

The Sovereignty of Persons with Disabilities in a Democratic State

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ABSTRACT

Persons with disabilities are a citizen group that has constitutional political rights. They are an inseparable part of the arrangement of Article 28D of the 1945 Constitution of the Republic of Indonesia. This study aims to analyze the active participation of persons with disabilities when they channel political rights in the implementation of the general election. This study is conducted as normative legal research. The conclusion showed that: 1) The state has accommodated the interests of persons with disabilities to participate in the general election process, both as organizers and as participants. 2) In its implementation, the settings are still dealing with various problems. For example, stigma in the community of people with disabilities where they are considered unable to bear the sovereignty and administration problems because many persons with disabilities do not have residential documents.

Keywords: Election Law, General Election, Persons with Disabilities.

1. INTRODUCTION

General elections are a democratic mechanism to hold leader recruitment in the regions, where citizens thoroughly have the right and freedom to choose their supported candidates. Through general elections, citizens can determine their own political choices which will then bring change in the views of citizens against the government in the country because candidates will lead directly by the people. Universally, general elections are an instrument to realize people's sovereignty to form a legitimate government as well as a means of articulating the aspirations and interests of the people. Elections are a mechanism that guarantees the principle of popular sovereignty in a democratic country. Because of that, elections have become a trend in both developed and developing countries as a very important political agenda, not only from the point of view of citizens but also of the government in power. The Indonesian nation as a democratic country has carried out direct general elections as a form of elaboration of people's sovereignty and democracy.

This process proves the existence of a democratic attitude and transparency for citizens who will choose a leader openly. In addition, the selected leader will provide the best ability to manage and regulate his government. The biggest hope is that the welfare of citizens will be better through the implementation of general elections following the principle of general election law, namely direct, general, free, confidential, honest, and fair. The implementation of general elections

by the principle of the general election law is a forum for the development of democracy in Indonesia that brings great hopes for the welfare of all people, including persons with disabilities.

The law defined persons with disabilities as "everyone who experiences physical, intellectual, mental and/or sensory limitations for a long time in interacting with the environment can experience obstacles and difficulties to participate in full and effectively with other citizens based on similarity rights [1]". Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (hereinafter mentioned as CRPD) also ruled that the state is bound to the Convention had obligation in "Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty [2]," and "Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices [3].

So, persons with disabilities have the same political rights as other citizens. Indonesia has ratified the International Convention on 10 November 2011 through Law No. 19 of 2011 Concerning the Ratification on

Convention on the Rights of Persons with Disability. Thus, Indonesia is one of the States Parties subject to the provisions of the Convention and is obliged to implement legal norms in the Convention consistently and transparently. In its implementation, the fulfillment of political rights for residents of persons with disabilities in the general elections is accommodated in the general election commission regulations nationally.

2. LITERATURE REVIEW

The construction of people's sovereignty stemmed from the Athens terminologies "demos" and "kratein" as later develop into the popular term "democracy". By definition, it means that all power should be exercised by one collegiate organ the members of which are elected by the people and which should be legally responsible to the people [4]. Charles Frederick Strong stated that the term democracy is variously used, sometimes to mean a form of government and sometimes to connote a condition of society" [5]. In the second context, institutional arrangement for arriving at political decisions in which individuals acquire the power to decide to utilize competitive struggle for the people's vote [6] and this is including the persons with disabilities as part of a democratic society.

Toni Yuri Rahmanto explained about Right to Vote for People with Mental Disabilities Viewed from The Human Rights Perspective and concluded that suffrage (rights to vote and right to be elected) should be protected, respected, and fulfilled (dari perspektif hak asasi manusia, hak pilih (hak memilih dan hak dipilih) tersebut sebaiknya perlu dilindungi, dihormati dan dipenuhi) [7]. The current development idea of democracy also has an impact on increasing interest in equipping everyone with the protection of rights (universal suffrage). Accordingly, the state has to provide the same access for persons with disabilities so they can fully participate in the democratic process. In this notion, the state needs to empower persons with disabilities to be able to do so. In many ways, we can understand empowerment as a model of sovereignty: control over one's life, body, future, and political movement [8].

In opposition to this model, which often relies on a problematic notion of deviance and normalcy, disability scholars have developed a "social model of disability," which asserts that the difficulties faced by people with disabilities are created by an environment built to privilege the able-bodied. Through this model, "social relations, the built environment, laws, and practices are structure and organized [so that] certain bodies are hindered and made to be disabled, while other bodies are supported and facilitated [9]. In the practice in Indonesia, the state does not differentiate the regulation in the electoral law for persons with disabilities with other citizen groups. All citizen is treated equally based on the principle of equality before the law. Nevertheless, a study by Virginia Atkinson, Rebecca Aaberg, and Staffan Darnolf found that persons with disabilities were one of the groups organized into what the General Election Commission (hereinafter mentioned as KPU) called

'democracy volunteers'. Volunteers from five sectors of voters-first time voters, religious groups, women's groups, marginalized groups, and persons with disabilities-were provided voter education training materials to increase their participation. However, voter education efforts did not include accessible formats, such as braille, audio, or easy-to-read. Public service announcements over television did not provide sign language interpretation [10]. Hence, the general election law is hindered at the level of its implementation in society.

The same is echoed in deliberative democracy's all-affected principle. This principle requires "that all those affected by a political decision ought, directly or indirectly, to have a say in its making." This idea is reflected in the discourse principle as well: "only those action norms are valid to which all possibly affected persons agree as participants in rational discourses" [11]. In this case, the involvement of persons with disabilities in the general election process is inevitable because they are an inseparable part of democratic society in Indonesia as ruled in Article 29 CRPD focuses on participation in political and public life. It calls on states to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected". This means that election laws and processes should not contain provisions that restrict the right to vote, while voting procedures, facilities, and materials should be appropriate, accessible, and easy to understand and use [12].

