

PROGRESSIVE LEGAL PROTECTION OF THE VOTING RIGHTS OF PEOPLE WITH DISABILITIES OF MENTAL DISORDERS IN INDONESIAN ELECTIONS

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ABSTRACT

The purpose of this research is to study the authority of the Constitutional Court of the Republic of Indonesia (MK RI) in protecting the constitutional rights of citizens, specifically the disability vote for the category of people with mental disorders (ODGJ) in general elections (elections). This study uses a case study approach (MK case) and the literature study. The results showed that the Constitutional Court of the Republic of Indonesia through Decision No.135/PUU-XIII/2015 had a progressive role in protecting the constitutional rights of the disability category of people with mental disorders (ODGJ) through judicial review of the law. Decision of the Constitutional Court RI No.135/PUU-XIII/2015 has canceled the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Regional Head Elections which have the potential to discriminate against citizens' voting rights. Based on the decision of the Constitutional Court of the Republic of Indonesia, it shows that judges have followed the law by emphasizing spiritual intelligence; carry out the law with the search for deeper meaning; carrying out the law is not merely according to the principle of logic, but with feelings, care and involvement (compassion) to the weak community groups, all of which are patterns of progressive legal reasoning. Concrete forms of progression of the Constitutional Court's decision No.135/PUU-XIII/2015 in protecting the voting rights of ODGJ disabilities in elections are: (1) anti-discrimination of the suffrage rights of ODGJ citizens; (2) encourage awareness of citizens respecting ODGJ; (3) strengthening the existence of legal policies in favor of ODGJ voters; and (4) encourage the courage of election organizers to record ODGJ voters. While the progressive influence of the Constitutional Court's decision is: (1) can significantly increase ODGJ voter participation in elections; (2) the registration of ODGJ permanent voter lists (DPT) is getting easier; (3) fulfillment of voting rights (TPS) specifically for ODGJ; and (4) changing the community's bad stigma about ODGJ.

Keywords: MK RI, Suffrage, Mental Disorders, Progressive Law.

INTRODUCTION

Starting with Law No. 8 of 2015 concerning General Elections of Regional Heads (Pemilukada), this seemed to generalize those groups of people who are mentally disturbed/memory as people who are unable to vote, so they do not have the right to vote.

Citizens who are marginalized in the system in elections are people with mental disorders (hereinafter referred to as ODGJ). Through the ruling of the Constitutional Court of the Republic of Indonesia (MK RI) No. 135/PUU-XIII/2015 which canceled the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Pemilukada which states that "registered Voters are those who are not disturbed mentally/his memory" finally restore and restore the constitutional rights of citizens with the category of mental disorders that have been discriminated against. Of course, this ruling is a milestone that was successfully carved by the Constitutional Court of the Republic of Indonesia in protecting the suffrage of all citizens without exception including marginalized groups even in the design of modern Indonesian state administration.

Judicially, there are two categories of voters in the election, namely normal voters and voters with mental disorders. Normal voters are voters according to the provisions of Article 198 paragraph (1) of Law No.7 of 2017 concerning Elections which confirms that *"Indonesian citizens who are voting on the day of voting are already 17 (seventeen) years old or older, married, or already ever married have the right to vote "*. These voters did not have psychiatric obstacles when registered as voters up to the polling stage at the polling station on polling day. Of course, it is different from voters with mental disorders who are categorized as disabled.

The data shows that the number of voters who are categorized as disabled has a significant number in influencing the victory of candidates. For example, in 2014, the number of disabled people in general was recorded at 343,865 people. Meanwhile, the number of voters with mental disabilities was 8,717 (Irfan, 2018).

Based on the KPU List Voter data in the 2019 elections was 192,866,254 (Andayani, 2019). Meanwhile, the number of disability Voters in the 2019 Election DPT is 363,200 or 0.191% of the DPT. A total of 0.029% of voters is mentally disabled and mental disability voters, totaling 54,295 people (Kami, 2019). Although the amount of 0.029% in the 2019 General Election DPT, constitutionally it is the right of citizens who must be protected by their existence so as to produce democratic elections.

There are several characteristics of democratic elections technically in the administration of elections, namely: First, the percentage of the degree of voter coverage in the voter list, the degree of updating of the voter list, and the degree of voters reaches 95-100 percent. Second, the number of non-voters and the number of invalid votes is low in holding various types of elections. Third, guarantees various forms of service to voters that make it easier for registered voters to use their voting rights, such as voting before polling day for voters who are absent from voting days (absentee voting), voting through post offices (mail voting), polling stations special voting (TPS), mobile voting (TPS) and convenience for voters who are disabled (Soemeri et al., 2011).

The Constitutional Court of the Republic of Indonesia has a strong role in protecting the voting rights of people with disabilities in the category of people with mental disorders to be equal to other voters. The courage of the Constitutional Court of the Republic of Indonesia to make decisions that are sensitive to the issue of protecting the right to vote for ODGJ is a manifestation of decisions aimed at upholding the principles of constitutionalism. Because the constitution is the highest meta-norm that makes the highest legal basis for all state life. Therefore, the constitution is the main reference for all state institutions (Sweet, 2009). RI Court

Decision No. 135/PUU-XIII/2015 contains progressive meaning, namely (1) towards progress; and (2) towards the improvement of the situation (<http://kbbi.web.id/progresif>). So that this decision is in line with Satjipto Rahardjo's, (2008) idea of progressive law, which directs the law to be able to keep up with the times, be able to answer problems that develop in society, and be able to serve the community by relying on the morality aspect of law enforcement resources as a response to positivistic paradigms.

