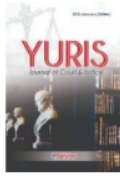


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Legal Protection of Vulnerable Groups' Rights in General Elections

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ABSTRACT

A country is considered a democracy if the government regulations allow its citizens to participate in political activities to the greatest possible extent as a form of implementing democratic values. General elections are one of the main pillars to support a democratic political system. General elections are held to elect representatives of the people at the central and regional levels in order to obtain support from the public to achieve the country's national goals which are held regularly in a certain period or period of time. General elections are a source of citizens' aspirations in determining the leaders who will compete their voices. It includes the fulfillment and protection of the rights of vulnerable groups. The approach used in this research is the juridical-normative approach, that is, legal research conducted by examining library materials or secondary materials as basic material to be researched by conducting a search for regulations and literature related to the problem being researched. According to The Indonesian National Human Rights Commission, there are groups of people whose voting rights are vulnerable to manipulation during elections. There are 16 vulnerable groups in the general election, such as: disabilities and people with mental disabilities (ODDM); prisoners; prison inmates, plantation and mining workers; migrant workers; domestic workers; frontier society; alienated tribal communities; the elderly; LGBTQ; PLHIV; refugees of social conflict/natural disasters; homeless; women; hospital patients and health workers; and novice voters.

Keywords: *General Election, Legal Protection, Vulnerable Group*

INTRODUCTION

One of the basic human needs, that is the need for shelter or a house that requires land, will also cause some problems with the limited land. This basic need is fulfilled by individuals through building on their own land, some are provided by other parties. A country is considered a democracy if the government regulations allow its citizens to participate in political activities to the greatest possible extent as a form of implementing democratic values. General elections are one of the main pillars to support a democratic political system.¹ General elections are held to elect representatives of the people at the central and regional levels in order to obtain support from the public to achieve the country's national goals which are held regularly in a certain period or period of time. General elections in their implementation require the guarantee of voters' rights by involving all elements of citizens without exception.

The right to vote is one way of participating in politics. It implies that political rights are classified in the derogable rights group, which is a right guaranteed by the state, but under certain conditions these rights can be reduced without discrimination. The concept of political participation according to the opinion of Miriam Budiardjo is based on the understanding that the sovereignty is in the people's hands which will be implemented through joint activities to determine the objectives and future of society and to determine the person who will hold the reins of leadership.² Elections become a channel for citizen aspirations in determining leaders who will fight for their vote.³ It includes the fulfillment and protection of the rights of vulnerable groups. The protection and fulfillment of the rights of vulnerable groups in general elections is dependent on the efforts of election organizers in preparing and implementing elections that are based on the accessibility principle. However, it is required to control the fulfillment of the right to vote, including vulnerable groups, so that there are no human rights violations in the general election.

RESEARCH METHODOLOGY

The approach used in this research is the juridical-normative approach, that is, legal research conducted by examining library materials or secondary materials as basic material to be researched by conducting a search for regulations and

¹ Ta'mirotul Biroroh, "Optimizing The Role of the General Election Commission in Realizing Democratic Elections in Indonesia," *International Journal of Law and Politics Studies (IJLPS)* 3, no. 2 (2021): 29–35.

² Miriam Budiardjo, *Pengantar Ilmu Politik*, Edisi 1. (Tangerang Selatan: PT. Gramedia Pustaka Utama, 2017).

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literature related to the problem being researched. Juridical-normative through the study of legislation that is the basis of legislation and various literature to analyze the protection of voting rights for vulnerable groups in general elections because it examines and assesses the enforcement or implementation of laws and regulations.⁴ The character of this research is descriptive and materials are collected through literature and statutory research.

