

## Research Article

## Legal Protection for Person with Disabilities in Relating Right to Vote on the Indonesian Election

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**Abstract:** This research is a conceptual study that examines the legal protection of right to vote for persons with disabilities in the conduct of general elections in Indonesia. The main problem in this article is how Indonesian government is committed to be protected the right by availability of Indonesian regulation, in particular regulation on person with disabilities. The method used is a normative research method. This study concludes that Indonesian Government has a full commitment in terms of protecting right to vote for persons with disabilities. The evidence seemed by the availability of legislation both produced through the ratification of international conventions and those produced by the national legislation process. The availability of these rules starting from Indonesian constitution of 1945 to the rules technical issues issued by the election organizer in this case the General Election Commission.

**Key words:** *Right to Vote; Legal Protection; Person with Disability; Indonesian Election.*

### 1. Background

The state has obligation to ensure that right to participate in political processes, including voting in elections through positive state action. This positive action must be sought by the state to be enjoyed by all individuals in the country without discrimination. This obligation is the most demanding obligation of state intervention (positive measures). So that, everyone's rights to the opportunity to obtain their rights cannot be fulfilled through their own efforts. Likewise, citizens who categorized as persons with disabilities also have the opportunity to exercise their political rights.

Internationally, the obligation to provide election access was first established through the Universal Declaration of Human Rights of 1948. Furthermore, the state's obligation to guarantee the rights and opportunities of every citizen to participate in elections is regulated as political rights in Article 25 of the International Convention on the Rights Civil and Political Rights. The state obligations provisions in this regard are specifically regulated in the International Convention on Persons with Disabilities (CRPD). Article 29 of CRPD expressly states that Member States guarantee the political rights of persons with disabilities and provide opportunities for them to exercise these rights equally with members other communities by taking steps to fulfill the rights of persons with disabilities in fulfilling their political rights. Well known, Indonesia is a state party of those conventions, so normatively, Indonesia is bound by the provisions of those conventions.

Indonesia's obligation to fulfill the right to vote for persons with disabilities has been stipulated in the constitution. The right to vote as a political right in Indonesia has been recognized and regulated in Article 28 H Paragraph (2) and Article 28 I Paragraph (2) of the 1945 Constitution, in general

affirms that everyone has the right to get special facilities and treatment to obtain opportunities and benefits, in order to achieve equality and justice, where the treatment given must

also be sought to be enjoyed by all Indonesian citizens without discrimination.

Elections in a democratic country such as Indonesia is the media provided by state to change the executive and legislative power holders in a peaceful manner which are conducted periodically in accordance with principles outlined in the constitution. Principles in the general election which are in accordance with constitution include state's life principle of people sovereignty (democracy), which marked that each citizen without discriminating either on the basis of economic, hereditary, political views or beliefs has the right to participate actively in every process of state decision making. The election is a very important for political activity on exercising power process in a country that adheres to democracy principles.<sup>1</sup>

Less of awareness and knowledge about electoral system, stages and mechanisms are giving an impact to the voting rights for persons with disabilities is being vulnerable to manipulation. In reality, participation rate of persons with disabilities on general elections, both in the local elections, presidential elections and legislative elections tends to decrease every period of elections. In the 2014 election, based on findings of National Commission on Human Rights, there several elections were less friendly to disability groups. For example, almost in all provinces were monitored, either

<sup>1</sup>Budiyono, Mewujudkan Pemilu 2014 Sebagai Pemilu Demokratis, *Fiat Justitia Jurnal Ilmu Hukum Volume 7 No. 3, Sept. – Des. 2013*, page 281.

instruments, or voting booths were not friendly for them, including the socialization did not go into detail to persons with disabilities.<sup>2</sup>

According to the Commission's data, there are three problems were not fulfilled in political rights for persons with disabilities, firstly the limitation of instruments on procedure for conducting elections and its access for persons with disabilities. Secondly, the tools and infrastructure in supporting of election implementation for people with disabilities. Thirdly, the socialization in pertaining election for persons with disabilities. These issues have an impact on political participation numbers of persons with disabilities in using their right to vote as a constitutional right can be assumed, that is not fulfilled.

Data of the commission in the 2014' election is about 11 million people with disabilities in Indonesia, only 2.8 million registered using their voting rights. From 2.8 million voter participation reached 75.11 percent while 24.89 percent of voters ultimately could not use their voting rights. Even this number of participation was only in the presidential election and the percentage of voters in this group was much smaller during the legislative and regional head elections.<sup>3</sup>

Realizing the right to vote for persons with disabilities in Indonesia requires attention from all parties, in particular the National Commission of Election as the organizer, the government as the holder of power in this country, also requires attention from community including persons with disabilities itself to realize fulfillment of rights for citizens has been carried out and felt by all individu. Role of the organizer and the government is the main support in realization of right to vote for people with disabilities in Indonesia.