Through the decision of the Constitutional Court RI No. 135/PUU-XIII/2015 Constitutional Court judges managed to build an argument that did not fully look at the positivistic aspects of the norm, but was stronger based on sociological aspects. A the judge of the Constitutional Court were not limited to seeing the provisions in Article in Law No. 8 of 2015, but rather looks at and considers the condition of society in seeing people with mental disabilities as citizens. Based on these main points, the problem in this paper is, How is the role of the Constitutional Court of the Republic of Indonesia in protecting the constitutional rights of citizens related to disability suffrage categorized by people with mental disorders in the election through the ruling of the Republic of Indonesia Court No.135/PUU-XIII/2015 in progressive legal perspective?

RESEARCH METHODS

This research is a kind of descriptive and explanatory research. Descriptive because it will describe or describe the Republic of Indonesia Decision No. 135/PUU-XIII/2015 which is considered progressive in protecting the suffrage of people with mental disorders. Exploratory because this research will explain in depth about the causality relationship between 2 (two) things, namely (1) the existence of the Constitutional Court's decision in adjudicating a judicial review of the Law on the 1945 Constitution related to the suffrage of people with mental disorders and (2) explaining the influence of the Constitutional Court's decision towards increasing voter participation in elections (Mahfud, 1993). This research is also a normative legal research (legal research) or doctrinal research, namely research that is applied specifically to the science of law (Istanto, 2007). The law here is interpreted as principles of truth and justice that are natural and universally applicable; this is a characteristic of philosophy-oriented reasoning (Sulistiyono, 2006).

Normative legal research (legal research), is used with the reason to be able to identify the concepts or ideas and principles of law which are the benchmarks of the Constitutional Court in deciding material test cases through legal philosophy and "*normwissenschaft*" or "*sollenwissenschaft*" (Soekanto & Sri, 2006).

The specification of this study is normative legal research, which describes the products of the Constitutional Court's decision No. 135/PUU-XIII/2015 which are considered progressive in protecting the suffrage of people with mental disorders. Types of legal data according to Soerjono Soekanto & Sri, (2006) in terms of their nature, can be classified into three types: primary legal materials, secondary legal materials and tertiary legal materials. First, primary legal materials, namely primary and authentic data. Second, secondary legal material, which is data that cites from other sources, so that it is no longer authentic. Third, tertiary legal material, i.e. supporting data relevant to the object of research.

Data collection techniques are systematic efforts in order to obtain data sources that will be used as research material. Because this research is a qualitative study, data collection is done in natural conditions and more data collection techniques on participatory observation and documentation (Sugiyono, 2008).

DISCUSSION

The Role of the Constitutional Court of the Republic of Indonesia in Protecting the Constitutional Rights of Citizens in Elections

Not only as the guardian of the constitution, is the existence of the Constitutional Court also the final interpreter of the constitution (The Interpreter of the Constitution) and the protector of human rights. Since the inclusion and regulation of human rights in the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has a function as a protector of the constitution in particular protecting human rights (the protector of the human rights) (Siahaan, 2006).

Constitutionally in Article 24C of the 1945 Constitution of the Republic of Indonesia (NRI 1945), the Constitutional Court of the Republic of Indonesia functions as the guardian of the constitution which has the authority to (i) test the Law against the Constitution; (ii) testing the authority of state institutions the authority is given by the Constitution; (iii) decide upon the dissolution of political parties, (iv) dismissal of the president, and (v) decide on disputes over election results.

The MK's limitative authority granted by the 1945 Constitution intersects with the "*political sphere*", therefore the Constitutional Court is required to understand and comprehend the political world, by not being trapped and slipping into conflicts of interest in favor of certain politics. Instead, it will continue to reinforce the understanding of constitutionalism by issuing verdicts of constitutional law that are fair, objective and independent.

One of the instruments of democracy is the exercise of sovereignty in the form of general elections (elections) to elect members of the DPR, DPD or president and vice president. So the existence of elections is a simple indicator of whether or not the democratic system in a country operates. Because, with the election, there is a regular circulation of elite political leaders in a fixed term. In addition, citizens are given the space to participate in the form of the right to vote and the right to be elected. Both of these rights are one of the human rights in the category of civil and political rights inherent in every citizen.

Voting rights and the right to be chosen are compared to a currency. Both of these rights are a measure for the state's ability to protect citizens so that no one is discriminated against using it. The right to vote is the right for citizens to exercise their political rights in electing political leaders in accordance with their aspirations in elections, while the right to be elected is the right for citizens to be elected as political leaders in democratic institutions, namely the legislature and president/vice president through an election mechanism.

