

Regulations on Voting Rights for Persons with Disabilities: A Comparative Study between Indonesia and Australia



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ABSTRACT: Indonesia as well as Australia have signed and ratified Convention on the Rights of Persons with Disabilities. This action is regarded as a new chapter for two countries to strengthen their commitment to fulfill political rights for persons with disabilities. Article 29 of the Convention calls on all states to assure that persons with disabilities can participate effectively and fully in political sphere, included the right and opportunity to vote in the election. All states have to ensure that voting procedures, facilities and materials in the election are appropriate, accessible and easy to understand and use. This article aims to explore more and compare the implementation of voting rights for persons with disabilities in Indonesia and Australia, and also how both countries regulate the procedure and mechanism of voting rights into domestic laws based on the Convention. The result is found that either Indonesia or Australia has formulated accommodative and responsive laws to uphold the voting rights for people with disabilities. However, in certain aspects, regulations in Australia are more progressive and innovative than in Indonesia.

KEYWORDS: Voting Rights; Disabilities; Election; Indonesia; Australia

I. INTRODUCTION

The substance of state law is to protect and fulfill of all citizen's rights. There should be equal opportunity and treatment provided by states for male and female, rich and poor, normal and people with disabilities (Jimly Asshiddiqie: 2008). In many countries, the compliance of persons with disabilities (PwD)'s rights has become a challenge due to lack of attention from the government. Majority of states, especially in developing countries, are not equipped by sufficient facilities to support PwD's rights. On the other hand, the pressure from international community related to providing special treatment for PwD continues to happen. It has put many states to take hard efforts and pay extra attention to uphold PwD's rights, especially in terms of voting rights. Therefore, it is interesting to dig more details to what extent Indonesia and Australia has been working on protecting and fulfilling voting rights for persons with disabilities in the election.

This matter is important to be raised, given Indonesia and Australia have signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD) as part of global commitment to fulfill voting rights of disabilities group. Apart from that, the constitution of the two countries also fully include human rights principles (Muhammad Ibrahim: 2019). For this reason, researching how far the commitment and successfulness of Indonesia and Australia in providing the easiness for people with disabilities in the voting rights based on the CRPD principle, is an important and interesting issue. CRPD is a provision related to the perspectives and approaches of countries in the world towards people with disabilities. The convention is emphasizing that it needs new paradigm to disabled people group 'from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society'. (UN: 2020).

In response to the CRPD, Indonesia and Australia subsequently make a number of regulations related to the voting rights for persons with disabilities. In Indonesia, the government has enacted Act Number 19 of 2011 concerning Ratification on the CRPD and also Act Number 8 of 2016 concerning Persons with Disabilities. Furthermore, Indonesia has also formulated Act Number 7 of 2017 concerning General Election which includes "accessibility standards" for persons with disabilities to cast their votes in the election (Ministry of PPN: 2023). In Australia, before the Convention was ratified, there is Disability Discrimination Act 1992 (Cth) as a legal umbrella in fulfilling the voting rights of persons with disabilities, and after the CRPD was ratified, Australia has adjusted the DDA 1992 by strengthening the disability rights protection (Australian Department of Social Service: 2023). In addition, the Australian Electoral Commission (AEC) has also made a number of rules providing convenience and special treatment for persons with disabilities in casting their vote during the election.

The right to vote in the election is one of the political rights guaranteed for PwD in the CRPD. Article 29 of the CRPD expressly requests to all states parties to ensure that persons with disabilities can effectively and fully participate in political life on an equal basis with others, directly or through freely chosen representatives, including the rights and opportunities to vote and to be elected.

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In addition, Article 29 also calls on states to ensure that voting procedures, facilities and materials are appropriate, and accessible and easy for persons with disabilities to understand and use. Thus, it is clear that Article 29 emphasizes on state parties to provide convenience and special treatment for persons with disabilities in exercising their voting rights.

Initial facts are found that regulations in Australia are more details and flexible in regulating the procedure of voting rights for PwD group. For example, it is allowing PwD to vote by post and telephone if they are unable to reach the polling stations due to having poor views, etc (AEC: 2023). In addition, it calls on AEC to conduct special training for polling station staff as preparation to assist (if requested) persons with disabilities while they cast their vote. Furthermore, the regulation in Australia is also emphasizing that the design of polling station should be based on recommendation from PwD's organization. Meanwhile in Indonesia, the existing rules have not regulated as detail and flexible as Australia have. For example, it stipulates that the voting cast must be held at polling station only, there is no option by post or email and telephone. It can be imagined for those cannot reach the polling station due to the limitation of movement or poor views, finally they cannot cast their vote. Also, the road facilities to reach polling station are not accessible yet, thus, how PwD can cast their vote at polling station.

