

Advocating for Disability Voting Rights in Framework Ius Constituendum

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Abstract

Protecting and guaranteeing the rights of every citizen is the obligation of the state, but in fact there are still acts of discrimination in the rights of citizens experienced by persons with disabilities. One form of discrimination carried out is related to political rights by setting physical health requirements for prospective members of the DPR, provincial DPRD, and district/city DPRD. Although there is no definite limit to measure the level of physical health. In addition, the electoral law contradicts the law on persons with disabilities which states that persons with disabilities have political rights. The electoral law should provide an open space as a means for people with disabilities to become part of public office. However, this will not be realized without a special quota for persons with disabilities to run as candidates for legislative members, as is the case with the quota of 30% female representation as prospective candidates for the DPR / DPRD and the determination of persons with disabilities as workers in government agencies at least 2% and 1% for private companies. Therefore, regulations should be added related to special quotas for persons with disabilities to become candidates for representation from political parties as election participants.

I. Introduction

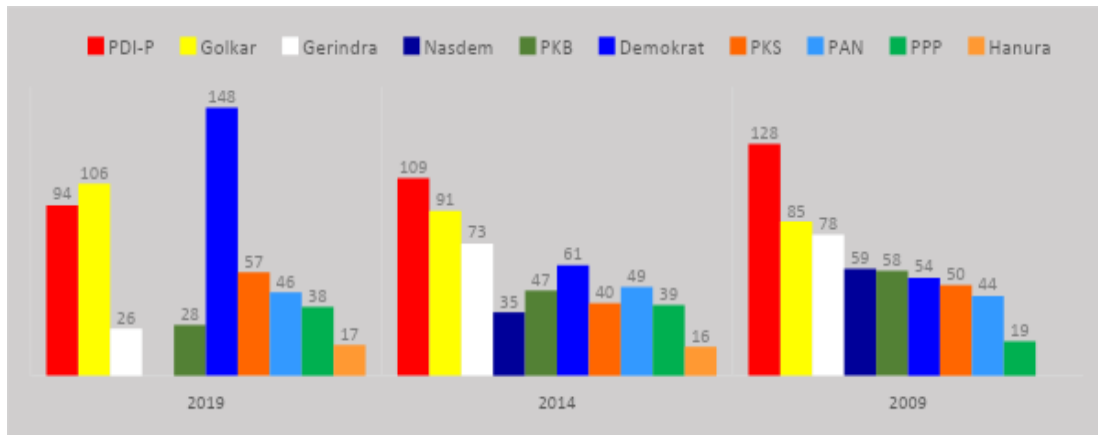
Every Indonesian citizen must be given all their rights, including political rights, the right to a proper education, welfare, life, and other rights. Rights must be obtained by every human being, from when he is in the womb until he dies. Political rights must be given to all people, from those who are physically normal to those who have mental disorders such as mental disabilities. (Ilyas & Suyuti, 2021).

People with disabilities have the same rights as other Indonesian citizens. (Trimaya, 2018) As citizens, they have the same role, and there should be no discrimination. (Siregar & Purbantara, 2020) In fulfilling the rights of persons with disabilities, including political rights. Restrictions on the political rights of persons with disabilities contradict Article 26 of the International Covenant on Civil and Political Rights, which states that there shall be no discrimination of any kind against any person and guarantees equal and adequate protection for all persons against discrimination on any grounds including political birth or another status. Discrimination of political rights for persons with disabilities is not only carried out by citizens, election organizers and participants, but discrimination is carried out by the State by enacting regulations on elections. Article 240, paragraph (1) of Law Number 7/2017 on General Elections, regulates that one of the requirements for candidates for DPR / DPRD members is that Indonesian citizens are physically healthy.

The restriction of political rights above makes people's views on people with disabilities often liken them to someone who does not have medical abilities, so they are considered as unwell people who need help so that they cannot get an education, let alone work in the formal sector like humans in general (Hamidi, 2016). The existence of this view certainly makes it difficult for people with disabilities to be able to get a decent life, let alone to fulfill their political rights. Discrimination in electoral regulations also contradicts Law No. 8/2016 on Persons with Disabilities. The law explains that persons with disabilities have political rights to elect and be elected public officials. However, the right to be selected for persons with disabilities cannot be realized if the requirements to run for office are still the same as the provisions in the Election Law.