These two rights are generally regulated in each country's constitution, so if there are

countries that do not regulate these rights in the constitution, they can be declared as part of human rights violations (Bisariyadi, 2018). In the context of the Indonesian constitution the suffrage is also regulated in Article 1 paragraph (2), Article 6A paragraph (1), Article 19 paragraph (1), and Article 22C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. These provisions indicate the existence of a legal guarantee inherent for every Indonesian citizen to be able to exercise their voting rights. The provision emphasizes that all forms of legal products governing the general election should open up the widest possible space for every citizen to be able to exercise their voting rights in elections.

In general elections universal suffrage is recognized. This suffrage is one of the fundamental prerequisites for a country that adheres to modern constitutional democracy. In the constitution the right to vote and the right to be elected constitute a set of constitutional rights which is equally strong to be protected as an inseparable part of the constitution.

Explicitly Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right to vote by affirming all citizens are at the same time in law and government and must uphold the law and government without exception.

Even based on the Decision of the Constitutional Court in Case Number 011-017/PUU-I/2003, dated February 24, 2004 states:

"Considering, that the constitutional rights of citizens to vote and be elected (right to vote and right to be candidate) are rights guaranteed by the constitution, laws and international conventions, then restrictions on irregularities, negation and elimination of said rights are violations of the rights of citizens"

The intended international convention, namely Article 26 of the International Covenant on Civil and Political Rights confirms the legality of the provisions with the article sound as follows:

"... All people are equal before the law and are entitled to the same legal protection without any discrimination. In this case the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, gender, language, religion, politics or other opinions, national or social origin, wealth, birth or other status"

Herein lies the correlation between the Constitutional Court as the guardian of the constitution in which the Constitutional Court has a strategic role to protect citizens' voting rights in elections in the form of judicial review to test the material of laws that are contrary to the meaning of the constitution in terms of protecting the citizens' voting rights.

The Role of the Constitutional Court RI to Protect the Voting Rights of ODGJ Disabilities in Elections

The election function is a means of democracy so that citizens can use their right to vote to elect their future leaders. That is why participation is a very important aspect to be able to say that the elections have taken place freely and fairly (free and fair).

One segment of the electorate that received less attention and was discriminated systemically in the Legislative Elections in the regions was the disabled (diffable). What is meant by a person with a disability is as referred to in the provisions of Article 1 of Law No. 4 of

1997 concerning Disabled Persons, namely: "... any person who has a physical and/or mental disability, which can interfere or is an obstacle and an obstacle for him to do properly, which consists of: (a) physically disabled; (b) people with mental disabilities; (c) people with physical and mental disabilities ".

Disability voter participation is very low in legislative elections in the regions, and even tends to choose not to use the right to vote (abstentions) which in the study of elections called Voter Turnout (Blais, 2000 & 2006; Blais & Carty, 1990; Geys, 2006). As a result, the holding of legislative elections in the regions has not been able to strengthen local democracy. If mapped Golput can be divided into three typologies, namely Ideological Abstentions, Political Abstentions and Pragmatic Abstentions (Riewanto, 2009).

In general the rights possessed by persons with general disabilities and special disabilities categories of people with mental disorders (ODGJ) in elections include: the right to get information about elections, the right to be registered to vote, and the right to access to polling stations (TPS). In addition to the three main rights of persons with disabilities above, there are also other rights that must be obtained by persons with disabilities in the election, namely, when voting, voters with disabilities can be assisted by other people who are chosen and the person must keep their choice confidential, persons with disabilities with a type of tuna disability the blind, and other physical disabilities must be facilitated by the election organizing committee such as providing braille letters to make it easier for them to vote.

Barriers and obstacles that often occur in people with disabilities and disabilities in the category of people with mental disorders (ODGJ) during the elections, which often do not take into account the voting rights of persons with disabilities which are also often underestimated by the community because of their limitations. In addition, the lack of transparency of data from the General Election Commission (KPU) concerning persons with disabilities and the number and position of persons with disabilities many are not mapped so that many voters with disabilities are not registered in the permanent voter list. This is due to the reluctance of data officers to ask the type of disability group data and cheating data officers not to register voters with disabilities.

On the other hand, also persons with disabilities have not received the right to have the opportunity and treatment to be able to act and move according to their conditions (Daulay, 2013). There are still disregarding the political rights of persons with general disabilities and special disabilities categories of people with mental disorders (ODGJ) in the General Election, including:

1. The right to be registered to vote;
2. Right to access to TPS;
3. The right to a secret vote;
4. The right to be elected as a member of the Legislature;
5. The right to information includes information about elections; and
6. The right to participate in elections (Muladi, 2009).

This of course is a barrier to the mobility of people with disabilities and special disabilities in the category of people with mental disorders (ODGJ) in order to obtain civil and political rights, especially during elections as part of the democratization process. Disability and knowledge related to disability exist in our social reality (Lipsky & Gartner, 1997). The right to

vote is the constitutional right of citizens who cannot be discriminated against on any basis. Disability rights are not a legal policy but constitutional rights. The basis of equality for persons with disabilities is Article 27 paragraph (1) of the 1945 Constitution.

The existence of the Constitutional Court verdict Decision of the Constitutional Court RI No.135/PUU-XIII/2015 shows the role of the Constitutional Court which is very significant and strong in efforts to protect the disability of voting rights in general and specifically disability categories of people with mental disorders (ODGJ). By requiring more serious data collection on people with mental disorders who have the right to vote based on the decision of the Constitutional Court.