II. THEORITICAL FRAMEWORK

In Indonesia, persons with disabilities are defined as physical or mental disorders which can interfere or having obstacles to carry out any action normally. It classifies PwD into three categories, namely; physical disabilities, mental disabilities, and physical and mental disabilities. Physical disabilities are interpreted as disabilities with bodily functions, such as malfunctions in body movement, vision, hearing, and speech. Mental disabilities are mental or behavioral disorders, both congenital disabilities and those caused by illness. Physical and mental disabilities are people who are suffering from these two disabilities simultaneously (Frichy Ndaumanu: 2020).

Indonesia Act Number 8 of 2016 concerning Persons with Disabilities states that people with disabilities are those who are experiencing physical, intellectual, mental, and/or sensory limitation in the long term period. Consequently, the limitation has put some obstacles and difficulties to participate fully and effectively with other citizens based on equal rights when they are interacting each other's.

In Australia, the term of persons with disabilities is defined in Part 4 of the Disability Discrimination Act (DDA) 1992 (Cth). It states that disability in related to person means:

- a. total or partial loss of the person's bodily or mental functions; or
- b. total or partial loss of a part of the body; or
- c. the presence in the body of organisms causing disease or illness; or
- d. the presence in the body of organisms capable of causing disease or illness; or
- e. the malfunction, malformation or disfigurement of a part of the person's body; or
- f. a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- g. disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; .

In the Convention on the Rights of Persons with Disabilities (CRPD), the definition of disability is not clearly stated. However, Article 1 of the Convention describes that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

The CRPD definition provides a slightly different approach in defining the meaning of persons with disabilities compared to above definition. However, it is not a problem at all, as long as the definition of persons with disabilities can be applied to all types of persons with disabilities as stated by Matilde Leonardi. Matilde argues that the definition of disability should be: applicable to all people, without segregation into groups such as "the visually impaired" or "wheelchair users" or those with a chronic illness, and be able to describe the experience of disability across many areas of functioning. The definition should allow comparison of severity across different types of disability, be flexible enough for different applications (eg, statistical or clinical use), be able to describe all types of disability, and recognise the effects of the environment on a person's disability. Finally, the definition should not include stipulations about the causes of any disability (Matilde Leonardi, et all: 2006).

In the CRPD, the voting rights for persons with disabilities is regulated in detail in the Article 29 as follow:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - I. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

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- II. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
- III. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, using assistance in voting by a person of their own choice;

The existence of this voting right in the CRPD emphasizes that persons with disabilities have the same rights as other normal people, and based on that reason the nations are obliged to protect and facilitate the fulfillment of the rights. The presence of CRPD also reflects a change of paradigm from states parties in perceiving people with disabilities in the political and public sphere.

III. RESEARCH METHOD

This is a library research. It is conducted by collecting and studying primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials include the Convention on the Rights of Persons with Disabilities, the Indonesia Constitution, Disability Discrimination Act 1992 (Cth), Australian Electoral Commission rules, Indonesia Act Number 19 of 2011 concerning Ratification on the CRPD, Indonesia Act Number 8 of 2016 concerning Persons Disabilities, Indonesia Act Number 7 of 2017 concerning General Elections, and other related regulations. In addition, secondary legal materials will also be used, such as books, articles, opinions of legal experts as well as papers related to the topic of this research. Subsequently, it will be analyzed and making conclusions.

IV. RESULT AND DISCUSSION

A. Voting Rights for PwD in Indonesia

In Indonesia, the guarantee of voting rights in the election for persons with disabilities is generally regulated in the Constitution (UUD NRI 1945). Although it is not stated concretely, however in Article 27 of the Constitution states that it is the right of every citizen to participate and involve in government and public sphere without exception. Furthermore, in the Article 28 letter A-J emphasizes that political rights are part of human rights that must be respected by everyone and must be supported and given space for the fulfillment. Apart from the Constitution, the right to vote for PwD is also detailed in Indonesia Act Number 39 of 1999 concerning Human Rights, Article 42 and 43 of the Act regulates that it is right of every citizen to vote and be elected in the election.

More specifically, the existence of the voting rights is regulated in Indonesia Act Number 8 of 2016 concerning Persons with Disabilities. Article 5 Paragraph 1 Letter h states that one of the rights of persons with disabilities is a political right. Article 13 of the Act elaborates more detail about the rights, namely:

1. Rights to vote and be elected;
2. Rights to forming, becoming members and/or administrators of community organizations and/or political parties;
3. Rights to forming and joining organizations of persons with disabilities and to represent persons with disabilities at the local, national and international level;
4. Rights to be actively participate in the general election;
5. Rights to obtain accessibility in the elections process; and
6. Rights to obtain political education.