Three main problems as explained above must be found a solution. The initial solution for a rule of law in the fulfillment of basic human rights in its territory begins with providing legal protection for the basic rights of individuals in context of fulfillment and promotion of human rights. Hence, this research is important. It discusses legal protection for persons with disabilities related to the right to vote on the election in Indonesia.

## 2. Problem

The central investigation in this research is how is legal protection for Person with Disabilities in Indonesia in relating right to vote on the Indonesian election.

## 3. Research Method

This study uses normative research method that is characteristic of legal research. Normative research is conducted to produce new arguments, theories and concepts as a prescription in solving problems. Thus, in this study

<sup>2</sup>Komnas HAM, KPU 'Kurangnya ramah terhadap disabilitas', May 28<sup>th</sup> 2014, accessed by [www.bbc.com](http://www.bbc.com) on June 3<sup>th</sup> 2019

<sup>3</sup>Putu Ratih Kumala Dewi, aksesibilitas partisipasi politik penyandang disabilitas Dalam pemilu di kota Denpasar, Prosiding Seminar Nasional Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Terbuka UTCC, August 26<sup>th</sup> 2015, page 544-545.

examines the provisions of positive written law and habits that live in a sustainable and systematic way related to protection for all Indonesians within law and human rights framework.

## 4. Discussion

Election integrity is exist if elections can be carried out based on democratic election principles and fulfillment of universal suffrage and political equality as reflected in international election standards with professional organizer, impartial and ever-transparent implementation carried out through an election cycle. Likewise, if a state want to realize election integrity, particularly in guarantee terms of right to vote, the state needs a legal framework in accommodating all citizens who eligible to be able to participate in elections without discrimination.<sup>4</sup>

The term of without discrimination also regulated by Article 43 Paragraph (1) of Law No. 39 of 1999 on Human Right, it stated that "*Every citizen has the right to be elected and to vote in elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with national regulation*". Based on the definition it can be concluded that human rights are considered as rights possessed by every human being, which is inherent to existence of human being.

In the Preamble of International Covenant on Civil and Political Rights (ICCPR) is formulated on the rights should be obtained by everyone without discrimination. It is stated that: "*these rights originate from the dignity inherent in humans*". These rights are gained and brought along with person's presence in this world. Human rights are present from God. As the gift, so that all people without exception must respect it and the state must provide protection for it. This right is very fundamental, in sense that its implementation is absolutely necessary, thus humans can develop in accordance with their talents, ideals, and dignity. This right is also universally, it is possessed by humans regardless of nationality, race, religion or gender.

Furthermore, Article 2 of the UDHR states that: "everyone has the right to all the rights and freedoms set forth in this statement, without any exceptions whatsoever, such as the origin of descent, color, sex, language, religion, political establishment or other positions, nationality or social origin, ownership rights, birth status or other status.

Both of international conventions are ratified by Indonesian government. Despite the fact that Indonesia does not have an instrument of ratification for the UDHR, the Law on Human Rights in Indonesia consider the UDHR provisions as one of the considerations point. So, based on the principle of *Pacta sunt servanda*, Indonesia is bound in these two conventions and has an obligation to implement its provisions.

According to Budiarto, voting in elections is one form of political participation. Political participation is activity of a person or groups to actively participate in political stuff,

<sup>4</sup>Tota Pasaribu R, Widya Setiabudi Sumadinata, Muradi, Penerapan Pemilu Berintegritas Dan Jaminan Kesetaraan Hak Politik Dalam Pendaftaran Pemilih: Studi Kasus Pada Pilkada Samosir Tahun 2015, Jurnal Wacana Politik (Volume 3, No 2, Oktober 2018), page 122

namely by electing head of State and directly or indirectly influencing government policy.<sup>5</sup>

In Indonesia, the election is a democratic party, which is every five years to directly elect the people's representatives, as well as the President and Vice President. In elections, people choose freely, which means people must choose according to their conscience and without coercion from anyone.<sup>6</sup>

However, the political system in Indonesia does not yet have a diffable perspective, due to there are still limited accessibility and acceptability for persons with disabilities in political space, both as voters and as chosen subjects. As voters, people with disabilities cannot maximize their voting rights. Among the reasons are limited of buildings accessibility (towards the voting booths), lack of equipment for voting, and the information systems inaccessibility at polling stations. These various obstacles will affect the principle in the democratic election process. Unpreparedness of the organizers in regarding the existence of persons with disabilities is also caused by the fact that organizer has not voter data on disability. As a result, the organizer was unable to identify the need for supporting in realizing accessibility of the election. The provisions in pertaining one of democracy principles in Indonesian elections contained in Article 22E paragraph (1) of the 1945 Constitution and Article 2 of Law No. 7 of 2017 on Elections, states that the principle of general election is direct, general, free, confidential, honest and fair, or commonly abbreviated and called *jurdil luber*.

