



Comparison of the Implementation of a Closed Proportional System from a Country Perspective with a Presidential System

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Abstract This research aims to analyze the comparison of the implementation of a closed proportional system between Indonesia and countries that adhere to the presidential system through normative research methods with a fact approach and conceptual approach. By using the theory of elections, the theory of political parties and the theory of justice. Legal materials are collected through literature study and then analyzed and compared based on the object of research. The results of this study found several differences in the implementation of proportionality systems in several countries such as Mexico, Brazil and Argentina, each of which applies a proportional system based on the needs and conditions of the country.

Keywords: Comparison; Closed Proportionality; Presidential State.

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1. Introduction

General elections are a mandate of the 1945 Constitution as stipulated in Article 22 Point (E), which states that general elections are held to elect members of the people's representative council. One of the missions of the general election is to realize this goal to elect the president and vice president as the leader of the country, as well as to elect the DPR, DPD, DPRD, MPR as representatives of the people's representatives and connectors of their aspirations. In order to oversee the running of the government, the people have the highest authority in determining their representatives who will sit in Senayan.¹

According to Syamsudin Haris, general elections are a form of political education for the people that is direct, open, mass and is expected to educate political understanding and increase public awareness of democracy. In its implementation, the general election system in Indonesia has undergone several changes, starting with using a closed proportional system (close list PR) to an open proportional system (open list PR). The Closed Proportional System (close list PR) is an election with the mechanism of people's election to the party. The way this system works is that voters cast their votes by voting for party pictures and political parties determine the candidates who will occupy legislative seats. Party votes for the first opportunity will be given to the top candidate. Open Proportional System (open list PR) is a system designed with a mechanism where voters directly elect their legislative representatives by voting for the pictures and names of party candidates.

In Indonesia, the difference between the elections after the amendment of the 1945 Constitution of the Republic of Indonesia and the elections before the amendment lies in the Party List variant, where before the change still used a closed list variant, but after the change used an open list variant. The phenomenon that occurs in general elections with a closed proportional system has been applied since after the amendment of the 1945 Constitution with various regulations issued one after another starting from the implementation of Law Number 12 of 2003 concerning General Elections to Law Number 7 of 2017 concerning General Elections while the open proportional system was first applied in the 2004 general elections, but its application was still limited (not fully open), thus making some parties call it the term "half-open proportional system".²

Changes were made in order to accommodate the electoral process in accordance with the notion of popular sovereignty adopted by Indonesia. Likewise, the method of the electoral system took turns starting from the enactment of quota hare to the enactment of sainte-lague. As classified under the Quota method, the method of scrutinizing a certain minimum number of seats that a political party can obtain in an electoral district (electoral district) is the intention of the Hare Quota. The Sainte-Lague method

¹ Maleha Soemarsono, "Negara Hukum Indonesia Ditinjau Dari Sudut Teori Tujuan Negara," *Jurnal Hukum & Pembangunan* 37, no. 2 (2007): 300-322.

² Nurida Maulidia Rahma, "SEBUAH PEMBELAJARAN UNTUK PEMILU YANG AKAN DATANG," *Jurnal Penelitian Politik* 19, no. 1 (2022): 67-72.

purely uses the formula of the entire number of votes that have been entered divided by a divisor number based on the average of the highest number of votes to determine the allocation of seats in an electoral district. By using the Sainte-Lague Method, its application can be concluded to be more complex than using the Hare Quota method.³ Through the Sainte-Lague method, determining legislative candidates who will qualify for parliament according to Article 414 of Law Number 7 Year 2017 on General Elections, explains the calculation pattern using the two patterns above as read below:

1. Political parties participating in the election must meet a threshold of at least 4% of the total valid votes nationally to be included in the determination of DPR member seats;
2. All political parties participating in the election are included in determining the acquisition of seats for members of the provincial DPRD and DPRD (district/city).⁴

