

**CENTER FOR RESEARCH AND STUDY OF THE CASE
AND LIBRARY MANAGEMENT**

RESEARCH REPORT

**THE PROGRESSIVE ROLE OF THE CONSTITUTIONAL COURT
IN PROTECTING THE VOTING RIGHTS OF PEOPLE WITH
MENTAL DISORDERS AND ITS EFFECT ON INCREASING
VOTER PARTICIPATION IN THE ELECTIONS**

(Study of the Constitutional Court's Verdict Number 135/PUU-XIII/2015)

**Cooperation between the Constitutional Court and the Center
for the Study of Pancasila and Constitution (PUSKAPSI),
Faculty of Law, University of Jember**

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RESEARCH RESULTS

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**Center for Research and Study of the Case and Library Management
The Clerk's Office and Secretariat General of the Constitutional Court
2019**

APPROVAL SHEET

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SUMMARY

This research aims to examine the authority of the Constitutional Court (MK) in protecting the constitutional rights of citizens regarding the voting rights of People With Mental Disorders (PWMD) in the elections. The Constitutional Court's verdict No. 135/PUU-XIII/2015 is important to be studied because it is a milestone carved by the Constitutional Court judges in the effort to protect the civil and political rights of citizens who are marginalized in the social system. The progressive legal perspective is used to become a starting point in analyzing the Constitutional Court's verdict. Because the Constitutional Court's verdict is able to direct the law to follow the development of the times, and is able to answer the problems that develop in society.

This research focuses on the Constitutional Court's verdicts and related literature. In terms of research approach, research that makes court decisions as the subject of study is also called a case study. This research makes the verdict of the Constitutional Court as the subject of discussion to measure the extent to which the Constitutional Court is able to play itself as the guardian of the constitution to make the Constitutional Court's verdict as a basis for future legal political policies in protecting the voting rights of people with mental disorders through its derivative legislation products made by the election organizer. So that the Constitutional Court's verdict is able to influence the increase in voter participation in the elections in Indonesia.

The research results showed that the Constitutional Court played a role in protecting the constitutional rights of citizens in the election in the form of a

judicial review to examine statutory material that contradicts the meaning of the constitution in terms of protecting citizens' voting rights. The Constitutional Court also plays a role in protecting disabilities' voting rights in the form of the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Regional Head Election. The progressive role of the Constitutional Court in protecting PWMD's voting rights through the Constitutional Court's verdict No. 135/PUU-XIII/2015 is compatible with the criteria for the concept of progressive law, namely carrying out the law using spiritual intelligence; carrying out the law with a search for deeper meaning; carrying out the law not only according to the principles of logic, but with feelings, care and compassion to the weaker groups. Concrete forms of progressiveness of the Constitutional Court's Verdict No. 135/PUU-XIII/2015 in Protecting the Voting Rights of PWMD Disabilities are: (1) Anti-discrimination the voting rights of PWMD citizens; (2) encouraging the citizen awareness to respect the PWMD; (3) strengthening the existence of pro PWMD legal policies; and (4) encouraging the courage of election organizers to register the PWMD voters.

Meanwhile, the progressive effects of the Constitutional Court's verdict are: (1) it can significantly increase voter participation in Bali Province and nationally; (2) recording of the PWMD's Permanent Voters List is getting easier; (3) fulfillment of special Polling Station rights; and (4) changing the stigma and respect for PWMD.

Keywords: Constitutional Court of the Republic of Indonesia, voting rights, mental disorders and progressive law

CHAPTER I

PRELIMINARY

A. Background

This research examines the protection of the constitutional rights of citizens, one of the groups of citizens who are marginalized in the social system, namely people with mental disorders (hereinafter referred to as PWMD), so that their political rights in the form of voting rights in elections are not discriminated against, and are even distorted through the progressive role of the Constitutional Court of the Republic of Indonesia (hereinafter written MK RI). The issuance of the Constitutional Court Verdict No. 135/PUU-XIII/2015 dated September 27, 2016, which canceled the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Regional Head Election which states that "Registered voters are those who are not mentally disturbed". This verdict is a milestone that was successfully carved by the Constitutional Court of the Republic of Indonesia in starting to protect the voting rights of all citizens without exception including marginalized groups, namely PWMD in the design of modern Indonesian constitutionality.

Constitutionally, the Constitutional Court of the Republic of Indonesia functions as the guardian of the constitution. According to Article 24 C of the 1945 Constitution, it has the authority to (i) examine laws against the Constitution; (ii) testing the authority of state institutions whose jurisdiction is given by the Constitution; (iii) decide to dissolve political parties, (iv) dismiss the president, and (v) decide on disputed election results. That is

why the Constitutional Court of the Republic of Indonesia has a strategic role and authority in efforts to strengthen the protection of select groups of people who are categorized as persons with disabilities.

The substance of holding elections in a democratic country is actually competition between candidates in order to gain voter sympathy. That is why voters are an important instrument in an election without voters, which is not really an election.

So in the context of developing democracy that is built is efforts to enable adult citizens to have the right to vote, participate effectively in the process of making and implementing political decisions.

There are several technical characteristics of democratic elections in the implementation of elections, namely: First, the percentage of the degree of coverage of voters in the voters list, the degree of updating of the voters list, and the degree of voters reaching 95-100 percent. Second, the number of non-voters and the low number of invalid votes in holding various types of elections. Third, guarantees of various forms of service to voters that make it easier for registered voters to use their voting rights, such as voting before polling day for voters who are unable to attend polling day (absentee voting), voting through the post office (mail voting), polling stations. special voting (TPS), mobile TPS (mobile voting) and the convenience for voters who are categorized as disabled.

There are two categories of voters in the election, namely normal voters and voters with mental disorders. Normal voters are voters in accordance with the provisions in Article 198 Paragraph (1) of Law No.7 of 2017

concerning Elections which confirms that "Indonesian citizens who on the polling day are 17 (seventeen) years old or more, are already married or have been married, have the right to vote". This voter did not have psychological problems when he/she was registered as a voter until the voting stage at the TPS on polling day.

Meanwhile, voters with the category of people with mental disorders are in accordance with the provisions of Article 75 paragraph (2) of Law Number 8 of 2016 concerning Persons with Disabilities which confirms that the Government and Local Governments are required to guarantee the rights and opportunities for Persons with Disabilities to vote and be elected. Voters as referred to in line with the provisions of Article 5 of Law No.7 of 2017 concerning General Elections, it is stated that Persons with disabilities who meet the requirements have the same opportunity as voters. Then in the provisions of Article 198 Paragraph (1) it is also emphasized that voters who have mental problems at the time of registration, however, have the potential to exercise their right to vote on polling day.

In terms of number, the number of voters categorized as disable is relatively large and can affect the victory of candidates in the election. In 2014, the number of disabled voters in general was recorded at 343.865 people. Meanwhile, the number of voters who were persons with mental disabilities at that time was recorded at 8.717 people.

Based on KPU data, the KPU Voters List in the 2019 election was 192.866.254,4. Voters with disabilities in the Voters List of 2019 Election were 363.200 or 0,191% of the Permanent Voters List (DPT). As much as

0,029% voters are voters with mental disabilities. The number is 54,295 people. Based on data on the determination of the temporary Permanent Voters List (DPT) for the 2019 Election, which was announced by the KPU on December 15, 2018, there were 192.828.520 voters.

In every election, voters are the most sensitive issue among other issues, because voter data is the most important data in elections because these voters can become a reference source for the General Election Commission (KPU) to determine the various basic needs in organizing the election, starting from the election budget, until the equipment at the polling stations (TPS), such as ballot papers, voting tools and the number of polling stations and the number of polling station officials (KPPS).

The Constitutional Court of the Republic of Indonesia has a strong role in protecting the voting rights of this disability group in the PWMD category, so that it is equal to other voters. This role can be used by the Constitutional Court of the Republic of Indonesia through the realization of a judicial review against a law which discriminates against PWMD's voting rights which is declared contrary to the text in the 1945 Constitution. The courage of the Constitutional Court of the Republic of Indonesia in making decisions that are sensitive to the issue of protecting PWMD's voting rights is a manifestation of decisions aimed at upholding the principles of constitutionalism.

Because the constitution is the highest meta-norm which makes the highest legal basis for all state life. Therefore, the constitution is the main reference for all state institutions.

Upholding the constitution means affirming the principles of constitutionalism, so that all components of the nation behave in accordance with the constitutional guidelines and all state policies are based on the constitution.

The Constitutional Court Verdict No. 135/PUU-XIII/2015 contains progressive meaning, namely (1) towards progress; and (2) take a direction towards improving the situation. This is in line with Satjipto Rahardjo's idea of progressive law, namely directing law that is able to keep up with the times, is able to answer problems that develop in society, and is able to serve the community by relying on the morality aspect of the law enforcement apparatus as a response to the positivistic paradigm.

Through the verdict of the Constitutional Court No. 135/PUU-XIII/2015, the Constitutional Court judges succeeded in building arguments that did not fully look at the positivistic aspects of norms, but were stronger based on sociological aspects. The Constitutional Court Judges are not limited to seeing the provisions in the Article in Law No. 8 of 2015, but looks more at and considers the condition of society in seeing people with mental disabilities as citizens. The Constitutional Court's verdict considers the position of the court's decision as an intermediary to straighten out perceptions that are considered wrong in society. So this Constitutional Court's verdict contains a message of legal policy in the design of modern Indonesian administration, so that people with mental disorders are part of Indonesian citizens who are entitled to respect, protection and fulfillment of their basic rights, as guaranteed in the 1945 Constitution.

B. Problem Formulation

Based on these points, this research will address the following problems:

1. What is the role of the Constitutional Court of the Republic of Indonesia in protecting the constitutional rights of citizens related to the voting rights of people with mental disorders in the election through the Constitutional Court's verdict No. 135/PUU-XIII/2015 in a progressive legal perspective?
2. What is the progressive effect of the Constitutional Court's verdict No. 135/PUUXIII/2015 on increasing voter participation in the Elections?

C. Researcher Objectives

1. Evaluating the role of the Constitutional Court of the Republic of Indonesia through the verdict of the Constitutional Court of the Republic of Indonesia No. 135/PUU-XIII/2015 which can be categorized as progressive in protecting PWMD's voting rights in elections.
2. Assessing the effect of the Constitutional Court's verdict No.135/PUU-XIII/2015 on increasing voter participation in the elections.

D. Research Benefits

1. Theoretical Benefits

- a. Adding references to the institutional role of the Constitutional Court in carrying out its role in protecting the constitutional rights of marginalized citizens in the social system.

- b. Developing constitutional studies, especially those related to the issue of protecting the voting rights of citizens categorized as mental disabilities in order to strengthen voter participation in the elections.

2. Practical Benefits

- a. Providing documents for the Constitutional Court to conduct institutional self-evaluation and reflection in carrying out its role in protecting PWMD's voting rights in the General Election.
- b. Producing documentation regarding the influence of the Constitutional Court's verdict which is considered progressive in protecting the voting rights of citizens of the PWMD group in the elections.

CHAPTER II

LITERATURE REVIEW OF THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Theory of Constitutionality of Voting Rights

The political rights of citizens include the right to vote and be elected, the guarantee of the right to be elected explicitly is contained in the provisions of the 1945 Constitution starting from Article 27 paragraph (1) and (2); Article 28, Article 28D paragraph (3); Article 28E paragraph (3). Meanwhile, the right to vote is also provided for in Article 1 paragraph (2); Article 2 paragraph (1); Article 6 Paragraph (1); Article 19 paragraph (1) and Article 22C paragraph (1) of the 1945 Constitution.

In the formulation of these articles, it is clear that discrimination against citizens' voting rights as a constitutional right in elections is not justified. It must be understood that the right to vote cannot be identified with a population register because each has a different legal basis.

Because what is called a voter is an Indonesian citizen aged 17 years old or already married and there is no need for other clauses, the rest is only considered an administrative requirement that can be ignored. But voting rights cannot be ignored. If the state neglects the voting rights of citizens, this is a violation of human rights.

Because in accordance with the provisions of Article 25 of the International Covenant On Civil And Political Rights (ICCPR 1966), the political rights of citizens in the form of voting rights are protected rights. In

fact, the political rights of persons with disabilities in an abnormal sense are provided for in the International Covenant On Civil and Political Rights. In Article 25 of the International Covenant on Civil and Political Rights, which states that "Every citizen must have rights and opportunities, without any distinction as referred to in Article 2 and without improper restrictions, to":

In the provisions of Article 21 of the Convention on the Rights of Persons with Disabilities (CRPD) which is a broader development of the Declaration Universal of Human Rights (DUHAM) of the United Nations in 1948 which prohibits the practice of discrimination against humans on any grounds, including in this case for those with disabilities when exercising their political rights in elections. This is as regulated in Article 21, namely as follows:

Likewise, in the provisions of Article 23 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, it is stated that "Everyone is free to choose and has political beliefs".

Article 43 paragraph (1) of this Law states that "Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of laws and regulations".

2. Theory of Disabilities and Mental Disorders

In the perspective of studying the theory of dissability, there are two issues, which are used as an analysis tool for disability, namely approaching the disability aspect as (i) a medical issue and (ii) a social issue.

First, the Medical Perspective. In society as well as in societal research, individuals who have “disabilities” or physical and mental disorders, are often seen as disabilities, and these disabilities are often seen as purely medical problems that can and should be treated. The medical perspective emphasizes that disability is related to a “biological function” or “physiological” in a person. (Silvers, 1998).

The medical perspective classifies a disability or a person with disabilities as fully related to individuals with disabilities, regardless of external factors. This perspective is also commonly referred to as a conservative perspective. This perspective views that problems caused by "disability" are considered to be and originate in the individual and apart from the social context, or identify disability as a biological problem. The goal for the disabled then is to find medical drugs to cure their "disabilities". Simultaneously, this perspective focuses on disability as a problem that can be addressed through medical and technological advances.

Second, social perspective. The social perspective on disability asserts that "disability is the result of [patterns of] social arrangements that work to limit the activities of 'disabled' by placing a number of 'social barriers' in the way they [activity or participate]."

Disability, according to a social perspective, is the result of how a person's physical or mental characteristics affect their functioning in an environment and their expectations for refuge.

The social perspective views a person's disability (and not their disability) as more of a result of external factors imposed on a person than

simply the diffable's biological function. The social perspective allows us to see disability as the effect of an (external) environment that is hostile to some body forms and not others, (and for that) diffables need progress more in social justice than in medical advancement. The beliefs and social functions that then marginalize and weaken the role of the diffable can be seen as an obstacle to life fully dependent on their (type) ability.

The social perspective focuses on "citizenship rights" and knows "the ways in which social organizations or institutions oppress the diffable." From a social perspective, discrimination against individuals with disabilities, which is sometimes identified as disablism, is seen as akin to sexism, racism, homophobia, and ageism as oppression of certain groups based on social, political, and economic power. (Abberly, 1987). The social perspective states that understanding the social constructs that oppress the diffable should be used to reduce the various 'disadvantages' that have been created by the view that the individual is incapacitated due to 'impaired bodily and mental functions'. The social order must be changed through an improved perspective on disabilities in order to ensure the creation of social, political, economic, cultural and other equality for all people.

Protection of the voting rights of people with mental disorders can refer to the World Health Organization (WHO), consisting of various problems, with various symptoms. However, they are generally characterized by some abnormal combination of thoughts, emotions, behavior and relationships with other people. Examples are schizophrenia, depression, intellectual disabilities and disorders due to drug abuse, bipolar affective disorder,

dementia, intellectual disabilities and developmental disorders including autism.

In the context of mental health, there are two terms for individuals who have mental disorders. First, people with psychiatric problems (PWPP) are people who have physical, mental, social, growth and development problems, and/or quality of life, so they are at risk of experiencing mental disorders. Second, People with Mental Disorders (PWMD) are people who experience problems in their thoughts, behavior and feelings which are manifested in the form of a series of symptoms and/or meaningful behavior changes, and can cause suffering and obstacles in carrying out people's functions as humans.

3. Theory of Disability Participation in Elections

Milbrath in Maran argues that there are 4 (four) main factors that encourage someone to participate in political life, namely: First, there is a political stimulus. Because there is a stimulus, people are willing to participate in political life, related to beneficial motives, such as caring about political issues concerning their life.

Second, the Personal Characteristics of a Person. People of social character, who have great concern for social, political, economic and other problems are usually willing to get involved in political affairs.

Third, the Social Characteristics of a Person. Social characteristics include a person's socioeconomic status, racial group, ethnicity and religion. However, the social environment can influence the perceptions, attitudes

and behavior of a person in the political field. People who come from a more rational social environment and respect values such as openness, honesty, justice, and others will certainly want to fight for the upholding of these values in the political field.

Fourth, Political Situation or Environment. A conducive political environment makes people happy to participate in political life. In a democratic political environment, people feel more free and comfortable to be involved in political activities than in a totalitarian political environment. The political environment which is often filled with brutal and violent activities automatically keeps people from the political sphere.

Based on this opinion, the emergence of citizen participation movements in political life is influenced by internal factors and external factors. Apart from the factors driving the emergence of citizen participation in political life, there are also reasons that citizens want to avoid and close themselves off from political life.

Rosenberg in Maran states 3 (three) reasons why people do not want to participate in political life, namely: first, there is a fear of negative consequences from political activity. Here, people think that political activation is a threat to their life. Second, there is an assumption that participating in political life is meaningless. Here people feel that their political participation is useless and will not affect the political process. Third, there is no incentive to participate in political life.

In the context of elections, empowerment and increasing the participation of voters with disabilities is important. In general, the rights

held by persons with disabilities in elections include, among others: (i) the right to obtain information about elections; (ii) the right to be registered to vote; and (iii) right to access to polling stations (TPS).

So far, voters with disabilities have not had the right to get opportunities and treatment, so that they can act and do activities according to their conditions. There is still neglect of the political rights of persons with disabilities in elections, including: (a). The right to be registered to vote; (b). Right to access to TPS; (c). The right to a secret vote; (d) The right to be elected to the Legislature; (e). The right to information including information about elections; and (f). The right to participate as organizer in elections.

