

Conference Paper

Strengthening the Open Proportional Election System after the Constitutional Court Decision Number 114/PUU-XX/2022 from the Perspective of People's Sovereignty

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Abstract.

The focus of this research is the open proportional election system after the Constitutional Court Decision Number 114/PUU-XX/2022. This study aimed to analyze the legal implications of Constitutional Court Decision Number 114/PUU-XX/2022 from the perspective of people's sovereignty. Research methods with a normative approach were analyzed in a qualitative descriptive manner. The results showed that the basis for consideration of the decision of the Constitutional Court Number 114/PUU-XX/2022, as the Petitioners' application is not grounded in law in its entirety. The Constitutional Court rejected the arguments presented considering its ruling, the Constitutional Court used textual interpretation or original intent and systematic interpretation. The Constitutional Court considered the open proportional election system closer to the concept of elections in the 1945 NRI Constitution. The constitution mandates consideration of the Constitutional Court is still very relevant, especially in terms of continuing to apply the open proportional system. The legal implications of the Constitutional Court decisions are legal certainties of election implementation, strengthening the open proportional election system, and increasing. Suggestions to ensure legal certainty, vote laws are not often changed, and changes to an electoral system are adjusted to the dynamics and needs of conducting elections, as well as the real needs of the community as holders of popular sovereignty

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1. INTRODUCTION

Constitutionally, Indonesia is a country based on people's sovereignty (democracy), and one of the characteristics of a country is said to be a democratic country is the existence of general elections. The holding of elections must be based on a firm electoral system considering that the electoral system is the main pledge. What electoral system will be implemented must be determined early, because choosing the right electoral system will have implications for other accompanying implementing regulations.

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existence of general elections. The holding of elections must be based on a firm electoral system considering that the electoral system is the main pledge. What electoral system will be implemented must be determined in advance, because choosing the right electoral system will have implications for other accompanying implementing regulations.[1]

The electoral system adopted by a country is inseparable from the factors of development and democratic system and the needs of the community. Every system is not perfect, there are always advantages and disadvantages. Countries that previously adopted a district system tried to adopt a proportional system, and countries that implemented a proportional system tended to implement a district system that they considered better.[2]

Development of the electoral system in Indonesia after the reform, in 1999 with a closed proportional system, in 2004 with an open list proportional system based on the sequence number of candidates, in 2009 with an open list proportional system based on the most votes of candidates, in 2014 an open list proportional election system based on the most votes and in 2019 an open list proportional election system based on the most votes.

Syamsudin Haris, elections are a form of political education for the people, which is open, direct, mass, which is expected to increase the intelligence of knowledge about politics and public awareness of democracy.[3]

Entering the 2024 elections, the open proportional election system is again questioned based on case application Number 114/PUU-XX/2022 concerning the examination of the Election Law submitted by the applicants, namely Riyanto (Applicant I), Nono Marijono (Applicant II), Ibnu Rachman Jaya (Applicant III), Yuwono Pintadi (Applicant IV), Demas Brian Wicaksono (Applicant V), Fahrurrozi (Applicant VI). The Petitioners postulate Article 168 paragraph (2), Article 342 paragraph (2), Article 353 paragraph (1) point b, Article 386 paragraph (2) point b, Article 420 paragraph c and letter d, Article 422, Article 424 paragraph (2), Article 426 paragraph (3) contrary to the NRI Constitution of 1945.

Thus, the petitioner's argument that the Election Law provides for an open proportional election system with the determination of elected candidates based on majority votes allegedly contradicts the provisions of Article 22E Paragraph (3) of the NRI Constitution of 1945. For this reason, the petitioners submitted to the judges of the Constitutional Court (MK) for the 2024 elections, changing the open proportional election system to a closed proportional election system.

The Constitutional Court related to the electoral system issued Decision Number 22-24/PUU-VI/2008, stating that the constitutional electoral system is an open proportional election system with the determination of elected candidates based on majority votes. So in essence, the Constitutional Court judges were tested for consistency with the electoral system that had been decided at that time with the choice of an open proportional system.

If examined in depth from a constitutional perspective, the NRI Constitution of 1945 does not regulate the electoral system, so the electoral system is not a constitutional arrangement. Constitutional Court Decision Number 47/PUU-XVII/2019 which constitutionally states that the 1945 Constitution does not determine the model of the electoral system. Further implementation of the NRI Constitution of 1945 will be the choice of electoral system regulated in the form of the Determination law.[1] So, the decision of the Constitutional Court Judge is influenced by many factors and the reality of the trial and the political developments that accompany it.

