined and regulated by the application of the law. In terms of closed and open proportional mechanisms, Indonesia has not yet reflected good political polarization and constitutional democracy, even though it already has the foundations and objectives contained in the 1945 Constitution.

There are several questions regarding the constitutionality of a closed proportional system. These questions relate to constitutional aspects such as the right to vote, people's sovereignty, and the freedom of expression guaranteed by the 1945 Constitution. A review of the constitutionality of this style of voting system is needed to ensure the compatibility of the general election system with the basic principles of democracy. A better understanding of the advantages and disadvantages of this system in the context of political fairness and greater representation will be created by delving deeper into the constitutionality of the closed proportional system. This background will be important to initiate further research into developing ideas and encouraging better legislative election reform in Indonesia. A review of the closed proportional system refers to the evaluation and analysis of the legislative general election system used within the framework of the Indonesian constitution. In this context, the closed proportional system refers to the method of determining political representation in parliament based on a list of candidates

drawn up by political parties.<sup>2</sup>

The constitutionality of legislative general elections refers to the suitability or compliance of a legislative general election system with the constitutional provisions contained in a country's constitution. Legislative elections are an important process in a democratic system, in which citizens directly or indirectly elect their representatives to sit in parliament or other legislative institutions. Through a review of constitutionality, the main objective of this study is to ensure that legislative elections are run by democratic principles and constitutional values that underlie a country's political system. This assessment can be carried out by the constitutional court or other related institutions to ensure that the legislative election system meets the established constitutional standards. Assessment can involve evaluating constitutional texts, court decisions, comparisons with international standards, and academic discussions. Election monitoring by independent institutions, such as election commissions or election supervision, can also play a role in assessing and ensuring the constitutionality of general elections.

Under a closed proportional system, political parties select a list of candidates to represent them in general legislative elections. The party's representation in parliament is then decided by the number of votes each political party receives. The positions of political representatives in parliament are then decided based on the order in which the candidates are listed. A review of the closed proportional system implied in the 1945 Constitution includes an analysis of the system's compliance with the stipulated constitutional principles. This includes aspects such as proportional political representation, fair voting rights, public participation, and democratic principles underlying the electoral system.

In carrying out such a review, it is necessary to consider court decisions, interpretations of the constitution, and the current political and social context. A review of the closed proportional system in the context of the 1945 Constitution may involve discussing the advantages and disadvantages of this system, as well as the implications of its constitutionality for political diversity, political stability and public participation. The review aims to provide a better understanding of how the legislative general election system in Indonesia functions within the context of the prevailing constitution. A closed proportional election system is considered by some to be a solution to the problems faced by the current general election system. In this system, candidates promoted by political parties cannot be changed by voters and only political parties can enter candidates. This means that political parties become more involved in elections and can choose better candidates to represent the voice of the people, in theory helping to overcome the issues of debate and controversy related to the pre-existing electoral system.

Additionally, a closed proportional general election system could help in reducing vote buying and money politics, which are established issues in Indonesia's general election system. Political parties can choose candidates who are more qualified and thus have more potential to represent the people's voice, while voters will have greater ability to choose political parties that meet their election criteria. By using technology such as Blockchain and online voting systems, elections can be carried out quickly, safely, and reliably.

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2 Veri Junaidi and others, *Membaca 16 Tahun Mahkamah Konstitusi (Data Uji Materi Undang-Undang Terhadap UUD 1945 2003-2019)* (Jakarta: Kode Inisiatif 2019). See also Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] Intellectual Discourse. See also Winibaldus Stefanus MADUNG, Otto Gusti Ndegong, MERE, 'Constructing Modern Indonesia Based on Pancasila in Dialogue with the Political Concepts Underlying the Idea of Human Rights' (2021) 5 *Journal of Southeast Asian Human Rights* 1 <<https://jurnal.unej.ac.id/index.php/JSEHR/article/view/20258>>.

## METHODS

This study uses a qualitative normative approach (normative juridical). This research procedure applies legal or data collection techniques, such as documentation or literature studies and the results of interviews. The used legal materials are analyzed using a qualitative-descriptive-prescriptive method that is focused on problem formulation. Legal materials, in the form of 'soft files' and 'hard files', are also a focus of the analysis. Manual inventory is carried out on hard file legal materials, while digital inventory is carried out on legal materials in soft file form. After the inventory, an analysis process is carried out concerning the constitutional interpretation of the closed proportional system.