With the Sainte-Lague method, we can illustrate the meaning of Article 415 paragraph (2) of Law Number 7 Year 2017 on General Elections, if the division is not through seat quotas, but through the acquisition of the number of votes by being divided by a divisor number which is an odd number according to the number of seat allocations per electoral district for the order of each seat acquisition. System changes continue to be made to provide system updates that better accommodate problems and achieve elections that give birth to good governance and healthy democracy after the reform of the Indonesian state.⁵

When looking back at the history of elections in Indonesia before, Law Number 10/2008 concerning General Elections used a closed proportional system where voters only chose political parties because in fact based on the 1945 Constitution the contestants of the legislative elections were political parties (Parpol), then political parties appointed cadres who were worthy and appropriate to sit in the parliamentary seats based on the standards of each party. Based on the review of the above conditions, it is found that during the implementation of general elections from 2004 to the 2019 general elections, the implementation of an open proportional system has not been able to accommodate the problems that occur in Indonesian society, especially related to the problems described above, instead today open proportional presents new democratic conditions that are wilder and more pragmatic.⁶

With the Dissenting Opinion of one of the Mk Judges, Arif Hidayat, who believes that there is a need for evaluation, improvement and changes to the open proportional

³ Christine ST Kansil and Yohanes Jeriko Giovanni, "Kontroversi Isu Penerapan Kembali Sistem Proporsional Tertutup Dalam Sistem Pemilu Di Indonesia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 889-97.

⁴ Republik Indonesia, "Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum" (n.d.).

⁵ Muhammad Ibrahim Rantau, "Penguatan Sistem Presidensial Di Indonesia: Analisis Terhadap Undang Undang No 7 Tahun 2017 Tentang Pemilihan Umum," *Jurnal Penelitian Dan Karya Ilmiah P-ISSN 1907* (1907): 5693.

⁶ Andie Hevriansyah, "Hak Politik Keterwakilan Perempuan Dalam Sistem Proporsional Representatif Pada Pemilu Legislatif," *Awasia: Jurnal Pemilu Dan Demokrasi* 1, no. 1 (2021): 67-85.

system after the 2024 general election, the author is interested in conducting research on "Comparative Study of the Enactment of a Closed Proportional System in the Perspective of a State with a Presidential System".

2. Method

in this study the authors took the type of normative research conducted by collecting library materials or secondary data and then examined and adjusted to the needs of the object under study. This research is also often referred to as doctrinal research or library research.⁷ Based on the type of approach, this research uses a statute approach, and a conceptual approach. In this research, the theories used are election theory, political party theory and justice theory.⁸

3. Enactment of a Closed Proportional System in the Perspective of Countries with a Presidential System

The closed proportional system is not only known in Indonesia.⁹ Countries with the same system of government, namely 'Presidential', also apply a closed proportional system even today. In the country that the author makes as a comparative study such as Mexico, the open proportional system is considered the most ideal with the conditions of Mexico. Efforts to equalize and develop the system were made by the government without changing the system as a whole.¹⁰ It can be seen in countries with a presidential system of government that also impose a closed proportional system including :

1. Mexico

Mexico is a country with a presidential system of government, also known as a congressional system.¹¹ Both the powers of the federation and the thirty-two states are based on the principle of the division of powers among the executive, legislative and judicial branches. Federal executive power rests with the President of the Republic of Mexico, in each of the 31 states with the Governor of each state and with the head of Government for the federal district. All are elected every six years and cannot be re-elected.

Technically apportioning the seats of the 128-member senate, three senators are elected in each of the thirty-two states. For this purpose political parties must

⁷ Nurul Qamar et al., *Metode Penelitian Hukum (Legal Research Methods)* (CV. Social Politic Genius (SIGn), 2017).

⁸ S. H. I. Jonaedi Efendi, S. H. Johnny Ibrahim, and M. M. Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).

⁹ Didik Sukriono, "Menggagas Sistem Pemilihan Umum Di Indonesia," *Konstitusi Jurnal* 2, no. 1 (2009): 8.

