

CHAPTER FOUR FINDING AND ANALYSIS

A. The Analysis of Indonesia Legislative Electoral System

1. Proportional System

The research shows that a proportional system is always an option in organizing elections with various modifications. The trend since the New Order also shows that the amendment, refinement, and replacement of regulations has always been an option when proportional system policies were continued in the first elections of the reform era, namely the 1999 Election. This can be seen from the promulgation of the package of political laws in 1998, 2003 and 2008 (Political Parties, General Elections of the DPR, DPD and DPRD, as well as the Law and Structure of DPR, DPD and DPRD).⁴² The following is a table of differences between the 1999 elections to 2019 elections:

Indicator	1999 Election	2004 Election	2009 Election	2014 Election	2019 Election
System	Closed Proportional	Open Proportional (half)	Open Proportional	Open Proportional (Limited)	Open Proportional
The number of seats (DPR)	500 seats	550 Seats	560 Seats	560 Seats	575 Seats
Electoral Areas	District and/or	District and/or	Province and/or Part	Province or a combination	Province or a combination

⁴² See Law number 12 of 2003 on the 2004 General Elections of the DPR, DPD and DPRD.

	combination	combination	of the Province	n of district/cities	ation of district/cities
The Number of Electoral Areas		69	77	77	80
Voter Divider Number		Valid votes are divided by seats quotas in each electoral district	The party's legitimate vote that meets 2.5% is minus by the party's legitimates vote that does not meet 2.5% divided by the quota of seats in each electoral district	The Party's legitimate votes are divided by the number of seats available in each electoral district	The legitimate votes of the party that meet the parliamentary threshold for the 2014 election year are divided by odd number

Table.4.3 List of Used Electoral System

Source: The Law number 7 of 2017 on general election, Law number 8 of 2012 on general election, Law number 10 of 2008 on General Election of Legislative, Law number 20 of 2004 on General Election of Legislative, Law number 3 of 1999 on General Election

The greater the number of representatives to be elected from one electoral district the more electoral system will be proportional.⁴³ The weaknesses of the proportional system are:⁴⁴

⁴³ Andrew Reynolds, Reilly, B., & Ellis, *Op. Cit.*, p. 69.

⁴⁴ *Ibid*, p. 70.

- a. Managing coalitions that do not have enough common ground in terms of policies or support bases. These pragmatic coalitions are sometimes contrasted with commitment coalitions produced by other systems where parties tend to depend on each other's voting votes for their elections, and thus the coalition can be stronger.
- b. Small parties get disproportionately large powers. Large parties may be forced to form coalitions with far smaller parties, giving a party with the support of only a small percentage of the power to veto any proposals that come from major parties.
- c. The inability of voters to push for accountability by displacing a party from power. In a Proportional system it might be very difficult to displace a large enough central party from power. When governments are usually in the form of coalitions, some political parties are always in government, even though their electoral performance is always weak.
- d. Difficulties for voters to understand or for election organizers to implement these regulations are sometimes complicated. Some PR systems are considered more difficult than non-PR systems and may require more voter education and training of polling station officials to function properly.

The list of representations in a proportional system is underestimated. The representation list of Proportional system does not by itself describe this electoral system as a whole: there are details that must be specified.⁴⁵ The system used to count the allocated seats of the counted votes use the highest average or the Largest Remainder Method. The Largest Remainder Method may be defined when one seat is allocated in electoral areas in each set of calculations to the party with the highest total votes. When a seat is allocated, the party's original vote is reduced by division. The most commonly used range of dividers is D'Hondt and Sainte-Laguë. The Highest Average Method tends to favor larger parties than its the alternate the Largest Remainder Method.⁴⁶ Indeed, the Largest Remainder method is more profitable for small parties, because after the parties have seats in their constituencies and have received quotas (a) full of votes, some seats remain unoccupied, and some votes remain for each party, not a full quotas (a). The remaining seats were then given to parties in accordance with the number of votes they received.⁴⁷

The Open Proportional Election System used to elect DPR and DPRD Members has several major weaknesses. First, the Open Proportional system as a procedure and mechanism for converting people's votes into seats of state

⁴⁵ *Ibid*, p. 70.

⁴⁶ *Ibid*, p. 198.

⁴⁷ *Ibid*, p. 199.

administrators is too complex.⁴⁸ There are at least two proofs of this complexity, namely:

- a. The first complexity appears in the number of alternative choices that are too many. Voter must choose from at least 36 candidates from 12 political parties (3 x 12) to a maximum of 120 candidate names from 12 parties (10 x 12) for the DPR, and from at least 36 (3 x 12) names of candidates and a maximum of 144 (12 x 12) names of candidates for DPRD.⁴⁹
- b. The second complexity is seen in the Proportional Formula with the Hare quota method and the application of the biggest remainder for the composition of the seats. The division of seats for each Electoral District for Election Participants is carried out through a long steps:
 - 1) Determination of Voters' Dividers or the number of votes for one quota. The combined number of valid votes for all Election Participant Political Parties divided by the number of seats allocated to the Electoral District concerned.
 - 2) Distribution of electoral seat to Election Participants. The number of valid votes for each political party divided by the Voter Divider Numbers (one quota).

⁴⁸ Ramlan Surbakti, 2015, *Naskah Akademik dan Draft RUU Kitab Hukum Pemilu: Usulan Masyarakat Sipil*, Jakarta, Kemitraan bagi Pembaruan Tata Pemerintahan, p. 25.

⁴⁹ *Ibid*, p. 26.

- 3) The Remaining Seat distribution (If there are still undivided seats or Remnant Seats) is based on the largest reminding principle, ie Chair Remnants are distributed to the Election Contesting political parties based on the number of remaining votes (the number of votes do not reach the Voter Dividers is categorized as Voice Remaining).
- 4) Determination of elected candidates (procedures for determining who seats the Party) based on the highest votes.

Secondly, the open proportional electoral system provides incentives for candidates, voters or voting and counting officers (KPPS, PPS, and PPK) to engage in vote-buying transactions. These incentives appear in the following three elements of the system:⁵⁰

- a. The number of electoral districts between 3-10 (DPR) and 3-12 (DPRD), quota methods (BPP) and the largest reminding in dividing the remaining seats (the number of votes not reaching the Voters' Dividers is also categorized as remaining votes) are the causes the seats relatively easy to get.
- b. Voters are asked to vote for candidates.
- c. In order to be determined has a seats, a candidate does not require to reach the majority or the Voter Dividing Numbers, but rather reaches

⁵⁰ *Ibid*, p. 27.

more votes than the number of votes for each other candidate from the same party and in the same electoral district.