The graph below illustrates the 2009-2019 election results.

Grafik 1 Election Results 2009-2019



Source : General Election Commission, KPU Indonesia (Data di olah)

In 2009-2019, 560 members of the House of Representatives were elected. Of the 560 elected members of the House of Representatives, there were no specific reports from the election organizers of persons with disabilities becoming members of the House of Representatives. The absence of a People's Representative Council (DPR) with disabilities should seriously concern legislators. Statistics Indonesia data (BPS) for 2020 indicates that the number of disabled reached 22.5 million of the population (Disabilitas, 2020). These heightened numbers must be supported by programs and activities referring to equal rights for persons with disabilities. (Frich, 2020) which is the right to be elected. It is necessary to update the electoral regulations by designing the obligations of election organizers and participants. Through regulatory changes, the right to be elected stipulated in the International Covenant and the law on persons with disabilities can be realized in the 2024 elections and subsequent elections.

In 2024 General Election or any election afterward, the representation of people with disabilities as DPR/DPRD candidates should be realized with a minimum quota limit for persons with disabilities that political parties must meet as election participants. So far, Article 245 of the Election Law merely regulates 30% of women's representation and should be added with a minimum quota limit specifically for disabled candidates, such as the stipulation that persons with disabilities should be employed as workers in government agencies at least 2% and 1% for private companies.

However, what kind of disabilities are considered DPR/DPRD candidates. The type of disability determines which kind of person with disabilities could potentially be a DPR candidate. By keeping in mind if elected, they would take out their functions. The background description raises several issues to fulfill the rights of persons with disabilities by updating the election regulations to establish obligations for the General Elections Commission (KPU) as the election organizer and political parties as election participants.

For this reason, concern regarding *firstly* how the Ius Constitutum of the Right to Vote for Persons with Disabilities in Indonesia, *secondly*, how the idea of Ius Constituendum fulfills the right to be elected for persons with disabilities. The reason for issues formulation is that the previous researchers have studied more related to the right to vote and accessibility for voters with disabilities, not the right to be elected for persons with disabilities themselves.

Similar research themes have been explored previously, including Tri Hardianti's article stating the role of the KPU has not been optimal in efforts to fulfill the political rights of persons with disabilities in the general election stage. (Hardianti, 2021). Muhammad Nur Ramadhan's article stated that the indicator must be improved is the understanding and knowledge of election organizers of the conditions of persons with disabilities. Thus helping people with disabilities understand how to exercise their political rights (Ramadhan, 2021). Research by Hilmi Ardani Nasution; Marwandianto. explained that political parties in Yogyakarta Special Region (DIY) Province welcome all groups, including persons with disabilities, without any exception, to engage actively in political activities within the party and to become contestants (H. A. Nasution & Marwandianto, 2019).

Based on previous research, it can be concluded that the *State of Art of* this research is the idea of Initiating the Electoral Rights of Persons with Disabilities in the Frame of Ius Constituendum. Ius Constituendum.

II. Research Method

This This research employs a statutory approach (B. J. Nasution, 2008). The conceptual approach will assist in developing basic concepts relevant to the study, while the statutory approach will assist in understanding the legal basis applicable in general elections (Creswell & Creswell, 2017). The policy analysis approach can assist researchers in understanding how existing electoral policies can be improved to fulfill the political rights of people with disabilities (Rubin & Babbie, 2016).

Applied data analysis in research uses descriptive statistical methods and inferential techniques specifically designed to characterize the sampled data. In contrast, inferential techniques can be used to test hypotheses and find relationships between the variables involved in the research. In addition, content analysis techniques were also used to analyze legislation and policy documents relevant to the investigation. A literature study was then conducted to understand basic concepts and ensure that the research topic had not been previously researched. Data was collected using various techniques such as interviews, observations, and questionnaires. The collected data is then analyzed using appropriate methods, and the analysis results will be used to test hypotheses or answer research questions.

In the data analysis stage, this research uses a mixed method. This research will use qualitative data analysis that social researchers use to find the truth descriptively. This will be strengthened by quantitative data analysis used by scientific researchers;

thus, the validity of the resulting data will be concrete and comprehensive to become a complete text. In addition, public policy analysis will be used for the political field. Public policy analysis is used to analyze policies made by the government, including policies related to general elections. In public policy analysis, the role of actors in policy-making, such as political parties, voters, and election organizers, must also be considered.

