

Accessibility of Persons with Disabilities in Realizing Elections with Integrity

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ABSTRACT

The right to vote and be elected is a constitutional right of citizens who are recognized as part of the rights to the same position in law and government. Elections are a very important momentum, in fact, the Election still often raises problems for persons with disabilities. Persons with disabilities are a group of persons with disabilities who most need special facilities so that they can choose independently so they can fulfill the principle of elections, namely Direct, General, Free and Confidential and Honest and Fair. So that the political rights of persons with disabilities have not been maximally fulfilled through the provision of accessibility in elections for them. This research is normative legal research. By using several methods of approach, namely: Legislative approach (statute approach), conceptual approach (conceptual approach), case approach (case approach). The results of the study show that the provision of accessibility space, not only on the momentum of giving rights (giving ballots to be tested) to persons with disabilities on voting days and hours in elections but giving accessibility to persons with disabilities in elections was given since the stages of election implementation were echoed. Ideally, Disabled Persons must have access as election organizers as well as election participants. The accessibility of persons with disabilities should not only be given to access rights as voters on the day and time of voting.

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1. INTRODUCTION

Indonesia is the State of Law as intended by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state of the law is a concept of the state that has developed from several decades. It is evident from the existence of thoughts about the concepts of the rule of law that have existed and developed long before the concept of the state law has been structured and organized as it is today. In connection with the PP, according to Jimly Asshiddiqie, the idea of the rule of law had actually been developed by ancient Greek philosophers. Plato, initially in the Republic, argued

that it was possible to realize an ideal state to achieve goodness which is rooted in goodness. For this reason, power must be held by those who know best, namely a philosopher (the philosopher king). However, in his book "the Statesman" and "the Law", Plato stated that what can be realized is the second best form that places the rule of law. In line with Plato, the aim of the State according to Aristotle is to achieve the best life possible that can be achieved with the rule of law¹.

The right to vote and be elected is a constitutional right of citizens who are recognized as part of the rights to the same position in law and government. Pp is very clear in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia that everyone has the right to the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Furthermore, in Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia that every citizen has the right to obtain equal opportunities in the government. One of the basic rights of the citizens of the country is the right to democracy and the freedom to administer, fulfill and use the right of democracy itself. This right is a very important part of the national journey, given the democratization efforts that lead to the freedom of democracy from time to time continue to develop.

One of the pillars of democracy is the principle of the trias politica which divides the three political powers of the state (executive, judicial and legislative) to be realized in three types of independent (independent) state institutions and are ranked equally with each other. The alignment and independence of the three types of state institutions are needed so that the three State institutions can supervise and control each other based on the principle of checks and balances.

Many democratic countries only give voting rights to citizens who have passed a certain age, for example, aged 17 years, and who do not have criminal records (eg prisoners or former prisoners. Elections are viewed from the perspective of Human Rights, Elections are the implementation of basic rights and the future of shared life in a society, Furthermore, Michael Saward argues that democratization of a system requires a number of minimum conditions such as basic freedom guarantees (freedom of speech and expression, freedom of movement, freedom of association, rights to equal treatment under the law); citizenship and participation, freedom of speech and expression, freedom of movement, freedom of association, the right to equal treatment under the law, citizenship and participation, administrative codes, publicity and social rights.

Therefore, elections are a forum to convey the expressions and desires of the people in determining the direction of a country that is held regularly so that in the General Election, the votes of citizens who have fulfilled the right to vote are equal to every opportunity to express their opinions directly or through directly chosen representatives. Because this right is irreplaceable (nonderogable), the participation of all groups must be protected without exception.

Even though the Election is a very important momentum, the General Election still often raises problems for persons with disabilities. Because persons with disabilities are a group of people with disabilities who most need special facilities so that they can choose independently so they can fulfill the principle of elections, namely

¹Jimly Asshiddiqie. (2009). *Menuju Negara Hukum Yang Demokratis*. PT Bhuana Ilmu Populer Kelompok Gramedia : Jakarta. Pp. 395.

Direct, General, Free and Confidential (LUBER) and Honest and Fair (JURDIL). So that the political rights of persons with disabilities have not been maximally fulfilled through the provision of accessibility in elections for them.

A fair attitude in the electoral process is the equal rights and equality of one person, one vote, one polling station, and one momentum for the day of the election. This condition will have an effect on changes in the attitude of the community that is fair to persons with disabilities in the implementation of general elections.

The mandate of Article 28H Paragraph (2) of the 1945 Constitution of the Republic of Indonesia that everyone has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice. Furthermore, Article 28I paragraph 2 states that everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment.

