

Equality of The Political Rights of People with Mental Disorders (PWMD) in General Elections

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Abstract

The Constitutional Court in 2015 ruled MK Decision No.135/PUU-XIII/2015 which revoked the provisions of Article 57 paragraph(3) letter a of Law No.8-2015 concerning Amendments to Law No.1 Regarding the Establishment of a Government Regulation in Lieu of Law No.1-2014, whose substance prohibits persons with disabilities to use their right in choosing. Law No.7-2017 concerning General Elections, which exclusively gives political rights for persons with disabilities to exercise their political rights. The research used is the realm of doctrinal study. This research belongs to the category of normative research with a normative juridical approach. The equality of political rights of PWMD in general elections is very important, because elections provide opportunities to increase participation and change public perceptions of the abilities of persons with disabilities.

Keywords: *Equality, Mental disorder, General election*

Introduction

Disabilities are part of Indonesian who have the right to respect⁽¹⁾, protect and fulfill their basic rights, as guaranteed in the Constitution of RI⁽²⁾. When the legislative elections and the presidential and vice presidential elections 2014, people with disabilities still get discrimination when one of them want to use their right to vote in general elections⁽³⁾. The cause is the absence of regulations that protect the rights of people with disabilities.⁽⁴⁾

In 2015, the Constitutional Court established the Decision of the Constitutional Court⁽⁶⁾ No.135 PUU-XIII/2015 which revoked the provisions of Article 57 paragraph(3) letter a of Law No.8-2015 concerning Amendments to Law No.1 Regarding the Establishment of a Government Regulation in Lieu of Law No.1-2014, whose substance prohibits persons with disabilities to

choose⁽⁷⁾. Disabilities people get political justice and refer to this Decision also, the Government stipulates Law No.7-2017 concerning General Elections, which exclusively gives political rights for disabilities persons to exercise their political rights. Referring Article 5 of Law No.7, 2017: "Disabled persons who meet the requirements have same opportunity as voters, as candidates and as election organizers". The provisions of Article 5 of Act No.7-2017 are in line with the provisions of Article 75 paragraph(2) of Law No.8-2016 concerning Persons with Disabilities, "The Government and Regional Governments must guarantee the rights and opportunities for Persons with Disabilities to choose and be elected". Provisions that are discriminatory in the provisions of Article 57 paragraph(3) letter a of Law No.8-2015 then submitted to MK to conduct a material test of the provisions in the 1945 Constitution of RI, especially on Article 28D paragraph(1). Request for judicial review was submitted on October 20, 2015. Then, on September 27, 2016, the Constitutional Court issued Decision No.135/PUU-XIII/2015 on the request. It was stated that the Constitutional Court granted some of the applicants⁽⁷⁾, especially stating that Article 57 paragraph(3) letter a of Law No.8-2015 does not have

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binding legal force as long as phrase “disturbed by his/her memory” is not interpreted as “experiencing mental disorders and/or permanent memory disorders which according to mental health professionals have eliminated a person’s ability to vote in general elections”.

The decision of the Constitutional Court views persons with disabilities in general, but what is debated today is the participation of persons with mental or mental disabilities in the election as voters called People with Mental Disorders (PWMD). The General Election Commission (KPU) has stipulated the General Election Commission Regulation No.11-2018 concerning the Compilation of Voters List which stipulates allowing mental persons with disabilities to exercise their right to vote. KPU has included PWMD in the Permanent Voters List (DPT) in the 2019 general election, around 5,000 of those with mental disabilities have been included in the voter list. Although KPU only includes the voters who fulfill administrative requirements on the voter list, as long as persons with disabilities fulfill the conditions, their right must be given to vote⁽⁷⁾.

PWMD is allowed to vote in general elections, raises pro-contra among legal experts, politicians, educators, students, the community and all circles, given the concern that the voice of PWMD can later be misused by irresponsible individuals. Some view that PWMD cannot choose. According Article 1330 paragraph(2) of the Civil Code, a person under authority of being declared is incapable of law, such as a loss of memory person.

Method

This study used the realm of doctrinal study. This study belongs to the category of normative research with a normative juridical approach through deductive thinking methods.