As for the medical field, clinical research methods can be used. Cross-sectional studies are one of the research methods that can be used in medicine to study the participation and challenges faced by people with disabilities in elections (Patino & Ferreira, 2016). This study can be conducted with data collection techniques through interviews, observations, or questionnaires. Data analysis in cross-sectional studies can use descriptive statistical methods to identify the characteristics and prevalence of participation of people with disabilities in general elections. A cross-sectional study is a type of observational research that can describe the population's condition at one specific time. This study can generate information about the distribution of people with disabilities in general elections and the factors influencing their participation. In a cross-sectional survey, respondents are randomly selected from the population to be studied and then analyzed for distribution and characteristics. This technique can provide insights into the challenges faced by people with disabilities in elections and suggest specific solutions to increase their participation.

III. Results and Discussion

Voting Rights Regulation for Person with Disabilities

The level of political participation from all Indonesians determines the success of elections to realize democracy. However, this has not yet been realized because there are still many elections that are not friendly to people with disabilities. A form of political participation that can ensure the manifestation of the interests of people with disabilities in government policy is through organizational activities. There are at least three forms of organizations that people with disabilities usually join, namely Environmental Organisations, Community Organisations, and Political Organisations (Inayah, 2020).

Therefore, the right to be elected and to vote in general elections is owned by all citizens without exception for persons with disabilities. Persons with disabilities have the same right to choose and be chosen in the life of the nation and state, but the right to be selected has not been a serious concern of the state. The involvement of persons with disabilities in the political system is needed to produce balanced policies for every citizen with various backgrounds and conditions (Zikri et al., 2020).

The right to be elected for persons with disabilities is also regulated in several national and international regulations. Several international rules hold political rights for persons with disabilities, such as in the provisions of Article 26 of the International Covenant on Civil and Political Rights, which stated,

"All persons are equal before the law and are entitled to the equal protection of the law without discrimination. In this respect, the law shall prohibit discrimination of any kind and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

By the above provisions, political rights for persons with disabilities are protected without discrimination. However, there are still many persons with disabilities who experience discrimination related to their political rights. This discrimination is not solely executed by fellow citizens, election organizers, and participants; the state engages in such discriminatory practice by enacting regulations on general elections. Article 240 paragraph (1) of Law Number 7/2017 on General Elections stipulates that one of the requirements for candidates for DPR/DPRD members is that Indonesian citizens are physically healthy.

In addition, the scope of international regulations related to political rights for persons with disabilities is also regulated in the Convention on the Rights of Persons with Disabilities and the Optional Protocol in the provisions of Article 29 paragraph (a) and letter (ii) which stated:

- (a) *Ensuring the active and equitable involvement of persons with disabilities in political and public affairs, whether directly or through chosen representatives. This including the rights of persons with disabilities to both vote and run for office, among other things, by:*
- (ii) *Ensuring the voting rights of individuals with disabilities through confidential voting in elections and public referendum, free from intimidation and guaranteeing their eligibility to run for office, effectively assume positions, and fulfill all general duties at every government level while facilitating the utilization of assistive and innovative technologies as required.*

By the above provisions, political rights for persons with disabilities should be protected and guaranteed by the state. However, in reality, there are still many people with disabilities who have difficulty running for elections. The problems experienced also vary, such as difficult access to information from election organizers, low education levels, inadequate accessibility for persons with disabilities, and economic factors.

National regulations also regulate the international scope of political rights for persons with disabilities. As in the 1945 Constitution of the Republic of Indonesia in Article 28D paragraph (3), which stated, *"Every citizen has the right to equal opportunity in government."* The provisions in the article that every citizen has the right to obtain equal opportunities in government; this also applies to persons with disabilities. Political rights for persons with disabilities are also included in one of the human rights that should be the obligation of the state to fulfill. (Waisnawa & Dewi, 2019). (Waisnawa & Dewi, 2019).

In addition to Article 43, paragraph 1 of Law Number 39 of 1999 concerning Human Rights, which stated, *"Every citizen has the right to be elected and vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting by the provisions of laws and regulations."* By these provisions, citizens have the political right

to elect and be elected in every election and participate in government activities. Thus, political rights are rights owned by everyone and given by the law to seize power, position, and wealth that are useful for themselves.