The obligation to provide access to elections at the international level was first established through the Universal Declaration of Human Rights in 1948 and subsequently underwent a process of development from year to year. At present, the Convention on the Rights of Persons with Disabilities is a product that clearly addresses the human rights of persons with disabilities.

Indonesia has also ratified the International Covenant on Civil and Political Rights (ICCPR), namely an international agreement produced by the United Nations (UN) in 1966. The ICCPR came into force in 1976 and has been ratified by 141 countries. The substance stipulated in this agreement is respect for human rights which obliges participating countries to transform into national law. Among the contents of ICCPR relating to the rights of persons with disabilities is Article 25 which reads "Every citizen must have the right and opportunity, without any distinction to participate in the implementation of government affairs, either directly or through freely chosen representatives; elect and be elected in periodic elections that are pure, and with universal and equal suffrage, and carried out through secret voting to guarantee freedom of expression of the wishes of the voters; and obtain access to public services in the country on the basis of equality in the general sense".

The General Election Commission as the election organizer has also made regulations relating to persons with disabilities, such as the existence of a policy for the guiding tool (braille template) intended that disability voters, especially those who are blind, can easily read the names of legislative candidates to be elected. The policy orientation made by the KPU is also problem-oriented and action-oriented because it is clearly implemented in the rules and guidebooks so that the problems experienced by persons with disabilities can be overcome by measures that have been adjusted, such as the needs of facilitators. in a polling station if there is no disability voter, KPPS officers can be a companion. Based on this description, the authors are interested in discussing it further in a scientific paper with the title accessibility of persons with disabilities in realizing elections with integrity.

2. METHOD

The type of research that the author uses in this study is normative legal research, also called library research, some also call doctrinal legal research. This research was conducted by examining primary legal material and secondary legal

material. The use of data in this study is only to support normative legal research. To find answers to various questions contained in the formulation of this legal research problem. The author uses several approaches, namely: Approach to legislation (statute approach), conceptual approach (conceptual approach), case approach (case approach). The source of legal material used in this study is primary legal material and secondary legal material. The legal material analysis method used is a method of qualitative normative analysis.

3. RESULTS AND DISCUSSION

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Indonesia is a sovereign country and has laws in carrying out a regulation.² General election activities are also a means of channeling the human rights of citizens who are very principle. Therefore, in the framework of implementing citizens' human rights, it is imperative for the government to guarantee the implementation of general elections in accordance with the prescribed constitutional schedule as according to Jimly Asshiddiqie that:³

"in accordance with the principle of popular sovereignty in which the people are sovereign, all aspects of the holding of the general elections themselves must also be returned to the people to determine them. It is a violation of human rights if the government does not guarantee the implementation of general elections, slow down the implementation of general elections without the approval of the people's representatives, or do nothing so that the general election is not held properly".

In connection with Jimly Asshiddiqie's opinion, another pp with Jean Bodien that sovereignty is often interpreted as "supreme power", is the full and highest power in a country to regulate all its territory without interference from the government of other countries. For Jean Bodien, sovereignty is absolute. King is a *legibus solutus*⁴.

However, the sovereignty theory was rejected by the flow of political pluralism, that the sovereignty theory raised by Jean Boldin was a narrow view and not based on strong reasons for rejecting pluralist societies. None of the groupings can be prioritized or higher than others. Against these problems some ideas or theories that provide answers arise, each of which raises a theory or doctrine of sovereignty.⁵

Furthermore, Jimly Asshiddiqie⁶ revealed that based on the concept of freedom/equality and the concept of popular sovereignty is the basis of democracy. People's sovereignty means the owner of people's sovereignty in the country is the

² Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo.(2018).Legal Protection Against Health Workers in Taking First Aid Medical Measures.Musamus Law Review,1(1), 40-52

³ Jimly Asshiddiqie. (2006). *Pengantar Ilmu Hukum Tata Negara*. Jilid II. Konstitusi Press: Jakarta. Pp. 172.

⁴ Samidjo. (1986). *Ilmu Negara*. Armico: Bandung. Pp 140.

⁵ Yusdar. (2012). *Format Kelembagaan dan Pola Hubungan Antara Majelis Permusyawaratan Rakyat, Dewan perwakilan Rakyat dan Dewan Perwakilan Daerah Pasca Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jurisprudentie Jurusan Ilmu Hukum Fakultas Syariah dan Hukum UIN Makassar.