4. Theory of Progressive Law and Constitutional Review

The main idea of progressive law was adapted from Satjipto Rahardjo who emphasized that carrying out the law fulfills at least three ways, namely: First, carrying out the law using spiritual intelligence. Second, carrying out the law with a search for deeper meaning. Third, carrying out the law is not just according to the principles of logic, but with feeling, care and compassion to the larger group.

Because philosophically, actually the law is for humans and not the other way around, humans are for the law. This means that the law must be able to decipher all conflicts and problems of human life without having to be shackled by legal procedures and the text of laws and regulations. As long as the law is for the benefit of society, the law must be interpreted and carried out humanely and functionally, even though it must go against standard legal texts and procedures.

The real operationalization of carrying out progressive law and politics is by looking for new ways (role breaking) and innovative breakthroughs, if normal and normative methods are unable to immediately realize the principles and values of justice and truth. Whereas in human's practical law science is more for law and legal logic. Herein lies the enlightenment by progressive law science.

In progressive law, people always feel thirsty for the truth because it is constantly searching for the truth. Because of this priority towards humans, progressive legal science is not just submissive towards existing laws but is critical. Here progressive legal science shares the same understanding with schools, such as Legal Realism in the United States of America, Freie Rechtslehre in Europe. In the USA, John Chipman Gray refuses to put emphasis on logical factors and prefers non-logical factors, which opposes analytical positivism that has overthrown legislaif domination and has been replaced by the courts. This method is intended to show that submissive attitude (logic of rules) wants to be replaced by progressive creativity (logic of experience). Progressive law and legal science are more inclined towards creativity and reject the routine logic of rules.

Thus, in fact progressive law is a way of law by prioritizing morality above the law, morals become the core basis for the operation of the legal system. This is in line with Ronald Dworkin's thought, who reminded the essence of the constitution is moral, because the constitution reflects the basic principles of regulating political power towards an ideal state based on the values of morality adopted by the components of the nation. Morals are

thus undeniably the final reference for all policies to be formulated by all state administrators.

As a legal term, constitutional review must be distinguished from judicial review. First, besides the constitutional review conducted by a judge, can also be done by institutions other than the judge or the court, depending on the institution where the constitution gives authority to do so. Second, the concept of judicial review also relates to a broader definition of the object, for example covering the legality of regulations under law against laws, whereas constitutional review only concerns the constitutional review of the constitution.

Examining legal norm testing, it is also necessary to differentiate between material testing (material toetsing) and formal testing (formile toetsing). The two forms of testing are distinguished by Law Number 24 of 2003 concerning the Constitutional Court by the terms of the establishment of laws and the content of the laws. Material testing is judicial review which is carried out on the material. The review results in the cancellation of part of the content or part of the relevant law. The meaning of the substance of the law is the content of the paragraph, the origin and/or certain parts of a law, it can even be only one word, one point, one comma or one letter which is considered contrary to the 1945 Constitution of the Republic of Indonesia. On the contrary, the meaning of the part of law can also be the whole of a part or the whole of a chapter of the relevant law.

From a theoretical perspective, constitutional review aims to “transform public policy disputes into questions of constitutional interpretation that can

be decided by texts, procedures, principles, and rules that are generally accepted as legal and not political.”

Through a constitutional review decision, “even unpopular ones, being accepted, because courts are viewed as appropriate institutions for making such decisions and commitment to procedure and process trumps concerns over outcomes.” Therefore, the performance of constitutional review “operate in an environment of national political constraints that compromise their own institutional legitimacy and decisional efficacy.”

CHAPTER III

RESEARCH METHODS

A. Types and Approaches

1. Types of Research

This research is a descriptive and explanatory research. Descriptive because it will describe or describe the Constitutional Court Decision No. 135/PUU-XIII/2015 which are considered progressive in protecting the suffrage rights of people with mental disorders. Explanatory because this research will explain in depth about the causality relationship between 2 (two) things, namely (1) the Constitutional Court's decision in adjudicating a judicial review of the Law on the 1945 Constitution regarding the right to vote for people with mental disorders and (2) explain the effect of the Constitutional Court's decision on increasing voter participation in elections. This research is also a normative legal research (legal research) or doctrinal research, namely research that is specifically applied to legal science. Law here is defined as principles of truth and justice that are natural and apply universally, this is a characteristic of philosophical-oriented reasoning.

Normative legal research (legal research), is used with the reason to be able to identify concepts or ideas and legal principles which are the benchmarks of the Constitutional Court in deciding judicial cases through legal philosophy and "normwissenschaft" or "sollenwissenschaft". These principles and benchmarks are used in an in-depth review of the

Constitutional Court decisions which are considered progressive in maintaining the values of Pancasila.

2. Research Approach

The approach used in this book is the principle of law approach and the case approach. Both will be applied in this research in the following ways:

1. The Principle of Law Approach. This is carried out by interpreting the legal principles and principles formulated by the Constitutional Court's decision in its decision that is considered progressive in protecting the suffrage rights of persons with mental disorders. According to Roeslan Saleh, the relationship between the principle of law and the law is that the principle of law determines the content of the law. Positive legal regulations will only have legal meaning if they are linked to legal principles. This approach is used to answer the first problem.
2. The case approach. The case approach is intended to study and deepen the decision of the Constitutional Court of the Republic of Indonesia No 135/PUUXIII/2015 which is considered progressive in protecting the suffrage rights of people with mental disorders. As a manifestation of the authority of the Constitutional Court of the Republic of Indonesia in safeguarding the constitution to direct the legislative products under it to be sensitive to the protection of civil and political rights of citizens who are marginalized in the social system.

B. Sources and Types of Data

1. Sources of Data

The specification of this research is normative legal research, which describes the products of the Constitutional Court Decision No. 135/PUU-XIII/2015 which are considered progressive in protecting the suffrage rights of people with mental disorders. According to Soerjono Soekanto, descriptive and expansive normative legal research aims to describe the objective reality of the object under study by providing a systematic description of legal regulations and facts as the implementation of these laws and regulations in the field.

There are 2 (two) meanings of influence in research, namely: First, the influence of the implementation of laws which requires field research with an empirical sociological approach in society. Second, the effect of the implementation of laws in the field, which is presented by systematically describing regulations, facts and objective realities as the implementation of laws. This research model does not carry out field research with an empirical sociological approach and only presents data and facts based on literature data. This study chooses the second influence research model.

That is why this research focuses on legal material sources and library data or documents (library research). Literature research is intended to obtain secondary data, in the form of primary, secondary and tertiary legal materials. Then proceed with an inventory, research or test legal materials or written data that are relevant to the object of research.

2. Types of Data

According to Soerjono Soekanto, legal data types can be classified into three types: primary legal materials, secondary legal materials and tertiary

legal materials. First, primary legal materials, namely primary and authentic data. Second, secondary legal materials, namely data that are quoted from other sources, so that they are no longer authentic. Third, tertiary legal materials, namely supporting data relevant to the object of research. In this research, the third type of legal material is used together.

a. Primary Law Materials consist of:

1. Amendments to the 1945 Constitution.
2. Minutes of the DPR session at the meeting drafting laws that were reviewed in the Constitutional Court of the Republic of Indonesia.
3. A number of laws were reviewed in the Constitutional Court of the Republic of Indonesia.
4. Decisions of the Constitutional Court (MK) are related to the constitutional protection of the voting rights and to vote.
5. A number of laws and regulations under legislation

a. Secondary Legal Materials consist of:

1. Various books on law, human rights and politics.
2. Various constitutional law books about the government system.
3. Various books on elections, the party system.
4. Various books on democratic institutions.

5. Various articles and papers in various journals, magazines, newspapers about the results of research and studies in various scientific forums.
- b. Tertiary legal materials consist of legal dictionaries, encyclopedias, political dictionaries and various dictionaries relevant to the object of this research. In addition, it is also carried out through electronic media, namely the internet, magazines and newspapers.

C. Data Collection Techniques

Data collection techniques are systematic efforts in order to obtain data sources that will be used as research material. Because this research is a qualitative research, data collection is carried out in natural setting and the data collection techniques are mostly in participant observation and documentation.

D. Data Analysis Techniques

Data analysis techniques in normative legal research as reflected in this study, by collecting (inventory) descriptively research materials and collecting library materials in accordance with the object of research, then interpretation is carried out.

The method used in analyzing the theme of this research is using normative content analysis method, namely describing objectively and systematically the contents of a text of regulations and decisions of the Constitutional Court of Indonesia or hermeneutics. Data criticism was

carried out, data compilation so that the results were comprehensive, critical and evaluative conclusions as a prescription stage, thus finding new laws. Integral-integrative analysis can be constructed in the form of facts, theories and values. Then, drawing conclusions is carried out in the form of a systematic and directed writing description in accordance with the theme and object of research.

CHAPTER IV

RESEARCH AND DISCUSSION RESULTS

A. The Role of the Constitutional Court in Protecting Citizens' Constitutional Rights in Elections

Recently the Constitutional Court has been transformed into a legal institution that has received wide attention from the public. Mainly because of the various legal decisions that are sometimes progressive, courageous and beyond the expectations of legal experts and politicians. Inevitably there are many Constitutional Court legal decisions that continue to be a constant public debate. Because it has been able to change the course of legal political policy in Indonesia.

Thus, the various decisions of the Constitutional Court actually show that the Constitutional Court has been able to position itself as the guardian of the constitution or reinforce the notion of constitutionalism in a state with various risks that must be faced, especially insults and various scathing criticisms. This is because the basic concept of the formation of the Constitutional Court in various countries including Indonesia after the third amendment to the 1945 Constitution is closely related to the theory of modern state administration which places law as the state's vein. The Constitutional Court is also the final interpreter of the constitution. If you look carefully in several countries, the Constitutional Court has also become the protector of the constitution. Since the inclusion and regulation of human rights in the 1945 Constitution of the Republic of Indonesia, the

Constitutional Court also has the function of protecting the constitution in this context, namely protecting human rights (the protector of human rights).

Likewise, Indonesia has put the law in command and stood over politics or upholding the principle of a humum state (rechstaats), not a power state in the hands of a few (machstaats). Because of that, the principle of check and balance, the principle of democracy and guarantee of protection of human rights became Indonesia's new icon after the 1998 reformation. The Constitutional Court was formed to uphold these principles.

As stated by Hans Kelsen (1961), that in carrying out the functions of a modern state system based on legal principles (constitutionalism), conflicts between higher and lower norms are confirmed, not only with regard to laws and court decisions but also between institutions (state organs) and laws.

Therefore, we need a special institution capable of resolving the conflict, namely a special court (versfassungsgerichtshoft) or the Constitutional Court to confirm constitutionalism. Constitutionalism is a principle that the exercise of state power by state organs must be based on constitutional provisions. Violation of the constitution cannot be tolerated because it will create tyrannical and arbitrary power. To judge objectively and independently whether a state act violates the constitution or the law, an institution is needed to judge and decide through a guarantee from the constitution.

Because of that, according to Article 24 C of the 1945 Constitution, the Constitutional Court has the authority in the form of: testing the law against the constitution, testing the authority of state institutions whose jurisdiction

is given by the constitution, deciding the dissolution of political parties, dismissing the president, and making decisions on election results.

The limitative authority given by the 1945 Constitution to the Constitutional Court is close to the "political area", therefore the Constitutional Court is required to understand and understand the world of politics, but not to be trapped and slip into conflicts of interest to take sides with certain politics, on the other hand, it continues to strengthen the concept of constitutionalism by issuing constitutional law decisions that are fair, objective and independent.

One of the instruments of democracy is the exercise of sovereignty in the form of general elections to elect members of parliament or president and vice president. So the existence of elections is a simple indicator of whether or not a democratic system is running in a country. This is because through elections there is a regular circulation of elite political leaders in a fixed term and citizens are given the space to participate in participation in the form of the right to vote and the right to be elected. These two rights are one of the human rights in the category of civil and political rights inherent in every citizen.

Voting rights and voting rights are a piece of currency. Where these two rights are a measure for the state of its ability to protect citizens so that no one is discriminated against to use them. The right to vote is the right for citizens to exercise their political rights in electing political leaders according to their aspirations in elections, while and the right to be elected is the right for citizens to be elected as political leaders in democratic institutions,

namely the legislature and the president/vice president through the election mechanism.

These two rights are generally regulated in the constitution of every country, so it is inevitable that if there is a country that neglects to stipulate in the constitution, this right can be declared as part of human rights violations.

Human rights violations can take two forms. First, it is done by his own actions (act by commission). Second, it happened because of his own negligence (act by omission). Violations in the form of actions are committed by the state through its officials. Meanwhile, violations in the form of negligence are committed by the state through the policies it makes.

In the context of the Indonesian constitution, suffrage is also regulated in Article 1 Paragraph (2), Article 6A (1), Article 19 Paragraph (1), and Article 22C (1) of the 1945 Constitution. These provisions indicate that there is an inherent juridical guarantee for every Indonesian citizen to be able to exercise his voting rights. This provision emphasizes that all forms of laws and regulations governing general elections should open the widest possible space for every citizen to be able to exercise their voting rights in general elections. That is why the right to vote is a constitutional right.

In general elections, universal suffrage is recognized. This voting right is one of the fundamental prerequisites for a country that adheres to a modern constitutional democracy.

In the constitution, the right to vote and the right to be elected is a series of constitutional rights that are equally strong to be protected as an inseparable part of the constitution. Furthermore, Article 26 of the International Covenant on Civil and Political Rights affirms the legality of this provision with the following articles:

“... All persons are equal before the law and are entitled to the same protection of the law without any discrimination. In this regard the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, sex, language, religion, politics or other opinion, national or social origin, wealth, birth or other status.”

Whereas in the constitution, the right to vote is a right that must be protected as stated in Article 27 paragraph (1) of the 1945 Constitution which states that "All citizens have the same position in law and government and are obliged to uphold the law and government without exception".

Even based on the Verdict of the Constitutional Court in Case Number 011-017/PUU-I/2003, dated February 24, 2004, it states:

"Considering, that the constitutional right of citizens to vote and right to be candidate is a right guaranteed by the constitution, laws and international conventions, then restrictions on deviation, elimination and abolition of these rights is a violation of the rights of citizens."

Herein lies the correlation between the Constitutional Court as the guardian of the constitution where the Constitutional Court has a strategic

role to protect the voting rights of citizens in elections in the form of a judicial review to examine the material of the law which contradicts the meaning of the constitution in terms of protecting the voting rights of citizens.

The strategic role of the Constitutional Court is to cancel (negative legislators) products of laws that have the potential to discriminate against citizens' voting rights in elections that are contrary to the spirit of the 1945 Constitution which protects citizens' voting rights as citizens' constitutional rights.

B. The Role of the Constitutional Court in Protecting Disability Voting Rights

As it is believed in the academic tradition that actually the function of elections is a means of democracy so that citizens can use their voting rights to elect their future leaders. That is why participation is a very important aspect to be able to say that the General Election has taken place freely and fairly. This means that the higher the level of citizen participation in an election without discrimination and freedom, the higher the level of democratic practice in a country. On the other hand, the lower the level of participation of state citizens in elections in a state due to discrimination, both technical and political, the lower the level of democratic practice in the world.

One of the probabilities of participation in elections that is quite low in the scope of public attention and attention span is the participation of voters with disabilities or people with disabilities. The issue of the concept and

terminology of disability in Indonesia is still a complicated issue which so far has not been evenly understood. For many people in Indonesia, disability is always seen as simply a matter of an individual person based on the condition of their body and mind. Currently there are several terms used in everyday conversation, namely people with disabilities, disabilities, persons with disabilities, special needs, people with social welfare problems, and various other terms that are local in nature which directly refer to their physical appearance or habits, for example in Makassar the *kandala* or the *kusta* and in Java the *buntung*, the *pengkor*, *cah panti* (the child who lives in the orphanage) and so on.

One segment of voters who receive less attention and are systemically discriminated against in regional legislative elections are people with disabilities.

As for the definition of persons with disabilities are those referred to in the provisions of Article 1 of Law No. 4 of 1997 concerning Persons with Disabilities,

namely: "... any person who has a physical and/or mental disability, which can interfere or constitutes an obstacle and hindrance for him or her to do properly, which consists of: (a) physically disabled; (b) mentally disabled; (c) physically and mentally disabled ”.

The participation of voters with disabilities is very low in regional legislative elections, and they even tend to vote not to use their right to vote (*Golput*), which in the study on elections is called a Voter Turnout. As a result, the implementation of Legislative Elections in the regions has not

been able to strengthen local democracy. If it is mapped, Voter Turnout can be divided into three typologies, namely Ideological Voter Turnout, Political Voter Turnout and Pragmatic Voter Turnout.

Voters with disabilities can also be categorized into these three typologies, because in fact they are voters in general, the only difference is that they have certain physical limitations.

In the context of elections, empowerment and increasing the role of persons with disabilities in national development need special attention and empowerment. In general, the rights held by persons with disabilities in elections include: the right to obtain information about elections, the right to be registered to vote, and the right to access to polling stations (TPS). In addition to the three main rights of persons with disabilities above, there are also other rights that persons with disabilities must obtain in elections, namely, voters with disabilities can be assisted by another person who chooses to vote when they cast their vote and that person must keep their vote secret, persons with disabilities with types of visual impairment and other physical disabilities must be facilitated by the election organizing committee such as providing braille to make it easier for them to vote.

As previously stated, people with disabilities have the desire and capacity to participate in making decisions that affect their lives. However, they often face obstacles that limit or prevent their access. In addition to these unique barriers, people with disabilities also face the same challenges that other citizens of other countries face. In many new and emerging

democracies, part of the population is experienced in voting and other forms of political participation.

Obstacles and hinderances that often occur for persons with disabilities during elections are often not taking into account the voting rights of persons with disabilities which are often underestimated by the community because of their limitations. In addition, the lack of transparency of data from the General Election Commission (KPU) regarding persons with disabilities and the number and position of persons with disabilities is not mapped so that many voters with disabilities are not registered in the permanent voters list. This is due to the reluctance of the enumerator to ask about the type of disability group being recorded and the enumerator's fraud in not registering voters with disabilities.