In addition, human rights are rights owned and inherent in every human being throughout his life, which are personal rights or natures given by the Creator. Each individual holds fundamental rights to exercise or obtain these rights without bumping into the rights of others. As a fundamental right, human rights have a comprehensive scope.

However, Law Number 7/2017 on General Elections in Article 5 states that individuals with disabilities who have met the requirements should be afforded equal chances as voters and potential candidates for the People's Representative Council (DPR), Regional Representative Council (DPD), Regional People's Representative Council (DPRD), President or Vice President, and considered for roles as election organizers. (Ihsan & Kharima, 2022) however, this law also states that one of the requirements for candidates for DPR / DPRD members is that they be Indonesian citizens who are physically and mentally healthy. This is undoubtedly one of the controversial requirements related to the phrase "physically healthy" because there is no benchmark measuring tool that can be used to define the meaning of the word "physically healthy" itself.

In addition, there is still an understanding in the community that people with disabilities are included in the requirements so that people with disabilities cannot run for office due to multiple interpretations both among people with disabilities themselves and from the perspective of the community and even political parties and election organizers, so that a broader explanation is needed so as not to cause debate in the nomination requirements for all parties, especially for people with disabilities (H. A. Nasution & Marwandianto, 2019). Although people with disabilities are a minority, people with disabilities have the same rights as people without disabilities, and the state must protect the rights of every citizen in politics for both citizens without disabilities and people with disabilities (M. A. Nasution, 2021)

Persons with disabilities are the group that most need special facilities so that they can vote or be elected so that they can fulfill the election principles of Direct, General, Free, and Secret (LUBER). Therefore, the political rights of those disabilities have not been maximally realized by ensuring accessibility during elections. A just approach to electoral procedure emphasize equal rights and parity, ensuring every person has the same voting rights, access to polling station and a singular moment on election day. Such conditions will influence changes in the attitude of a fair society towards people with disabilities in various fields of life (Maulinda et al., 2021).

Article 3 of Law No. 8/2016 on Persons with Disabilities states that "the implementation and fulfillment of the rights of persons with disabilities aim to:

- a. Article 3 of Law No. 8/2016 on Persons with Disabilities states that "the implementation and realization of the rights of individuals with disabilities aim to:
- b. Realizing comprehensive and equitable recognition, advocacy, safeguarding, human rights and essential freedoms of individuals with disabilities;

- c. Ensure the acknowledgment, advocacy, protection, and realization of rights as the inherent aspect of dignity of those with disabilities;
- d. Protecting persons with disabilities from neglect and exploitation, abuse, and any discriminatory acts and human rights violations (Viera Mayasari Sri Rengganis et al., 2021).

Political rights of those with disabilities are also regulated in Law Number 8/2016 on Persons with Disabilities in several articles, such as Article 75, which states:

- (1) *"The Government and Regional Governments must ensure that Persons with Disabilities can participate effectively and fully in political and public life directly or through representatives.*
- (2) *The Government and Regional Governments must guarantee the rights and opportunities for Persons with Disabilities to vote and be elected."*

In addition, the political rights of persons with disabilities are also regulated in Article 76, which reads, "Persons with Disabilities have the right to hold public office." As well as Article 77 letter e reads, "protecting the rights of Persons with Disabilities to run for election, to hold office, and to carry out all public functions at all levels of government." By the above provisions, it can be seen that political rights for persons with disabilities have been regulated in various legal outputs without exception in laws related to persons with disabilities (Putri et al., 2019)

The Law on Human Rights, the Law on Persons with Disabilities, and Law No. 12/2005 on the ICCPR Ratification provide equal opportunity to exercise one's right to vote. Everyone must get the same chance to exercise their voting rights in general elections. The same opportunity must also be accommodated in exercising the right to vote for persons with disabilities. Article 1 Point (2) of the Law on Persons with Disabilities states that "Equal Opportunity entails creating a situation that provides grants access but also facilitates individuals with disabilities to express their capabilities across all potential in all aspects of state and community governance (Pradana, G, H, & Hantoro, B, 2019).

Enabling Disability Election Rights : An Ius Constituendum Concept

The right to be elected in general elections for persons with disabilities is one of the human rights that must be fulfilled by the state and respected by everyone. Therefore, efforts to fulfill political rights for persons with disabilities can be carried out in various ways, such as revising the Political Party Law to be more open and open opportunities for persons with disabilities to join political parties (Siar L, 2020).