Based on evaluations from the Joint Election Secretariat, in terms of instruments of democracy, the 2014 proportional open electoral system contained contradictions between elements of the electoral system, as follows:⁵¹

- a. On one side, the size of the electoral areas of DPR is considered as Medium-sized areas. This such electoral areas might shows multi party in the DPR. It is contradicted with the 3.5% parliamentary threshold, which originally aimed to reduce the party number.
- b. The medium-sized electoral areas used to form a represent-able political representatives. Somehow, voting to candidates and the determination of elected candidates based on the majority of votes causes not only the political parties to lose their role as Participants in the Election but also cause the purpose to be sifted to prioritizing people's representative accountability than population representation.
- c. The nomination pattern uses a system of candidate lists determined by the party (party list) as Election Participants but the elected candidates are determined based on the most votes. Political parties

⁵¹ Ramlan Surbakti, 2014, "Understanding the Flaws in Indonesia's Electoral Democracy", *Strategic Review*, p. 18 – 29.

are required to use the Vision, Mission and Party Program as campaign material but candidates conduct campaigns in all ways determined by each candidate so that the question naturally arises as to who represents the constituents: elected candidates or political parties?⁵²

- d. To increase women's representation in the DPR, political parties are required not only to nominate at least 30% of women in each electoral district but also to place at least one woman for every three candidates in each electoral district. However, the candidate quota policy and quota of small serial numbers for women are in fact juridically canceled by itself because the selected candidates are determined based on the highest votes.
- e. To reduce the number of parties in the DPR a threshold of 3.5% is applied. However, at the same time the Election Law also adopted elements of the electoral system which in fact resulted in facilitating political parties to obtain seats. The element is the amount of electoral districts representing many mediums, the proportional selection formula uses the Hare quota method with the remaining seats allocated to the party based on the remaining majority votes,

⁵² Ramlan Surbakti, 2015, *UU MD3 dan UU Pemilu*, Jakarta, Kompas, p. 6.

and the timing of the election of DPR members differs around 3 months from the time of the President and Vice President elections.

Another thing to be consider is the constituency. The seats of the House of Representatives for the 2019 election year increased by 15 seats from 560 to 575. This change occurred because the determination of electoral districts for the People's Representative Council was made by changing the provisions of the electoral district in the last election-based on changes in the number of seat allocations, constituency arrangement and data development electoral constituent.⁵³ Then it can be interpreted that there are additional regions in several provinces. Provisions for the number of seats for each selected area are a minimum of three and a maximum of ten.⁵⁴ Electoral Arrangement for legislative elections must pay attention to the following principles:

a. Equal Balloting

Efforts to increase ballot value (seat value) with the equivalent of one electoral district and another electoral district, in line with the principle of one person-one vote-one value.

b. Adherence to Proportional System

Obedience in the formation of electoral districts by prioritizing a large number of seats so that the percentage of seats obtained by

⁵³ See Article 187 Paragraph (4) of the Law number 7 of 2017 on the General Election.

⁵⁴ See Article 187 Paragraph (2) of the Law number 7 of 2017 on the General Election.

each political party is equivalent to possible percentage of valid votes obtained.

c. Proportionality

Equality of allocation of seats between constituency, so that the balance of seat allocation for each electoral district is maintained.

d. Region Integrity

Paying attention to several provinces, several regencies / cities, or sub-districts that have been compiled into one electoral district for border areas, while taking into account the integrity and integration of regions, and considering geographical conditions, transportation facilities, and ease of transportation aspects.

e. Within the Same Areas

Compilation of constituencies for members of the Provincial DPRD, which are formed from one, several, and / or district / city sections which must all be included in a DPR member electoral district.

f. Cohesiveness

The preparation of constituency takes account to history, socio-cultural conditions, customs and minority groups.

g. Continuity

Preparation of Constituency by taking into account the electoral districts that have existed in the previous year's Election, except if

the seat allocation in the electoral area exceeds the maximum limit of seat allocation for each electoral district or if it contradicts the six principles above.

2. District System

Indonesia uses two different systems in its two legislative rooms. The district system is used to elect DPD members, while DPR members are elected by proportional systems. This district system is also called Plurality/ Majority System.⁵⁵ The principle of a plurality/ majority system is simple. After the vote is given and the total number is calculated, the candidate or parties with the most votes are declared the winner. This district system has several variants including First Past the Post (FPTP), Block Vote (BV), Party Block Vote (PBV), Alternative Vote (AV) and Two Round System (TRS).⁵⁶

First Past the Post (FPTP) is the simplest form of a plurality/ majority system, using a single representative constituency and candidate-oriented voting. Voters are given the names of the proposed candidates and vote by choosing one, and only one, from the names. The winning candidate is the person who won the most votes.⁵⁷ The main disadvantage of this system is that the parties in the FPTP system typically nominate the most acceptable

⁵⁵ Andrew Reynolds, Reilly, B., & Ellis, *Op. Cit.*, p. 30.

⁵⁶ Narelle L Miragliotta, 2015, "Little Differences, Big Effects: An Example of the Importance of Choice of Method For Transferring Surplus Votes in PR-STV Voting Systems", *Representation*, vol. 41, p. 15–23.

⁵⁷ *Ibid*, p. 39.

candidates in a particular district so as not to alienate the majority of voters. Therefore according to Duverger, this approach approaches the true sociological law.⁵⁸

Indonesia chose to use a variant of the multi-district district system which was determined to have 4 (four) seats, with its constituency being the Province.⁵⁹ This is mandated by article 22C point (2) of the 1945 Constitution, which states that all members of the Regional Representative Council are no more than one third of the number of the House of Representatives.⁶⁰ This multi-district system district is a district system with a Block vote variant.⁶¹ This variant emerged as a solution to the nature of the exclusion of minority groups from fair representation in the Majority System because it was able to maintain the ability of voters to vote for individual candidates. Voters have as many votes as seats to be filled in their constituencies, and are free to choose individual candidate candidates regardless of party affiliation.⁶²

Block Vote is also able to allow for geographically-sized electoral districts while at the same time increasing the role of parties greater than FPTP and strengthening parties that show the most coherence and organizational capability.⁶³ The district system for election of the Regional Representative

⁵⁸ Maurice Duverger, 1963, *Political Parties: their Organization and Activity in the Modern State*, United States, Wiley, p. 217.

