



#### Research Article

# The Effectiveness of Implementing a Closed-list Proportional System in Selecting Legislative Members from the Perspective of Islamic Law

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#### Abstract.

The legislative elections using an open-list proportional system always generate identical controversies during general election season. This, mainly involves the prevalence of misconduct by both the prospective legislative candidates themselves and their campaign teams. This issue has become a latent problem in every general election season, resulting in several adverse effects, including high campaign costs leading to corruption practices and poor political education to the public. The closed proportional system is once again considered as a solution to prevent vote-buying practices, also known as money politics. This research is a normative legal study using the statute approach, conceptual approach, and case approach. There are two types of legal materials used in this research. First, primary legal materials, namely Law No. 2 of 2011 Regarding Amendments to the Political Parties Law and Law No. 7 of 2017 Regarding General Elections. This study focuses on the importance of reconsidering the implementation of the closed proportional system in legislative elections as an effort to prevent the ongoing issue of money politics, which has been a latent problem in every general election in Indonesia. This research aims to reevaluate the use of the closed proportional system as the most suitable system to combat money politics practices.

**Keywords:** money politics, legislative elections, proportional system

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## 1. Introduction

The entire Indonesian society is anticipating the upcoming Indonesia presidential and legislative election scheduled for the year 2024. This general election will not only determine the fate of presidential candidates and aspiring representatives who contested, but the result will also shape the nation's future amidst rapid and complex global changes. People should be well aware of the critical opportunities, challenges, and risks that this election holds for Indonesia's future.[1]

A key factor for the success of elections is the role of professional and reputable election organizers. They contribute to building a higher quality democracy. The General





Election Commission (KPU), as the main organizer, supported by various levels including District Polling Committees (PPK), Voting Polling Committees (PPS), and Polling Station Committees (KPPS), is required to ensure legal certainty, rule of law, transparency, professionalism, honesty, and fairness based on law and ethics. This is achieved by maintaining independence, integrity, and credibility.[2]Election organizers are also obligated to safeguard and protect the political rights and sovereignty of the people to exercise their right to vote in every election.

While both the populace and organizers hold significant roles in ensuring the efficacy of general elections, the pivotal factor lies in the employed electoral system. Indonesia has employed two distinct electoral systems: the open-list proportional representation and the closed-list proportional representation. The open-list system enables direct voter choice of legislative representatives, while the closed-list system involves voting solely for the party logo, with initial allocation favoring top-ranked candidates.[3] The discourse regarding the transition from an open-list proportional representation system to a closed-list proportional representation system has recently sparked substantial discussion. This has generated significant controversy within society, necessitating a comprehensive reevaluation. The issue gained prominence following a statement by the Chairman of the General Election Commission of the Republic of Indonesia (KPU RI), Hasyim Asyari, on October 14, 2022. Asyari expressed his endorsement of the closed-list system, citing reasons such as its cost-effectiveness in curbing money politics and its streamlined ballot design. This viewpoint aligns with the statement conveyed by Mahfud MD on October 13, 2022, at the PDIP Lentang Agung School in South Jakarta.

The suitable electoral system needed to adhere to the principles of transparency, impartiality, and freedom from political manipulation. The process begins before the actual election and continues until the end of the election results process. To ensure the realization of these principles, the existence of election rules and the roles of entrusted stakeholders play a crucial role in achieving an ideal election.

In practice, Indonesian elections often appear to be unhealthy. Despite being seen as a democracy celebration, they struggle to fully implement a true democratic system. During the implementation process, elections are marred by cheating, with one form being the practice of "money politics." This is a serious issue because the impact of continued money politics can affect the democratic system, which is a cornerstone of the state's process of filling public offices legitimately. It starts with making society accustomed to vote-buying practices and can lead to corruption under the guise of recovering campaign costs during the election process.