RESULT AND DISCUSSION

Legal Protection of Vulnerable Groups' Rights in General Elections

The definition of vulnerable groups has not been defined explicitly. In Article 5 Paragraph (3) of Law No. 39/1999 on Human Rights, it is stated that "people who are classified as vulnerable groups in society have the right to obtain and receive more protection in relation to their special needs."⁵ The Indonesian National Human Rights Commission has stated that there are 17 groups that can be categorized as vulnerable groups that may be violated in the implementation of general elections or their constitutional rights. Those included in vulnerable groups are as follows:

1. Disabilities and people with mental disabilities⁶ (ODDM)

The definition of disabilities according to Law No. 8/2016 concerning disabilities is every person who has physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment may have difficulties and problems to participate fully and effectively with other citizens based on equal rights.⁶ Persons with disabilities are divided into several groups, such following below:

a. People with Physical Disabilities

People with physical disabilities is the disruption of movement function, such as amputation, quadriplegic or rigid paralysis, paraplegia, cerebral palsy (CP), stroke-induced, leprosy-induced, and small person.

b. People with Intellectual Disabilities

People with intellectual disabilities is the disruption of thinking due to below-average intelligence, such as slow learning, intellectual disability and down syndrome.

c. People with Mental Disabilities

People with mental disabilities is disruption in thought, emotion, and behavior, such as (1) psychosocial (schizophrenia, bipolar, depression, anxiety, and personality disorders); and (2)

⁴ Johnny Efendi, Jonaedi & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 1st ed. (Depok: Prenad Media Group, 2016).

⁵ Kementerian Indonesia, *Undang-Undang Republik Indonesia Nomor 39 Tahun 1999* (Jakarta, 1999).

⁶ Kementerian Indonesia, *Undang-Undang Republik Indonesia Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas* (Jakarta, 2016).

¹¹ developmental disabilities that affect social interaction skills such as autism and hyperactivity.

d. People with Sensory Disabilities

People with ¹² sensory disabilities is the impairment of the function of each of the five senses, such as visual disabilities, hearing disabilities, and/or speech disabilities.⁷

²⁷ People with disabilities have the same rights and obligations as ²⁸ disabled people, including constitutional rights and obligations, such as the economic, social, and cultural rights.⁸ The state has an obligation to fulfill ¹⁸ respect, and protect every right possessed by every citizen, including the right to vote for voters with disabilities. Regarding the right to vote for the disabilities in general elections, the process of data collection and socialization for disabilities is still not maximized by the election organizers. Electoral logistics such as ballots, placement of voting booths, completeness of voter requirements such as ID cards and identities, coordination of election organizers with vulnerable groups with disabilities, and socialization to vulnerable groups. Access or facilities at some voting booths are not adequate and appropriate for the rights of disabilities.⁹

In the 2019 elections, the General Elections Commission (KPU) registered a total of 1,247,730 voters with disabilities. The details of voters with disabilities include 83,182 disabled voters, 166,364 visually impaired voters, and 249,546 deaf voters. Then for mental retardation, there are 332,728 voters and disabilities that are categorized as other as many as 415,910 voters.¹⁰

2. Prisoners

The police generally do not record the identity of prisoners before their legal proceedings are completed. As a result, it is difficult for prisoners to use their voting rights.

3. Prison Inmates

The inmates of correctional institutions and detention centers have very restricted movement. Voting service facilities are still related to the address where inmate voters are registered on the permanent voter list. Voters are registered in accordance with the voter's domicile ¹⁶ attested by an electronic identity card. In fact, there are only a few voters in correctional institutions and detention centers who have the same domicile address as the

⁶ Henny Andriani and Feri Amsari, "Hak Pilih Kelompok Penyandang Disabilitas Dalam Pemilihan Umum Tahun 2019 Di Sumatera Barat," *Jurnal Konstitusi* 17, no. 4 (2020): 777–798.

⁸ Josephin Mareta, "Mekanisme Penegakan Hukum Dalam Upaya Perlindungan Hak Kelompok Rentan (Anak Dan Perempuan)," *Jurnal HAM* 7, no. 2 (2016): 141–155.

⁹ Fajri Nursyamsi et al., *Kerangka Hukum Disabilitas Di Indonesia: Menuju Indonesia Ramah Disabilitas*, Cetakan Pe. (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2015).

¹⁰ Badan Kesatuan Bangsa dan Politik Yogyakarta, "Pendidikan Untuk Difabel," *Kesbangpol*.

correctional institution or detention center. Inhabitants of correctional institutions and detention centers can come from regencies and even provinces that are different from the address of the correctional institution or detention center. It means that the residents of the correctional institution or detention center are cross-regional. This caused many residents of correctional institutions and detention centers to be unable to use their voting rights.

