

Equality of Suffrage for People with Mental Disorders in Malang City

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Abstract

Constitutional Court of Indonesia in 2015 established Constitutional Court's Decision Number 135 / PUU-XIII / 2015 that revoked the provisions of Article 57 paragraph 3 letter a of Indonesian Law Number 8 of 2015 concerning Amendment of Law Number 1 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 which the substance prohibited person with disabilities for voting in election. Then, Law Number 7 of 2017 concerning General Elections, which exclusively gave political rights for people with disabilities to implement their political rights.

Qualifications for people with mental disabilities in elections of The Constitutional Court decides that the phrase "mental disorders/ memory impairment" must be interpreted as "experiencing mental illness and/ or permanent memory impairment which according to mental health professionals, has abolished one's ability to vote in elections". It means that sufferers with mental disorders and/ or impermanent memory impairment must still be registered as voters and they have the opportunity to use their voting rights in elections.

Equality of political rights for people with mental disorders (*Orang Dengan Gangguan Jiwa (ODGJ)*) in elections is very important because general election gives opportunity to increase participation and change public perception for the ability of people with disabilities. As the result, people with disabilities can have stronger political voice and they are recognized more as equal citizens. Moreover, this research was in category of normative research with normative juridical approach. In conclusion, the equality of political rights for people with mental disorders (*orang dengan gangguan jiwa (ODGJ)*) in elections is very important because general election gives opportunity to increase participation and change public perception for the ability of people with disabilities. As the result, people with disabilities can have stronger political voice and they are recognized more as equal citizens.

Keywords: *Voting Rights (suffrage), People with Disabilities, General Election*

Introduction

Democracy in Indonesia is different from Western democracy. Western democracy is liberal or free democracy. Democracy in Indonesia is built from *Pancasila*, as a fundamental norm that is explained in law and regulation norms.⁽¹⁾ Disabilities are part

of Indonesian citizens who have rights for respect, protection, and fulfillment of their basic rights as what is guaranteed in the 1945 Constitution of the Republic of Indonesia. In legislative and presidential and vice presidential elections in 2014, people with disabilities still experienced discriminations and one of them was discrimination in using their right to vote in general elections. The cause was the absence of regulations that protected rights for people with disabilities. According to Abdul Rasyid Thalib, there are two authorities in Constitutional Court's main authority, which are authority in examining law against the Constitution of the Republic of Indonesia and authority in interrupting

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on authority dispute of state institutions.⁽²⁾

In 2015, the Constitutional Court determined Constitutional Court (Mahkamah Konstitusi (MK)) Decision Number 135 / PUU-XIII / 2015 that revoked the provisions of Article 57 paragraph 3 letter a of Indonesian Law Number 8 of 2015 concerning Amendment for Law Number 1 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014, which the substance prohibited people with disabilities to vote in general election. Based on this Decision, people with disabilities obtain political justice and it refers to this Decision. The Government enacted Law Number 7 of 2017 concerning General Elections, which exclusively gave political rights for people with disabilities to use their political rights. In Article 5 of Indonesian Law Number 7 of 2017 stated that: "Person with disabilities who qualifies has same opportunity as Voter, as candidate for House of Representative, as candidate for Regional Representative Board, as candidate for President/ Vice President, as candidate for Regional House of Representative, and as Election Organizer".⁽³⁾ The provisions of Article 5 of Law Number 7 of 2017 were in accordance with the provisions of Article 75 paragraph (2) of Law Number 8 of 2016 concerning Person with Disabilities which stated that, "Central Government and Regional Government must guarantee the rights and opportunities for Person with Disabilities to elect and to be elected". Discriminatory provision in provision of Article 57 paragraph (3) letter a of Law number 8 of 2015 was submitted to the Constitutional Court (Mahkamah Konstitusi (MK)) of Indonesia to be conducted material test against provisions in the 1945 Constitution of the Republic of Indonesia, especially against Article 28D paragraph (1). Petition of material test was submitted on 20th October 2015. Then, on 27th September 2016, the Constitutional Court issued Decision Number 135 / PUU-XIII / 2015 against the petition. In Decision of *amar* (verdict), it was conveyed that the Court granted some petitioners, especially in stating that Article 57 paragraph (3) letter a of Law Number 8 of 2015 did not have binding legal force as the phrase of "mental disorders/ memory impairment" is not interpreted as "experiencing mental disorder and/ or permanent memory impairment which according to mental health professionals, has abolished someone's ability to vote in general elections".