## RESULTS

The closed proportional and open proportional systems each have their own advantages and disadvantages. When referring to the constitutional interpretation of article 22 E of the 1945 Constitution, it is very clear that it mandates that political parties are the participants in general elections, meaning it is constitutionally possible to implement a closed proportional system. This description can be interpreted that the public must choose a political party, not choose an individual candidate. The study find that regarding constitutional ethics, according to the author, if a closed proportional system is applied, it would be necessary to amend article 22 E to emphasize that political parties,<sup>3</sup> as participants in general elections, present legislative candidates to be elected by the people, so that the construction of this article can be interpreted clearly and without confusion.

## DISCUSSION

*Constitutional Interpretation of the Legislative Election System: Overview of Article 22E of the 1945 Constitution of the Republic of Indonesia*

Article 22 E of the 1945 Constitution gives authority to the law to regulate the position, authority, appointment, dismissal, term of office and replacement of members of the Dewan Perwakilan Rakyat (DPR), Dewan Perwakilan Daerah (DPD) and Dewan Perwakilan Rakyat Daerah (DPRD). The correct constitutional interpretation must consider the principles of democracy and public participation in general elections. It also needs to consider the general election system that is appropriate to the context and needs of the nation. Legislative general elections can be held in conformity with democratic ideals and the state constitution by conducting a comprehensive constitutional interpretation.<sup>4</sup>

It is stated in Article 22 E of the 1945 Constitution that "If members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council come from general elections, the position, authority, appointment, dismissal, term of office, and replacement of members shall be regulated by law." This

3 See also Muhammad Siddiq et all Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525. See also Muhammad Siddiq Armia and others, 'Penghapusan Presidential Threshold Sebagai Upaya Pemulihan Hak-Hak Konstitusional' [2016] Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

4 Alboin Pasaribu, "Tafsir Konstitusional Atas Kemandirian Penyelenggara Pemilu Dan Pilkada (Constitutional Interpretation on the Independence of National and Local Election Management Bodies)" (2019) 16 Jurnal Konstitusi, p. 416. in Muhammad Mutawalli, *Dinamika Partai Politik Indonesia Problematika Penarikan Dukungan Calon Kepala Daerah* (Wawasan Ilmu 2023), p.74-75. See also Yasar Aulia, 'Fundamental Principles of The Legislation Process: Comparative Study Between Indonesia and The United Kingdom' (2021) 6 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 40; Muhammad Siddiq Armia, 'Constitutional Practice Of Asean Countries: Questioning Judicial Review, Religions And Minority Issues' (2022) 7 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Anang Dony Irawan, 'Nationalism In A State Based On Pancasila' (2020) 5 Petita : Jurnal Kajian Ilmu Hukum dan Syariah <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/85>>; A Ahsi Thohari, 'The Manifestation of the Rechtsidee of Pancasila in Regulating the Constitutional Rights in Indonesia' (2019) 4 Petita: Jurnal Kajian Ilmu Hukum Dan Syariah 149.



article implies that legislative elections are the method used to determine the members of the People's Representative Council (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD). However, this article does not explicitly address parliamentary general elections. Therefore, a constitutional interpretation is required to understand how Article 22 E is implemented in practice.

#### *Constitutional Interpretation of Article 22 E of the 1945 Constitution*

##### 1) Position, Authority, and Appointment of Members

Article 22 E of the 1945 Constitution states that the position, authority, and appointment of members of the DPR, DPD and DPRD are regulated by law. This means that the constitution gives authority to the creation of laws to regulate these matters in detail. Legislative general election laws regulate member qualifications, registration procedures, voting systems, and other technical aspects related to legislative general elections.

##### 2) Dismissal, Term of Office, and Replacement of Members

Article 22 E also states that the dismissal, term of office and replacement of members of the DPR, DPD and DPRD are regulated by law. This indicates that the legislative general election law will regulate the term of office for members of the legislature, the mechanism for dismissing members, and the process for replacing members in the event of re-election or other situations that require replacement of members of the legislature.

##### 3) Term of Office of Members

One of the things that needs interpretation is the term of office for members of the DPR, DPD and DPRD. Article 22 E of the 1945 Constitution does not explicitly state the term of office for members of the legislature. Therefore, any constitutional interpretations must include this. Legislative elections regulations, for example, may specify that members of the DPR serve for a five-year term, while members of the DPD and DPRD serve for varied durations based on local context and requirements.