⁵⁹ See Article 196 and 197 of the Law number 7 of 2017 on the General Election.

⁶⁰ See Article 22c of the 1945 Constitution.

⁶¹ See Article 168 point (3) of the Law Number 7 of 2017 on General Elections.

⁶² Andrew Reynolds, Reilly, B., & Ellis, *Op. Cit.*, p. 49.

⁶³ *Ibid.*

Council was Made in 2004 where 128 DPD members are elected and take an oath.⁶⁴

In its simplicity, the District system still allows for additional conditions as a condition for holding the election. Additional terms used in Indonesia are a condition of minimum votes. The requirement of votes must be met to be declared as a winner. Votes as referred to in article 183 point (1) is spread in at least 50% (fifty percent) of the number of districts/ cities in the province concerned.⁶⁵ This Required votes is proved by a signature list of support or fingerprints and a photocopy of the resident card for each supporter.⁶⁶

Citizen	Minimal Votes
1 (One) \geq 1.000.000 (One Million)	1000 (One Thousand)
1.000.000 (One Million) \geq 5.000.000 (Five Million)	2000 (Two Thousand)
5.000.000 (Five Million) \geq 10.000.000 (Ten Million)	3000 (Three Thousand)
10.000.000 (Ten Million) \geq 15.000.000 (Fifteen Million)	4000 (Four Thousand)
> 15.000.000 (Fifteen Million)	5000 (Five Thousand)

Table 4.4 The Minimum Required Votes

Source: the Law number 7 of 2017 on The General Election

The district system is related to the two-party system or even the no-party system, while Indonesia has a multiparty. If this system is associated with the establishment of the DPD in the Indonesian constitutional realm directly or

⁶⁴ See The Law number 20 of 2004 on the Replacement of Government Regulation Number 2 of 2004 on the amendment to law number 12 of 2003 on General Election of the House of Representatives, the Regional Representative Council to Become a Law.

⁶⁵ See Article 183 Paragraph (2) of the Law number 7 of 2017 on the General Election.

⁶⁶ See Article 183 Paragraph (3) of the Law number 7 of 2017 on the General Election.

indirectly it has mapped people's aspirations into two shafts. The first axis is the general aspirations of the people which are represented by the representation of the DPR. The second axis is the aspirations of the regional (territorial) people which are represented by their representation in the DPD. That is why the DPR which is filled by political parties is often termed political representation, while the DPD is a regional or territorial representation.⁶⁷ Based on this representation, the district system is used in the election of the Regional Representative Council. However, the decision of MK number 30 / PUU-XVI / 2018 which allows the participation of members of political parties to register as members of the DPD more or less obscures the aspirations of the people who were previously mapped into the people's aspirations in general and the aspirations of the regional people. Because the existence of members of political parties makes it difficult to accommodate regional interests represented by the party's people.

B. Comparative Survey on District system

1. United States of America

United State of America is a federal country consisting of 50 states, 490 members of the House of Representatives and 100 Senate members.⁶⁸ The Constitution of the United States divides the federal government into three branches to make sure no individual or group have bigger power than other as

⁶⁷ Jimly Asshiddiqie, *Op. Cit.*, p. 138.

⁶⁸ The United State Congress, <https://www.congress.gov>, accessed on 1 March 2019, at 19.14.

Lord Acton once said that “power tends to corrupt, but absolute power corrupt absolutely”. The United States use the *trias politica* theory in order to separating the power of state organs. The teaching of the separation of powers from Montesquieu was inspired by the view of John Locke in his book "Two Treatises on Civil Government" and the practice of British constitution.⁶⁹ Locke separates the power of state institutions into three types of power, namely legislative, executive, and judicial. The Constitution of the United States divides each branch of power separately.

The legislative power (Congress) of the United States shall consist of a Senate and House of Representatives.⁷⁰ This shows that United State of America uses a bicameral system. The phenomenon of bicameral systems in the world has two distinct historic origins. First established in England and later in the United State of America itself.⁷¹ Multi-chamber systems were first created in a unitary states as a method to represents different matters. In the fourteenth century, two chamber system was created and consist of the feudal lords (both spiritual and temporal) and the citizens (commoners) from the counties and boroughs.⁷²

⁶⁹ Montesquieu, 2007, *The Spirit of Laws*, Bandung, Nusamedia, p. 189.

⁷⁰ See Article 1 section 1 of the Constitution of the United State of America.

⁷¹ Betty Drexhage, 2015, *Bicameral Legislatures: an International Comparison*, Ministry of the Interior and Kingdom of Netherland, p. 7.

⁷² Patterson & Mughan, 1999, *Bicameralism in the Contemporary World*, Ohio, Ohio State University Press, p. 2-3.

When the Constitution was drafted for the newly formed United States, they ultimately opted for a bicameral system. The choice was a compromise between those who wanted a parliament in which the states, irrespective of their population size, would have an equal voice (as was the case in the confederal congress). Bicameralism in this regard was designated as a new institutional mechanism, created in the wake of the changing societal balance of power, or an institutionalized compromise between old and new conceptions of legitimacy. Lijphart said about a ‘conservative brake’ as the most important original function of most senates.⁷³ In conclusion, a bicameral system in federal states is a means of offering, at the level of the member states, a more equal representation than a unicameral system which constituted on the basis of one man one vote.

United States has emerged as a country champion of democracy and the guardian of democracy and has become a country that always sponsors the dissemination of democracy in various parts of the world.⁷⁴ Tocqueville in his book *Democracy in America*, published in 1835, explained that not only in the state system and government did the practice of democracy exist, but it had crystallized in the nation's philosophy, religion, cultural pluralism, and family

⁷³ Arend Lijphart, 2012, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Yale, Yale University Press, p. 190.