⁶ Jimly Asshiiddiqie. (2003). *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat Undang-Undang Dasar NRI Tahun 1945*.Makalah disampaikan pada Seminar Pembangunan Hukum Nasional VII dengan Tema Penegakan Hukum Dalam Era Pembangunan Berkelanjutan di Denpasar, 14-18 Juli 2003. Pp.1.

people or known by the principle of power from the people, by the people and for the people. The sovereignty of the Indonesian people is channeled and organized through constitutional procedures. The Pp shows that Indonesia is a democratic rule of law (demokratische rechtsstaat) and a democratic state based on the law (constitutional democracy) that is not separate from one another⁷.

Democracy is a sign to see and mark the practice of state administration so as not to violate the boundaries of state power so as to trigger the risk of abuse of power. In addition, in the constitution, we can see and measure indicators of state success and failure in providing protection against rights basic people, including in the guarantee of democracy and human rights. Democracy and human rights are basic norms in the life of the state⁸.

According to Moh. Kusnardi and Ibrahim's Harmaily⁹ Broadly speaking, the general elections have two models relating to the membership filling system of the people's representative institutions, which are quite numerous, namely the Organic system and the mechanical system.

The organic view places the people as individuals who live together in various kinds of life alliances based on genealogy (household, family), certain functions (economy, industry), social layers (labor, peasants, intellectuals) and other social institutions.

The mechanical view places the people as a mass of the same individuals. The flow of Liberalism, Socialism, and Communism are all based on this mechanical view. The difference is that Liberalism prioritizes individuals as autonomous entities and views society as a complex relationship between individuals that is contractual in nature, whereas Socialism and especially Communism prioritizes the collective totality of society and understates the role of individuals in that collective totality. However, all of the above streams prioritize individuals as active voting rights and view the community (voter corps) as a mass of individuals who each issue one vote in each election.

Regulations regarding general elections experience a dynamic paradigm. Pp is in line with the development of the thinking of political elites, experts, and of course along with grassroots (community) aspirations. Elections in Indonesia in the New Order era were intended to elect members of the legislature, namely the House of Representatives, Provincial Regional Representatives, and Regency / City Regional Representatives.

Post-reform and amendments to the 1945 Constitution¹⁰ general elections in Indonesia are carried out directly¹¹, general¹², free¹³, secret¹⁴, honest¹⁵, and fair¹⁶ every

⁷ Ni'matul Huda. (2010). *Ilmu Negara*. Raja Grafindo: Jakarta. Pp.188.

⁸ Anshori Ilyas. (2010). *Suara Terbanyak dan Ambivalensi Demokrasi: Analisis atas Putusan Mahkamah Konstitusi Nomor: 22/PUU-VI/2008*. Pada Jurnal Konstitusi Pusat Kajian Konstitusi Universitas Hasanuddin, Makassar. Volume I, Nomor 1, November 2009.

⁹ Moh. Kusnardi dan Harmaily Ibrahim. (1983). *Pengantar Hukum Tata Negara Indonesia*. CV. Sinar Bakti: Jakarta. Pp. 333.

¹⁰ Four times the amendment: the first amendment on October 19, 1999, the second amendment on August 18, 2000, the third amendment on November 10, 2001, and the fourth amendment on August 10, 2002. The mention of the 1945 Constitution was changed to the 1945 Constitution of the Republic of Indonesia, as confirmed in the additional rules of Article II "with the enactment of this Constitution, the 1945 Constitution of the Republic of Indonesia NRI consists of the opening and articles". (Harmaily Ibrahim, 1987, *Hukum Tata Negara Indonesia*, UI, Jakarta, pp. 98)

five years¹⁷ which is intended to elect members of the House of Representatives, Regional Representative Council, President and Vice President and Regional Representative Council¹⁸ held by an electoral commission that is national, permanent and independent¹⁹.

The constitutional mandate is to meet the demands of the development of political life, the dynamics of society and the development of democracy in line with the growth of the life of the nation and state. In addition, the vast territory of the Republic of Indonesia with a large population and spread throughout the archipelago as well as having national complexity requires the organizers of elections that have integrity.

Direct election by the people is a means of manifesting popular sovereignty in order to produce a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The implementation of direct, general, free, confidential, honest and fair elections can be realized if implemented through the right concept because of the implementation elections in Indonesia today are still limited to the implementation of procedural democratic elections, not yet reflecting the implementation of substantial democratic elections because as in some statutory provisions only the level of election organizers is demanded for professionals and has integrity, capability, and accountability.