Moreover, the open-list proportional system, based on the highest number of votes, fosters unhealthy competition among candidates, primarily aiming to garner as many votes as possible by relying on money and popularity. This is why election fraud under this system is dominated by money politics in various forms, including cash handouts, distributing essentials, and public infrastructure improvements to gain constituents' sympathy before the election. As a result, this electoral system becomes one of the most expensive in Indonesian history, especially when compared to the closed-list proportional system used during the New Order era and in the 1999 and 2004 reformera elections.[4]

The open-list proportional system not only encourages money politics and corruption but also opens the door to ethical politics, leading to the emergence of political brokers for financially weaker legislative candidates who will vie for seats. In return, these legislative representatives must assist their financial backers by crafting regulatory policies in favor of their own groups.

Money politics is increasingly pervasive due to a lack of commitment to values like honesty and integrity among officials and some members of the public. Additionally, the absence of inspirational leaders has led people to believe that their fate won't change, resulting in vote-buying. Islam provides guidance on the ideal leader: one with integrity, strong character, trustworthiness, honesty, and noble conduct, serving as an example for the people they lead.

Money politics is increasingly prevalent due to a lack of commitment to values of faith (*iman*) like honesty, *iffah* and dignity among officials and some in society. The absence of role models in leadership has led people to believe their fate won't change, resulting in vote-buying. Islam emphasizes ideal leadership qualities: integrity, strong character, trustworthiness, honesty, and noble conduct, serving as an example for others.[5]

Islam itself prohibits money politics because it falls under the category of "risywah" (bribery).[6] Risywah is a gift given by one person to another (usually an official) with the intent of approving an unlawful act (batil) according to Sharia law or nullifying a rightful act.[7] Islam explicitly forbids its followers from resorting to bribery, whether as the giver, receiver, or intermediary. This prohibition is rooted in the fact that bribery can lead to societal harm and injustice. It can distort the facts, turning what is right into wrong and what is wrong into freedom, preventing people from obtaining their rightful rights as they should.

It in contrast to the regulations in the regional head elections in 2018, which specified in detail that every pair of candidates for regional head and deputy regional head should not provide money to cover transportation costs or other expenses but permitted



vouchers as an alternative. This phenomenon is indeed a serious issue that needs to be addressed and discussed for the betterment and enhancement of democracy in Indonesia.

Several academic works delve into the topic of money politics in Indonesian democracy. Arif Awaludin's study, "Bahaya Politik Uang dalam Kontestasi Demokrasi (Penyuluhan Hukum di Desa Kaliwedi Kebasen Banyumas)," highlights the perils of money politics, emphasizing its violations of democratic values, legal norms, religion, and societal standards. This research stands apart by reevaluating the effectiveness of the open proportional system and comparing it to the closed-list proportional system employed in different historical eras. In a complementary exploration, Samsul Hadi, in his thesis "Kriteria *Money Politic* dalam Pemilu Perspektif Hukum Islam," delineates the criteria for money politics through library research, descriptive analysis, and a normative approach.[8] His study elucidates key aspects, including money politics, grants (*hibah*), gifts, and *shadaqah*, to establish the criteria defining money politics.

### 2. Methods

This research is structured using a normative juridical approach, which primarily focuses on examining the application of rules and norms within positive law. The research methodology involves using a statutory approach, a conceptual approach, and a case-based approach. [9]

#### 3. Results and Discussion

#### 3.1. The Concept of a Proportional (Balanced) Electoral System

There is various definition of election in Indonesian law. Many previous laws have defined elections primarily focusing on the implementation of popular sovereignty through a free and fair (*luber jurdil*) process.[10] However, in the 2017 Election Law (Law No. 7 of 2017), the definition has expanded to include the mention of positions to be contested, as stated in Article 1, Paragraph 1 of the said law:

"Pemilihan Umum yang selanjutnya disebut pemilu adalah sarana kedaulatan rakyat untuk memilih anggota Dewan perwakilan Rakyat, anggota Dewan perwakilan Daerah, Presiden dan Wakil presiden, dan untuk memilih anggota Dewan Perwakilan Rakyat Daerah, yang dilaksanakan secara langsung, umum, bebas, rahasia, jujur, dan adil



dalam Negara Kesatuan Republik Indonesia berdasarkan pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."

