



(REVIEW ARTICLE)



Legal review of the constitutional court decision number 135/PUU-XIII/2015 on the voting rights of people with mental disorders (ODGJ) reviewed from the foundation of positive law

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Abstract

People's participation as citizens in the implementation of government is the main requirement in filling positions. To be able to take part in elections, people must comply with the provisions that have been ratified by law. The KPU "General Election Commission" as the organizer of the democratic party gives the right to vote in elections to People with Mental Disorders (ODGJ). ODGJ are allowed to take part in the 2024 elections as stated in the decision of the MK "Constitutional Court". The aim of this research is to examine juridically "the decision of the Constitutional Court Number 135/PUU-XIII/2015 concerning the voting rights of People with Mental Disorders or ODGJ and the impact that may arise from the participation of ODGJ in taking part in the election". The author chose a normative juridical approach (Legislative Approach). The research carried out by the author used a normative juridical approach (Legislation Approach). The data used in this research uses secondary data, namely data or input sourced from literature and statutory regulations. For this type of research, the author applies qualitative descriptive research. Based on research results, the ruling "Constitutional Court Decision Number 135/PUU-XII/2015" states that people suffering from mental disorders can vote only if they do not experience permanent mental disorders that have prevented them from voting in general elections, according to mental health experts. Based on this, there is disharmony between the decision of the constitutional court and positive law in Indonesia. Apart from that, the possible impact of ODGJ's participation in the election is the emergence of various frauds in the democratic party process.

Keywords: Republic; Indonesia; Court Decision; Mental Disorders; Voting Rights

1. Introduction

People's participation as citizens in the implementation governance is the main requirement in filling a position. To be able to follow elections, the people must undergo provision which has been legalized by law. In order to be able to get the right to vote in elections in Indonesia, citizens must be 17 years of age or older, registered in the DPT "Permanent Voters List", and have the ability to show their KTP "Resident Identity Card" when exercising their right to vote. Determining voters to carry out elections is considered fair if the right choose inhabitant country fulfilled without any differences in terms of (different tribes, race, and religion). So that every citizen has a perfect opportunity to use their right to vote in the election. It is important to note that the determination of voters must be carried out fairly and with integrity. This process must consider who is considered to have the ability to participate in the election, not only based on the right to vote of each citizen. Therefore, it is important to ensure that voters are selected based on eligibility, including healthy physical and mental conditions. This will ensure that the general election process runs fairly and with integrity.

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KPU “General Election Commission” as the organizer The democratic party provides voting rights in elections to People with Mental Disorders (ODGJ). The KPU provides assistance facilities to People with Mental Disorders to be able to exercise their right to vote. People who suffer from mental disorders according to KBBI “Big Indonesian Dictionary” are referred to as people with mental disabilities, or in scientific terms are known as mentally retarded. Therefore, the KPU decided to treat ODGJ and other people with disabilities in the same way. Based on the Election Law, namely: “Article 5 Number 7 of 2017, people with disabilities that “meet the requirements to have the same opportunity as a voter, as a candidate for DPR member, as a candidate for DPD member, as a candidate for President/Vice President, as a candidate for DPRD member, and as an Election Organizer.” Idham Holik as Commissioner of the Indonesian KPU said that people with mental disorders are allowed to participate in the 2024 Election as stated in the decision of the Constitutional Court (MK).

In the content of “Decision of Case No. 135/PUU-XIII/2015 filed by the Mental Health Association, the Center for General Election Access for the Disabled (PPUA PENCA), the Association for Elections and Democracy (Perludem)”. In its decision, the Constitutional Court determined that people with mental disorders can vote if they do not have a permanent mental disorder that has eliminated their skills in voting in elections. The right to vote is a basic right of every citizen who has fulfilled the requirements to go to a polling station and vote for a candidate for public office.

The act or action in carrying out the election is a legal act. Called a legal act, it is because every action that has been taken by a person or legal entity can produce rights and obligations as a result of the expression of will. To carry out a legal act, a person must first have the ability. Ability in this case is the ability to act as a legal subject, which means everything that has rights and obligations so that it can act according to law. A capable person is a person who is mature and has common sense. Meanwhile, people who are not yet adults and are not of sound mind are considered legally incompetent.

From the perspective of the essence of the concept, it is found that the act of choosing is not just a right that is given, but also an obligation that must be accounted for to the entire community, the state, and also to God Almighty. Therefore, in carrying out action law charged only to people who have a healthy mind and soul and understand the legal burden. Therefore, the author wants to know and is interested in this research, namely : “Legal Review of the Constitutional Court Decision Number 135/PUU-XIII/2015 Concerning Voting Rights People with Mental Disorders (ODGJ) Reviewed from Positive Law.” And hopefully this scientific work can be a reference material in the academic world.

2. Method

The author applies a doctrinal research method or called “library research” which is based on legal materials such as primary legal materials and secondary legal materials. The author also applies a normative legal approach or called “legislative research”. For the type of research, the author applies a qualitative descriptive research type.

