Affirmative Policy A Necessity for Fulfilling the Political Rights of Persons with Disabilities

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Submitted: Sept 01, 2023; Reviewed: Sept 13, 2023; Accepted: Dec 12, 2023

Abstract

Persons with disabilities have political rights. The right to vote and the right to be elected in general elections. This article examines the political rights of persons with disabilities to be elected in general elections. This is important because the representation of persons with disabilities in the public sphere will voice the rights of persons with disabilities. The purpose of this research is to identify the factors that influence the lack of fulfillment of these political rights for persons with disabilities and to examine the fulfillment of their political rights through affirmative policies. The method used in this research is qualitative with a descriptive analytical approach. Primary data was obtained through in-depth interviews with several informants. Factors contributing to the lack of fulfillment of the political rights of persons with disabilities include education level, welfare, and lack of support from the environment and family. Affirmative policies can serve as an alternative to represent persons with disabilities in the public sphere.

A. Introduction

Persons with disabilities are part of the diverse fabric of society. Based on data from the Central Agency on Statistics (Badan Pusat Statistik/BPS) in Indonesia, there were approximately 16.5 million persons with disabilities in 2021 and around 22.5 million in 2022,
with about 7.6 million of them being of working age.\(^1\) Persons with disabilities experience long-term physical, intellectual, mental, and/or sensory limitations that hinder their full and effective participation in interactions with the environment.\(^2\) Despite these challenges, constitutionally, they have the same rights and standing before the law and government. Enhancing their roles, protections, and fulfillment of their rights and responsibilities is crucial and strategic.

As citizens, persons with disabilities have the right to engage in political life. They are guaranteed the opportunity to participate fully and effectively in political and public life, exercise the right to vote and be elected, and hold public office.\(^3\) The state is obligated to ensure equality and justice for persons with disabilities. Equality and justice form the framework of human rights needed within the principles of democracy. Guaranteeing basic rights for every citizen is a prerequisite for effective involvement in public affairs. An underlying human rights framework in a democracy ensures that the democratic process goes beyond procedural democracy,\(^4\) ensuring that all human rights are enjoyed by all citizens, including those with disabilities.

Until now, research and reporting on the fulfillment of political rights for persons with disabilities have mainly focused on their rights as voters. Reports from the 2019 General Elections in Indonesia indicate that many Polling Stations did not register a number of persons with disabilities. While rules and outreach efforts about accessible TPS for disabilities were in place, implementation often lacked accessibility for disabled voters.\(^5\) Bawaslu (General Election Supervisory Agency) focused on monitoring accessibility to elections for disabled voters.\(^6\) Additionally, based on data from Komisi Pemilihan Umum/KPU (General Election Commission) of Lampung Province during the 2018 Regional Head Elections, there were 7,005 registered disabled voters, but only 4,903 of them exercised their voting rights.\(^7\) This suggests that many persons with disabilities have not utilized their voting rights in elections.

Research on the presence of disabilities in relation to their political rights has been conducted, particularly in 2019 leading up to the 2019 elections. This research identified several barriers to fulfilling the political rights of disabled voters.\(^8\) There is a role and the fulfilment of political rights for persons with disabilities in these general elections that has not yet been maximally achieved.\(^9\) The fulfillment of voting rights for persons with disabilities in simultaneous elections by the KPU is carried out through data collection, outreach, and providing access. However, challenges in the fulfillment of voting rights arise from family paradigms, officials' perspectives, and the lack of disability data.\(^10\) Existing regulations do not

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2 “Pasal 1 Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas” (2016).
3 “Pasal 13 Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas” (2016); “Pasal 75 Ayat (1) Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas” (2016); “Pasal 75 Ayat (2) Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas” (2016); “Pasal 76 Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas” (2016).
align with their technical implementation.\textsuperscript{11} There is a potential for regulations in Indonesia to undermine the political rights of persons with disabilities, and practical implementation during elections still encounters obstacles that prevent the disabled community from exercising their political rights.\textsuperscript{12} Actually, there is no regulation in Indonesia specifically eliminating the political rights of people with disabilities. Indonesia has adopted various policies to enhance the participation of people with disabilities in the political process and elections. One regulation that encompasses the rights of people with disabilities is Law Number 8 of 2016 concerning Persons with Disabilities. This law includes several provisions aimed at protecting the rights and welfare of people with disabilities, including their political rights. Some of these provisions address accessibility issues, including accessibility in general elections. However, the implementation and compliance with these regulations may not be fully optimal in various regions.