⁷⁴ Huntington, P., Samuel, 1995, *Gelombang Demokratisasi Ketiga*, Penerjemah: Asril Marjohan, Jakarta, Graffiti, p. 130.

life as the smallest unite of life.⁷⁵ Democracy has become the American Ethos and has become regulatory values in the life of the nation and state since the proclamation of the US Declaration of July 4, 1776.

Based on those reasons, the General Election is vital for the United States Citizen. National Elections take place every even-numbered year. Every four years the president, vice president, one-third of the Senate, and the entire House are up for election (on-year elections). On even-numbered years when there isn't a presidential election, one-third of the Senate and the whole House are included in the election (off-year elections).⁷⁶ The election conducted by the Federal Election Commission, which composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and six member appointed by the President, by and with the advice and consent of the Senate.⁷⁷ All the election conducted separately. Whereby, each state is represented by a different number of electors, depending on the size of that state's population. The House of Representatives and the Senate elected using different system.

a. The House of Representative

⁷⁵ Tocqueville, Alexis de, 1961, *Masalah Demokrasi*, Penerjemah: Sumantri Mertodipuro, Jakarta, Bharatara, p. 2.

⁷⁶ The United States Senate, <http://www.senate.gov/reference/index/elections/htm>, accessed on 26 May 2019, at 09.58am.

⁷⁷ See Section 437c point 1 of the United State Code on the Federal Election Commission.

The House of Representatives or mostly known as the lower house shall be composed of Member who chosen every second year by the People of several States and the Electors in each State shall have the qualifications requisite for electors of the most numerous Branch of the State Legislature.⁷⁸ The allocation of seats is based on the population within the states but shall not exceed one for every thirty Thousand and at least shall has one Representative.⁷⁹ The Representatives apportioned among several States which included within the United States, according to their respective numbers, following the decennial census.⁸⁰

United States of Census Bureau will provide the latest data to be used in any electoral time. It has special program in order to redistricting data on Congressional Districts and new products are generated only when the changes to congressional districts are reported between sessions. Then, the changes to congressional plans are submitted to the Census Bureau by non-partisan state liaisons which identified by the governor and legislative leadership of each State at the beginning of each decades of Redistricting Data Program.⁸¹ The Bureau has the opportunity to specify geographic areas (e.g., blocks, voting districts) for which they wish to receive

⁷⁸ Section 2 point 1 of the Constitution of the United States.

⁷⁹ *Ibid.*

⁸⁰ Section 2 point 3 of the Constitution of the United States.

⁸¹ The United State Census Bureau, <http://www.census.gov/program-surveys>, accessed on 23 May 2019, at 08.04pm.

decennial census population counts for the purpose of reapportionment or redistricting. Such authority were given by title 13 section 141(c) of the United States Code (U.S.C), which stated that:⁸²

“Officers or public bodies having initial responsibility for the legislative apportionment or districting of each state ...”

According to the Constitution, the census has one fundamental purpose which to ensure that the representation of each state in the U.S House of Representatives reflects the relative size of its population. The Redistricting Data Program is partitioned into five phases, namely:⁸³

1) Phase 1- Block Boundary Suggestion Project

This phase give the States opportunity to submit their suggestion for the next Census tabulation block inventory and State’s suggestion on legal boundary updates as well as the geographic areas. The suggestion are made by designating the desirability of linear features for use as the next tabulation block boundaries.

2) Phase 2 - Voting District Project

Phase 2 of the next Census Redistricting Data Program, provide states the opportunity to submit their voting districts. This actions allow states to construct some of the small area geography they need for legislative redistricting. Phase 2 is conducted in three

⁸² See section 141 of title 13 of the United States Code.

⁸³ *Op. Cit.*

parts. The first two parts are an initial identification of the voting districts and a verification stage to ensure the suggested updates were accurately applied. The third stage is an additional round of verification, for those states participating in the first two stages, to further review and adjust the voting districts.

3) Phase 3 – Delivery of the Year of Census Data Files and Geographic Products

The Director of the Census Bureau produce a prototype product to illustrate a solicit feedback of what the states can expect regardless the of a State’s participation in phase 1 and or 2.

4) Phase 4 – Collection of Post-year Census Redistricting Plans

5) Phase 5 – Evaluation of the next Census Redistricting Data Program and Recommendations for the Next Decennial Census.

The number of representatives or seats in the U.S. House of Representatives has remained constant at 435 since 1911, except for a temporary increase to 437 at the time of admission of Alaska and Hawaii as states in 1959.⁸⁴ The fixed number of seats creates disparities among the states so in the 1940s the apportionment method changed into proportional apportionment. The latest election for the member of the

⁸⁴ The United States Census Bureau, 2011, *Congressional Apportionment*, Washington DC, U.S Census Bureau, p. 1.

House of Representatives was conducted on 2018 and serves as the 116th Congress. For that electoral year, there are 490 representative seats available.

The apportionment of Congressional Districts determined every ten years, as required by the United States Constitution, following a national census. The equal proportions based on the Title 2 section 2a of the United State Code, requires the Census Bureau to compile a priority list of states.⁸⁵ The priority values are determined by dividing the geometric mean of its current House seats with the State's population.⁸⁶ So, each of the fifty States was first awarded with one seat out of 490 total. Then the 51st seat went to the state that had the highest priority value, which later be their second seat. This are the complete steps on calculating the apportionment, as follows:⁸⁷

- 1) Congress decide the method to calculate apportionment

The process of apportionment determines the distributions of congressional seats among the states. The 2010 Congressional Census was calculated using the method of equal proportion which has been used for every census after 1940.

- 2) Automatically assign the first 50 seats

⁸⁵ See Title 2 Section 2a of the United States Code.

⁸⁶ The United States Census Bureau, 2010, *Strength in Numbers: Your Guide to census 2010 Redistricting Data From the U.S Census Bureau*, Washington DC, U.S Census Bureau, p. 3.

⁸⁷ The United States Census Bureau, 2011, *Op. Cit.*, p. 6.

First, each state is assigned one congressional seat, as provided by the Constitution. Then, allocating the remaining seats among the 50 states according to their apportionment population.