##### 4) General Election System

Article 22 E does not specifically regulate the legislative general election system that must be used. Therefore, constitutional interpretation must explain the general election system. In Indonesia, the current legislative election system is a proportional system with a fixed list of candidates (FLC). However, a new constitutional interpretation can open opportunities to consider other general electoral systems that are appropriate to the context and needs of the nation, such as a majority system, a mixed system, or a proportional system with smaller electoral districts.

##### 5) Principles of Democracy and Public Participation

Any constitutional interpretation must also include the principles of democracy and public participation in legislative elections. The constitution confirms that legislative elections are a means of giving the people a voice in determining their representatives in the legislature. Therefore, the constitutional interpretation of Article 22 E must ensure that the legislative election process complies with democratic principles and provides fair and equitable public participation.

In this paper, a constitutional interpretation will be made of Article 22 E of the 1945 Constitution, with a focus on its application in the legislative general election system in Indonesia.<sup>5</sup> The author's chosen constitutional interpretation of Article 22 E of the 1945 Constitution reads as follows: *"To elect members of the People's Representative Council,*

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5 Franciscus Xaverius Wartoyo, "The Concept and Its Implementation of Indonesian Legislative Elections Based on the Pancasila Democracy Perspective" (2019) 8 Yustisia Jurnal Hukum, p. 109.

*Regional Representative Council, and Regional People's Representative Council, every citizen who has the right to vote elects one person who will represent himself/herself in the relevant Council. The electoral system member of the Council concerned is regulated by law."*

Several important aspects need to be considered when interpreting Article 22 E of the 1945 Constitution, including:

- 1) Principles of Democracy: Article 22 E of the 1945 Constitution emphasizes the basic principle of democracy, in which every citizen who has the right to vote has the opportunity to choose one person who will represent himself/herself in the council concerned. This principle of democracy guarantees fair and equitable political participation for all citizens.
- 2) Proportionality: Article 22 E of the 1945 Constitution also emphasizes the principle of proportionality in the general election system. This proportionality reflects the principle that representation in the assembly should fairly reflect the vote share of the political parties involved in the general election. As a result, each vote counts equally when deciding how the council will be made up.
- 3) Justice: Article 22 E of the 1945 Constitution demands justice in the general election system. This justice includes aspects such as equal opportunity for every citizen to vote and be elected, fair treatment of competing political parties, and protection of individual political rights.

Constitutional interpretation is a process of interpretation and analysis of constitutional provisions, taking into account legal aspects, democratic principles, and the goals to be achieved through general legislative elections. In this case, the constitutional interpretation of Article 22 E of the 1945 Constitution is related to an in-depth understanding of the aspects covered in that article, as well as its implications for the legislative general election system that is implemented in Indonesia. Additional aspects that must be considered while interpreting Article 22 E of the Constitution include:

- 1) Position, Authority, and Appointment of Members  
Article 22 E of the 1945 Constitution confirms that the position, authority and appointment of members of the DPR, DPD and DPRD are regulated by law. Therefore, a constitutional interpretation must pay attention to how the legislative general election law regulates these matters in detail. Included in this aspect are member qualifications, registration procedures, and the mechanism for determining elected members.
- 2) Dismissal, Term of Office, and Replacement of Members  
Article 22 E also states that the dismissal, term of office and replacement of members of the DPR, DPD and DPRD is regulated by law. In this case, constitutional interpretation needs to examine how the legislative general election law determines the term of office of members and the process for dismissing and replacing members if needed.
- 3) Principles of Democracy and Public Participation  
In the constitutional interpretation of Article 22 E, it is important to pay attention to the principles of democracy and public participation in legislative general elections. This article gives a mandate to the people to choose their representatives in the legislature. Therefore, a constitutional interpretation must ensure that the legislative general election system fulfils democratic principles, including in terms of an election process that is fair, transparent, and provides equal opportunities for all election participants.
- 4) General Election System

Article 22 E does not specifically regulate the legislative general election system that must be used. Therefore, a constitutional interpretation must include aspects of the electoral system that are appropriate to the Indonesian context. Currently, Indonesia uses a proportional legislative election system with a fixed list of candidates (DCT). However, a constitutional reinterpretation could consider alternative electoral systems that may further strengthen public participation, represent political diversity, or increase public accountability.<sup>6</sup>

Through a comprehensive constitutional interpretation, legislative general elections can be carried out properly, by democratic principles, and produce quality people's representatives. When carrying out such an interpretation, it is important to involve constitutional experts, academics, legal practitioners, and related stakeholders. In-depth discussion and analysis will provide a solid foundation for the development of a legislative general election law that complies with constitutional principles, democratic principles, and the needs of the Indonesian people.

