



## DISCOURSE ANALYSIS OF OPEN ELECTION SYSTEMS LIMITED IN THE 2029 ELECTION

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### *Abstract*

Dissenting Opinion from Arief Hidayat as a Constitutional Court Judge who proposed implementing a Limited Open Election System in 2029. This was stated during the reading of the decision on case Number 114/PUU-XIX/2022 regarding the judicial review of the Election Law. The bitter experience of a closed and open electoral system in legislative elections is possible to bring about the discourse of implementing a limited open electoral system in the 2029 election. It is felt that the existence of an open and closed electoral system still creates gaps that can tarnish the principle of elections, namely Luber Jurdil (Direct General, Free, Secret, Honest and Fair), including Political Money, Intervention of Party Leaders, the proximity of elected candidates to the public so that the arrogance of political parties becomes. This paper uses normative juridical and descriptive analytical methods. The purpose of this writing is to see the feasibility of implementing the Limited Open Proportional system in the next election system. The results of this paper indicate that the discourse on a limited open electoral system is seen as appropriate if political parties adhere to neutral and impartial principles towards the proximity of legislative candidates, and must also be accompanied by increased active participation of the community in the electoral process so as to create aspirational People's Representatives. The support of the KPU and Bawaslu as Election Organizers and Supervisors has also been part of the success of the Limited Open Proportional system.

**Keyword:** *Election, Election System, Limited Open*

### **A. Introduction**

Elections are a 5-year activity to elect members of the People's Representative Council , the Regional Representative Council, the President and Vice President and the Regional People's Representative Council <sup>3</sup>. In carrying out elections, a system is needed to achieve the goal of electing people's representatives to occupy seats in an institution to run a government that is in accordance with the goals of the state. A system is a collection of

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elements that are interconnected and interact in unity to carry out the process of achieving a goal. (Fery Wongso, n.d.) Elections are a characteristic of a democratic country. The implementation of elections is considered democratic, according to the views of the DKPP (Honorary Council for General Election Organizers), namely if it involves simultaneous and substantive aspects. The simultaneous aspect is interpreted as procedural, namely including the rules contained in the law, election organizers, election participants and voters. Meanwhile, the substantive aspect is interpreted as the principle underlying direct, general, free, secret, honest and fair elections (principles).

The implementation of elections presents a voting system to create a democratic atmosphere. The electoral system is interpreted as a way to organize citizens to elect representatives to the people's representative institutions (DPR, DPRD and DPD). The various electoral systems applied in elections in Indonesia from 1955 to 2019 have had positive and negative impacts in their implementation. (Dedi, 2019) In political science, electoral systems are generalized into two models, namely district systems and proportional systems. In the two electoral systems there are differences that lie in the methods Which used For compile member parliament, with ignore possibility imbalance between total voice And power Which accepted representative party For get chair in parliament . The proportional system is seen as prioritizing balance voice in election And strength party political For win chair in parliament with the risk of it being difficult to form a majority in parliament . Meanwhile, the district system is considered to result in a minimal role for political parties, because in this system the politicians have role Which big in election. By Because That, defeat And victory Actually very depend on ability politician For interesting voters. Excess area election is figures famous in area election selected And tend fight for interest public in area the. The downside is politician selected tend bring interest local to in scene national .(Galuh Kartiko, n.d.)

The implementation of 12 elections from 1955 to 2019 has implemented various pluses and minuses. Quoted from the KPU website regarding the history of the electoral



system in Indonesia. In 1955, during the parliamentary period, a closed proportional system was implemented using a combination of the district system and the balanced representation system . In 1971, a Closed Proportional system was implemented with a balanced representation system that adhered to a binding list stelsel system . Then from 1977 to 1999, a closed proportional system was implemented in the elections . From 2004 to 2019 elections were held simultaneously to elect the DPR, DPD, DPRD and President and Vice President using an open proportional election system.