However, so far, they have not had the right to get opportunities and treatment so that they can act and do activities according to their conditions. There is still neglect of the political rights of persons with disabilities in elections, including:

- a. The right to be registered to vote;
- b. The right to access to Polling Stations (TPS);
- c. The right to a secret vote;
- d. The right to be elected as a member of the Legislative;
- e. The right to information including information about elections; and
- f. The right to participate as executor in elections.

This of course becomes an obstacle to the mobility of persons with disabilities to obtain civil and political rights, especially during general elections as part of the democratization process. Disabilities and knowledge related to disabilities exist in our social reality.

The right to vote is a constitutional right for citizens that cannot be discriminated against on any basis.

The right to disability is not a legal policy but rather a constitutional right. The basis for equality for persons with disabilities is Article 27 paragraph (1) of the 1945 Constitution.

So the presence of the Constitutional Court Verdict No. 135/PUU-XIII/2015 which essentially invalidates the provisions of Article 57 paragraph (3) "To be registered as voters, Indonesian citizens as referred to in paragraph (1) must meet the following requirements: letter a that one of the requirements for Indonesian citizens to be registered as voters is a person who is "not currently suffering mental/memory disorders". Because it is contrary to Article 27 paragraph (1) of the 1945 Constitution. It is a very significant and strong role of the Constitutional Court in efforts to protect the suffrage rights of disabilities in general.

At the same time, the Constitutional Court's decision is the role of the Constitutional Court in realizing the rights of persons with disabilities which are not directly stated in the Constitution (UUD) or in Law 39/1999 concerning Human Rights, because this right is a development of the universal human rights doctrine.

C. The Progressive Role of the Constitutional Court in Protecting the Voting Rights of PWMD Disabilities Through the Constitutional Court's Verdict No. 135/PUU-XIII/2015

The following will describe the progressive role of the Constitutional Court through its decisions related to the protection of disability suffrage. This description will begin with: (1) Identity of the Petitioner; (2) Subject of the Petition; (3) Injunction; and (4) Judge's Opinion. The purpose of this description is to explain how to facts of the case of a judicial review against a qua article and understand how the injunction of the Constitutional Court's verdict, and how the opinion of the Constitutional Court judges in adjudicating this case is related to the legal arguments used by the Constitutional Court judges.

1. Petitioner's Identity

Healthy Mental Association as Petitioner I, General Election Center for Disability Access (PPUA PENCA) as Petitioner II, Association for Elections and Democracy (Perludem) as Petitioner III, and Khorunnisa Nur Agustyati as Petitioner IV.

2. Subject of Petition

Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Ratification of Government Regulations in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors which contain the provisions of Article 57 paragraph (3) "To be registered as Voters, Indonesian citizens as referred to in paragraph (1) must meet the

following requirements: letter a, that one of the requirements for Indonesian citizens to be registered as voters is a person who is “not not currently suffering from mental/memory disorders”.

This provision has the potential to eliminate the right of a citizen to be registered as a voter and give his/her voting rights in the holding of regional head elections. This provision does not at all explain in detail what the clear qualifications are for a person who is said to be "suffering from mental/memory disorders".

Therefore, the provisions in this Article have made the state not treat every citizen equally in an activity of state administration. In addition, the provisions in Article 57 paragraph (3) letter a, as long as the phrase "is not currently suffering from mental/memory disorders", also eliminates the guarantee, protection and legal certainty that is just to every citizen before the law which should be fulfilled by the state. In addition, in the provisions in Law Number 8 of 2012 concerning the General Election of Members of the DPR, DPD, Provincial DPRD and District/City DPRD, it does not provide any preconditions for a citizen to be registered as a voter "is not currently suffering from mental/memory disorders".

The Petitioners' concern is that their not being registered as voters will result in them being unable to participate in the general election. Apart from that, the exclusion of mentally impaired persons from voter registration is inappropriate because the criteria for mental/memory disorders are not clear. Mental disorders have broad dimensions (types or categories), each category does not always result in the inability of voters to make choices.

Likewise, in Law Number 42 of 2008 concerning the Election of the President and Vice President. In fact, when the 2014 Election was held, the General Election Commission (KPU) tried to build Polling Stations (TPS) in several Mental Hospitals (RSJ) in several areas. On that basis, the constitutionality review of the provisions in Article 57 paragraph (3) letter a is very important to save the right to vote for every citizen to remain registered and be able to vote in the implementation of the Regional Head Election later.

3. Injunction

1) To grant the Petitioners' petition partly:

a) Article 57 paragraph (3) letter a of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors Into Law (State Gazette of the Republic of Indonesia Number 57 of 2015, Supplement to the State Gazette of the Republic of Indonesia Number 5678) contradicts the 1945 Constitution of the Republic of Indonesia, as long as the phrase "mental/memory disorder" is not interpreted as "experiencing mental disorder and/or permanent memory disorder which according to mental health professionals has eliminated one's ability to vote in general elections";

b) Article 57 paragraph (3) letter a of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning

Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors Into Law (State Gazette of the Republic of Indonesia Number 57 of 2015, Supplement to the State Gazette of the Republic of Indonesia Number 5678) does not have binding legal force as long as the phrase "mental/memory disorder" is not interpreted as "experiencing mental disorder and/or permanent memory disorder which according to mental health professionals has eliminated one's ability to vote in general elections";

2). To reject the Petitioners' petition for the rest/remainder.

4. Opinion of the Constitutional Court

The Court has the opinion that mental disorders and memory disorders are two things that have different characteristics. Mental disorders and memory disorders are two intersecting categories but cannot always be equated. Memory disorder is a problem caused by deterioration or decline in physical quality, namely the brain as a means for storing and processing memory, while mental disorders are not always caused by a mere decline in the physical quality of humans.

Each type of disorder, both mental and memory disorders, has various derivatives. Thus according to the Court the use of punctuation "/" (slash) in the phrase "mental/memory disorders" as stated in Article 57 paragraph (3) letter a must be emphasized not in the context of equating mental disorders with memory disorders, but rather a grouping of two categories in the form of

mental disorders and memory disorders as a group that is excluded from citizens who have the right to be registered in the voters list.

In order to limit the rights of voters who happen to be persons with mental and/or memory disorders, the Law must pay close attention to the characteristics of each type of mental and/or memory disorders of the voters. The House of Representatives in its statement said that in interpreting the phrase "disturbed mental/memory " must refer to the context of Article 1 point 1 and point 3 of Law 18/2014 on Mental Health, as well as Article 148 of Law 36/2009 on Health. Article 1 of the Mental Health Law states that, "In this Law what is meant by:

"Mental health is a condition in which an individual can develop physically, mentally, spiritually and socially, so that the individual is aware of his own abilities, can cope with pressure, can work productively, and is able to contribute to his community".

"People with Mental Disorders, hereinafter abbreviated as PWMD, are people who experience disturbances in their thoughts, behavior and feelings which are manifested in the form of a series of symptoms and/or meaningful behavior changes, and can cause suffering and obstacles in carrying out people's functions as humans." As for Article 148 of the Health Law states that:

"(1) People with mental disorders have the same rights as citizens. (2) The rights as meant in paragraph (1) include equal treatment in every aspect of life, unless otherwise stated in the laws and regulations."

The Mental Health Law in conjunction with Article 150 of the Mental Health Law stipulates that mental health examinations for legal purposes must be carried out by a doctor who specializes in mental medicine and even involves a specialist in other fields and/or clinical psychologists. Election organizers are certainly not the right institutions to carry out such tasks because election administering bodies are not designed to carry out mental and/or memory health diagnoses. The absence of appropriate guidelines and institutions to implement the provisions of Article 57 paragraph (3) letter a has the potential to violate the constitutional rights of prospective voters to be registered as potential voters.

Article 57 paragraph (3) letter a, according to the Court, has equalized the consequences for all categories of people with mental disorders and/or sufferers of memory disorders. If the provisions of Article 57 paragraph (3) letter a are independent provisions and therefore contain legal norms that also stand alone, the Court is of the opinion that such provisions indicate violations of the Petitioners' constitutional rights to vote [refer to Article 22E paragraph (1)] and rights to obtain legal recognition [refer to Article 28D paragraph (1)]. Especially when Article 57 paragraph (3) letter a is read in connection with paragraph (4) which then regulates that voters who happen to be mentally and/or mentally disturbed at the time of voter registration will lose their right to vote in the general elections of that period, which the time of general election is different from the time of voter registration.

D. Progressive Analysis of the Constitutional Court's Verdict No. 135/PUU-XIII/2015 in Protecting the Voting Rights of People with Mental Disorders

The following will describe the progressive analysis of the Constitutional Court's verdict No. 135/PUU-XIII/2015 in an effort to protect the voting rights of people with mental disorders. This description aims to explain the aspects of the Constitutional Court's verdict which are considered compatible with the idea of progressive law which was theoretically expressed by Prof. Satjipto Rahardjo, both of which (Constitutional Court Decisions and Progressive Legal Theory) have a degree of compatibility. So that the Constitutional Court's verdict is actually a real practice of how to carry out progressive law through court decisions.

1. The Compatibility of the Constitutional Court's Verdict No. 135/PUU-XIII/2015 with Progressive Legal Criteria

The request of the parties to the Constitutional Court to cancel Article 57 paragraph (3) letter a of the Regional Head Election Law which states that one of the requirements for Indonesian citizens to be registered as voters is a person who is "not experiencing mental illness ...". What is reviewed is the provision of Article 27 paragraph (1) of the 1945 Constitution, which "states that all citizens are equal before the law and government and are obliged to uphold the law and government without exception". And Article 28 D paragraph (1) of the 1945 Constitution, "everyone has the right to recognition of guarantees of protection and legal certainty that is just, as well as equal treatment before the law". Then the

Constitutional Court issued the Constitutional Court Verdict No. 135/PUU-XIII/2015 which canceled the provisions of Article 57 paragraph (3) letter a of the Regional Head Election Law, because it is contrary to the 1945 Constitution, in principle, is a decision protecting the Voting Rights for People With Mental Disorders.

The Constitutional Court's decision is in line with the main idea of progressive law adapted from Satjipto Rahardjo who emphasized that implementing the law fulfills at least three ways, namely: First, carrying out the law using spiritual intelligence. Second, carrying out the law with a search for deeper meaning. Third, carrying out the law is not just according to logical principles, but with feelings, care and compassion to the weaker group.

Whereas if it is deepened, the progressive law can be identified as follows:

1. Progressive legal studies try to shift the focus of the initial study using legal optics towards behavior.
2. Progressive law consciously places its presence in close contact with humans and society and is responsive in nature.
3. Progressive law shares understanding with the flow of legal realism, because law is not viewed from the perspective of the law itself, but is seen and judged from the social goals to be achieved and the consequences arising from the operation of the law.

4. Progressive law has a closeness with the flow of sociological jurisprudence of the Roscoe Pound theorist who studies law not only in the study of regulations but going out and seeing the effects of law and the operation of law.
5. Progressive law has a closeness with the flow of natural law, because it cares about things that are "meta-judicial".
6. Progressive law has close ties to critical legal studies, but has a broader scope.

If you look closely, then the Constitutional Court's verdict is compatible with this progressive legal idea, among others it can be proven from the considerations of the Constitutional Court judges in deciding this case, namely:

1.1. Carrying Out The Law Using Spiritual Intelligence

The Constitutional Court's decision canceling the provisions of Article 57 paragraph (3) letter a of Law 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors into Laws and the provision is declared to be contradictory to the 1945 Constitution containing the spirit of carrying out the law by using spiritual intelligence.

The judges of the Constitutional Court have clearly possessed spiritual intelligence in producing this decision through the views in the consideration of the decision. Where the Constitutional Court judges have the view that

registration of prospective voters and voting rights are two things that are principally different. The right to vote is the right of state citizens to participate in general elections as voters. Voter registration is an administrative effort/activity carried out to obtain data on the number of citizens who have voting rights. So that must be distinguished. Where should the right to be registered as a voter is a right inherent in all citizens. This is because if we refer to Article 57 Paragraph (4) of Law 8/2015 which basically stipulates that the requirement to be registered as a voter is not the only condition to participate in general elections. The requirement to be registered in the voter list is an alternative or choice requirement. If a voter does not meet the requirements to be registered as a voter, he/she can still use their right to vote in the general election by showing an "Electronic Identity Card".

The spiritual intelligence of the Constitutional Court judges can be read from the statement in their decision which states that, the word "moderate" in Article 57 paragraph (3) letter a of Law 8/2015 shows temporary, so that the purpose of the aforementioned provision is that it refers to the testimony of the House of Representatives (DPR), which is limited treatment for a person at certain times and conditions, and not treatment for a later period. According to the DPR, this provision does not hinder the right to vote for the Indonesian citizen in the general election if at the time of the voting, the Indonesian citizen is not mentally disturbed and/or has a memory. This is regulated in Article 57 paragraph (2).

Also in the statement of the Constitutional Court judges:

"In general, mental disorders and/or memory disorders, from a medical perspective, have several more specific types. If you look at the time/duration of the disturbance, it can be broadly divided into two, namely a) mental and/or memory disorders that are relatively permanent or chronic; and b) mental disorders and/or memory problems that are temporary, not permanent, or episodic".

In terms of quality, mental and/or memory disorders can be broadly divided into three types, namely a) mild disorders; b) moderate disorders; and c) serious disorders. Each level of quality (stage) of mental disorders and/or memory disorders has different levels of recovery, both in terms of speed of recovery and in terms of quality of recovery.

There are sufferers who experience recovery of mental or memory conditions of almost one hundred percent or at least experience recovery that enables the sufferer to return to normal activities, both physical and psychological activities. However, there are also sufferers who do not experience recovery of mental and/or memory conditions, even only within the minimum limit to be able to carry out activities psychologically.

The Constitutional Court judges can understand that in everyday community interactions the terms mental and/or memory disorders are always imagined as "crazy", or what is medically known as mental illness (psychosa). When in fact "crazy" is only one type of mental abnormality. Another type of mental abnormality is mental disorder (neurosa), which has a very wide range of categories. The wide range of mental disorders categories and/or memory disorders in everyday language can be seen from

various terms, including "stress", "anxiety", "paranoid", "talkative", "phobia", and "bad thoughts". Of course the conditions are not the same between people with mental disorders such as psychosis and people who "only" experience mild stress.

The Court is of the opinion that such confusion of perception, which currently cannot be avoided in society, must begin to be addressed in order to prevent improper treatment of people with mental and/or memory disorders. Court decisions have an important position to help clear up various confusion which tend to lead to stigmatization and improper treatment of people with mental and/or memory disorders.

The statement of the Constitutional Court judges in the legal considerations above can be categorized as spiritual intelligence, namely thinking that is not limited by rules (rule-bound), also not only contextual, but out of the existing situation and trying to find the truth, meaning, or deeper values. Thus, thinking becomes a kind of infinite game. Thinking in this way does not want to be bound and limited by existing standards, but to go beyond and penetrate existing situations (transcendent). This is known as a Spiritual Quotient (SQ).

In this context, the judges of the Constitutional Court demonstrated spiritual thinking by believing in the intervention of God Almighty, that people with mental disabilities in the PWMD category can be temporarily cured.

So they need to be registered as voters in the Permanent Voters List (DPT). The infallibility in looking at social reality, especially the health

aspect by the judges of the Constitutional Court, shows that they have high spirituality and strong faith in God Almighty as a manifestation of someone who is religious and deepens spiritual values in religion and lives them and is reflected in this decision.

1.2. Carrying Out The Law With A Search For Deeper Meaning

The Constitutional Court's verdict contains the spirit of the meaning of carrying out the law with a deeper search for meaning because the judge through this decision has been able to find the search for the deepest meaning of Article 28D paragraph (1) of the 1945 Constitution states that, "Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law", the provisions of this Article explicitly prohibit any differentiation of treatment before the law, including in regulating the right to vote. In addition, there is no single article in the Election Law that prohibits persons with disabilities, including persons with mental disabilities, from exercising their right to vote. So that the legal policy that prohibits PWMD disabilities from losing their voting rights in the election has clearly injured the deepest meaning of the constitution. So the prohibition against persons with mental disabilities in Article 57 paragraph (3) letter a of Law 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents, and Mayors becomes Law and the provision was declared contrary to the 1945 Constitution by the Constitutional Court through Verdict Number 135/PUU-XIII/2015.

The Constitutional Court Judge through this decision has also found the deepest meaning in law by interpreting progressively that PWMD's mental disability is not an obstacle to not being able to exercise their voting rights. This can be related by referring to Law Number 8 of 2016 concerning Persons with Disabilities, there are 4 groupings of disabilities. There are physical disabilities, intellectual disabilities, mental disabilities, and sensory disabilities. Without intending to rule out physical disabilities and sensory disabilities, this paper deliberately focuses on intellectual and mental disabilities.

The meaning of intellectual disability is the disruption of thought functions because intelligence is below average. For example, slow learning, mentally disabled, and Down syndrome. As for mental disability, it is the disruption of thought, emotional, and behavior functions. The variants are quite diverse. There are schizophrenia, bipolar disorder, depression, anxiety (extreme anxiety), and personality disorders. These five conditions fall into the psychosocial category. They are what are often called people with mental disorders (PWMD). Apart from the psychosocial category, there is also a developmental disability category that affects social interaction skills. This is still a type of mental disability. For example, autism and hyperactivity.

Carry out the law with a legal meaning which in this can be read through the Constitutional Court's decision when the Court makes legal considerations as follows:

"... if what was meant by the legislators that the person exempted from voter registration was a person with psychosis (insane), which had characteristics such as being vagrant, eating carelessly, being asocial, even unaware of his own existence, such matters according to the Court do not need to be specifically regulated because people with such psychosis are certain, with reasonable reasoning, that they will not be registered by the voter registrar because people with such psychosis have no desire to participate in voting ..."

Furthermore, the judges of the Constitutional Court argued that:

"There is no need to regulate a prohibition on being registered as a voter for people with psychosis, according to the Court, which is equivalent to no need to regulate a prohibition on registration for people who are facing death (sakaratul maut), are in a coma, and so on. When a person with psychosis is specifically regulated in the a quo Law, especially in the provisions regarding voter registration, and is even put in the mental/memory disorder category, this will bring legal consequences to people with mental/memory disorders who are not psychosis, that before the law, especially in relation to the right to vote and the right to be registered in the electoral list, which assumes the ability to make choices, each category of mental disorder and / or memory impairment as described above should not be treated equally. This means that in order to limit the rights of voters who happen to be people with mental and/or memory impairments, the law must pay close attention to the characteristics of each type/type of mental and/or memory disorders of the voters. The DPR in its statement said that in

interpreting the phrase "mental/memory disturbed" must refer to the context of Article 1 Number 1 and Number 3 of Law 18/2014 on Mental Health, as well as Article 148 of Law 36/2009 on Health".

