



ISSN Print 2615-5648  
ISSN Online 2615-174X

# Volksggeist

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## Political Configuration of Electoral System Law in Indonesia from State Administration Perspective

Article	Abstract
<p><b>Authors</b> Saiful Risky<sup>1*</sup>, Sholahuddin Al-Fatih<sup>2</sup>, Mabarroh Azizah<sup>3</sup>.</p> <p><sup>1,2</sup> Faculty of Law, Universitas Muhammadiyah Malang, Indonesia <sup>3</sup> Faculty of Sharia, Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia</p> <p><b>Corresponding Author:</b> *Saiful Risky, Email: <a href="mailto:Saifulrizki2@gmail.com">Saifulrizki2@gmail.com</a></p> <p><b>Data:</b> Received: Mar 16, 2023; Accepted: Jun 26, 2023; Published: Jun 30, 2023.</p> <p><b>DOI:</b> <a href="https://doi.org/10.24090/volksgeist.v6i1.7940">10.24090/volksgeist.v6i1.7940</a></p>	<p>The massive number of money politic and clientelism cases occurring between legislative electoral candidates and the community should be eradicated, especially as the general election comes close. This article analyzed the causes of money politic and clientelism in the electoral system and which electoral system that Indonesia as a state should pursue in the legal political context. This normative juridical research discussed the subjects from the point of view of positive legal norms in Indonesia and focused on a statutory approach. The research data were collected by reviewing various literatures. From the research findings, it was concluded that the open-list proportional electoral system in Indonesia in Law No. 7 Year 2017 concerning General Election should be changed into a close-list one considering that the legal politic of the Law on General Election led to the many money politic cases occurring before and after the election. The Constitutional Court in its decision No. 144/PUU-XX/2022 rejected entirely the application for a change of proportional electoral system in the Law on General Election for many considerations and the upcoming general election in 2024 would still use the open-list proportional electoral system. Nevertheless, in the national legal political context, the party drafting the Law on General Election was authorized by the Constitutional Court to change the electoral system in the future on various requirements that they need to fulfill.</p> <p><b>Keywords:</b> <i>General election; political configuration; proportional system.</i></p>

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### INTRODUCTION

Indonesia is a democratic country as explicitly set forth in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia where it reads that the sovereignty lies in the hands of the people and should be exercised in accordance with the Constitution. The people's sovereignty is tightly related with democracy and it is manifested in the implementation of a general election. This general election allows the people or community to elect their own representatives to be authorized

to make legal products and monitor or ensure that the people's wishes are realized as set by these people's representatives.<sup>1</sup> Aurel Croissant suggests in his article entitled *Electoral Politic in South East and East Asia: A Comparative Perspective*, that one of the objectives of general elections is to create an effective government, i.e., a government that can effectively run their administration on a stable manner.<sup>2</sup>

General election is an important instrument in a democratic country that follows a representative system.<sup>3</sup> The election in Indonesia is implicitly defined as a constitutional agenda for Indonesia as a country since it has been explicitly set forth in the Constitution of the Republic of Indonesia CHAPTER VIIB Article 22E. It has been recorded that Indonesia has organized 11 general elections since 1955 through 2019. Nevertheless, so far those elected by the people for the parliamentary seats could not be said satisfactory for the people. This is because some of the House of Representatives members still practiced the corruption, collusion, and nepotism and underperformed.<sup>4</sup>

The electoral system in Indonesia changed drastically and brought about a political constellation as marked by the Soeharto's resignation to end his reign as the president. This fall was also the earliest sign of reform movement where the room for a more democratic constitutional arrangement was opened. However, it is possible for an unconstitutional measure based on personal political interest to occur in such a country. This is because a country can never be separated from the so-called politic itself.

As the 12th general election in 2024 draws close, some fairly crucial news and public opinions circulate in the society. They are about the proportional electoral system, regarding which the Law on Election No. 7 Year 2017 was petitioned for its review to the Constitutional Court (CC) under a case number 144/PUU-XX/2022. Some petitioners proposing the review think that the open-list proportional electoral system is no longer effective to manage the country's administration in the future. The rationale is that the open-list proportional electoral system causes money politic and clientelism cases and this in turn leads to corruption, collusion and nepotism. For this reason, the petitioners request CC to review the essence of Law on Election regarding the open-list proportional system and change it into the closed-list one. It is undeniable, though, that on 15 June 2023 the CC rejects completely this petition for judicial review for various accountable considerations.

Article 284 of Law on Election loosens the sanction for money politics and clientelism cases by not even including any penal sanction for those violating it. The article reads: In the event it is found that the election organizers and campaign teams promise or provide some money or other materials as a reward to the campaign participants either directly or indirectly to: (a) not use their voting rights, (b) use their rights to vote for Electoral Candidates in a certain way that makes their ballot invalid; (c) vote for a certain Candidate Pair; (d) vote for a certain General Election Participant Party; and/or (e) vote for a certain DPD member candidate, shall be sanctions as set

<sup>1</sup> Agus Effendi, "Studi Komperatif Pengaturan Sistem Pemilihan Umum Anggota Dewan Perwakilan Rakyat Di Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 2 (2016), <https://doi.org/https://doi.org/10.25041/fiatjustisia.v10no2.746>.