The election is an election process involving all citizens who will exercise their voting rights to elect their representatives and involve election participants and stakeholders, so that in the conduct of general elections not only the organizers are required to have integrity but all related components. Every period of the implementation of the electoral process always leaves unrelenting problems from elections to elections, including problems related to the fulfillment of electoral justice principles²⁰.

The biggest problem is the incompatibility of the legal framework of elections with the election justice paradigm. The drafted legal framework should be able to provide protection against electoral rights and if these rights are violated they can be restored. However, the existing legal framework is ineffective in maintaining the

¹¹ Direct means that voters are required to cast their votes directly and may not be represented.

¹² General means that general elections can be followed by all citizens of the Republic of Indonesia who already have the right to use votes.

¹³ Free means that voters are required to cast their votes without any coercion from any party

¹⁴ The secret means that the vote given by the voter is confidential only known to the voter himself

¹⁵ Honest means that elections must be carried out in accordance with the rules to ensure that every citizen who has the right can choose according to his will and each voter has the same value to determine the leader to be elected.

¹⁶ Fair means equal treatment of participants in elections and voters without any privilege or discrimination against participants or voters.

¹⁷ Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia

¹⁸ Article 22E paragraph (2) of the 1945 Constitution of the Republic of Indonesia

¹⁹ Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia

²⁰ Yusdar. (2010). *Analisis Hukum Penggunaan Kartu Tanda Penduduk, Kartu Keluarga, dan Paspor Sebagai Tanda Pemilih dalam Pemilu Presiden dan Wakil Presiden Tahun 2009 di Indonesia (Studi Kasus Putusan Mahkamah Konstitusi Nomor 102/PUU-VII/2009)*. Jurnal Konstitusi Pusat Kajian Konstitusi Universitas Hasanuddin.

voters' voice as a source of sovereignty. The electoral legal framework emphasizes punishment without being able to return the votes of voters.

Another problem that often occurs in the administration of elections is the issue of electoral administration, among others, on the issue of voter data, namely there are problems in the legal boundaries of the implementation of elections and population administration in 2 (two) districts/cities; validity of voter data, that DPT has been determined but there are still significant numbers of unregistered voters; the difference in the number of voter lists between Sidalih and physical data (manual documents). That the process at the stage of updating voter data from elections to elections is always a very central issue questioned by potential contestants and the public who feel that their constitutional rights have been disadvantaged as voters.

The problem certainly can be resolved by changing the concept of holding elections²¹ which have been used in Indonesia and also upholds the integrity of election administration. The integrity of the implementation of elections that can be conceptually seen from the perspective of an orderly and professional EMB management organization both in the framework of managing and implementing electoral regulations which includes operational technical arrangements stages in the formulation of the Election Commission's internal regulations (KPU)²² and Election Oversight Body (Bawaslu)²³ and in the enforcement of the code of ethics the election organizer is supervised by the Election Organizing Honorary Council (DKPP)²⁴. Enforcement of the ethics code of election administrators is a substantial part in building the quality of understanding and instilling ethical awareness for election administrators regarding the importance of carrying out their duties and functions professionally and independently and the obedience to the principles of holding elections by participants and the public.

In practice, the elections held by a democratic country only fulfill procedural requirements. This PP also happened in Indonesia in the era of the New Order authoritarian regime. Whereas in the reform era, as a rule of law, substantial improvements to the election need to be carried out. An internationally recognized standard and a reference for seeing an election as democratic is a standard made by the International Institute for Democracy and Electoral Assistance (International IDEA).

Elections with integrity can be seen if elections can be carried out based on the principles of democratic elections and the fulfillment of universal suffrage and political equality as reflected in international election standards with professional, impartial and always transparent organizers carried out through an election cycle. Likewise, if it is to create electoral integrity, then in pp guarantee of the right to vote and be elected, there is a need for a legal

²¹ Election Organizers are the implementation of the stages of the Election carried out by Election Organizers.

²² Article 1 number 8 of Act Number 7 of 2017 concerning General Election Organizers that the General Election Commission, hereinafter abbreviated as KPU, is a National, permanent, and independent Election Organizing Agency tasked with carrying out Elections.

²³ Article 1 number 17 of Act Number 7 of 2017 concerning General Election Organizers that the Election Oversight Body, hereinafter abbreviated as Bawaslu, is an election organizing institution which is tasked with overseeing the implementation of elections in the entire territory of the Unitary Republic of Indonesia.