Barriers in the technical implementation of elections for people with disabilities often involve constraints such as physical access, lack of technical support, and insufficient awareness of their specific needs. Some common obstacles include the unavailability of disability-friendly transportation, polling facilities that are not disability-friendly, and a lack of training for election officials to assist people with disabilities.

This paper completes the examination of the political rights of persons with disabilities, specifically the political rights of persons with disabilities to be elected in general elections. Therefore, it is important for persons with disabilities to be engaged in political party membership, where if elected as legislative members, they can advocate for the rights of persons with disabilities. There are factors influencing the lack of fulfillment of these political rights for persons with disabilities, and an examination of affirmative policies for the fulfillment of their political rights.

The method employed in this research is a qualitative approach with descriptive analysis. Data collection procedures for this study were obtained through field research and library studies. Primary data was acquired at the research location through in-depth interviews with several informants.\textsuperscript{13} Secondary data was collected from various sources such as regulations related to the political rights of persons with disabilities (Law Number 39 of 1999 on Human Rights, Law Number 8 of 2016 on Persons with Disabilities), mass media, literature, and online reports. Informants in this research were purposefully selected through purposive sampling. Informants consisted of political parties and persons with disabilities.

B. Discussion

1. Political Rights of Persons with Disabilities

One of the principles in a constitutional state is the principle of legality. The principle of legality represents a harmonization of the rule of law and the sovereignty of the people, enabling the establishment of legal certainty and equal treatment. The principle of legality is closely related to the concepts of democracy and the rule of law. The concept of democracy demands that all forms of legislation and decisions receive approval from representatives of the people and consider the interests of the people as much as possible. The concept of the rule of law

\begin{itemize}
  \item \textsuperscript{13} Nazir, \textit{Metode Penelitian} (Jakarta: Ghalia Indonesia, 2003).
\end{itemize}
requires that governance and administration be based on laws and provide guarantees for the
fundamental rights of the people as enshrined in the laws.

The 1945 Constitution of Indonesia states that Indonesia is a state based on the rule of law
(rechtsstaat), not merely based on power (machtsstaat). Friedrich Julius Stahl identifies four
essential elements of a constitutional state, one of which is the recognition and protection of
human rights. Meanwhile, Scheltema states that the elements of a rechtsstaat are legal
certainty, equality, democracy, and a government that serves the public interest.

The legal framework of a constitutional state has regulated the basic rights of citizens. Each
citizen holds an equal position before the law and the government, shares an obligation
to uphold the law and the government without exception, and has the right to recognition,
guarantees, protection, fair legal certainty, and equal treatment under the law.

The Fourth Amendment of the 1945 Constitution of the Republic of Indonesia addresses
26 provisions concerning the constitutional protection of citizens. These provisions
collectively provide protection for human rights for all citizens, including persons with
disabilities. Article 28H, paragraph (2), stipulates that every individual has the right to receive
ease and special treatment to access opportunities and benefits equally, ensuring equality and
justice. Mahkamah Konstitusi/MK (The Constitutional Court) has provided an interpretation
of the term "every individual" in this provision. In three verdicts (MK Decision No. 10-17-23/PUU-VII/2009, MK Decision No. 143/PUU-VII/2009, and MK Decision No. 16/PUU-VII/2010), the MK stated that:

"The constitutional right in Article 28H, paragraph (2) of the 1945 Constitution of the
Republic of Indonesia is a constitutional guarantee for those who experience marginalization,
backwardness, isolation, restrictions, differentiation, disparities in political participation and
public life arising from continuous structural and socio-cultural imbalances in society
(discrimination), both formal and informal, in public and private spheres, or known as
affirmative action."

This interpretation confirms that the group of persons with disabilities is included within
the term "every individual" in Article 28H, paragraph (2) of the 1945 Constitution of the
Republic of Indonesia. Furthermore, this interpretation clarifies that ease and special treatment
are not meant to be understood in a discriminatory sense but remain within the scope of
fulfilling constitutional rights.