<sup>2</sup> Aurel Croissant, "Electoral Politics in Southeast & East Asia," in *Electoral Politics in Southeast and East Asia: A Comparative Perspective*, ed. Gabriele Bruns and Marei John Aurel Croissant (Friedrich Ebert Stiftung, 2002).

<sup>3</sup> Ismail Sunny, *Pergeseran Kekuasaan Eksekutif*, 2nd ed. (Jakarta: Aksara Baru, 1986), 37.

<sup>4</sup> Helmi Candra SY and Shelvin Putri Irawan, "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 4 (2022), <https://doi.org/https://doi.org/10.31078/jk1942>.

forth in this Law. Unfortunately, as referred to in Article 286, the sanction is administrative in nature.<sup>5</sup>

In regard to the open-list proportional system, a professor of politics at Airlangga University, Ramlan Surbakti, suggests that if the open-list proportional system is to be maintained in the 2024 elections, Indonesia will suffer at least from five failures. The *first* one is the failure to strengthen political parties as means for democracy. This is because political party members only focus on their individual powers, without proper focus on the party they are part of. The *second* one is the failure to simplify political parties. This is because the open-list proportional system has the potential to increase the number of political parties in Indonesia. *Third*, the objective of a representative political system will not be achieved. The *fourth* one is the failure to realize an effective administration at both national and regional levels. Finally, the *fifth* one is the failure in giving birth to competent politicians with integrity.<sup>6</sup>

Satjipto Rahardjo also states that law is the art of interpretation.<sup>7</sup> Therefore, the tangible evidence of the money politics and clientelism cases occurring in the society during every election indicates that the interpretation of law that governs the open-list proportional general election needs a review to prevent these latent issues from being repeated over and over again.

Nevertheless, to ensure that this idea is original and authentic, the writer would like to discuss a bit some previous studies that generally have some relevance with the topic in this paper. The *first* study is conducted by Evi Noviawati<sup>8</sup> entitled “*Perkembangan Legal politic Pemilihan Umum di Indonesia*” (The Development of Legal Politic of General Election in Indonesia). This research analyzes the development of electoral legal politic from one time to another and finds that a significant shift does occur. Election is considered as the real form of democracy and the most concrete manifestation of people’s participation in the state administration. However, this research does not comprehensively discuss the democratization in the government involved in the general election, whether it has covered substantial or procedural democracy.

The *second* research is entitled “*Legal politic Ketatanegaraan dan Pemilu di Indonesia*” (State Administration Legal Politic and General Election in Indonesia) written by Tarsan Umarama.<sup>9</sup> This research analyzes the development of legal politic in the general elections organized Indonesia. The study finds that from the old order to the reform eras, the mechanisms as well as the electoral systems in the organization of elections have some differences. What this research lacks, in my opinion, is the absence of reference to the ideal mechanism and electoral system for the simultaneous elections to be organized in the future. This is because legal research ideally prioritizes *ius constituendum* (the ideal law) rather than the *ius constitutum* (positive law).

The third research on election legal politic in Indonesia is entitled “*Legal politic Tindak Pidana Politik Uang dalam Pemilihan Umum di Indonesia*” (The Legal Politic of Money Politics Crime in

<sup>5</sup> “State Gazette Number 5801 Law Number 7 of 2017 Concerning General Elections.” (n.d.).

<sup>6</sup> Rofiq Hidayat, “Sistem Pemilu Proporsional Terbuka Disebut Gagal Penuhi Lima Tujuan,” *Hukum Online*, 2020, <https://www.hukumonline.com/berita/a/sistem-pemilu-proporsional-terbuka-disebut-gagal-penuhi-lima-tujuan-lt5edf301268f3f/>.

<sup>7</sup> Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

<sup>8</sup> Evi Noviawati, “Perkembangan Politik Hukum Pemilihan Umum Di Indonesia,” *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (March 1, 2019): 75–86, <https://doi.org/10.25157/JIGJ.V7I1.2139>.

<sup>9</sup> Tarsan Umarama, “Politik Hukum Ketatanegaraan Dan Pemilu Di Indonesia,” *Al-Mizan: Jurnal Kajian Hukum Dan Ekonomi* 1, no. 1 (2021): 37–52.

General Election in Indonesia), written by Hariman Satria.<sup>10</sup> In this research, it is concluded that the provisions for punishment as set forth in Law No. 7 Year 2017 concerning General Election has relatively similarities between the *actus reus* (crime) and *mens rea* (misconduct) elements in the *a quo* article and the misconduct element uses deliberate intention (*dolus*). And the money politics referred to in the *a quo* article is classified into 3 during campaign period, election silence and during the voting periods. Unfortunately, the research does not cover further what the proportional electoral system is effective for organizing the next election in the future, whether it should be closed- or open-list proportional systems. This is because it is highly likely that this proportional electoral system causes the crime in general election in Indonesia.