The electoral system is an important thing in organizing elections. To determine the right electoral system to implement, you must understand the meaning of democracy and what kind of representational function you want to realize. Understanding the problems that occur in countries with models of society that come from various regions with their respective cultures is something that must be considered in determining the electoral system in Indonesia.(Budiono & Program Doktor, n.d.) Saat ini penerapan sistem pemilu masih merupakan perpaduan antara sistem daerah pemilihan dan sistem perwakilan berimbang Hal ini sejalan dengan rekomendasi LIPI agar sistem pemilu Indonesia tidak menganut sistem proporsional murni atau sistem daerah pemilihan murni. Namun, kombinasi kedua sistem ini lebih disukai, dengan memanfaatkan kekuatan kedua sistem dan menghilangkan kelemahan keduanya.

System changes in the electoral process are interpreted as a solution to the failure of the previously implemented electoral system. Arief Hidayat is the former Chairman of the Constitutional Court and currently serves as a judge at the Constitutional Court. During the reading of the decision in the material review case regarding the open proportional election system as regulated in Law No. 7 of 2017 concerning General Elections. In its decision, the Constitutional Court stated that it rejected in its entirety the applicant's request to change the electoral system to a closed proportional one. However, of the 9 constitutional judges, 8 judges stated that they rejected it and 1 judge (Arif Hidayat) had a different opinion (dissenting opinion).



Arief Hidayat is of the opinion that the implementation of an open proportional electoral system must be evaluated and improved. Moreover, the open proportional election system has been implemented in 5 elections in 2004, 2009, 2014, 2019 and 2024. In his opinion, it is necessary to transition the system from an open proportional system to a limited open proportional system. According to Arief Hidayat, the transition from an open proportional system to a limited open proportional system is very necessary because from a philosophical and sociological perspective the implementation of an open proportional system is based on a fragile democracy. Arief Hidayat assessed that the applicant's request was legally sound in part, therefore it must be granted in part. In his view, Arief said that the transition to a limited open proportional system could begin in 2029 so as not to disrupt the 2024 election stages which are currently underway.

## **ELECTION SYSTEM IN INDONESIA**

Elections in Indonesia are regulated in Law No. 7 of 2017 concerning General Elections, this Law was born out of the mandate of Article 22E paragraph (6) of the 1945 Constitution of the Republic of Indonesia. Elections are held with the aim of choosing who will sit in seat of government (President, Vice President, DPR, DPD, Provincial/Regency DPRD, City). In holding elections, a system is needed to determine the best way to calculate the number of seats in the legislative body. The electoral system for conducting elections is determined in the Election Law as an implementation of the 1945 Constitution of the Republic of Indonesia.

As a democratic country, Indonesia has held elections 12 times, from 1955 to 2019. On 12 occasions the elections were carried out using different systems, namely closed proportional representation and open proportional representation systems. The closed proportional election system is implemented in a way that the people can only vote for political parties, then legislative candidates in first place are given the first opportunity to be given the results of the party's votes. Meanwhile, the proportional system is open



with a mechanism where the people can directly elect representatives who are deemed appropriate to occupy legislative seats. (Riwanto, 2019) Changes in the implementation of the electoral system are certainly considered a solution to the weaknesses of the previously implemented system. Changes to the electoral system occurred since 2004, where when elections were held a semi-open proportional system was used, whereas previously elections were held with a closed proportional system.

The 12 elections held in Indonesia using different systems (Putri Rahayu et al., 2017) are detailed as follows (RI KPU website History of elections in Indonesia):

Election Year	Election system used	Information
1955	Proportional Closed by means of a combination of the District System and the Balanced Representation System. <i>The District System</i> means that the country's territory is divided into electoral districts based on population. The number of members of the people's representative body is determined to be equal to the number of districts. Each electoral district elects a member of the people's representative body. Voters choose candidates proposed by election participating	During the parliamentary period of the Burhanuddin Harahap Cabinet, this was the first election held by Indonesia. The elections were led by Soekarno and Moh Hatta as president and vice president. This first election was held twice, namely to elect the DPR (29 September 1955) and to elect the Constituent Assembly (25 December 1955). The legal basis for holding elections this year is Law Number 7 of 1953 concerning the Election of Constituent Members and DPR members, PP Number 9 of 1954 concerning Implementing Election Law and Government



