



THE PARTICIPATION OF DISABLED PEOPLE AS THE ORGANIZER OF GENERAL ELECTION

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Abstract: The disabled people as citizens of Indonesia are constitutionally entitled to respect, protection and fulfillment of their basic rights, including participating in general elections, both in using their voting rights and as organizer of general elections. The type of research used was normative legal research, using a statutory approach and a conceptual approach. According to Article 5 of Law Number 7 of 2017, the disabled people gain recognition and access to be actively involved as organizer of general elections. However, it found that implementing regulations had not carried out the mandate of Article 5 of Law Number 7 of 2017, not all types of people with disabilities became the obstacles for the disabled people to be the organizer of general election. The disabled people must be involved in organizing general elections according to the required ability and quality of intelligence.

Keywords: Disability, The Organizer of General Election.

I. INTRODUCTION

Democracy as a form of society's sovereignty, it is not admitted because the perfect order to regulate human life in the state. However, in the journey of history, it has been shown that democracy as a model of state life has the least chance to enable the deviation to humanity. The idea of democracy has been accepted and is being fought to be practiced.

The main democratic practice is General Election (abbreviated as Election). Election is the main requirement for the realization of democracy in the life of the state, therefore, there is no democracy that does not run election. At this point, the election requires the constitutional guarantees so that neither party ignores or forgets about Election practice.

Election in Indonesia is also recognized as a manifestation of the society's sovereignty within the framework of democracy. The concept of sovereignty of the people puts the highest power in the hands of the society, this is in line with the mandate of the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (abbreviated to the 1945 Constitution of the Republic of Indonesia), which states that: "Sovereignty is in the hands of the society, and it is implemented according to the Basic Law". The regulation of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia means that the state recognizes and guarantees the sovereignty in the hands of the society, which is implemented according to the Constitution.

The implementation of the mandate of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which is embodied in the implementation of the General Election. Election consists of Presidential Elections (abbreviated Pilpres) and Legislative Elections (abbreviated Pileg) which are regulated in Law Number 7 of 2017 concerning General Elections (Law Number 7 of 2017) and Regional Elections (abbreviated as Pilkada) which are regulated in the Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors into Law (abbreviated as Law Number 1 of 2015).

The right to the role of citizens in the General Election has received serious attention from the organizer of election. This can be discovered from the efforts that have been continuously made to achieve a good Election. The roles and rights of citizens, including the rights and roles of the disabled people. The disabled people are citizens, where as citizens, the disabled people must be guaranteed protection of their rights and roles in the election. It must be admitted that the disabled people have not been fully treated the same as non-disabled citizens, especially in conveying and contributing their roles and rights in the election.

The disabled people are also Indonesian citizens as holders of the highest level of sovereignty seem to be powerless in facing the power of the Government, which is actually only the executor of the sovereignty. In addition, laws and regulations, which are actually tools of the state to protect citizens, it has turned into tools of power for elite groups to ignore the rights of minority communities, including people with disabilities.

The rights of disabled people have not been optimally fulfilled so far as mandated by the 1945 Constitution of the Republic of Indonesia and Law Number 8 of 2016 concerning People with Disabilities (abbreviated as Law Number 8 of 2016), even the presence of disabled people is still underestimated. There are still many people with disabilities who are not treated properly. Even though the disabled people have the same rights as non-disabled people. The rights are referred to, it is the right to be involved and act as election organizer, including being a Commissioner of the General Election Commission (abbreviated as KPU), being a member of the General Election Supervisory Board (abbreviated as Bawaslu) and being a member of the Honorary Board of Election Administrators (abbreviated as DKPP). However, in reality the requirements and selection in the regulations related to the recruitment of KPU Commissioners, Bawaslu members and DKPP members still do not provide access for all types of disabled people.

Based on the description above, it is necessary to have a study to analyze more deeply a new perspective on the rights of disabled people in the selection for the recruitment of KPU Commissioners, Bawaslu members, both at the central level till the sub-district level, and in the recruitment of DKPP Members. The study carried out is expected to be able to provide an overview or even direction for the society, especially the regulators regarding the perspective that must be chosen in an effort to respect, protect and fulfill the rights of people with disabilities. The issue raised is: "How are people with disabilities involved as election organizers?"

