

The Right To Vote And Be Elected For Persons With Mental Disability In Indonesia Due To Revisions To General Electoral Law

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ABSTRAK

Tulisan ini mengkaji seluruh Undang-Undang yang mengatur tentang Pemilihan Umum dari Undang-Undang Nomor 7 Tahun 1953 sampai dengan Undang-Undang Nomor 7 Tahun 2017. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan. Hasil penelitian ini adalah bahwa dalam perjalanan Politik dan Demokrasi di Indonesia telah terjadi revisi Undang-Undang Pemilihan Umum yang berdampak pada hilangnya hak politik bagi penyandang disabilitas mental, yang sebagai warga negara penyandang disabilitas mental dan disabilitas lainnya memiliki perlindungan hak hukum yang sama sebagai warga negara. Hal-hal lain sebagaimana diatur dalam Pasal 27 Ayat (1) UUD 1945. Adanya mispersepsi baik masyarakat umum maupun penyelenggara negara mengenai disabilitas mental, sehingga hak untuk memilih dan dipilih penyandang disabilitas mental dalam Pemilu dan Pilkada dipertanyakan, dibatasi atau bahkan dihilangkan. Temuan ini semakin menarik karena adanya fakta bahwa undang-undang pemilihan umum yang telah beberapa kali direvisi tidak mengakomodir hak memilih dan dipilih dari penyandang disabilitas mental, padahal penyandang disabilitas sebagai warga negara Republik Indonesia juga memiliki hak politik. Inilah sebabnya mengapa masih ada perdebatan tentang hak politik Penyandang Disabilitas Mental. Kemudian hingga saat ini baru ada 2 (dua) UU Pemilu yang mengatur tentang hak memilih dan dipilih penyandang disabilitas mental dalam pemilu yaitu UU Nomor 7 Tahun 1953 dan Undang-Undang Nomor 7 Tahun 2017.

Kata kunci: Pemilu, Cacat Mental, Pemilihan

ABSTRACT

This paper examines all Laws governing General Elections from Law Number 7 of 1953 to Law Number 7 of 2017. The research method used is normative juridical with a statutory approach. The results of this study are that in the course of Politics and Democracy in Indonesia there has been a revision in the General Electoral Law which has an impact on the loss of political rights for mental disabilities, which as citizens with mental disabilities and other disabilities have equal legal right protection as citizens. Other matters as regulated in Article 27 Paragraph (1) of the 1945 Constitution. There are misperceptions of both the general public and state officials regarding mental disabilities, so that the right to vote and be elected with mental disabilities in General Elections and Regional Head Elections is questioned, limited or even eliminated. This finding is even more interesting because of the fact that the general electoral law which has been revised several times does not accommodate the right to vote and be elected from mental disabilities, even though as citizens of the Republic of Indonesia people with disabilities also have political rights. This is why there are still debates about the political rights of Persons with Mental Disabilities. Then until now there are only 2 (two) Electoral Laws that regulate the right to vote and are elected with mental disabilities in general elections, namely Law Number 7 of 1953 and Law Number 7 of 2017.

Keywords: Election, Mental Disabilit, Election

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A. Introduction

Persons with disabilities have the equal rights in all aspects of life, protection of the right to live, to grow and develop as stated in Law Number 8 of 2016 concerning Persons with Disabilities. This is the main idea of the preamble. It is stated in the preamble of the law. Protection of the right of persons with disabilities also regulated in Article 5 Law Number 7 of 2017 governing General Elections, which stated A person with disabilities who is eligible to vote shall be provided with the same opportunity as a voter, DPR candidate, DPD candidate, presidential/vice-presidential candidate, DPRD candidate, and as General Elections Commission commissioner.

The word eligible in the article become the author's interest to examine what conditions must be met by a person with mental disabilities to obtain the person's right in the general election as stated in the law. In a guidebook for social assistance for persons with disabilities, Ministry of Social Affairs of Republic Indonesia categorize persons with disabilities into three categories, that is:

Person with mild disabilities.

Is a person who has physical or mental weakness but capable of being educated or trained, for example, a person whose arms or legs amputated, one leg wilted, or bent hands or legs. People with such disabilities are still able to carry out daily activities and do not need the help from others, they can also be empowered or rehabilitated.

Person with moderate disabilities.

Is a person who has physical or mental weakness but capable of being educated or trained, for example two arms amputated above the elbows, two legs amputated above the knees or thighs, hearing disability, or seeing disability. People with such disabilities are still able to carry out daily activities and do not totally need the help from others, they can also be empowered or rehabilitated.

Person with severe disabilities.

Is a person with disabilities whose level of disability can no longer be rehabilitated, cannot carry out daily activities, and/or depend on other people's assistance throughout their lives, and are unable to support themselves.