In practice, democracy is an institutional procedure for reaching political decisions in which individuals gain the power to make decisions through competitive struggles to gain the people's vote. Thus, the primary purpose of elections is to bestow legitimacy on the collective decision-making power of certain representatives. Representative democracy functions by allowing voters to choose politicians to represent them [13]. Persons with disabilities in Indonesia have not fully enjoyed this because of various social problems that hinder their participation in fulfilling their political rights as holders of sovereignty.

3. RESEARCH METHODS

This research was conducted in the area of Palu City, Central Sulawesi, Indonesia which has 429 persons with disabilities that fall under the category of sovereign people, domiciled in 8 sub-districts. The research used primary and secondary legal materials in normative legal research. Primary legal materials sourced from legislation on the local election and persons with disabilities. The secondary legal materials are taken in the form of legal principles, legal theory, and legal doctrine.

4. RESEARCH RESULTS AND DISCUSSION

On Wednesday 17 April 2019, the first simultaneous general elections to elect members of House of Representative (hereinafter mentioned as DPR), Regional Representative Council (hereinafter mentioned as DPD), and Regional House Representative (hereinafter mentioned as DPRD) are held on the same day as the general election to elect the President and the Vice President. During the voting day in Palu City, 310 voters of persons with disabilities out of 346 persons with disabilities that are listed in the Permanent Voter List (DPT) exercise their voting right [14]. This number rise in the local election held on Wednesday 9 December 2020 as 401 voters of persons with disabilities out of 429 persons with disabilities that are listed in the Permanent Voter List (DPT) exercises their voting right [15].

To held a participatory election, KPU of Palu City has tried several efforts to reach the persons with disabilities community, including collaborating with orphanages and special schools as well as parties who have concern for persons with disabilities such as NGOs. For instance, the orphanage prepared the location where the socialization about the general election was carried out, but during the voting day, none of the residents of the orphanage exercised their right to vote due to the absence of an accompanying orphanage officer. In another case, the family of persons with disabilities would not allow them to join the event. Even worse, many of them do not have the residential document as proof of citizenship. Therefore, good cooperation between the KPU and other parties was needed so that similar incidents would not happen again.

Currently, there are various regulations approved by the government in the conduct of the election. For example, Law No. 7 of 2017 concerning Elections, Law No. 42 of 2008 concerning Presidential and Vice Presidential Elections, Law No. 8 of 2012 concerning Elections for Members of DPR, DPD, and DPRD, KPU Regulation No.3 of 2009 concerning Technical Guidelines for the Implementation of Voting and Vote Counting at Polling Stations in the General Elections for Members of DPR, DPD, Provincial and Regency/Municipal DPR, KPU Regulation No. 29 of 2009 concerning Technical Guidelines for Voting and Counting Votes for Presidential and Vice Presidential Elections, KPU Regulation No. 23 of 2008 concerning Guidelines Implementation of Socialization and Information Submission of Elections for Members of DPR, DPD, and Provincial and Regency/Municipal DPR.

Regardless, these regulations are not sufficient to guarantee the rights of persons with disabilities to participate in elections. Their political rights are still being ignored. There are still many obstacles in the various stages and mechanisms of the election which are still considered discriminatory for persons with disabilities. At the technical level, barriers for persons with disabilities during elections that do not support the

implementation of the aspirations of persons with disabilities include the use of the term “physically and mentally healthy” which is detrimental, especially for legislative candidates with disabilities. There is also no understanding or resolution of violations of election access.

In addition, several laws and regulations limit the rights of persons with disabilities in exercising their political rights. For example, the absence of a law that supports the principle of non-discrimination in the election law, and the inclusion of physical and mental health requirements that does not refer to Law No. 36 of 2009 concerning Health. Moreover, before the voting day, there are no public service advertisements for people with disabilities, certain people with disabilities are not registered in the voter list, announcements or socialization of the stages of the election do not take into account the need for access to information for the deaf and blind. On the voting day, in some remote areas, polling stations were not accessible for wheelchair users. Luckily, the voting was carried out because the officers visit them and administer the voting door-to-door.

On the level of national regulation, there are no obstacles or problems in accommodating persons with disabilities to participate in politics. It is contained in the regulation of the General Election Law, Ratification of CRPD, and Persons with Disabilities Law. On the contrary, political parties must see their existence as an opportunity to increase their popularity as persons with disabilities also held a significant number in society. If persons with disabilities show their number and importance at the voting box, politicians are likely to develop policies that appeal to this group such as inclusive education, employment, transport, and health services. Persons with disabilities who participate in political life also have the resource to influence a wide range of policies and provide opportunities to incorporate the legal progressive concept of disability into national legislation at higher levels (Dengan berpartisipasi di kehidupan politik, penyandang disabilitas juga memiliki kesempatan memengaruhi kebijakan berentang luas dan membuka peluang untuk memasukkan konsep progresif legal mengenai disabilitas kedalam legislasi nasional ke tingkatan yang lebih tinggi) [16]

5. CONCLUSION

Persons with disabilities faced several problems that prevent them from exercising their sovereignty in general elections. These problems include the absence of a law that supports the principle of non-discrimination in the election law and the inclusion of physical and mental health requirements that does not refer to Law No. 36 of 2009 concerning Health. Other factors rise from the implementation of national regulations that challenge the discriminatory situation for persons with disabilities in Indonesia’s democratic society.

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