The MK's Progressive Role in Protecting the Voting Rights of ODGJ Disabilities in Elections through MK RI Decision No.135/PUU-XIII/2015

The following will describe the progressive analysis of the decision of the Constitutional Court of the Republic of Indonesia No.135/PUU-XIII/2015 in an effort to protect the special disability vote rights of the ODGJ category in elections.

Compatibility of the constitutional court decision no. 135/puu-xiii/2015 with progressive legal criteria

Decision of the Constitutional Court RI No.135/PUU-XIII/2015 which invalidates the provisions of Article 57 paragraph (3) letter a of the Local Election Law because it is contrary to the 1945 Constitution in principle is a decision that Protects the Voting Rights of ODGJ Disabilities.

The Constitutional Court's decision was congruent with the main idea of progressive law adapted from Satjipto Rahardjo, who stressed that carrying out the law fulfills at least three ways, namely: First, implementing the law using spiritual intelligence. Second, run the law with the search for deeper meaning. Third, running the law is not merely according to the principle of logic, but with feelings, caring and involvement (compassion) to weaker groups (Suteki, 2015).

If examining the Constitutional Court's decision is compatible with the idea of progressive law, among others, it can be proven from the considerations of KM judges who decided this, namely:

Execute the law using spiritual intelligence

Decision of the Constitutional Court that annulled the provisions of Article 57 paragraph (3) letter a of Law 8 of 2015 concerning Amendment to 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 into Acts and Provisions declared contrary to the 1945 Constitution contains the spirit of carrying out the law by using spiritual intelligence. The spiritual intelligence of the Constitutional Court judge can be read from the statement in his decision stating that, the word "*medium*" in Article 57 paragraph (3) letter a of Law 8/2015 shows temporary, so the purpose of the above provisions is to refer to the statement of the DPR,

is a limited treatment for someone at certain times and conditions, and not the treatment for the future. According to the DPR, this provision does not preclude the voting rights of the concerned Indonesian citizen in the general election if at the time of the voting the concerned Indonesian citizen is not disturbed in his mind and/or memory. Such matter is regulated in Article 57 paragraph (2). Judges of the Constitutional Court can understand that in everyday people's interactions the term mental disorder and/or memory disorder is always imagined as a "crazy" condition, or what is medically referred to as mental illness (psychosis). When in fact "crazy" is only one type of mental abnormality. Another type of mental abnormality is mental disorder (neurosa), which has a very broad range of categories. The wide range of categories of mental disorders and/or memory disorders in everyday language can be seen from various terms, including "stress", "anxiety", "paranoid", "talkative", "phobia", and "bad thoughts". Certainly not the same condition between people with mental disorders such as psychosis with people who "only" experience stress in mild levels. The statement of the Constitutional Court justices in the legal considerations above can be categorized as spiritual intelligence, that is, thinking that is not limited to rules (bound), also not only contextual, but out of the existing situation and trying to find deeper truth, meaning, or value. Thus, thinking becomes a kind of infinite game (infinite game). Thinking this way does not want to be bound and limited by existing standards, but transcends and penetrates the existing situation (transcendent). This is what is referred to as Spiritual Quotient (SQ) (Zohar, 2012).

Execute the law by seeking deeper meaning

Judges through this decision have been able to find the search for the deepest meaning of Article 28D Paragraph (1) of the 1945 Constitution states that, *"Every person has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law"*, the provisions in Article this expressly prohibits the differentiation of treatment before the law, including in the case of regulating the right to vote. In addition, there is no article in the Election Law that prohibits persons with disabilities, including persons with mental disabilities, from exercising their right to vote. So that the legal policy prohibiting the ODGJ disability from losing their voting rights in elections has markedly damaged the deepest meaning of the constitution. Therefore, the Prohibition of Persons with Mental Disabilities in Article 57 Paragraph (3) Subparagraph a of Law 8 of 2015 concerning Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors into Laws and Regulations the provision was declared contrary to the 1945 Constitution by the Constitutional Court through Decision Number 135/PUU-XIII/2015.

Judge of the Constitutional Court through this decision has also found the deepest meaning in the law by interpreting progressively that the mental disability of ODGJ is not an obstacle to not being able to exercise their right to vote. This can be related to referring to Law No. 8 of 2016 concerning Persons with Disabilities, there are 4 disability groupings. There are physical disabilities, intellectual disabilities, mental disabilities, and sensory disabilities. Without intending to put aside physical and sensory disability, this paper deliberately focuses on intellectual and mental disability groups.

Understanding intellectual disability is the disruption of the function of thought because intelligence is below average. For example, slow learning, mentally disabled, and Down syndrome. The mental disability is the disruption of the function of thought, emotion, and behavior. The variants are quite diverse. There is schizophrenia, bipolar disorder, depression, anxiety (extreme anxiety), and personality disorders. These five conditions are categorized as psychosocial. These people are often called people with mental disorders (ODGJ) (Handoko, 2019). In addition to the psychosocial category, there is also a developmental disability category that affects the ability of social interaction. This is still a type of mental disability. For example, autism and hyperactivity.