Elections are a crucial component of a democratic system, and the success of a well-conducted election can serve as a benchmark for the success of democracy in a country. Elections, including the selection of legislative members who play a role in lawmaking and oversight, are an integral part of this process.

In Indonesia have been experienced two type of balanced representation system, which are the open proportional system and the closed-list proportional system. The open proportional system allows voters to directly choose their legislative representatives. In contrast, the closed-list proportional system is a method where voters cast their votes by marking the party's logo only, and the party's votes are initially allocated to the top-ranked candidates.

Menwhile, in general, electoral systems can be categorized into two types: mechanical electoral systems and organic electoral systems. Mechanical electoral systems reflect a mechanistic view that sees the people as a mass of individuals with equal status.[11] On the other hand, organic electoral systems consider the people as a collection of individuals who live together in various forms of societal associations based on genealogical ties (households, families), specific functions (economic, industrial), social strata (laborers, farmers, intellectuals), and social institutions (universities).

When related to the representative system, organic elections can be connected to the functional representation system, commonly found in bicameral parliamentary systems like in the UK and Ireland. In mechanical electoral systems, political parties organize the voters and guide them within a two-party or multi-party framework based on liberal and socialist ideologies, or within a one-party framework based on communist ideologies.

The mechanical electoral system, in its implementation, employs two methods: the district/majority representation system (single-member constituencies) and the proportional representation system. The fundamental concept of proportional representation is that the number of parliamentary seats obtained by a group or party corresponds to the number of votes it receives from the public. Balance is required; for example, if there are 1,000,000 valid voters in a general election and the number of seats in the legislative body is set at 100, then one representative requires 10,000 votes. The country is divided into several larger electoral constituencies (larger than districts in the district system), and each electoral constituency elects a number of representatives proportional to its population.



#### 3.2. Distric Representation System

The district system is the oldest form of electoral representation, based on geographical units. Each geographical unit, typically referred to as a district due to its small size, has one representative in parliament. For national elections, the country is divided into numerous districts, and the number of parliamentary representatives is determined by the number of districts.[12] In this system, the candidate with the most votes in a district wins, and votes for other candidates in that district are considered lost and not counted, regardless of the margin of defeat. This electoral system is used in countries like the UK, Canada, the United States, and India.

Two key characteristics distinguish the district system from other systems. First, in the district system, elections are directly associated with specific electoral districts, which are often not identical to administrative divisions. Electoral districts are drawn to ensure that the number of voters residing in an area is roughly equivalent to those in other districts, a requirement for fair elections. Therefore, it's common for an electoral district to encompass one or more administrative regions, and parts of the same administrative area may be combined with other administrative areas to form a single district.

The second distinctive feature is that, in the district system, the focus of the election is on individuals who represent or are nominated by organizations within a specific district. Only politicians residing in that district may be nominated by political parties to represent the people in that district. In other words, party members who do not live in the district are not eligible to represent the people in that district.

# 3.3. Problem in Open-list Proportional Representation

General elections have been held in Indonesia since 1955 using a proportional system. Essentially, both open and closed-list proportional systems have been applied in Indonesia's electoral system. The closed-list proportional system was used in the 1999 and 2004 elections, while the open proportional system was used in the 2009, 2014, and 2019 elections.[13]

Post-2004, the open-list proportional system emerged as the antithesis of the previously used closed-list proportional system. A crucial factor in adopting the open proportional system was to limit the control of political party elites in determining the structural circulation of the legislature. The open proportional system also aimed to achieve popular sovereignty, allowing legislative candidates to directly engage with the people, enabling voters to choose the representatives they want in parliament. This



is in contrast to the closed-list proportional system where voters only see the party's emblem on the ballot without knowing which candidates the party will select based on an internal numbering system.