3) Calculate a list of priority values

A priority value is based on a state's apportionment population and the number of its next potential seat. The formula for a priority value (PV) is:

$$PV(n) = \frac{\text{State Apportionment Population}}{\sqrt{n + (n - 1)}}$$

Which means that the Priority Value (PV) equals the state's apportionment population divided by the geometric mean of its current (n-1) and next (n) potential seat number. Because every state automatically receives its first seat, PV start with each state's second seat. The maximum number of PV ever needed for each state would account for the hypothetical situation in which one state is so large that it receives all of the remain 385 seats. This means one could potentially calculate a total list of 19.250 PV (385PVs multiplied by 50 states). However, it is more efficient to only calculate enough priority values to account for the largest number of seats any particular state that might currently be assigned. In practice, the PV values for a specific

state's second and third seats based on the census are as follows, using Alabama as the example state:

$$PV(2nd\ seat\ for\ alabama) = \frac{4.802.928}{\sqrt{2 \times 1}} = 3.396.221$$

$$PV(3rd\ seat\ for\ alabama) = \frac{4.802.928}{\sqrt{3 \times 1}} = 1.960.809$$

4) Assign the remaining seats in ranked order

After all the state's PV have been calculated, a combined list of priority values from every state is ranked in descending order. The state with the largest PV in the list is given the 51st, then the second largest get the 52nd until the last seat has been filled. Based on the equal apportion method, the following is a table of the latest congressional district and the population of the State: ⁸⁸

No	State	Congressional District	Population (2018)
1	Alabama	7	4.887.871
2	Alaska	1	737.483
3	Arizona	9	7.171.646
4	Arkansas	4	3.013.825
5	California	53	39.557.045
6	Colorado	7	5.695.564
7	Connecticut	5	3.572.665
8	Delaware	1	967.171
9	District of Columbia	1	702.455
10	Florida	27	21.299.325
11	Georgia	14	10.519.475
12	Hawaii	2	1.420.000

⁸⁸ The United States Census Bureau, 2010, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1 2018*, Washington DC, U.S Census Bureau, p. 18.

13	Idaho	2	1.754.208
14	Illinois	18	12.714.080
15	Indiana	9	6.691.878
16	Iowa	4	3.156.145
17	Kansas	4	2.911.505
18	Kentucky	6	4.468.402
19	Louisiana	6	4.659.978
20	Maine	2	1.338.404
21	Maryland	8	6.042.718
22	Massachusetts	9	6.902.149
23	Michigan	14	9.995.915
24	Mississippi	4	2.986.530
25	Missouri	8	6.126.452
26	Montana	1	1.062.305
27	Nebraska	3	1.929.268
28	Nevada	4	3.034.392
29	New Hampshire	2	1.356.458
30	New Jersey	12	8.908.520
31	New Mexico	12	19.542.325
32	New York	27	19.542.620
33	North Caroline	12	10.383.620
34	North Dakota	1	760.077
35	Ohio	16	11.689.442
36	Oklahoma	5	3.943.713
37	Oregon	5	4.190.713
38	Pennsylvania	19	12.807.060
39	Rhode island	2	1.057.315
40	South Carolina	7	5.084.010
41	South Dakota	1	882.235
42	Tennessee	9	6.770.010
43	Texas	36	28.701.845
44	Utah	4	3.161.105
45	Vermont	1	626.299
46	Virginia	11	8.517.685
47	Washington	10	7.535.591
48	West Virginia	3	1.805.832
49	Wisconsin	8	5.813.568
50	Wyoming	1	577.737

Table 4.5 Comparison of the Number of Congressional District and Population

Source: The United State Census Bureau

b. The Senate

The Senate of the United States shall composed of two Senators from each State.⁸⁹ No person shall be a Senator who shall not have attained the age of thirty years and been nine years as a citizen of the United State.⁹⁰ This requirements comes from several reasons of its establishment, namely:⁹¹

- 1) Doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient.
- 2) The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.
- 3) The Senate can meet the need for knowledge about the laws and the interests of the country, and thus help to avoid mistakes.
- 4) The senate can be a factor for stability that ensures continuity in the administration of the country, thus reinforcing the trust of other counties and avoiding too many laws being made and laws being changed too quickly.

⁸⁹ Section 3 point 1 of the Constitution of the United States.

⁹⁰ Section 3 point 3 of the Constitution of the United States.

⁹¹ James Madison, Alexander Hamilton & John Jay, 1987, *the Federalist Papers*, Penguin Classics, 1987, p. 366.

The United States Constitution mandated the Senate to be divided into three classes for purposes of elections. Senators are elected to six-year terms, and every two years the members of one class—approximately one-third of the senators—face election or reelection.⁹² The times, places, and manner of holding elections for Senators shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.⁹³

2. Malaysia

Malaysia is a country that carries out Asian-style democracy and differs from democracy that was pioneered by the West which liberal democracy.⁹⁴ Malaysia is a plural society consisting of numerous ethnic groups, each with its own language, traditions, and religious norms and value systems. This made it imperative for the elites of each ethnic group to unite in a mutually beneficial fashion. Malaysia is also considered a semi-democratic country because its implementation is full of limitations.⁹⁵ The principles of democracy cannot be fully realized.⁹⁶ The system of government in Malaysia is mixed because it is not considered a democracy and at the same time also not authoritarian.⁹⁷ This can be considered as a system that resembles

⁹² Section 3 point 2 of the United States Constitution.

⁹³ Section 4 point 1 of the United States Constitution.

⁹⁴ Takashi Inoguchi, 1998, *Asian style democracy*, Tokyo, United Nation University Press, p. 173-183.

⁹⁵ Mustaffa Kamil Ayub, 2004, *Masyarakat madani & idealisme politik*, Petaling Jaya, Institut Masyarakat Madani (IMAD), p. 44.

⁹⁶ William Case, 1996, *Elites and regimes in Malaysia*, Melbourne, Monash Asia Institute, p. 67.

⁹⁷ Crouch Harold, 1996, *Theories of democracy: a critical introduction*, London, Routledge, p. 51.

democracy, known as quasi-democracy.⁹⁸ Therefore, it can be concluded that the element of democracy does exist in Malaysia, but problems always arise in terms of implementation.