According to the law on general elections, one of the requirements to become a candidate for DPR, provincial DPRD, and district/city DPRD is to be an Indonesian national who is physically healthy. However, until now, there has been no standardization for medicine to measure the meaning of the word "physically healthy." One of the doctors who is a member of the Indonesian Medical Association said that people with disabilities are not those who are not physically healthy, despite they still

have deficiencies. The lack of standardization to measure the level of "physical health" for people with disabilities has led to the opinion that the requirement of "physical health" does not prevent people with disabilities from heading for election.

Focus Group Discussion activities conducted by the author with the Indonesian Doctors Association suggested that there should be a boundary that doctors can use to measure the level of "physical health" for legislative candidates, especially those with disabilities. This is because there are often differences in perspective between one doctor and another regarding the "physical health" requirement for legislative candidates.

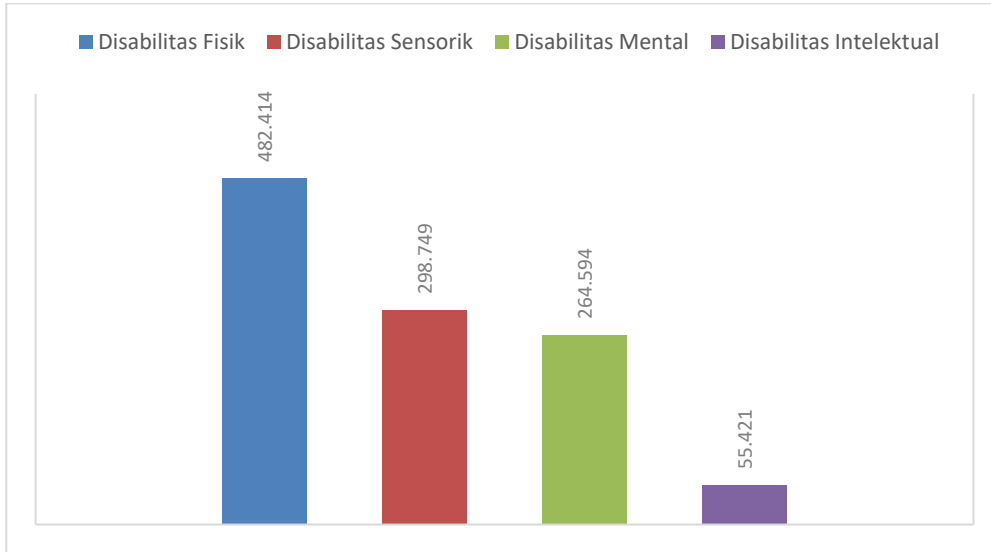
In addition to fulfilling the political rights of persons with disabilities, it is also necessary to increase the special allocation for individuals with disabilities to be competent in conducting general elections. For this, it can be modeled on a particular percentage of women, as much as 30%, to be able to run in general elections, so disabilities must also be given the same treatment in law (Haryani, 2023). Therefore, it is necessary to make a rule to add a special quota for people with disabilities, even though it is not as big as the nominal allocation for women.

Law Number 8 Year 2016, private companies are obliged to employ at least 1% of persons with disabilities from the number of employees or workers. Consider the company needs to fulfill this obligation. In that case, the government can impose sanctions on the company as done by the Regional Government of West Java Province through Legal Regulations, Article 56 of the Regional Regulation of West Java Province Number 7 of 2013, by imposing administrative sanctions for companies that do not meet the 1% allocation.

To fulfill the political rights of persons with disabilities, it is necessary to have a special quota for persons with disabilities to be able to run as legislative candidates at the DPR RI, Provincial DPRD, and Regency / City DPRD levels. However, based on the results of the Focus Group Discussion conducted by the author with the Indonesian Disability Association (hereinafter referred to as PPDI) Bandung City Branch, persons with disabilities agree that this special quota applies only to the provincial and city levels but not to the district level, this is because, at the district level, the human resources of persons with disabilities are also still inadequate.

Based on data collected by the General Election Commission (hereinafter referred to as KPU), there are 1,101,178 voters with disabilities in the General Election. This number equals 0.54% of the permanent voter's list (DPT) for the 2024 elections, totaling 204,807,222 people. This disability voter data can be seen in the graph below.

