The limitation of voting rights for people with permanent mental disabilities in Indonesia: a debate between reasonable and unreasonable rights

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Abstract: Voting rights are fundamental rights under Article 28D Paragraphs (1) and (3) as well as Article 28I of the. However, the Indonesian has excluded people with permanent mental disabilities from the right to vote. This article aims to carefully examine whether the Indonesian Constitutional Court’s decision violates the voting rights of people with permanent mental disabilities. The study used hermeneutic and qualitative content analysis to interpret the 1945 Indonesian Constitution and the judges’ considerations on the Constitutional Court Decision Number 135/PUU-XIII /2015. Furthermore, this study examined six countries for comparison concerning unconditional voting rights. This research reveals that the Indonesian Constitutional Court interpreted the law beyond the powers of its authority and violates the voting rights of people with permanent mental disabilities without cogent reasons. The Indonesian government should take measures to facilitate the fulfillment of the voting rights of people with permanent mental disabilities.

Keywords: Limitation; voting rights; people with permanent mental disabilities; constitutional court; Indonesia

1. Introduction

Since the first direct election in 2004, Indonesian democracy has grown into prominence and has become a successful example of transformation from authoritarianism to democracy (Diprose et al., 2019). The concept of inclusive voting gives all people the same opportunity to participate in elections (James & Garnett, 2020), including people with permanent mental disabilities. This concept is
guaranteed under Article 27 Paragraph (1), Article 28D Paragraph (1), and Article 281 of the 1945 Constitution of the Republic of Indonesia. Some key principles on the guarantee of voting rights cover the following aspects: (1) equality before the law; (2) non-discrimination; (3) the responsibility of the state to protect, advance, uphold and fulfill human rights as set forth in laws and regulations.

However, after the enactment of Law of the Republic of Indonesia Number 8 of 2015 concerning the Election of Governors, Regents and Mayors, there was a major change regarding voting rights. Particularly, Article 57 Paragraph (3) states that one of the requirements to become a registered voter is that an individual should not be mentally incompetent. Consequently, the constitutional right of people with mental challenges to vote has deliberately been revoked.

Furthermore, the Constitutional Court Decision Number 135/PUU-XIII/2015 supports the provision in Article 57 Paragraph (3) of Law Number 8 of 2015 by stating that people with permanent mental disabilities can lose their right to vote. The interpretation of the Constitutional Court’s judges potentially violates voting rights, which are fundamental rights.

The Constitutional Court is the guardian and only interpreter of the 1945 Indonesian Constitution. When the Constitutional Court’s decision in a case is beyond its authority, especially in a case of limitation of human rights, it could have dire consequences. Michael Ignatieff argues as follows (Loughlin, 2006):

The constitution does not create our rights. They recognize and codify the ones we already have, and provide means for their protection. We already possess rights in two senses: either because our ancestors secured them or because they are inherent in the very idea of being human.

The hypothesis from Ignatieff leads to the argumentation that the Constitutional Court is only capable of interpreting the Constitution and changing the Constitution from a condition of no rights to existence of rights, not reducing existing rights. This article explains how the Constitutional Court’s decision interferes with the right of people with mental disabilities to vote. Furthermore, compared with previous published research, the originality of this research mainly lies in the fact that it focuses on how the Constitutional Court that is supposed to be the guardian of the 1945 Indonesian Constitution could take the opposite action.

Based on the introduction above, this research seeks to answer four questions: (1) How urgent is the implementation of inclusive voting practices for people with permanent mental disabilities? (2) What is the legal position on people with permanent mental disabilities with respect to voting rights? (3) How far can voting rights as a constitutional right be limited? (4) What is the form of limitation on suffrage for people with mental disabilities by the Indonesian Constitutional Court?

2. Research Method
This article is a doctrinal legal research using hermeneutic and qualitative content analysis to interpret the 1945 Indonesian Constitution and the judges’ considerations on the Constitutional Court Decision Number 135/PUU-XIII/2015. The research is focused on the limitation of the voting rights of people with permanent mental disabilities. This research uses three approaches, namely statute, conceptual and comparative approaches. In the comparative approach, relevant legislations from six countries (i.e. Cyprus, Austria, Finland, Netherlands, Sweden and Italy) were identified. For non-English versions of legislation, the study used the official English translation. If the official translation does not exist, the study used unofficial translation or secondary sources.