Running the law with this deep legal meaning can be read through the Constitutional Court's decision when the Constitutional Court makes legal considerations as follows:

"... if what is meant by the legislators is that those who are exempt from voter registration are people with psychosis, who have characteristics such as living vagrant, eating carelessly, asocial, not even aware of their own existence, According to the Court, this matter does not need to be specifically regulated because people with such psychosis are certain, with reasonable reasoning, they will not be registered by the voting registrar because people with such psychosis do not have the desire to participate in the vote ... "

Furthermore, the Constitutional Court judge argued that:

"The need to regulate the prohibition of being registered as a voter for people with psychosis, according to the Court, is equivalent to the need not to be regulated for the registration of people facing death (sakaratul death), being in a coma, and so on. When people with psychosis are specifically regulated in the Law a quo, especially in the provisions regarding voter registration, even placed in the category of mental/memory disorders, this will also bring legal consequences to people with mental/mental disorders who are not psychotic. that before the law especially in relation to the right to vote and the right to be registered in the electoral register, which assumes the ability to make choices, each category of mental disorder and/or memory impairment as described above may not be treated equally. This means to limit the rights of voters who happen to be people with mental disorders and/or memory impairment, the Act must take into account the characteristics of each type/type of mental disorder and/or memory impairment from voters. The DPR in its statement said that in interpreting the phrase "mentally/mentally disturbed" must refer to the context of Article 1 number 1 and number 3 of Law 18/2014 on Mental Health, and Article 148 of Law 36/2009 on Health ".

Article 1 of the Mental Health Law states that, "In this Act what is meant by:

1. Mental Health is a condition in which an individual can develop physically, mentally, spiritually, and socially so that the individual is aware of his own abilities, can overcome pressure, can work productively, and is able to contribute to his community.
2. People with mental disorders, hereinafter abbreviated as ODGJ are people who experience disturbances in thoughts, behaviors, and feelings manifested in the form of a set of symptoms and/or meaningful behavioral changes, and can cause suffering and obstacles in carrying out people's functions as human beings. "

Article 148 of the Health Law states that:

1. People with mental disorders have the same rights as citizens.
2. The rights referred to in paragraph (1) include equality of treatment in every aspect of life, except regulations.

After the Court has examined carefully, both the Health Law and the Mental Health Act do not explain further how to find out or at least the criteria for assessing whether a citizen is mentally and/or memory impaired. Even if Law 18/2014 formulates certain criteria, or that such criteria can refer to mental health criteria according to medical science, psychology, and/or psychiatry, determining whether someone is mentally disturbed and/or his memory cannot be done by just anyone. Certain expertise (professions) is required to be able to appropriately assess someone's mental and/or memory impaired.

Even Article 73 of the Mental Health Act in conjunction with Article 150 of the Mental Health Act stipulates that mental health examinations for legal purposes must be carried out by psychiatric specialists and even involve specialists in other fields and/or clinical psychologists.

The organizer of the general election is certainly not the right institution to carry out such tasks because the election organizing agency is not designed to carry out a mental health and/or memory diagnosis. The absence of appropriate guidelines and institutions to carry out the provisions of Article 57 paragraph (3) letter a has the potential to cause violations of the constitutional rights of prospective voters to be registered as prospective voters.

From the arguments of the Constitutional Court justices, it shows that the method of interpreting the Constitutional Court justices is closer to the Judicial Activism interpretation model, which means interpreting the constitution more deeply or extra ordinary or progressive actions in an effort to interpret the constitution based on a judge's personal view of the truth he believes.

Judicial activism that is as one way of judges in finding law. In this case judicial activism is carried out in two categories: (1) legal discovery (*rechtsvinding*) if there are no laws governing an issue, but due to the need for judges must find the rule of law; (2) can be in the form of interpretation if there is already a provision for a problem, but efforts are needed to resolve it outside the concertative provisions, namely more progressively (Amsari, 2013). Running the Law with feelings, concerns and involvement (compassion) to weaker groups.

The Constitutional Court's decision contains the spirit of progressive legal meaning, which is not only according to the principle of logic, but with feelings, care and involvement (compassion) to weaker groups.

The Constitutional Court's verdict was in favor of the weaker or more vulnerable, namely the mental disability in the category of ODGJ so that they would be protected and respected like other citizens. In this case, it can be read from the considerations of the Constitutional Court justices through a decision stating:

"Considering whereas the formulation of Article 57 paragraph (3) letter a according to the Court has equated the consequences for all categories of people with mental illness and/or sufferers of memory impairment. If the provisions of Article 57 paragraph (3) letter a are independent provisions and therefore contain legal norms that are also independent, the Court is of the opinion that such provisions indicate indications of violation of the Petitioner's constitutional right to vote [vide Article 22E paragraph (1)] and the right to get legal recognition [vide Article 28D paragraph (1)]. Especially when Article 57 paragraph (3) letter a is read in conjunction with paragraph (4) which then stipulates that voters who happen to be mentally and/or memory impaired at the time of voter registration will lose their right to vote in the general election at that period, whichever the time of holding a general election is different from the time of voter registration ".