Discussion

Disabled people according to Law No.8-2016 concerning disability are those who experienced long-term physical, intellectual, mental, and/or sensory limitations to interact in the environment, experience obstacles and get difficulties to participate fully and effectively with citizens in other countries based on similar rights. Mental Health according to Article 1 of Law No.18-2014 is a condition where an individual can develop physically, mentally, spiritually and socially

so that the individual is aware of his own abilities, can overcome pressure, can work productively, and be able to contribute to his community. According to Law No.18-2014, people with mental disorders are divided into two groups: people with psychological problems are people who have physical, mental, social problems, growth and development, and/or quality of life so they are at risk of experiencing mental disorders. Whereas PWMD are people who experience disturbances in thoughts, behaviors, and feelings that are manifested in the form of a set of symptoms and/or behavioral changes that are meaningful, and can cause suffering and obstacles in carrying out people’s functions as humans.

Mental disorders are syndromes or behavioral patterns that are clinically meaningful that are directly related to distress and cause disability in functions of human life. The disturbed function of the soul includes biological, psychological, social and spiritual. Mental function disorders experienced by an individual can be seen from appearance, communication, thought processes, interactions and daily activities.

Article 7 of the Universal Declaration of Human Rights states that “All persons are equal before the law and are entitled to the same legal protection without any discrimination”. So everyone is equal in the case of equality before the law. Likewise, the constitution strengthens this provision in Article 27 paragraph(1) which states that: “All citizens are at the same time in law and government and are obliged to uphold the law and the government without exception”. Thus, so they PWMD have the same rights as citizens who are physically and mentally healthy. There are a number of regulations that can be used as references to legitimize PWMD can choose, for example Article 43 of Law No.39-1999: “Every citizen has the right to be elected and elected in general elections based on equal rights through voting direct, public, free, confidential, honest and fair in accordance with the provisions of legislation. Every citizen has the right to participate in government directly or through the mediation of his chosen representative freely, in the manner specified in the laws and regulations. Every citizen can be appointed in every government position”. Furthermore, the Health Act No.36-2009 Article 148 states that: “(1) PWMD have the same rights as citizens. (2) The rights referred to in paragraph(1) include the equality of treatment in every aspect of life, unless the legislation states otherwise”.

There is no prohibition for PWMD to participate in giving their voting rights in general elections. The Constitutional Court strengthens suffrage for PWMD, namely by canceling Article 57 paragraph(3) letter a of Law No.8-2015 concerning Amendment to Law No.1-2014 Regarding Determination of Government Regulations in Lieu of Law No.1-2014 which is considered unconstitutional, because provide limits on the right to vote and discriminate against PWMD.⁽¹²⁾ The Constitutional Court stated that the provisions of Article 57 paragraph(3) letter a stated that one of the requirements of Indonesian who could be registered as voters was a person who was “not being disturbed by his memory”. Contrary to Article 27 paragraph(1) of the 1945 Constitution which states that: “All citizens together in the law and government and are obliged to uphold the law and the government without exception”, and Article 28D paragraph(1) of the 1945 Constitution which states that: “Every person has the right to recognition of guarantees, protection and fair legal certainty and equal treatment before the law”.

Protection of the Rights of Persons with Disabilities Before the Constitutional Court Decision No.135/PUU-XII/2015, Article 57 paragraph(3) letter a the Regional Head Election Law raises interpretations that can eliminate the right of persons with disabilities to be registered in the voter list, indirectly will eliminate their right to vote. However, in the a quo Decision, the Constitutional Court provides an interpretation that people who are experiencing mental disorders, still have the right to be registered in the voter list as voters in general elections, as long as mental disorders and/or memory disorders are not permanent according to field professionals mental health has eliminated a person’s ability to vote in general elections⁽¹³⁾.

In Decision No.135/PUU-XIII/2015, the Constitutional Court argues that every type of mental disorder/memory is so diverse. Therefore, the use of “/” in “mental disorder/memory” in Article 57 paragraph(3) letter a is a mistake. That will lead to the same legal consequences for a different condition. In addition, Article 57 paragraph(3) letter a of Law No.8-2015 regulates a limitation on someone to do something based on a condition, namely a mental disorder or memory. The Article should be accompanied by provisions governing the matter of the mechanism in determining whether a person is or is not being disturbed by his or her memory. To determine this, a special profession is needed,

which when referring to Article 73 of Law No.18-2014 concerning Mental Health and Article 150 of Law No.36-2009, mental health checks for legal purposes are carried out by psychiatric specialists in health care facilities. With the absence of a determination mechanism by that particular profession, the potential for injustice or discrimination against certain groups will be enormous. With these considerations, the Constitutional Court affirmed that the provisions in Article 57 paragraph(3) letter a of Law No.8-2015 contradicts the electoral principles adopted in Article 22E paragraph(1) of RI-Constitution, while also contradicting the principle of legal recognition stipulated in Article 28D paragraph(1) of RI-Constitution.