Article 1 of the Mental Health Law states that, "In this law what is meant by:

1. Mental Health is a condition in which an individual can develop physically, mentally, spiritually, and socially so that the individual is aware of his own abilities, can cope with pressure, can work productively, and is able to contribute to his community.
3. People with Mental Disorders, hereinafter abbreviated as PWMD, are people who experience disturbances in their thoughts, behavior and feelings which are manifested in the form of a series of symptoms and/or meaningful behavior changes, and can cause suffering and obstacles in carrying out people's functions as humans."

As for Article 148 of the Health Law states that,

"(1) People with mental disorders have the same rights as citizens.

The rights as intended in paragraph (1) include equal treatment in every aspect of life, except regulations.

After the Court has examined carefully, the Health Law and the Mental Health Law do not further explain how to find out or at least the criteria to assess whether a citizen is mentally and/or mentally disturbed. If Law 18/2014 specifies certain criteria, or that such criteria can refer to mental health criteria according to medical, psychological, and/or psychiatric sciences, determining whether a person is mentally disturbed and/or has

his/her memory cannot be done by just anyone. It takes certain skills (professions) to be able to accurately assess someone who is mentally and/or mentally disturbed.

Even Article 73 of the Mental Health Law in conjunction with Article 150 of the Mental Health Law stipulates that mental health examinations for legal purposes must be carried out by a mental medicine specialist even involving a specialist doctor in other fields and/or clinical psychologists.

Election administrators are certainly not the right institutions to carry out such tasks because election administering bodies are not designed to carry out mental and/or memory health diagnoses. The absence of appropriate guidelines and institutions to implement the provisions of Article 57 paragraph (3) letter a has the potential to violate the constitutional rights of potential voters to register as potential voters.

From the arguments of the Constitutional Court judges above, it shows that the way to interpret the Constitutional Court judges is closer to the Judicial Activism interpretation model, namely interpreting the constitution more deeply or taking extraordinary or progressive actions in an effort to interpret the constitution based on a judge's personal view of the truth he believes .

Judicial activism is a way for judges to find law. In this case, judicial activism is carried out in two categories: (1) legal discovery (rechtsvinding) if there is no law regulating an issue, however due to the need the judge must find the legal rule; (2) can be in the form of interpretation if there is already a

stipulation on a problem, but corrective efforts are needed; essays outside the conservative provisions, namely in a more progressive manner.

From the legal arguments expressed by the judges of the Constitutional Court above, it can be understood that the Constitutional Court judges interpreted and interpreted the constitutional provisions related to the rights of state civil servants with disabilities categorized as PWMD very deep because they were not merely interpreting the constitutional text in a short range but in a futuristic range function and able to relate to the deepest meaning of the social and psychological realities of PWMD disabilities in their own context, the views of the community and the need for the state to act in real terms to protect and guarantee policies that favor them.

1.3. Carrying out the Law with Feelings, Concern and Compassion to the Weaker Groups

This Constitutional Court decision contains the spirit of the meaning of progressive law, which is not just according to logical principles, but with feelings, care and compassion to weaker groups.

The Constitutional Court's decision clearly sided with the weaker or vulnerable, namely mental disabilities thanks to the PWMD so that they are protected and respected like other citizens. In this case it can be read from the consideration of the Constitutional Court judge through his decision which states:

"Considering whereas the formulation of Article 57 paragraph (3) letter a, according to the Court, has equated the consequences for all categories

of people with mental disorders and/or sufferers of memory disorders. If the provisions of Article 57 paragraph (3) letter a are independent provisions and therefore contain legal norms that also stand alone, The Court is of the opinion that such provisions indicate violations of the Petitioners' constitutional rights to vote [vide Article 22E paragraph (1)] and the right to legal recognition [refer to Article 28D paragraph (1)]. Especially when Article 57 paragraph (3) letter a is read in connection with paragraph (4) which then regulates that voters who happen to be mentally and/or mentally disturbed at the time of voter registration will lose their right to vote in the general election of the period at that time, in which the time of the general election is different from the time of voter registration".

However, since the provisions of Article 57 paragraph (3) letter a are provisions that must be read in relation to paragraph (4) in conjunction with paragraph (2), the unconstitutional nature of paragraph (3) letter a has been eliminated by paragraph (4) juncto paragraph (2). The legal norm in Article 57 paragraph (4) in conjunction with paragraph (2) has closed or eliminated the potential for unconstitutionality of paragraph (3) letter a so that paragraph (3) letter a can remain without containing potential interference with the constitutional rights of the Petitioners, specifically the right to vote in general elections. Although then the question arises, what is the significance of the existence of Article 57 paragraph (3) letter a. If so, is it not true that the provisions of Article 57 paragraph (3) may not exist, because the essence of the norm in the provisions of paragraph (3) has been negated by the provisions of paragraph (4) in conjunction with

paragraph (2) and therefore it no longer significantly affects the rights of the Petitioners to exercise their voting rights.

Therefore, the provisions of Article 57 paragraph (3) relate to the dimensions of human rights, in the form of restrictions on citizens' voting rights.

With the emergence of this Constitutional Court decision, it is clear that the Constitutional Court has progressively made decisions that are more in favor of legal subjects (Rechts Person) who are weaker in the social strata in society.

This legal alignment with the weak is congruent with the idea of Satjipto Rahardjo, who emphasized that progressive law is a law that carries out liberation, both in the way of thinking and acting in law, so as to allow the law to flow alone to complete its duties to serve humanity and humanity. Because law aims to create justice and prosperity for all people.

Where the reality is mental disability, the PWMD category is a weak and vulnerable group to be discriminated against in socio-political life because of social and cultural factors that harass them. However, the Constitutional Court comes with its decision that it has shown that the Constitutional Court is taking sides and wants to eliminate the bad stigma of PWMD mental disabilities as equal citizens who have the right to be protected and respected by their voting rights through their protection to record their names in the Election DPT so that in the election they can use their voting rights.

2. Forms of Progressiveness of the Constitutional Court's Verdict No. 135/PUU-XIII/2015 in Protecting the Voting Rights of PWMD Disabilities

The following description will try to probe deeper into the progressive aspects of the Constitutional Court decision by tracing it through legal analysis of legal arguments on legal considerations and legal arguments used by the Constitutional Court judges. in interpreting the 1945 Constitution which is in the context of safeguarding and protecting the constitutional rights of citizens, especially the voting rights of people with disabilities in the election.

2.1. Anti-Discrimination against PWMD Citizens' Voting Rights

The Constitutional Court Decision Number 135/PUU-XII/2015 has affected the anti-discrimination against citizens' voting rights, especially for PWMD because prior to this decision the state still did not have special attention to PWMD, except for the physical category of voting rights, such as blind, disabled, deaf or other physically disabled.

Even before the emergence of this Constitutional Court Ruling, the public responded negatively, both in the form of rejection statements, demeaning, and making jokes. Farther away from efforts to fulfill human rights of people with disabilities as guaranteed by the Election Law. It is estimated that more than 3.500 people with mental disabilities are registered in the voter lists for the 2019 elections. This figure is still lower than the estimated number of people with mental disorders in Indonesia, which is more than 500 thousand.

Therefore, the Constitutional Court's decision has influenced progressively so that the community respects and guarantees the voting rights of PWMD. One of them is by conducting data collection, facilitating so that voting rights can be conveyed with the principles of correct elections, monitoring and protecting against abuse or mistreatment of irresponsible parties. In addition, it seeks to protect and facilitate the fulfillment of all PWMD rights.

The right to vote for PWMD is regulated by the provisions of Article 5 of Law Number 7 of 2017 concerning Elections, it is also stated that persons with disabilities who meet the requirements have the same opportunity as voters, as candidates for DPR members, as a candidate for DPD member, as a candidate for President/Vice President, as a candidate for DPRD member, and as an election organizer.

Strengthened by KPU Regulation, Article 4 paragraph 3 of KPU Regulation Number 11 of 2018 which reads, "Voters who are mentally disturbed as referred to in paragraph (2) letter b, so that they do not qualify as voters, must be proven by a doctor's certificate."

In addition, juridically, PWMD includes Indonesian citizens (WNI) who have the same constitutional rights in accordance with Article 28D paragraph 1 of the 1945 Constitution which states, "Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law". It is also regulated in the Human Rights Law, the Mental Health Law, the Health Law and the Law on Ratification of the Convention on the Rights of Persons with Disabilities.

Article 75 paragraph (1) of the Law on Persons with Disabilities also states that the government and local governments are obliged to ensure that persons with disabilities can participate effectively and fully in political and public life, directly or through representatives.

The provisions of Article 77 state that the government and regional governments are required to guarantee the political rights of persons with disabilities by taking into account the diversity of disabilities in general elections, elections for governors, regents/mayors, and elections for village heads or other names, including: (a) participating directly in general election activities, election for governor, regent/mayor and election for village heads or other names; (b) obtaining the right to be registered as voters in general elections, governor, regent/mayor elections and village head elections or other names.

In Article 148 paragraph 1 of Law Number 36 of 2009 concerning Health, people with mental disorders have the same rights as citizens.

Based on Law (UU) Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities, and Law Number 8 of 2016 concerning Persons with Disabilities, PWMD is part of the community group with mental disabilities. According to the Chairman of the Indonesian Healthy Mental Association, Yeni Rosa Damayanti, the two legal frameworks provide protection for the rights of PWMD. Including the right to participate in politics as a voter.

This Constitutional Court decision protecting the suffrage rights of PWMD is an important part of efforts to reduce stigma, encourage

rehabilitation and integration of people with mental disorders so that they can be accepted and active again in social life. This Constitutional Court decision has emphasized that assessing mental disorders is not incapacity. The determination of the capacity of persons with mental disorders to exercise their voting rights is not based on diagnosis or symptoms, but is based on their capacity to understand the purpose of the election, reasons for participating, and the selection of candidates.

The Constitutional Court's decision affects the anti-discrimination paradigm in a social perspective so that it is more in-depth in assessing someone who must be associated with cognitive function (ability to think), controlling aggressiveness, and behaving in accordance with prevailing norms in society.

The Constitutional Court's decision has significantly influenced not to discriminate against citizens' voting rights only because of the PWMD factor. Therefore, this decision has given the spirit that PWMD voters must be recorded and given voting rights in the Election. On condition that there is no certificate from a health worker that says he is unable to vote. If we read the norms in the Election Law and the Regional Election Law, it states that the requirements to become a voter in an election are 17 years old and/or married. There is no requirement that states that voters are not mentally disturbed. This means that all citizens who already have the right to vote, including people with PWMD, must be recorded without exception.

Through this decision, the Constitutional Court also philosophically the state must not discriminate the right to vote first for data in the Permanent

Voters List that then they do not use their voting rights during elections is a personal right of voters for subjective reasons, however, the state needs to objectively protect their voting rights in order to be registered as voters for the 2019 election is a necessity.

In fact, according to psychiatrists, mental disability is an episodic condition, or not permanent. Even though sufferers have disabilities in some mental functions, they can still live normally and are able to determine what is best for them.

2.2. Encouraging Citizen Awareness to Respect People with Mental Disorders (PWMD)

The Constitutional Court's verdict has progressively influenced the way the people understand and respect the rights of PWMD voters. Likewise, sociologically, the Constitutional Court's verdict has significantly influenced the public's awareness to respect or at least understand that there is a social reality in society that there are voters with PWMD status who need to be respected as part of citizens who have the same political rights.

So the Constitutional Court's decision has been able to significantly reduce the existence of parties who have been laughing at the suffrage rights of persons with disabilities of the PWMD.

For a long time, the community has stigmatized PWMD because of the superficiality and ignorance of the community about mental disorders/people with disabilities who can also live normally as long as they are supported by an optimal recovery process.

That is why the Constitutional Court's verdict has been able to encourage the public to have awareness of law and human rights that view people with mental disabilities as other human beings who have political rights through general elections.

This perspective of public human rights awareness is important for social capital in social integration in building relationships and social interactions in an impartial and non-discriminatory manner in communities with PWMD disabilities in elections. Because the election provides an opportunity to increase participation and change public perceptions of the abilities of persons with disabilities of the PWMD.

Medically, a person's capacity to vote in elections is not determined by the diagnosis or symptoms experienced by the sufferer, but by cognitive abilities (thinking skills). This means that people with mental disabilities such as people with schizophrenia, bipolar disorder or major depression do not automatically lose their capacity to make choices.

More than that, the Constitutional Court's verdict has significantly increased public trust in state law, in this case the 1945 Constitution is used as the main reference for the Constitutional Court to make decisions that protect PWMD's voting rights. Because the struggle to advocate for the rights of people with disabilities of the PWMD to be able to vote in elections based on the 1945 Constitution can be realized in this 2019 Election.

After the birth of the Constitutional Court's decision, it has encouraged a number of non-governmental organizations (NGOs) to support the

Constitutional Court's decision and carry out various advocacy and appeals to the public to have more respect for persons with disabilities of the PWMD.

The concrete evidence is the awareness of community groups of the Civil Society movement spearheaded by one of which was the formation of the Working Group (Pokja) on the Implementation of the Law on Persons with Disabilities whose members consist of several NGOs that care about People With Mental Disorders (PWMD). This working group supports the General Election Commission's policy of registering voters for persons with mental disabilities for the 2019 elections.

This working group encourages the General Election Commission to form additional policies that support persons with mental disabilities to participate in exercising their voting rights, namely:

1. coordinate with the Ministry of Health and the Regional Government to provide health facilities to registered persons with mental disabilities in order to exercise their right to vote on voting day;
2. not using a doctor's certificate as a condition for any voter to exercise their right to vote, including persons with mental disabilities. A doctor's certificate is only used by the General Election Commission to prove a person cannot vote due to health reasons;
3. disseminating and educating the public, the success team for Presidential and Vice-Presidential candidates, political parties participating in the 2019 Election, internal General Election Commission, Regional General Election Commission and other election

administrators related to the political rights of persons with disabilities, especially persons with mental disabilities.

2.2. Strengthening the Existence of the Pro-PWMD Disability Legal Policy

The Constitutional Court Decision No.135/PUU-XIII/2015 can progressively affect the strengthening of the existing pro-PWMD disability legal policy, but not functionally implemented in public policies, especially in the preparation of the Regional Election (Pilkada) Law. Where the Regional Election Law still contains norms of discrimination against PWMD disabilities to be registered as voters.

That is why this Constitutional Court decision is a suggestive oasis to serve as a basic guideline in order to strengthen various public policies that respect PWMD in the laws and regulations in Indonesia.

For example, in the provisions of Article 42 of Law Number 39 of 1999 concerning Human Rights, which regulates that every citizen who is elderly, physically and or mentally disabled has the right to receive special care, education, training and assistance at state expense, to guarantee a decent life in accordance with human dignity, increase self-confidence and the ability to participate in the life of the community, nation and state.

For this reason, the regulation of each sector in the administration of the nation and state must adjust and pay attention to the provisions on disability rights as regulated in the CRPD convention.

In implementing these obligations, the state must refer to general principles in strengthening legal policies that are pro to PWMD disabilities, namely:

- a. Respect for inherent dignity, individual autonomy, including freedom of choice and individual liberty;
- b. Non-discrimination;
- c. Full and effective participation and participation in society;
- d. Respect for differences and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women.

Not only in certain laws and regulations, but all legal products must pay attention to and refer to these general principles.

So the importance of a pro-PWMD disability legal policy related to the issue of Election is because elections are a means of democracy to elect new people's representatives who must be able to represent all Indonesian citizens as their constituents, without exception. PWMD disability in this case also what is meant by the term citizen of the said country without discrimination. Limited mobility due to limited physical non-physical conditions should not reduce their rights as citizens, including the guarantee of their political rights.

This Constitutional Court decision has influenced legal policies so that every person with a PWMD disability has equal rights and opportunities in all fields of life and livelihood. The fields of life and livelihood referred to are aspects of religion, health, education, social, employment, economy, public services, law, culture, politics, defense and security, sports, recreation and information. Therefore, the rights of people with PWMD disabilities must be fulfilled in order to carry out activities without any obstacles as whole humans without any shortcomings.

This Constitutional Court decision has influenced legal policies so that every person with a disability must be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and arbitrary treatment, and have the right to receive respect for mental and physical integrity on the basis of equality with others. This also means the treatment that is not arbitrary and the same as the treatment or guarantee of political rights for the wider community in general.

Because every PWMD person with disabilities has equal rights and opportunities in obtaining and exercising their political rights, as regulated in Article 13 of Law Number 8 of 2016 concerning Persons with Disabilities (Law No. 8 of 2016 concerning Persons with Disabilities). In this article, it is stipulated that:

Political rights for Persons with Disabilities include the right:

- a. elect and be elected to public office;
- b. express political aspirations, both written and oral;

- c. electing political parties and/or individuals who participate in general elections;
- d. forming, becoming members and/or administrators of community organizations and/or political parties;
- e. forming and joining organizations of Persons with Disabilities and to represent Persons with Disabilities at the local, national and international levels;
- f. participate actively in the general election system at all stages and/or parts of its implementation;
- g. obtain accessibility to the facilities and infrastructure for the holding of general elections, election for governors, regents/mayors, and elections for village heads or by other names; and
- h. get political education.

2.3. Encouraging Moral Courage of Election Organizers to Record Voters with PWMD Disabilities

This Constitutional Court decision has boosted the moral courage of the election organizers of the General Election Commission (KPU) because then the KPU issued letter Number 1401/PL.02.1-SD/01/KPU/XI/2018, the KPU registered voters with mental disabilities (PWMD) to the Permanent Voters List (DPT) for the 2019 Election.