¹⁰ Kharisma Aulia Firdausy and Agus Riwanto, "Penerapan Undang-Undang Nomor 7 Tahun 2017 Tentang Sistem Pemilu Proporsional Terbuka Terbatas Pada Pemilu Legislatif 2019 Di Kota Salatiga," *Res Publica: Jurnal Hukum Kebijakan Publik* 3, no. 1 (2019): 91-101.

¹¹ Radis Bastian, *Buku Pintar Terlengkap Sistem-Sistem Pemerintahan Sedunia: Ragam Bentuk Dan Sistem Pemerintahan Negara-Negara Di Dunia* (IRCiSoD, 2015).

submit a list with two formulas for their candidates. Two of the seats are allocated through the relative majority principle, i.e. they go to the party that gets the highest number of votes and the third is appointed through the minority principle, i.e. to the party that gets the second highest number of votes. The remaining thirty-two seats are filled by a system of proportional representation, according to the electoral roll in one national multi-member district. All votes for the Senate are totaled at the national level.

The formula used is the Largest Remainder method using a quota here and a 2% threshold. No political party can have more than 300 members of the Lower House elected by both principles of simple majority and proportional representation. Thus, if a political party aspires to get an absolute majority of seats (251 seats) due to its electoral performance, the law prevents it from achieving the required majority (two-thirds of the number of seats) needed to approve constitutional reforms by the party itself. To ensure vote-seat proportionality, no political party is allowed a total number of members of the Lower House that exceeds eight points of the percentage of the national vote in its name. For example, if a political party wins 35% of the elections, it is not entitled to more than 43 percent of the seats, i.e. more than 215 out of 500 seats.

The only exception in the Constitution to this provision is where a political party achieves an overall percentage of Assembly seats that exceeds the sum of its national vote percentage plus 8% through a relative majority of votes in single-member districts. For example, if a party wins 235 single-member districts (up to 47% of the total) with 35% of the total votes, the 8% proportionality rule cannot be applied even though the difference between votes and seats would amount to up to 12 percent. Members of the Federal Lower House may not be re-elected for another term, although this prohibition does not apply to substitutes for members of the Lower House who have not yet held office.

In this case, they can become members of the Lower House for another term. However, a member of the Lower House cannot be elected for another term as a substitute. The most recent redistribution of the 300 districts among the 32 states is in order to ensure that each member represents a balanced segment of the population and therefore fulfills the principle of equality of votes.

What is interesting about the closed proportional system mechanism in Mexico is the relatively closed candidate selection procedure through closed conventions or closed and tightly controlled primary elections. In addition, political parties control most of the campaign expenditures even in district and state level elections where these closed lists reduce the intensiveness for candidates in campaigning. More interestingly, members of the upper house and lower house cannot be elected for another term. The legal system does not recognize any type of semi-direct democratic mechanism such as plebiscite, referendum, citizen initiative or recall of freely elected representatives.

Mexico applies strict recruitment principles and the procedures distributed to political parties to be able to register as national parties are fairly good where parties must meet 3 thousand members in at least 10 of the 32 federal units or 100 of the 300 electoral districts. In addition to reforms to increase the level of fairness in party political competition, this can be seen with the right to clarify information provided by the mass media during the campaign and recognized when it is found that there is a distortion of facts or situations that refer to party or personal image damage activities.¹²

In addition, Mexico also distributes equal slots for advertising on TV and other mass media for each party. Each party gets the same duration of 250 hours for radio, 200 hours for television and 10 thousand advertising slots for federal. Elections in Mexico really guarantee a sense of fairness and equality between parties to prevent wars between political parties. The above mechanism ultimately leads parties to healthy competition by seeking a good image among the public.