	<p>organizations. Then the determination is based on the majority vote.</p> <p><i>The balanced representation system</i> means that first the territory of the country is determined as one electoral district, but in its implementation it can be divided into several administrative electoral districts, secondly the number of members of the people's representative body is determined based on the proportion of population, for example every 4000,000 inhabitants have one representative, thirdly each electoral district elects more than one representative, the fourth voter, chooses the Election Contesting Organization (OPP), however the OPP submits its candidates which are arranged in one list, fifthly, the determination of the</p>	<p>Regulation Number 47 of 1954 concerning How to Nominate Members of the DPR /Constituent Assembly by Members of the Armed Forces and Statements Inactive/Dismissal based on acceptance of the membership candidacy, as well as the prohibition on holding Election Campaigns for Members of the Armed Forces. Elections are held by election organizing bodies, namely: Indonesian Election Committee (PPI), Election Committee (PP), Regency Election Committee (PPK), and Voting Committee (PPS)</p>
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	<p>number of seats that will be obtained by each election participating organization is balanced with the amount of voter support, namely the number of beacons obtained, the six selected candidates are taken from the names on the list of candidates, based on the candidate's serial number, if the binding list system is adopted and the votes obtained by each candidate, if the free list system is adopted.</p> <p><i>Combination System</i> , is a combination of the district system and the balanced representation system, for example the number of members of the people's representative body is determined based on the population, then the majority of the members are appointed as district representatives through elections using the district</p>	
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	<p>system and a small part is determined to represent the OPP, which is calculated using the OPP who do not receive representatives in elections using the district system.</p>	
1971	<p>Proportional Closed with a balanced representation system that adheres to a binding list system , meaning that the strength of organizational representatives in the DPR and DPRD is balanced with the amount of voter support because voters give their votes to the Election Contesting Organizations</p>	<p>This year it is based on Law Number 15 of 1969. Elections were held on July 5 1971. This year the elections were carried out by the Election Organizing Institution (LPU) which was formed through Presidential Decree No. 3 of 1970 with the Chief Minister of Home Affairs and members of the Leadership Council , Advisory Council and General Secretariat. This year's elections were attended by 12 political parties including: Golkar, NU, Parmusi, PNI, PSII, Parkindo, Catholic, Perti, IPKI and Murba.</p>
1977, 1982, 1987, 1992 and 1997	<p>Proportional Closed by selecting the DPR and DPRD to adopt a proportional system with the Stelsel List which is</p>	<p>The third election was held regularly with general elections. The third was held every 6 years and after that in 1977 it was</p>





	<p>followed by only 3 political parties, namely the United Development Party, Golongan Karya and the Indonesian Democratic Party.</p>	<p>scheduled every 5 years. In 1977 the election was held on 2 May 1977, in 1982 it was held on 4 May 1982, in 1987 it was held on 23 April 1987. In 1992 it was held on 9 June 1992 and in 1997 it was held on 29 May 1997.</p>
1999	<p>Close Proportional determines the selected candidates in this election, which is different from the previous election, namely the ranking of votes obtained by a party in the electoral district.</p>	<p>This year the election organizer is the General Election Commission (KPU) because this year the KPU was also formed by the President. Elections were held on June 7, 1999.</p>
2004	<p>Open Proportional</p>	<p>This year's elections were held on April 5 2004 with a different system from previous elections. The differences are in the DPR and DPRD election system and the DPD election system, as well as the election of president and vice president which is carried out directly and no longer through MPR members like previous elections, and could even go to the second round. Apart from that, elections are also national,</p>



		<p>permanent and independent. Elections to elect members of the DPR, Provincial DPRD and Regency/City DPRD are carried out using a balanced (proportional) representation system with an open candidate list system. Political parties will get seats according to the number of valid votes they obtain. This seat will be given to candidates who meet or exceed the BPP score. If there are none, then seats will be given to candidates based on serial number. Elections to elect DPD members are carried out using a multi-member district system.</p>
2009	Open Proportional	<p>This year's elections were held on July 8 2009 based on Law Number 42 of 2008. This year the DPR and DPRD election system uses an open proportional system.</p>
2014	Open Proportional	<p>This year's elections were held on April 9 2014 using an open proportional system to elect the</p>