Unlike those studies explained above, the research the writer is about to conduct is quite different. This research answers some problems based on the democracy principles of a law state. The *first* problem is what causes the massive number of money politics cases in Indonesia before and after the elections. *Second*, in the national legal political context as viewed from the several elections that Indonesia has organized, which electoral system is the best based on the national legal politic and the one that should be applied in the upcoming 2024 General Election.

## RESEARCH METHODS

This research is prepared using normative juridical research method, i.e., the one that focus on reviewing the application of rules or norms in a positive law.<sup>11</sup> Such a concept holds that law is identical to a written norm made and enacted by the authorized institutions or officials. The data in this research was collected using a literature study, thus the main activity performed for this research was finding sources of secondary data such as books, scientific journals and other papers related to the electoral systems in Indonesia.

For its approach, this research used statute approach. It is a research approach that uses legal materials. These include the laws and regulations serving as the bases to implement something. In its norming, discrepancies or disparities in its technical implementations in the field, especially in organizing the general election, were found. This approach was used by reviewing a number of laws and regulations in Indonesia regarding the legal issues on general election.

## ANALYSIS AND DISCUSSION

### General Election in Indonesia

As a plural country, every region in Indonesia holds different views on leader election. Their independence begins to change the people's habit in thinking of the government system. For this reason, some processes have been undergone to arrive on a decision to organize a general election as a way to elect the leaders.<sup>12</sup> In Law No. 7 Year 2017, general election is a means of people's sovereignty to elect the House of Representatives (DPR), Regional Representative Council (DPD), President and Vice President, and to elect Regional People's Representative Council (DPRD),

<sup>10</sup> Hariman Satria, "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia," *Integritas : Jurnal Antikorupsi* 5, no. 1 (June 24, 2019): 1–14, <https://doi.org/10.32697/INTEGRITAS.V5I1.342>.

<sup>11</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2007), 295.

<sup>12</sup> Muhammad Revan, Fauzano Makarim, and Khairul Fahmi, "Permasalahan Dan Dampak Dari Implementasi Sistem Pemilu Proporsional Terbuka Terhadap Sistem Politik," *Journal of Social and Policy Issues* 2, no. 2 (June 15, 2022): 50–57, <https://doi.org/10.58835/JSPI.V2I2.39>.

which shall be organized in a direct, free, confidential, honest, and fair manner within the Unitary State of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia.

The 1955 General Election is the first ever election held in the history of Indonesia upon its independence when it was still 10-years old. This election was held during the parliamentary democracy era under Burhanuddin Harahap's cabinet. The voting was held twice, on 29 September 1955 for electing the members of Democratic Republic and on 15 December 1955 for electing the members of Constituent Assembly. The election was organized on the following bases: (1) Honesty, meaning a general election should be held in accordance with the applicable regulations of laws. In general, this meant every citizen who met the minimum age requirement was eligible for electing or being elected; (2) Equality, meaning that every eligible citizen shared the same right to elect, namely one person one vote; (3) Confidentiality, meaning that the vote was guaranteed, no one would know who they casted their vote to; and (4) Direct way, meaning that the voter directly casted their vote based on their conscience, with neither intermediary nor hierarchy.<sup>13</sup>

The 1971 General Election was the second that Indonesians organized. This was held during the New Order administration era, exactly five years since its reign. This general election was held on 5 July 1971 to elect DPR members. The 1971 electoral system used a proportional representative system and *daftar stelsel* system, which meant that the power of representativeness in DPR and DPRD was proportional to the voters' support when voters casted their votes for the campaign organizations.

The third general election was organized more than six years after the second one in 1971, i.e., in 1977, and since then the elections were organized once every five years. Judging from the schedule, the elections had been held on a regular basis since then. What made this election different from the previous election was that since the 1977 general elections, the participants were much lesser, consisting of only two parties and one group known as *Golongan Karya* (Golkar). This was possible after the government and DPR attempted to simplify the number of parties by enacting a law. The Law Number 3 Year 1975 concerning Political Party and Golkar. The two parties were the United Development Party or *Partai Persatuan Pembangunan* (PPP) and Indonesian Democratic Party or *Partai Demokrasi Indonesia* (PDI) and Functional Groups or *Golongan Karya* (Golkar). Thus, in 5 general elections in 1977, 1982, 1987, 1992, and 1997 only three parties participated. As the participants were always the same, so was the winner, with Golkar always coming out victorious, and PPP and PDI serving as the accessories or ornaments. Golkar had even won it since the 1971 General Election. This directly and indirectly put both the executive and legislative under the control of Golkar. The main supporters of Golkar were the civil bureaucracy and military.