The hope with the open-list proportional list system is that voters no longer choose blindly, as they know the identities and track records of candidates. This fosters an accountable political relationship between voters and their elected representatives.[14] However, the candidate-based open proportional system leads to competition among candidates within a party, between parties, and among candidates in various constituencies, all vying for limited parliamentary seats. This dynamic can open the door to attempts at money politics by candidates seeking to gain public favor. One drawback of the open-list proportional election system is that it weakens party control over candidates and hinders the promotion of party ideology.[15]

In 2019, the open-list proportional system was implemented concurrently with the presidential and vice-presidential elections. Any electoral system governed by law certainly has implications that affect the technical aspects of each election stage, including administrative requirements, procedures, timing, personnel, resources, budgets, and support from other institutions.[16] The consequences of the 2019 elections, which we have gone through and will apply again in 2024, must take into account legal instruments, including Article 21 of the Universal Declaration of Human Rights, emphasizing the supreme human right of the right to life for every individual from birth. Therefore, in formulating election regulations, lawmakers and technical rule-makers must incorporate a holistic respect for human rights.

The 2024 elections are on the horizon, but we are still awaiting the legal certainty from the Constitutional Court regarding which proportional system will be used. The Constitutional Court is currently reviewing Article 168 of Law No. 7 of 2017 on Elections, as it is seen as conflicting with the 1945 Constitution, which states that election participants are political parties, implying that a closed-list proportional system should be the electoral system in 2024. To prevent a recurrence of the issues faced in 2019, researchers suggest that the government should reconsider switching back to a closed-list proportional system from an open one. This is because a closed-list proportional system offers technical advantages, such as reduced working hours for organizers, ensuring that the election process aligns with human rights and is cost-effective.[17]

The closed-list proportional system features a different legislative election ballot design, displaying only party logos. This has an impact on the vote counting and tallying process at polling stations, significantly reducing the time required. Previously,



in the open-list proportional system, it took 16-24 hours, whereas with the closed-list proportional system, it only takes 5-7 hours.

The budget allocation for the closed-list proportional election system can be considered significantly smaller compared to the open-list proportional system, as evident from the ballot paper size. In the 2019 elections for members of the DPR (People's Consultative Assembly) and regional legislative councils (DPRD), the ballots used a portrait or vertical design measuring 51 cm  $\times$  82 cm, nearly one and a half times the size of a newspaper page. For the presidential election, the ballots measured 22 cm  $\times$  31 cm, slightly larger than an A4 sheet and featured a landscape or horizontal design. The enormous ballot size was a result of the numerous participating political parties in the 2019 elections. This size may further increase in the 2024 elections if more than 16 parties participate.

However, if the electoral system switches from open to closed proportional, where voters select only party logos, assuming 16 participating parties, the ballot size for legislative elections (DPR, DPRD at provincial and regency/city levels) could be reduced by approximately 600%. For instance, if the voter list includes around 190 million people, the total number of ballots printed would be 970 billion, including reserves. The budget allocated for producing the 2019 election ballots exceeded Rp 603.34 billion. By adopting a ballot size similar to that of the presidential election, costs for acquiring election ballots for simultaneous elections could be reduced by 38%, resulting in savings of approximately Rp 407.22 trillion. The closed-list proportional system significantly contributes to the efficiency of acquiring ballots, resulting in substantial cost savings.[18]

Given the high political costs borne by parties and candidates, as well as the state budget allocated for elections using the open-list proportional system, there may be an opportunity for a new electoral system in 2024, namely the closed-list proportional system, which offers cost-effectiveness, minimizes money politics, and promotes ideological party representation.[19]

# 3.4. The Prohibition of Money Politics from The Perspective of Islam

Islam was revealed by Allah SWT through Prophet Muhammad SAW, serving not only as a belief system and a set of rituals but also as a guiding principle for human life. Its sources are found in the Quran and the Sunnah, covering aspects of faith, worship, ethics, societal conduct, or what can be called a life philosophy for its followers.