Protection of the rights of persons with disabilities is often associated with the concept of
Human Rights. The framework for protecting the rights of persons with disabilities is based on
the postulate of equal justice under law and equal opportunity for all. This foundation led to
the birth of the Convention on the Rights of Persons with Disabilities (CRPD) No. 61/106 on
December 13, 2006. Subsequently, the Republic of Indonesia government, through the Minister
of Social Affairs, signed the CRPD document on March 30, 2007, at the UN Headquarters in
New York, USA. Through Law No. 19 of 2011, the CRPD was ratified. Thus, the obligation
was placed on the state, through legislative measures (regulation enactment) and administrative
procedures that support it, to ensure and advance the fulfillment of the rights of persons with
disabilities. As regulated in Article 43 paragraphs (1) and (2) of Law Number 39 of 1999
concerning Human Rights, "every citizen has the right to be elected and to vote in general

elections based on equality of rights through a direct, general, free, secret, honest, and fair vote in accordance with the provisions of the legislation" and "every citizen has the right to participate in government directly or through representatives freely chosen, according to the methods stipulated in the legislation." Meanwhile, Article 5 paragraph (1) stipulates various rights for persons with disabilities, one of which, in subparagraph (h), specifies that persons with disabilities have political rights. Regulations, including the elimination of rules and cultures that violate the rights of persons with disabilities, need to be harmonized in this context.

The aforementioned demonstrates that legal policy in Indonesia has established a legal framework for protecting the rights of persons with disabilities, which includes the enactment of Law No. 8 of 2016 concerning Persons with Disabilities (here in after referred to as the Disability Law). This represents the government's commitment to respecting, protecting, fulfilling, and advancing the rights of persons with disabilities. Through the ratification of the Convention on the Rights of Persons with Disabilities, the state is obligated to realize the rights outlined in the convention through adjustments to legislation.

Since the enactment of the Disability Law, the issue that has arisen is the state's commitment to realizing the rights of persons with disabilities. The state's fulfillment of obligations is not limited to the regulation of legislation; rather, it also guarantees the participation of persons with disabilities in all aspects of life, including education, healthcare, employment, politics, sports, arts and culture, as well as the utilization of technology, information, and communication. In the discussion of political rights, it can be elucidated that the political rights of persons with disabilities include the following:17

a. The right to vote and be elected to public office;
b. The right to express political aspirations, both in written and oral form;
c. The right to choose political parties and/or individuals participating in general elections;
d. The right to form, become a member of, and/or hold a position in community organizations and/or political parties;
e. The right to form and join organizations of Persons with Disabilities and to represent Persons with Disabilities at the local, national, and international levels;
f. The right to actively participate in the electoral system at all stages and/or parts of its implementation;
g. The right to accessibility in facilities and infrastructure for the conduct of general elections, elections for governors, regents/mayors, and village head or other similar positions; and
h. The right to receive political education.

Political Human Rights are emphasized in Article 25 International Covenant on Civil and Political Rights which states that every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions: (1) to take part in the conduct of public affairs, directly or through freely chosen representatives. (2) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. (3) To have access, on general terms of equality, to public service in his country. 18

2. Factors Inhibiting the Fulfillment of Political Rights for Persons with Disabilities

Regarding the fulfillment of rights for persons with disabilities, a paradigm shift has occurred. The shift is from a service and rehabilitation paradigm (charity-based) to a rights-
Based on the research conducted, below are summarized excerpts from interviews with respondents:

Respondent A, a person with a disability, stated:

"I graduated from elementary school, from a financially challenged family. With my condition of using a wheelchair, I engaged in trading. No office was willing to hire me. The same goes for my friends in similar situations. We are content and feel sufficient running our businesses. Initially, I wasn't allowed to go to school because my parents were ashamed and couldn't afford it, but an uncle supported me to attend school."

Respondent B, a person with a disability, shared:

"I never dreamed of studying until higher education. Completing primary school until grade 6 is already fortunate. Currently, I'm a entrepreneur, crafting chairs and household furniture from rattan. The training we received from the local government was sufficient to enable us to be self-sufficient without burdening our families. My parents are vegetable vendors, and I couldn't assist in selling. When I was in school, I stayed home after classes because the kids around my house didn't want to play with me."