²⁴ Article 1 number 24 of Law Number 7 Year 2017 concerning General Election Organizers that the Honorary Board of Election Organizers, hereinafter abbreviated as DKPP, is an institution tasked with handling violations of the Election Organizers' code of ethics and is a unified function of the Election administration.

framework that accommodates all citizens who meet the conditions guaranteed to be able to participate in elections without discrimination.

Voting rights are very basic rights for all citizens without exception. The state guarantees the protection of the rights of its citizens who fulfill the requirements to be registered as voters through the rule of law in the form of a right to vote. Amnesty International released. Indonesia violations of human rights (HAM).²⁵

In the Covenant on International Civil and Politics, the International Covenant on Civil and Political Rights (ICCPR) stated that the existence of basic human rights and freedoms that are absolute must not be reduced even in an emergency. A free right of retroactive punishment, rights as legal subjects, freedom of thought, belief or religion. Likewise the right to choose and be elected in a periodic election that is universal. This indicates that political rights both to choose and to be elected are the most basic rights.

The golput phenomenon is one of the characteristics that general elections are no longer a place to channel aspirations properly. Some people assume that elections are merely activities to commit fraud against the principles of democracy. Especially if we look back, the era of the new order. In those days the democratic process was only a sweetener. How not, prospective leaders have been determined in advance, while the election is only a shield that democracy has been carried out. However, if viewed further, the election process is not as desired by all Indonesian people. Elections are only a party that produces nothing, just waste money.

Therefore, one of the causes of the abstention phenomenon is the inaccessibility of the organizing process by certain groups, for example, groups of people with disabilities.

To be able to carry out justifiable elections, the election organizers at every level from the RI KPU, Provincial KPU, Regency / City KPU and Ad-hoc Election organizers, namely PPK, PPS and KPPS are required to always maintain their integrity in carrying out all the stages of the election as well as giving space to minority groups such as their pp to persons with disabilities.

Regulatory reconstruction is absolutely necessary to regulate the implementation of elections, including regulating the implementation of elections, so that they can have strong integrity in carrying out the stages of the election.

The word reconstruction comes from English, reconstruction, which means return as before or compilation (depiction) again. In terms of reconstruction means the formulation or rearrangement of a concept returned to its origin²⁶.

In organizing general elections in several countries²⁷, Voter participation is often a common issue because it relates to how many citizens are present to cast their votes at the polling place. The level of participation is often related to the legitimacy of the results of elections because it will determine the people chosen by the people to occupy certain positions.

In another context, voter participation is also related to citizens' trust in democracy, the political system, election organizers and parties who will represent them to govern and become representatives of citizens in parliament. Participation chooses to be one of the needs so that the sustainability of democracy and the political system does not experience obstacles. Election as the main instrument of democracy is

²⁵ Imanuel Marthen Dumais, Muhadar, Marwati Riza. (2018). The Right of Suspects to Obtain Legal Aid at Criminal Investigation. *Musamus Law Review*, 1(1), pp. 53-62

²⁶ Habiburrahman. (2011). *Rekonstruksi Hukum Islam di Indonesia*. Kencana Prenada Media Group: Jakarta. Pp. 17.

²⁷ Like: Australia and the United States.

one instrument that bridges the voice of the people as the sovereign owner to give a mandate to someone as a people's representative or as a ruler who will sit in the government. High and low participation rates are related to the level of legitimacy and trust of citizens to their representatives or people who are mandated to run the government and issue policies. As one part of the sustainability of democracy, the level of voter participation will also have an impact on who will win the general election and regulate the lives of many people.

Therefore, some countries that embrace democracy, including Indonesia, make participation as an agenda that cannot be ruled out in the electoral process, especially in the presence or absence of voters. The implementation of elections with integrity is not only the demands of the election organizers but also demands the election participants and especially demands the accessibility of marginalized groups (groups of people with disabilities).

4. CONCLUSION

Indonesia as a rule of law, it is fitting to provide accessibility for persons with disabilities in the holding of general elections. The provision of accessibility space, not only on the momentum of giving rights (giving ballots to be tested) to persons with disabilities on voting days and hours in elections but giving accessibility to persons with disabilities in elections is given since the stages of election implementation were echoed. Ideally, Disabled Persons must have access as election organizers as well as election participants. The accessibility of persons with disabilities should not only be given to access rights as voters on the day and time of voting. In the course of each episode, the holding of elections in Indonesia is only fulfilling procedural requirements. This PP also happened in Indonesia during the New Order regime. Whereas in the reform era, as a rule of law, substantial improvements to elections need to be carried out to create elections with integrity.

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