Malaysia is one of the world's few stable "hybrid", or "multiparty, electoral, but undemocratic regimes" regimes,⁹⁹ sustaining a mix of participation and constraint types of political party. Parties are the key players in Malaysian political life. Up until now, competition has been between a firmly fixed BN and a fairly stable set of opposition parties, which are frequently allied in electoral pacts or coalitions. Just as Sartori posits should be the case, Malaysian parties serve both representative and expressive functions: developing and transmitting popular interests; channelling participation and structuring competition; and at least claiming intent to govern for the sake of the whole, rather than just on behalf of a given faction. However, no matter how leader-identified or -oriented individual parties may be – not least the United Malays National Organization (UMNO), which dominates the BN – as institutions, they are marked by internal competition, suggesting not just the space for new political patterns to emerge, but also pockets of more "democratic", or at least fervently contested, space within a comparatively undemocratic polity.

⁹⁸ Case William, *Op. Cit.*, p. 72.

⁹⁹ Larry Diamond, 2002, "Thinking about Hybrid Regimes", *Journal of Democracy*, vol.13, p. 21–35.

And yet, as Sartori (1976: 49) notes, intra-party competition (for instance, in a one-party state) is not functionally equivalent to inter-party competition, as winners of party polls need not be responsive to the governed. That so many key political battles are worked out within the party or in the course of intra-coalition negotiations effectively removes these issues from the political marketplace and limits the scope of what general elections actually determine.¹⁰⁰ To date, the BN has been able to claim that what has made this system right for Malaysia is the structure of social cleavages. However far from Lijphart's ideal-typical consociational democracy, the structure of governance in Malaysia still echoes that pattern of government by a vertically organized "elite cartel", in which carefully channelled participation defuses potentially destabilising inputs from a segmented public.

The presence of the two coalitions, each of which is apparently sufficiently internally resilient to persist, and attracts a nearly equal share of the popular vote, does not necessarily argue against this mode of pre-election coalition-building, but it does call into question how relevant or stable the communal cleavages that gave rise to this norm actually are. Such questioning is all the more germane since the BN's negotiations failed to ensure anywhere near proportionate elected representation for Malaysian Chinese, notwithstanding the coalition's vehement claims to inclusivity and (perhaps

¹⁰⁰ Weiss, Meredith L, 2013, "Coalitions and Competition in Malaysia – Incremental Transformation of a Strong-Party system", *Journal of Current Southeast Asian Affairs*, vol.32, p. 22.

countervailing) attention to matters presumed of especial concern to the Chinese community.¹⁰¹

If voting is no longer significantly conducted on communal grounds, a Downsian view may be increasingly germane to understanding Malaysian voting patterns. Anthony Downs argued that where voters' preferences are distributed normally (in other words, would map to a bell-curve) in a majoritarian system – one with first-past-the-post voting rules, as in Malaysia – parties will converge on the preferences of the median voter.¹⁰² The result is likely to be a system of few (usually two) broadly similar effective parties. (In Malaysia, the key modification to this model is that the “parties” are actually pre-formed coalitions.) If current patterns hold, even if the specific composition of the two coalitions changes along the margins, Malaysia could begin to look a bit more like other electoral regimes with majoritarian voting rules, in which two basically centrist parties fight for the middle ground. That picture, however, is not complete: preferences along other axes align differently. When pushed to differentiate themselves – a necessary part of the electoral game – the parties' ideologies supplanted their policies. The BN resorted to the multipolar, communal framework around which it is formed, whereas Pakatan emphasized issues of good governance and “change”.

¹⁰¹ *Ibid*, p. 23.

¹⁰² Anthony Downs, 1957, “An Economic Theory of Political Action in a Democracy”, *Journal of Political Economy*, vol.65, p. 135–150.

In future elections, ascendant non-economic issues could well shift the balance anew – although “rice-bowl” (that is, cost-of-living) issues are unlikely to wane to a substantial extent. Indeed, while the coalitions as a whole appeared, at least in policy terms, more alike than otherwise, their respective component parties remain less all-inclusive, thereby offering clear grounds for differentiation. Most of these parties cater to segments of voters, which are usually defined in communal terms for the BN and in religious or ideological terms for Pakatan. The need to capture voters from across segments has long pressed the BN to coalesce and encouraged opposition parties to do the same, with less success.

Malaysia shifted in the 2013 elections from a multi-polar balance in which no party representing any one cluster could win, to something that seemingly approximates a statistically normal distribution of voters, at least in terms of the current most salient voting issues, wherein two coalitions compete for support. The residual power of communalism, which is both instrumental and discursive, and traceable in the makeup of the extant parties – especially of those in the BN – still mandates multi-party, explicitly cross-racial coalitions, rather than lone contenders. That said, the importance of parties shows no sign of diminishing; Malaysia’s pattern of fixed, predetermined coalitions serves to strengthen coalition component parties through complementarity. Yet this reading falsely reifies cobbled-together organisations, as though they were rock-solid entities. Malaysia’s parties

reflect as much as mould sentiments; they are permeable to claims from below, as well as being organisationally dependent on their respective bailiwicks within an increasingly mobilised civil society.

The latest elections clearly revealed the real fragility and, hence, the careful strategy, of even Malaysia's strongest parties. Malaysia does remain a hegemonic party system, inasmuch as the BN maintains a clear advantage in securing parliamentary seats, and, within the BN, UMNO is stronger than ever before, not least due to the near-total failure of its Chinese-based Malaysian Chinese Association (MCA) and Parti Gerakan Rakyat Malaysia (Malaysian People's Movement Party) component parties. But neither the BN as a whole, nor UMNO specifically, can take its primacy for granted. Moreover, while part of the machinery that wins the ground game is endogenous to the party in question, other portions are external, and likely to have a more narrowly particularistic perspective and ambition. For its part, Pakatan prospered in 2013 not just thanks to careful deliberations among party elites, enthusiastic members, and a compelling message, but also given its ability to call upon a robust web of partisan-inclined social movement organisations, which reflected a steady efflorescence of civil society, especially since the 1990s.