II. Research Methods

The type of research used in this study was normative legal research, considering that legal science is a *sui generis*. The approach used was a *statute approach* and a *conceptual approach* related to statutory regulations and the concept of elections and disabilities. Primary legal materials and secondary legal materials that had been collected (inventory), then carried out an assessment using a statutory approach and a conceptual approach. The results of the analysis were in the form of arguments toward the problems that were raised, thus, providing a prescription as a solution to the problems being analyzed.

III. Discussion

1. The Changes of Perspective on Disabled People in The Perspective of Human Right.

The term used for disability, it was originally the term of disabled, as the nomenclature used in Law Number 4 of 1997 concerning People with Disabilities (abbreviated to Law Number 4 of 1997), however, the use of the term of disability often has a negative connotation. People with disabilities are considered as legal subjects who are less empowered, so that they give a negative predicate to a person, namely disability in their whole person. In reality, it is possible for a individual to have only one particular physical defect, for example having the inability to see (blind) but all the other organs of the body are functioning perfectly.

Another difference between the terms of disability and the terms of disabled is based on two approaches, namely the social approach and the medical approach. In the social approach, assessing the obstacles that arise from the social interactions that occur. The social approach used in the concept of disability positions is the existence of barriers as the unfulfilled human rights of people with disabilities, so that the solution will be based on the fulfillment of these human rights (*human rights based*).

The second approach is the medical approach, where the barrier is a physical deficiency in a person, as the result, it emerges the assessment of "normal" and "abnormal", which for people with disabilities is more identical to the assessment as "abnormal". In the medical approach used in the concept of disability, seeing the fulfillment of

barriers depends on the compassion (*charity based*) of others for the condition of a people with a disability that is “abnormal”.

Some people also use another term, namely “Difabel”, the word for “difabel” comes from English, namely *Different Ability* which means having different abilities. Meanwhile, the terminology of people with disabilities originates from Indonesia and is in accordance with Law Number 8 of 2016.

The term of disability is officially used as a translation of the word '*disability*' in the *Convention on the Rights of People with Disabilities* (abbreviated as CRPD) which the Government of Indonesia ratified in Law Number 19 of 2011 concerning Ratification of the *Convention on the Rights of Persons with Disabilities* which is abbreviated as Law Number 19 Year 2011, on November 10, 2011. Law Number 19 Year 2011 conceptualizes that disabled people as people who have physical, mental, intellectual or sensory limitations in the long term when it is faced with various obstacles, this is may hinder their full and effective participation in society on an equal basis with others’.

The term of disability is used to replace the term of disability, because the term disability is synonymous with negative impressions, and leads to defective or *abnormal* conditions. On the other hand, disability cannot only be interpreted as a term, but must also be interpreted as a concept that explains a perspective in seeing the obstacles are undergone by individual in carrying out its daily activities.

Disability, according to the Big Indonesian Dictionary, is defined as a condition (such as illness or injury) that damages or limits a person’s mental and physical abilities. Disability is also an English loanword, *disability*, which means a person’s inability to do things in an ordinary way.

The concept of disability in the CRPD views that the obstacles experienced by a person in carrying out their daily activities are caused by inaccessible environmental conditions, so that problem solving is focused on interventions on environmental change. This is different from the term of disabled, which indicates that obstacles are caused by a person’s physical condition that is not in accordance with an environment that is already considered *mainstream*, so that solving the problem is directed to the intervention on person's physical condition.

In connection with the perspective on disability, a human rights-based approach has emerged. A human rights-based approach to people with disabilities can make its fulfillment mandatory or must be guaranteed by the state. In a human rights-based approach, the state is a legal subject that acts as an stakeholder of obligation, it implies that it has the responsibility to protect, enforce and advance human rights, at least for its own citizens.¹ Meanwhile, the basis of generosity for people with disabilities, it does not put it as an obligation, because it depends on the willingness and availability of the remaining resources, because its fulfillment is not a priority to be handled.