The Constitutional Court's decision views person with disabilities in general, but what is being debated today is the participation of the person with mental disabilities in general elections as voter, which is called as People with Mental Disorders (*Orang Dengan Gangguan Jiwa (ODGJ)*). General Election Commission (*Komisi Pemilihan Umum (KPU)*) of Indonesia had stipulated Election Commission Regulation Number 11 of 2018 concerning the Compilation of Voter Lists which stipulated to allow people with mental disabilities to use their suffrage. General Election Commission (KPU) had included people with disabilities (ODGJ) in Permanent Voter List (*Daftar Pemilih Tetap (DPT)*) in general election in 2019. Around 5,000 people with mental disabilities had been registered in Permanent Voter List (*Daftar Pemilih Tetap (DPT)*). Although General Election Commission only included voters who qualified administrative requirements on the voter list, as long as the people with disabilities qualified the requirements, they must be given their suffrage.⁽⁴⁾

However, being allowed for the people with disabilities (ODGJ) to vote in general elections caused procontra in legal experts, politicians, educators, students, communities, and all groups of community because there were fears of ODGJ vote which could be misused later by irresponsible elements. Some people believed that ODGJ could not vote. This opinion was based on the provisions of Article 433 of the Civil Code which stated that people with mental disorders must be with tutelage. Thus indirectly, ODGJ could not vote. According to Civil Code, person who is under control by tutelage is considered incapable in doing legal actions. In other words, the person with disabilities cannot be accountable for his/her actions. According to the provisions of Article 1330 paragraph (2) of Civil Code, person who is under tutelage is stated that he/she is not capable in law, such as a crazy person or memory loss person.⁽⁵⁾ All legal actions for people who are under the tutelage are represented by their tutelage as what is stipulated in the provisions of HIR Article 145 and Article 171 of Law 8/1981 concerning Criminal Procedure Law. Article 145 of HIR stipulates that one of the people who cannot be heard in court as witnesses is crazy people, even though the crazy people sometimes had bright memories. Thus, it might be understood that ODGJ is not capable in law.

Method

Research Type

Type of this research was empirical juridical research. In this research, the researcher examined the equality of political rights for people with mental disorders (*orang dengan gangguan jiwa (ODGJ)*) in regional elections in Malang City.

Research Approach

Type of this research approach was sociological juridical approach. Juridical approach in this research aimed at analyzing Indonesian Law Number 7 of 2017 concerning Elections, then, sociologically looking at the implementation of these regulations in Malang City people who were as participants in the election of Regional Government.

Data Source

a. Primary Data Source

Data was obtained from parties which were related directly with this research and the parties were:

- 1) Batu City people
- 2) Batu City people who became part/ who suffered from mental disorders.

b. Secondary Data Source

Supporting data were such as books, archives, documents, and many more which were obtained during research process.

Technique of Data Collection

a. Primary Data

Techniques which were used to collect primary data were observation, documentation, and question and answer verbally and directly which were open, dialogic, and systematic through in-depth interviews in order to explore more closely regarding the equality of suffrage for people with mental disorders in Batu City.

b. Secondary Data

Data was obtained through literature research which was collecting and studying literature in accordance

with this research as a comparison of literature and theory studies.

Discussion

Mental disorders are indicated by person's inability to assess reality. It is caused by a disturbance of neurochemical balance in nerve cells in human brain that makes the person is disrupted and unproductive in society.⁽⁶⁾ In Indonesia, implementation of human rights is guaranteed by the 1945 Constitution of Republic of Indonesia as well as Law Number 39 of 1999 concerning Human Rights, specifically in article 23 which states that everyone (including people with mental disorders) has rights to elect and political beliefs. In 2005, Indonesia also had ratified International Convention on Civil and Political Right (ICCPR), and had become an active legislation that was Indonesian Law Number 12 of 2005 in article 25 (b) which stated that every citizen had right and opportunity to elect and to be elected in honest periodic general elections with universal and equal suffrage.⁽⁷⁾

In Indonesian Law Number 18 of 2014 concerning Mental Health, people who suffer from mental disorders/ memory impairment are called as People with Mental Disorders (*Orang Dengan Gangguan Jiwa (ODGJ)*) and determination (diagnosis) as ODGJ can only be conducted by certain professionals such as Psychiatrists, Doctors, and Clinical Psychologists. The diagnosis must be referred to Guidelines for the Classification of Mental Disorders in Edition III (PPDGJ III).

Clinically, in order to assess whether someone is considered to have capacity to make choice or not, at least, he/she must be able to state 4 things, which are understanding the choice that is given, being able to state their choice, having reasons why to choose the choice, and knowing the consequences from that choice.⁽⁸⁾ This capacity must be checked specifically for specific purposes or situations. The example of clinical situation is sufferer's capacity needs to be examined in order to determine whether the sufferer has capacity to determine treatment type that will be given, or to determine his/her willingness to participate for the research. Of course, the sufferer must be given a complete explanation until he/she understands what the consequences from the treatment or the consequences from the participation in the research.⁽⁹⁾ The capacity in making choice aims

to guarantee the choice that will be taken is the best choice for him/her and at the same time, it protects him/ her from bad consequences that may arise. No one knows more about him/her, except for himself/ herself. Therefore, the best choice for him/her can be different from ordinary people.

