

# IMPROVING ACCESSIBILITY OF THE RIGHT TO PERSONS WITH MENTAL DISABILITIES IN GENERAL ELECTION

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**ABSTRACT**--Right to vote of persons with mental disabilities raises a polemic among the public, which affects the quality of elections. The research aims to determine the right to vote of persons with mental disabilities in the election process and the accessibility of persons with mental disabilities to the quality of elections. This study uses normative research using a statutory approach and conceptual approach. The result shows that persons with mental disabilities are included in psychosocial disorders (mentally retarded) not included people with mental disorders. Persons with mental disabilities can distribute their voting rights by fulfilling adequate accessibility so that they are included as unconditional voters. Accessibility for persons with mental disabilities must meet the completeness of additional equipment, voter assistance, localization of polling stations and policy regulations in the form of technical instructions. The technical guidelines made by the election organizers contain several provisions namely: Categories and qualifications of persons with mental disabilities who participate in elections; Voting equipment is additional. The phase of socialization was conducted through online and offline (face to face). The formation of voter assistants, and the availability of friendly polling stations for people with mental disabilities. Providing structural accessibility for persons with mental disabilities will create quality elections by fulfilling the principles of direct, general, free, confidential, honest, and fair elections. This research is a reference for election committees in increasing voter participation and the transparency of voting results.

**KEYWORDS**—Accessibility; Constitutional Rights; Election; Suffrage; Disabilities

## I. INTRODUCTION

One of the embodiments of the exercise of people's sovereignty in the context of administering government is to provide recognition to the people to participate actively in determining the form of government administration. The provided facilities to implement the people's sovereignty, applied through general elections (Markowitz, 2007). General election is a democratic mechanism to determine the change of government in which the people can be involved in the process of electing their representatives in parliament and national and regional leaders directly, publicly, freely, confidentially, honestly, fairly, and safely. These principles are very important in the election process as an indicator of the quality of democracy (Ubaedillah&Razak,2016).Most democratic countries either limit or deny altogether voting rights for people with cognitive impairments or mental health conditions. Against this weight of legal and practical exclusion, disability advocacy and developments in international human rights law increasingly push in the direction of full voting rights for people with cognitive impairments (Barclay,2013).

The election aims to enable the transfer of government in a safe and orderly manner to carry out people's sovereignty and implement human rights. In the election process every citizen has the same rights that must be respected, protected and fulfilled by the state. As in the constitution's mandate written in the Article 28 D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal before the law. This also relates to the regulation of the right to vote. An interesting phenomenon that arises from the participation of the suffrage of persons with mental disabilities (people in mental disorders) that will affect the quality of elections.

The National Election Commission of the Republic of Indonesia states that people who experience psychiatric disorders or in other words referred to as people with mental disabilities can be given their rights as voters. The General Election Commission of the Republic of Indonesia (KPU RI) noted, there were 43,769 people with mental disabilities who had the right to vote in the 2019 elections (Rahmanto,2019). This KPU's step is a tangible form of the realization of equal political rights guarantees for every citizen in accordance with the

provisions in various Laws including the Disability Act, the Election Law, and the UN Convention on the Rights of Persons with Disabilities that have been ratified by Indonesia through Law No. 19 of 2011.

Various polemics that arise related to the granting of the right to vote for people with mental disabilities. Deputy Chairman of the Gerindra Party SufmiDasco Ahmad said people with mental disorders should not have the right to vote. People with mental disorders cannot be guaranteed awareness when giving the right to vote. In addition, suffrage for people with psychiatric disorders also has a gap for abuse (Nathaniel,2020). The granting of the right to vote for persons with disabilities has consideration as stated by the Executive Director of the Association for Elections and Democracy (Perludem) Anggraini said, people with mental disabilities must be recorded and given the right to vote in the Election. With the condition, there is no certificate of health workers who say he is not able to vote (Anggraini,2019). Pursuant to the Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities, and the Law Number 8 of 2016 concerning Persons with Disabilities, Persons with Mental Disorders (ODGJ) is part from the group of people with mental disabilities. Perceptions of people with mental disabilities and people with mental disorders are interpreted the same so that the interpretation of "crazy people" is considered to participate in elections that can affect the quality of elections.