The disabled person is one of the largest minority groups in the world, covering 600 million people, of which more than half of all persons with disabilities are in developing countries.² However, the development of thoughts on respecting, protecting and fulfilling the human rights of disabled person tends to experience a deceleration when it is compared to the development of the idea of human rights in general. People with disabilities as well as non-disabled people have the same rights and obligations, including constitutional rights and obligations, which include economic, social, and cultural rights (abbreviated as Ecosob). The state has the obligation to fulfill, respect, and protect every right to education that is owned by every citizen.

Everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and to gain benefit from science and technology, art and culture, in order to improve the quality of their life and for the welfare of society, so it is obviously that the constitutional obligation of the state in fulfilling the right to education is to facilitate, promote, provide.³

This is in line with the opinion of Fajri Nursyamsi who highlighted that the human rights for the disabled people were left behind since the emergence of human rights after the second world war. There are parties who claim that disabled people are part of humanity which is included in the object of human rights. In reality, starting

¹ Pusat Studi Hak Asasi Manusia UII, *Hukum Hak Asasi Manusia*, PUSHAM UII, Yogyakarta, 2008, p. 53.

² Theresia Degener, *International Disability Law- A New Legal Subject on the Rise*, in Experts Meeting at Hongkong, December 13rd-17th 1999, Berkeley Journal International, California, 2000, p. 187.

³ Slamet Thohari, *Pandangan Disabilitas dan Aksesibilitas Fasilitas Publik bagi Penyandang Disabilitas di Kota Malang*, Indonesia Journal of Disability Studies, Vol 1 issue 1, Juni 2014, p. 31.

from the stigma of society to the policies of a country, it still hinders the guarantee of human rights for disabled people.⁴

According to Jimly Assiddiqie that: “One of the human rights provisions that are closely related to the implementation of protection for the disabled people, as follows:

- 1) Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection toward such discriminatory treatment, and
- 2) Everyone has the right to gain special facilities and treatment to get the same opportunities and benefits in order to achieve equality and justice.”⁵

Furthermore, Jimly Assiddiqie stated that:

“The formulation of human rights in the 1945 Constitution of the Republic of Indonesia, if it includes all 27 materials covering human rights, it can cover five material groups, one of which is the Special Rights Group and the Right to Development, which consists of,

- a. Every citizen with social problems, including groups of people who are isolated and who live in remote environments, have the right to special facilities and treatment to obtain equal opportunities;
- b. Women's rights are guaranteed and protected to achieve gender equality in national life;
- c. Special rights inherent in women due to their reproductive function are guaranteed and protected by law;
- d. Every child has the right to love, care and protection of parents, family, society and the state for their physical and mental growth and personal development;
- e. Every citizen has the right to participate in the management and to enjoy the benefits obtained from the management of natural resources;
- f. Everyone has the right to a clean and healthy environment;
- g. Policies, treatments or special actions that are temporary and are outlined in valid laws and regulations which are intended to equalize the level of development of certain groups that have undergone discriminatory treatment with other groups in society, and special treatment as specified in paragraph (1) of this article, it is not included in the definition of discrimination as stipulated in Article 1 paragraph (13).”⁶

The grouping into Special Rights and the Right to Development as stated by Jimly Assiddiqie above, it includes groups of people with social problems, women and children as subjects of human rights protection. Within the same need, groups of people with disabilities can be included as subjects of human rights protection because groups of disabled people need special treatment and are guaranteed by the constitution, both in the context of *affirmative action* and *reasonable accommodation*.

2. The Rights of Disabled People in The Implementation of General Elections

The Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights that are inherently universal in human, need to be protected, respected and maintained, so that protection and human rights for vulnerable groups, especially People with Disabilities.

Respect, protection, promotion and fulfillment of the rights of Disabled Peoples are the obligation of a state. This is also emphasized in Law Number 39 of 1999 concerning Human Rights (abbreviated to Law Number 39 of 1999), so that society has the responsibility to respect the rights of Disabled People.