After President Suharto was forced to step down from his presidency in 21 May 1998, the vacant president seat was then assumed by the then Vice President Bacharuddin Yusuf Habibie. On the people's insistence, a general election was immediately organized to replace the result of the 1997 general election. It turned out that the closed-list proportional system had been implemented in 7 June 1999, right on the 13th month of Habibie's service. The election was held to, among other things, win the people's approval and trust, including the international community, since the administration and institutions resulting from the 1997 General Election were considered untrustworthy. An MPR's plenary meeting was then convened to elect its new Chairman and Vice

<sup>13</sup> Komisi Pemilihan Umum, "Pemilu Di Indonesia," 2021, [https://www.kpu.go.id/dmdocuments/modul\\_1c.pdf](https://www.kpu.go.id/dmdocuments/modul_1c.pdf).

Chairman. The Indonesian government and systemic authority's underperformance that was far below the people, in general, and 1999 general election voters' expectations, in particular, for the last five years seemed to trigger the political discourse of social contract that moved towards the general election in 2004. The arguments to improve the electoral system and process, especially on the general election and leaders' strong performance, were discussed.

The 2004 General Election was the first one that allowed the people to directly elect their representatives in DPR, DPD, and DPRD and even their President and Vice President. This election was held simultaneously on 5 April 2004 using the open-list proportional system and 550 DPR members, 128 DPD members, and a bunch of DPRD (Provincial and Regency/City DPRD) members throughout Indonesia for the 2004-2009 period were elected. For the President and Vice President election, it was organized on 5 July 2004 (first round) and 20 September 2004 (second round). The 2004 general election results showed a change in both the national and local political landscapes, particularly as reflected from the shift of power between political parties in the 1999 and 2004 general elections.<sup>14</sup>

The 2009 general election, the third one since the reform period began, was held using an open-list proportional system like the previous one and simultaneously on 9 April 2009 for electing 560 DPR members, 132 DPD members, and a large number of DPRD (Provincial and Regency/City DPRD) members throughout Indonesia for the 2009-2014 period. At the same time, on 8 July 2009 a general election to vote for the President and Vice President (one round) for the 2009-2014 service term was held. However, many predicted that the people's interest in participating in this election would decline, considering that in the previous general and regional elections, there was a declining trend of the number of voters. The people's participation level in this election was lower than the 1999 and 2004 general elections, i.e., only 121,288,366 voters used their rights, 49,677,076 voters decided to vote for no one, with 104,099,785 votes being valid and 17,488,581 votes being invalid.

The 2014 general election to vote for President and Vice President of the Republic of Indonesia was held on 9 July 2014 where the elected President and Vice President of Indonesia would serve for the 2014-2019 period. It was the third direct presidential election in Indonesia. President Susilo Bambang Yudhoyono could no longer re-nominate himself since the law prohibited the third term of a president. In accordance with the 2008 Election Law, only parties with more than 20 seats in the House of Representatives or 25 most votes could nominate their candidates. In the previous elections, the people's level of participation in the parliamentary elections decreased drastically.

Many factors were behind this decline in the participation level. This included the fatigue for attending the elections too frequently, the dissatisfaction towards the political system that failed to improve their quality of life, administrative errors in organizing the election, anti-democracy religious belief, and the people's weakened awareness of the election's role as a means for attempting social changes. Another cause was the large number of cases involving the political parties, the minimum human resources that political parties had and the loss of political party's image.

The 2014 general election blew a fresh air of change to Indonesians' hope to bring in a new leader. Thanks to this, the people's participation in the 2014 general election increased to 75 percent.

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<sup>14</sup> Lili Romli, "EVALUASI PEMILU LEGISLATIF 2009 : Tinjauan Atas Proses Pemilu, Strategi Kampanye, Perilaku Memilih, Dan Konstelasi Politik Hasil Pemilu," *Jurnal Penelitian Politik (JPP)* 7, no. 1 (2010), <https://doi.org/https://doi.org/10.14203/jpp.v7i1.514>.

This general election was won by Joko Widodo-Jusuf Kalla pair who obtained 53.15% of the votes, defeating Prabowo Subianto-Hatta Rajasa pair who only earned 46.85% of the votes as per the decision of KPU RI on 22 Juli 2014. The elected President and Vice President were inaugurated on 20 October 2014, to replace Susilo Bambang Yudhoyono.

The 2019 General Election based on Law Number 7 Year 2017 was the simultaneous parliamentary member elections with open-list proportional system for DPD, DPR, and DPRD members as well as the President and Vice President of the Republic of Indonesia in 2019. The parliamentary election served to uphold the democracy, strengthen the constitution and order and to create a legal certainty. Therefore, this parliamentary election in Indonesia could only be based on the direct, general, free, confidential, honest, and fair principles. In addition, it should also meet the independent, honest, fair, legally certain, well-ordered, transparent, proportional, professional, accountable, effective, and efficient principles.

People's participation in this 2019 general election also increased. This increase was backed by the people's anger towards the government that wished to lead and improve the people's welfare. To re-awaken the hope for change in the 2019 general election, the people's participation increased to 81 percent in this election. This showed that people began to be more aware of the politic in Indonesia. The various issues emerging in the previous elections were attempted for their solutions. However, it is still possible for the latter issues to re-emerge in the upcoming election.