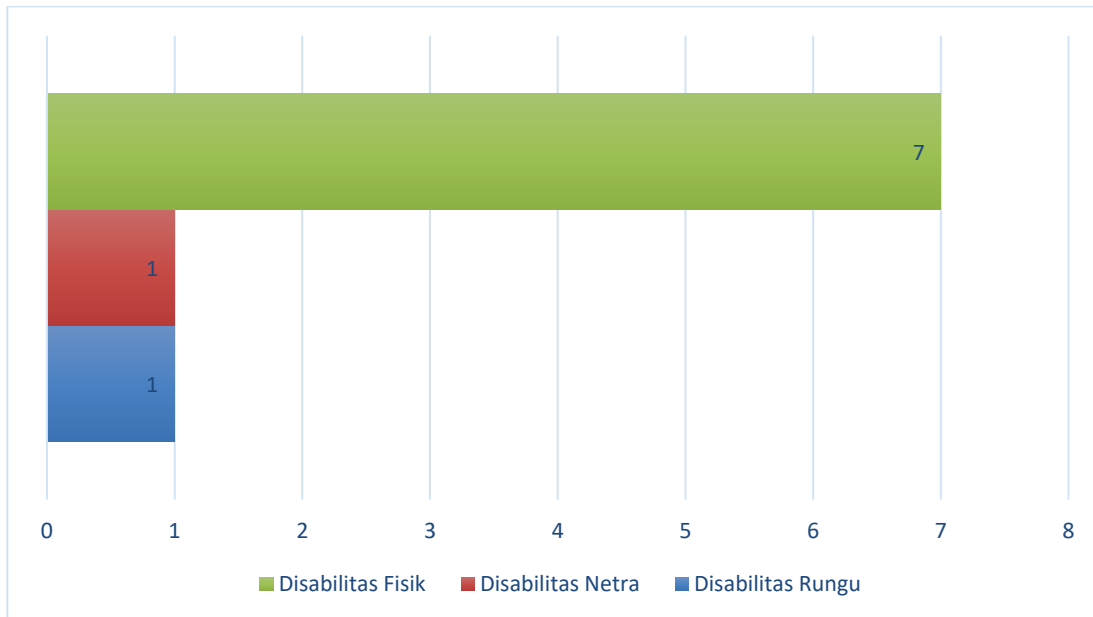
Grafik 3 Number of voters with disabilities in the 2024 election



Source: 2023 General Election Commission Data (processed)

Based on the graph above, the number of voters with physical disabilities is 482,414 people, voters with sensory disabilities are 289,749 people, voters with mental disabilities are 264,594 people, and voters with intellectual disabilities are 55,421 people. In addition to voters in the general election, there are also persons with disabilities who run as legislative candidates, as shown in the following graph.

Grafik 4 2023 Elections: Count of Disabled Legislative Candidates



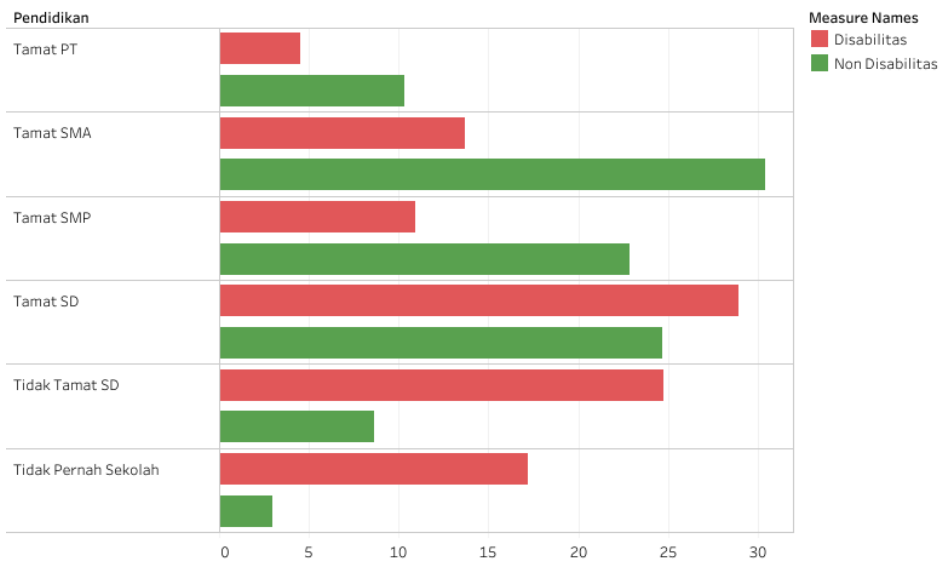
Source : 2023 General Election Commission, KPU (Processed)

Based on the graph above, 9,919 members of the House of Representatives were

appointed on 18 August 2023; there is one person with a hearing disability, 1 with a visual disability, and 7 with physical disabilities.