However, because the provisions of Article 57 paragraph (3) letter a are provisions that must be read in relation to paragraph (4) juncto paragraph (2), the unconstitutional nature of paragraph (3) letter a has been removed by paragraph (4) juncto paragraph (2). Legal norms in Article 57 paragraph (4) juncto paragraph (2) have closed or eliminated the potential for unconstitutionality of paragraph (3) letter a so that paragraph (3) letter a can still exist without containing potential interference to the constitutional rights of the Petitioners, specifically the right to vote in the general election. Although the question then arises, namely what is the significance of the existence of Article 57 paragraph (3) letter a. If this is not the case, the provisions of Article 57 paragraph (3) may not exist, because the essence of the norm in the provisions of paragraph (3) has been negated by the provisions of paragraph (4) juncto paragraph (2) and therefore no longer significantly affects the right of the Petitioners to exercise their right to vote.

Therefore the provisions of Article 57 paragraph (3) are related to the human rights dimension, in the form of restrictions on citizens' voting rights. With the emergence of the Constitutional Court's decision, it is clear that the Constitutional Court has progressively made decisions that are more in favor of legal subjects (Rechts Person) which are weaker in the social strata of society. This legal alignment with the weak is congruent with the idea of Rahardjo & Dimiyati, (2004), who asserts that progressive law is a law that makes liberation, both in the way of thinking and acting in law, so as to be able to let the law flow only to complete its task of serving humanity and humanity. Because the law aims to create justice and prosperity for all people.

Forms of Progressiveness of the Constitutional Court Decision No. 135/PUU-XIII/2015 in Protecting Voting Rights of ODGJ Disabilities

Legal arguments and analysis on legal considerations conducted by Judges of the Constitutional Court in interpreting the 1945 Constitution which is contextualized to safeguard and protect the constitutional rights of citizens, especially the voting rights of ODGJ disabilities in elections. The shape of the progression of the Constitutional Court's Decision caused the following:

Antidiscrimination of ODGJ Citizens' Voting Rights

The Constitutional Court Decree number 135/PUU-XII/2015 has influenced anti-discrimination against citizens' suffrage especially for ODGJ because before this decision the state still did not have special attention on ODGJ except for physical categorized voting rights, such as blind, disabled, tuna deaf or other physical disabilities. Legally, ODGJ includes Indonesian citizens (WNI) who have the same constitutional rights in accordance with Article 28D paragraph 1 of the 1945 Constitution which states, *"Every person has the right to recognition, guarantees, protection, and certainty of legal justice and equal treatment before the law."* Also regulated in the Human Rights Act, the Mental Health Act, the Health Act and the Ratification Act of the Convention Regarding the Rights of Persons with Disabilities.

This Constitutional Court ruling that protects the right to vote for ODGJ is an important part in efforts to reduce stigma, encourage rehabilitation and integration of people with mental disorders in order to be accepted and active again in social life. The Constitutional Court's ruling has emphasized that assessing a mental disorder is not an inability. Determination of the capacity of people with mental disorders to exercise their right to vote is not based on diagnosis or symptoms, but rather based on their capacity to understand the purpose of the election, the reasons for participating, and the selection of candidates (Novellino, 2019). The Constitutional Court's ruling influences the antidiscrimination paradigm in social perspectives to further consider deeply in assessing someone who must be associated with cognitive function (thinking ability), controlling aggressiveness, and behaving according to the norms prevailing in society.

Encouraging Citizens Awareness Respect ODGJ

The Constitutional Court's decision has progressively influenced the public's perspective in understanding and respecting the rights of ODGJ voters. The Constitutional Court's ruling has markedly increased public confidence in state law; in this case the 1945 Constitution was used as the main reference for the Constitutional Court to make a decision protecting ODGJ's suffrage. After the birth of the Constitutional Court's ruling has encouraged a number of non-governmental organizations (NGOs) that support the Constitutional Court's ruling and conduct various advocacy and appeals to the community to better respect people with disabilities ODGJ.

Strengthening the Existence of ODGJ Pro Disability Legal Policies

The Constitutional Court's decision has influenced the legal policy so that every person with disabilities ODGJ has the same rights and opportunities in all fields of life and livelihood. The areas of life and livelihood in question are aspects of religion, health, education, social, employment, economy, public services, law, culture, politics, defense and security, sports, recreation, and information (Muladi, 2009).

Encouraging the Moral of Courage in Election Organizer to Record ODGJ Voters

The Constitutional Court's decision has encouraged the morale of the election organizer of the General Election Commission (KPU) because then the KPU issued a letter Number 1401/PL.02.1-SD/01/KPU/XI/2018, the KPU registered voters with mental disabilities (ODGJ) to the List Permanent Voters (DPT) for the 2019 Election. The Constitutional Court's decision has morally encouraged the courage of the Election Oversight Body (Bawaslu) to supervise the General Election Commission (KPU) related to guarantees for persons with disabilities ODGJ in the 2019 election to be registered in the permanent voter list (DPT) (Farisa, 2019).

Progressive Effect of the Constitutional Court's Decision in Increasing Voter Participation in 2019 General Elections

The progression of the Constitutional Court Ruling Number 135/PUU-XIII/2015, resulted in some changes in the dynamics of the general election law towards a better change including significant changes in people's behavior in respecting the voting rights of people with mental

disorders (ODGJ), such as increased voter participation; the registration of ODGJ permanent voter lists is easier; fulfillment of rights through the provision of Special TPS for ODGJ; as well as changes in community stigma in respect of ODGJ.

