

Fulfillment of the Constitutional Rights for Persons with Intellectual Disabilities in General Elections

Bambang Sumantri¹, Ane Nor Cahya Ilmiah², Salfanil Farizi³

^{1,2}Faculty of Law, Universitas Trunojoyo Madura, Indonesia

³School of Literature, Language, and Culture, Omo Nippon Academy, Japan

Corresponding Author: bambangskuy10@gmail.com

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ABSTRACT

The purpose of this research is to examine the fulfillment of the constitutional rights of persons with intellectual disabilities against the fulfillment of constitutional rights as citizens in general elections that are not mentioned concerning their voting rights in regulations on general elections. The contribution of this research is to equalize the provision of legal certainty of the State to persons with intellectual disabilities in general election regulations. In writing research at this time, normative legal research methods are used, as well as various legal approaches such as statutory approaches, case approaches by examining court decisions, and concept approaches. The results of the research in this paper show that legal protection to people with disabilities with disabilities in general elections as voters also have equal or equal rights based on the Constitution, Human Rights Regulations, Regulations on the Ratification of the Convention on the Rights of Persons with Disabilities, Regulations on Persons with Disabilities that exist in the State of Indonesia, each of which provides legal protection related to the right to vote for people with disabilities with disabilities. However, persons with disabilities have not fully received legal protection in the general election regulations, resulting in conflicting norms, so the author provides a solution for testing the Election Law which is directly contrary to the rules that are equal as well as to the state constitution to the Constitutional Court to provide legal certainty in accordance with what is made an ideal by the state.

Introduction

General elections, often called elections, are a form of democracy over power in a government that is applied as a system of transferring power.¹ The main pillars of a democratic state are based on the channeling of people's aspirations in the electoral system, democracy is a form of implementation of people's sovereignty as has been clarified in articles 1 (1) and (2) of the 1945 Constitution of the Republic of Indonesia in the implementation of the principle of sovereignty to form "representatives" of the people, so that the formation of a government carried out

¹ Yudi Widagdo Harimurti et al., "Democratic Education on the Village Consultative Body Election in Bangkalan," *Journal of Social Studies Education Research* 11, no. 2 (2020): 84–110, <https://doi.org/jsser.org/index.php/jsser/article/view/2020>.

using general elections has a very strong legitimacy because it is based on the sovereignty of the people.²

General elections are a form of popular sovereignty that gives the people the right to elect and be elected so that they can directly determine the head of government.³ Therefore, the election law states that general elections are a form of popular sovereignty, one of which is contained in Article 1 paragraph (1) of Law Number 7 Year 2017 concerning General Elections, which states the General Elections are a form of means of popular sovereignty in electing representatives of legislative candidates such as DPD, DPR, DPRD, as well as the election of executive institutions such as the President and Vice President.⁴ The application is carried out based on the principles of the election itself, such as direct (giving voting rights directly by the will of the voters), general (the opportunity to vote for all citizens without discrimination),⁵ Free (freedom of choice without intervention), secret (guaranteeing the confidentiality of elections), honest (each organizer carries out elections honestly), and fair (equal treatment of election participants in its implementation) in accordance with the principles of elections based on the values and provisions of Pancasila and does not deviate from the provisions of the Indonesian Constitution.⁶

Elections in a democratic country become an essential thing or part because the formation of a democratic country always prioritizes the involvement of the people in conducting elections, both executive and legislative, in each region, especially in determining the head of the government that the people want through a simultaneous general election system in 5 years,⁷ so that every citizen has the right to implement it, both the right to vote or nominate himself for the benefit of

² Muhammad Syafei and Muhammad Rafi Darajati, "Design of General Election in Indonesia," *LAW REFORM* 16, no. 1 (March 27, 2020): 97–111, <https://doi.org/10.14710/lr.v16i1.30308>.

³ Eugenia Brandao Da Silva and Lin Asyiqoh, "The Idea of Legal Pluralism in Dispute Resolution of Village Head Election in Madura," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 61–83, <https://doi.org/ejournal.pustakaparawali.com>.

⁴ Dewi Iriani et al., "Citizen Guarantees in Determining National Leaders Through Elections and Democratic Integrity," *Jurnal Dinamika Hukum* 23, no. 1 (February 2023): 54, <https://doi.org/10.20884/1.jdh.2023.23.1.3231>.

⁵ Ranarosyidah Rihadatul'Asy, Widy Anastasya Putri, and Nor Lailatul Mutfaidah, "Comparison of Presidential Term Regulations in Several Countries with Presidential Systems: Indonesia, United States, and Philippines," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 84–95, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/3>.