3. Results and Discussion

3.1. The urgency of inclusive voting practices for people with permanent mental disabilities
The right to vote is a fundamental right for all Indonesian people. The aim of regular election is to strengthen representative and government systems (Solihah, 2019). Furthermore, elections function
as a legitimacy tool for the government in power. Legitimacy is important as it allows the government to carry out all administrative processes with strong public support (Prasetyoningsih, 2014). One of the administrative processes is the process of determining policies, in which the representative institution acts as a decision maker whose decisions will have an impact on the public. According to Budhiati, elections are a means of renewing the social contract between the society and state officials; based on the dynamics of society, the contract will be continuously renewed (Budhiati, 2013).

Discussions on people with permanent mental disabilities are always related to people with disabilities as a whole. Inclusive voting practices need to be urgently implemented in Indonesia considering that voting rights are not only owned by normal people, but also by those with disabilities (Daming, 2011). In the context of this paper, inclusive voting practices refer to legislations that reduce inequality in the electoral process for citizens, including, but not limited to, the voter turnout and registration gap (James & Garnett, 2020). Therefore, successful implementation of inclusive voting practices is achieved if everyone who has the right to vote can participate in the electoral process by selecting the party who is deemed most capable of solving problems in society (Vowles et al., 2014).

The implementation of inclusive election practices in Indonesia is still far from appropriate. The exclusion of the voting rights of people with permanent mental disabilities makes it more difficult for them to access their rights. However, the government has an obligation to guarantee, give access and facilitate voting rights for all Indonesian citizens, especially people with mental disabilities (Salim, 2014). Muladi is critical of the Indonesian government and asserts that they have neglected the political rights of people with mental disabilities in the electoral process. Such rights are given below (Muladi, 2009):

(a) The right to be included in the final voter list.
(b) The right to get access to polling stations.
(c) The right to a secret ballot.
(d) The right to access information on elections.

This neglect is evidence that people with mental disabilities have not had a major impact on the decision-making process, so it is easy for government to ignore their rights.

Realizing inclusiveness in the election process is challenging. Reflecting on the 2002 presidential and parliamentary elections in Bolivia, all political parties tried to realize inclusiveness in elections. Furthermore, inclusiveness can be achieved in several ways: making fundamental changes to the electoral system, understanding the ideal concept of elections (through an appropriate electoral education process), and social consolidation of those who wish to be included in the concept of inclusive elections that are being formed (Cott, 2002). The failure of inclusive election practices can lead to a disastrous situation where elections are only held as a formal process to maintain power for a group of people who can easily gain power. Unluckily, such power does not have legitimacy from the people (Knutsen et al., 2014).

3.2. The legal position on people with permanent mental disabilities with respect to voting rights
Voting right is an inherent right for every citizen regardless of physical or mental disorders. People do not choose the conditions that they will experience, including the condition of mental disabilities. Referring to Article 28 A-J of the 1945 Constitution of the Republic of Indonesia, those provisions regulate and guarantee human rights. In the concept of democracy, equality of right is the most fundamental right that must be fulfilled. Consequently, by adopting the conception of democracy, the Indonesian government should guarantee the fulfillment of human rights for every citizen without exception (Maran, 2014). However, an issue arises: What are the efforts of the Indonesian government to guarantee constitutional rights for people with permanent mental disabilities?
In the lens of human rights law, people with mental disabilities, including mental disorders, neurodevelopment and neurodegenerative diseases, organic brain damage, learning disability and intellectual disability (Scholten & Gather, 2017), have the same rights as every other person. The state should facilitate and give special treatment to people with mental disabilities in order to respect, advance, and fulfill their human rights (Sholihah, 2016). Unfortunately, the opinion that has developed in the society is that people with mental disabilities are incapable of making legal decisions, and it is even considered dangerous if a person with mental disabilities continues to make legal decisions (Fazel & Grann, 2006).

Data from the Ministry of Health of the Republic of Indonesia (Indonesia Ministry of Health, 2018) show that the number of people with mental disabilities in Indonesia reaches 7% of the total population. In the 2019 general election, the number of people with mental disabilities who were counted in the Permanent Voters List (DPT) was 3,500 people (Hatta, 2019). In accordance with the principle of the presumption of liberty, which generally applies within the scope of human rights, it is the responsibility of the state to guarantee that every law that is enacted can accommodate all citizens and do not limit their movement (Sochmawardiah, 2013). Therefore, the state should be able to provide guarantee for people with mental disabilities to have access to their constitutional rights.