The categorization of level of disability above is one of the Government's effort in handling persons with disabilities in an integrated manner according to the level of severity/stage. Regarding the word "eligible" in Article 5 of Law Number 7 of 2017, the severity

division can also be used as a tool in determining the granting of the right to vote and be elected for persons with mental disabilities. Due to lack of standard definitions and rules regarding the regulation of the rights of Mental Disabilities in the implementation of the General Election, ahead of the General Election on April 17, 2019, the participation of persons with mental disabilities in the Permanent Voter List (DPT) is being questioned by some parties, regardless those rights is mandated by the 1945 Constitution. This is not only due to the attitude of the majority of Indonesian people who assumed that information about persons with disabilities is nothing of importance nothing to their interest, the inherent stigma for people with mental disabilities and the use of the word “crazy” for people with mental disabilities are clear evidence of discrimination against mental disabilities. Most Indonesians tend to simplify the notion of mental disability by referring to the sufferer as crazy. This lack of public concern and ignorance of the community then has an impact on efforts to fulfill the political rights of persons with disabilities as stated in Article 5 of Law Number 8 of 2016 governing Persons with Disabilities.

As the results of the author's search, it turns out that the issue of participation in mental disabilities in elections is not new, because during the first general election held in 1955 until the General Election in 2019 there have been 7 (seven) revisions to the General Election Law, which is also one of the revisions, namely the regulation regarding the selection and selection of persons with mental disabilities. This matter then attracted our attention as writers to bring it up in a scientific writing on the rights of mental disabilities in elections from various perspectives on laws and other regulations. The use of these other rules and laws is used to discuss more clearly regarding mental disabilities so that there is no confusion of information regarding mental disabilities and their civil rights. The appointment of this discussion is interesting to discuss because throughout the literature search, the author has not found any scientific evaluation of this problem.

B. Focus of Problem

Based on this background, the problem can be formulated as:

How is the implementation of the right to vote and be elected for persons with disabilities, especially mental disabilities in various revisions to the General Electoral Law?

C. Research Methodology

We use the normative juridical method in assessing and testing legal concepts that exist in social life. Researchers also collect data by conducting a literature study to determine the

effectiveness of the intent of the Law (Das Sollen) issued with its implementation in the community (Das Sein). The data collected in this paper is in the form of secondary data.¹

The secondary data collected can be obtained from Primary Legal Materials, which are legal materials that have binding power to the community. The material used by the researcher is a review of all General Electoral Laws through a statute approach, laws on disabilities, and other laws in correlation with our research, with Constitution of 1945 as the foundation. The writing also uses secondary material that provides an explanation of primary legal materials such as academic drafts of legislation, research results, articles, papers, scientific writings, which are works in the field of law and state administration that support this writing. As for tertiary materials, the legal materials used are all materials that provide instructions or explanations for primary and secondary legal materials or also referred to as supporting materials for researchers, such as dictionaries, biographies, encyclopedias.

Furthermore, the legal materials that have been collected from various sources are then studied, then described descriptively in order to answer the problems in this paper.

D. Finding And Discussion

1. Fulfillment of the Right to Vote and Be Elected for Persons with Mental Disabilities Based on Law Number 7 of 2017

The open-mindedness of society in Indonesia in assessing a disability is still far from expected even though these things have been regulated in the 1945 Constitution and other laws. This is due to the wrong stigma that is built up in people's lives. The provisions regarding the right to vote and be elected for persons with mental disabilities contained in Law Number 7 of 2017 are not always in line with other laws or government regulations. This can be seen on:

2. Law Number 36 of 2009 concerning Health

The health law also regulates the rights of persons with mental disabilities or mental disorders, including Article 148 Paragraph (1) which reads: "People with mental

¹ Secondary data (in legal research called primary legal material) is data that has been in a ready-to-use state, the form and content of which have been prepared by previous researchers and can be obtained through certain agencies, for example laws, government regulations, international conventions, court decisions (jurisprudence), official documents, statistical data and so on. See: Wiradipradja, E. S. Practical Guide to Research Methods and Scientific Research [*Penuntun Praktis Metode Penelitian dan Penelitian Karya Ilmiah*]. p. 43.

disorders have the same rights as citizens". Then in Paragraph (2) it is stated that: "The rights as referred to in Paragraph (1) include equal treatment in every aspect of life, unless the laws and regulations state otherwise". Supposedly as a law on health drawn up by experts in the field of health, the contents of this law clearly explain and position the rights of mental disabilities firmly, so that it will become a reference for the legislation under it. This will be different if the phrase "unless the legislation states otherwise" is replaced with the phrase "the treatment of aspects of life is regulated separately from other regulations". So the regulations that determine the treatment of aspects of life of persons with mental disability will follow the existing laws.