Even though there are people with disabilities who run for legislative candidates, these people with disabilities also often experience several obstacles when they want to run for legislative members. (Syarifurrohmah & Nasution, 2021). One of the obstacles encountered by persons with disabilities is the low level of education; this is due to accessibility, facilities, and infrastructure that are still not friendly to persons with disabilities to the cost of education to be able to attend Sekolah Luar Biasa (hereinafter referred to as SLB) is still relatively expensive for persons with disabilities who on average have a middle to lower economic level. Data on the education of persons with disabilities, based on data from the Central Statistics Agency in 2022, in the graph below,

Grafik 5 Education Levels of Disabled Individuals in 2022



Source : 2022 Statistics Indonesia, BPS (Processed)

According to Statistics Indonesia (BPS), most people with disabilities at the last education level have not graduated from primary school 24.72%. As many as 28.91% of persons with disabilities were elementary school graduates. Persons with disabilities who had never been to school reached 17.22%. Then, people with disabilities whose last education was junior high school amounted to 10.93%, senior high school 13.71%, and university 4.51%.

Meanwhile, the non-disabled population had the highest number of high school graduates, at 30.44%. The number of non-disabled nationals who graduated from junior high school and primary school was 22.89% and 24.71%, respectively. 10.73% of the non-disabled population did not complete primary school. 10.31% of the non-disabled population graduated from university. Meanwhile, 3.00% of the non-disabled population never went to school.

For people with disabilities, the education level is still low. It should be realized that currently, in Indonesia, there are not many people with disabilities who can access and graduate from higher education. This condition impacts the lack of confidence of disabled persons to contest the elections. (Anggraini & Susetyo, 2023). In addition to formal education, electoral education for groups with disabilities can be a medium and means of learning, community participation, and channeling aspirations, so what is highly expected from the existence of a disability education is to create empowerment for groups with disabilities (Angelita & Arifin, 2023).

The provision of a special allocation for persons with disabilities aims to prevent persons with disabilities from competing with non-disabled legislative candidates. This is because if people with disabilities are not given a particular allocation and have to compete with other non-disabled candidates, this will be a tricky thing. After all, people with disabilities will face several issues, according to the results of the *Forum Group Discussion* with PPDI West Java who said :

"In campaign activities, persons with disabilities encounter several obstacles, such as infrastructure that is not yet disability-friendly, lack of finance because the average person with a disability comes from the lower middle class and there are few jobs for disabilities, and lack of popularity because it is challenging to do blusukan (impromptu visit) such other legislative candidates." Said Head of the Legal Bureau of PPDI West Java at the FGD on 04 September 2023.

As a result of the above constraints and the limitations that people with disabilities have, they are unable to compete with non-disabled legislative candidates. Therefore, people with disabilities are often subjected to discriminatory behavior when running for office.

The provision of special quotas for persons with disabilities is also an effort to fight for their rights, which, in this case, are also protected and regulated in regulatory provisions nationally and internationally. The provision of special quotas for persons with disabilities also aims to create more civilized and fair politics with the presence of legislative members in society. In addition, forming regulations, especially for persons with disabilities, can be more targeted. In addition, people with disabilities also have the same rights to be able to vote and be elected in elections. (Dedi & Sudarmo, 2020). Therefore, the rights of persons with disabilities must be fulfilled so that they can carry out activities without any obstacles as human beings without any shortcomings (Hardianti, 2021)

IV. Conclusion

political right to vote and be elected in General Elections for Persons with Disabilities has been regulated by various national and international laws. These various regulations and political rights for persons with disabilities are guaranteed and become one of the human rights that the state must fulfill without any discrimination against persons with disabilities.

As an effort to fulfill the right to be elected for persons with disabilities, it is necessary to provide special quotas for persons with disabilities, such as the 30% quota for women to become legislative candidates, then increase the level of formal education and political education for persons with disabilities and create disability-friendly facilities and infrastructure.

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