Respondent C, a person with a disability, expressed:

"I've been blind since birth. I'm thankful I have the ability to give massages. I didn't receive any formal education. We have a large family of blind individuals who support each other, and some inform us if there are opportunities to use our skills. I don't expect much. I also don't understand what rights are, let alone political matters. For me, having enough to eat and meeting my daily needs is sufficient."

Before discussing political rights, based on the above interviews, it is evident that persons with disabilities still belong to a vulnerable community experiencing underdevelopment, discrimination, and living in poverty. The low level of education among persons with disabilities, coupled with limited access to education and higher education, exacerbates the situation. This is worsened by the closed-minded attitudes of family members towards individuals with disabilities, inhibiting their interaction with society and hindering the development of their knowledge, abilities, experiences, and overall presence.

From interviews with persons with disabilities regarding political rights, 90% of respondents view their political rights as encompassing the right to vote in General Elections and Local Elections. However, 20% of respondents understand that their political rights also include being elected in General Elections and holding public positions. Nevertheless, among this 20%, some do not have the confidence to fulfill their political rights to be elected or hold public positions. Therefore, it can be inferred, based on the interviews with persons with disabilities, that factors hindering the fulfillment of their political rights include educational

level, economic status, negative stigma, lack of support from family and society, and lack of self-confidence among persons with disabilities.

Interviews were also conducted with representatives of political parties, assuming that political parties serve as a platform for persons with disabilities to be elected and hold strategic positions in executive and legislative bodies. Below are some excerpts from interviews with political party representatives:

Party Representative A stated:

"Our party is open to welcoming individuals with disabilities who want to join. However, based on what we know, there hasn't been much interest from persons with disabilities in joining our party. As party members, we need to understand how to actively engage with constituents. Regarding political education for party members, we've conducted it, but so far, we haven't had any party members who are persons with disabilities. Currently, we're still focused on increasing female representation, as mandated by the law."

Party Representative B stated:

"In my opinion, it's widely accepted that current politics prioritize proximity to party leadership, seniority, candidate electability, and popularity, along with financial resources. I agree that if friends with disabilities receive affirmative action similar to the affirmative action for women in political parties, it's a good idea. However, it needs to be understood that politics requires finances, and there's a need to efficiently manage the significant political costs."

Party Representative C stated:

"In our party leadership, there hasn't been a member who is a person with a disability. Recruitment of party members is based on requests from prospective members. In all my time as a party representative, there hasn't been a person with a disability who has expressed interest in becoming a member of our party. If we were to initiate recruitment, we would approach a few female members who we ask to fulfill the female representation quota."

Based on the interviews above, it's evident that political parties have not optimally recruited persons with disabilities, meaning there hasn't been an effort to cultivate leadership from persons with disabilities. Several assumptions suggest that persons with disabilities may not be interested in becoming members of political parties, and political parties are still focused on increasing female representation as candidates for legislative positions.

3. Affirmative Policies for Fulfilling the Political Rights of Persons with Disabilities

As described above, a rights-based approach is a manifestation of changing perspectives on persons with disabilities. This approach shifts the view and attitude towards persons with disabilities as subjects with rights, capable of claiming those rights, making decisions based on free consent and sufficient information, and becoming active members of society. This paradigm shift signifies that persons with disabilities have equal agency as other members of society.21

It is undeniable that empirical evidence shows that persons with disabilities still live in vulnerable conditions, experience discrimination, marginalization, and sometimes face harmful treatment.22 This phenomenon has negative social and political implications for persons with

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disabilities, warranting the need for affirmative measures. Just as there are groups in society that require facilitation, special treatment, and enhanced protection such as women, children, the elderly, and persons with disabilities special attention and treatment are necessary to ensure that these groups can lead dignified and full lives in accordance with their inherent dignity. Special attention and treatment are necessary to ensure that this group can continue to live in a decent and intact manner according to their dignity, as stipulated in Article 5 paragraph (3) of Law Number 39 of 1999, which states that every person belonging to a vulnerable social group is entitled to receive treatment and protection more relevant to their particular condition.