The prohibition of bribery and corruption has been in place since the early days of Prophet Muhammad's prophethood. The regulation against bribery and corruption was revealed by Allah SWT alongside the prohibition of idol worship, even before the command to establish the five daily prayers. This highlights the severity of such actions, which must be avoided as they can lead to injustice and impropriety.[19] Maka bisa dikatakan hukum menggunakan hasil dari *money politic* yang di qiyaskan dengan suap menyuap ini terdapat sejumlah landasan dasarnya dalam Alquran yaitu: Al-Quran Q.S al-Bagarah: 188 said:

"Do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to,acquire] a portion of the wealth of the people in sin, while you know [it is unlawful]."

Al-Quran Q.S al-Nisa: 29 said:

"O you who have believed, do not consume one another's wealth unjustly or unjustly or be deceived by it into [committing] a sin. And do not offer the properties of people for bribery, nor use them [as a means] to gain the favor of the judges, in order that [they] may [arbitrarily] consume a portion of other people's wealth in sin and [highhanded] wrongdoing."

The practice of money politics should be avoided because, in essence, elections should produce leaders with genuine competence, legitimacy, and a strong connection to their future constituents. True legitimacy cannot be attained by election candidates resorting to improper means, such as money politics. Leaders generated through money politics tend to be corrupt, and during their leadership, they are likely to go to great lengths to cover up their campaign expenses.

Each country possesses unique characteristics and legal cultures, particularly regarding its legal culture. In this context, addressing the prevention of money politics in Indonesia should be grounded in the cultural and ethical values upheld by the Indonesian people. Indonesia is known for its religious and cultural values, and any approach should be carefully formulated to effectively combat money politics during elections. Other aspects of focus include assessing whether legal instruments for preventing money politics have proven effective in reducing violations and whether there have been improvements in legal regulations themselves. Moreover, it's important to determine



whether people are aware of the legal consequences for those involved in money politics during elections and explore alternative methods for prevention, considering Indonesia's religious cultural background.[20]

# 4. Closing

The open-list proportional electoral system for selecting legislative candidates in Indonesia needs a thorough reevaluation of its effectiveness in improving the quality of democracy. This system has a drawback as it promotes the prevalence of money politics, leading people to choose legislative candidates not based on their quality or abilities but through bribery, purchasing votes. The closed-list proportional system becomes an option to reduce the practice of money politics, ensuring that transactional dealings during every election season do not occur. Although it has some shortcomings, such as fostering an oligarchic connection within political parties, it can also encourage massive party cadre development, leading to the emergence of high-quality candidates for elections. This shift aims to empower the electorate to choose representatives based on their qualities, not the amount of money spent. Money politics in Indonesia has not only originated from the public but also from how political parties recruit candidates for legislative positions. Parties often prioritize recruiting candidates with ample funds to buy votes, rather than investing in developing high-quality and integrity-rich candidates.

Democracy based on freedom still carries the potential for conflicts that contradict Pancasila Democracy, which rejects irresponsible freedom. Instead of fostering closeness between representatives and constituents, many legislators are newcomers to political parties shortly before elections. This trend, if left unchecked, will push party leaders out of the parliament, rendering the constitutional provision in the 1945 Constitution stating that election participants are political parties inapplicable.

Ideally, election contestants should be limited to political parties, not individual party members. The implementation of open-list proportional elections involving numerous legislative candidates is considered inefficient and costly. Elections should serve as a valuable instrument for political education, helping citizens understand the political ideas put forth by election participants, both parties and their nominated candidates. Consequently, the application of the open-list proportional system should be associated with broader interests, ensuring that it aligns with Islamic principles by producing representatives who are close to the people and exhibit integrity.



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