3. General Elections Commission Regulation Number 11 of 2018 concerning the Preparation of Domestic Voters List in the General Elections

The preparation of the Permanent Voter List (DPT) and its requirements are regulated in Article 4 Paragraph (1) which contains "To be able to exercise the right to vote, Indonesian Citizens must be registered as Voters unless otherwise stipulated in the Law", then in Paragraph (2) it says that: "The voters as referred to in paragraph (1) must meet the following requirements: has reached 17 (seventeen) years of age or older on the voting day, are married, or have been married; then not being mentally disturbed / memory. Then the last one listed in Paragraph (3), namely: "Voters who are mentally disturbed as referred to in Paragraph (2) letter b, so that they do not meet the requirements as voters, must be proven by a doctor's certificate."

4. General Elections Commission Regulation Number 11 of 2019 concerning the Second Amendment to General Election Commission Regulation Number 11 of 2018 Compilation of Domestic Voters List in Organizing General Elections

In subsequent political developments, the General Elections Commission revised several phrases in Article 4, among others in Article 4 Paragraph (1) it is stated that: "To be able to exercise the right to vote, Indonesian citizens must be registered as voters unless otherwise stipulated in the Act. ", whereas in Paragraph (2) it is stated that: "Voters as referred to in Paragraph (1) must meet the requirements, among others: has reached 17 (seventeen) years of age or older on the voting day, are married, or have been marry; and not being mentally disturbed

KPU Regulation Number 11 of 2018 which was issued on April 18 2018 and KPU Regulation Number 11 of 2019 which was issued on April 3, 2019 which are expected to further emphasize the political rights of persons with mental disabilities, have even created legal

uncertainty, among others, because these two KPU regulations were issued after Law No. Law Number 7 of 2017, and looks very inconsistent and even contradicts Law Number 7 of 2017, the contents of the article in the KPU regulation above seem to make the problem of fulfilling the right to vote and being elected with mental disabilities not really final. As a result, efforts to fulfill the right to vote and be elected for persons with mental disabilities in the general election on April 17, 2019 became a political issue that was raised to be a subject of debate among political figures ahead of the general election.

The General Elections Commission should in making rules follow the hierarchy of law formation as regulated in Article 7 Paragraph (1) of Law No. 12 of 2011:

- 1) 1945 Constitution
- 2) MPR Decree
- 3) Government Regulation in Lieu of Law
- 4) Government Regulation
- 5) Presidential Regulation
- 6) Local regulations
- 7) Village regulations

Thus, legally, these two General Election Commissions regulations have a lower position than the law. In jurisprudence, we are familiar with the principle of *lex superior derogat lex inferior*, namely the higher law overrides the lower law. These two General Election Commissions regulations contradict the regulations that the General Election Commissions itself has issued, namely, KPU circular letter No. 395/KPU/V/2014 which instructs that voting place be held in mental hospitals to facilitate the fulfillment of the right to vote for people with mental disabilities.

Thus, the fulfillment of the rights of persons with mental disabilities according to the laws and regulations still needs to be improved. In the implementation of the election activities on April 17, 2019, there have been better efforts from the Government and elements of society to fulfill the right to vote from mental disabilities. This can be proven by the participation of mental disabilities who have been able to use their political rights as voters in the April 17 2019 General Election where it is hoped that in the upcoming general elections more and more mental disabilities can exercise their political rights.

In order to provide legal certainty to the fulfillment of the right to vote and to be elected by persons with mental disabilities in the upcoming celebration of democracy, it is hoped that the Legislature, Judiciary and the General Elections Commission must make clearer rules, both

for persons with physical disabilities or mental disabilities. Because many facts show that a person's disability does not limit his activities and creativity, things can be seen around us that many works and mental disabilities are beyond what we can imagine. Lilik Suwandi (Anta Samsara), author of the book “The waves of the ocean of the soul are mental disabilities, Hana Alfikih, Indonesian artist who is Bipolar, and, Saka Rosanta, Indonesian artist who is a schizophrenic

Although we still have to go through the twists and turns of the struggle, I hope the struggle to get state and community recognition for the rights of persons with disabilities, especially mental disabilities will never end. Not only the struggle for the political rights of a person with a disability but for other rights. This struggle is a noble struggle for the creation of a just and prosperous state based on the ideals of Pancasila and the 1945 Constitution.

E. Literature Review.

Disabilities and Mental Disabilities

First, we discuss the meaning of Disabilities and Mental Disabilities, where the World Health Organization (WHO), defines persons with disabilities as impairment, disability, handicap.² Impairment is loss or damage to body parts, such as amputations and paralysis due to disease. Disability as a result of impairment, among others, difficulty in walking, seeing, speaking, hearing, reading, writing, counting, and difficulty in relating to the surrounding environment. Disability can be a handicap, if the difficulties experienced by the individual interfere with his ability to do the things that are expected of him in life.³

The United Nation states that: “Persons with disabilities include those who long-term physical, mental, intellectual or sensory impairments which interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.⁴

Guidelines for the Classification and Diagnosis of Mental Disorders, do not recognize the term Mental Illness (Mental Illness) but the term used is mental disorder⁵. The Ministry of Health of the Republic of Indonesia defines that mental disorders are conditions that interfere with an

² Andrie Irawan, S.H. (2017). The Role of the Yogyakarta Special Region Government in Legal Protection Against Women with Disabilities Victims of Violence [*Peranan Pemerintah Daerah Istimewa Yogyakarta Dalam Perlindungan Hukum Terhadap Perempuan Penyandang Disabilitas Korban Kekerasan*], DEJURE Scientific Journal of Law: Scientific Studies of Law, 2(2), 202-218 2(2), 202-218.