Affirmative action becomes an alternative to overcome barriers for citizens to participate in democracy, particularly in democratic states, the fulfillment of rights is not an easy task and requires political will from policymakers. The representation or involvement of persons with disabilities in politics through governmental institutions is expected to lead to policies that are favorable to persons with disabilities. Therefore, regulations that provide opportunities for persons with disabilities to be candidates, even if initially only in the nomination stage, are needed. Whether they get elected or not will ultimately depend on the people's choice and the political parties accommodating these candidates with disabilities.

Reformulating rules to fulfill the political rights of persons with disabilities is imperative. Law can function as a tool of social engineering, and stated that law is needed to engineer society to support development and control changes that occur. Therefore, just as there is an affirmative policy for women, the representation of persons with disabilities can also use affirmative regulations.

Affirmative policies aim to reduce disparities or injustices related to minority groups. Similar to affirmative action for women, supporting affirmative action for persons with disabilities can be analyzed as providing constitutional guarantees to those who experience discrimination, both formally and informally in public and private spheres. Affirmative policies can take the form of quota regulations designed to provide equal opportunities for minority groups.

Krook offers several approaches for implementing affirmative policies. These approaches include: (1) examining where the affirmative mandate is created, whether in the constitution, laws, or internal party documents, (2) looking at the institution or body that oversees affirmative actions, whether it's the state or political parties, (3) examining the electoral process and determining at which stage affirmative rules are applied (during the selection of prospective candidates, selection of candidates, or during the election), and (4) determining the nature and scope of reform desired to address candidate selection dynamics, whether targeting the electoral system, party practices, or political norms.

Using these approaches, it can be said that the mandate for affirmative policies in legislative candidacy is found in the election law, which formally applies to all participating political parties. Thus, affirmative policies are intended to be implemented during the selection of prospective candidates. The purpose of this rule is to encourage parties to recruit affirmed candidates as early as possible, so that by the time of the election, these candidates have the

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opportunity to compete, whereas previously, the opportunity for these candidates was very limited.

Similar to the affirmative policy for women, the electoral system, political parties, the selection of legislative body members, and the appointment system in the executive, judiciary, can also ensure the representation of persons with disabilities according to specified criteria. The representation of persons with disabilities begins within political party leadership. Affirmative policies align with the constitution, requiring political parties to nominate a percentage of candidates with disabilities as legislative members.

Regarding the fulfillment of the right to be elected for persons with disabilities, the pathway lies through political parties. Political parties, as one of the pillars of democracy in Indonesia, have functions including political recruitment. The functions of political parties include being a means of political communication, political socialization, political recruitment, and political regulation. Moreover, according to Law No. 2 of 2008 on Political Parties, Article 11 paragraph 1 states that the functions of political parties, among others, include political recruitment in the process of filling political positions through democratic mechanisms while considering gender equality and justice. Political parties, as representatives of societal aspirations, have been granted the right to nominate candidates in the election contest. Therefore, the responsibility of political parties to provide cadres to fill public positions without discrimination should be a top priority within their activities.

C. Conclusion

Based on the discussion results, there are obstacles to the fulfillment of political rights for people with disabilities involving physical, social, and attitudinal factors. These factors contribute to the observed gap in the understanding of political rights. Despite the existing legal framework, there are real challenges in the practical implementation of these rights. Issues such as limited accessibility, both physically and informationally, contribute to barriers in the full realization of political rights by people with disabilities. Overcoming these barriers requires strategies involving increased awareness and improvements in facilities to support the fulfillment of political rights for disabilities.

As for affirmative policies, they indeed play a crucial role in addressing disparities in political participation. The positive impact of affirmative policies aimed at enhancing the inclusion of people with disabilities in the political process is evident. However, challenges persist, indicating the need for a more comprehensive and robust approach in policy implementation. A holistic approach is required to address existing gaps, in addition to strengthening the enforcement of existing legal provisions, improving accessibility in public spaces and election processes, and conducting awareness campaigns to promote a more inclusive political environment.

D. Suggestion

The fulfillment of political rights for individuals with disabilities can be achieved through collaborative efforts involving the government, election organizers, political parties, and individuals with disabilities themselves. Affirmative action policies provide an alternative means to fulfill the political rights of individuals with disabilities. Therefore, regulations

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28 “Pasal 46 Undang- Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia” (1999).
outlining the percentage of representation for individuals with disabilities in general elections are essential.

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**D. Website**