During this time, The Disabled People have experienced a lot of discrimination which results in not fulfilling the implementation of the rights of Disabled People As Indonesian citizens, people with disabilities have the same roles and rights as non-disabled citizens, even though so far the Government of the roles has been neglected on the rights of disabled people. Through Law Number 8 of 2016, the disabled people receive “recognition and guarantees” by the Government to play an active role and contribute their rights in various fields of life, including in politics.

Every regulation made and issued by the state through the government must take sides with the protection of the interests of the people. In this case, the society has a role to participate (*inspire*) in determining the content of every policy designed and issued by the government. This concept is based on the background of the existence of

⁴ Fajri Nursyamsi, *Kerangka Hukum, Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*, Pusat Studi Hukum and Kebijakan Indonesia, Jakarta, 2015, p.14.

⁵ Jimly Assiddiqie, *Kontstitusi dan Konstitusionalisme*, Sinar Grafika, Jakarta, 2010, p. 83.

⁶ *Ibid.*, pp. 88-89.

society's sovereignty starting with there is an engagement between individual people who give their sovereignty to the stakeholder (state) in writing, so that the stakeholder is obliged to protect and keep the lives of the people who have given their sovereignty to the stakeholder.

The Constitution of the Republic of Indonesian 1945 regulates firmly the respect, protection, guarantee and fulfillment of human rights in Article 27 paragraph (1) and paragraph (2), Article 28 and Article 28A, which regulates the following:

Article 27

(1) All citizens shall have equal position in the law and government and are obliged to uphold the law and government without exception.

(2) Every citizen has the right to work and a living that is decent for humanity.

Article 28: "Freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by law."

Article 28A: "Everyone has the right to live and has the right to defend its life and life."

The provision of Article 27 paragraph (1) and paragraph (2), Article 28 and Article 28A of the 1945 Constitution of the Republic of Indonesia implies that citizens who are people with social problems, including groups of people who are isolated and who live in remote environments, women and children have the right to be granted and guaranteed the fulfillment of facilities and special treatment to obtain equal opportunities by the state. Policies, treatments or special action that are temporary and are embodied in valid laws and regulations which are intended to equalize the level of development of certain groups that have undergone the discriminatory treatment with other groups in society.⁷

The need for efforts to respect, protect, promote and fulfill the human rights of citizens, thus, the disabled people need a special treatment and are guaranteed by the constitution, both in the context of *affirmative action* or *reasonable accommodation*. In addition to the functions and objectives of the constitution argued above, Jimly Asshiddiqie also pointed out that ten constitutional functions, one of the functions of which is as a means of manipulation and community renewal, both in the narrow and broad sense.⁸

Further elaboration of the electoral political rights of disabled people in legislation is regulated in Law Number 8 of 2016 and Law Number 7 of 2017. The rights of disabled people in Law Number 8 of 2016 are regulated in Article 8 paragraph (1) letter h which specifically regulates the rights politics of disabled people. This article is further elaborated in the provisions of Article 13 which states:

"Political rights for Disabled People include the right:

- a. to elect and be elected to public office;
- b. to express political aspirations, both written and oral;
- c. to elect political parties and/or individuals who participate in general elections;
- d. to form, being members and/or administrators of community organizations and/or political parties;
- e. to form and join organizations of People with Disabilities and to represent Disabled People at the local, national and international levels;
- f. to participate actively in the general election system at all stages and/or parts of its implementation;
- g. to obtain accessibility to the facilities and infrastructure for the implementation of general elections, election for governors, regents/mayors, and election for village heads or other names; and
- h. to get political education."

Furthermore, the regulation of the political rights of disabled people in Law Number 7 of 2017 is contained in Article 2, Article 3, and Article 5 which highlights:

Article 2 states that: "Elections are conducted based on the principles of direct, general, free, confidential, honest and fair."

⁷ Jimly Asshiddiqie, 2010, *Loc.Cit.*

⁸ *Ibid.* pp. 27-28.

Article 3

In conducting the election, the organizer of election must carry out the Election based on the principles referred to in Article 2 and its implementation must comply with the principles:

- a. independent;
- b. honest;
- c. fair;
- d. have legal certainty;
- e. orderly;
- f. open;
- g. proportional;
- h. professional;
- i. accountable;
- j. effective; and
- k. efficient.