### **Proportional Electoral System**

Referring to the Law Number 7 Year 2017 concerning General Election (Law on Election) in article 168 paragraph (2), it is explicitly stated that the legislative electoral system (DPR, DPD, and DPRD) shall be held using an open-list proportional system. It also explained further in article 353 paragraph (1) point b. that the voting shall be done by puncturing the name or sequence number of the legislative member candidates located in the columns of each party.

The open-list proportional system has some weaknesses and leads to political system chaos. It is not only the election process that can be corrupted, but also a few elites who has low integrity as result of the electoral system that may give birth to monetary policies and other frauds. The open-list proportional system's failure to strengthen the political party institutionally harms Indonesia's politic systematically. The weak party as an institution means the absence of potential candidates to be monitored internally within their own party, making these candidates to engage in a forced and voluntary relation with investors beyond the party. When these relations are cemented between the party candidates and capitalists, it is in this moment that money politics and clientelism emerge. Clientelism is a corruptive measure generally taking the form of a transaction, making this behavior bidirectional. It is an exchange of interests between a political actor that provides the materials (patron) to the receiver (client), aiming to earn a loyalty from the receiver (paternalistic).<sup>15</sup>

The presence of a transaction of interest, corrupt behaviors such as money politics will be automatically and massively formed and this will surely make the cost to organize the elections in Indonesia more expensive. This is a consequence of the open-list proportional system that prioritizes the process of winning the election based on the most votes, giving raise to unhealthy

<sup>15</sup> Edward Aspinall and Ward Berenschot, *Democracy for Sale: Pemilihan Umum, Klientelisme Dan Negara Di Indonesia* (Jakarta: Yayasan Pustaka Obor Indonesia, 2019).

competition between candidates. These candidates are in a race to gain more votes by relying on money and goods.<sup>16</sup> This makes it clear that the open-list proportional electoral system is extremely dominated by money politics.

The open-list proportional electoral system makes the cost to organize an election more expensive than the closed-list one. This effect can even survive once the election was done. Corruption can still occur when the candidates win the electoral contestation and are elected parliament members. The costly campaign demands the candidates to find source of greater income, be it to repay their capitalists or to cover their own money and this make the candidates' focus divided between their jobs and responsibility and the attempt to repay their campaign money. Yet, this money politics phenomenon seems prevalent in the community.<sup>17</sup>

J. E. Sahetapy, a professor in law sciences at Airlangga University, Surabaya, in a National Law Commission discussion entitled “*Menakar Penindakan Pidana Pemilu 2014 di Jakarta*” (Measuring the Enforcement of Punishment for 2014 Election Violation in Jakarta) seems to agree that the open-list proportional electoral system creates a chaos. He argues that the election organized in 2014 was the dirtiest one with the most massive level of corruption level and no one was held responsible for that.<sup>18</sup> He further suggests that the open-list proportional system worsens the quality of legislative choices that people have compared to the previous system. The people even seemed to permit legislative candidates gave away money arbitrarily in the community during the campaign period. Since they have low welfare and education, most of them think that money politics allow them to have money instantly without breaking a sweat.<sup>19</sup>

The democratic system applicable in Indonesia gives raise to pragmatism where the legislative candidates were elected using a referendum with a sole focus on how many votes they get, leaving behind those candidates with no ability and talent to assume the seat, they win the election. Any candidate can fight for the people's heart and causes controversy regarding monetary policies. The effects are not limited to merely creating pragmatic voters, it can also create an extensive corruption

<sup>16</sup> Hariyanto Hariyanto, “Politik Hukum Pencegahan Dan Penanganan Politik Uang Dalam Pemilu,” *Humani (Hukum Dan Masyarakat Madani)* 11, no. 2 (December 2, 2021): 360–79, <https://doi.org/10.26623/HUMANI.V11I2.4057>. Money politics undermine democratic systems throughout the nation. Therefore, dealing with money politics is not enough for law enforcement alone, but also for all elements of society. The seriousness of the government and political parties in overcoming the problem of money politics can be done by means of political law. This study discusses political policy in money politics and political policy in money politics in the 2019 elections in the Banyumas district. The results showed; First, political policy in money politics in the 2019 Election in Banyumas Regency, political parties made several efforts in at least three things. 1) implementation the integrity pact and providing debriefing to cadres and legislative candidates. 2) all parties that consider only following the existing rules issued by KPU or Bawaslu institutions. 3) Related to the competency requirements of the more stringent legislative candidates, intellectuals, managerial skills, experience and morality are not all parties that require them. Second, the Legal Policy on Change and Political Policy in the 2019 Regional Election in Banyumas Regency, which is called the Regional Election has a strategy through Legal Policy, namely prevention of monetary policy level policies, judicial policies, transfer policies that have not been implemented can be realized.