⁶ Bambang Angkoso Wahyono Raditya Feda Rifandhana, Indro Budiono, Ayu Dian Ningtias, Riski Febria Nurita, "The Existence And Effectiveness Of The Law On The Applicability Of The Constitutional Rights Of Citizens-Naturalization In Elections In Indonesia," *Independent* 10, no. 2 (2022): 158, <https://doi.org/https://doi.org/10.30736/ji.v10i2.199>.

⁷ Eugenia Brandao Da Silva et al., "A Model of Election Supervision Based on Village Judicial Institutions; A Review of Legal Anthropology in Madura," *Trunjojo Law Review* 6, no. 1 (February 28, 2024): 96–119, <https://doi.org/10.21107/tr.v6i1.23230>.

the people.⁸ Simultaneous general elections held in various regions, both district, provincial, and central, must be held by the principles of general elections, such as the principle of freedom, which can be interpreted as the right of freedom of citizens to exercise their right to vote according to their wishes Merdeka in choosing their rights.⁹ The principle of fairness in general elections is used to obtain the right to equal treatment between election participants in terms of implementing the enforcement of citizens' constitutional rights because the right to vote is included in the basic rights and, of course, the basic rights for each citizen must be guaranteed against legal certainty.¹⁰

The guarantee of the fundamental rights of every citizen to protection and recognition is directly stated in Article 28D, paragraphs 1 and 3 of the Indonesian Constitution '45. Paragraph 1 states that recognition of certainty before the law is applied equally, is the right of every person or human being. Paragraph 3 also states that every community is given the right to enter the government.¹¹ The provision of the Article gives the right to the community in fulfillment of the right to carry out the election process. In addition to being a means of popular sovereignty, general elections are also one part of the presence and entry of human rights (Human Rights), as explained in Article 28D paragraphs 1 and 3 of the 1945 Constitution (Called UUD RI'45), the right to vote is included in the fundamental or basic requirements of the rule of law to prioritize the human rights of its citizens in the right to vote in general elections.¹² It can also be said that the right to make choices during the implementation of elections has been protected by the state as the right to participate in the community to control the government, according to Article 43, paragraphs 1 and 2 of Law number 39 of 1999 concerning human rights states in paragraph (1) which contains the provisions of the right to participate both to be elected and to vote in the implementation of general elections given to every citizen, and in paragraph (2) contains the provisions of the right to participate or enter the government freely in conducting elections, this shows that

⁸ Hasan Aulia Hudhaibi, "General Election (Election) As an Implementation of The Constitution in A Country with A Democracy System," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (June 2023): 860, <https://doi.org/10.37680/almanhaj.v5i1.2682>.

⁹ Anisya Murdani et al., "Significance of Comparing Electoral Systems: Indonesia and the United Kingdom," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 112–25, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/6>.

¹⁰ Rahmat Yasin, "Hak Konstitusional Warga Negara Dalam Pemilu," *Jurnal Bawaslu Provinsi Riau* 4, no. 2 (2022): 2.

¹¹ Wiwit Pratiwi et al., "Evaluation of the Fulfillment of Political Rights for Persons with Disabilities to Welcome the 2024 General Election," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 2023, 20, <https://doi.org/10.24090/volkgeist.v6i1.7886>.

¹² Ismail Ismail dan Hidayat Hidayat, "Peran Bawaslu Sebagai Pemenuhan Hak Asasi Manusia Dalam Pemilihan Umum," *Warta Dharmawangsa* 17, no. 1 (8 Februari 2023): 331–41, <https://doi.org/10.46576/wdw.v17i1.2946>.

the right to participation of the community is very influential on the course of government.¹³

The constitutional court also issued a decision, namely the Constitutional Court's decision No. 135 / PUU-XIII / 2015 where this decision was more directed at persons with mental disabilities to be registered during the implementation of the general election, but while there has been no Constitutional Court decision related to the rights of persons with intellectual disabilities specifically, plus there are provisions for the fulfillment of conditions that persons must meet with disabilities to be able to have the opportunity to vote contained in article 5 of Law No. 7 of 2017 concerning elections.¹⁴ The right to make choices is included in the right to participate, which is given unconditionally to avoid discrimination.