In line with the Decision of the Constitutional Court Number 135 / PUU-XIII / 2015 in the ruling of the Decision states that Article 57 paragraph (3) letter a of Law No. 8 of 2015 does not have binding legal force as long as the phrase "mentally / mentally disturbed" is not interpreted as "experiencing mental illness and / or permanent memory impairment which, according to mental health professionals, has deprived someone of their ability to vote in elections". An examination of the law gives an indication of the competence of persons with disabilities in exercising their voting rights.

According to the research on the suffrage for people with mental disabilities previously discussed by Raseukiy(2019) on "the rights of persons with mental disabilities to the quality of democracy" explained that the granting of suffrage rights for people with mental disabilities would cause problems that would affect the quality of democracy as a result of an election process through restrictions on the concept of universal suffrage (Raseukiy,2019). Further research was reviewed by Susanti(2019) regarding "Voting Rights for Citizens with Intellectual and Mental Disabilities" that the recognition, as well as the promotion and protection of the rights of persons with disabilities is an important development in the concept of human rights. The state does not provide facilities to persons with disabilities out of compassion, but rather rights, so the application of these rights must be applied accountably. The research has not further studied the position and classification of persons with mental disabilities in exercising their voting rights and the effect on the quality of elections. This study aims to determine the position of persons with mental disabilities in the electoral process as well as to improve the accessibility of persons with mental disabilities to the quality of elections.

## **II. METHODOLOGY**

This study is a normative-legal research by using statute, case, and conceptual approaches (Marzuki, 2010). The data used in this study are secondary data, that is data obtained through literature study consisting of primary and secondary legal materials. The data analysis technique used in this study is qualitative analysis. Descriptive analytical means what has been done (real behavior) and expressed by respondents both verbally or in writing and then examined to be understood as a whole (Soekanto,2008).

## **III. RESULTS**

### **The Position of Right to Vote of Persons with Mental Disabilities in the Election Process**

The right to vote in the electoral process is a right that has been guaranteed and protected by the constitution in the Article 27 (1) of the 1945 Constitution of the Republic of Indonesia that the equality of citizens in the legal and administrative position without exception. The right to vote in the electoral process is a right that has been guaranteed and protected by the constitution Article 27 (1) of the 1945 Constitution of the Republic of Indonesia that the equality of citizens in the legal and administrative position without exception This suffrage for persons with mental disabilities must be accommodated as a form of respect for human rights for others in social life.

In accordance with the provisions of Law No. 8 of 2016 Persons with Mental Disabilities "is the disruption of the function of thought, emotion, and behavior, including: psychosocial including schizophrenia, bipolar disorder, depression, anxiety, and personality disorders; and developmental disabilities that affect the ability of social interactions including autism and hyperactivity. Meanwhile, according to the Mental Health Act, mental limitations possessed by citizens, including those with mental health problems are people who have physical, mental, social, growth and development problems, and/or quality of life so that they are at risk of developing

mental disorders. People with mental disorders are people who experience disturbances in thoughts, behaviours, and feelings manifested in the form of a set of symptoms and/or changes in meaningful behavior, and can cause suffering and obstacles in carrying out people's functions as human beings. In the provisions of Law No.8 2015 before conducting a judicial review explaining the conditions of voters one of which is not being disturbed soul. The arrangement does not provide detailed qualifications regarding people who are mentally disturbed.

Pursuant to the explanation of the provisions of Law 19 of 2011 for persons with disabilities, those who have long-term physical, mental, intellectual, or sensory limitations in interacting with the environment and the attitudes of their communities can encounter obstacles that make it difficult to participate fully and effectively based on equal rights. The absence of the same perception in regulations regarding the category of people with mental disabilities who can participate in elections so as to cause false perceptions of mental disability voters among the people. People with mental disabilities and people with mental disorders have limitations, but do not eliminate the same opportunities and opportunities in channelling rights choose as part of respect for human rights (Daud, 2016).

The suffrage status of persons with mental disabilities is a valid election participant registered in the permanent election list. Persons with mental disabilities are included in psychosocial disorders not including people with mental disorders. Perceptions of people with mental disabilities and people with mental disorders are interpreted the same, but both have differences in terms of legal skills. Persons with mental disabilities can channel their voting rights by fulfilling adequate accessibility. While people in mental disorders can also vote but are categorized as mentally ill people who require further examination by professionals before distributing voting rights in the electoral process (Atkinson et al., 2017). People with mental disabilities are unconditional voters while people in mental disorders are conditional voters.