<sup>17</sup> Dudi Warsudin and Hayatun Hamid, “Implikasi Penerapan Sistem Proporsional Terbuka Dalam Pemilihan Umum Terhadap Profesionalitas Anggota Legislatif Dan Kualitas Kaderisasi Partai Politik Dihubungkan Dengan Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum,” *Jurnal Justitia : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (December 4, 2022): 1104–14, <https://doi.org/10.31604/justitia.v9i2.1104-1114>.

<sup>18</sup> Muhamad Doni Ramdani and Fahmi Arisandi, “Pengaruh Penggunaan Sistem Pemilihan Umum Dewan Perwakilan Rakyat Proporsional Daftar Terbuka,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 1 (2004), <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v3i1.59>.

<sup>19</sup> Revan, Makarim, and Fahmi, “Permasalahan Dan Dampak Dari Implementasi Sistem Pemilu Proporsional Terbuka Terhadap Sistem Politik.”



phenomenon, even though this can lead to extremely high cost for campaign and voters tend to vote for those well-funded candidates, which may make the elected candidates' performance less optimal.<sup>20</sup> These are the effects of open-list proportional electoral system. Its domino effects lead to politic system chaos and unstable government.

The General Election Supervisory Agency's (Bawaslu) data showed that money politics cases were found in 25 Regencies/Cities in 13 Provinces, during the simultaneous general elections in 2019.<sup>21</sup> This indicates that money politics cases in Indonesia remained massive. This was possible not only because of the candidates, the organizers and the existing political system, but also because of the people's permissiveness towards this monetary policy behavior. Judging from the root cause, the people who "tolerated" it were those who lived below the poverty line. It is this wealth discrepancy that causes the emergence of money politics behavior. Interests were transacted between the potential candidates and the public. The potential candidates contributed their materials or assets with public votes serving as the reward. People received something they particularly needed, in return for their rights to vote for certain candidates. When wealth is equally distributed, this monetary policy behavior will totally fade away. This is because the attempt to implant democracy principles are considered successful when no one is starving and everyone lives prosperously. This makes many members of community reluctant to think about the serious implication of open-list proportional electoral system, which actually has highly serious effect on the country's political system.

The open-list proportional electoral system weakened party institutions, with all the political system issues coming from these weak party institutions. This was worsened by the high political and campaign costs in Indonesia. A Dutch-Indonesian Anthropologist, Ward Berenschot states that the systemic damage that harm the environment is a result of current application of democracy.<sup>22</sup> The extremely high campaign costs encouraged potential candidates to develop relations or social networks with those beyond their own political parties. These networks and relations needed a campaign team; thus, it is only reasonable that a large sum of money is needed. Yet, it is simply one of many more leakages in political spending and costs.

The high campaign costs at least have three factors, namely: (1) political support; (2) vote buying; and (3) use of witness at polling stations (TPS).<sup>23</sup> Finally, the great amount of fund needed during a campaign forces a potential candidate to find investors by developing relations with businessperson or financial actors. This is where the systemic damage resulting from monetary policy practice plays some role. The potential candidates and the investors trade their interests, with the potential candidates needing some fund in a large amount to finance their campaign and political spending, and the investors in need of regulations that they and their companies can benefit from. The oligarchy system in the government emerges due to the interest exchange phenomenon. Berenschot later adds that in Indonesia, this informal vicious circle makes the money politics persist and this has a tendency to lead to corruption, in which politicians fail to translate their vision and

<sup>20</sup> Revan, Makarim, and Fahmi.

<sup>21</sup> Bawaslu, "Masa Tenang, Pengawas Pemilu Tangkap Tangan 25 Kasus Politik Uang | Badan Pengawas Pemilihan Umum Republik Indonesia," accessed June 30, 2023, <https://www.bawaslu.go.id/id/press-release/masa-tenang-pengawas-pemilu-tangkap-tangan-25-kasus-politik-uang>; Refers to Revan, Makarim, and Fahmi, "Permasalahan Dan Dampak Dari Implementasi Sistem Pemilu Proporsional Terbuka Terhadap Sistem Politik."

<sup>22</sup> Aspinnall and Berenschot, *Democracy for Sale: Pemilihan Umum, Klientelisme Dan Negara Di Indonesia*.

<sup>23</sup> Revan, Makarim, and Fahmi, "Permasalahan Dan Dampak Dari Implementasi Sistem Pemilu Proporsional Terbuka Terhadap Sistem Politik."

missions into policies. Rather, they merely do what the investors want and demand them to do.<sup>24</sup> As a result, voters ignore the politicians' agenda and prefer personal benefits. This is commonly known as the “*serangan fajar*” (dawn attack). Even after assuming the position, these politicians will still commit corruption and collude with businesspersons.

Nevertheless, in the Order of Constitutional Court 144/PUU-XX/2022 it is stated that the some of the petitioners' considerations serve as the bases for MK to keep on using the open-list proportional system. Some of them are: (1) the electoral system is an open legal policy that forms the law and the state constitution does not give any authority to change the proportional system; (2) MK has several times agreed with the importance of open-list proportional system as set forth in Order No. 22-24/PUU-VI/2008, wherein it is explained that the constitutional electoral system is the open-list proportional system; (3) the original intent forming the Constitution is the open-list proportional one; and (4) the legislative intent forming the Law on Election has stated that the electoral system is the open-list proportional one.