Restrictions on the right to be elected and to vote for persons with disabilities (the fulfillment of conditions) but not explained in detail that must be fulfilled to obtain their constitutional rights in the general election law. In addition to the restrictions through the requirements for persons with disabilities, persons with intellectual disabilities are also not mentioned in Article 356 paragraph (1), which states "Voters with visual disabilities, physical disabilities, and who have other physical obstacles" when conducting elections are assisted with the permission of the voter,¹⁵ "being a question that is quite complicated by only mentioning several types of people with disabilities without the whole means that the government is not more concerned with the participation of other disabilities so that legal certainty and legal protection in this law do not guarantee the fulfillment of the rights of other disabilities."¹⁶

The statement in Article 356 paragraph (1) only mentions voting for visual disabilities, physical disabilities, and other physical obstacles and does not regulate the voting rights of people with disabilities, even though people with disabilities also have the right to vote and cannot be referred to as crazy people, it is appropriate that people with disabilities also get help in voting, because a person with a disability is someone who has a mind or intellectual capacity (*IQ*) that is below average so that he cannot adjust to the social environment.¹⁷ It can be seen

¹³ Gaussyah Annisa Bukhari Putri, Faisal, "Fulfillment of the Constitutional Rights of Persons with Disabilities in the Implementation of Elections in Banda Aceh City," *International Journal Of Law* 10, no. 4 (2024): 258.

¹⁴ Muflih Ramadhani, "Perlindungan Hukum Hak Memilih Penyandang Disabilitas Dalam Pemilihan Umum," *Jurist-Diction* 3, no. 1 (January 2020): 251, <https://doi.org/10.20473/jd.v3i1.17635>.

¹⁵ Ansori Ansori, Agung Ali Fahmi, and Mukhlis Mukhlis, "A Normative Review of The Simultaneous General Election and Regional Head Election Delay," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 36–44, <https://doi.org/10.21107/tr.v4i1.16340>.

¹⁶ Nunik Retno Herawati Fitriyah, "Accessibility of Voters with Disabilities in General Elections," *Ilmu Sosial* 20, no. 2 (2021): 218.

¹⁷ Hernimawati Hernimawati et al., "Prinsip-Prinsip Berdemokrasi Bagi Penyandang Disabilitas Tuna Grahita Pada Pemilihan Umum 2019 Di Provinsi Riau," *Nakboda: Jurnal Ilmu Pemerintahan* 18, no. 31 (June 2019): 2, <https://doi.org/10.35967/jipn>.

from the legal facts that the weakness of the article only mentions assisting in voting or voting rights at polling stations for blind disabilities, physical disabilities, and other physical obstacles where this is very important to be studied about optimizing the regulation of persons with intellectual disabilities, which is not regulated by the provision of voting rights for persons with intellectual disabilities, both in terms of providing assistance in distributing voting rights or election procedures used for intellectual disabilities.¹⁸

This research is original, with great expectation of legal developments to deal with the problems that the author is discussing to create a legal system with legal certainty related to how the government provides legal protection to persons with intellectual disabilities in the fulfillment of constitutional rights in general elections, several previous studies have conducted studies on legal protection of persons with disabilities, but until now there has been no study of the voting rights of persons with intellectual disabilities.

Previous studies that have been conducted include An article entitled, "Legal Protection of Voting Rights of Persons with Mental Disabilities in General Elections in Indonesia", published in December 2023 in the *Journal of Islamic Constitutional and Political Law*, Vol. 10, No. 2, by Fitri Kartika Sari, Kusaimah, Salman.¹⁹ This journal focuses on protecting voting rights, specifically for persons with mental disabilities, by analyzing the legal aspects of the issues raised. The similarity with this research is the same discussion on the voting rights of persons with disabilities. The research being conducted focuses on the rule of law to optimize the fulfillment of the voting rights of persons with intellectual disabilities by not regulating the provision of rights to get assistance in the election process.

Anak Agung Istri Ari Atu Dewi published an article entitled "Juridical Aspects of Legal Protection and Fulfillment of Rights of Persons with Disabilities" in June 2018 in *Pandecta*, Vol. 13, No.1.²⁰ This journal discusses the forms of legal protection of persons with disabilities in general and the implementation of the rights of persons with disabilities themselves associated with Balinese culture, referring to Bali Province Regional Regulation Number 9 of 2015, which contains the rights of persons with disabilities, to find out the implementation of the rule of law, the similarities in this study are the legal aspects of fulfilling disability rights. The difference with this research is in the aspect of fulfilling the right to vote to get

¹⁸ Muwaffiq Jufri et al., "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and The State in Madura," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 21, no. 2 (2024): 221–46, <https://doi.org/10.21154/justicia.v21i2.9283>.

¹⁹ Fitri Kartika Sari, Kusaimah Kusaimah, and Salman Salman, "Perlindungan Hukum Hak Pilih Penyandang Disabilitas Mental Dalam Pemilihan Umum Di Indonesia," *Politica: Jurnal Hukum Tata Negara Dan Politik Islam* 10, no. 2 (December 2023): 189–99, <https://doi.org/10.32505/politica.v10i2.7516>.