Article 22E of the 1945 Constitution is an article that provides a constitutional basis for the holding of fair, honest, direct, general, free, secret and clean legislative elections. What is meant by free and secret is how the public is free to determine their choice and vote in secret in the process of voting for candidates who are selected in secret through a voting booth, not in a secret implementation process, but rather a private aspect that concerns the choice of each community's property rights that will elect a candidate. The selected. This article also regulates the general election system which can be regulated by law.<sup>7</sup> In the context of the legislative general election system, the author's constitutional interpretation of Article 22E of the 1945 Constitution is follows:

- 1) Fair Legislative Elections: Article 22E emphasizes the importance of fair legislative elections. Fair in this case means that every voter has the same opportunity to cast their vote, without any discrimination or unlawful obstruction. Elections must be regulated and carried out with the principles of justice so that each vote has equal weight in determining representation in the legislature.
- 2) Honest Legislative Elections: Honesty in legislative elections refers to integrity and fairness in all stages of an election, including the nomination, campaigning, voting, and counting processes. Voters must be provided with accurate information and no fraud be committed by election participants or election administrators. Honesty in elections involves openness, transparency, and compliance with applicable rules and ethics.
- 3) Direct Legislative Elections: Article 22E emphasizes the importance of direct legislative elections. In other words, voters directly decide which politician or political party will represent them in the legislature. Voters who directly cast their ballots will determine voter representation; there are no intermediaries or representatives in this process.
- 4) General Legislative Elections: Elections for the legislature are open to all eligible citizens without restriction in general elections. Every citizen has the same right to vote and be elected regardless of social background, economy, ethnicity, religion, gender, or other discriminatory factors. All citizens have the right to participate in the legislative election process.
- 5) Free and Secret Legislative Elections: Article 22E emphasizes the importance of freedom in choosing candidates or political parties without any pressure or unauthorized intervention. Free means that people have the right to determine their choices, while

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6 Fajlurrahman Jurdi, *Pengantar Hukum Pemilihan Umum* (Jakarta: Kencana Prenada Media Group 2018), p. 250-257.

7 Agus Riwanto and others, *Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019: Perihal Penegakan Hukum Pemilu* (Jakarta: Bawaslu 2019).



secret means that people secretly choose and cast their votes in the voting booth.

A constitutional interpretation of Article 22E of the 1945 Constitution regarding the legislative general election system includes the interpretation and understanding of these provisions. Article 22E of the 1945 Constitution stipulates that "General elections are carried out directly, publicly, freely, confidentially, honestly, fairly and are periodic." The following are some of the constitutional interpretations of Article 22E of the 1945 Constitution regarding the legislative general election system:

- 1) Direct General Election: This interpretation emphasizes that general elections must be carried out directly, where voters have the direct right to choose their representatives in the legislature. Voters directly vote for the candidate or political party they choose without going through intermediaries.
- 2) Elections in General: This interpretation means that elections must involve all citizens who are eligible to vote. Citizens who meet the requirements are granted the right to vote without discrimination or other restrictions.
- 3) Free General Elections: This interpretation emphasizes that general elections must be carried out freely, without any pressure, intimidation, or influence that limits the freedom of voters to choose according to their wishes. Voters should have the freedom to express their political preferences without fear or coercion.
- 4) Anonymous General Elections: This interpretation emphasizes that general elections must be held anonymously, whereby voters have the right to keep their choices secret. Secrecy in general elections is important to protect the privacy and freedom of voters and prevent pressure or manipulation from other parties.
- 5) Honest General Elections: This interpretation requires the implementation of fair and fair elections, in which all election processes must be carried out with integrity and transparency. There are no acts of fraud, cheating, or violations of the law in the implementation of general elections.
- 6) Periodic General Elections: This interpretation emphasizes that general elections must be held regularly and repeatedly according to a set schedule. Periodic elections allow for the rejuvenation of political power and provides opportunities for voters to elect their representatives periodically.