In the writer's opinion, every electoral system has its own strengths and weaknesses. The Constitutional Court actually reserves no right to change the open-list proportional system into the closed-list proportional one. However, in Order of MK No. 144/PUU-XX/2022, it is stated that the ones forming the law (in this case DPR and the President) may at any time change the electoral system provided that: (1) the change shall be made not too frequently; (2) when possible, the change should be placed to cover the weaknesses of election organization; (3) when possible, the change should be made sooner before the election organization commences; and (4) the balance and interrelatedness between political parties are maintained.

Therefore, in the statutory context, the national legal politic gives a room or authority for the institutions forming the law to change the regulations<sup>25</sup> regarding electoral systems that can change the electoral system into a closed-list proportional one. In the law substance context, the national legal politic also gives a room to create a direct, public, free, confidential, honest, and fair election. Democracy is more than just a writing on a piece of paper (procedural democracy), rather it is also a result of the people's representation (substantial democracy). Thus, the closed-list proportional system will allow Indonesia's people to have wise representatives of high integrity to create a substantial democracy.<sup>26</sup>

This is also supported by opinions of some experts in Indonesia such as the state administration expert Yusril Ihza Mahendra who suggests that the closed-list proportional system is a system that is consistent with the 1945 Constitution of the Republic of Indonesia considering his track record in the 2014 and 2019 elections.<sup>27</sup> In line with Yusril, Fachri Bachmid, a constitution law expert at Muslim University of Indonesia, also thinks that the closed-list proportional system does not relegate the democracy and constitutionality; rather it strengthens the quality of constitutional and

<sup>24</sup> Revan, Makarim, and Fahmi.

<sup>25</sup> Hariyanto Hariyanto, “Politik Hukum Dalam Legislasi Nasional,” *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 13, no. 2 (December 31, 2022): 297–312, <https://doi.org/10.21043/YUDISIA.V13I2.16206>. the product of legislation is a work that is normative. So that everything that is normative is open to legal deviations. This potential deviation from the law will create what is called a legal error (legal gap

<sup>26</sup> Hariyanto Hariyanto, “Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (June 7, 2018): 53–63, <https://doi.org/10.24090/VOLKSGEIST.V1I1.1731>.

<sup>27</sup> Yusril Ihza Mahendra Setuju Proporsional Tertutup di Pemilu 2024, Rekam Jejaknya di Pilpres 2014 dan 2019, Berita Tempo.co <https://nasional.tempo.co/read/1680222/yusril-ihza-mahendra-setuju-proporsional-tertutup-di-pemilu-2024-rekam-jejaknya-di-pilpres-2014-dan-2019>

presidentialism democracy in Indonesia.<sup>28</sup> The politic observer at Gajah Mada University, Mada Sukmajati also argues that a closed-list proportional system match better for the implementation of simultaneous general election since it makes things easier for the election organizers to recapitulate the results based on transparency, accountability, and participatory principles.<sup>29</sup>

## CONCLUSION

General election is a manifestation of democracy representation and law state principle. As the 12th general election draws closer in 2024, Law Number No. 7 Year 2017 on General Election was brought for review before the Constitutional Court under Case Number 144/PUU-XX/2022. The petitioners argued that an open-list proportional electoral system was no longer effective to keep the state administration going in the future. This research concluded that: *First*, the open-list proportional electoral system was the cause of money politics and clientelism cases that led to corruption, collusion, and nepotism as indicated by the data from Bawaslu in the 2019 General Election; *Second*, in the legal politic context, it is the closed-list proportional system that actually matches better with what Indonesia as a nation pursues. Especially, the national legal politic gives a room to change a set of existing regulations on this proportional system. Therefore, judging from the Order of MK No. 144/PUU-XX/2024, the upcoming 2024 General Election will still use the open-list proportional system as its electoral system. Nevertheless, it is expected that DPR can change the electoral system into a closed-list proportional one to eradicate money politics and clientelism cases before and after the elections on the requirements as set forth in the said Order of MK.

## REFERENCES

- Aspinall, Edward, and Ward Berenschot. *Democracy for Sale: Pemilihan Umum, Klientelisme Dan Negara Di Indonesia*. Jakarta: Yayasan Pustaka Obor Indonesia, 2019.
- Bawaslu. "Masa Tenang, Pengawas Pemilu Tangkap Tangan 25 Kasus Politik Uang | Badan Pengawas Pemilihan Umum Republik Indonesia." Accessed June 30, 2023. <https://www.bawaslu.go.id/id/press-release/masa-tenang-pengawas-pemilu-tangkap-tangan-25-kasus-politik-uang>.
- Candra SY, Helmi, and Shelvin Putri Irawan. "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 19, no. 4 (2022). <https://doi.org/https://doi.org/10.31078/jk1942>.
- Croissant, Aurel. "Electoral Politics in Southeast & East Asia." In *Electoral Politics in Southeast and East Asia: A Comparative Perspective*, edited by Gabriele Bruns and Marei John Aurel Croissant. Friedrich Ebert Stiftung, 2002.
- Effendi, Agus. "Studi Komperatif Pengaturan Sistem Pemilihan Umum Anggota Dewan Perwakilan Rakyat Di Indonesia." *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 2 (2016). <https://doi.org/https://doi.org/10.25041/fiatjustisia.v10no2.746>.