³ Ministry of Health, R.I. (1993). Guidelines for Classification and Diagnosis of Mental Disorders in Indonesia III [*Pedoman Penggolongan dan Diagnosa Gangguan Jiwa di Indonesia III (PPDGJ III)*], p.10.

⁴ Rao, G. P., Ramya, V. S., & Bada, M. S. (2016). *The rights of persons with Disability Bill, 2014: How “enabling” is it for persons with mental illness?*. Indian journal of psychiatry, 58(2), 121.

⁵ Rusdi Maslim, "Pocket book on diagnosis of mental disorders" [*Buku saku diagnosis gangguan jiwa*"], Publisher of the Department of Psychiatry, FK-Unika Atmajaya, Jakarta, 2013. p.7

individual's ability to function normally in society and in fulfilling his obligations as human beings in society.⁶

There are several definitions/concepts used to define the definition of mental disorders. One of them was given by the American Psychiatric Association (APA) in 1952, which eventually gave birth to the Diagnostic and Statistical Manual of Mental Disorder IV (DSM-IV) in 1992, these concepts include:⁷

The concept of mental disorders from PPDGJ - II which refers to DSM - III

Mental disorders are syndromes ⁸ or behavior, or psychology of a person, which is clinically significant, and which is typically associated with a symptom of distress or impairment in one or more of the essential functions of a human being.

In addition, it is concluded that dysfunction is a dysfunction that lies not solely in the relationship between the person and society, but rather in behavioral, psychological, or biological terms, and the disorder.

The concept of mental disorders from DSM-IV (which is a PPGDJ-III reference)

Mental disorder is conceptualized as clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significant increased risk of death, pain, disability, or an important loss of freedom.

The definition of mental disorders is done by grouping based on diagnosis, where the grouping is done using a numerical system starting from F00 to F98 with a total of 100 categories/types of mental disorders. For grouping can be seen in the following Classification Structure table:

Organic Mental Disorder	Organic and Symptomatic Disorders	F0	Organic Mental Disorders including Symptomatic Mental Disorders	F00 – F03 F04-F07,F09	Dementia Amnestic Syndrome & Organic Mental Disorder
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⁶ MoH, R.I. (1993). Ibid.

⁷ Rusdi Maslim, Ibid. p. 7

⁸ Indonesian Dictionary [Kamus Besar Bahasa Indonesia]: Syndrome is a collection of symptoms or signs that occur simultaneously (appear together) and mark certain abnormalities; things (such as emotions or actions) that usually together form an identifiable pattern.

	Disorders due to alcohol and drugs/substances	F1	Mental and Behavioral Disorders Due to Use of Alcohol and other Psychoactive Substances.	F10 F11,F12,F14 F13,F15,F16 F17,F18,F19	Mental & Behavioral Disorders due to alcohol use Mental & Behavioral Disorders due to use of opioids/cannabonoid/cocaine Mental & behavioral disorders due to use of sedatives or hypnotics/other stimulants/hallucinogenics Mental & Behavioral disorders due to use of tobacco/volatile solvents/multiple substances & other psychoactive substances
Psychotic mental disorder	Schizophrenia and related disorders	F2	Schizophrenia, schizotypal disorder and delusional disorder	F20,F21,F23 F22,F24 F25 F28,F29	Schizophrenia, Schizotypal Disorder, Acute and transient psychosis Persistent delusional disorder, induced delusional disorder Schizoactive disorder Other non-organic psychoactive disorders, or YTT
	Affective disorder	F3	Mood/afective Disorder	F30,F31 F32,F39	Manic episodes, bipolar affective disorder Depressive episodes, recurrent depressive disorder, persistent mood (mood/affective) disorder/other/Unclassified (YTT)
Neurotic disorders and personality disorders	Neurotic disorders	F4	Neurotic disorders, somatoform disorders and stress related disorders	F40,F41 F42 F43,F45,F48 F44	Phobic or other anxiety disorder. Obsessive compulsive disorder Reaction to severe stress and adjustment disorders, somatoform disorders, other neurotic disorders. Dissociative (conversion) disorder.
	Adult personality and behavior disorders	F5	Behavioral syndromes associated with physiological disturbances and physical factors	F50-F55,F59	Eating disorders, sleep disorders, sexual dysfunction or other behavioral disorders.
	Adult personality and behavior disorders	F6	Adult personality and behavior disorders	F60-F69	Personality disorders, habit & impulse disorders, sexual identity or preference disorders.
Disorders of childhood, adolescence and development	Mental retardation	F7	Mental retardation	F70-F79	Mental retardation
	Disorders of childhood, adolescence & development	F8	Psychological development disorders	F80-F89	Psychological development disorders
	Disorders of childhood, adolescence & development	F9	Behavioral and emotional disturbances with onset, usually in childhood and adolescence	F90-F98	Hyperkinetic disorders, behavioral disorders, distinctive emotional or social functioning disorders, "Tic" disorders or other behavioral & emotional disorders