The KPU's move is based on recommendations from the Election Supervisory Agency (Bawaslu) and a number of civil society. He said that

the Constitutional Court's decision encouraged the KPU's moral courage to record disabilities in the DPT because in the 2018 Pilkada, for example, people with mental disabilities still had difficulty obtaining their voting rights because they were still based on a certificate from a doctor, voters with mental disabilities were declared mentally disturbed, so the voters were not included in the election. DPT.

This Constitutional Court decision has also encouraged the moral courage of the General Election Supervisory Agency (Bawaslu) to supervise the General Election Commission (KPU) regarding guarantees for people with PWMD disabilities in the 2019 elections to be registered in the final voter list (DPT). The morality of Bawaslu to supervise the KPU is not only influenced by the Constitutional Court's decision but is also guided by Law Number 7 of 2017 concerning Elections which guarantees the right to vote for every citizen in general elections, including persons with disabilities.

Article 5 states that persons with disabilities who meet the requirements have the same opportunity as voters, as candidates for House of Representatives members, as candidates for Regional Representative Council members, as candidates for president/vice president, as candidates for Regional People's Representative Assembly members, and as election organizers. The rights of persons with disabilities in politics have also been previously regulated in Law number 8 of 2016 article 5 letter (h) concerning persons with disabilities. Although the Indonesian General Election Commission policy is based on Article 4 paragraph 3 of General Election Commission Regulation Number 11 of 2018 concerning the preparation of

domestic voter lists which reads, "Voters who are mentally disturbed as referred to in paragraph (2) letter b, so that they do not qualify as voters, must be proven by a doctor's certificate."

So this General Election Commission policy uses the principle of prudence by providing conditions, including: Registered in the Permanent Voters List, proof of a doctor's certificate, stable condition and understanding of the election, guarded before voting, without a companion when voting. This policy is based on the Constitutional Court Decision, UUD 45 Article 28 D paragraph 1, Law No. 7 of 2017 concerning Election Articles 5, 198, 199 and 200, and General Election Commission Regulation concerning amendments to General Election Commission Regulation No.11/2018 concerning Domestic Permanent Voters List Compilation in the Election.

Persons with mental disabilities are required to bring a letter of recommendation or statement from a doctor to be able to exercise their right to vote at a Polling Station (TPS). The letter must state that persons with mental disabilities are in good health. This is one of the conditions for them to vote in the 2019 elections.

Persons with mental disabilities are registered as voters because they are part of the citizenship. However, because voting is part of a legal action, the voter must be legally competent. So the use of suffrage (persons with mental disabilities) must obtain a certificate from a doctor.

One commissioner Pramod Ubaid Tantowi Commission asserts, the Commission has included mental disabilities voter's name in the Permanent

Voters List (DPT) of the Election 2019. It was, as the efforts of the Commission to protect the citizens' right sound at the same time the implementation of General Election Commission Regulation (PKPU) No. 11 of 2018 concerning the preparation of domestic voter lists. That mental disabilities or mental disorders are not permanent. If a person with mental disabilities is not included in the Permanent Voters List, but later on on voting day he is in good health, then he may lose his voting rights. Mental disorders or memory loss is not permanent. If it is not registered in the Permanent Voters List, it turns out that when the voting is finished, it means that voters lose their voting rights.

So the General Election Commission (KPU)'s policy is relatively good in accommodating the order of the Constitutional Court decision of the Republic of Indonesia that voters with disabilities in the PWMD category must be protected by their voting rights while voting later, this must be proven by a health certificate from a psychiatrist. That's what the General Election Commission adopted.

So far, the obstacles faced by the General Election Commission in the data collection process for voters with mental disabilities. For example, during matching and research (coklit), many families did not allow family members with mental disabilities to be recorded on the Permanent Voters List (DPT). During the verification process, the family should not obstruct information regarding the existence of voters with mental disabilities in the family, so that the data on voters with mental disabilities in the Permanent

Voters List is updated. However, the General Election Commission cannot force the family to reveal the identity of a person with mental disabilities.

In broad terms, the 3 (three) obstacles faced by the General Election Commission in terms of voting data collection for voters with disabilities are as follows:

First, there are families who do not register their family members with disabilities because they do not understand their voting rights and/or are ashamed to provide information to the Voting Registration Officer (Pantarlih). Some of them are embarrassed to reveal their family members with disabilities. For certain families, disabilities carried by members are considered a disgrace so that they do not need to be mentioned in the voter data. Openness from the community and their own families. It is suspected that these circles are sometimes less sensitive than the residents or those closest to them are persons with disabilities who have the same rights including in elections.

Second, there is a voter registration officer (Pantarlih) who has limited knowledge of the importance of data collection for voters with disabilities. Sometimes the updating officer thinks that the information on disability is not important so that the person concerned does not record it properly. In some cases, pantarlih only guessed the whereabouts of persons with disabilities without carrying out the matching and researched each house to update the data.

Third, the preliminary data on the List of Potential Election Voters (DP4) used by election organizers does not mention information on disabilities.

Information regarding this matter is also not included in the latest election data. Fourth, the very minimal information about data on persons with disabilities makes it difficult for officers to record voters in this category.

E. The Progressive Influence of the Constitutional Court Decision on Increasing Voter Participation in the 2019 General Elections

Seeing the development of the progressive legal realm in the science of law in Indonesia, this does not make the Constitutional Court's decision closed to this. The authority of the Constitutional Court (hereinafter referred to as the Constitutional Court) is to judge at the first and last levels whose decisions are final and binding in terms of examining the law against the constitution, decide disputes over the authority of state institutions whose authority is granted by the constitution, decide the dissolution of political parties, and decide on disputes over the results of general elections and must make decisions on proposals from the House of Representatives (hereinafter referred to as DPR) regarding alleged violations by the President and/or Vice President as contained in Article 24C of the 1945 Indonesian Constitution, which is re-explained in Article 29 of Law Number 48 of 2009 concerning Judicial Power and Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 23 of 2004 concerning the Constitutional Court.

Based on normative provisions, the authority of the Constitutional Court in examining the law against the constitution is emphasized on the attempt to cancel or declare an article in a law that has no binding legal force. The authority of the Constitutional Court is what is known as the negative

legislature. The term negative legislature was first introduced by Hans Kelsen, who emphasized that the judicial institution has the authority to cancel a law or declare a law not legally binding. In carrying out this function, the judicial power holders act as negative legislatures. Through its authority to eliminate the validity of a law norm, the Constitutional Court is often referred to as a legislator in a negative sense, as opposed to the function of parliament as a legislator in a positive sense. In other words, the Constitutional Court only has the authority to examine and annul laws against the constitution and not to form laws or other provisions. Because the authority to make laws is the domain and duty of the House of Representatives (DPR) and the President.

The fact that develops in the state administration shows that in several cases, the Constitutional Court made decisions that not only invalidated the norms, but created several variants of decisions, namely conditionally constitutional, conditionally unconstitutional, decisions that postpone the enforcement of decisions (limited constitutional), and decisions that formulate new norms. With these four variants of decisions, the Constitutional Court is often seen as having taken progressive legal steps in its role as a negative legislature state institution.

The Constitutional Court not only nullifies norms, but interprets the contents of the norms or provisions contained in a clause so as to change or create new parts of the contents of a law being tested, so that the norms of the law also change from the previous ones. This can be seen through the

various Constitutional Court verdicts that have made real legal progress, one of which is the Constitutional Court Verdict Number 135/PUU-XIII/2015.

The emergence of the Constitutional Court VERDICT Number 135/PUU-XIII/2015 began with the submission of a judicial review by the Petitioners from the Healthy Mental Association, the General Election Center for Access to People with Disabilities (PPUA PENCA), the Association for Elections and Democracy (Perludem), and Khorunnisa Nur Agustyati regarding the provisions contained in 57 paragraph (3) letter a of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and MayorS becomes a law which states that:

"To be registered as a voter, Indonesian citizens as referred to in paragraph (1) must meet the following requirements:

- a. not having a mental/memory disturbance; and/or
- b. their voting rights are not being revoked based on a court decision which has permanent legal force.

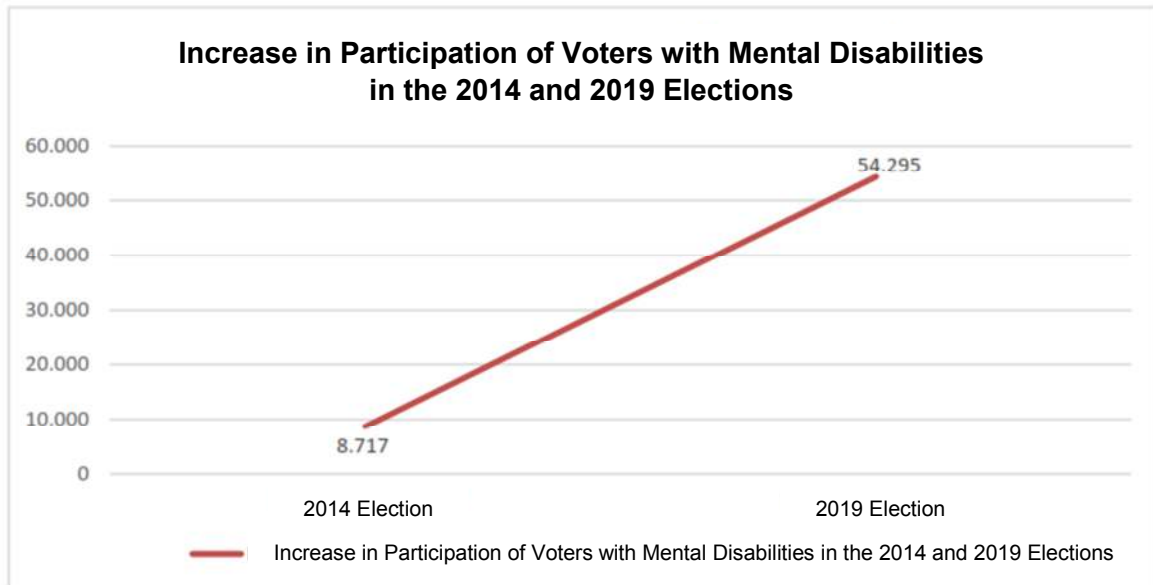
In his petition, the Petitioner filed for a constitutionality review of Article 57 paragraph (3) letter a of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Ratification of Laws and Regulations Number 1 of 2014 concerning Election of Governors, Regents and Mayors becomes a law as long as the phrase "is not mentally disturbed/mentally disturbed". In the end, the Constitutional Court in its decision interpreted the

clause "mental/memory disorder" not as "experiencing mental disorders and/or permanent memory disorders which according to mental health professionals have eliminated one's ability to vote in general elections."

The progressiveness of the Constitutional Court Decision Number 135/PUU-XIII/2015, resulted in several changes in the dynamics of general election law for the better, such as increasing voter participation; Fulfillment of Rights through the Provision of Special Polling Station for PWMD; Changes in Community Stigma in Respecting PWMD; Monitoring of PWMD in the More Effective Use of Voting Rights; elimination of discrimination on the political rights of persons with mental disabilities.

1. The Influence of Increasing Participation of PWMD Voters and Bali Province

2015 as an initial milestone in allowing people with mental/memory disorders with the criteria of not experiencing mental and/or permanent memory disorders which according to mental health professionals has eliminated a person's ability to vote in the election is a decision that can influence public participation in voting. Empirically, in Indonesia the Election event which is held every five years brings significant changes, especially after the issuance of the Constitutional Court Verdict.



Source: The General Election Commission of the Republic of Indonesia

Number 135/PUU-XIII/2015 related to political rights, namely the right to vote for people with mental disabilities. In the 2019 Election which was held on April 17, 2019, the total voters with mental disabilities who entered the Permanent Voters List were 54.295 voters. This number includes 0.028 percent of the total Permanent Voters List, namely 190.770.329 voters. The number of voters with mental disabilities increased significantly from the 2014 General Election, which amounted to 8.717 people to 54.295 people.

The increasing number of voter participation in the 2019 Election indicates the increasing political awareness of citizens about their rights and obligations, apart from an award given to vulnerable groups such as people with disabilities in general and mental disabilities in particular. So that groups of people with disabilities, whether physical, mental, intellectual and/or sensory disabilities do not feel discriminated against, instead they

should be proud because their political rights are well accommodated by the state through the government.

This has also proven that the existence of the Constitutional Court Decision Number 135/PUU-XIII/2015 which was born in 2015 has been able to become a legal reference for election organizers regarding the voting rights of people with mental disabilities which increased from the 2014 Election to the 2019 Election. Positive between the decision of the Constitutional Court Number 135/PUU-XIII/2015 and the increase in the number of voters with mental disabilities due to several reasons:

1. There is no longer any doubt for election organizers from the center to the Voting Committee (PPS), in providing space for persons with mental and mental disorders to vote.
2. Legal basis for the organizers to make laws and policies in the administration of elections to distinguish between mental disabilities with mental disorders and/or memory disturbances that are relatively permanent or chronic; and mental and/or memory disorders that are temporary, not permanent, or episodic.
3. Increased concern for the community, which will invite relatives with non-permanent mental disorders to vote.
4. Increase the activeness of Mental Hospital officers in providing services for mental disorders to exercise their voting rights.

In fact, even though in practice people with mental disabilities who are also mental hospital patients, especially the Bali Province Mental Hospital,

are not much involved in the election, the Constitutional Court Decision Number 135/PUU-XIII/2015 is actually carried out and in accordance with legal scientific developments in line with the times. Empirically, the progressive effect of the Constitutional Court Decision Number 135/PUU-XIII/2015 on increasing the participation of voters with disabilities, whether physical, mental, intellectual and/or sensory disabilities in the 2019 Election are concretely:

1. In the implementation of the Elections that have taken place in Indonesia, especially the Election events in 2009 and before the 2009 Election, however, there has not been any form of respect, protection and optimal fulfillment of the political rights of persons with disabilities. Barriers faced by persons with disabilities are the unavailability of facilities (accessibility) in the Election facilities and infrastructure, both physically and non-physically provided for persons with disabilities to vote directly, publicly, freely, secretly, honestly and fairly on the basis of equal rights and opportunities with other citizens. Physically, there are no ballot papers equipped with braille letters and there are still polling stations located in places that are difficult to reach for persons with disabilities such as rocky areas, stairs, hills, thick grass, difficult access roads to polling stations passed by persons with disabilities, as well as voting boards and voting booths that are difficult to reach for persons with disabilities, especially wheelchair users. Then non-physically, there are stereotypes or prejudices of election organizers and laws and regulations that discriminate against persons with


disabilities. For example, regarding the requirements for candidates for People's Representative Assembly and Regional People's Representative Assembly candidates who require that they be able to speak, write and read Indonesian, and be physically and mentally healthy. These requirements have reduced the opportunity for the right to be elected for persons with disabilities who are only able to communicate in sign language or read braille and persons with disabilities cannot become members of the legislature because they are considered physically and mentally unhealthy. Empirically in the 2019 Election, especially in the Guidelines for Voting Organizers (hereinafter referred to as KPPS), Voting and Vote Counting for the 2019 Election has paid attention to various aspects concerning the issue of persons with disabilities. Not only that, but also pay attention to the aspects related to polling stations and voting in the Mental Hospital which are contained in Chapter 4.2. Mental Hospital Voting Services.

2. After the issuance of this Constitutional Court Decision, it has also been able to provide confidence for people with physical and mental disabilities. People with physical and mental disabilities are no longer afraid to give their political rights to the appointed polling stations. This is because all parties, both Voting Organizing Group, Polling Station Supervisors and Election Contesting Witnesses are ready to serve the use of voting rights from the beginning of the stage until the voting stage ends. This effort is made in addition to increasing the

participation of people with physical and mental disabilities as well as to minimize the soaring number of golput in the General Election.

9. Note:
To ensure persons with disabilities who have physical disorders can exercise their voting rights accompanied by a companion.
Providing assistance to voters is carried out in the following ways:

- a. For voters who cannot walk, the appointed companion helps the voters to the voting booth and voting for ballots is carried out by the voters themselves;
- b. For voters who do not have two hands and are blind, the appointed companion helps cast ballots according to the wishes of the voters.

An illustration showing a person in a wheelchair being assisted by a companion at a voting station. The person in the wheelchair is holding a ballot. A man in a patterned shirt is standing behind the wheelchair, and a woman in a yellow hijab and black dress is standing next to him. Another man in a purple shirt is standing to the right. In the background, there are voting booths with Indonesian national symbols.

Source: Witnesses' Pocket Book of the 2019 Election Contestants

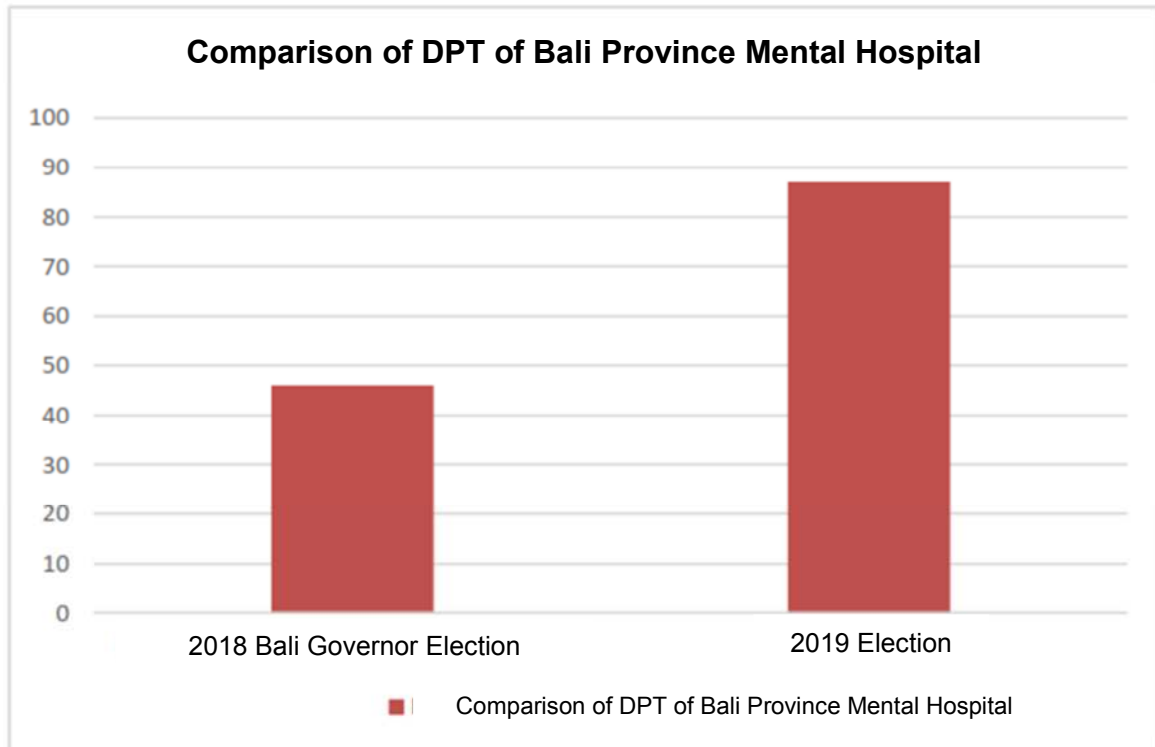
Examples of pieces found in Witnesses' Pocket Book of the 2019 Election Contestants compiled by the General Election Supervisory Agency of the Republic of Indonesia show that there is respect and services provided for persons with physical and mental disabilities at the Polling Station;

Disabilities that are not only limited to physical disabilities, but also mental disabilities have changed the paradigm of people's thinking about people who are considered vulnerable groups. That people with mental disorders are also a vulnerable group who must be given protection to prevent discrimination against them. The birth of the Constitutional Court

Verdict Number 135/PUU-XIII/2015 regarding the meaning of the clause "mentally disturbed" not as "experiencing mental disorders and/or a permanent memory disorder that mental health professionals say has diminished a person's ability to vote in elections."