		DPR and DPRD. This year's elections were based on Law Number 8 of 2012 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council and Law Number 15 of 2011 Concerning General Election Organizers
2019	Open Proportional	This year's elections were held on April 17 2019 by electing the President and Vice President, DPR, Provincial DPRD, Regency/City DPRD, and DPD. This year's elections are based on Law Number 7 of 2017 concerning General Elections. Election System for DPR and DPRD elections using an open proportional system (majority vote)

The implementation of an open proportional system is regulated in Article 168 paragraph (2) of Law Number 7 of 2017 concerning Elections which states "Elections to elect members of the DPR, Provincial DPRD and Regency/City DPRD are carried out using an open proportional system". The implementation of elections using this system is certainly not free from the problems that arise, even though this system is seen as more



suitable for democratic countries which want officials who occupy government seats to be able to represent the wishes of the people. Because the advantage of an open proportional system is that the people are able to directly choose who is worthy to represent them (Budiono & Program Doktor, n.d.). The implementation of the open proportional election system was motivated by the Constitutional Court decision Number: 22-24/PUU-VI/2008 . (Silitonga, n.d.)and the people's desire that the elected legislative candidate be someone who has received support from the people. It is felt that the open proportional system that has been implemented from 2009 to 2019 still causes problems, such as expensive campaign costs, money politics, identity politics, political polarization and the country spending a lot of money. So in this system the big note is that legislative candidates need large capital to be able to compete in the election.(Darmawan, n.d.)

In implementing the principles of popular sovereignty, the general election system must be organized in such a way as to present the essential and procedural principles of popular sovereignty so that the spirit of general elections becomes closer and more beneficial to the people, therefore in the implementation of general elections it is necessary to reform them into a system that is administratively simple and cheap in financing . (Fahmi, n.d.). With problems still existing in the open proportional electoral system, it is possible for system changes to occur with the aim of solutions to the current political and democratic conditions in Indonesia. (Kansil et al., 2023). Even though currently there are quite a few people who want to bring back the closed proportional system, it is important to remember that the open proportional system is still considered worthy of being maintained on the grounds that it better accommodates the people's vote compared to the closed proportional system where political parties are the strongest in determining legislative candidates who sit in legislative seats.



## LIMITED OPEN PROPORTIONAL IN THE ORGANIZATION OF ELECTIONS IN INDONESIA

In holding every type of election, at least an electoral system is required. The electoral system has two functions in organizing elections. First, the electoral system as an instrument of democratization of various aspects of the electoral system, such as the party system, political representation system, effectiveness in administering presidential government and effectiveness of regional government, politician behavior, voting behavior, and national integration (Surbakti, 2023). Second, in the function of the electoral system, it is used as an election mechanism by state administrators, legislative and executive institutions, central and regional.

The first function of the electoral system as an instrument of democratization is described as the consequence or impact of the electoral system on various aspects of the political system. Meanwhile, the second function, technically holding elections, is described as a set of procedures or steps for changing voter votes into electoral seats. There are two proportional systems in organizing elections, namely the open proportional system and the closed proportional system (Intani, 2023).

The differences between an open proportional system and a closed proportional system include the following:

<b>Election System</b>	<b>Selection Mechanism</b>	<b>Excess</b>	<b>Lack</b>
<b>Open Proportional</b>	The mechanism for voters to directly elect candidates	a. More representative in representing the people;	a. Vulnerable to conflicts of interest, namely that political parties often appear to care more about the interests of individuals