Party members themselves may be just as opportunistic, perhaps seeking policy access and privileged consideration for contracts or other benefits in exchange for their votes. However, reliance upon networks internal to the party was far less overtly costly for candidates. Both UMNO and PAS in

particular function as mass parties, with on-going activities within an extensive structure of local branches and officials. Some of their coalition partners have less developed grassroots bases, and hence function more like cadre parties, kicking into gear as an election approaches. Overall, though, taken as coalitions, both BN and Pakatan have remarkably dense networks of supporters internal to the party, however dependent they may still be on supportive external allies in reaching out beyond party members and core constituencies.¹⁰³

C. The Rebuilding of Indonesia Legislative Electoral System

1. Reason to Rebuild

As a contest that fights for people's trust, an election will be legitimate and gain legitimacy if it is carried out fairly. Fair elections are one of the constitutional mandates that are explicitly contained in Article 22E Paragraph (1) of the 1945 Constitution. By using a conceptual approach, the results of the study conducted, the electoral justice desired by the constitution are based on the concept of justice as fairness and social justice contained in the Fifth Precept of the Pancasila. In Article 22E paragraph (1) the 1945 Constitution of the Republic of Indonesia is stated, general elections are carried out directly, publicly, freely, secretly, honestly and fairly every five years. In

¹⁰³ Weiss, Meredith L, *Op. Cit.*, p. 28.

accordance with these provisions, "fair" is one of the principles of election management. Therefore, this principle must deepen the electoral system which consists of electoral law and electoral process.¹⁰⁴

With that spirit, the principle of fair elections actually wants to oversee the implementation of elections as a procedure for the constitutional transfer of state power. Provisions regarding electoral justice must be aimed to ensure the action, procedure and decision related to the electoral process is in line with the law. All of that was in order to protecting or restoring the electoral rights, complaint, hearing and adjudication.¹⁰⁵ Furthermore, the author has stated that the determination of the election is fairness as stated by Ramlan Surbakti.¹⁰⁶ As adherents of utilitarianism, actions are right when they are proportional to their tendency to encourage happiness, and are wrong if they are proportional to their tendency to produce the opposite of happiness.¹⁰⁷ John Stuart Mill as the successor to this school says "happiness does not stop at the pleasure and absence of pain, but also includes the ultimate goal of truth and beauty".¹⁰⁸

¹⁰⁴ Khairul Fahmi, 2016, "Menelusuri Konsep Keadilan Pemilihan Umum Menurut Undang-Undang Dasar 1945", *Jurnal Cita Hukum*, vol.4 no.2 (2016), p. 168.

¹⁰⁵ Ayman Ayoub & Andrew Ellis (Ed.), 2010, *Electoral Justice*, The International IDEA Handbook, International IDEA, p. 1.

¹⁰⁶ Ramlan Surbakti, 2014, *Pemilu Berintegritas dan Adil*, Harian Kompas, p. 6.

¹⁰⁷ Joseph Losco dan Leonard Williams, 2005, *Kajian Klasik dan Kontemporer Pemikiran Machiavelli-Rawls*, Jakarta, Raja Grafindo Persada, p. 681.

¹⁰⁸ Karen Leback, 2013, *Six Theories of Justice; Analisis Kritis Terhadap Pemikiran J.S. Mill. John Rawls, Robert Nozick, Reinhold Neibuhr, Jose Porfirio Miranda*, Jakarta, Nusamedia, p. 15.

Utilitarianism teaches that the right or wrong whether or not the rules or actions depend on the direct consequences of the rules or certain actions taken.¹⁰⁹ So, there is no theory of justice that can be separated from the demands of expediency. Benefit is the final measure of whether an action is fair or not.¹¹⁰ The fifth principle of Pancasila states, social justice for all Indonesian people. The placing of "social justice" in the fifth order of Pancasila gives a sign that social justice is a great mission as well as the ultimate goal of the state.¹¹¹ In a sense, the fifth precept is a goal for the other four precepts.¹¹² Thus, electoral justice is an inherent principle that must exist in the administration of elections.

From the research, author found the most consistent finding in the electoral literature was the Duverge's Law. The Duverger law shows the mechanical and psychological effects on Single-Member Districts (SMD) will lead to two-party competition, whereas larger district magnitude produce multiparty system.¹¹³ As SMD only lead to one winner, small parties are expected to be disappear or align with the bigger parties in order to have greater chance to win. Duverger himself suggested that district competition

¹⁰⁹ Andre Ata Ujan, 2001, *Keadilan dan Demokrasi, Telaah Filsafat Politik John Rawls*, Yogyakarta, Kanisius, p. 21.

¹¹⁰ Kaelan, 2013, *Negara Kebangsaan Pancasila, Kultural, Historis, Filosofis, Yuridis, dan Aktualisasinya*, Yogyakarta, Paradigma, p. 381.

¹¹¹ Yudi Latif, 2011, *Negara Paripurna, Historisitas, Rasionalitas, dan Aktualitas Pancasila*, Jakarta, Gramedia Pustaka Utama, p. 534.

¹¹² *Op. Cit.*, p. 398.

¹¹³ Singer, M.M., Stephenson, L.B, 2009, "The political context and Duverger's theory: Evidence at the district level", *Electoral Studies*, p. 480–491.

could spill over into the Proportional tier, yet most scholars supportive of a contamination thesis focus on additional factors that cross tiers, such as party interests or qualifying for public funds which may increase the number of district candidates.¹¹⁴

The main institutional difference between classes of mixed legislative system is how the system addresses the tiers (seat types) are linked. Under a Mixed Member Proportional (MMP), the overall distribution of seats is dictated by the party list vote, which compensates for the inherent disproportionality of SMDs and creates an explicit contamination. On the contrary, under a Mixed Member Majoritarian (MMM), no explicit linkage between the seat types exist, with the allocation of SMD and Proportional conducted separately, allowing for very disproportional outcomes. Three factors may help explain this deviation from expectation is whether the system employs a one- or two-vote system. Most mixed systems provide voters with two physical ballots – one for an SMD election and one for a party list which Indonesia used right now. Therefore there are some substances that has to be reconstructed.

¹¹⁴Timothy S Rich, 2015, “Duverger’s Law in Mixed Legislative System: The impact of National Electoral Rules on District Competition”, *European Journal of Political Research*, p.184.

2. Substance of Rebuilding

a. The Election and Electoral System

The research shows that Indonesia use two distinct electoral system for its two legislative bodies. While, United State use the same electoral system and its method. By using two system, it create no coordination with both institution and people's expectation. The Proportional system with Saint-lague variant in a concurrent election shows some problems. One of it established because the time of presidential election and legislative are conducted in the same time with no interval at all. It's a jump of cliff kind of change that Indonesia did from the previous election time.