Furthermore, based on scientific research, people with mental disabilities are proven to have sufficient knowledge, a sense of responsibility for their actions, and the majority of them have positive feelings about the general election (Melamed et al., 2007). Therefore, based on the concept of democracy and rule of law, the right of every citizen to vote should not be undermined in any ways. This is in line with the main pillars of the establishment of the rule of law, which indicates that creating a strong rule of law requires the guarantee of equality before the law, protection of human rights, and social control (Asshidiqie, 2004).

Based on the research conducted by Herdaetha, which focused on the categorization of people with psychiatric disabilities, there are several points to note regarding the classification of voters as legally competent and psychiatrically unhealthy (Herdaetha, 2015):

1. Disease of the mind, insanity, and mental disability are legal terminologies, not medical terminologies. According to Constanzo (2008), the words refer to the legal situation faced by each sufferer.
2. People who clearly have psychiatric disabilities are not necessarily classified as “crazy” in the concept of law. This in turn causes the person to remain legally competent.
3. The law focuses on the thoughts and mindset of a person who commits legal action; it does not look at the organs that cause interference to a person who commits legal action (Allen, 1993). If a person is said to be legally competent, then that person is still legally able to take legal action.

Article 27 Paragraph (1), Article 28D Paragraph (1), and Article 28I Paragraphs (1), (2), (4), (5) of the 1945 Constitution of the Republic of Indonesia provide guarantee for persons with mental disabilities to participate in the electoral process. Apart from the 1945 Constitution, various legal frameworks guarantee justice for persons with disabilities without exception, as given below:

1. Article 23 Paragraph (1) of Law Number 39 of 1999 on Human Rights states that “Everyone is free to vote and hold his political beliefs.”
2. Article 13 Letter (a) of Law Number 8 of 2016 on Persons with Disabilities states that “The political rights of persons with disabilities include the right to vote and be elected into a political office.”
3. The state is obliged to provide protection for accessibility of voting rights as stated in Article 75 Paragraph (2) of Law Number 8 of 2016 on Persons with Disabilities, which states that “The Central Government and Regional Governments are obliged to guarantee the rights and opportunities of persons with disabilities to vote and be elected.”
Generally speaking, several laws and regulations meet the requirements of providing protection for the human rights of persons with disabilities. Furthermore, Gomez (2008) explains that the right to vote should not be classified based on certain aspects, including the “mental capacity” of a voter. If a voter is still able to understand that he has the right to vote, or at least he can think about his rights, then no one should remove his right to vote. The Constitutional Court's decision has clearly shown that there are restrictions for people with mental disabilities to participate in the decision-making process. Justice will be achieved if vulnerable people, including people with mental disabilities, have the same opportunity as others in society (Rawls, 2011).

3.3. Limitation of constitutional rights for Indonesian citizen
Constitutional rights are inherent rights that are directly attached to a citizen (Purnomosidi, 2017). As an Indonesian citizen, one’s constitutional rights have been guaranteed in the 1945 Constitution of the Republic of Indonesia. One of the basic issues regulated by the constitution in various parts of the world is the protection and guarantee of human rights (Soemantri, 2006). Peter Mahmud Marzuki argues that human rights do not need to be translated into a specific positive law because these rights are original, not derivative. Therefore, the basic rights are sufficiently stated in the highest state law, which is the constitution (Marzuki, 2008).

According to Bisaryadi, constitutional rights in Indonesia are very different from other rights contained in an Act (Bisaryadi, 2017). This is because constitutional rights are rights that rigidly appear in the 1945 Constitution of the Republic of Indonesia. Constitutional rights can provide protection when there are instruments from the state that are considered detrimental to the people (Siahaan, 2011). In theory, constitutional rights actually contain restrictions because every constitutional right is always accompanied by an obligation to maintain social order. Furthermore, Venkat Iyver explains that there is justification in an abnormal situation for legal norms (including norms that apply to the constitution) to be postponed (Matombo, 2014). These rights cannot stand individually but exist communally by respecting other people’s rights.