Furthermore, in the Article 75 of the Indonesia Disabilities Act states that

1. The central government and local governments are required to ensure that persons with disabilities can participate effectively and fully in political and public life directly or through its representatives.
2. The central government and local governments are required to guarantee the rights and opportunities for persons with disabilities to vote and be elected in the political sphere.

A similar provision is also regulated in Article 7, which states that the central government and local governments are required to guarantee the political rights of Persons with Disabilities by taking into account the diversity of disabilities in parliament/presidential election, gubernatorial election, regent/mayor election, including:

- a. To Involve directly to participate in election activities/process;
- b. Rights to be registered as a voter;
- c. To ensure that the election procedures, facilities and aids are appropriate, accessible and easy to understand and use;
- d. To protect the right of Persons with Disabilities to vote confidentially without intimidation;
- e. To protect the rights of Persons with Disabilities to run for election, to hold office and carry out all public function at all level of government;
- f. To ensure that Persons with Disabilities can take advantage of the use of new technology to assist in carrying out their duties;
- g. To guarantee the freedom of Persons with Disabilities to choose companion according to their own choice;
- h. To obtain information, socialization and simulation at every stage in the election; and
- i. To guarantee the fulfillment of the right to be involved as staff/official of the election body.

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Meanwhile in the regulation related to election, the right to vote for PwD is regulated in the Act Number 7 of 2017. Article 5 of the Act states that “persons with disabilities who meet the requirements as voters have same opportunity to vote and be elected as members of parliament, president/vice president, and as election commissioners”. Likewise, in the Article 350, Article 356 and Article 364 of the Act, in principle, also require Indonesia election body to provide facilities for persons with disabilities, especially the accessibility to polling stations.

Hence, the arrangement of PwD voting rights in the Indonesia regulations are moderately good, because it has been providing equal space and facilities for PwD groups to participate in the election and other political rights. However, if it is observed more closely, the above Act actually still leaves space for discrimination in the fulfillment of voting right for PwD group, because in some aspects these provisions are not regulated in detail, so that PwD’s are confused on how to execute their voting rights, this is what happened in the 2019 election. In other words, the Act does not fully reflect the elaboration of Article 29 of the CRPD. On the other hand, Article 29 of the CRPD clearly demands state parties to provide simple mechanisms and procedures for fulfilling the right to vote in the election.

To be specific, it can be simplified that there are some aspects in the Indonesia regulation which have not accommodated yet regarding the easiness to vote for persons with disabilities. For example, the existing regulations require the cast of voting must be held at polling stations or at a place that has been specifically designated as a polling station as stated in Article 350 of the Act Number 7 of 2017. Indeed, this article provides easiness for PwD by providing reachable polling station. However, requiring the cast of voting must be held in a polling station will potentially make persons with disabilities are unable to cast their vote because some of them are having low vision or even cannot walk at all, then how can to “push” PwD to vote at polling stations. In addition, the roads or other supporting facilities, are not fully available and well integrated yet for PwD. Therefore, these regulations should provide alternative way which is enable PwD to exercise their voting rights without being hindered by other things.

Another problem in the Indonesia regulation is, there is no strong stipulation whether election staff/officers are compulsory to be trained related to how to provide assistance for PwD. Although in the Article 356 of the Election Act has stipulated that persons with disabilities in case of difficulties can seek for help from others people. However, staff of the election body must be anticipated and well prepared in case PwD is asking for help from them. The similar description also happens to polling station standard, despite the polling station for PwD is prepared, there is no clear explanation in the regulation whether the election body should have recommendation from disabilities organization to form the polling station. Surely, the unclear affirmation will become a problem for disabled persons, because the election staffs might not well prepare the polling station designed for PwD standard.

Therefore, in that situation, the Indonesia government should provide alternative options for PwD to cast their vote in the election, such as by phone, email or post, so as to make it easier to exercise their voting rights as requested in the Article 29 of the CRPD.

B. Voting Rights for PwD in Australia

In Australia, the protection of PwD rights is regulated in the Disability Discrimination Act (Cth) 1992. This Act ensures that there is no discrimination against persons with disabilities in the public sphere. Violation of this provision will receive sanctions. Meanwhile, the presence of the CRPD has become new legal umbrella for Australia in accelerating the implementation of the political rights of persons with disabilities, especially the voting rights.