Table 1 Classification Structure of Guidelines for Classification of Diseases and Diagnosis of Mental Disorders (GCDDMD)

Right of Persons with Disabilities

Like other citizens, persons with disabilities also have rights that are protected by the State which have been regulated in the Constitution of 1945 where every citizen has the same civil rights and obligations as citizens, for example:

- a. Every citizen has the right to legal protection.
- b. Every citizen has the right to work and a decent living.
- c. Every citizen has the same position in the eyes of the law and in the government.
- d. Every citizen is free to choose, embrace and practice their own religion and belief.
- e. Every citizen has the right to education and teaching.
- f. Every citizen has the right to defend the territory of the unitary state of the Republic of Indonesia.
- g. Every citizen has equal rights in freedom of association, assembly and expression of opinion orally and in writing in accordance with the law.

These rights as citizens are enforced without exception, including for persons with physical and mental disabilities. Meanwhile, regarding the rights of persons with disabilities as written in Article 5 paragraph (1) of Law Number 8 of 2016 includes:

- a. To live,
- b. Free from stigma,
- c. Privacy,
- d. Justice and legal protection,
- e. Education,
- f. Employment, entrepreneurship and cooperatives,
- g. Health,
- h. Politics,
- i. Religion.

From the description of the rights of persons with disabilities above, the author focuses on point “h”, namely on political rights, which includes the rights of persons with disabilities to participate in democracy. This right also includes the right of persons with disabilities to vote and the rights of persons with disabilities to take part in legislative and executive candidates. And in its development, disability rights experienced ups and downs and ups and downs following the dynamics of politics in Indonesia and became a debate with various considerations from various disciplines.

Amendments to General Electoral Law.

Of the various revisions to the law, the author's focus is only on the discussion of the requirements to become a legislative candidate and the requirements to become a prospective voter, in other words, the right to vote and the right to be elected. We set the focus of the

discussion on these rights because of revisions that eliminate the right of persons with mental disabilities to participate in elections. According to Teuku Mohammad Radhie, legal reform implemented in Indonesia should be within the framework of national legal development. What is meant by national law development here is conditioning efforts in all fields of law, namely civil law, criminal law, procedural law, and other laws if necessary.⁹

However, in reality these revisions seem to be only oriented towards political interests.

The revisions to the General Election Law can be seen in the following table:

Rights of Persons with Disabilities	Law 7/1953	Law 15/1969	Law 1/2015 Law 8/2015	Law 10/2016	Law 7/2017
The right to vote for people with mental disabilities	Article 2 paragraph (1) point (d), it is obvious that <u>memory</u> is not disturbed	Article 10 paragraph (2) point (b), is clearly not having <u>mental/memory</u> disorders	Article 57 paragraph (3) point (a), not having <u>mental/memory</u> disorders	Article 57 paragraph (3) point (a), not having <u>mental/memory</u> disorders	Article 5, persons with disabilities who meet the requirements have the opportunity to become voters
The right to be elected people with mental disabilities	Article 36 – Article 55, It is the right of each party	Article 16, point (g), is clearly not mentally disturbed	Article 7 point (f), physically and spiritually capable based on results of a thorough medical examination from a team of doctors;	Article 7 paragraph (2) point (f), physically and spiritually able, and free from narcotics abuse based on the results of a comprehensive health examination from the team;	Article 5,...as a candidate for member of House of Representatives (Dewan Perwakilan Rakyat, DPR), member of Regional Representative Board (Dewan Perwakilan Daerah, DPD), President/vice president, member of Regional House of Representatives (DPRD), and General Elections Commission (Komisi Pemilihan Umum, KPU) commissioner

Source: data processed based on articles in the General Electoral Law

Table. 2. Differences in Voting and Elected Rights in the amendments to the Law

From the table above, it is clear that there are different arrangements for the rights of persons with disabilities, both the right to vote and the right to be elected. Thus, almost 48 years since the issuance of Law No. 15/1969, the right to vote and to be elected with mental