It is a legal breakthrough in the Constitutional Court decision which considers that the law is formed for humans and non-humans, which is formed by a law. So that in Bali in particular, the Constitutional Court Verdict mentioned above has been used as a guideline for election organizers, in this case the General Election Commission and General Election Supervisory Agency to establish and supervise the formation of Polling Station contained in the Bali Province Mental Hospital, which is located in Kawan Village, Bangli District, Bangli Regency, Bali Province. That the Polling Station contained in the Bali Province Mental Hospital during the 2018 Governor Election of Bali Province was 21 Polling Stations and at the time of the 2019 Election was 33 Polling Stations;

Empirically it shows that there is an increase in the number of Permanent Voters List (DPT) in the Bali Province Mental Hospital involving vulnerable groups, namely people with mental disabilities in the Bali Province Mental Hospital when compared to the 2018 Governor Election of Bali Provincial and the 2019 General Election. The following describes the Permanent Voters List (DPT) comparison data consisting of people with mental disabilities in the Bali Province Mental Hospital:



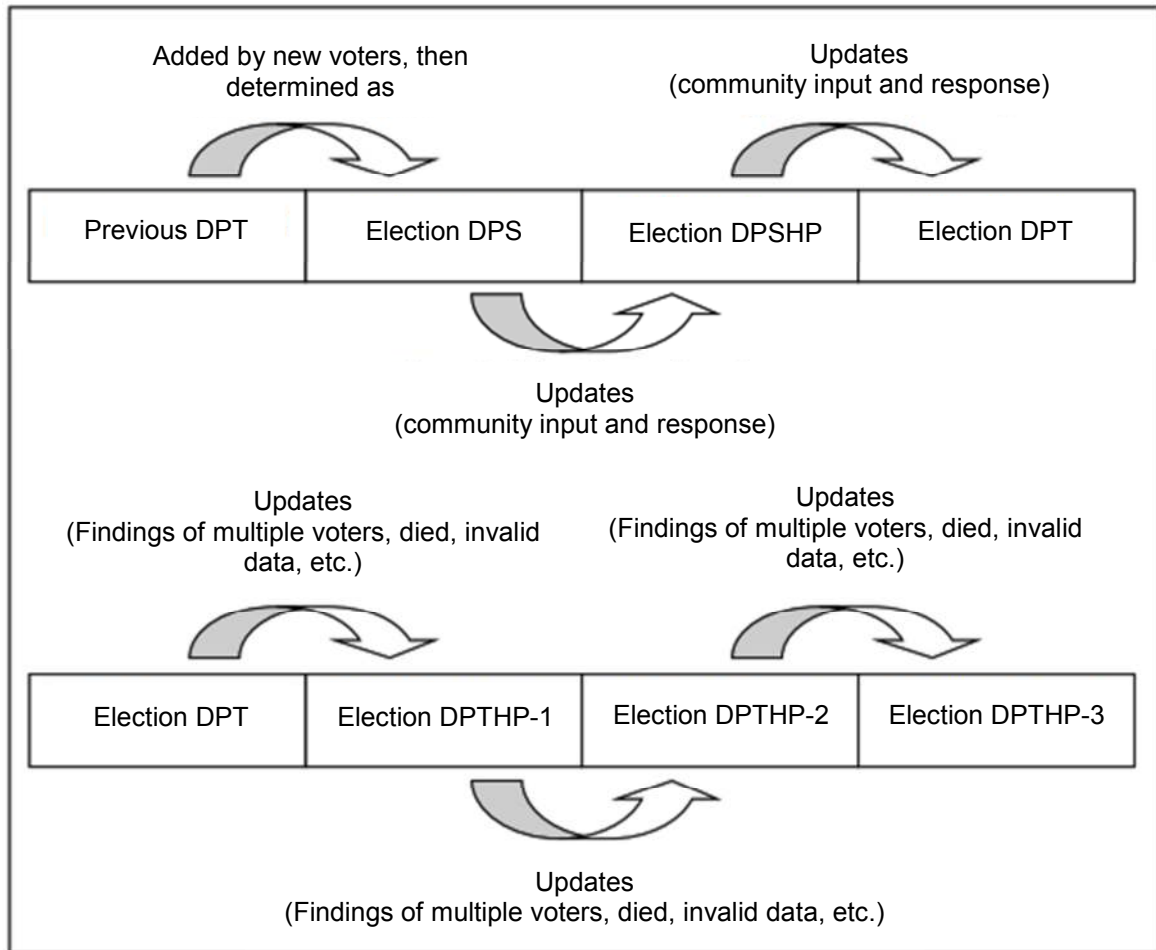
Based on the chart above data, it can be seen that there is a significant increase over a period of one year from the 2018 Regional Head Election for the Governor of Bali Province to the 2019 General Election has shown that the Constitutional Court's decision has been the orientation of the law in providing the fulfillment of the political rights of people with mental disorders at the Mental Hospital in Bali Province.

Regarding people with mental disorders, in fact various forms of respect, protection and fulfillment of political rights have been carried out. Reporting from the Ministry of Law and Human Rights (hereinafter referred to as Kemenkumham) shows that there are 17 Provinces and 180 regencies/cities in Indonesia that have “free stocks” programs. In addition, there are 17 provinces and 180 regencies/cities in Indonesia that have local policies for handling and mental health services for people with mental

disorders (hereinafter referred to as PWMD). When compared with the total number of provinces and regencies/cities in Indonesia, this figure is not very satisfying, however, it needs to be appreciated and needs to be improved. This fact has shown that the existence of PWMD and/or people with mental disabilities in Indonesia at various levels is still treated.

2. Recording of Permanent Voters List (DPT) for People with Mental Disorders (PWMD) is Getting Easier

Empirically, the decision of the Constitutional Court which was born in 2015 has been implemented since the beginning of this decision until today, which can be seen through several things. In particular, Bali Province has carried out the contents of the Constitutional Court Decision Number 135/PUU-XIII/2015 regarding the right to vote for someone who is mentally disturbed/whose memory is not interpreted as someone who has mental disorders and/or permanent memory disorders which according to mental health professionals has diminished one's ability to vote in elections. This is indicated by the existence of a Permanent Voters List (hereinafter referred to as DPT) at the Mental Hospital (hereinafter referred to as RSJ) in Bali Province which is located in Bangli Regency. Even the 2019 Election democratic party event which was held simultaneously in Indonesia, in Bali in particular, has recorded that there are 124 Permanent Voters Lists at the Bali Provincial Mental Hospital which were recorded through non-short stages. The process for obtaining the Permanent Voters List in general and at the Mental Hospital in particular is described as follows:



In general, the 2019 Permanent Voters List used in the 2019 Election is derivative data from the previous election Permanent Voters List, namely during the 2018 election for the Governor and Vice Governor of Bali Province which then added data for new voters or novice voters, which later became the Temporary Voters List (hereinafter referred to as DPS). The Temporary Voters List was then updated again by allowing time for the public to provide input and comments. After that, the Temporary Voters List for the Results of Revision (hereinafter referred to as DPSHP) is established. DPSHP is also given the opportunity for the community to provide input and feedback. After that, the Election Permanent Voters List was determined. In the 2019 Election, based on the results of the

Supervision of the General Election Supervisory Agency (hereinafter referred to as Bawaslu) and the matching and research of the General Election Commission (hereinafter referred to as the KPU), resulted in the findings of multiple voters, death, invalid data, and others. This Permanent Voters List (DPT) is then changed to the First Revised Permanent Voters List (hereinafter referred to as DPTHP-1). Then the DPTHP-1 was updated again to the Second Revised Permanent Voters List (DPTHP-2), which was then updated again to the Third Revised Permanent Voters List (DPTHP-3).

Before the 2019 Election was held, first updating the Permanent Voters List for the 2019 Election was carried out by looking at the Permanent Voters List for the 2018 Bali Provincial Governor Election or other elections, especially in the number of the Permanent Voters List. Specifically, in Bali, the Permanent Voters List for the Regional Head Election (hereinafter referred to as Pilkada) for the Governor of Bali Province in 2018 because the Pilkada was the last election held in Bali before the 2019 General Election. The Permanent Voters List for people with mental disorders in the polling stations at the Bali Provincial Mental Hospital, which is located in Bangli Regency, from the 2018 Bali Provincial Regional Head Election are as follows::

No	Name	Personnel Reg. No.	Sex	Address	Polling Station
1	A.A. Ayu Murniasih	5108057112840063	F	Bd Dangin Pura, Panji, Sukasada,	21

				Buleleng	
2	Gusti Ayu Karyawati	5108024905800002	F	Br Bukit Sari, Lokapaksa, Seririt, Buleleng	21
3	Putu Adnyana Yasa	5108052012810001	M	Br. Dinas Pasut Katiasa, Dusun Pegadungan, Buleleng	21
4	Ni Komang Sukerti	5108016406950002	F	D/A. Bd Batu Ampar Ds Pejarakan Gerokgak Buleleng	21
5	Made Susana	5108063112610154	M	Br. Peguyangan Desa Astina Buleleng	21
6	I Md Sumewa	5108081706090010	M	Br. Penulisan, Ds, Tunjung, Kubutambahan, Buleleng	21
7	Dewa Putu Indrabawa	5108030107580010	M	Banjar Satria, Busung Biu Singaraja	21
8	Hana Ketu	5171036802680019	M	Jl, Gunung	21

				Bromo I/102 Denpasar. Dsn Panca Kerta	
9	Ni Md Suryaniti	5171037011710002	F	Jl. Gunung Agung Gg IV/ Dsn Ttegal Linggah Denpasar	21
10	Ni Made Darmini	5171047112890012	F	D/A Br Pemalukan, Peguyangan, Denpasar Utara	21
11	Ni Made Sarti	5101027012770076	F	D/A. Br/Dusun Randu, Poh Santen, Mendoyo, Jembrana	21
12	Made Sanjaya	5101011303770003	M	Jln. Nusa Indah Raya No. 2. B.B.Agung, Dusun Anyarsari, Jembrana	21

13	Desi Widyastuti	5101014612750001	F	Jln. Nusa Indah Raya No. 2. B.B.Agung, Dusun Anyarsari, Jembrana	21
14	Ni Made Sriasih	5101037112670045	F	D/A. Br Pengeragoan, Pekutatan, Jembrana	21
15	Ni Ngh Parwati	5102084107620001	F	Bd Piling Tengah, Ds Mangesta, Penebel, Tabanan	21
16	Ni Ketut Suparti	5102026112540001	F	D/A. Br. Dinas Bantas Tengah Kaja, Ds Bantas, Selemadeg Timur, Tabanan	21
17	Ni Wayan Santiasih	5103036708780001	F	D/A. Br Pande Abiansemal Badung	21

18	Ni Kt Madriasih	5103030903070019	F	Bd Sangging, Sibang Kaja, Abiansemal, Badung.	21
19	Kadek Asri	5103025210680001	F	D/A. Br. Jumpayah Negari Badung	21
20	Ni Ketut Suwaka	5103027112580345	F	Br. Sayan Kaleran Werdi Buwana Mengwi Badung	21
21	Ni Made Sabi	5103037112490268	F	Br. Sangging Sibangkaja Abiansemal Badung	21
22	Si Made Arioni	5103027112070144	M	Lingkungan Tengah, Sempidi, Mengwi, Badung	21
23	Nengah Sandi	5106020207750002	M	Bd Selekungang Taman Bali,	21

				Bangli	
24	Ni Nengah Suanten	5106025603770002	F	Ling Tegal Suci, Kubu Bangli	21
25	Ni Made Tagel	5106034107550407	F	Br. Undisan Kelod, Tembuku Bangli	21
26	I Noman Sunawa	5106010107830559	M	Dsn Abuan, Desa Abuan, Susut, Bangli	21
27	Nengah Parta	5106010107750580	M	Br Kayuambua, Ds Tiga Susut Bangli	21
28	Ni Ketut Kasti	5105044104560001	F	Dsn Sulang Desa Sulang Dawan Klungkung	21
29	I Dewa Gede Telaga	5105030107530043	M	Jln. Imam Bonjol No 15 Semarapura Klungkung	21
30	Ni Komang Sriasih	5105024706810001	F	D/A Dusun Kaleran,	21

				Timuhun, Banjarangkan, Klungkung	
31	I Wayan Arbawa	5105101807077837	M	Br Prapat, Desa Nusa Ped, Nusa Penida Klungkung	21
32	I Made Manis	5105011807070076	M	Banjar Sebunibus, Nusa Penida Klungkung	21
33	I Nyoman Rawan	510706221113002	M	Br Cemar Tebel, Buana Giri, Bebandem, Karangasem	21
34	I Komang Merta	5107033112400062	M	Br. Kelod Desa Antiga Manggis Karangasem	21
35	I Nengah Mawa	5107021210590004	M	Br. Iseh Sinduwati Sideamen Karangasem	21
36	I Ketut Suyasa	5104022012780005	M	Br. Kebon Kaja,	21

				Gianyar	
37	Ni Nyoman Kerti	5104054704750005	F	D/A Ds. Mas Ubud Gianyar	21
38	A.A.Anom Putri	5104047112640061	F	D/A Br Pacung, Pejeng Kelod, Tampaksiring	21
39	I Ketut Kerta	5104033112770040	M	Lingk. Kelod Kangin, Beng, Gianyar	21
40	I Nym Lanus	5104031003780000	M	Br. Kembengan, Ds. Tulikup, Gianyar	21
41	Ni Ketut Bunter	5104056103860005	F	Br Bangkilesan, Mas Ubud, Gianyar	21
42	Ni Komang Liana Dewi	5104034611870001	F	Jl Cendrawasih, Gianyar	21
43	I.B Kdk Suamba	5104023112660056	M	Br, Mas Pahit, Dsn. Mas Pahit, Gianyar	21
44	Made Marti	5104014107830056	F	D/A. Br. Manyar, Ketewel,	21

				Sukawati, Gianyar	
45	I Nyoman Selang	5107052210090471	M	Br Bale Gede, Datah, Abang, Karangasem	21
46	Ni Wayan Reni	5107062809090061	F	Br Tihing Seka, Bebandem, Karangasem.	21

Source: Bangli Regency Election Supervisory Agency

Of the 46 voters who have intellectual, sensory, intellectual, mental or other disabilities at the Mental Hospital of Bali Province which are listed in the Permanent Voters List for the 2018 Regional Head Election of Bali Province, then after going through the process as above, the Permanent Voters List was obtained. Results of Revision-3 which are then used as the Permanent Voters List for the 2019 Election. Based on data collected through the Bangli Regency Election Supervisory Agency, it is known that the number of Permanent Voters List of people with intellectual, sensory, intellectual, mental or other disabilities at the Mental Hospital of Bali Province as many as 87 people.