The Constitutional Court of the Republic of Indonesia through several hearings finally decided the case through the Constitutional Court Decision of the Republic of Indonesia Number 114 / PUU-XX / 2022, on June 15, 2023, which in essence the content of the decision rejected all petitioners for judicial review of Article 168 of Law Number 7 of 2017 concerning General Elections and the election system continues to use open proportional.[4]

Departing from this background, this study analyzes the Decision of the Constitutional Court of the Republic of Indonesia Number 114 / PUU-XX / 2022 concerning material testing of Article 168 of Law Number 7 of 2017 concerning General Elections in terms of the Aspect of People's Sovereignty

There are two formulations of the problem raised, namely what is the basis for consideration of the Constitutional Court Decision of the Republic of Indonesia Number 114/PUU-XX/2022 and what are the legal implications from the perspective of people's sovereignty. To analyze this research using the theory of popular sovereignty (democracy) and the electoral system.

2. METHODOLOGY/ MATERIALS

Decision of the Constitutional Court of the Republic of Indonesia Number 114/PUU-XX/2022, the Judge of the Constitutional Court adjudicated rejecting the Petitioners' application for provision and in the subject matter of the application, rejected the Petitioners' application in its entirety

3. RESULTS AND DISCUSSIONS

Basis for consideration of the Constitutional Court of the Republic of Indonesia Decision Number 114/PUU-XX/2022

On November 14, 2022, the applicants submitted a judicial review of Law Number 7 of 2017 concerning General Elections. The petitioner filed an application with the Constitutional Court regarding the electoral system to be used in the 2024 elections.

Through several trials, finally on June 15, 2023, the Constitutional Court of the Republic of Indonesia Decision Number 114/PUU-XX/2022 was determined, based on considerations, among others, that the Court has the authority to hear the application a quo and legally the applicants standing is qualified as the applicant and accepted by the Constitutional Court. Unreasonable under law application for provision and Subject matter application is not grounded in law in its entirety.

The Constitutional Court rejected the arguments presented by the applicant, such as an open proportional system endangering the Republic of Indonesia and damaging the ideology of Pancasila, high-cost politics, making money politics rampant, giving birth to political corruption and resulting in many invalid votes because voters were confused when voting and made elections very complicated. The proposition of an open proportional system that emphasizes individuals and election participants is that political parties demand Article 22 E paragraph (3) of the NRI Constitution of 1945, this reduces the role of parties as election participants is also rejected.

In considering its ruling, the Constitutional Court used textual interpretation or original intent and systematic interpretation. The Constitutional Court considered the open proportional election system closer to the concept of elections in the Constitution. Therefore, if the candidate for the elected legislature (candidate) is determined by a political party, it is considered to deny the sovereignty of the people.

Constitutional Court judge Enny,[5] argued that the electoral system had been designed with better democratic principles in mind. With an electoral system, which provides limits so that political actors do not deviate from state ideology. A number of laws have anticipated this, such as the basis of political parties is Pancasila and the 1945 Constitution which is regulated in Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties.

Constitutional Judge Saldi Isra stated that, while political parties remain the only door to legislative, political parties still have the authority to recall or replace members of the DPR/MPR from their parties for a number of reason.[5]

Constitutional Judge Suhartoyo argued that an open proportional system is considered more democratic because it provides a fairer opportunity for parties or candidates to gain significant public support, political representation is based on the number of votes received by political parties.[6] It anticipates the domination of government by a single political group or party and encourages political inclusivity, accommodating the various interests of society.

An open proportional system aims to realize people's sovereignty, candidates can deal directly with the people and the people have the opportunity to determine the candidates they want to sit in parliament. While proportional is closed, people only see the image of the party without knowing who will be chosen to be its representative because that determines the internal political party.[7]

Constitutional judge Arief Hidayat,[4] had a dissenting opinion, that the petitioner's application was well-founded in law in part and therefore should be granted in part. Improvements and changes to the open proportional system that has been implemented in four elections need to be made. Because, from a philosophical and sociological perspective, the implementation of proportional systems turns out to be based on fragile democracies. Candidates compete without ethics and allow all means to be elected by the community. The proposal is that a limited proportional system be applied to the 2029 election and for the 2024 election to continue to apply an open proportional system, considering that the stages have been running and do not interfere with the holding of the 2024 election.

Although looking at the current political and democratic conditions of Indonesia, a closed proportional system can be a solution to change the electoral system, but oligarchs can play through this system, and parties will dominate more and people's sovereignty can be threatened.[8]

From the consideration of the Constitutional Court Decision, the author agrees that the arguments submitted by the petitioner are unreasonable, in the era openness, the open proportional system is more democratic and voters have the freedom to determine the people's representatives directly, and vice versa, the closed proportional system elects voters choose parties without knowing the representative they will choose. Those elected are more loyal to political parties than to their constituents. There is therefore no reason to declare an open proportional electoral system unconstitutional. If it is to be changed with a closed proportional system, then this is not in harmony with the democratic electoral system, or it can be said that there are inconsistencies in the application of the democratic electoral system.