According to C.S.T Kansil, the principle can be described as follows:

- a) *Direct*, which means that every citizen can use their voting rights directly. Voters have the right to vote directly according to their conscience without intermediaries and without ranks;
- b) *Public*, meaning that every Indonesian citizen who has fulfilled the requirements as a voter has right to vote;
- c) *Free*, it means that each voter is free to elect a leader according to his/her conscience without any influence, pressure or exercise from anyone or with anything;
- d) *Confidential*, means every option in order to voting by every citizen has the right to be kept confidential, and guaranteed by regulation.

Related to the principles, in fact according to Muladi there is still a disregard for the political rights in the election in particular right for person with disabilities. These neglections are:

- a. The right to be registered to vote;
- b. Right to access to voting booths;
- c. The right to secret ballot;
- d. The right to be elected as a member of Legislature;

<sup>5</sup> Muhammad Bayu Dwi Cahyo, Tingkat Partisipasi Masyarakat dalam Menggunakan Hak Suara pada Pemilu Legislatif 2014, Jurnal Pandecta Unnes (Volume 10, No 1, Juni 2015), page 120

<sup>6</sup> Op.cit, Muhammad Bayu Dwi Cahyo, Tingkat Partisipasi Masyarakat dalam Menggunakan Hak Suara pada Pemilu Legislatif 2014, page 107

e. The right to information includes information about elections;

f. The right to participate in elections.

In order to fulfil right to vote for persons with disabilities, in Indonesia several laws and regulations are issued to encourage the realization of the rights. Both in form of regulations are the result of international conventions ratification and Indonesian national law. As an example the latest regulations namely Law No. 8 of 2016 concerning Persons with Disabilities.

Right to vote for persons with disabilities with equality principle is regulated in Article 13 of Law No. 8 of 2016 on Persons with Disabilities, which reads: “ *Every person with disabilities has the same rights and opportunities in obtaining and exercising his/her political rights, namely: electing and being elected in public office, expressing political aspirations both written and oral, selecting political parties and / or individuals participating in general elections, forming, becoming members, and / or their constituents, obtain access to facilities and infrastructure for holding general elections, electing governors, regents / mayors and electing village heads or other names, and obtaining political education*”.

Indonesia's commitment in fulfilling right to vote for persons with disabilities is not novelty. In essence the granting of right to vote based on equality principle, in Basic Constitution of Indonesia is regulated in Article 27 paragraph (1) of the 1945 Constitution which reads: “*All citizens are at the same position in law and government and are obliged to uphold the law and government with no exception*”. These provisions are reaffirmed in Article 23 paragraph 1 of Law No. 39 of 1999 on Human Rights, it states that: “*Everyone is free to choose and have political beliefs*”.

Furthermore, in respecting universal human rights including right to participate in politics, the Indonesian government also ratified several international conventions. So that, these provisions are binding and must be implemented by Indonesian Government. In ICCPR was ratified by Indonesia through Law No. 12 of 2015 is regulated about the same rights and opportunities without any distinction, as mentioned in article 2 of ICCPR and without unnatural restrictions both to participate in carrying out all public affairs both directly and through freely elect representatives. thereafter to vote and be elected in periodic elections that are free and with equal and universal suffrage and are held through the issuance of written and confidential votes that guarantee voters to express their will freely, and to obtain public services in their own country in general on the basis of equality.

Furthermore, the meaning of equality concept of identical human rights with justice. In Rawls Theory, justice must be able to provide equal opportunities and rights for all society, so that fair procedures are necessary. The demand to participate fairly in political structuring process is intended to guarantee rights and obligations of each person, especially the minimum level of benefit for disadvantaged groups or those who are

objectively in the most apprehensive social conditions.<sup>7</sup>

In the Constitutional Court Decision Number 10-17-23 / PUU-VII / 2009; and Decision Number 143 / PUU-VII / 2009; and Decision No. 16 / PUU-VIII / 2010, the Court regulates constitutional guarantees of those who experiences marginalization, underdevelopment, exclusion, restriction, differentiation, disparity in participation in politics and public life which stem from structural and socio-cultural inequalities of the community continuously (discrimination), both formal or informal, in the public or private sphere or known as affirmative action.