Australia Electoral Commission (AEC) has the authority to make any rules related to election procedures for persons with disabilities (AEC: 2020). It is found that, AEC provides voters with disabilities with various type of voting. Among them are, the casting vote is not only conducted at the polling stations, but also can be carried out at home if the disabled person condition shows impossible conditions to go to the polling station. Surely, this option makes it easier for persons with disabilities to fulfill their right to vote.

If the voting rights is carried out at the polling station, it is supported by the ideal and standards facilities for PwD to reach it. For example, the polling station is made based on the recommendation of disability organization, so that the the polling station fulfills the standard for disabled persons. Likewise, the availability of AEC staff who have been trained on how to provide assistancy for persons with disabilities, is also another good policy from AEC. Although PwD group can ask anyone for the help, but the AEC’s step is as an effort to anticipate if the disabled person is asking assistant from AEC staff.

The other most important thing is the integrated road facilities from house to the polling station, so that it is very possible for people with disabilities to reach the polling station independently. In Australia, it is government compulsory to provide accessibility in the public facilities and connected each other. For example, bus stations, buses, and road sidewalks are generally equipped with accessibility facilities that allow persons with disabilities to reach the polling stations around them. In the Article 23 of DDA 1992, it is stipulated that public places must be made accessible to PwD. As a result, this clause has made voters with disabilities still easily be able to exercise their voting rights at the polling station.

However, if persons with disabilities cannot reach the polling station due to low vision or blindness, then they can vote by telephone. In addition, they can also vote by post if they consider cannot vote on the election day because there is another agenda already planned early or might be they experience from other limitations, also can cast their vote through post. This flexibility might

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be said as part of progressive interpretation in following up the provision of Article 29 of the CRPD. Thus, it can minimize the barrier for persons with disabilities to vote in the election.

Australia itself has been implementing this flexibility since the 2010 Federal Election and until recent day. This method has contributed to the increasing participation of persons with disabilities in the election. Another progressive aspect is the availability of accessible election guideline to persons with disabilities, including audio, braille, large print and electronic text, which provides information on accessible polling stations and how voters can vote more early if he or she couldn't attend the polls.

The above description explains that Australia provides various options in the election. For example, the voting is not merely casted in the polling station, but it can be conducted by post or telephone or email. Also, it compulsory for the AEC to consider recommendation from disability organizations in determining and designing accessible polling stations. Thus, based on the description, it is less potential that PwD group cannot exercise their voting rights during the election.

C. What Indonesia Can Learn

Based on the above description, it is found that there is a different arrangement between the Indonesia regulation and Australia in regulating the fulfillment of voting rights for persons with disabilities. In Australia, it can be said that it is more innovative and progressive, while in Indonesia it seems that in certain aspect the regulation is still rigid in translating the meaning of CRPD. One of the reason is related to the election body authority.

In Australia, AEC is given broad authority to regulate in detail on the election procedure and mechanism, this condition makes them more flexible in regulating the voting rights procedure for persons with disabilities such as providing options to vote by post or by telephone or by mobile polling station. Meanwhile in Indonesia, the election body is given limited authority to make any rule related to election, so that under this conditions, the Indonesia Election Body is not flexible to provide any option in the election. Their decision must be based on the higher law and also must be consulted with parliament. They are forbidden to make any new rules before doing any consultation. That is why they have difficulties to make any innovation in the election for disability. Perhaps, it is also related to the legal system in the two countries, Indonesia adopts a hierarchical and legality system, means that the lowest law/body cannot against with the higher one and also a state body cannot act prior law exist. This condition has affected the flexibility of Indonesia Election body to make any option for disabled people. Meanwhile, Australia with its common law system seems to be more dynamic in seeking and discovering new things, that has made the AEC tends to be more flexible in arranging various options of voting rights for disabled people in the election.

V. CONCLUSION

To conclude this article, it is expected that regulations in Indonesia might provide more space for persons with disabilities, especially the easiness to cast their vote in the election as Australian has. Generally, current regulation in Indonesia is not bad, it provides good space for persons with disability to involve in the election, but in several sectors, the regulation is still rigid in understanding Article 29 of the CRPD. So, it might say that the current regulations have a potential to obstruct the voting right of persons with disabilities. Therefore, providing new option such as voting via post will greatly assist persons with disabilities in exercising their rights. Likewise, voting via telephone can also be another alternative, so that there is no disability political rights are neglected. The essence of state law like Indonesia is ensuring that everyone is treated equally in exercising their political rights, included for persons with disabilities. Moreover, these options are feasible and inexpensive to be conducted, as a result, in the future the fulfillment of the voting rights of persons with disabilities according to the CRPD can really be carried out perfectly in Indonesia.

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