The open proportional election system model is more democratic, because the winner is the one who gets the most votes, both the absolute and most simple votes and has strong legitimacy because it is appropriate that those who are entitled to seats are candidates who get the most popular support.[9]s

As stated by expert witness Firman Noor,[1] there are several principles of a democratic electoral system. The public must be fully informed, so that the people can provide the best choice. According to *Institute for Democracy and Electoral Assistance*, yang berjudul, “International Obligation for Elections Guidelines for Legal Frameworks”, In the implementation of democratic elections, one of the important points is the right to obtain information and transparency. Without openness and comprehensive and complete information, there is an oppornity for the emergence of unwanted people’s representatives to represent the people. This means that the people are not given the opportunity to think before making a choice for the people’s representatives they want.

3.1. Legal implications of the Constitutional Court of the Republic of Indonesia Decision Number 114/PUU-XX/2022 from the perspective of people's sovereignty

Decision of the Constitutional Court of the Republic of Indonesia Number 114/PUU-XX/2022, the Judge of the Constitutional Court adjudicated rejecting the Petitioners’ application for provision and in the subject matter of the application, rejected the Petitioners’ application in its entirety.[4]

The Constitutional Court’s ruling will carry legal implications on the following aspects :

3.1.1. Legal Certainty for the implementation of the 2024 Elections

The Constitutional Court ruling states that the proportional election system with a list of candidates is open to the constitutional, thus the Constitutional Court Decision provides legal certainty for the holding of the 2024 elections. Thus, the election stage will run according to the provisions of the proportional system with an open list of candidates regulated in Law Number 7 of 2017 concerning Elections.

This is in line with Gustav Radburch’s opinion, that legal certainty is “Scherkeit des Rechts selbst” (legal certainty about the law itself). here are 4 things that have a relationship with the meaning of legal certainty, including. There are 4 things that have a relationship with the meaning of legal certainty, including:

1. That the law is positive, which means that the law is legislation (gesetzliches Recht);
2. Law based on facts (Tatsachen), Not based on formulations related to judgments that will be carried out by judges, such as good will and politeness;
3. That fact must be clearly formulated to avoid errors in interpretation, is also easy to implement;
4. The positive law must not be changed frequently.[10]

So positive law should not be changed frequently, even if there are changes to an electoral system, adjusted to political developments and the needs of holding elections.

According to the Constitutional Court, if improvements will be made to the current system, there are several things that need to be considered by the framer of the law, among others, namely changes are not made too often, improvements to the electoral system, before the stage of holding elections begins, changes must be made earlier, still must maintain continuity and balance between the principle of people's sovereignty as stated in Article 1 paragraph (2) of the 1945 Constitution and the role of political parties as stated in Article 1 paragraph (2) of the 1945 Constitution and the role of political parties as contained in Article 22E paragraph (3) of the 1945 Constitution, involving all groups who have concerns about the implementation of elections by applying the principle of meaningful public participation.[4]

Through Constitutional Court Decision Number 91/PUU-XVIII/2020 that in general, the process of forming laws, including election laws, must have public participation at every stage. The Court wants more meaningful public participation in the formation of laws containing three prerequisites, that is:

First, the right to be heard; second, the right to be considered; and third, the right to get an explanation or answer to the opinion given (right to be explained). Public participation is mainly intended for community groups who are directly affected or have concerns about the draft law being discussed.[4]

3.1.2. Strengthening the Open Proportional system

According to Suhartoyo, the Constitutional Court Judge,[11] the Constitutional Court ruling ruled that the electoral system remains proportionally open on the grounds that *the first* is more democratic, political representation is based on the number of votes received by political parties or candidates, providing equal opportunities for parties or candidates to gain significant public support. *Second*, open proportionality is

considered fairer for parties and candidates. *Third*, compete fairly among candidates, thus improving the quality of campaigns and work programs and have the freedom and flexibility to determine candidates directly according to their preferences. *Fifth*, increase accountability and transparency in the political system, including increasing voter participation.

So with an open proportional system has several advantages, both for voters, candidates for legislative candidates, and political parties, among others, for voters, given the widest possible space for aspirations and public participation to elect people's representatives directly in accordance with the desired figure and; for candidates, can garner support directly from the people so that they can be elected in elections; Political parties, the degree of representation is very high, with the support of obtaining seats that are comparable to the support of the people's votes so that legitimacy in the eyes of Rakyat is also high.

