

# Constitutional Right to Vote for People with Mental Disorders (PMWD) with Case Study in Yogyakarta, Indonesia

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# Constitutional Right to Vote for People with Mental Disorders (PMWD) with Case Study in Yogyakarta, Indonesia

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## Abstract

The right to vote as one of the constitutional rights is certainly in favor of all Indonesian citizens, including those who suffer mental disorders. The Constitutional Court through the Constitutional Court Verdict Number 135/PUU-XIII/2015 has stated people with mental disorders, as long as their condition is not permanent, they can vote. However, this verdict has the potential to violate the constitutional rights of the citizen. This research location will be carried out in the Special Region of Yogyakarta where it is one of the provinces with the largest mental disorder communities in Indonesia. This research uses a normative juridical method and focusing on literature studies as its main sources. This research will conclude about the method used by people with mental disorders to access their right to vote. Furthermore, it will also explain the extent to which the Constitutional Court's decision has an impact on patients with psychiatric disorders in the Special Province of Yogyakarta.

**Keyword:** constitutional rights; right to vote; people with mental disorder

## Introduction

Political rights contain the nature of universality and equality, which means that everyone has the same opportunity in the electoral process, arranges political access that is not limited by anything, and channels references that are owned by each person through voting mechanism.<sup>1</sup> This is in line with what has been mandated in Law Number 18 of 2014 concerning Mental Health, which in Article 2 letter h states that one of the principles implemented in the Law is the principle of non-discrimination. Article 3 of the same law also guarantees the rights of a citizen suffering from mental disorders. This article then aims to find out how persons with disabilities, especially persons with disabilities with the category of mental retardation, channel their right to vote through general elections. Especially considering that political rights (to vote and be elected) are under gable rights for everyone and without discrimination.<sup>2</sup>

Thus, it can be seen that every Indonesian citizen has the right to vote regardless of the condition of each person. In general, Indonesia's General Election Commission (KPU) has established special regulations that provide opportunities for persons with disabilities to be able to exercise their rights. The KPU has basically provided a means for persons with this type of mental retardation to be able to channel their constitutional rights. This is then an elaboration of the Constitutional Court Decision Number 135/PUU-XIII/2015 which in its decision states that as long as a person does not have a mental illness that can permanently affect a person's choice, then that person still has his constitutional right to vote. The problem here is that the Constitutional Court decision has the potential to injure the constitutional rights of citizens, especially someone suffering from mental disorders. The Court's decision has great potential to injure the constitutional rights of a person with a mental health disorder, especially their right to vote. It is possible for people with mental disorders to recover, although it requires strict assistance and a long process.<sup>3</sup> Yogyakarta Province based on Basic Health Research (Riskesdas) is choose as research location as it has the number of people with psychiatric disorders that

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has increased from a number of 2.8% in 2013 increased quite high to 10% in 2018. This makes Yogyakarta Province occupy the 2nd position with the largest number of people suffering from psychiatric disorders. This explains that there are 10 people with psychiatric disorders every 1000 people in Yogyakarta Province. This illustrates the legal conditions that occur in the field that there are a number of people in Yogyakarta Province who have the potential to be impaired by their right to vote, which is a citizen's constitutional right as a result of the Constitutional Court Decision.

### Research Methods

<sup>6</sup> This research is a conceptual research with normative juridical research. Normative legal research is legal research that puts down the principles, values and legal norms that are contained in statutory regulations, as well as court decisions.<sup>4</sup> The approach used in this paper is a statutory approach. The technique of collecting legal materials in this study was carried out by using literature study techniques. This research uses the deductive legal material analysis method, in which the legal materials that have been collected are classified and then conclusions are drawn from general matters into specific matters.

#### Urgency of Inclusive Elections for Patients with Psychiatric Disorders

The implementation of inclusive elections is very relevant to be implemented in Indonesia, considering that the right to vote is not only owned by normal people, but also for those with disabilities. The inclusiveness of an election can be said to be successful when everyone who has the right to vote can participate in the electoral process by selecting the party who is most deemed capable of solving their problem.<sup>5</sup> One indicator that an election can be said to be of quality is the large level of community participation from all groups in an overall electoral process.<sup>6</sup> Including those with psychiatric disorders, the implementation of inclusive elections in Indonesia itself is far from being feasible. The "human side" of state administrators has not yet grown to provide all the needs of voters with this special category, making it very difficult for them to be able to exercise their rights.<sup>7</sup>

Realizing inclusiveness in the general election process itself is not as easy as turning your hand. Reflecting on the electoral process that was carried out by the Bolivian state in 2002, the participation of both parties is very strong to be able to realize inclusiveness in general elections. Apart from the participation of the parties, inclusiveness also needs to be achieved in several ways, including: fundamental changes in the electoral system, understanding of the ideal conception of elections (through an appropriate electoral education process), and social consolidation of those who wish to be included in the concept. Inclusiveness of elections that are being formed.<sup>8</sup> The failure of the process of inclusiveness can be the beginning of a disaster that general elections, where elections are only held as a formal process to maintain power from a group of people who easily gain power.<sup>9</sup>