⁹ Abdul Manan, “Aspects of Changing Laws” [*Aspek-aspek Pengubah Hukum*], Predanamedia Group Publisher, Jakarta, 2018, p.5

disabilities has not been recognized or, rather, it has been eliminated. The abolition of the rights of persons with mental disabilities occurs because in the making of the law the legislature equates mental disability (mental disorder) with intellectual disability (memory disorder). This equalization of mental disabilities and intellectual disabilities should not be carried out by the legislature when making laws, this equality is carried out without considering the development of other sciences, especially the development of mental medicine, even though science is also a source for finding law.¹⁰ The development of mental medicine has experienced rapid development as evidenced by revisions in regulations, including:

- a. Use of Guidelines for Classification and Diagnosis of Mental Disorders (GCDMD–I) since 1973,
- b. Use of Guidelines for Classification and Diagnosis of Mental Disorders (GCDMD–II) since 1983, and
- c. Use of Guidelines for Classification and Diagnosis of Mental Disorders (GCDMD–III) since 1993.

These revisions indicate a development in Psychiatric Medicine which has found a significant difference between Mental Disorders and Intellectual Disorders based on symptoms that can be found and can be seen because they often occur in life around us. The authors present these differences in tabular form to make it easier to distinguish the two disabilities who almost look the same on a daily basis.

Mental disorders	Intellectual Disorder
1. Anxiety disorders (phobias))	1. Down syndrome
2. Personality disorders (antisocial, paranoid)Gangguan mood (<i>Bipolar</i>)	2. Inhibition of hormones in the thyroid gland (Hypothyroidism)
3. Inability to control cravings (kleptomania, alcohol, nicotine, and drug addiction)	3. Inflammation of the protective lining of the brain and spinal cord (Meningitis)
4. Psychotic Disorders (Hallucinations, schizophrenia)	4. Disorders during pregnancy (Preeclampsia)
5. Eating disorders (anoxeria nervosa)	5. Disturbances during childbirth (premature)

¹⁰ Mertokusumo, S. (1998). Indonesian Civil Procedural Law [Hukum Acara Perdata Indonesia], p.215

6. Obsessive-compulsive disorder (repeated rituals)	
7. Post-traumatic disorders	
8. Stress response syndrome	
9. Dissociative Disorder (Multiple Personality)	
10. Sexuality and Gender Disorders	
11. Somatoform disorders (pain even without medical problems)	
12. Alzheimer's dementia	
13. Trouble sleeping (Insomnia)	

Source: data processed from various sources

Table 3. The Difference Between Mental and Intellectual Disorders

From what is presented above, the legislature, which is the people's representative, should be able to open up and follow the development of science and amend these laws and regulations so as not to eliminate the rights of mental disabilities. From Table 2 it can be concluded that there are only two electoral laws enacted in Indonesia that give place to the rights of persons with mental disabilities to participate in general elections, namely Law Number 7 of 1953 and Law Number 7 of 2017, whereas in law Civil disability is a person (Person) who is a legal subject. Thus, legal subjects have the right and obligation to carry out legal actions.¹¹ Furthermore, the author discusses the rights of persons with disabilities in the General Electoral Law which has been used in the Republic of Indonesia since independence, as follows:

Law Number 7 of 1953

The phrase, obviously not having memory impairment, in Article 2 Paragraph (1) letter (d), Law Number 7 of 1953 provides the meaning that a person with mental disability or a person with a mental disorder is a person who can be legally responsible for his actions while a person with a mental disorder memory impairment (intellectual disability) is a group of people who cannot legally be held responsible for their actions. However, the weakness of this article is that it does not provide clear limits on which mental disabilities can be included in the general election. The unclear boundaries in granting the right to vote and the right to be elected for mental disabilities certainly creates legal uncertainty, while;

¹¹ Beni Ahmad Saebani ell, "Comparison of civil law" ["Perbandingan hukum perdata"], Publisher Pustaka Setia, Bandung, 2016. p.1061

Law Number 15 of 1956, Law Number 1 of 2015, Law Number 8 of 2015, and Law Number 10 of 2016.

There are 4 General Election Laws (Pemilu) which in each article of the requirements for the right to vote and the right to be elected, equate mental disability and intellectual disability. The author has not found out what the legislative rationale and rationale was at that time so as to equate mental disability and intellectual disability in Law Number 15 of 1956, hence, the omission of the rights of mental disabilities in participating in elections. Meanwhile, Law Number 1 of 2015 is a product of laws that were made in a hurry and the political situation at that time focused more on the issue of general elections and direct regional head elections, so that the issue of disability rights has not received attention.

The history of the birth of Law Number 1 of 2015, Law Number 8 of 2015 began with the political situation approaching the 2014 election, where there were various debates regarding the mechanism for holding regional head elections, pressure and the political situation forced President Susilo Bambang Yudhoyono to issue a Government Regulation in Lieu of Acts Number 1 of 2014. After the general election on 9 July 2014, Government Regulation in Lieu of Acts Number 1 of 2014 was passed into Law Number 1 of 2015 on 20 January 2015. After the ratification of Law Number 1 of 2015 the Legislature revised and ratified Law Number 8 of 2015 on March 18, 2015.