<sup>28</sup> Soal Pemilu Sistem Proporsional Tertutup, Ini Pendapat Pakar. BeritaSatu.com <https://www.beritasatu.com/bersatu-kawal-pemilu/1017455/soal-pemilu-sistem-proporsional-tertutup-ini-pendapat-pakar>

<sup>29</sup> Pengamat Politik UGM: Sistem Proporsional Tertutup Paling Cocok Untuk Pemilu Serentak, Liputan ugm.ac.id <https://ugm.ac.id/id/berita/23344-pengamat-politik-ugm-sistem-proporsional-tertutup-paling-cocok-untuk-pemilu-serentak/>

- Hariyanto, Hariyanto. "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (June 7, 2018): 53–63. <https://doi.org/10.24090/VOLKSGEIST.V1I1.1731>.
- . "Politik Hukum Dalam Legislasi Nasional." *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 13, no. 2 (December 31, 2022): 297–312. <https://doi.org/10.21043/YUDISIA.V13I2.16206>.
- . "Politik Hukum Pencegahan Dan Penanganan Politik Uang Dalam Pemilu." *Humani (Hukum Dan Masyarakat Madani)* 11, no. 2 (December 2, 2021): 360–79. <https://doi.org/10.26623/HUMANI.V11I2.4057>.
- Hidayat, Rofiq. "Sistem Pemilu Proporsional Terbuka Disebut Gagal Penuhi Lima Tujuan." *Hukum Online*, 2020. <https://www.hukumonline.com/berita/a/sistem-pemilu-proporsional-terbuka-disebut-gagal-penuhi-lima-tujuan-lt5edf301268f3f/>.
- Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia, 2007.
- Noviawati, Evi. "Perkembangan Politik Hukum Pemilihan Umum Di Indonesia." *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (March 1, 2019): 75–86. <https://doi.org/10.25157/JIGJ.V7I1.2139>.
- Rahardjo, Satjipto. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing, 2009.
- Ramdani, Muhamad Doni, and Fahmi Arisandi. "Pengaruh Penggunaan Sistem Pemilihan Umum Dewan Perwakilan Rakyat Proporsional Daftar Terbuka." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 1 (2004). <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v3i1.59>.
- Revan, Muhammad, Fauzano Makarim, and Khairul Fahmi. "Permasalahan Dan Dampak Dari Implementasi Sistem Pemilu Proporsional Terbuka Terhadap Sistem Politik." *Journal of Social and Policy Issues* 2, no. 2 (June 15, 2022): 50–57. <https://doi.org/10.58835/JSPI.V2I2.39>.
- Romli, Lili. "EVALUASI PEMILU LEGISLATIF 2009 : Tinjauan Atas Proses Pemilu, Strategi Kampanye, Perilaku Memilih, Dan Konstelasi Politik Hasil Pemilu." *Jurnal Penelitian Politik (JPP)* 7, no. 1 (2010). <https://doi.org/https://doi.org/10.14203/jpp.v7i1.514>.
- Satria, Hariman. "Politik Hukum Tindak Pidana Politik Uang Dalam Pemilihan Umum Di Indonesia." *Integritas : Jurnal Antikorupsi* 5, no. 1 (June 24, 2019): 1–14. <https://doi.org/10.32697/INTEGRITAS.V5I1.342>.
- State Gazette Number 5801 Law Number 7 of 2017 Concerning General Elections. (n.d.).
- Sunny, Ismail. *Pergeseran Kekuasaan Eksekutif*. 2nd ed. Jakarta: Aksara Baru, 1986.
- Umarama, Tarsan. "Politik Hukum Ketatanegaraan Dan Pemilu Di Indonesia." *Al-Mizan: Jurnal Kajian Hukum Dan Ekonomi* 1, no. 1 (2021): 37–52.
- Umum, Komisi Pemilihan. "Pemilu Di Indonesia," 2021. [https://www.kpu.go.id/dmdocuments/modul\\_1c.pdf](https://www.kpu.go.id/dmdocuments/modul_1c.pdf).
- Warsudin, Dudi, and Hayatun Hamid. "Implikasi Penerapan Sistem Proporsional Terbuka Dalam Pemilihan Umum Terhadap Profesionalitas Anggota Legislatif Dan Kualitas Kaderisasi Partai Politik Dihubungkan Dengan Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum." *Jurnal Justitia : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (December 4, 2022): 1104–14. <https://doi.org/10.31604/justitia.v9i2.1104-1114>.