#### Participation of People with Mental Disorders in Yogyakarta in the General Election

According to research conducted by the Provincial Health Office of Yogyakarta in 1999, of the 3.5 million residents of the Province of Yogyakarta, 12,322 of them were sufferers of psychiatric disorders. The results of the 2017 Yogyakarta regional head election show that the turnout rate for voters with disabilities has increased compared to the results of the last election in 2014. The results of the 2017 Yogyakarta regional elections were 350 out of it. 494 persons with disabilities registered in the Permanent Voters List (DPT) who exercised their voting rights. This means that the percentage of persons with disabilities recorded in the DPT who exercised their voting rights in the 2017 Yogyakarta city elections reached 70.9%.<sup>10</sup>

<sup>2</sup> Seeing the position of the participation of persons with mental disorders in the general election can be examined from 2 points of view, philosophical and sociological. Philosophically, the revision of Law Number 8 of 2015 refers to the consideration that all basic human rights must be fulfilled, without exception.<sup>11</sup> Despite experiencing conditions of limited mental illness, every Indonesian citizen has rights directly guaranteed by the Constitution. Sociologically, the role of the state is very important to create political justice for every level of society. Efforts made by the government for people with mental disorders began to

be implemented in the 2019 general election. This is the start of a change in perspective that not all people with mental disorders cannot participate in the general election. Efforts to change this point of view are based on 4 things that are always stigmatized in people with mental disorders, including equation of mental disorders with crazy people; concern about acts of vandalism that may be committed by people with mental disorders on voting day; concern that voices made by people with mental disorders can be manipulated and misused; and doubts about the capabilities of the mentally impaired at the time of voting.<sup>12</sup>

In the eyes of the law, people with psychiatric disorders have the same rights as citizens who are not affected. Giving special treatment for sufferers of mental disorders is the maximum effort for respecting, advancing and fulfilling human rights for them.<sup>13</sup> Contrary to this, the opinion that developed in the community later said that people with mental disorders are considered not to have the capability to make legal decisions, and it is even considered dangerous if a person with mental disorders continues to make legal decisions.<sup>14</sup>

Based on data collected by the Ministry of Health, it is stated that the number of people with mental disorders in Indonesia reaches 7% of the total population of Indonesia as a whole. In the 2019 general election alone, the number of people with mental disorders who are counted in the DPT is 3,500 people. In accordance with the principle of the presumption of liberty which generally applies within the scope of human rights, it is the state that is burdened with the responsibility of being able to guarantee that every law that is enacted can accommodate all citizens and does not limit their movement.<sup>15</sup> The state must be able to provide guarantees for people with mental disorders, in this case non-permanent mental disorders, to continue to have access to their constitutional rights.

Sufferers of psychiatric disorders are proven to have sufficient knowledge, a sense of responsibility for their actions, and the majority of them have positive feelings about the implementation of general elections.<sup>16</sup> This explains that in the concept of democracy and rule of law, every vote that comes from a citizen cannot be reduced in any way. This is in line with the main pillars of the establishment of a rule of law, one of the pillars in

order to create a strong rule of law requires guarantees of equal treatment before the law, protection of human rights, and social control.<sup>17</sup>

Looking at the categorization of people with psychiatric disorders, there are several differences between someone who is said to be legally competent and someone who is psychiatrically unhealthy.<sup>18</sup> The word refers to the legal situation faced by each sufferer.<sup>19</sup> This in turn causes the person to be considered legally competent. Law focuses on the thoughts and mindset of a person who commits legal action, not looking at the organs that cause interference to a person who commits legal action.<sup>20</sup> If a person is said to be legally competent in taking a legal action, then that person is still legally able to take legal action.

The Commission has directed that persons with mental disabilities to be included in the DPT.<sup>21</sup> The KPU noted that there were 43,769 people with mental disabilities who had the right to vote in the 2019 elections. This number is expected to increase because data collection is still ongoing. In the 2014 election, there were only 8,717 voters with mental disabilities, while in the 2019 election it reached 43,769 people.<sup>22</sup>

## Conclusion

The implementation of inclusive elections is a very important part if the state wants to protect the right to vote for people with psychiatric disorders to participate actively in elections. Inclusive elections not only provide opportunities for persons with disabilities in general, but also pay attention to the needs of those who are also Indonesian citizens. Providing access to people with mental disorders will open up access for them in the policy making process, so that it will be possible for them to form policies that are more inclusive and friendly. Election inclusiveness can be the first step to improve the overall level of life of persons with disabilities. The right to vote for people with mental disorders is a right inherent in them. In general, the right to vote protected by laws and regulations applies to all Indonesian citizens. This then brings a consequence that people with mental disorders are one of the legal subjects whose voting rights must be protected.

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