Affirmative action is a policy taken that aims to make certain groups / groups (gender or profession) get equal opportunities with other groups / groups in same field. It also Can be interpreted as a policy which gives privileges to certain groups.<sup>8</sup> The purpose of affirmative action is to promote equal opportunities for every citizen, including women and others vulnerable groups. This is often institutionalized in government and education regulations to ensure that minority groups in a society can be included in all existing programs. One of the most important means of implementing is through regulation. Therefore, the guarantee of its implementation must be exist in state constitution.<sup>9</sup>

The guarantee is also technically set by Law No. 7 of 2017 on Elections. Furthermore, in this Law, particularly in Article 5 stated that persons with disabilities who meet the requirements have the same opportunities as voters. This provision is reaffirmed in Article 199 whereby to be able to exercise the right to vote, Indonesian citizens must be registered as Voters unless otherwise stipulated in this Law.

Unfulfilled issues of right to vote for persons with disabilities in Indonesia in a significant number in 2014, requires the country especially the election organizer to actively participate in taking concrete steps to encourage participation of persons with disabilities in every general election in Indonesia. In the 2019 elections, the General Election Commission made a policy by allowing voters with disabilities to be accompanied by a companion when voting. This is to ensure the voting rights of voters with disabilities is properly channeled. Head of the Technical Bureau and community participation relations said there were two types of accompaniment for voters with disabilities. First, companion who only deliver to voting booth. For this category, disability voters are only accompanied to voting booths. The ballot process is carried out independently. Furthermore, for disability voter category who needs help in voting process, the commission provides an opportunity for a companion to company disability voters into voting booths. The companion can even vote to represent the disabled person, but the implementation based on the desire of voters is

represented. Furthermore, there are no specific criteria for disability voter assistants. In practice, the companion is their family. It is impossible to be accompanied by family, the commission allows officers of the Voting Committee Group to assist them, where, the voters must notify the officer in advance if they need a companion in voting.<sup>10</sup>

The process is implementation of elections principle in Indonesia. Furthermore, to ensure the confidentiality principle, the assistant must complete companion form. In the form there is a companion statement that will not divulge voter choice to anyone, also has criminal provisions for companion who divulge the choice of persons with disabilities.<sup>11</sup>

The protection for persons with disabilities rights including right to vote is an important development in human rights concept. Commitment Indonesia as a rule of law has been promoting human rights from the very beginning. This philosophy was made clear when Indonesia ratified International Convention on Persons with Disabilities in 2011. Therefore, Article 28 D Paragraph (1) of the 1945 Constitution on the right to recognition, guarantee, protection and fair legal certainty, as well as equal treatment before the law, also applies absolutely to persons with disabilities. It should be stressed, the state does not provide facilities to persons with disabilities out of compassion, but due to their rights, so the application of the rights must be applied accountably.

Furthermore, related to state protection in relating right to vote for persons with disabilities, the state have to take appropriate steps regarding how the election organizer can facilitate persons with disabilities to exercise the rights. The law should contain general rules which recognizes citizens' rights, including persons with disabilities, of any kind. Then the matter of who can be registered as a voter can technically be submitted to the election organizer, as has been done by the General Election Commission.

## 5. Conclusion

The right to vote is a human right guaranteed by the Indonesian constitution, which must be fulfilled by the state based on the principle of equality and without discrimination. It also must be enjoyed by people with disabilities in Indonesia. The commitment to fulfill the rights is carried out by the Indonesian government, as proof as Indonesia's participation as a state party to International Human Rights Convention specifically the Convention on Persons with Disabilities. In addition, several human rights legislation in Indonesia also mandates human rights fulfilment without discrimination including right to vote for persons with disabilities starting from the basic rules of the 1945 Constitution to the technical regulations issued by the Indonesian election organizer. Thus, Indonesia as a state of law has a full commitment related to the legal protection of right to vote for persons with disabilities in

<sup>7</sup> Yahya Ahmad Zein, 2016, Hak Warga Negara di Wilayah Perbatasan (Perlindungan Hukum Hak Atas Pendidikan dan Kesehatan), Liberty, Yogyakarta, page 134

<sup>8</sup> Accessed by <https://www.hukumonline.com/klinik/detail/ulasan/cl6904/affirmative-action/> on August 29<sup>th</sup> 2019

<sup>9</sup> Accessed by <https://aceh.tribunnews.com/2013/04/29/saatnya-affirmative-action-bagi-perempuan> on August 29<sup>th</sup> 2019

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conduct of general elections in Indonesia.

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