Psychosis people with mental disorders (*Orang dengan Gangguan Jiwa (ODGJ)*) can still function normally for most of his/ her life. Generally, psychotic mental disorders are chronic and episodic (recurrent). In 'relapse' condition, the ODGJ experiences hallucinations, has wrong thoughts, or behaves improperly.⁽¹⁰⁾ The content of his/ her thought becomes difficult to be understood, even his/ her ideas and actions are specific only for him/ her. Sometimes, sufferers can be difficult to be directed and they can behave uncooperatively.⁽¹¹⁾ In serious clinical condition like this, the sufferers must get treatment without being asked about his/ her willingness. Sufferers are considered not to have capacity to determine the treatment. If the period of this severe relapse is occurred on Election Day, it is certainly not possible to force sufferers to come to the voting place to participate in voting. However, out of the relapse period, the sufferer's thoughts, attitudes, memories, and behavior can be normal.⁽¹²⁾ Regarding registration process for the voter, which until election day is begun for quite long period of time (3-6 months), removing someone from the voter list will remove the sufferer's rights which on election day, he/ she is most likely to be in good condition and able to vote.⁽¹³⁾

Conclusion

Voting in elections is not a difficult thing. There are no wrong choices, which have bad consequences either for sufferer or for society. Each person's choice is very personal and cannot be accused or blamed. A person is not determined by diagnosis or symptoms which are experienced by the sufferers, but it is from cognitive ability. It means that psychosis people with mental disorders (*Orang dengan Gangguan Jiwa (ODGJ)*) such as schizophrenics, bipolar, or severe depression do not automatically lose the capacity to make choice. The capacity can be reduced or considered to have no capacity for only sufferers who suffer from serious cognitive dysfunction. However, it needs to be known that cognitive function can be improved by learning and

training. A person who is deemed not to have capacity can be educated and trained repeatedly, thus, his/her capacity can

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References

1. Abdul RT. Wewenang Mahkamah Konstitusi dan implikasinya dalam sistem ketatanegaraan Republik Indonesia. Bandung: Citra Aditya Bakti; 2006. 223 p.
2. Nofi SU. Pembentukan Badan Peradilan Khusus perkara pemilihan kepala daerah dalam menjaga integritas penyelenggaraan pemilihan kepala daerah. Dissertation. universitas Diponegoro; 2018. 3 p.
3. Available at: https://www.pdskji.org/article_det-33-orang-dengan-gangguan-jiwa-berhak-dan-mampu-memilih.html
4. Indonesian Judicial Reform Forum. Akses Terhadap Keadilan Bagi Masyarakat Rentan Di Mahkamah Konstitusi. Kumpulan Tulisan Pilihan Pembaruan Peradilan. Jakarta: Pusat Penelitian dan Pengkajian Perkara Mahkamah Konstitusi.
5. Pan MF dan Oly VA. Akses Terhadap Keadilan Bagi Masyarakat Rentan Di Mahkamah Konstitusi. Kumpulan Tulisan Pilihan Pembaruan Peradilan. Indonesian Judicial Reform Forum. Jakarta: Pusat Penelitian dan Pengkajian Perkara Mahkamah Konstitusi; 2018.
6. Pan MF. Memperkuat Prinsip Pemilu yang Teratur, Bebas, dan Adil Melalui Pengujian Konstitusionalitas Undang-Undang Jurnal Konstitusi. Jurnal Konstitusi. 2017;14(3).
7. Perludem: Penyandang Disabilitas Mental Harus Diberi Hak Pilih dalam Pemilu. <https://nasional.kompas.com/read/2018/11/20/23173601/perludem-penyandang-disabilitas-mental-harus-diberi-hak-pilih-dalam-pemilu>
8. Priyo H. Hak Penyandang Disabilitas Mental di Pemilu. 2018. <https://news.detik.com/kolom/d-4434312/hak-penyandang-disabilitas-mental-di-pemilu>
9. PSHK. 2018. MK Lindungi Hak Memilih bagi Disabilitas Mental- <https://pshk.or.id/blog-id/mk->

lindungi-hak-memilih-bagi-disabilitas-mental/

10. Y Prasetyo, F Irawan, S Wibowo, A Budiono. Illnesses as an Excuse for Corrupt Indonesian Officials to be Free From Legal Liabilities. *Journal Medico Legal Update*. 2020;20(1):2311-2315
11. Pusat Pemilihan Umum Akses Penyandang Cacat PPUA-PENCA. Modul Ringkas Pemilu Akses Bagi Penyandang Disabilitas. Jakarta; 2016.
12. The Constitutional Court of the Republic of Indonesia, Decision Number 135 / PUU-XIII / 2015 concerning Judicial Review of Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors against the 1945 State Constitution of the Republic of Indonesia; 2015.
13. E Ellyani, K Dimyati, A Absori, K Wardiono, A Budiono. Psychological Analysis of Jenang Kutei Judges in Delivering a Verdict of Matai Bilai and Cuci Kampong (Purification Ritual) in Rejang Lebong Regency, Bengkulu Province, Indonesia. *Journal Medico Legal Update*. 2020;20(1):1217-1221.