Constitutional interpretations of Article 22E of the 1945 Constitution are important for maintaining democratic principles in the legislative election system. Elections that are conducted by the principles of democracy and include the active involvement of all citizens can be ensured by consistent and proportional interpretations of this article.

**Closed Proportional Mechanism: The Right Choice in the Legislative Election System?**

In the previous description, it was explained that Article 22E paragraph (3) has the potential to give rise to different understandings and interpretations. When the interpretation of election participants as referred to in Article 22E paragraph (3) is a political party, not an individual candidate, then in a limited interpretation the application of a closed proportional mechanism should be the system adopted by Indonesia in legislative general elections. This is based on the principle of popular sovereignty which is regulated in Article 1 paragraph (2), (3), Article 22E paragraph (2), (3), Article 6A paragraph (2), and Article 28D paragraph (1) of the Constitution. 1945. Political parties are unquestionably the key participants in general elections, when we look at how the article was conceptualized. When a political party has received the necessary number of votes, it should be able to choose the candidates it believes are most suited for the positions for which they have been elected.

The urgency to restore the closed proportional system is also supported by the culture of political party polarization, which no longer prioritizes aspects of recruitment and regeneration as the main requirements for candidacy. Political parties' recruitment patterns are now developing corrupt, instantaneous cadre faucets that appear to push aside quality candidates. An open proportional system results in the elimination of qualified party cadres, giving preference to nominated cadres who are financially secure, as well as cadres who are popular solely for party trends, and cadres who have an emotional or familial connection to party officials but lack the required abilities.

Restoring a closed proportional system in legislative elections is a step that could be considered appropriate in some contexts. A closed proportional system is one in which voters vote for political parties, not individual candidates, and seat acquisition is based on the proportion of votes received by each party.<sup>8</sup> In contrast, the open proportional system focuses on obtaining candidate income which erodes and weakens the position of the political parties themselves. The basic concept of applying open proportionality was initially to eliminate the partition and distance between the people and their candidates for the representative council. However, as time goes on and the development of the existing political system becomes more entrenched, it creates more distance and barriers between the people and their candidates and has an impact of weakening the position of political parties.

The following are some of the arguments in favor of returning a closed proportional system in legislative elections:

- 1) **Political Stability:** Closed proportional systems tend to produce more stable political parties. In this system, political parties have greater control over the list of candidates to be nominated. This makes it possible for political parties to properly evaluate the qualifications and dedication of their candidates. In the long run, political party stability can help maintain continuity in policy and governance.
- 2) **Stronger Party Representation:** In a closed proportional system, political parties have more power in choosing candidates and formulating party policies. Political parties can carry out a more stringent selection of candidates and ensure compatibility between candidates and party platforms. Thus, this system can strengthen the role of political parties in representing voters.
- 3) **Quality Control of Candidates:** In a closed proportional system, political parties have greater control over the candidates they run. Political parties can ensure that the candidates they carry have adequate quality, both in terms of competence and integrity. This can improve the quality of elected legislators and strengthen the effectiveness of the legislature.
- 4) **Focus on Party Platforms:** In a closed proportional system, voters are more likely to vote based on their political party and platform, not just on individual candidates. This encourages political parties to focus more on preparing a comprehensive and clear political platform. Voters can choose political parties that match their values and overall interests.
- 5) **Controlling Political Fragmentation:** Closed proportional systems can help control excessive political fragmentation and minimize the formation of small, unstable political parties. In this system, the larger political party tends to play a more dominant role in the formation of government and public policy. This can increase political stability and reduce the instability that may result from too many competing political parties.

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8 Rahani Itsia Kurnianingrum, "Reconsidering the Closed Proportional System for Indonesia" (2020) 8 JPPUMA: Jurnal Ilmu Pemerintahan dan Sosial Politik UMA (Journal of Governance and Political Social UMA), p. 106.

The closed proportional systems also have potentially negative implications and factors to take into account, such as restrictions on personal representation and potential for political variations. The decision to restore a closed proportional system must consider the political context, democratic principles, and broader public participation. Careful evaluation and inclusive dialogue are necessary to ensure that the decision matches the needs and objectives of the community.<sup>9</sup> Returning a closed proportional system in legislative general elections is a decision that affects the structure and political process in a country. Although this system has certain implications, several arguments can be considered in support of re-using closed proportional systems in legislative elections.