3.1.3. Increasing the Role of Political Parties

Titi Anggraini,[12] said political parties need to follow up seriously regarding this Constitutional Court ruling. Because, how urgent political parties are to improve and implements internal party democracy, especially regeneration and anti-corruption political practices. For political parties must make changes and improve the internal democracy of political parties. Law enforcement of money politics and political corruption must be a serious commitment from those who have authority, especially Bawaslu, authorized law officials, and all other state instruments and including the consistency of political parties to maintain their cadres. With an open proportional election system, party winners become more eager to mobilize candidates to work to find votes for party seats. "All candidates have the same chance of being elected as long as they are able to reach voters in the right ways and move voters to the polling station and vote for them directly. The party machine is not only driven by the elite, but also by all candidates and their winning teams.

According to Deputy Chief Justice Saldi Isra, political parties still have full authority and still have a central role in the selection process and become the only entry point for citizens who meet the requirements to be submitted as candidates for DPR / DPRD members. The central role of political parties is to evaluate their members who sit in the DPR / DPRD through the mechanism of switching between times (PAW) or recall and remain loyal and committed to the policy line of their political parties.

Schattscheider "*Political parties created democracy*". Political parties are a very important pillar to strengthen the degree of institutionalization in any democratic political system.[13]

Therefore, there should be a party authority that determines who is eligible to be a party representative in parliament after attending political education, regeneration, and party ideology development, thus internal democracy of political parties is implemented.

Intra-party democracy as "a stage of democracy in the party where every members of the party has the right to take part of the decision making of the party".[14]

According to IDEA, one of the indicators of democratic elections is the existence of an electoral legal framework (Structuring the legal framework) which means that the holding of elections in general refers to all laws and legal materials or documents related to elections. In particular, the electoral legal framework includes provisions at the constitutional level, electoral laws passed by the legislature and all other laws that affect elections. It also includes any and all regulations attached to election laws and other relevant laws and regulations promulgated by the government including election regulations issued by election administrators that may have a direct or indirect impact on the election process.[15],[16]

Khairul Fahmi,[17] stated that the principles of popular sovereignty or democracy are freedom, equality or equality, majority vote and accountability. The first two principles are more as the essence of people's sovereignty (essential principles) and the second two principles are procedures for the implementation of people's sovereignty (procedural principles).

John Rawls,[18] argued that people's freedom has freedom, freedom from restrictions on doing something or not doing something, and that it is free from interference by others and protected. Freedom also comes to the point that individuals are not only allowed or not allowed to do something, but other people and governments must have a legal obligation not to hinder it Principle of equality or equality in the political context is implemented in the concept of "one man, one vote, one value".

Hans Kelsen,[19] says that political freedom means the harmony between the will of the individual (the *volente de tous*), and the will of the group or general (the *volente general*). This means that it can be said that the principle of majority guarantees the highest degree of political freedom in society and a social order, and a decision is made based on the unanimous consent of all levels of society, it can be said simply that the sovereignty of the majority vote can be understood as the sovereignty of the people. The principle of freedom and equality, whenever and wherever democracy exists, then freedom and equality of political rights are finally manifested into political choices

through the procedure of people's votes measured qualitatively (majority principle) and actualized through voting.

4. CONCLUSION AND RECOMMENDATION

Based on the judge's consideration in Constitutional Court Decision Number 114/PUU-XX/2022, the application for provision is not grounded in law and the subject matter of the petition of the Petitioners is not grounded in law in its entirety. The Constitutional Court rejected the arguments presented by the applicant, such as an open proportional system endangering the Republic of Indonesia and damaging the ideology of Pancasila, high-cost politics, making money politics rampant, giving birth to political corruption and resulting in many invalid votes because voters were confused when voting and made elections very complicated. And the proposition of an open proportional system that favors individuals and reduces the role of parties as participants in elections as stipulated in Article 22 E paragraph (3) of the NRI Constitution of 1945 is also rejected. In considering its ruling, the Constitutional Court used textual interpretation or original intent and systematic interpretation. The Constitutional Court considered the open proportional election system closer to the concept of elections in the 1945 NRI Constitution. The constitution mandates that sovereignty rests with the people. Therefore, if the candidate for the elected legislature (candidate) is determined by a political party, it is considered to deny the sovereignty of the people. legal implications of the Constitutional Court Decision are legal Certainty for the Implementation of Elections in 2024, Strengthening the Open Proportional Election System and Increasing the Role of Political Parties.

To ensure legal certainty of the electoral system, the legal basis in the form of laws and regulations is not often changed and is not based on momentary political interests. For this reason, the electoral system is adjusted to the dynamics of electoral politics and the needs of holding elections as well as the level of community needs as holders of people's sovereignty.

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