No	Name	Personel Reg. No.	Sex	Address	Polling Station
1	I Nyoman Jarwa	5106023112360079	M	Ling. Kubu, Bangli	33

2	Made Rediksa	5108050604800003	M	Bd. Batu, Dingding	33
3	Nyoman Tjandra	5171010101300015	M	Jl. Padang Galak, Pekandelan, Sanur, Denpasar	33
4	Ni Luh Karsa	5103025211520001	F	Br. Pasekan Buduk, Mengwi, Badung	33
5	Ni Ketut Sundri	5104034107550004	F	Bali	33
6	Ni Wayan Belak	5106034107570315	F	Ds. Undisan, Tembuku, Bangli	33
7	Ni Nyoman Ratni	5106027112620155	F	Dusun Selati, Ds. Bunutin, Bangli	33
8	I Nengah Sukardika	5105043112630039	M	Ds. Sukahati, Ds. Pesinggahan, Dawan, Klungkung	33
9	Nyoman Lama	5104023112640021	M	Bd. Blangsinga, Ds. Saba, Blahbatuh,	33

				Gianyar	
10	I Ketut Mustika Jaya	5102051208670001	M	Bd. Wanasari Baleran Banjar, Tabanan	33
11	Ida Ayu Made Widyawati	5171016304720009	F	Jl. Danau Beratan No. 13 Sanur Kaja, Denpasar	33
12	I Nyoman Subrata	5104040107750157	M	Bd. Tatag, Banjar Tatag Manukaya, Tampaksiring, Gianyar	33
13	Made Sujana	5171033112760123	M	Jl. Puputan Baru Gg. D12 Mertha Gangga, Ds Tegal	33
14	Sudiani Ni Nym	5104037012760001	F	Br. Pratamha Mandala, Tegal Tugu, Gianyar	33
15	I Wayan Sepiana	5103043107770007	M	Jl. I Gst. Ngr. Rai, Br. Samuan Kawan, Petang,	33

				Badung	
16	I Wayan Sudarma	5107010107890007	M	Bd. Besakih Kawan, Rendang, Karangasem	33
17	I Ketut Mardana	5108033112780023	M	Bd. Kelod, Kedis, Busungbiu, Buleleng	33
18	I Ketut Sumarta	5103031701780001	M	Br. Tohpati, Bongkasa, Abiansemal, Badung	33
19	I Wayan Latra	5171030606790001	M	Bd. Bunutan, Abang, Karangasem	33
20	I Wayan Sudiasih	5106031005790001	M	Bd. Penida Kaja, Tembuku, Bangli	33
21	Ni Nengah Anik	5107047112800274	F	Br. Dauh Pangkung, Seraya Barat, Karangasem	33
22	I Gede Redana	5108080107800110	M	Bd. Dauh Margi, Br. Dauh	33

				Tunjung, Kubutambahan	
23	Ni Ketut Padmi	5106045312800004	F	Br. Bubung, Abang Batudinding, Kintamani, Bangli	33
24	Gusti Putu Winata	5107040107810050	M	Br. Genteng, Subagan, Karangasem	33
25	I Nyoman Suarsa	5106010505810001	M	Dsn. Apuan, Susut, Bangli	33
26	I Putu Satria Asih Hardana	5103022707810003	M	Br. Pengayehan, Cemagi	33
27	I Nyoman Sunarta	5103031502820001	M	Br. Selat Anyar, Br. Selat, Abiansemal	33
28	I Nyoman Sutena	5103040107830155	M	Sekar Mukti, Belok Sidan, Petang, Badung	33
29	I Ketut Mudita	5107062012830003	M	Bd. Tihingan, Tengah Bebandem,	33

				Karangasem	
30	Sang Nyoman Palana	5106032104880001	M	Br. Tegalah, Tembuku, Bangli	33
31	I Nyoman Maharta	5106031004880003	M	Br. Bangbang Kaja, Tembuku, Bangli	33
32	Ni Nengah Merta	5107057012890010	F	Bd. Kaler, Seraya, Karangasem	33
33	Sang Made Suardika	5106031606900004	M	Br. Galiran, Jehem, Tembuku, Bangli	33
34	Kdk Ayu Darma Ari	5104015405950003	F	Bd. Delod Pangkung, Sukawati, Gianyar	33
35	Ni Nyoman Pastini	5106046506860003	F	Banjar Belancan	33
36	I Ketut Suyasa	5104022012780005	M	Br. Kebon Kaja, Gianyar	33
37	I Nyoman Rawan	5107062211130002	M	Br Cemar Tebel, Buana Giri, Bebandem,	33

				Karangasem	
38	Ni Komang Sriasih	5105024706810001	F	D/A Dusun Kaleran, Timuhun, Banjarangkan, Kl u ngkung	33
39	Ni Made Sriasih	5101037112670045	F	D/A. Br Pengeragoan, Pekutatan, Jembrana	33
40	Nengah Sandi	5106020207750002	M	Bd Selekungkang Taman Bali, Bangli	33
41	Ni Md Suryaniti	5171037011710002	F	Jl. Gunung Agung Gg IV/ Dsn Ttegal Linggah Denpasar	33
42	I Ketut Kerta	5104033112770040	M	Lingk. Kelod Kangin, Beng, Gia n yar	33

43	A.A.Anom Putri	5104047112640061	F	D A Br Pacung,Pejeng Kelod, Tampaksiring	33
44	Made Susana	5108063112610154	M	Br. Peguyangan Desa Astina Buleleng	33
45	Nengah Parta	5106010107750580	M	Br Kayuambua, Ds Tiga Susut Bangli	33
46	Ni Made Sarti	5101027012770076	F	D A. Br Dusun Randu, Poh Santen, Mendoyo, Jembrana	33
47	I Wayan Arbawa	5105101807077837	M	Br Prapat, Desa Nusa Ped, Nusa Penida Klungkung	33
48	I Nengah Mawa	5107021210590004	M	Br. Iseh Sinduwati Sideamen Karangasem	33
49	Michele Launa	3117503519483011	F	Dalung	33

	Koyogia				
50	Komang Gede Wirata Sindu Giri	5108094107860001	M	Tabanan	33
51	Hadijah	5108065202910008	F	Kampung Jawa Buleleng	33
52	Desak Made Dwi Parwati	5102109108100001	F	Pupuan Tabanan	33
53	Ni Ketut Arini	5104057112630115	F	Lod Tunduh, Ubud, Gianyar	33
54	Febrita Maya Nustiki	5101045402940001	F	Gilimanuk, Jembrana	33
55	Ni Wayan Kartini	5103711269900366	F	Abiansemal Badung	33
56	I Nengah Selik	5107033112260008	M	Kubu Karangasem	33
57	A. A. Alit Sudiana	5171011510850001	M	Pedungan Denpasar	33
58	I Made Suastika	5108082205810003	M	Singaraja	33
59	Gede Oka Yana	5108020506920005	M	Patemon Singaraja	33
60	Dewa Gede	5104021502067004	M	Blahbatuh	33

	Adnyana			Gianyar	
61	I Wayan Sueradnyana	5105033112770076	M	Selat Klungkung	33
62	Nyoman Doni Artana	5102101903081330	M	Pupuan Tabanan	33
63	I Made Budianta	5108020107920201	M	Seririt, Buleleng	33
64	Kadek Adnyana	5108022302930003	M	Seririt, Buleleng	33
65	Wayan Redata	5107080107792109	M	Karangasem	33
66	I Wayan Karnada	5104012308700001	M	Sukawati, Gianyar	33
67	I Made Ardana	5107041104900003	M	Karangasem	33
68	Ni Ketut Widiriasih	5103054505700015	F	Jimbaran	33
69	Ni Luh Ariani	5101034958000001	F	Jembrana	33
70	Tarmiza	5171031706790027	F	Renon, Denpasar	33
71	Ketut Dharma	5107010760000003	M	Selat , Karangasem	33
72	I Made Ruta	5171021802780001	M	Kesiman, Denpasar	33

73	Komang Gede Putu Saputra	5102071903803082	M	Marga Tabanan	33
74	Wayan Winya	5107053007610001	M	Abang Karangasem	33
75	Ketut Suryakawi	5171032202740002	M	Denpasar	33
76	Nyoman Cenik	5107050101750002	M	Abang Karangasem	33
77	Ni Nyoman Runti	5103065605590003	F	Krobokan, Kuta Utara	33
78	Sisilia Analini Rastri	5171015058600002	F	Denpasar	33
79	Ni Wayan Okantari	5102017112790017	F	Selemadeg, Tabanan	33
80	Ni Ketut Indrayani	5103046103980004	F	Petang, Badung	33
81	Brosius Iwan Reimondus	5106020109740002	M	Rsj Bangli	33
82	Teti Eriyati	5106024101750011	F	Rsj Bangli	33
83	Gusti Nyoman Sukarya	5102103012570008	M	Pupuan Tabanan	33
84	Ni Ketut Suparti	5102152011540001	F	Selemadeg, Tabanan	33
85	IB Agung	5102070652000002	M	Marga, Tabanan	33

	Wirata				
86	Ketut Ardika	5108061111760006	M	Singaraja	33
87	Ida Bagus Suteja	5101051908700003	M	Negara	33

Source: Bangli Regency Election Supervisory Agency

The number of Permanent Voters List (DPT) in the Mental Hospital of Bali Province is 87 people who must channel their voting rights at the polling stations (hereinafter referred to as TPS/Polling Station), the Bali Province Mental Hospital which is located in Kawan Village, Bangli District, Bangli Regency, Bali Province. Although in practice there are only 35 Mental Hospital patients in Bali Province who are allowed to vote in the Election on April 17, 2019. The decrease in voters was due to the large number of mental hospital patients who were allowed to go home because they were considered physically and mentally healthy enough, so most of them channeled their voting rights in their respective regions. While the rest are Mental Hospital patients whose condition is still unstable.

With the increase in the number of Permanent Voters List (DPT) of the 2018 Regional Head Election from 46 people to 87 people in the Permanent Voters List (DPT) at the Bangli Mental Hospital, proving a positive correlation between the decision of the Constitutional Court No. 135/PUU-XIII/2015 with an increase in the number of voter turnout in the General Election. Besides that, the Constitutional Court's decision was able to provide solutions for voters with non-permanent mental disabilities to obtain voting rights in the 2019 Election.

3. Fulfillment of Rights through the Provision of Special Polling Station for PWMD

Regulations for Polling Station (TPS), are regulated in Law No. 7 of 2017 concerning General Elections, namely Article 350, which determines:

- (1) The maximum number of voters for each Polling Station (TPS) is 500 (five hundred) people.
- (2) The location of the Polling Station (TPS) as referred to in paragraph (1) is determined in a place that is easily accessible, including by persons with disabilities, does not combine villages, and takes into account geographical aspects and guarantees that each voter can cast his/her vote directly, freely and confidentially.
- (3) The number of ballots at each Polling Station (TPS) is the same as the number of voters listed in the final voter list and additional voter lists plus 2% (two percent) of the permanent voters list as a backup.
- (4) The use of backup ballots as referred to in paragraph (3) is made an official report.
- (5) Further provisions regarding the number, location, shape, arrangement. (2) the location of the Polling Station (TPS) as referred to in paragraph (2) and the format of the official report as referred to in paragraph (4) shall be regulated by a General Election Commission Regulation.

In the provisions of Article 350 of the General Election Law, in the formation of Polling Station, there are 2 conditions that are relevant to this research, namely first, the maximum number of voters in the Polling Station

(TPS) is regulated, not the minimum number of voters. Second, determining the location must be in a place that is easily accessible, including for persons with disabilities. Thus, the General Election Law gives freedom to the General Election Commission to form special Polling Station to provide convenience for persons with mental disabilities.

The Constitutional Court Verdict Number 135/PUU-XIII/2015 is not only able to increase voter participation, but also should be interpreted as providing protection and privileges to persons with mental disabilities in exercising their voting rights in General Elections, including the provision of special polling stations that guarantee Persons with Mental Disorders (PWMD) participation.

However, practically in the field, there are areas that make special TPS in the Mental Hospital environment, some outside the hospital. As happened at the Dr Arif Zainudin Regional Mental Hospital, Surakarta, 77 patients with mental disabilities who have been verified by a team of psychiatrists to ensure that they are eligible to use their voting rights at Polling Station (TPS) 108. Apart from making voting booths comfortable in air-conditioned rooms, the Voting Organizing Group Officer (KPPS) which are chosen consist of doctors and nurses who know very well how to treat their patients who are being treated.

Unlike the case in Pekanbaru, which does not provide a special Polling Station. Based on information from the Riau General Election Commission (KPU) Commissioner, Nugroho Notosusanto said, the 2019 election for voters with the status of People with Mental Disorders (PWMD), cannot vote

in the area of the Tampan Mental Hospital, Pekanbaru. Instead, they will vote at Polling Station (TPS) 20 in RW 03, Simpang Baru Village, Tampan. The absence of a special Polling Station (TPS) for Persons with Disabilities in the Mental Hospital area will create a reluctance to use voting rights. In this context, it appears that the progressive decision of the Constitutional Court has not been followed by a progressive policy by the general election organizer, namely the General Election Commission (KPU).

4. Changes in Community Stigma in Respecting PWMD

One form of manifestation of political rights to the community is obtained through the holding of General Elections (hereinafter referred to as Elections) both at the national and regional levels. Election is a manifestation of the implementation of the people's sovereignty in the framework of administering governance, namely being granted. Elections are a means of implementing a change of government both at the central and regional levels legally and constitutionally in Indonesia. Election is also a form of transition to political power which is expected to be able to provide corrections and improvements to the country as a whole. In particular, the change of government regimes through elections embodied the great hopes of the people, namely the emergence of a shift in welfare for the people in general and for the region in particular, as the true purpose and essence of a democracy. That democracy is a way of creating people's welfare.

According to the provisions of Article 23 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, it states that: "Everyone is free to vote and has political beliefs". Furthermore, according to the provisions of

Article 43 paragraph (1) of a quo Law, it states that: "Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with with the provisions of laws and regulations". Referring to the two provisions of the article above, it clearly shows that there is an inherent juridical guarantee for every Indonesian citizen to exercise his political rights, both the right to be elected and/or the right to vote.

The right to be elected is expressly regulated in Article 27 paragraph (1) and paragraph (2); Article 28; Article 28D paragraph (3); and Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This regulation affirms that the state must fulfill the human rights of every citizen, especially in the involvement of citizens in the government sector to be elected in a democratic party. Meanwhile, the right to vote for citizens must be guaranteed by the state, especially the government which has also been regulated in Article 1 paragraph (2); Article 2 paragraph (1); Article 6A (1); Article 19 paragraph (1); and Article 22C (1) of the 1945 Constitution of the Republic of Indonesia.

Historically, Indonesia has followed many different government systems. However, of all government systems that have been adopted, it is a democratic government system that has survived the reform era in 1998 to the present with various shortcomings and challenges that this nation has to face. The implementation of this democratic government system has also provided a lot of fresh air to many people, considering that human rights

already occupy a space freely so that everyone has the right to convey their opinions and aspirations.

The Constitution has guaranteed various forms of protection, advancement, upholding and fulfillment of human rights which are the responsibility of the state, especially the government as stipulated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Indonesian Constitution. 1945). This means that the Government as a stakeholder is obliged to provide forms of protection, advancement, enforcement and fulfillment in various ways, one of which is to form laws and regulations as an umbrella for human rights law.

After the Decision of the Constitutional Court of the Republic of Indonesia Number 135/PUU-XIII/2015, which states Article 57 paragraph (3) letter a of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors Becoming a law contrary to the 1945 Constitution of the Republic of Indonesia, as long as the phrase "mentally disturbed/memory impaired" is not interpreted as "experiencing mental disorders and/or permanent memory disorders which according to mental health professionals it has diminished a person's ability to vote in election".

Following up on the Constitutional Court Verdict, the General Election Commission issued General Election Commission Regulation Number 11 of 2018 concerning Compilation of Domestic Voters List in Organizing General Elections and General Election Commission Regulation Number 37 of 2018

concerning Amendments to General Election Commission Regulation No. 11 of 2018 concerning the Compilation of Domestic Voter List in Organizing General Elections. With the issuance of General Election Commission Regulation, there is an indirect similarity in the essence of regional head elections and presidential elections.

Initially, the provisions for exempting the right to vote for voters who were not mentally disturbed were still regulated in the Regulation Number 11 of 2018 as stipulated in Article 4, which stipulated:

- (1) To be able to exercise the right to vote, Indonesian citizens must be registered as voters unless otherwise stipulated in the law.
- (2) Voters as intended in paragraph (1) must meet the following requirements:
 - a. is even 17 (seventeen) years old or more on the voting day, is already married, or has been married;
 - b. not having a mental/memory disorder;
 - c. their voting rights are not being revoked based on a court decision that has permanent legal force;
 - d. domiciled in the administrative area of the Voters as evidenced by an electronic-ID Card;
 - e. in the event that Voters do not yet have an electronic-ID Card as referred to in letter d, may use a Certificate issued by the agency in charge of population affairs and local civil registration; and

- f. is not currently a member of the Indonesian National Army, or the Indonesian National Police.
- (3) Voters who have mental/memory disorders as referred to in paragraph (2) letter b, so that they do not qualify as voters, must be proven by a doctor's certificate.
- (4) Indonesian citizens who have been registered in the Voters List, apparently no longer meet the requirements as referred to in paragraph (2), the said Indonesian citizens cannot exercise their right to vote.

Then, there was a change to General Election Commission Regulations through General Election Commission Regulation No. 37 of 2018, by removing the requirements for voters for people who are not experiencing mental/memory disorders and the provisions of paragraph (3), so that the provisions of Article 4, determine:

- (1) To be able to exercise the right to vote, Indonesian citizens must be registered as voters, unless otherwise provided by law.
- (2) Voters as referred to in paragraph (1) must meet the following requirements:
 - a. is even 17 (seventeen) years old or more on the voting day, is already married, or has been married;
 - b. deleted;

- c. their voting rights are not being revoked based on a court decision that has permanent legal force;
- d. domiciled in the administrative area of the Voters as evidenced by electronic-ID Card;
- e. in the event that Voters do not yet have an electronic-ID Card as referred to in letter d, may use a Certificate issued by the agency in charge of population affairs and local civil registration; and
- f. is not currently a member of the Indonesian National Army, or the Indonesian National Police.

(3) Deleted.

(4) Indonesian citizens who have been registered in the Voters List, apparently no longer meet the requirements as referred to in paragraph (2), the said Indonesian citizens cannot exercise their right to vote.

If you look at the 2 General Election Commission Regulations, several weaknesses can be identified, namely:

1. General Election Commission Regulations No. 37 of 2018 does not provide a more detailed regulation regarding the active actions of the state to search for people who are already healthy from mental illness that previously suffered from. Because in fact it is returned to the regional General Election Commission policy. In fact, supposedly, there needs to be a mechanism, a report from the village head, that there are a number of people who are thought to be experiencing mental illness.

So it is necessary to provide doctors who identify citizens to find out whether it is psychologically possible to make an election.

2. Through this mechanism, examination of a team of doctors to citizens outside the Mental Hospital who are suspected of having psychiatric problems is carried out for the preparation of the Permanent Voters List (DPT) and the Additional Voters List (DPTb).

Thus, the Progressive decision of the Constitutional Court in granting political rights to citizens with mental illness who meet the requirements, was not followed by a progressive policy by the General Election Commission (KPU). In the absence of active field checking actions in the preparation of the Permanent Voters List (DPT) and the Additional Voters List (DPTb), in the end it is inversely proportional to the progressive Constitutional Court decision. In other words, the Progressive Constitutional Court decision was not followed by the implementation of a progressive policy either.