Basically, political rights are divided into two categories, namely absolute rights and rights that can be limited in specific qualifications (Kurnia, 2015). Absolute rights include the right to freedom of thought and conscience. Meanwhile, the rights that can be limited include the right to association, assembly, freedom of opinion and expression. This study adopts the hypothesis that the right to vote and be elected falls under rights that can be limited. This is corroborated if the limitation is conducted based on democratic values. In the international law perspective, this is stated in Article 21 of the International Covenant on Civil and Political Rights (ICCPR). The mentioned article states that “No restriction may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society” (United Nations Treaty Series, 1976). Along with these conditions, a legal action can revoke the constitutional rights of a citizen under certain conditions. According to Amrullah and Syarifuddin (2017), the abolition of constitutional rights is not a deprivation of human rights protected in the constitution, but it is a limitation of human rights. Even though the limitation exists, it does not completely revoke the other rights contained in the 1945 Constitution of the Republic of Indonesia. According to Gardbaum (2007),

The structure of constitutional rights in majority of countries in the world gives the law enforcement officer, judge, or any legislature bodies the power to override the constitutional rights whenever it is in conflict with public order.

The law only allows the limitation of certain rights that can impact on a process as a whole. This practice of limiting constitutional rights has been implemented several times in Indonesia. The Constitution allows the limitation of the rights of every citizen as long as the restrictions are necessary (Article 28 J(2) of the Indonesian 1945 Constitution). Some examples of the revocation of citizens’ constitutional rights in Indonesia include the cases of Djoko Susilo (“Indonesian Supreme Court Verdict Number” 537 K/Pid.Sus/2014), Anas Urbaningrum (“Indonesian Supreme Court Law Verdict Number” 1261 K/Pid.Sus/2015) and Akil Mochtar (“Indonesian Supreme Court
Verdict Number “336 K/Pid.Sus/2015). They were sentenced to have their constitutional rights limited in the form of revocation of their right to vote and be elected because of the criminal act of corruption. This indicates that the limitation of constitutional rights in Indonesia is something that can be implemented. The limitation of constitutional rights in the form of the right to vote and be elected is basically regulated in Article 10 of the Criminal Code as an additional punishment, and it is also confirmed in Article 18 of Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The provision of additional penalties in the form of revocation of the right to vote and be elected, which is a removal of constitutional rights, is based on the argument that the criminal act of corruption is an extraordinary crime that requires an extraordinary criminal settlement (extraordinary measure) (Kristiarso, 2018).

Elections can have direct and indirect impacts on people with mental disabilities. Principally, the right to vote is a fundamental right that should not be reduced, except through specific qualifications based on justice. In addition to providing guarantee for the protection of the rights of every citizen, the 1945 Constitution also provided an explanation on the limitation of rights, as stipulated in Article 28 J Paragraph (2) of the 1945 Constitution. The limitation is specifically based on the considerations of morality, religious values, security and public order.

The Constitutional Court Decision Number 135/PUU-XIII/2015 imposed restrictions on people with mental disabilities. However, their participation does not have any negative impact on security and public order. The Constitutional Court should be an institution that transforms human rights into constitutional rights, not one that limits and/or reduces these rights (Kurnia, 2015). According to Ginsburg, one of the objectives of establishing the Constitutional Court is the emergence of a contractarian perspective between the society and government. This contractarian perspective is binding so that it will give rise to the so-called insurance model of judicial review, explained as follows: “By serving as an alternative forum in which to challenge government action, judicial review provides a form of insurance for the people” (Kurnia, 2015).

In addition, a judge in deciding a case needs to look at the values in law and the sense of justice that exists in society (Articles 5, 6 and 54 of Law No. 48 of 2009). This study concludes that the revocation of the right to vote and be elected for a convicted criminal of corruption is right on target. However, it becomes a limitation of constitutional rights if the revocation of this right is applied to someone who does not disturb security and public order.

3.4. The form of limitation of voting rights by the constitutional court

Elections have consequences, so every person has the right to vote and be elected. The right to vote is the most basic right because not everyone is willing to be elected as a representative. The diversity of society in Indonesia and the concept of rule of law under the 1945 Constitution give the legal consequences that the people are the holders of the highest power and are most entitled to determine the goal to be achieved in state life (Siallagan & Simamora, 2011). One of the statements from the judges on the Constitutional Court Decision Number 135/PUU-XIII/2015 is as follows:

… the constitutional rights of citizens to vote and be elected are rights guaranteed by the constitution, laws, and international conventions; thus, limiting, deviation, negating and abolishing these rights constitutes a violation of the human rights of citizens.