Increased Voter Participation

The consequence of the Constitutional Court Decision Number 135/PUU-XIII/2015 related to political rights, namely the right to vote for people with mental disabilities is an increase in the number of voters. In 2014, there were 8,717 voters with mental disabilities. Whereas in 2019, 0.029% of voters were mentally disabled and mental disability voters, totaling 54,295 people. This has also proved that with the Constitutional Court Decree Number 135/PUU-XIII/2015 born in 2015 it has been able to become a legal reference for election organizers related to the suffrage of persons with mental disabilities that increased from the 2014 election to the 2019 election. Correlation positive relationship between the decisions of the Constitutional Court Number 135/PUU-XIII/2015 with an increase in the number of mentally disabled voters due to, several things:

1. There is no longer any doubt for election organizers from the center to the Voting Committee (PPS), in providing space for people with mental disorders (ODGJ) to vote
2. There is a legal basis for administrators to make legal and policy products in the administration of elections by distinguishing between mental disabilities and mental disorders and/or memory disorders that are relatively permanent or chronic; and mental, and/or memory disorders that are temporary, non-permanent or episodic.
3. Increased awareness for the community, which will invite relatives of people with ODGJ to choose.
4. Increase the activity of Mental Hospital staff in providing services to mental disabilities to use voting rights.
5. Giving good confidence to ODGJ no longer afraid to give their political rights to designated polling stations. This is because all parties, both KPPS, PTPS, and Election Contesting Witnesses are ready to serve the use of the right to vote from the initial stage to the end of the voting stage.

The Recording of DPG ODGJ is Easier

With the decision of the Constitutional Court RI Number 135/PUU-XIII/2015, by separating the classification of a) mental disorders and/or memory disorders that are relatively permanent or chronic; and b) temporary, non-permanent, or episodic mental and/or memory disorders. So it is easy to prepare the Permanent Voter List, given the existence of clarity of the size applied in the Constitutional Court's decision regarding the suffrage of people with mental disorders. Thus, mental hospitals can provide assistance in identifying people with mental disorders who have the right to vote based on the decision of the Constitutional Court of the Republic of Indonesia.

Fulfillment of Rights through Provision of Special TPS for ODGJ

The Polling Place Arrangement (TPS), regulated in Law No. 7 of 2017 concerning General Elections, namely Article 350 paragraph (1) and paragraph (2).

In the provisions of Article 350 of the Election Law, in the formation of TPS, there are 2

conditions that are relevant to this article, first, the number of voters in the TPS is only set to a maximum number of 500 people, but does not regulate the minimum number of voters. Second, determining the location must be in a place that is easily accessible, including by ODGJ. Thus, the Election Law gives KPU freedom to form a special polling station in order to facilitate ODGJ.

Decision of the Constitutional Court Number 135/PUU-XIII/2015 is not only able to increase voter participation, but also should be interpreted as providing protection and privileges to ODGJ in exercising their right to vote in the General Election, including the provision of special TPS that guarantees ODGJ participation. As happened at the Regional Mental Hospital Dr. Arif Zainudin Surakarta 77 patients with mental disabilities that have been verified by a team of psychiatrists to ensure proper voting rights at TPS 108. In addition to the voting booths being made comfortable in air-conditioned rooms, the Voters Organizing Group Officer (KPPS) selected consists of doctors and nurses who understand well treating their patients who are being treated (Abrori, 2019).

Changes in Community Stigma in Respect of ODGJ rights

After the Decision of the Constitutional Court of the Republic of Indonesia Number 135/PUU-XIII/2015, KPU issued KPU Regulation Number 11 Year 2018 concerning the Compilation of Domestic Voter Lists in Organizing General Elections and KPU Regulation Number 37 Year 2018 concerning Amendment to PKPU No. 11 of 2018 concerning the Compilation of Domestic Voter Lists in Organizing General Elections. With the PKPU issuance, there is an indirect equation in the essence of the regional head election and the Presidential election.

Initially, the provisions on the exemption of the right to vote for voters who were not mentally/mentally impaired were still regulated in KPU Regulation Number 11 Year 2018 regulated in Article 4, which specifies:

1. To be able to exercise the right to vote, Indonesian citizens must be registered as Voters unless otherwise stipulated in the Act.
2. Voters as referred to in paragraph (1) must meet the following requirements:
 1. Even 17 (seventeen) years of age or older on polling day, already married, or already married;
 2. Not being disturbed soul/memory;
 3. not being revoked of his right to vote based on a court decision that has permanent legal force;
 4. Domiciled in the administrative area of the Voters as proven by KTP-el;
 5. In the case that the Voters do not have an KTP-el as referred to in letter d, they can use a Certificate issued by the service office that administers population affairs and local civil registration;
 6. Not currently a member of the Indonesian National Army, or the National Police of the Republic of Indonesia.
3. Voters who are mentally/mentally disturbed as referred to in paragraph (2) letter b, so that they do not qualify as Voters, must be proven by a doctor's certificate.
4. Indonesian citizens who have been registered in the Voter Register, apparently no longer fulfill the requirements referred to in paragraph (2), the intended Indonesian Citizens cannot exercise their voting rights.