	<p>from political parties.</p>	<p>b. can provide wider freedom of voting rights to voters;</p> <p>c. encourage candidates to communicate more actively and socialize more closely with voters;</p> <p>d. can increase the integrity of the candidates chosen by voters.</p> <p>e. Voters can control the candidates they choose;</p> <p>f. Parties hold seats in proportion to the votes they receive;</p>	<p>or certain groups than the interests of society as a whole</p> <p>b. Political parties are only used as 'vehicles' for candidates so that the ideological attachment between candidates and political parties is very weak and reflects more transactional politics;</p> <p>c. Nominated by political parties so that political parties are considered important at the time of nomination, after being elected candidates tend to act independently.</p> <p>d. The opportunity for money politics to be practiced is very high;</p> <p>e. Requires high capital or political costs;</p> <p>f. The lack of superior cadres in political party candidates has resulted in</p>
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			<p>a lack of integrity in <i>leadership</i>.</p> <p>g. It is very vulnerable to creating unhealthy competition between one candidate and another</p> <p>h. The complexity of the mechanism for calculating vote results</p> <p>i. Can cause voters to be confused in choosing candidates who match their aspirations;</p>
<p><b>Closed Proportional</b></p>	<p>The election mechanism is only based on parties. Political parties submit a list of candidates arranged based on serial number.</p> <p>Determination of serial numbers by political parties.</p>	<p>a. Can minimize the practice of money politics;</p> <p>b. Strengthening internal solidarity and loyalty of political parties;</p>	<p>a. The party oligarchy is very strong in this system;</p> <p>b. There are very few candidates due to the crisis of potential candidates who fit the criteria of political parties;</p> <p>c. Can distance the socialization relationship between candidates and voters after the election;</p> <p>d. Foreclose greater public participation;</p>



In the political contestation in Indonesia ahead of the Election Year, namely 2024, there is a public debate between people who support the open proportional electoral system (SPPTb) and those who support the closed proportional electoral system (SPPTt). This debate arose because there was a request from a number of citizens to the Constitutional Court (MK) that SPPTb be replaced with SPPTt with a request for review of Law no. 7 of 2017 concerning General Elections (Election Law). However, in this petition the Constitutional Court rejected the petition on the legal grounds that in holding elections, political parties still have and continue to have a central role which has full authority in the process of selecting and determining prospective candidates, including determining the serial numbers of legislative candidates. Moreover, the facts show that since the election was held after the amendment to the 1945 Constitution, political parties have become the only entry point for citizens who meet the requirements to be nominated as candidates for members of the DPR/DPRD (MKRI, n.d.).

In the ruling of the Constitutional Court Number 114/PUU-XX/2022 regarding the case of material review of Law no. 7 of 2017 concerning General Elections (UU Election) regarding the 1945 Constitution of the Republic of Indonesia (UUD 1945) Constitutional Justice Arief Hidayat expressed a dissenting opinion with the consideration that *moving the electoral system towards closed proportionality is not the right solution because it has the potential to buy a cat in a sack and only transfer transactional political behavior between prospective legislative members and the supporting political parties* (Indonesia, 2022). So that in improving the election system in Indonesia, a new idea is brought forward, namely a limited open proportional system.

The open proportional system is limited, placing more emphasis on determining elected candidates based on the serial number of the political party that received the most votes (Firdausy & Riswanto, 2019). During the 5 (five) times that elections have been held, it is very necessary to evaluate improvements and changes to the open





proportional system which has been implemented 4 (four) times, namely in the 2004, 2009, 2014 and 2019 elections. To improve the quality of democracy, the election system has been improved from open proportional system becomes limited open proportional. This improvement by switching to an open proportional system is limited because the open proportional system currently in use, in accordance with the provisions in Article 168 of Law Number 2 of 2008 concerning Political Parties, will weaken political parties.

This is because the role of political parties is lost in selecting elected candidates in general election contention. Thus, it could result in a candidate's loyalty to their political party being reduced, thus the Constitutional Court Decision Number 114/PUU-XX/2022 will increase the strength of the role of political parties (Eriton, 2023). Candidates for legislative members who are unethical in competing, using all means to be elected by the community, cause the potential for sharp conflict between people with different choices, especially between legislative candidate candidates and their success teams from the same party or internal conflicts between candidates. -candidates for legislative members from the same party who had to be terminated by the Constitutional Court because their party could not complete it. Competition is very free. This is the reason why the open proportional system that has been implemented so far has turned out to be a democracy that is fragile from a philosophical and sociological point of view.