²⁰ Anak Agung Istri Ari Atu Dewi, "Aspek Yuridis Perlindungan Hukum Dan Pemenuhan Hak Penyandang Disabilitas," *Pandecta: Research Law Journal* 13, no. 1 (August 2018): 50–62, <https://doi.org/10.15294/pandecta.v13i1.13933>.

assistance in the election process, which is not regulated in the general election regulations.

The article entitled "Implementation and Realization of the Rights of Persons with Disabilities in General Elections", published in March 2020, in the Hasanudin *Community Service Journal*, Vol.1, No.1, by Muh. Yusril Sirman, Andi Tenri Famauri Rifai.²¹ This journal discusses the fundamental rights of persons with disabilities to participate in political life. This research is similar because it discusses the political participation of people with disabilities. The difference is that this research discusses more the unclear rules governing the voting rights of people with disabilities, especially in providing assistance during elections.

Based on the previous studies above, the author's research on the Fulfillment of the Constitutional Rights of Persons with Disabilities in General Elections produces newness in terms of arrangements to optimize the fulfillment of voting rights in assisting at the time of election to persons with intellectual disabilities, which is based on the unmentioned right to receive assistance at the time of election in Law Number 7 Year 2017 concerning General Elections, such as other persons with disabilities. This issue arises due to the provisions of Article 356, which states that voters with disabilities are only limited to visual and physical disabilities, this of course creates conflicts or conflicts between the rules that apply to the voting rights of persons with disabilities (intellectual) in the fulfillment of the right to vote in general elections. The urgency in this research is that if the voting rights of persons with disabilities are not fulfilled only because the provision of assistance in the election process is not regulated, then their direct voting rights are also not fulfilled optimally, so it is essential to study because it is related to the constitutional rights of persons with disabilities, related to that it is necessary to conduct a study, How is the regulation and optimization of legal protection of government policies on the voting rights of persons with disabilities in fulfilling their constitutional rights.

The description above can be the main thing used to formulate the problem. Based on the description above, there are problems related to the regulation of the voting rights of persons with intellectual disabilities in general elections and how to optimize legal protection efforts in ensuring the constitutional rights of persons with intellectual disabilities in general election participation so that fundamental human rights in choosing and being elected for persons with intellectual disabilities in general elections are maximally fulfilled by promoting justice.

Methods

²¹ Muh Yusril Sirman et al., "Implementation And Realization Of The Rights Of Persons With Disabilities In General Elections," n.d., <https://journal.unhas.ac.id>.

This research uses normative legal research methods or *legal research*.²² Based on the object of this research, it also uses several approaches. The first approach is the approach to legislation (Statute Approach), which means that the author examines the rules of law by type of problem.²³ The second approach uses a case approach, which means examining court decisions as jurisprudence; the third approach is a conceptual approach, which helps researchers find new ideas or ideas relevant to the legal issues studied by studying doctrines. This approach is used to build an argument regarding the voting rights of persons with intellectual disabilities whose constitutional rights are not regulated in the General Election Law.

Discussion

Regulation of the Voting Rights of Persons with Intellectual Disabilities in General Elections

The right to vote and to be elected is a form of implementation of human rights that have existed since humans were born and guaranteed by the state. The right to vote is a fundamental universal right, so in its implementation, it must be fulfilled without discrimination. The right to vote as a fundamental right is an indicator of the success of the implementation of general elections on the high and low participation of the community, especially people with disabilities.²⁴ The Constitution provides a guarantee of protection in Article 28D Paragraphs 1 and 3 of the Indonesian Constitution relating to the security, recognition, and provision of equal opportunities in running the government given directly so that every citizen, whether it is a person with a disability or not can participate in general elections and enter the government as an aid to the fulfillment of constitutional rights that must be fulfilled. The rights of people with disabilities in general elections are also directly regulated in Article 43 Paragraphs 1 and 2 of Law Number 39 of 1999 concerning Human Rights, which explains the granting of the right to vote and the right to be elected to every community without exception and participate in government without discrimination, in this article expressly states that every community has the same and equal rights in the implementation of elections, so that people with disabilities, especially people with disabilities, directly get equal rights in terms of voting in the implementation of general elections provided by the Human Rights Law.

Not only that, the protection given by the government to people with disabilities is also guaranteed by the approval and ratification of Law Number 19 of 2011 concerning the Ratification of the *Convention On The Rights Of Persons With Disabilities*, which discusses disability rights guarantees, as a form of approval

²² Muhaimin, *Metode Penelitian Hukum* (Mataram: University Press, 2020): 45-47.