- 1) **Political Party Stability:** A closed proportional system can strengthen the stability of political parties. In this system, political parties have greater control in determining the candidates who will represent them. By reducing the political shifts that often occur in an open proportional system, political parties can maintain internal stability and consistency in political policies.
- 2) **Party Discipline:** A closed proportional system can increase party discipline in maintaining the unity and sustainability of the political platform. Political parties have more control over the selection of candidates and ensure that MPs follow the party line. This can encourage political parties to work collaboratively and cohesively in achieving the political goals that have been set.
- 3) **Focus on Quality of Candidates:** In a closed proportional system, political parties can focus more on the quality and competence of their candidates, as parties have authority in determining the order of the candidate lists. This can produce more qualified and experienced candidates in parliament, which can then help increase the effectiveness of the legislature.
- 4) **Party-Based Elections:** Closed proportional systems incentivize voters to select political parties over specific candidates. Political parties may become stronger as a result, and it may also help to develop policies that are more in line with the party's vision and mission. Party-based elections can also reduce political polarization and increase cooperation among political parties in parliament.

Closed proportional elections are also implemented in several European countries, such as the Netherlands, France, and Germany. Countries that have implemented this system have proven successful in ensuring better political participation and a reduction in the risk of money politics and ethical violations in elections.<sup>10</sup>

However, in these European countries, elections are held in a much smaller area and the available resources are much more than in Indonesia. As a result, before opting to implement a closed proportional electoral system in Indonesia, it must be thoroughly analyzed to ensure that the system is compatible with the features of Indonesia and the interests of its people.

It should be remembered that restoring a closed proportional system also has some criticisms and challenges, for example, reducing individual representation and constraining political diversity. In addition, it is important to ensure that in a closed proportional system,

<sup>9</sup> Heroik Mutaqin Pratama and Aditya Perdana, "Judicialization of Politics in Indonesia's Electoral System Case Study: Judicial Review on Threshold, Balloting Structure, and Simultaneous Election at Constitutional Court" (2021) 6 Politik Indonesia: Indonesian Political Science Review, p. 90. Read Muhammad Mutawalli; Harlida Abdul Wahab; Zainal Amin Ayub; Maskun, 'Constitutional Complaint: A Comparative Study of The Authority of The Republic of Indonesia and Croatia' (2023) Russian La Russian Law Journal, p. 132-142.

<sup>10</sup> UK Engage, 'What Are the Advantages and Disadvantages of Using a Proportional Representation (PR) Electoral System?' (March 2018).

political parties carry out a transparent and fair process in determining their candidate lists, while paying attention to fairness and diversity in political representation. The decision to restore the closed proportional system in legislative general elections must consider the context and needs of the country. In-depth discussions involving stakeholders and careful considerations need to be carried out to ensure a fair, representative, and democratic electoral system.

*Implications of Implementing Closed and Open Proportional Systems in Legislative Elections*

**The implementation of a closed proportional election system in Indonesia has far-reaching consequences** for the democratic system and Indonesian society. First and foremost, this system fosters political stability. Because all parties are granted equal rights to seats in parliament, the balance of power between political parties will be preserved. Nonetheless, major decisions will be subjected to healthy negotiations and agreements across political parties. Second, the system ensures that political representation is maintained. In an open election system, seats in parliament are apportioned evenly among political parties that may not have enough votes. Small parties that may not receive enough votes will nevertheless be allocated seats in parliament, reflecting the variety of Indonesian mindset. Third, using a closed proportional general election system will enhance voter participation. Political parties will better organize and publicize their candidate lists so that voters may learn about each party's programs, visions, and mission. Participation in elections will always fall if voters are unclear about which candidate best represents their values. However, it should be noted that the application of a closed proportional system also has some negative impacts that need to be considered, including:

- 1) Limited Representation of Individuals: Closed proportional systems may limit the representation of individuals in the legislature. Individual votes and preferences may not be properly represented in the legislature since voters do not have the option of voting for individual candidates, but only for political parties.
- 2) Constraints to Political Diversity: Closed proportional systems tend to produce larger and more dominant political parties. This can hinder the emergence of small or independent parties that represent diverse politics and different views. The implication is the limited variety of ideologies and political perspectives within the legislature.
- 3) Potential for Party Power Politics: In a closed proportional system, political parties have greater control in choosing candidates and formulating party policies. This could potentially result in the domination of political parties in political decision-making and narrow the space for healthy political participation and competition.