Expert Mada Sukmajati, when she was an expert witness at the Constitutional Court, stated that the electoral system needed to be changed from open proportional for several reasons, and the Court supported her opinion. *First*, the open list proportional system has created a phenomenon of personal choice (*personal vote*) from voters which may give rise to the potential for horizontal conflict after the election because voters prioritize individual candidates over political party institutions. *Second*, the electoral system is also more appropriate in terms of budget efficiency, time and energy (MKRI, n.d.). Not only based on the negative impacts resulting from the implementation of the



previous election system, the implementation of the Limited Open Proportional Election System was also driven by the desire to strengthen the institutional role of political parties in elections so as to create a balance between elections and elections. the role of political parties and voters (Akili, 2022).

The transition to the election administration system still needs to be studied in more depth, the change must combine the good aspects of the open proportional system and the good aspects of the closed proportional system with a prismatic conception, in order to obtain an election system that is appropriate to the needs and developments of the times. The suggestion given is to use a limited open proportional electoral system.

<b>Limited Open Proportional Systems</b>	
<b>Excess</b>	<b>Lack</b>
a. can re-strengthen the institutional role of Political Parties in Elections so that a balance is created between the roles of Political Parties and Voters; b. creating political accountability so that voters recognize and can evaluate the performance of political parties and prospective candidates;	a. Lack of public understanding regarding the Limited Open Proportional System; b. the system seems almost the same or 'camouflaged' from a closed proportional system; c. This system is seen as not prioritizing voter representation. d. There is a risk of bias in the definition of understanding in the implementation of a limited



<p>c. the realization of government stability with a solid and effective coalition of political parties in running the government;</p> <p>d. Administrative efficiency in the costs and technicalities of holding general elections;</p>	<p>open election system because it tends to be understood by those who organize the election and the public who actively seek out detailed information.</p> <p>e. People still think that this system is the same as an open proportional system.</p>
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### **Conclusion**

The holding of 12 elections in Indonesia has certainly provided lessons regarding the weaknesses and strengths, one of which is the electoral system implemented. With these weaknesses and strengths, it certainly provides a thorough evaluation in the next election. The formation of an Election Law must of course be based on the wishes of the people and solutions to the problems of democracy in Indonesia. Of course, when there is a system change that is considered the result of an evaluation and is a solution to election problems in Indonesia, it must be acceptable to every party.

The application of the open proportional system is limited, placing greater emphasis on determining elected candidates based on the serial number of the political party that received the most votes. To improve the quality of democracy, the election system was improved from an open proportional system to a limited open proportional system. This improvement by switching to an open proportional system is limited because the open proportional system currently in



use, in accordance with the provisions in Article 168 of Law Number 2 of 2008 concerning Political Parties, will weaken political parties. The transition to the election administration system still needs to be studied in more depth, the change must combine the good aspects of the open proportional system and the good aspects of the closed proportional system with a prismatic conception, in order to obtain an election system that is appropriate to the needs and developments of the times.

### **Suggestion**

- a. Election organizers, namely the General Election Commission, need to carry out outreach regarding the election administration system, in the widest possible way and extend the period of outreach to the public, not only technical information, so as to increase the knowledge of the voting public regarding the implementation of elections.
- b. In-depth research or study is needed regarding the limited open proportional system in organizing elections in Indonesia.
- c. strengthening political party cadre formation through continuous cadre education for a minimum of 3 (three) years for candidates for Provincial/Regency/City DPRD members and 5 (five) years for candidates for DPR RI members so that the elected legislative candidate members are truly produced from an effective cadre formation process. Excellent. This is also aimed at avoiding the "hopping flea" phenomenon in every nomination for members of the Provincial/Regency/City DPR/DPRD so that political party cadres can properly absorb the party's ideology. In this way, legislative members will be elected who are actually the best cadres who can meet the expectations of society in general and can carry out their duties as competent legislators.



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