²³ Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, 1 ed. (Pasuruan: CV. Penerbit Qiara Media, 2021): 58.

²⁴ Rahmanandita Sulastri, "Upaya Peningkatan Hak Pilih Penyandang Disabilitas Dalam Pelaksanaan Pemilu Serentak Tahun 2024," vol. 21, 2024.

by the Indonesian government in defending disability rights, where in the contents of the convention article 2 states the purpose of the convention, one of which is to protect and guarantee the equality of all human rights and fundamental freedoms. The ratification carried out is a form of defense of the honor of people with disabilities as human beings, so that the objectives in the convention are in line with the wishes of the Indonesian people in ensuring equality and legal certainty for disabilities.²⁵

The ratification of the *Convention on The Rights of Persons With Disabilities* shows that there is awareness and concern of the state towards the fulfillment of the rights of *persons with* disabilities so that with the ratification of the Convention, the government has the obligation to realize the rights of persons with disabilities by the convention, so that the state must make adjustments to the rules in the legislation, in guaranteeing all the rights of persons with disabilities from various aspects, one of which is the political aspect of persons with disabilities.²⁶ In order to sufficiently guarantee the rights of persons with disabilities, the government provides a guarantee of their rights through Law Number 8 of 2016 concerning Persons with Disabilities, which is used as a reference to obtain legal certainty.

In the law, people with disabilities are called someone who experiences limitations, namely limitations to physical, mental, intellectual, and sensory limitations by Law Number 8 of 2016 concerning Persons with Disabilities, we need to know together that the regulation of persons with disabilities, especially intellectual disabilities, directly regulates their rights in this disability law, to guarantee the existence of disability itself indeed. Where in this disability law, intellectual disability is a person who has a limited mind (*intellectual*) or limitations in thinking (*IQ* below average), as has been explicitly explained in Article 1 Paragraph (1) and Article 4 Paragraph (1) Letter b of the UUPD with a statement of the variety or type of disability, one of which is "Intellectual Disability" to be more widely understood.²⁷

In addition, persons with intellectual disabilities are also given direct protection in the disability law, namely related to political rights (the right to vote and be elected) for political participation during the implementation of general elections. These political rights are given in Article 13, letters a and c, which state, "political rights include the right: (a) To choose and be chosen in a public office and in letter (c) To choose people or individuals who are participants in general

²⁵ Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini, and I Wayan Lasmawan, "Legal Protection for People with Disabilities in Indonesia in the Perspective of Justice Theory," *Unnes Law Journal* 8, no. 2 (October 2022): 249, <https://doi.org/10.15294/ulj.v8i2.52406>.

²⁶ Sukimin Emola, Alfredo Bagaskara, Juita, Subaidah, "Perlindungan Hukum Atas Hak Berpolitik Bagi Penyandang Disabilitas Berdasarkan Undang-Undang Nomor 19 Tahun 2011 Tentang Pengesahan Convention On The Right Of Person With Disabilities," (2022): 12.

²⁷ Satrio Ageng Rihardi Suwandoko, "Legal Reform for the Fulfilment of Disabilities Human Rights," *UNNES Law Journal* 6, no. 2 (2020): 234.

elections. So, people with intellectual disabilities also have the right to make choices freely.²⁸

However, there is no regulation in the general election law on the implementation of the right to vote and to be elected for people with intellectual disabilities. Especially in the provisions of Article 356 Paragraph 1 and Article 364 Paragraph 1 of the General Election Law, which only states "visual disabilities and physical disabilities" without mentioning mentally retarded disabilities, it does not provide any fulfillment of the right to be assisted in general elections and legal certainty for mentally retarded disabilities in the fulfillment of their voting rights, how can they get protection, In the law, it is not mentioned even though Law Number 7 of 2017 is a reference in the implementation of general elections, because this regulation is a special regulation in the implementation of general elections, by not regulating the right to vote and be elected by persons with intellectual disabilities, of course the regulations on general elections directly contradict the disability law in the fulfillment, guarantee and protection of their constitutional rights as citizens.