4. Plantation and Mining Workers

There are many workers in plantation companies or mining companies who have temporary residence in the place or location of the company where they work, for example workers in oil palm plantations, workers in coal mining, whose numbers can reach hundreds to thousands of people. The reason they choose to live around the company is due to geographical reasons and the area of residence that is far from their origin. Potential problems can occur in elections if these workers are not listed in the voter list. In addition, there are also concerns that the surge in voters will cause the workers' voting rights not to be accommodated due to the limited number of ballots at each voting booth. This causes workers who live around oil palm plantations and mines to potentially lose their right to vote.

5. Migrant Workers

Voter participation abroad in general elections has always been a serious concern because their participation is quite low. According to Migrant Care, which monitors the implementation of Indonesian elections abroad, the permanent voter list for Indonesian citizens abroad has not made significant progress. The problems that often occur are technicalities in voting and methods of monitoring to ensure that the principles of direct, general, free, secret, honest and fair are fulfilled. According to the General Election Commission Regulation No. 4/2018, there are three ways to be able to conduct general elections such following below:

- a. Conducted at the determined voting booths;
- b. Through mobile ballot boxes (KSK); and
- c. Via pos.¹¹

Based on data from election organizers in 2004, 2009 and 2014, there was no accurate monitoring mechanism for the Mobile Ballot Box and Postal methods. Meanwhile, in the 2019 elections, the problems that have occurred consist of the following:

- a. Permanent voter list does not include all migrant workers;

¹¹ Kementerian Indonesia, *Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 4 Tahun 2018 Tentang Pembentukan Dan Tata Kerja Panitia Pemilihan Luar Negeri Dan Kelompok Penyelenggara Pemungutan Suara Luar Negeri Dalam Penyelenggaraan Pemilihan Umum* (Jakarta, 2018).

- b. Inequitable distribution of election invitations to the permanent voter list;
- c. Chaotic queuing system at voting booths; and
- d. The closing of voting booths that persisted even though the queue of voters was still long.

Based on previous data, many migrant workers feel that their right to vote has been deprived.

6. Domestic Workers

Workers who already have the right to vote should not be prevented from using their voting rights, including domestic workers. Service providers or employers must still allow their domestic workers to use their voting rights in accordance with their Electronic Identity Cards (e-KTP).

7. Religious Minorities

A religious minority group is a minority group formed due to religious classification in a certain area. For example, religious minority groups are Buddhists in some regions of Indonesia, Muslims in Bali and so on. Some time before the general election, various online and print media are often enlivened by the discourse on identity politics. Identity politics is often interpreted as a platform that has aspiration, demands for political interests and political ideology to mobilize action to achieve certain political goals. One of the political identities is religion. Every citizen has a religious background and still has the same rights and obligations to participate in voting. Unfortunately, religion-based identity politics is often used as a tool to affect voter behavior. Objective preferences for prospective leaders who have the ability then become biased by religious sentiments. Sometimes identity politics manipulates religious doctrines to discriminate and discourage voters who are of the same religion but have different political aspirations and often discriminate against religious minorities. On the other hand, identity politics can lead public opinion that people who do not have the same religious identity as them do not deserve to be elected. The powerful pressure from identity politics will certainly have a negative impact on other religious adherents. Minorities are perceived to be unable to provide significant support. This situation will eventually endanger democracy. Therefore, the quality of elections will be disrupted. We need to be fully aware that even though the number of minorities is small, they are still part of the Indonesian nation whose existence must be recognized and protected, especially in providing their voting rights aspirations.

8. Frontier Society

The issue of permanent voter lists in border areas is a serious concern in general elections. Sometimes people who live in border areas are also registered as citizens of other countries. For example, people living in North

Kalimantan, which has direct borders with Malaysia, are often registered as Malaysian citizens. This situation is due to the assumption of the local community that their participation in general elections has no impact on welfare and democracy, so their participation in voting in general elections is still very low.

9. Indigenous Peoples/Isolated Tribes

The vulnerability of indigenous peoples stems from data collection. The mechanism for compiling the voters list based on Law No. 7/2017 on General Elections, is conducted *de jure*, which means that the approach taken to verify voters is based on population identity, (in this case, electronic ID cards). Meanwhile, recording electronic ID cards remains a challenge for indigenous peoples. The constraints encountered are due to limited access and transportation to socio-cultural factors.