The hasty revision resulted in Article 57 Paragraph (3) letter (a), which regulates the requirements for citizens who can be registered in the electoral roll are people who "are not disturbed in spirit/memory". Where this phrase poses a problem among other things:

- 1) Not explaining in detail about the medically described qualification of "disturbed soul/memory".
- 2) Results in the state not treating its citizens fairly in the implementation of democracy.
- 3) Has also made some citizens (mentally disabled) lose legal guarantees, legal protection and legal certainty that should be fulfilled by the state.

On July 1, 2016, the legislature again ratified Law Number 10 of 2016 which was an amendment to Law Number 1 of 2015. In various revisions, Article 57 only revised in Paragraph (2), in Paragraph (3) which regulates the conditions for voters not revised. Revisions in the contents of article 57 paragraph (3) were only made after the decision of the Constitutional Court number 135/PUU-XIII/2015 on 13 October 2016. Revision to the phrase "mentally/memory disturbed" are explained in full in the Explanatory section of Law Number 7 of 2017.

Law Number 7 of 2017.

The phrase, persons with disabilities who meet the requirements, in Article 5 of Law No. 7 of 2017 covers a wider variety of disabilities, both physical (A), intellectual (B), mental (C), blind (D), deaf and speech disabilities (E), but limited to of being eligible.

For Intellectual Disabilities (Variety Code - B).

The phrases “qualified” and “...as candidates for DPR members, DPD members, President/vice presidents, DPRD members and election organizers”, which contain the right to vote and be elected, of course lead to confusion.

The phrases “qualified” and “...as candidates for member of House of Representatives (Dewan Perwakilan Rakyat, DPR), member of Regional Representative Board (Dewan Perwakilan Daerah, DPD), President/vice president, member of Regional House of Representatives (DPRD), and General Elections Commissions commissioner (komisioner Komisi Pemilihan Umum, KPU)”, which contain the right to vote and be elected, of course lead to confusion.

According to the preamble and the body of the 1945 Constitution, and on the consideration of Human Rights as stated in Article 43 of Law Number 39 of 1999 concerning Human Rights, then people with intellectual disabilities must have the equal right. However, of course, a comprehensive explanation must also be given for the application of this article to intellectual disabilities, because the explanatory of Article 5 of Law Number 7 of 2017 only explains the phrase "equal opportunity" which is a situation that provides opportunities and/or provides access to persons with disabilities to channel their potential in all aspects of state and community administration. The author assumed that persons with intellectual disabilities are persons with intelligence quotient (IQ) scores or intelligence levels below 70. We believe, below this level of intelligence a person's ability to think, analyze and remember is affected,

So the phrase "eligible" for intellectual disabilities has certainly been canceled, because someone with an IQ score below 70 is intellectually the same as children who are legally immature, have not been able to make their own decisions and are still under custody.¹² In Article 433 of the Civil Code (KUHPperdata), it is clearly written: *"Every adult, who is in constant state of stupidity, madness or rage must be placed under guardianship, even though*

¹² Explanation on Custody, in the Minister of Health Regulation Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement, that court judges often ask for the help of a psychiatrist to determine whether a person who is proposed for amputation meets the elements of a state of ignorance, brain disease or dark eyes. In addition, a psychiatrist is expected to be able to provide an opinion on whether the custody is permanent or needs to be evaluated repeatedly, as well as whether forgiveness is carried out on one, several or all aspects of the life of the person being examined.

he is sometimes able to use his mind. An adult may also be placed under custody because of his wastefulness.”

The words “stupid”, “crazy” and “amok” can be interpreted as follows: ¹³

- a) Stupid means very blunt brain, not smart;
- b) Crazy can be interpreted as a mental disorder, memory sickness;
- c) Amok, become so angry that reach a state of forgetfulness and throw a tantrum.

"Crazy" as referred to in the meaning of "mental illness" in Article 433 of the Civil Code does not apply to all mental illness conditions but only applies to severe and very severe levels/stages or permanent mental illness. So that legal treatment for people with moderate and mild mental illness will be applied as explained in point (3) of mental disability.

In the Civil Code, a person who is not yet an adult and a person who is under guardianship if he wants to take legal action, the person concerned must be accompanied by his parent or guardian. ¹⁴

For mental disabilities (Variety Code - C)

The definition of the word "qualifies" can be interpreted that people with mental disorders at the level/stage of severe and very severe (such as those living wandering around places in with dirty clothes and body) still have the right as citizens to vote, but it can also be interpreted that those persons do not have any interest or concern about democracy, so it does not need to be included in the Permanent Voters List by the General Election Commission. Meanwhile, people with mental disorders at mild and moderate levels can certainly take part in the election, of course, by attaching a certificate from a doctor or psychiatrist regarding the person's current condition. However, of course, the application of this requirement does not necessarily apply to the right to be elected as it is written in the phrase "...as a candidate for House of Representatives member, Regional Representative Board member, President/vice president, Regional House of Representatives member, and, General Elections Commission commissioner".