The issuance of the Constitutional Court's decision No. 135/PUU-XIII/2015 on the inclusion of persons with disabilities specifically mental disorders,²⁹ to be recorded as voters during elections, the Constitutional Court's decision No. 135/2015 brings progress with regard to the regulation of mental disabilities so that elections can be conducted while still including the qualification that they are not mentally / mentally disturbed when casting their votes.³⁰ However, basically, the Constitutional Court's decision is not directly binding or has no effect on the protection of persons with intellectual disabilities because the Constitutional Court's decision is focused on mental disabilities. It cannot be applied to intellectual disabilities because intellectual disabilities and mental disabilities are two different things, each of which is included in the variety of disabilities in the law on persons with disabilities (UUPD), and of course, the decision only applies to the provisions mentioned in the ruling, not applicable outside other provisions.³¹

People with intellectual disabilities cannot be said to be crazy people or people with mental disorders, for some people know that intellectual disabilities are included in the category of cognitive limitations. Hence, they think that people

²⁸ Rizkon Maulana, Indriati Amarini, and Ika Ariani Kartini, "Pemenuhan Hak Politik Penyandang Disabilitas Mental Dalam Pemilihan Umum," *Kosmik Hukum* 19, no. 2 (August 2020): 145, <https://doi.org/10.30595/kosmikhukum.v19i2.8219>.

²⁹ Putusan Mahkamah Konstitusi No 135/PUU-XIII/2015 Penyandang Disabilitas Mental. (2015).

³⁰ Fajri Nursyamsi and Muhammad Nur Ramadhan, "Pelindungan Hak Pilih Penyandang Disabilitas Mental Dalam Pendekatan Rangkaian Proses Pasca Putusan Mahkamah Konstitusi Nomor 135/PUU-VIII/2015," *Jurnal Adhyasta Pemilu* 3, no. 1 (December 2021): 17–39, <https://doi.org/10.55108/jap.v3i1.25>.

³¹ Firza Setiawan Putra et al., "Impeachment Mechanism for The President and/or Vice President of Indonesia and United States," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 96–111, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/4>.

with intellectual disabilities have protected their constitutional rights in the implementation of general elections, and intellectuals only experience limitations in the thought process so that they have little difficulty interacting. Still, it turns out that intellectual disabilities are not included in the group of crazy people or ODGJ (people with mental disorders). Why is this so? Intellectual disability is also mentioned in the Law on Persons with Disabilities (UUPD), namely with the designation of intellectual disability and not in the type of mental disability, which means that the legal provisions contained in the disability law regarding intellectual disabilities should also be legal protection as voters in general elections in Law Number 7 of 2017, to provide legal certainty based on the fundamental rights of persons with intellectual disabilities based on the same legislation.³²

Optimization of legal protection efforts in guaranteeing the constitutional rights of persons with intellectual disabilities in general election participation

The maximization of arrangements related to legal protection to guarantee disability rights is not far from the body that implements the regulation. The implementer or organizer of the general election is an institution or body that has been determined based on the provisions of the law to carry out its duties and obligations, the institution in this case, namely the General Election Commission (KPU), in Article 22 E paragraph 5 of the Indonesian Constitution '45 that the KPU is the organizer of the election, where the KPU is obliged to ensure the fulfillment of the voting rights of citizens such as persons with disabilities in the data collection process as permanent voters in general elections.³³

It is supposed that persons with disabilities have equality both from the same position and rights and are equal to citizens or *non-disabled* people, so with this equality, persons with disabilities should get special treatment from the state with efforts to provide legal protection against acts of discrimination, so the birth of the law of persons with disabilities (UUPD) is the answer to the absence of restrictions, reduction, or elimination of the rights of persons with disabilities as a human being as well as a citizen.³⁴ The provision of legal protection for persons with disabilities in general elections has been provided by the Law, namely, the provision of opportunities to make choices and the granting of political rights directly offered by the Law to persons with disabilities for guarantees in the fulfillment of their rights, of course, legal protection against the provision of

³² Rihadatul'Asy, Putri, and Mutfaidah, "Comparison of Presidential Term Regulations in Several Countries with Presidential Systems: Indonesia, United States, and Philippines."

³³ Taufiq Yuli Purnama and Ramalina Ranaivo Mikea Manitra, "The Proposal for the Implementation of Elections in Indonesia: A Framework Based on the Presidential System," *Wacana Hukum* 29, no. 2 (October 31, 2023): 181–205, <https://doi.org/10.33061/wh.v29i2.9815>.

³⁴ Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah," *Jurnal HAM* 11, no. 1 (April 2020): 2, <https://doi.org/10.30641/ham.2020.11.131-150>.

opportunities to make choices and political rights of persons with disabilities also get the same protection based on rights in the law. Therefore, the general election must be packaged based on the law that positions persons with disabilities as equal citizens, playing an active role and involving themselves in the electoral process.³⁵

In general election arrangements can be optimized with several stages such as regulation, implementation and court settlement stages.³⁶ The regulatory stage given in the general election in the form of a law will later lead to the implementation of the application of the law. Suppose some rules are not in accordance or contradictory to other regulations. In that case, it can submit a settlement in court to test conflicting legal rules in optimizing the rule of law.