In the end, the decision to implement a closed proportional system in legislative elections must consider these various implications, both positive and negative. Efforts need to be made to ensure that the electoral system adopted is consistent with the principles of democracy, fair representation, and broad public participation.<sup>11</sup> The implications of implementing an open proportional system in legislative elections has different impacts when compared to a closed proportional system. Relevant implications include the following:

- 1) Stronger Representation of Individuals: Open proportional systems allow voters to directly vote for individual candidates, not just political parties. Thus, this system provides greater opportunities for voters to determine their representation in the legislature. Election of the candidate with the greatest votes improves individual

11 Afiq Faqih, "Urgensi Sistem Proporsional Tertutup Untuk Pencegahan Praktik Money Politics Pada Pemilihan Legislatif" (2020) Al-Balad: Journal of Constitutional Law 2(1), 1-13., p. 68.



- representation in the legislature.
- 2) **Greater Political Diversity:** Open proportional systems can encourage the emergence of small or independent political parties that represent a diversity of different politics and views. In this system, smaller parties have a greater chance of winning seats in the legislature if they win enough voter support. This can increase the variety of ideologies and political perspectives within the legislature.
  - 3) **Responsive to Voter Preferences:** An open proportional system allows voters to directly influence the composition and representation of politics in the legislature. Voters can choose candidates according to their political preferences and influence the policies of political parties through their election. Thus, this system can encourage political parties to be more responsive to the wishes and preferences of voters.
  - 4) **Intense Political Competition:** An open proportional system can encourage more intense political competition between candidates and political parties.<sup>12</sup> Candidates seek to gain direct voter support and build their support base. This can encourage political parties and candidates to be more active and committed to carrying out effective political campaigns.
  - 5) **Greater Individual Influence:** In an open proportional system, the candidate who is elected tends to have more influence in the political decision-making process. They can advocate for and represent the interests of the voters who elect them directly. The implication is that there are greater opportunities for individuals to influence policy formation and fight for issues they deem important.

However, it should be remembered that an open proportional system also has its challenges, such as the increased complexity in counting votes and allocating seats, as well as the potential for excessive political fragmentation if there are too many small political parties. Therefore, the implementation of an open proportional system must consider political sustainability and government stability. The choice between a closed or open proportional system in legislative elections depends on the context and objectives to be achieved. Careful evaluation needs to be carried out to ensure that the electoral system chosen complies with the principles of democracy, fair representation, and effective public participation.<sup>13</sup>

Although a closed proportional system could be a solution for political conditions and issues within the current Indonesian democracy, the oligarchy can play through this system, meaning that the party could be more dominant and people's sovereignty more threatened.<sup>14</sup>

The following is an explanation of the implications of implementing the two systems:

#### Closed Proportional System-

- 1) A closed proportional electoral system has a very important impact on democracy. While political parties are in a position to elect their candidates, the majority of the electorate does not participate in this process. In this system, the list of candidates to be sworn in as representatives of the people is determined by political parties, not by voters. This means that many voters do not have representation in general elections. This can affect people's trust in the democratic system, as people may feel that their votes are not

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12 Putu Eva Ditayani Antari, 'Interpretasi Demokrasi Dalam Sistem Mekanis Terbuka Pemilihan Umum Di Indonesia' (2018) 3 Jurnal Panorama Hukum 87.

13 Hagopian Frances and Scott Mainwaring, *The Third Wave of Democratization in Latin America Advances and Setbacks* (Cambridge: Cambridge University Press 2005).