However, the final sentence of the Constitutional Court Decision Number 135/PUU-XIII/2015 eliminated the right of people with mental disabilities to vote by considering the condition of a person. The Court is trapped in a positivistic paradigm where it only adheres to the Constitution as an instrument, without seeing that the right was born naturally, not when the constitution was born (Ingram, 1994). A constitutional right is a right guaranteed by the constitution; it is a right that cannot be disturbed by anyone under any circumstances. Carissa and Andrew explain that a judicial decision that violates the constitutional rights of a citizen is an early symptom of the emergence of a totalitarian state (Hessick & Hessck, 2011). The concept of a totalitarian state is
 contrary to the concept of rule of law adopted by Indonesia. According to Yuzril Ihza Mahendra, when referring to the concept of people’s sovereignty, the people have authority to choose who has the right to represent them (Mahendra, 1966). This implies that the right to vote, as a constitutional right, is a necessity.

The Constitutional Court Decision Number 135/PUU-XIII/2015 abolished the right of people with mental disabilities to vote. The Court in its decision provides the following legal considerations:

(1) Some people with mental disabilities have recovered their mental or memory conditions, which have almost reached one hundred percent, or at least have experienced recovery which enables the sufferer to return to normal activities, both psychologically and physically. However, there are also patients who do not experience recovery from mental and/or memory conditions, even only within the minimum limit to be able to do psychological activities.

(2) The Court in limiting the right to vote for people with mental disabilities and/or memory disabilities pays close attention to the characteristics of each type of mental and/or memory disorder of a citizen and refers to Law Number 36 of 2009 on Health and Law Number 18 of 2014 on Mental Health.

(3) The Court is aware that there are no specific parameters provided by law that can be used to measure the level of legal proficiency for sufferers of mental and/or memory disabilities, so the Court is of the opinion that the most authorized to declare this matter is a professional in his field.

The court’s legal considerations then led it to a decision to revoke the right of people with mental and/or permanent memory disabilities to vote based on the opinion of a professional in the health sector (Constitutional Court Decision Number 135/PUU-XIII/2015).

Based on this part of the Court’s verdict, it is very clear that the Court is of the opinion that a person with mental and/or permanent memory disability cannot be cured. This assumption must then be strengthened by the opinion of a professional in the health sector. Unfortunately, the mindset of the Court has the potential to cause actions that injure the constitutional rights of people with psychiatric disabilities. According to Yeni Rosa, people with psychiatric disabilities do not need a doctor's letter to be able to access their right to vote at the general election. This is because, until now, the procedures regarding the need for recommendations from health experts, in accordance with what is mandated by the court’s decision, have not been mandated by statutory regulations (Farisa, 2018).

As the Constitutional Court’s decisions must be obeyed by legislative bodies, the norms initiated by the Court are then ratified as legal norms. The DPR as the implementer of the Constitutional Court’s decisions has a constitutional obligation to implement these decisions (Sihaaon, 2009). Article 5 of Law Number 7 of 2017 on Elections states that “A person with disabilities who is eligible to vote shall be provided with the same opportunity as a voter, DPR candidate, DPRD candidate, presidential/vice presidential candidate, DPRD candidate, and as EMB commissioners.” This actually gives legitimacy to violations of the rights of people with mental disabilities to participate in the election process.

In the Constitutional Court Decision Number 135/PUU-XIII/2015, the Court had a tendency to use formalism approach in its considerations, as indicated by the following statement: “the law consists of complete, clear, and consistent body of rules that dictates a single correct answer to any legal question” (Altman, 2001). In this case, the Court should use normativism approach, which tends towards ideals and general values that exist in society. According to Joseph William Singer, normativism considers rights, equality, justice, morality, and the basic values that make up a free and democratic society (Singer, 2008).
Based on the research conducted by Nasriati (2017), people with psychiatric disabilities need two stages to recover, namely the medical stage (assisted by professionals in the health sector) and environmental healing (which is strongly influenced by a therapeutic environment). A research conducted on people with psychiatric disabilities shows that one of the factors that make it difficult for people with mental disabilities to recover is the assumption from the social environment arguing that the illness experienced by the sufferer is permanent, and cannot be cured (Herdiyanto, 2017). The Court’s decision dichotomizing between people with permanent and non-permanent mental disabilities has the potential to strengthen the stigma existing in society that people with mental disabilities cannot be cured. A research conducted by Lawrence and Lance indicates that “Persons with mental disabilities have been involuntarily confined without due process or adequate cause” (Gostin & Gable, 2008). It is very unfortunate if in Indonesia, the category of “adequate cause”, which is literally translated as sufficient reason to limit the rights of persons with disabilities, is spearheaded by an institution that is at the forefront of safeguarding the rights of citizens.