Then, the changes to PKPU occurred through PKPU No. 37 of 2018, by removing the voter requirements for people who are not mentally/memory impaired and the provisions of paragraph (3), so that the provisions of Article 4, determine:

1. To be able to exercise the right to vote, Indonesian citizens must be registered as Voters unless otherwise stipulated in the Act.
2. Voters as referred to in paragraph (1) must meet the following requirements:
 1. Even 17 (seventeen) years of age or older on polling day, already married, or already married;
 2. Removed;
 3. Not being revoked of his right to vote based on a court decision that has permanent legal force;
 4. Domiciled in the administrative area of the Voters as proven by KTP-e
 5. In the case that the Voters do not yet have an KTP-el as referred to in letter d, they can use a Certificate issued by the office that administers population affairs and local civil registration; and
 6. Not currently a member of the Indonesian National Army, or the National Police of the Republic of Indonesia.
3. Deleted.
4. Indonesian citizens who have been registered in the Voter Register, apparently no longer fulfill the requirements referred to in paragraph (2), the intended Indonesian Citizens cannot exercise their voting rights.

When examining the 2 KPU regulations, there are several things that can be identified weaknesses, namely:

1. PKPU No. 37 of 2018 does not provide a more detailed arrangement, regarding active actions of the state, to look for people who are already healthy from mental illness/memory that was previously infected. Because in fact returned to the regional KPU policy. Whereas, actually, there needs to be a mechanism, a report from the village head, that there are a number of people who are suspected of being mentally/mentally ill. So that it is necessary to provide a doctor who identifies citizens to find out whether it is possible to mentally make an election.
2. Through this mechanism, the examination of a team of doctors to citizens outside the Psychiatric Hospital suspected of having psychiatric problems is carried out for the preparation of the Permanent Voter List (DPT) and Additional Voter List (DPTb)

Therefore, the Progressive Decision of the Constitutional Court in granting political rights to citizens with mental/mental illness who qualifies is not followed by a progressive policy by the KPU. With no active action in the field checking in the preparation of DPT and DPTb, in the end is inversely proportional to the progressive MK decision. In other words, the Constitutional Court's decision was not followed by the implementation of progressive policies as well.

However, such changes in community stigma in respect of ODGJ rights can be found in the facts that occur in West Bandung Regency. The West Bandung Regency Election Commission noted 130 people with mental disorders (ODGJ) scattered in 165 villages was included in the permanent voter list (DPT) for the Presidential and Vice President Elections and the 2019 Legislative Elections. However, the Chairman of the West Bandung KPU Adi Saputro said that his party did not provide a special polling station (TPS) for them. Instead, the voting officers will conduct a ball pick-up system by preparing a mobile polling station. The traveling polling station officers will also go to voters who are sick or voters who have physical

limitations, so they cannot go to the polling station to fulfill their rights in choosing presidential candidates or legislative candidates.

Indirectly, the decision of the Constitutional Court Number 135/PUU-XIII/2015 is felt not only to increase voter turnout, but to change the way of the community by actively providing mobile polling stations as a form of respect for the constitutional rights of ODGJ (Husodo, 2019).

CONCLUSION

The MK of the Republic of Indonesia plays a progressive role in protecting the right to vote in elections against the disability category of People with Mental Disorders (ODGJ) through the entry into force of the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Pemilukada which has the potential to discriminate against the voting rights of persons with disabilities in the ODGJ category. The decision of the Constitutional Court RI No.135/PUU-XIII/2015 is considered progressive because it shows that the judges of the Constitutional Court of the Republic of Indonesia have followed the law with a search for deeper meaning; carrying out the law is not merely according to the principle of logic, but with feelings, caring and involvement (compassion) to weaker groups. The progressive form of the Constitutional Court Decision No.135/PUU-XIII/2015 in protecting the voting rights of ODGJ disabilities includes: (1) anti-discrimination of the voting rights of ODGJ; (2) encourage awareness of citizens respecting ODGJ; (3) strengthening the existence of legal policies in favor of ODGJ; and (4) encourage the courage of election organizers to record ODGJ voters. While the progressive influence of the Constitutional Court's decision in the election are: (1) can significantly increase ODGJ voter participation in elections; (2) the registration of ODGJ permanent voter lists (DPT) is getting easier; (3) fulfillment of voting rights (TPS) specifically for ODGJ; and (4) changing the community's bad stigma about ODGJ.

RECOMMENDATIONS

Based on the research results above, it is necessary to submit a number of recommendations as follows:

1. The Constitutional Court of the Republic of Indonesia (MK RI) needs to continue to maintain progressive forms of decisions primarily aimed at caring for the disabilities of the ODGJ category as one of the weakest groups in the social structure of society.
2. Civil society organizations and academics need to care about the progressive decisions of the Constitutional Court of the Republic of Indonesia, such as this decision to be reviewed and socialized to the public so that the Constitutional Court's decision can be immediately implemented in the practice of public life
3. The House of Representatives and the Government as the norm-makers of the Act so that in compiling the Election Law to be more concerned with the weakest groups of people so as not to be discriminated against by the Election Law.
4. Election organizers (KPU and Bawaslu) need to be more sensitive to the most vulnerable groups so that their policies do not increasingly discriminate against them.

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