Successful adaptation to new electoral institutions requires political elites to negotiate on promising candidates and party lists – for example, by withdrawing weak competitors, by running joint lists or candidacies, and ultimately, by party mergers. If they fail to do so, voters are expected to desert the hopeless candidates and lists in favour of less preferred but more viable alternatives. In other words, successful adaptation requires elites to coordinate, and voters to vote strategically.¹¹⁵

Current standards of ideal behavior in national political life are no longer just relying on the measures of certainty, justice, and benefit of the

¹¹⁵ Cox, 1997, *Making votes count: Strategic coordination in the world's electoral systems*, Cambridge, Cambridge University Press. p. 73–80.

law based on the principles of rule of law, but more than that, elections and the practice of political activities in the present era are idealized to have more integrity with a more substantial foundation of political ethics. Law is important, but it is no longer sufficient to guard and control the ideal behavior of post-modern society. By prioritizing ethical considerations to perfect the legal logic for substantive justice, the quality of democracy can be improved not just as a procedural democracy, but democracy that is more substantial and has integrity.¹¹⁶

b. Balloting and Constituency

Indonesia shall not rawly follows what United States do to its election. The one that may be applied is how the United States determine its Constituency areas and balloting. Using the method of Equal apportionment rather than proportional will suites Indonesia's condition better. The equal apportionment goes in line with concurrent election and presidentialism. Considering the phenomenon of the addition of DPR seats and the lack of transparency in the electoral district stipulation by the Election Bill Special Committee, there is a possibility of Gerrymandering's reasoning. Elbridge Gerry was a Governor of Massachusetts (1812) who engineered the district boundaries of the US state legislative representatives that benefited the Democratic party.

¹¹⁶ Kofi Annan, 2013, *Interventions: a Life in War and Peace*, Penguin Books, p. 217.

Gerrymandering's thought is to maximize the voice of supporters to get seats and minimize the opponent's voice.

There are two common reasons used in determining electoral districts, namely cracking and packing. In the context of cracking, the political elite manipulated the electoral district where support for the party was small. The effort made by the political elite is to break the surrounding areas and combine them with their electoral districts, so that voter support for their small parties becomes large. While packing reasoning in the electoral arrangement is an attempt by the political elite to control the electoral district by minimizing other parties without them knowing it. In the packing reasoning, elites focus on one area with a large number of seats (voters), thus boosting the acquisition of party seats in parliament

c. Party System

Political parties and party systems are an essential factor for the formation and functioning of representative democracy and democratic governance but not sufficient for democratic political systems. The party becomes the media and means of citizen political participation, prepares prospective leaders and offers it to the people in elections, and prepares patterns of public policy in various public issues (vision, mission and development programs) which then offer it to the people during the Election.

Political parties will be able to carry out both important roles if internally managed democratically (intra-party democracy), and financially not dependent on one source. Management of political parties can be categorized as democratic if party decision-making is carried out in an inclusive manner (involving all party members, all party elements, including those who disagree with elected officials), and decentralizing some of the substance of decisions to branches (but branch party decision making must also be inclusive).¹¹⁷

Giovanni Sartori distinguishes party systems into three models, namely simple pluralism, moderate pluralism, and extreme pluralism.¹¹⁸ The number of poles of power in a simple pluralism party system is only two, such as the United States and Britain while the ideological distance between parties is very close (there are no ideological differences that are too striking). In the model of moderate pluralism, there are only two party poles (the possibility of ruling only two party coalitions even though the number of parties reaches around 5 to 7) but in the form of coalitions, several parties and ideological distances are so close that mutual agreement can still be reached. The party system that applies in Germany can be categorized as moderate pluralism. In the model of extreme

¹¹⁷ Susan Scarrow, 2009, *Political Party and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy*, Washington DC, National Democratic Institute for International Affairs, p. 188.

¹¹⁸ Giovanni Sartori, 2005, *Parties and Party Systems: A Framework for Analysis*, ECPR Press, p. 99.

pluralism, as applied in the Netherlands, the number of poles is more than two and the ideological distance between parties is very far. So many political parties come from almost all types of ideologies.

Party systems that are deemed to be suitable both in the context of Indonesian politics (plural community structures and party history) and with the form of presidential government are moderate pluralism party systems.¹¹⁹ Extreme pluralism is seen as incompatible with the form of presidential government¹²⁰ Moreover with Pancasila as *grundnorm*. The simple pluralism party system is very much in line with the form of presidential government but does not fit into the structure of society and Indonesian party history, especially less realistic compared to the party system that actually occurs in Indonesia today.

By Indonesian pluralism that is segmented and fragmented pluralism¹²¹, whatever the policy that applied for the purpose of simplifying the number of political parties naturally, in the long run, the number of political parties will never be reduced to 2 dominant political parties like in the United States. This is caused by the government which adheres to a presidential system so that when a multi-party system is

¹¹⁹ Jose Antonio Cheibub, 2007, *Presidentialism, Parliamentarism and Democracy, Government Coalitions and Legislative Success under Presidentialism and Parliamentarism*, Cambridge, Cambridge University Press, p. 173.

¹²⁰ Juan J. Linz, "The Failure of Presidential Democracy: The Case of Latin America", *Comparative Political Studies*, XXVI (May), p, 138.

¹²¹ Prof. Dr. Salim Said, 2018, *Ini Bukan Kudeta*, Mizan, p. 98.

implemented, the result is not even one political party is in a dominant position. The thinking paradigm should not question the number of political parties but rather the quality of political parties. The coalition shall be create before the election phase for more consistent coalition and easy-manage political party.

To regenerate the leadership of political parties, there should be a regulation regarding the requirements to become a head of the political party at the level of at least 5 years experience as a head at the subordinate level.¹²² If the management structure of a political party consists of 4 levels, then a candidate for General Chairperson is required to have at least 20 years been the head of the requested political party. Thus, the development of political parties in the long term will grow and develop healthily, avoiding the transactional and pragmatic political culture.

¹²² Jimly Asshiddiqie, 2014, *Pemilu Umum Serentak dan Penguatan Sistem Pemerintahan*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 5.