Article 5

The disabled people who meet the requirements have the same opportunity as voters, as candidates for DPR members, as candidates for DPD members, as candidates for president / vice-President, as candidates for DPRD members, and as organizers of the General Election.

Based on the above provisions, there are 8 political rights for disabled people. However, not all of these rights have been properly expressed properly. The right to vote and be elected, for example, still cannot be distributed. Many regulations still require that every public official must be physically and mentally healthy. Even through KPU Decree Number 231 / PL.03.1-Kpt / 06 / KPU / XII / 2017 concerning Technical Guidelines for Physical and Spiritual Ability Standards and Standards for Examination of Physical, Spiritual and Narcotics Abuse-Free Health in the Election of Governors and Deputy Governors, Regents and Representatives Regents, and / or Mayors and Deputy Mayors, the KPU as the election organizer also legalizes discrimination on the disabled people. Another example is legislation and regulations relating to the recruitment of election management members that are not accessible for people with disabilities.

The recruitment of Indonesian citizens as candidates for election organizers, in this case as KPU commissioners, members of Bawaslu and members of DKPP, it still has not provided accessibility for disabled people to be involved in it. In general, there are no requirements that restrict for the disabled people to register in the recruitment selection for election management candidates. The obstacle of disabled people who wants to join as organizers is the material / substance of each test stage that must be passed by each selection participant. In the selection of Provincial Bawaslu Members for the 2017-2022 Service Period as well as in the selection for the addition of two Provincial Bawaslu members and selection of Candidates for Regency / City Bawaslu Members, for example, based on the Guidelines for Selection of Bawaslu Members Province for the 2017-2022 period of service issued by Bawaslu RI, there is no single clause hampers the accessibility of disabled people to nominate themselves as members of the Provincial Bawaslu, however in the material for stage I and stage II health tests, each selection participant must pass a test stage that is not accessible for people with disabilities, in the form of physical exercise which is certainly difficult for disabled people to participate in., in particular, people with disabilities who are included in the variety of people with physical disabilities, which cover the physically disabled and the blind.

The provisions in the discriminatory regulations as stated, it indicates that there is a wrong perspective on the disabled people. There must be a change in the perspective of legislators and regulations in seeing the conditions of disabled people. Changes that are more capable of showing the existence of state guarantees that are reflected in the regulation of respect, protection and fulfillment of the human rights of citizens, especially citizens with disabilities.

The ability of disabled people in the implementation of elections needs attention from regulators, particularly those related to the recruitment of members of election administering bodies. The role of disabled people in the General Election, for example in supervising the implementation of each election stage. Supervision is carried out starting from voter data collection to vote counting. There are organizations of disabled people such as the General Election for Access to People with Disabilities (PPUA Penca) which have started to equip their members with training and briefing on access elections at polling stations/TPS. The module contains several sections relating to the political rights of disabled people in the General Election. The information contained in the module is related to the form of assistance and services and facilities that should be provided for people with

disabilities during voting at polling stations/TPS. In the training module, there is also provision for voters with access to disabilities which will later become the basis for conducting supervision, particularly on accessibility for voters with disabilities.

It must be admitted that based on the four types of disabilities as stipulated in Article 4 of Law Number 8 of 2016, there are various types of disabilities that are difficult to accommodate as public officials, including the organizer of election. However, not all types of disabilities can interfere with activities as public officials to provide public services to the community.

Types of disabilities in Article 4 of Law Number 8 of 2016, concerning 4 types of persons with disabilities which include:

- a. People with physical disabilities;
- b. People with intellectual disabilities;
- c. People with mental disabilities; and / or
- d. People with sensory disabilities.

Referring to the division of types of disabled people above, people with physical disabilities and people with sensory disabilities are still able to use their mind to contribute ideas, ideas and knowledge towards the implementation and improvement of good public services to the community. According to the explanation of Article 4 letters a and d, it is stated that:

Letter a:

“The meaning of “People with physical disabilities” is the interference of their movement functions, including amputation, paralysis or stiffness, paraplegia, cerebral palsy (CP), stroke, leprosy, and small people.”