3. Result and discussion

3.1. Legal Review of “Constitutional Court Decision on Constitutional Court Decision Number 135/PUU-XIII/2015 Concerning the Voting Rights of People with Mental Disorders (ODGJ) Reviewed from Positive Law”

The considerations decided by the panel of judges in a case are something very valuable when determining the fulfillment of the judge's decision which contains balance, benefits and of course legal provisions. The legal provisions are brief, specifically in essence with poured out material “ Article 57 verse (3) letter a Law Number 8 of 2015 concerning the 1945 Constitution”, the Constitutional Court affirmed :

Right in choose Also right in nomination as voters when the election is a obligation all over public Indonesia which complements existing rules.

Agenda nomination voters is location strategic which is “ indirect” or “continuous” with the completion of voting rights.

Mental health problems and having mental problems are two different conditions. even though in terms of structure they are no different.

Not all people who are currently experiencing mental and/or mental problems will lose their opportunity to run as voters in general elections, and

Uncertainty of procedures/characteristics and inability of appropriate agencies/professions to carry out psychological assessments of potential voters, causing rules water have an explanation that arise to divert constitutional rights in effect.

In the existing explanation, the existing provisions, the Constitutional Court's provisions should not be doubted. There is a ruling "Constitutional Court decision number 135/PUU-XII/2015, the explanation of which is Article 57 paragraph (3) letter of Law Number 8 of 2015" is contrary to the 1945 Constitution in line with the phrase "having mental/mental problems" does not mean "having permanent mental and/or mental problems" which in the professional explanation in The mental health sector has eliminated the opportunity for individuals to be nominated and register at elections.

The action in carrying out the election is a legitimate legal action. Every action must be accounted for before the law, those who can be accounted for are those who are competent in law. In Article 1330 of the Civil Code, a person can only be considered competent and able to make an agreement if he meets the criteria of adulthood based on his age and is not under guardianship. Article 433 of the Civil Code regulates guardianship in general, stating that "All adults who are always in a state of stupidity, madness or dark eyes, must be placed under guardianship, even though they are sometimes able to use their minds". Thus, a person who can carry out a legal act must be an adult and not under guardianship such as making an agreement. The explanation above "constitutional court ruling number 135/PUU-XII/2015" there are types of individuals who are not legally eligible because individuals who are experiencing mental health And his mind is mentioned as individuals who are not legally eligible and are sheltered under existing regulations.

If we examine it further in relation to criminal law where to know about the explanation of why the criminal offense was removed such as the explanation of the right person (justifier) and the explanation of the wrong person (forgiver). The justification reason means an explanation that emphasizes the nature of the violation viewed from the objective side or the side of the action. While the reason for forgiveness is an explanation that emphasizes the wrong or not of the executor of a criminal case viewed from the subjective side or from the side of the executor. From this forgiving reason, for example, is ODGJ, because the perpetrators do not have reason or are crazy so that their actions cannot be restrained. "Article 44 paragraph (1) of the Criminal Code: Anyone who commits an act that cannot be accounted for because his soul is disabled in growth or disturbed by illness will not be punished". In essence, R. Soesilo's explanation is because they cannot be punished for their behavior, they cannot be accounted for because of the lack of perfection of their minds, namely the power of the mind, brain power, and intelligence of reason. In addition, illness changes one's mind, such as insanity, hysteria, epilepsy, and various other mental illnesses. Based on this, people with mental disorders cannot carry out legal actions or cannot be responsible for their behavior.

Even in Islamic law it seems that people with mental problems are not can charged a punishment will not quite enough answer, because on generally voting during elections is a mandatory thing to do for the nation, state and country and for Allah SWT. Imam Al-Mawardi emphasized that those who can have the right when choosing a superior must have three conditions, namely being fair when carrying out the right considerations, having insight and having a mind and condition of knowledge that allows him to choose a person who should indeed be able to be an imam and the most legitimate and wise when giving rules later. Of course, the mind factor is the number one aspect in Islamic law to determine an individual as a mukallaf. A person as a mukallaf is considered to have the ability to act in accordance with the commands and prohibitions of Allah. He is hampered by his obligations, rules, instructions, and various other obligations, then if he has a mistake, then he is subject to a punishment that is adjusted to what he did. A mukallaf can be punished if he is rational and can understand the taklif given to him. Person the righteous is the individual who already mentioned can behave legally, whether related to Allah's rules or His prohibitions.

Even though an individual has reached the age of puberty but turns out to have mental problems or is insane, the taklif rule is not applied to him. This indicates that there has been a disharmony or inconsistency with the "Constitutional Court Decision Number 135/PUU-XII/2015". In a situation where civil law, criminal law, and Islamic law have different views from the decision of the constitutional court, which causes clear legal uncertainty.