### **Improving Accessibility of Persons with Mental Disabilities to Election Quality**

Accessibility for people with mental disabilities must be fulfilled with the facilities provided to realize equality of opportunity (Sahid&Shahrudin, 2018). Fulfillment of accessibility for voters with mental disabilities is the responsibility of election administrators by fulfilling voting equipment. Accessibility for persons with mental disabilities must meet the completeness of the equipment, accompanying staff, and polling stations. Standardization of voting equipment generally consists of ballot boxes, ballots, ink, voting booths, seals, tools to vote for votes, and polling stations to maintain security, confidentiality and smooth implementation of voting and counting of votes.

Non-physical accessibility is related to how information, communication and technology can be used or understood by people with disabilities. This is related to how to respond to the needs of persons with disabilities (Syafiie,2014).Fulfillment of additional tools for mental disability voters in the form of videos / tutorials on voting procedures that must be watched before the voting process and must be accommodated in each polling station. provide a simulation of voting procedures for persons with mental disabilities so as to facilitate access for voters with mental disabilities. Furthermore, voters with disabilities can use their voices to be assisted by others at the request of voters. Other people who help the voters in voting as intended must keep their voters' choices a secret. The existence of people who help mental disability voters will affect the transparency of the vote and the absence of clear qualifications for voter assistants, so that there is a need for voter assistants who meet the qualifications that are scattered in each election venue. The formation of electoral assistants formed by the election organizer must be open.

What is more, the polling place for persons with disabilities is to determine its location in a place that is easily accessible, including by persons with disabilities, do not combine villages, and pay attention to geographical aspects and guarantee that each Voter can vote directly, freely, and confidentially. Determination of polling stations for people with mental disabilities can be done by localizing polling stations in each polling area so as to create a friendly polling station for people with mental disabilities. Localization can be determined by the election organizer in coordination with the National Disability Commission and the Disability Services Unit.

Fulfillment of accessibility for persons with mental disabilities is also accompanied by the presence of policy guidelines in the form of operational guidelines / operational guidelines. According to Marcus Lukman, policy regulations can be functioned appropriately and efficiently as a means of regulation that complements, perfects, and fills in the deficiencies that exist in legislation (Ridwan &Sudrajat,2009). In the technical instructions made by the election organizer contains several provisions as follows:

1. Categories and qualifications of people with mental disabilities who participate in elections;
2. Voting equipment is additional
3. The formation for voter's assistants
4. A friendly polling station for people with mental disabilities

The completeness of facilities and infrastructure is additional for mental disability voters to be an evaluation and priority for election organizers and the government in increasing voter participation. The implementation of the concept of democracy continues to undergo a process of development and adaptation of procedural practices to the substantive nature by attaching importance to the quality of democracy (Ilmar, 2014). Policy reform requires a difficult balance of aspiration, political realism, and pragmatic urgency in tackling urgent social problems (Pollack, 2020). Policies for persons with disabilities are an important concern in conducting elections. Accessibility of the right to vote for persons with mental disabilities has fulfilled the principle of election which is based on the principle of direct, public, free, confidential, honest and fair. Persons with mental disabilities have the same right directly and are free to make choices in elections without the intervention of various parties (Sahid & Shahrudin, 2018). The implementation of electoral principles that are confidential, honest, and fair can be applied through the establishment of technical instructions or implementing instructions containing voting mechanisms for persons with disabilities mentality comprehensively. Providing accessibility for people with mental disabilities will create quality elections with the fulfillment of election principles. Quality elections are created with the synergy of competent election organizers, proportional voting equipment, professional election committees and integrity voters.

#### IV. CONCLUSION

The suffrage status of persons with mental disabilities is a valid election participant registered in the permanent election list who can participate in the election. Persons with mental disabilities are included in psychosocial disorders (*mentally retarded*) not including people with mental disorders. Persons with mental disabilities can channel their voting rights by fulfilling adequate accessibility so that they are included as unconditional voters. Improving accessibility for persons with mental disabilities must meet the completeness of additional equipment, voter assistance, localization of polling stations and policy regulations in the form of technical guidelines or operational guidelines. In the technical instructions made by the election organizer contains several provisions namely: Categories and qualifications of persons with mental disabilities who participate in elections; Voting equipment is additional, the stage of socialization through online and offline (face to face), the formation of voter assistants, and the availability of polling stations that are friendly for people with mental disabilities. Providing structural accessibility for persons with mental disabilities will create quality elections by fulfilling the principles of direct, general, free, confidential, honest and fair elections.

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