10. The Elderly

The criteria for this elderly group are elderly voters who are undiagnosed with certain diseases but have physical abilities that are too weak to vote at the determined voting booths. In general, increasing percentage of elderly people who are unable to vote in general elections is due to the fact that these elderly people have difficulty in doing daily physical activities, especially walking. Therefore, the participation of the elderly in voting in general elections is very low.

11. LGBTQ

LGBT people are vulnerable due to discrimination and persecution from anti-LGBT candidates. It makes LGBT people feel discouraged and ashamed when they go to the ballots to vote.

12. PLHIV

The existence of negative stigma and discrimination against PLHIV causes them to be isolated or alienated in their environment. Therefore, they cannot maximize their voting rights in the general elections.

13. Refugees of Social Conflict/Natural Disasters

Refugees affected by social conflicts and natural disasters are in a similar situation. They generally lose important documents that limit their access to public services. Many of them are also displaced or move to other places.

14. Homeless

Homeless people are included in the category of people who do not have identity. In anticipation of violations of the voting rights of homeless people who have qualified as stipulated in the applicable legislation, the government will facilitate those who do not have identity by including them in the Special Voters List (DPK) with a maximum limitation of 2.5 % of the total Permanent Voters List (DPT).

15. Women

One of the factors that cause the high level of awareness of women in voting is due to the lack of knowledge and awareness to use their voting rights. Many women still have a lack of education, especially when they are older, and are usually reluctant to vote.

16. Hospital Patients and Health Workers

Election access for hospital patients is very limited. This is due to the absence of special voting booths, strict special voter procedures, and minimal additional facilities for hospital voters.

17. Novice Voters

Novice voters are Indonesian citizens who on election or voting day must have fulfilled several requirements in order to be able to vote, such as following below:

- a. Already 17 years old or more;
- b. Have been married, or have already married;
- c. Those who have not previously been included as voters due to the provisions of the Election Law, such as members of the Indonesian National Defense Forces (TNI) and Indonesian National Police (POLRI).

The characters of novice voters are different from voters who have been involved in previous election periods. The characters of novice voters are as follows:

- a. Have never voted in a voting booth;
- b. No voting experience;
- c. Have high enthusiasm;
- d. Lack of rationality;
- e. Youth voters are usually energetic and if not controlled will have an effect on social conflicts in general elections;
- f. Have curiosity, try and participate in elections, although with various rational and quasi-rational backgrounds.

Factors that affect the participation of novice voters in general elections are described below:

- a. Driving factor, such as Novice Voters' Self-Awareness, Parental Motivation, Development of science and technology.
- b. Inhibiting factor, such as not receiving a C6 form, and busyness.¹²

The youth generation is categorized as vulnerable voters because they are often the target of money politics in elections. The protection of

¹² Gatot Ristanto et al., *Pemilu 2019: Pemenuhan Hak Konstitusional Warga Negara* (Jakarta: Komnas HAM RI, 2019).

vulnerable groups in general elections needs to be reviewed, especially in organizing elections. The protections that can be implemented by the General Election Commission against the voting rights of vulnerable groups from election violations are described below:

- a. Provide full facilities for the voting rights of vulnerable groups to the maximum starting from the stages of collecting voter data, determining the permanent voter list, campaigning, socialization, voting, counting votes, and certifying the final ballot;
- b. Provide discretionary room for groups in fulfilling the rights of vulnerable groups;
- c. Intensive socialization in social institutions, detention centers, correctional institutions and other vulnerable groups;
- d. Establishing special voting booths in plantation and mining areas;
- e. Prioritize the use of voting rights for vulnerable groups, especially for disabilities, the elderly and pregnant and breastfeeding women;
- f. Ensure the compatibility between population data and data in the General Election Commission in order to produce more valid and accurate voter data for vulnerable groups.

CONCLUSION

The implementation of general elections must be able to accommodate all voting rights owned by citizens without exception. In order for the implementation of general elections not to abuse voting rights, especially for vulnerable groups, several things need to be implemented, such as (1) monitoring every phase of election implementation in a transparent and participatory manner by allowing the participation of various community groups and civil society organizations; and (2) more intensive supervision in vulnerable areas such as mining areas, plantations, factories, and border areas with other countries.

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