3.2. The Impact of the Participation of People with Mental Disorders or Abbreviated as ODGJ in Implementing Elections in Indonesia

The right to vote for individuals with mental health problems arises polemic in society. The participation of people with mental disorders raises public speculation and public response. Some parties agree that people with mental disorders should be included in the permanent voter list and many parties also make it difficult for ODGJ to register as permanent voters in the election. The participation of people with mental disorders during the general election may explain actions related to the technical implementation of the election. Individuals with mental disorders are individuals who suffer from problems in mental, behavioral and spiritual aspects that are categorized in the structure of a group symptom

and/or changeover behavior Which means, as well as can give rise to their suffering and problems when carrying out their individual functions as human beings.

In view of society's life, people with disorders soul Still Lots equated with "person crazy" so Possible just during the election process where they are not provided with a special place, it can be used by a number of individuals to disrupt the election process. It cannot be denied that the emotional condition of people with mental disorders is not completely stable so that the possibility of provoking their emotions can occur anytime and anywhere. Another possibility is that only during the voting process they are directed by certain actors to win a particular candidate pair. In addition, in an emotional state Which No stable the person Which suffer from disturbance soul Can can only make the ballot paper unusable (torn or incorrectly marked).

Based on matter the, should person Which suffer from disturbance soul No can provide right his voice as a voter. The consideration is how they can vote if their mental and spiritual condition is not healthy. How can people with mental disorders vote based on their own conscience, sometimes they are not even aware of doing something. Moreover, in carrying out elections to elect people's representatives who will influence the progress or decline of the country for the next five years is in the hands of the people. Including people with mental disorders in the implementation of the democratic party seems ambitious for power. In fact, people with mental disorders do not care to think about themselves, let alone think about who will lead this nation.

Moreover, the KPU has not issued clear regulations regarding whether the person who takes care of the doctor's certificate is the individual himself, his family or the election organizers themselves. In addition, there is a requirement to include people with mental problems as voters in the election must include a certificate from a doctor or mental health expert. This is also stated in verdict court constitution number 135/PUU-XII/2015 "the existence is not explained as: suffering from mental problems and/or incurable mental problems as explained by professionals in the field of mental health. That in include letter information doctor by person with mental disorders to participate in the election cannot be used as a guarantee. It is possible that in practice in society the doctor's certificate could be manipulated. It is possible that the doctor's certificate was made by an individual claiming to be a doctor or health worker who actually does not have the authority to issue a health certificate. In reality, not all doctors can examine or treat people with mental disorders. A psychiatrist is needed who specifically handles people with mental disorders. Not only psychiatrists, but also psychologists can usually help handle people with mental disorders. Is the KPU able to prepare psychiatrists or psychologists at every TPS throughout the country to provide certificates or accompany people with mental disorders in determining their choice? A large number of psychiatrists and psychologists are needed to be able to assist in voting in the election. Even in line with the current situation, people with mental problems cannot be said to be healthy because there are no special tools which can be used to measure whether a person suffering from the disorder is completely healthy or not. So this can become a fertile ground for those who want to cheat and look for opportunities to get what they can make happen.

In addition, to build the basis of the election, namely Luber Jurdil "Direct, General, Free, Secret, Honest and Fair" must be implemented as it should be. People who have healthy minds and souls sometimes still cannot apply the principles of elections properly. There are still many people who are easily influenced not to act honestly and fairly. Moreover, people who are mentally ill and their minds are very likely to have difficulty in implementing the principles the election. Especially in channeling their voting rights must be accompanied of course regarding confidentiality and objectivity cannot be guaranteed. Meanwhile, those who accompany people with mental disorders also have no guarantee whether they can act honestly or not. To interpret the free and fair elections for people with mental disorders will certainly be difficult. Disturbances to voting rights in general elections in Indonesia often happens. Minority groups or vulnerable groups are intimidated in subtle or aggressive ways. Intimidation can be defined as the use of power to pressure someone to vote or not vote. One of form intimidation can in the form of motion body or words Which thrown out when someone is about to cast their vote in the election voice. With thus, Can So impact on person with mental disorders who wish to exercise their right to vote may be intimidated.

These issues are certainly problematic and must be given serious attention by the government and election organizers. Choosing the future of the nation requires people who are fully aware and of course are able to choose the right people's representatives for the future of the nation in the next five years.

4. Conclusion

A legal review of the "Constitutional Court Decision Number 135/PUU-XIII/2015 concerning the voting rights of people with mental disorders" states that individuals who are experiencing mental disorders/memory disorders are not interpreted as permanent mental disorders, and have a statement from a health professional that they are competent

to vote, then the person is allowed to vote in the election. However, provisions regarding the rights of individuals with mental disorders are contained in civil law, criminal law and Islamic law and cannot be charged with responsibility because they are considered incapable when carrying out legal acts. On basically The right to vote must be accounted for by God Almighty as well as by our beloved homeland.

The impact of the participation of ODGJ during the Election can cause polemics in society and various frauds during the process. The participation of people with mental disorders in the election can cause problems related to the technical implementation of the election.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

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