Stages of Regulation:

Legal protection to persons with intellectual disabilities is contained in Law No. 8 of 2016 concerning *Persons with Disabilities* or can be called (UUPD) which is based on Law No. 19 of 2011 concerning the ratification of the *Convention on The Rights of Persons with Disabilities*, Law No. 39 of 1999 concerning Human Rights, and the Indonesian Constitution "45. Where the provision of legal protection given to persons with disabilities is guaranteed to the fulfillment of the right to vote and be elected to the general election, so optimizing its implementation, the general election was formed Law Number 7 of 2017 concerning Elections as a Special Law in the General Election or by the application of the principle of *Lex Specialis Derogat Legi Generali* where there are rules that are special so that they can override legal restrictions that are general or general. Therefore, this General Election Law must reference the implementation of general elections.

Implementation Stages:

However, the optimization of legal protection arrangements for persons with disabilities has not been fully realized in the general election law because the regulation of persons with disabilities regulated in the rules of this law is considered not to provide the overall rights of persons with disabilities, especially intellectual disabilities in the fulfillment of their voting rights to get help with the election process in general elections, the optimization of arrangements related to the voting rights of persons with disabilities should be regulated as much as possible in the general election law both in the election procedures and assistance in the election process as a form of providing opportunities and equal rights in the participation of democratic parties, then the arrangements related to persons with disabilities. That is, the provision of legal protection to persons with intellectual

³⁵ AD Basniwati and Lalu Guna Nugraha, "Hak Konstitusional Penyandang Disabilitas Dalam Pemilu," *Journal Kompilasi Hukum* 4, no. 2 (December 2019): 7, <https://doi.org/10.29303/jkh.v4i2.17>.

³⁶ Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Handling of The Covid-19 Pandemic by The Government in View from The Legal Products Formed," *Trunojoyo Law Review* 5, no. 1 (March 20, 2023): 18–40, <https://doi.org/10.21107/tlr.v5i1.19410>.

disabilities that is not given at all in the general election law certainly reaps controversy in the community against the protection of persons with intellectual disabilities who are declared to have their rights protected in the Law and the 1945 Constitution.

Stages of Judicial Institution Settlement:

In a state of law, the state not only provides judicial institutions but is also obliged to regulate the procedures for the community (*burger*) to prosecute the judicial institution to examine, hear, and decide on a legal product, be it *Regeling* or *Beschaikking*, which has deprived them of their constitutional rights as citizens.³⁷ The occurrence of a conflict between a legal norm and another norm, our legal system (the 1945 Constitution) provides a solution using the *Judicial review* mechanism whose authority is given to the Constitutional Court and the Supreme Court as a material test right that can only be implemented by the judicial power to be able to test a conflicting regulation as explained in Article 9 paragraph 1 of Law Number 12/2011 concerning the Formation of Legislation, which states in paragraph (1) that if there is a law that is suspected or there is an estimation that the regulation is contrary to the 1945 Constitution of the Republic of Indonesia, then the test is carried out by the Constitutional Court.³⁸

Thus, Article 356 of Law No. 7/2017 on General Elections is considered contrary to the Law on Human Rights and the Law on Persons with Disabilities. It can be said that the norms in the regulation are contrary to equal norms and the 1945 Constitution. Therefore, it is necessary to test the General Election Law against the 1945 Constitution (*judicial review*) to the Constitutional Court by its authority in Article 24C of the 1945 Constitution. In the provisions of its authority, the Constitutional Court is not limited to being able to test one or more laws, which means that the Constitutional Court can test more than one law that is equal to each other contrary to the 1945 Constitution.³⁹ So that by conducting a *Judicial review of* Law Number 7 of 2017 concerning General Elections, it can better guarantee the legal certainty system for persons with intellectual disabilities, even though the consequences caused must cancel one of the norms or conflicting laws, the solution to optimizing the regulation of the voting rights of persons with intellectual disabilities is by conducting a *Judicial Review of* the Election Law as a

³⁷ Widodo Ekatjahjana, *Negara Hukum, Konstitusi, Dan Demokrasi: Dinamika Dalam Penyelenggaraan Sistem Ketatanegaraan Republik Indonesia*, 2015: 116.

³⁸ Maruarar Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung," *Jurnal Konstitusi* 17, no. 4 (January 2021): 729–52, <https://doi.org/10.31078/jk1742>.