The Constitutional Court through Decision No.135/PUU-XIII/2015, October 13-2016, gave its opinion: (1) the right to vote and the right to be registered as a voter in general elections is the right of all Indonesian citizens; (2) voter registration activities are administrative areas that do not directly correlate with the fulfillment of voting rights; (3) mental disorders and memory disorders are two different conditions even though both are in sliced categories; (4) not all people who are experiencing mental disorders and/or memory disorders will lose the ability to become voters in general elections; (5) the absence of guidelines/criteria and the absence of appropriate institutions/professions to carry out psychiatric analysis of prospective voters⁽⁸⁾, resulting in the provisions in Article 57 paragraph(3) letter a of Law No.8-2015 potentially causing violations of constitutional rights. Based on this, the Constitutional Court ruled that the phrase “disturbed by his/her memory” must be interpreted as “experiencing mental disorders and/or permanent memory disorders which according to mental health professionals have eliminated a person’s ability to vote in elections”. This means that people with mental disorders and/or non-permanent memory disorders must still be registered as voters and have the opportunity to exercise their voting rights in elections. Thus, the Constitutional Court’s Decision has maintained the principle of democracy related to the protection of human rights⁽¹⁵⁾.

The entry of PWMD into the DPT has actually been carried out since the first election in Indonesia in 1955. KPU-RI has officially stated that Indonesian citizens with mental disabilities have the right to vote⁽⁹⁾.

In the 2014, the KPU had determined PWMD to be included in the DPT list, for example there were 62 people enrolled in the DPT at the Marzuki-Mandi Mental Hospital in Bogor and 41 people in Banyuwangi Hospital, also Bangli Hospital. Even in the implementation of the 2014 General Election, the KPU stipulated Circular Letter No.395/KPU/2014, May 6, 2014 which instructed the Regency KPU/KIP to form polling stations in RSJ and social institutions. For the 2019 election, there were 54 thousand people with mental disabilities and mentally disabled people who entered the DPT. That number is only 0.028%⁽¹⁰⁾. What needs to be considered, the number of 54 thousand includes people with mental disabilities and mentally disabled people. Mentally disabled people are classified as intellectual disabilities⁽¹¹⁾.

In the process of updating voter data, KPU divided the recording of disability conditions in five groups. Especially for the mentally disabled as one of the variants of intellectual disability, it combined in the same group with mental disability. Therefore, the number of people with PWMD detected by the actual DPT is far below 54,000,000. In fact, even more so when compared with the number of people with mental disorders above the age of 15 years the Ministry of Health has released. Namely, 14 million people where 400 thousand of them belong to severe mental disorders. KPU conducts data collection according to the mechanism, which is only recording residents whose data elements are clear and accountable, namely residents who are known as population numbers (NIK) and family card numbers (NKK). To ascertain the psychological condition of voters with PWMD, KPU demands the openness of the family to the officers who carry out the data collection. Purpose of this disclosure is the willingness of the family to recognize family members who are recorded with mental disabilities. As a result, the residents entered the DPT with no record of their disability⁽⁹⁾. Mental disability is an episodic condition, not permanent. Even though patients experience disability in some of their mental functions, they can still live a normal life and be able to determine the best according to themselves⁽¹³⁾. Anticipating the unstable conditions of PWMD, KPU has set additional conditions for PWMD to choose namely PWMD before voting, must be declared healthy by the doctor accompanied by legal certificate. If the doctor states that the person has permanent/severe mental disability, then the right to vote automatically

dies. For PWMD who are declared healthy by a doctor, they can come to the polling station with/without companion. If you feel you need a companion, then the officer of the Voting Organizing Group will accompany him. This voter companion must fill out a statement form to maintain the voter confidentiality⁽¹²⁾.

The determination of additional conditions, namely the need for a doctor's certificate for PWMD, was actually carried out by KPU as a state organ and tool to prioritize a human rights-based approach⁽¹¹⁾, namely seeing persons with mental disabilities as other human beings who have political rights through general elections. The human rights-based approach to interaction with disability in elections is very important, because elections provide opportunities to increase participation and change public perceptions of the abilities of persons with disabilities. As a result, persons with disabilities can have a stronger political voice and are increasingly recognized as equal citizens⁽¹²⁾.

Conclusion

The qualification of PWMD in the election of the Constitutional Court ruled that the phrase "disturbed by his/her memory" must be interpreted as "experiencing mental disorders and/or permanent memory disorders which according to mental health professionals have eliminated a person's ability to vote in elections". This means that people with mental disorders and/or non-permanent memory disorders must still be registered as voters and have the opportunity to exercise their voting rights in elections.

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