2. Brazil

Brazil is a country that applies a proportional system to its general elections with a simultaneous election model. The use of this system is intended to overcome the split presidential government. However, in practice, many paradoxes have emerged from Brazil's election results, marked by the emergence of the case of the former Speaker of the Lower House of Brazil's Congress Eduardo Cunha who was arrested by the police due to corruption, the frontman of the Christian Evangelical Caucus in the House of Representatives who allegedly received millions of US dollars in bribes from the Petrobras state-owned oil field transaction and other political elite cases that made the workers' party want to take power.

The 2014 election has a number of contradictions with the concept of an open proportional system election where election results always illustrate that the party supporting the president has never become the majority party in parliament, in addition to the incompatibility of the electoral system with the variable number of seats per region where one Brazilian electoral district has 8-70 seats. Too many seats in one electoral district will result in many parties in parliament. In Brazil's 2014 election results, Dilma's supporting party had only 70/513 (13%) seats. The other 87% of seats must be shared with 27 parties in parliament, resulting in extreme multipartyism.¹³

¹² Rifka Anindya and Muhammad Ulul Albab Musaffa, "Presidential Threshold: Pengaruh Penerapannya Dalam Perkembangan Demokrasi Indonesia," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 10, no. 2 (2021): 269–87.

¹³ USEP HASAN SADIKIN, "Paradoks Pemilu Serentak Brasil," *Rumah Pemilu* (blog), October 23, 2016, <https://rumahpemilu.org/paradoks-pemilu-serentak-brasil/>.

The incompatibility of the second system is because Brazil, which applies a simultaneous election system for the president in two rounds, has a tendency to strengthen multipartyism so that the president's performance is not conductively supported by the parties. In practice, the author sees that the failures present in Brazil's general elections stem from the birth of many political parties without limitation from the government, the number of seats that are too large with a division system that dominates in several parties will ultimately only weaken the function of the party and the government itself.

3. Argentina

Argentina is a country that adheres to a closed proportional system, in this country, the representative system is very dynamic and competitive. Argentina has a clear, detailed and fair legislative framework for organizing its elections. In practice, for the Chamber of Deputies, parties must obtain at least 3% of the vote.¹⁴ For the deputies themselves, seats are allocated proportionally to the population of each province. As for the Senate (23 provinces plus Buenos Aires City), it is divided by national districts. Senators are elected through closed proportional representation, Two seats are awarded to the party with the most votes and one additional senate seat per district is awarded to the first minority party.¹⁵

The House of Representatives, consisting of 257 members elected in constituencies based on 23 provinces, is elected by a proportional system based on party lists. In practice, the implementation of the open proportional system in Argentina has tried to provide fair representation and satisfaction to the public and political parties, but the supporting factors for the weakness of the closed proportional system in this country are the high economic crisis and high inflation rate.¹⁶ This has an impact on the quality of political parties in Argentina. Fierce competition requires some parties to change their names and identities morally and socially to support the free market economy in this country. The relationship with the implementation of the proportional system is the same as the closed proportional system that was enacted in Indonesia in 1955-1999 with the conditions of the country still in crisis.

4. Columbia

Colombia is one of the oldest democracies in the Latin American region. Legislative power is vested in a bicameral national congress consisting of a 102-seat Senate and a 166-seat House of Representatives. Colombia is a country

¹⁴ "Pemilihan umum Argentina 2019," in *Wikipedia bahasa Indonesia, ensiklopedia bebas*, February 21, 2023, https://id.wikipedia.org/w/index.php?title=Pemilihan_umum_Argentina_2019&oldid=22996626.

¹⁵ Abd Hannan and Zainuddin Syarif, "Antara Terbuka, Tertutup, Dan Campuran: Mencari Format Sistem Proporsional Dalam Pemilihan Umum Legislatif Di Indonesia," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 10, no. 2 (2023): 120-37.