However, this change in the stigma of society in respecting the rights of PWMD can be found in the facts that occurred in West Bandung Regency. The General Election Commission of West Bandung Regency recorded that 130 People With Mental Disorders (PWMD) spread across 165 villages were included in the Permanent Voters List (DPT) for the 2019 Presidential and Vice-Presidential Elections and the 2019 Legislative Election. However, the Chairman of the West Bandung General Election Commission, Adi Saputro said, his party does not provide a special Polling Station (TPS) for them. Instead, voting officers will implement a ball pick-up system by setting up

mobile polling stations. The mobile polling station officers will also visit voters who are sick or voters who have physical limitations, so they cannot come to the polling station to fulfill their rights in choosing presidential or legislative candidates.

Indirectly, the Constitutional Court verdict Number 135/PUU-XIII/2015 is felt to not only increase voter turnout, but also change the way the public views it by actively providing mobile polling stations as a form of respect for PWMD's constitutional rights.

5. Monitoring of PWMD in the More Effective Use of Voting Rights

Based on empirical evidence, collected in the news Kumparan.com, it was reported that the Acting Director of the Psychiatric Hospital of West Kalimantan Province, dr. Ferawaty Ginting, said that of a total of 586 patients in the Mental Hospital Singkawang, there are 176 patients who received advice on giving voting rights in the April 17 2019 Election. On the other hand, in the same news, the Commissioner of Singkawang Election Commission, Umar Faruq, said that initially 239 patients received recommendations. After re-monitoring the latest data, the Singkawang Election Commission got the total number of both the Permanent Voters List (DPT) and the Additional Voters List (DPTb), only 176 people. In procedure, supervision will be carried out until D-1, the election organizer will consult and coordinate again with the doctor regarding the condition of the prospective voter. If there is a relapse on the day of the general election, then you cannot vote later.

Likewise, what happened in Bali, Commissioner of Bali Election Commission, I Gede John Darmawan said that from the number of Permanent Voters List (DPT) of 3.130.893 people, there were 1.075 voters with mental disorders. Although they have the right to vote, PWMDs are not automatically able to vote, but can use their voting rights if they get a certificate from a doctor and a statement from their family explaining that they are able to vote. In the procedure for voting, PWMD are advised to enter the voting booth without assistance, but if needed assistance will be carried out.

In contrast to the case in East Jakarta, based on data obtained from the Head of Bina Laras 2 Housing, there are at least 703 mental patients and already have a Personnel Registration Number (NIK) who will vote during the 2019 Presidential Election. Socialization of the general election has been carried out by the General Election Commission from the city level, provincial level, and from cross-disability volunteers who are accompanied by the General Election Commission. The election process is planned through several stages, the assisted residents will begin voting at 07.00 WIB. Previously, they would have breakfast at 05.30 WIB, and take medicine at 06.30 WIB. After taking the medicine, they will be directed to sit in 5 Polling Stations located inside the housing. Furthermore, 703 assisted residents who will vote are 703 out of 1.584 assisted residents, detailed as follows 172 people have been given A5 form, because they are graduating to Bina Laras 3 Housing; 262 people voted with their families; 380 people are DPK (Special Voters List), and 67 people vote outside the housing.

Furthermore, according to Tuti, if there was a recommendation from a psychiatrist in last year's election, this year everyone who has a Personnel Registration Number (NIK) can vote.

There are several policy differences in terms of monitoring the 4 cases above, namely; The PWMD supervision policy to vote implemented by the regional Election Commission varies. The condition that occurs in Singkawang district, by monitoring PWMD is carried out up to one day before the general election, even on election day. It is different from the conditions in East Jakarta, which emphasizes the Personnel Registration Number (NIK) approach as a measure to give PWMD the opportunity to vote. Likewise, in Bali and West Kalimantan, proof that PWMD can vote if it is proven by a doctor's certificate and a family statement.

Differences in the application of PWMD supervision to vote that occur in several places have the potential to lead to discrimination by the state through election administrators against the fulfillment of political rights to vote. On the one hand, the Constitutional Court Decision Number 135/PUU-XIII/2015 distinguishes between mental disorders and/or memory disorders that are relatively permanent or chronic; with mental disorders and/or memory disorders that are temporary, not permanent, or episodic. Meanwhile, people with mental disorders that are temporary, can relapse at certain times.

Furthermore, citing legal considerations [3.15] and [3.16] from the Verdict of the Constitutional Court Number 135/PUU-XIII/2015 which states that:

[3.15] Considering that in general mental disorders and/or memory disorders, from a medical perspective have several more specific types. If we look at the time/duration of the disturbance, it can be broadly divided into two, namely a) mental and/or memory disorders that are relatively permanent or chronic; and b) mental disorders and/or memory disorders that are temporary, not permanent, or episodic. In terms of quality, mental and/or memory disorders can be broadly divided into three types, namely a) mild disorders; b) moderate disorders; and c) serious disorders. Each level of quality (stage) of mental disorders and/or memory disorders has different levels of recovery, both in terms of speed of recovery and in terms of quality of recovery. There are sufferers who experience mental or memory condition recovery of almost one hundred percent or at least experience recovery that enables them to return to normal activities, both physical and psychological activities. However, there are also sufferers who do not experience recovery of their mental and/or memory conditions, even only within the minimum limit to be able to carry out mental activities. The Court can understand that in everyday community interactions the terms mental disorders and/or memory disorders are always imagined as "insane", or medically known as mental illness (psychosa). When in fact "crazy" is only one type of mental abnormality. Meanwhile, another type of mental abnormality is mental disorder (neurosa), which has a very wide range of categories. The wide range of categories of mental disorders and/or memory disorders in everyday language can be seen from various terms,

including "stress", "anxiety", "paranoid", "talkative", "phobia", and "bad thoughts". Of course, it is not the same condition between people with mental disorders such as psychosis and people who "only" experience mild stress. The Court is of the opinion that such confusion of perceptions, which currently cannot be avoided in society, must begin to be addressed in order to prevent improper treatment of people with mental and/or memory disorders. Court decisions have an important position to help clear up various confusion which tend to lead to stigmatization and improper treatment of people with mental and/or memory disorders.

[3.16] Considering that, if what the legislators meant that a person who is exempted from voter registration is a person with psychosis (insane), which has characteristics such as being vagrant, eating carelessly, being asocial, even unaware of his/her own existence, this is according to The Court does not need to be specifically regulated because people with such psychosis are certain, with reasonable reasoning, that they will not be registered by the voter registrar because people with such psychosis have no desire to participate in voting. There is no need to regulate the prohibition of being registered as a voter for people with psychosis, according to the Court, is equivalent to no need to regulate a prohibition on registration for people who are facing death (sakaratul maut), are in a coma, and so on. When a person with psychosis is specifically regulated in a quo Law, especially in the provisions regarding voter registration, even

being put in the mental/memory disorder category, this will bring legal consequences to people with mental/memory disorders who are not psychosis.

Thus, the General Election Commission should make General Election Commission Regulations concerning the monitoring mechanism for PWMD recurrently, before giving voting rights during general elections and regional head elections.

6. The Constitutional Court's Verdict as an Effort to Eliminate Discrimination on Political Rights of People with Mental Disorders in the Election

The various efforts that have been made by the state, especially the government, are not automatically able to overcome all the problems that arise in connection with discrimination that occur in the midst of an election. The limitations of the government in making arrangements regarding various forms of discrimination in elections through statutory regulations not only cause harm to the government itself, but also individuals with special needs (disabilities).

Referring to the Great Indonesian Dictionary, people are defined as people who suffer something. Meanwhile, the meaning of disability is an Indonesian word that comes from the English absorption word disability (plural: disabilities) which means physical defect or disability. According to Law Number 19 of 2011 concerning Ratification of Convention on The Rights Of Persons With Disabilities, persons with disabilities, namely people who have long-term physical, mental, intellectual or sensory limitations who

in interacting with the environment and attitudes of the community may encounter obstacles that make it difficult to participate fully and effectively based on equal rights. Then referring to Article 1 Number 1 of Law Number 8 of 2016 concerning Persons with Disabilities states that: "Persons with disabilities are everyone who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who interacts with the environment can experience it. obstacles and difficulties to participate fully and effectively with other citizens on the basis of equal rights."

Discrimination of political rights that often occurs in persons with disabilities is the difficulty and obstacles in voicing their political rights, due to the lack of accessibility of facilities and infrastructure that support persons with disabilities to fully participate in the political process. The imperfect physical and/or mental condition of persons with disabilities makes these people vulnerable to all forms of discrimination in various activities of social and political life. Referring to the provisions of Article 2 of Law Number 19 of 2011 concerning the Ratification of the Convention On The Rights Of Persons With Disabilities, it states that:

"Discrimination based on disability is any differentiation, weakening, exclusion or limitation on the basis of disability which impacts on any action that limits or eliminates the enjoyment and implementation on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social fields, cultural, civil or otherwise."

Discrimination against the political rights of persons with disabilities is an act or attitude that directly or indirectly limits, reduces, complicates,

hinders, or interferes with the political rights of persons with disabilities in general elections. such as: the right to access to a Polling Station, the right to be registered as a voter, the right to cast secret votes, the right to be elected as a legislative member, the right to information about elections, the right to become part of the election organizers, and other.

The political rights of persons with disabilities in elections have been included in the international document on The Bill of Electoral Right for Citizens with Disabilities in the Elections. In this document, there are five political rights of persons with disabilities in elections that must be respected, protected, and fulfilled by the state without discrimination on the basis of disability and without restrictions other than those justified in a free and democratic society. The statement in the document The Bill of Electoral Right for Citizens with Disabilities, namely, that every citizen has the same rights and opportunities, without distinction on the basis of the disability they bear physically, intellectually, sensory, intellectually, mentally or otherwise:

1. Gaining access based on general requirements regarding equality and equal rights in carrying out community activities, either directly or indirectly through freely elected representatives.
2. Participate on the basis of general terms of equal rights in conducting elections.
3. Register and to vote in general elections on a pure and regular basis, a plebiscite vote based on universal and equal suffrage.
4. Vote in a secret ballot.

5. Elected or run for office and carry out orders after being elected.

Based on this, persons with disabilities who are not only limited to persons with physical disabilities, but also persons with intellectual, sensory, intellectual, mental or other disabilities have the same opportunity to fulfill their political rights. Thus, the state is obliged to take progressive efforts through strategic steps so that persons with disabilities can have the same opportunity to enjoy and exercise their political rights in the election.

Today, various facts show that respecting, protecting and fulfilling the political rights of persons with disabilities in the 2019 Election has shown significant things. Various facilities are designed and built with attention to comfort for persons with disabilities in various places and public facilities. Not only public places and facilities, the process of fulfilling political rights, such as the General Election has also provided equal opportunities for persons with disabilities to participate in the democratic party in 2019. This reflects that the law should be able to keep up with the times, be able to respond to changing times with all its foundations, and be able to serve the interests of society by relying on the morality aspect of the human resources of law enforcers itself.

The progressive legal paradigm strongly rejects thoughts centered on rules or positivistic legal mechanisms. Honesty and sincerity are the crown of law enforcement. Empathy, caring, and dedication to bring justice into the spirit of law administrators. Human interests (welfare and happiness) become the point of orientation and the ultimate goal of law. Law enforcers are at the forefront of change.

Based on the description above, progressive law like other laws such as positivism, realism, and pure law, has characteristics that distinguish it from others. First, the paradigm in progressive law is that law is an institution that aims to lead humans to a just, prosperous life and make humans happy. This means that the progressive legal paradigm says that law is for humans. This basic grip, optic, or belief does not see the law as something central in law, but humans are at the center of the cycle of the law. The law revolves around the human being at the center. Law is there for man, not man for law. If we hold on to the belief that man is for the law, then that human being will always be endeavored, maybe even forced, to enter into the schemes that have been made by the law.

Second, progressive law refuses to maintain the status quo in law. Maintaining the status quo has the same effect, as when people argue, that the law is the measure of everything, and humans are the law. This legal method is in line with positivistic, normative and legalistic ways. Once the law says or formulates it like that, we can't do much, unless the law is changed first. Finally, progressive law pays great attention to the role of human behavior in law. This contradicts diametrically with the understanding that law is only a matter of regulation. The role of man here is a consequence of the recognition that we should not cling absolutely to the formal text of a rule.

Discriminatory attitudes are also often found in the theory and practice of the life of the nation and state, which leads to the maintenance of the political rights of people affected by discrimination. The rights of citizens in

the life of the nation, state and equal opportunities in government have actually been guaranteed in the constitution as stipulated in Article 28D paragraph (3) of the 1945 Indonesian Constitution which states that: "Every citizen has the right to get equal opportunities in government." This means that every citizen who has met the requirements can carry out his/her political rights, one of which is to get the same opportunity in government. The real example of political rights possessed by citizens is the right to vote and/or the right to vote. Judging through the content stipulated in the provisions of Article 28D and 28I of the 1945 Constitution of the Republic of Indonesia, the existence of political rights as stipulated in Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia is closely related to Article 28I paragraph (2) of the 1945 Republic of Indonesia Constitution which explicitly States that: "Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment." This is reasonable because this form of political right becomes crucial when it often clashes with various forms of discriminatory attitudes. Whereas the provisions of Article 28I regulate human rights which cannot be reduced under any circumstances.

At the juridical-formal theoretical level, demands for the enforcement of political rights have been regulated in the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights (International Convenan on Civil Political Right). These two resolutions have guaranteed the political rights of a democratic society, namely that all

people have the same opportunity to fully participate in the political process and gain access or convenience in expressing their political rights.

As a pluralistic country that has many different religions, ethnicities and cultures, it does not rule out the possibility of differences between Indonesians. These differences also include differences in thoughts and political views in the developing democracy in Indonesia. The existence of differences itself makes efforts to fight discrimination very important to be carried out in an effort to realize freedom of opinion and participation in state affairs.

Although it has been stated that the guarantee of human rights in this reformation era has provided a breath of fresh air, given the large number of Indonesian people, it makes the existence of discrimination always exist. Questioning the large quantity of Indonesian society makes the definition of discrimination and the efforts to overcome it can be interpreted broadly. As a result, a statutory regulation is needed that defines the nature of discrimination. Referring to the International Labor Organization (ILO) Convention Number 111 of 1958 concerning Discrimination in Employment and Occupation, it states that:

- (a) any difference, exclusion or choice on the basis of race, color, sex, religion, political beliefs, nationality or origin in society, which results in the loss or reduction of equal opportunity or treatment in employment or position;
- (b) any difference, exclusion or other choice that results in the loss or reduction of equal opportunity or treatment in employment or position

as determined by the Member concerned after consultation with organizations representing employers and workers, if any, and with other relevant bodies.

Then, discrimination has also been regulated in the statutory regulations in Article 1 Number 3 of Law Number 39 of 1999 concerning Human Rights, which clearly states that: "Discrimination is any limitation, harassment or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in a reduction, deviation, atau the elimination of recognition, implementation, or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural and other aspects of life."

Based on the understanding of the provisions regarding discrimination from the two laws and regulations, a common thread can be drawn that in fact discrimination is an attitude of discrimination that has an impact on social problems which results in disturbing patterns of relations, interactions and communication between individuals. Discrimination treatment is an act of limiting rights, especially the right to get adequate services based on the segregation of various matters relating to the identity of the person concerned. Not only between individuals, discrimination is also present and can occur in certain groups of society. Discrimination can also arise from an action by the majority group against a minority group that leads to

oppression or restricts the human rights of certain groups in various forms of action.

Even though it has been established, the implementation of the statutory provisions mandated in both the constitution and conventions relating to the elimination of acts of discrimination has not gone according to what was expected. As the highest law, the mandate of the prohibition of discrimination in various forms by the constitution cannot also provide the breadth and flexibility of laws and regulations in regulating various acts of discrimination in society. This fact is very much in accordance with the adage "het recht hink achter de feiten aan" which means that the law always stumbles trying to catch up with the events it is supposed to organize.

The low interest and commitment of the stakeholders in carrying out the provisions of the applicable laws and regulations hampers the process of eliminating all forms of discrimination. So it can be said that indeed Indonesia's participation in ratifying international legal instruments related to human rights only shows that in theory Indonesia cares about resolving human rights problems in the eyes of the international community, not so with its implementation practices.

CHAPTER V

CLOSING

1. CONCLUSION

Based on the above description, it can be concluded as follows:

1. The Constitutional Court of the Republic of Indonesia plays a role in protecting the constitutional rights of citizens in elections in the form of a judicial review to examine the material of laws that are contrary to the meaning of the constitution in terms of protecting citizens' voting rights. The Constitutional Court also plays a role in protecting disabilities' suffrage rights in the form of the provisions of Article 57 paragraph (3) letter a of Law No. 8 of 2015 concerning Regional Head Elections. The progressive role of the Constitutional Court in protecting the voting rights of PWMD through the Constitutional Court Decision No. 135/PUU-XIII/2015 is compatible with the criteria for the concept of progressive law, namely carrying out the law using spiritual intelligence; live the law with a search for deeper meaning; live the law not only according to the principles of logic, but with feelings, care and involvement (compassion) to the weaker group. Concrete forms of progressiveness of the Constitutional Court's verdict No. 135/PUU-XIII/2015 in Protecting the Voting Rights of PWMD Disabilities are: (1) Anti-discrimination the voting rights of PWMD citizens; (2) encourage citizen awareness of respecting PWMD; (3) strengthening the existence of pro PWMD legal policies; and (4) encouraging the courage of election organizers to register PWMD voters.

2. The progressive effects of the Constitutional Court's verdict are: (1) it can significantly increase voter participation nationally; (2) recording the Permanent Voters List for PWMD the easier; (3) fulfill the rights of voters of PWMD is special Polling Station; and (4) changing the stigma and respect for PWMD.

2. RECOMMENDATION

Based on the research results above, it is necessary to submit a number of recommendations as follows:

1. The Constitutional Court needs to continue to maintain progressive forms of decisions especially aimed at caring for PWMD as one of the weakest community groups in the social structure of society.
2. Civil society organizations and academics need to be concerned about progressive Constitutional Court's verdicts, such as this decision to be reviewed and disseminated to the public, so that the Constitutional Court decisions can be immediately implemented in the practice of community life.
3. The House of Representatives and the Government as the maker of Law norms so that in drafting the Election Law, it is more concerned with the weakest community groups so as not to be discriminated against by the Election Law.
4. Election organizer (the General Election Commission and the Election Supervisory Board) need to be more sensitive to the most vulnerable groups so that their policies do not further discriminate against them.

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