Letter d:

“The meaning of “Sensory disabilities” is the disruption of one of the functions of the five senses, including blind, deaf and / or speech disabilities.”

The explanation above emphasizes firmly that physical conditions do not automatically prevent the disabled people to carry out activities in the field of public services. As Election organizers (KPU commissioners, Bawaslu members and DKPP members), people with disabilities who are on a variety of physical and sensory disabilities can still carry out their duties and responsibilities properly.

The obstacles that occur to a person in the concept of disability are not seen from their physical condition, but rather looking at the obstacles that exist in environmental conditions. Therefore, the disabled people must still be guaranteed its rights, by removing the obstacles that exist in the surrounding environment, so that these rights can be fulfilled.

The explanation in Article 5 of Law Number 7 of 2017 states as follows:

What is meant by “equal opportunity” is a condition that provides opportunities and / or provides access to persons with disabilities to contribute their potential in all aspects of state and community administration.

Based on the explanation of Article 5 of Law Number 7 of 2017 above, people with disabilities can contribute their potential in all aspects of state and community administration. Power, thoughts and integrity of disabled people in supporting the performance of election organizers should be given the same appreciation and opportunity as non-disabled people. However, the access of people with disabilities is still burdensome from the material aspects of the selection test which must be paid more attention, in addition, to efforts to form regulations that support accessibility for people with disabilities to take an active role as the organizer of election.

Another issue that found from the effort to involve people with disabilities as election organizer is the socialization of Law Number 8 of 2018 and Law Number 7 of 2017 to people with disabilities, which is still not optimal. Many people with disabilities have the ability to become the organizer of election, but it does not attempt to obtain their rights due to limited information on rights guarantees regulated in laws and regulations.

The presence of Law Number 8 of 2016 aims to improve the welfare of disabled people by providing accessibility for disabled people to play a role in the administration of state affairs. Law Number 8 of 2016 provides a number of rights and obligations for people with disabilities as Indonesian citizens who have the same position as other Indonesian citizens.

So far, the regulation regarding People with Disabilities is regulated in Law Number 4 of 1997, however, this regulation does not have a human rights perspective. The content of Law No. 4 of 1997 is more charity based and the fulfillment of the rights of People with Disabilities is still considered a social problem whose rights fulfillment policies are only social security, social rehabilitation, social assistance, and improvement of social

welfare. People with disabilities should have equal opportunities in efforts to develop themselves through self-reliance as human beings with dignity.

The ratification of the CRPD in Law Number 19 Year 2011, it shows the commitment and seriousness of the Government of Indonesia to respect, protect and fulfill the rights of People with Disabilities as the result it is expected to improve the welfare of People with Disabilities. The disabled people have the right to receive respect for their mental and physical integrity based on equality with others, including the right to receive protection and social services in the context of independence, as well as in emergencies. Therefore, the Government is obliged to realize the rights contained in the convention, through adjustments to laws and regulations, including ensuring the fulfillment of the rights of Disabled People in all aspects of life such as education, health, work, politics and governance, culture and tourism, and the use of technology. information, and communication.

IV. Closing

The disabled people have a very essential role in the implementation of the General Election, both the Pilpres, Pileg and Pilkada in Indonesia. The success of the General Election is inseparable from the role of disabled people, for example the role of people with disabilities in supervising the implementation of each election stage. Supervision is carried out in a participatory form or in an active role as election organizer, both as KPU commissioners, members of Bawaslu, both at the central level and up to the sub-district level, and members of the DKPP. However, the regulations established for the recruitment of members of election management bodies have not guaranteed the fulfillment of the rights of the disabled people to participate in the selection and recruitment of members of election management bodies.

The formation of regulations is needed as the implementation of laws that provide access to the disabled people, especially to active roles as members of the election management body, to be directly and actively involved as the organizer of election. The role socialization and rights of the disabled people in laws and regulations must also be carried out better in the future.

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