14 Muten Nuna and Roy Marthen Moonti, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia' (2019) 4 Jurnal Ius Constituendum 110.



being counted because the political parties have already determined which candidate gets elected. According to Lijphart, a closed proportional electoral system can affect the representation of women and minorities in the resulting government.<sup>15</sup>

- 2) A closed proportional electoral system can also affect political stability. Because political parties have complete control over the list of candidates, they can assign seats to members of the majority power without needing to reach a consensus. Even if the majority of the people do not agree with the options offered by the winning party, they still control seats in parliament and can control and push issues that may not appeal to the public or do not have the real support of a majority of voters. According to Mainwaring and Scully, proportional representation can improve the performance of political institutions, especially when generating diverse political support in a heterogeneous society. On the other hand, this arrangement might make politics less sustainable and stable. For instance, this system might produce a parliament with numerous competing factions, which might lead to less stable political coalitions.<sup>16</sup>
- 3) Party Representation: In a closed proportional system, representation in parliament is determined based on the list of candidates compiled by the political parties. Thus, the main focus is on the political parties and the power of the parties in selecting the candidates who will represent them. This system implies that political parties have more control over who gets to serve in parliament, which can affect the stability of political parties and party discipline in parliament.
- 4) Representation of Candidates: In a closed proportional system, voters cannot vote for candidates individually. Individual representation tends to be neglected, and voters can only vote for political parties. This can reduce the direct connection between voters and their elected representatives, as well as reduce individual accountability to their constituents.
- 5) Representational Constraints: Closed proportional systems may place restrictions on diversity and proportionate representation in the legislature. Potentially strong candidates who do not obtain adequate positions on political party lists may not be able to effectively represent their interests.

#### Open Proportional System-

- 1) Representation of Individuals: Voters can select candidates to support in an open proportional system as opposed to only supporting political parties. This allows voters to have more control over who represents them in parliament. Stronger individual representation can strengthen the relationship between voters and elected representatives, as well as increase individual accountability to constituents.
- 2) More Proportionate Representation: Open proportional systems have a higher potential for achieving more proportional representation and diversity in parliament. Voters can select candidates from a variety of backgrounds and ensure that their votes are accurately translated into appropriate political representation.
- 3) Electoral Complexity: While open proportional systems provide flexibility to the electorate, they can also increase electoral complexity. Voters must understand the likely large number of individual candidates and make more specific choices. This can pose information and understanding challenges for voters who may not know all the candidates well.

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15 A Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (London: Yale University Press 2012).

16 S Mainwaring and TR Scully, *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press 2018).

In choosing between closed and open proportional systems, it is important to consider the context and purpose of the election. Each system has strengths and weaknesses that need to be evaluated based on aspects such as party representation, individual representation, diversity, political stability, and public participation.

Based on the analysis of the constitutionality mentioned above, the following are some recommendations for improving the legislative elections in the future. This could involve revising the constitution or developing laws that regulate the mechanism for legislative general elections. In addition, it is important to consider the principles of democracy, fair representation, and effective public participation in legislative elections. In this context, a closed proportional system is an alternative that should be considered, taking into account controlling political fragmentation and maintaining the necessary political stability.

Various stakeholders need to be included in discussions and decision-making on the legislative general election system by the government and related institutions. The active participation of civil society, political parties, academics, and citizens at large can help strengthen the legitimacy and accountability of decisions taken. Furthermore, effective political education also needs to be improved to increase public understanding of the legislative general election system and the importance of active participation in the political process. Communities should be provided with adequate knowledge and skills to make informed political choices and be informed about political candidates and parties.

## **Conclusion**

Constitutional legislative elections require a careful review regarding the electoral system that is applied in Indonesia. The application of a closed proportional system, as implied by the 1945 Constitution, has certain constitutional implications that need to be considered carefully. To ensure that the parliamentary general election system complies with the values of democracy, fair representation, and effective public participation, thorough discussions and further studies must be conducted. In reviewing the constitutionality of legislative general elections with a focus on the closed proportional system in the 1945 Constitution, several relevant conclusions and suggestions can be drawn:

- 1) The closed proportional system in legislative general elections implied by the 1945 Constitution has important implications. Its advantages include political party stability, party discipline, focus on candidate quality and party-based elections. However, there are also criticisms of this system related to individual representation and constraints on political diversity.
- 2) The normative juridical review shows that the closed proportional system implied by the 1945 Constitution is generally allowable considering the prevailing constitutional principles. However, it is necessary to ensure that this system does not violate human rights, justice, or political freedoms guaranteed by the constitution.
- 3) The implementation of a closed proportional system must be based on a process that is transparent, fair, and involves active public participation. It is important to avoid manipulative or corrupt practices that could threaten the integrity of the general election.

A closed proportional system can support preserving political stability and policy consistency in Indonesia. To address potential issues and shortcomings, it is vital to analyse and update the system regularly.

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