¹⁶ Ellydar Chaidir, *Perbandingan Sistem Proporsional Tertutup Dan Proporsional Terbuka Dalam Sistem Pemilu Indonesia* (Publica Indonesia Utama, n.d.).

that also applies a closed-list proportional system in its general elections. According to the Colombian constitution, the House of Representatives is composed of 166 representatives who serve four-year terms, elected by territorial districts, special districts and international districts. The respective departments form the territorial electoral districts. Each electoral district has at least two members and one more for every 365,000 inhabitants or a larger fraction of 182,500 exceeding the initial number of 365,000 for legislative terms e.g. in 2014-2018, 161 of the 166 members of the House of Representatives were elected in territorial electoral districts.

There are also three special electoral districts, which elect the remaining five members: one for the Indigenous community that currently has one representative, one for the Afro-Colombian community (negritudes) that currently has two representatives, and one for Colombian citizens living abroad that currently has one representative. As a result of the 2015 constitutional reform, the number of seats allocated to Colombian citizens living abroad was reduced to one, from 2018 onwards, as additional special seats will be created for territorial constituencies.¹⁷

Since 2014, the assignment of additional seats is based on a proportional increase in the national population according to the results of the census. If as a result of the above a territorial constituency loses one or more seats, it retains the number of seats to which it was entitled on July 20, 2002.¹⁸ For Council elections, political parties or movements and other groups run single lists, with the number of candidates not exceeding the number of seats to be filled, although in districts with only two seats, party lists may include a third name. The current limit for parties to win seats in territorial districts is 50% of the electoral share (total votes divided by total seats) in districts that produce more than two members, and 30% of the electoral share in districts that produce two members.

Seats are then distributed using a distribution number, or *cifra repartidora*. This number is obtained by dividing the number of votes obtained by each list successively by one, two, three, and so on, and arranging the results in descending order until the total number of results equals the number of seats to be filled. The lowest number produced is called the distribution number (*cifra repartidora*). Each list will get the number of seats corresponding to the number of times the distribution number appears in its vote total.¹⁹

¹⁷ Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain," *Jurnal Konstitusi* 15, no. 3 (2018): 480–501.

¹⁸ "How Many Countries around the World Use Proportional Representation?," accessed April 4, 2024, <https://www.electoral-reform.org.uk/how-many-countries-around-the-world-use-proportional-representation/>.

¹⁹ Idul Rishan, "Risiko Koalisi Gemuk Dalam Sistem Presidensial Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 219–40.

Parties can either run closed-list Proportional, with a predetermined order of candidates, or opt for preferential (open-list) voting, where the positions of candidates on the list are reordered based on the individual preference votes of the voters. In congressional elections, voters who vote for a party running closed-list only vote for the party list; voters who vote for a party following open-list can indicate their preferred candidate among the names listed on the ballot, if the voter does not indicate a preference and simply votes for the party, then the vote is valid for threshold purposes but not for reordering the list based on preference votes.

4. Conclusion

The proportional system is not only applicable in Indonesia, other countries with a presidential system of government such as Mexico, Brazil, Argentina and Colombia also apply a closed proportional system and have successfully conducted democratic, honest and transparent elections. In practice, Mexico presents a fairly good concept and mechanism in terms of the recruitment and regeneration system of political parties that makes the party system in this country good and fulfills the elements of justice.

The same applies to the implementation of a closed proportional system in Colombia where the distribution of seats is based on the number of regions. What is interesting in Colombia's electoral system is that the public and political parties are given the freedom to choose the system to be used during elections depending on how stable the country is during direct elections. In contrast, the closed-list proportional system in Brazil is considered to have more weaknesses.

This is driven by the stability and condition of the Brazilian state which is experiencing a crisis both in the economic field and infrastructure development so that these problems then have an impact on the pattern of implementing a closed proportional system in general elections in Brazil. As for the elections in Argentina, in practice the implementation of an open proportional system in Argentina has tried to provide fair representation and satisfaction to the community and political parties, but the supporting factors for the weakness of the closed proportional system in this country are the high economic crisis and high inflation rate. This affects the quality of political parties in Argentina. Fierce competition requires some parties to change their names and identities morally and socially to support the free market economy in this country.

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