As citizens as stipulated in the law, people with mental disorders still have the right to be elected, but it must be understood that the responsibility as member of House of Representatives, member of Regional Representative Board, President/Vice President, member of Regional House of Representatives, and General Elections Commission commissioner is not an easy responsibility. Responsibility in state affairs is a responsibility that requires a detailed

¹³ Indonesian Dictionary (Kamus Besar Bahasa Indonesia)

¹⁴ Beni Ahmad Saebani ell. Loc.cit Hal.109

analysis of the lives of many people, which can result in pressure both physically and psychologically. A person with a mental disorder should not be involved in it, because various excessive psychological and physical pressures can be a trigger for mental disorders. Even if a disability is a legal subject who has the right and obligation to take legal action, the act must be supported by legal skills (*rechtsbekwaamheid*) and legal authority (*rechtasbevoegdheid*).

From the explanation of the general election law that has existed and has been in force in Indonesia since independence in 1945, it can be seen that the differences between the laws above are a reflection of the different perspectives in viewing the same subject. Setya Adi Purwanta (2013) asserts that the social construction of disability has made our society's dominant understanding of mental disability. This has an impact on people's behavior, even the state and legal order that does not position the disabled equally, in the context of the state order and social society – change can occur not only by improving policies but also because of a shift in understanding.¹⁵ It is hoped that after Law No. 7 of 2017 there will be another new General Electoral Law that would better accommodate the rights of persons with mental disabilities in the general election.

F. Conclusion

Taking into account the results of the discussion as the author conveys in the formulation of the problem, the author can draw the following conclusions::

Law Number 7 of 2017 is the sixth general election law since Indonesia's independence. Until now, there are only two electoral laws that regulate the right to vote and be elected for persons with mental disabilities in general elections, namely Law Number 7 of 1953 and Law Number 7 of 2017.

The right to vote and be elected for persons with mental disabilities is regulated in Article 5 of Law Number 7 of 2017, where in the attachment to the law the explanation of article 5 only discusses the phrase “equal opportunity” which further explains the provision of access for mental disabilities in terms of state administration and not on the exercise of the right to vote and be elected by a person with a mental disability. As a result, various interpretations of the right to vote were born and were chosen from the phrase "qualifies" from various perspectives and disciplines, thus the regulation of voting rights and being elected is still unclear.

¹⁵ M. Syafi'ie et al, "Portrait of the Disabled Facing State Law" [*“Potret Difabel Berhadapan Dengan Hukum Negara”*], Sigab Publisher, Sleman 2016, p. 4

Starting from the term "qualifies" in Article 5 of Law Number 7 of 2017 then the fulfillment of the right to vote and be elected for persons with disabilities must be carried out properly, although in some assessments it will not be optimal, because:

- a) The term "eligible" means that a person with a mental disability must have a certificate from a doctor or psychiatrist, and to have a certificate of a person with a mental disorder, an examination must be obtained, which requires the involvement of the closest person from the person with a disability and the accessibility provided by the State.
- b) The Decree of the Constitutional Court Number 235/PUU – XIII/2015 which is considered in line with article 5 of law number 7 of 2017 has not resolved the problem in fulfilling the right to vote and being elected for mental disabilities because there are still contradictory rules such as General Elections Commission Regulation Number 11 of 2019.

G. Recommendation.

- a. As a result of the incomplete explanation of Article 5 of Law Number 7 of 2017 various different interpretations have emerged from the public regarding the right to vote and being elected with mental disabilities, so the author hereby recommends that:
 - 1) Additional explanation regarding the right to vote and to be elected for persons with mental disabilities is needed in the attachment to the law, by explaining the term "qualifies"
 - 2) The involvement of experts/professionals in the field of health and mental health is required in explaining the requirements for mental disabilities and intellectual disabilities who can exercise their right to vote and the right to be elected, and it is stated in written rules either in the form of additional explanations of articles in the attachment to the election law or as General Elections Commission Regulations.
- b. In an effort to fulfill the right to vote and be elected with mental disabilities in the implementation of General Elections and Regional Head Elections whose laws and regulations are still constrained, it is recommended that:
 - 1) The government provides mental health examination facilities up to the village level, recommendations regarding mental health can be given by general practitioners.
 - 2) Make revisions to Article 4 Paragraph (2) of the General Election Commission Regulation Number 11 of 2019, on:
Paragraph (2)

The voter as referred to in paragraph (1) letter (d) must meet the requirements of "not being mentally disturbed"

Changed into:

"Voters with mental and/or memory disorders must have a certificate in a stable condition from experts who are competent in mental health."

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