³⁹ Michelle Audrey Serena Rasji, Christopher Howard Wonohadidjojo, "Kewenangan Judicial Review Mahkamah Konstitusi Terhadap Peraturan Pemerintah Pengganti Undang-Undang," *Jalakotek* 1, no. 2 (2024): 408.

form of urgency in the fulfillment of all rights of persons with intellectual disabilities and legal certainty provided by the state.⁴⁰

The Constitutional Court according to Article 73 Paragraph (3) of the Constitutional Court Regulation No. 2 of 2021 states that the Constitutional Court can add a verdict other than granting, accepting, rejecting, being unable to accept, and conditionally unconstitutional. So in this case the Constitutional Court can modify the legal norms that have been formed by the DPR or the President temporarily until they are revised again by the legislator as a follow-up to the content material that has been tested by the constitutional court. In implementing *judicial review*, the Constitutional Court can decide and modify the formulation of norms considered contradictory and do not have a sense of justice.⁴¹

Norm Idea Model:

The formulation model that is used as a solution here is to offer to include intellectual disability into the formulation of norms as a form of comparative government in addressing this issue so that the formulation model recommended in this paper is: The initial norm, Article 356 Paragraph (1) states "voters with visual disabilities, physical disabilities, and who have other physical impediments at the time of casting their votes at polling stations can be assisted by other people at the request of the voter." Not categorizing people with intellectual disabilities in the provision of assistance to vote during general elections is very clear that people with intellectual disabilities who are intellectual disabilities are not treated equally by the principle of equal rights.

The principle of equal rights must be given in implementing general elections, especially to people with disabilities, to get assistance when conducting elections. Then the suggested norm formulation model becomes: Formulation of Norm Reform, Article 356 Paragraph (1) states "voters with visual disabilities, deaf disabilities, physical disabilities, and those who have other physical obstacles at the time of casting their votes at polling stations can be assisted by family or other people at the request of the voter." The formulation becomes a reference for forming norms after Article 356 onwards so that the Constitutional Court can consider the suggested norm and decide on the norm so that the legislature can revise it.⁴²

The implementation of general elections is included in human rights or human rights related to the right to participate in government. The right to participate is based on the principle of equality in its implementation. The principle

⁴⁰ Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 366–91, <https://doi.org/10.31078/jk2132>.

⁴¹ Jufri et al.

⁴² R. Wahjoe Poernomo Soeprapto, "Meaningful Participation Through Online Channels in Legislation Making in Indonesia via Dpr.Go.Id Page," *Trumojoyo Law Review* 6, no. 2 (2024): 190, <https://doi.org/https://doi.org/10.21107/tr.v6i2.25960>.

of equal political rights of persons with intellectual disabilities is regulated in Article 13 of the UUPD, which guarantees the principle of equal political rights, including the right to elect and be elected channel aspirations, and choose political parties or individuals who become election participants.⁴³ The Human Rights Law also guarantees the principle of equal rights in the political participation of persons with intellectual disabilities in Article 43 Paragraph 1, which states that the right to vote and be elected in general elections is based on equal rights in its implementation. By not giving the right to be assisted in the process of voting in general elections to people with disabilities, it is very clear that it ignores the rights of people with disabilities to equal rights to elect their representatives, the equality of the right to vote can be fulfilled as a whole if the norm of Article 356 Paragraph (1) of the Election Law classifies people with disabilities into the norm to get a guarantee of assisting when voting in the implementation of general elections.

Conclusion

The fulfillment of the voting rights of persons with disabilities in general elections is seen as a form of representation of the realization of the democratic system in Indonesia. The regulation of voting rights to persons with intellectual disabilities in General Elections is regulated directly in the state constitution, relating to the protection, recognition, and provision of equal opportunities in government is given directly. So, with equality, there is no distinction between people with disabilities and non-disabled people in the fulfillment of voting rights in elections. The government protects the rights of persons with disabilities; intellectual disabilities also receive protection in the Regulation on Human Rights, Regulation on the Ratification of the Convention On The Rights Of Persons With Disabilities, and Regulation *on Persons* with Disabilities. So it can be seen how important and fought for legal protection for persons with disabilities, especially persons with intellectual disabilities, but in Article 356 of the Regulation on General Elections, there is not a single rule regulating the voting rights of persons with intellectual disabilities, so the General Election Law is directly contrary to the norms that are equal and constitutional, to optimize the regulation of legal protection of persons with intellectual disabilities in the Election Law, it is necessary to conduct a judicial review of Article 356 of the law with the Constitution to the Constitutional Court for the settlement of conflicting norms to provide legal certainty for the protection of the voting rights of persons with intellectual disabilities in general elections as a fulfillment of the constitutional rights of citizens.

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⁴³ Andry Syafrizal Tanjung, "Hak Memilih Dalam Pemilihan Umum Bagi Penyandang Disabilitas," *Jurnal Pancabudi* 15, no. 3 (2022): 46.

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