Internationally, the rights of people with disabilities have been guaranteed. This has been achieved in terms of guarantee of human rights that apply to every human being in the whole world as well as by providing special rights that apply to people with mental disabilities. From the point of view of international law, the political rights of every human being are protected, as stated in the International Covenant on Civil and Political Rights. The preamble of the covenant states that “… everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights.” The rights of people with disabilities are regulated more specifically in the Convention on the Rights of Persons with Disabilities. Article 29 declares that every person with a disability, regardless of type, has the same rights as every other human being.

International law guarantees the right of people with mental disabilities to vote. Therefore, many countries continue to provide rights that should be accessible to people with mental disabilities. Several countries still provide access to the right to vote to people with mental disabilities, as shown in the Table 1 below.

The abovementioned countries choose to continue to provide the right to vote to people with mental disabilities, considering that this right is a right naturally inherent in humans. Ensuring that people with mental disabilities maintain their right to vote also means giving them the opportunity to change their circumstances. One of the aims of the general election is to elect community representatives who will make policies for the community (Radjab, 2009). This policy making process can change the situation for persons with disabilities in general and for people with mental disabilities in particular. According to Quinn (2009), the right of people with mental disabilities to vote is often undermined; this is due to the low political impact caused by them. However, regarding the rights owned by every human being, the slightest impact should be considered, and no party should be allowed to revoke these rights. Kelly (2014) conducted a research on patients with mental disabilities in Germany, and the result indicates as follows:

More people with mental disorder voted the left-wing party in Germany, compared with the general population. This condition is suggesting that the political choices of the mentally ill reflect a set of priorities that is somewhat, although not dramatically, different to that of the overall population.”

The Court as one of the institutions that have the potential to create new positive legal norms should use language that has more inclusive values so as to support the creation of a culture of choice for people with mental disabilities in particular, and people with disabilities in general (Shivey, 2007). The state has an obligation to promote the basic values and rights possessed by every citizen so that the conception of protection will not only be the task of the government; the awareness of all stakeholders should be enhanced as their support will help to enhance protection and respect for human rights, even the slightest of such rights.
| No | Country | Legal Basis | Exercise of Voting Rights for Persons with Mental Disabilities |
|----|---------|-------------|---------------------------------------------------------------|
| 1. | Cyprus  | Article 31 of Cyprus Constitution | The state of Cyprus does not necessarily remove people with mental disabilities from the voter list during the election. The country continues to include them in general elections in accordance with the conditions of their legal system. Health experts will measure the ability of people with mental disabilities. |
|    | Austria | Article 26, Constitution of Austria | Article 26 (5) of the Austrian Constitution states that a person can be deprived of his political rights (the right to vote and be elected) if he violates the Criminal Code (Section 22 of the Elections to the Parliaments Act). The Austrian state will do everything in its power and endeavors, using its state instruments, to guarantee the right of a citizen to vote. |
|    | Finland | Section 14 of Finland Constitution and Section 2 of Finland Election Act | The Constitution of the State of Finland states that the State’s Public Instrument is obliged to assist in all forms of the exercise of the right to vote and to be elected, which each citizen has. The state also has an obligation to promote these constitutional rights to every citizen. |
|    | Netherlands | Article 54–2 of Netherland Constitution | Since the Amendment to the Dutch Constitution, which was carried out in 2003, the Netherlands has followed the applicable International Law (International Covenant on Civil and Political Rights) and provides full voting rights for every Dutch citizen. |
| Country | Article | Description |
|---------|---------|-------------|
| Sweden | Chapter 1 Article 1 Constitution of Sweden and Chapter 3 Article 2 Constitution of Sweden | Chapter 1 Article 1 of the Swedish Constitution states that every citizen has an equal position in the democratic process and freedom of opinion. Chapter 3 Article 1 states that every citizen has an equal position in the general election process and has the right to have personal preferences. The rights in the Swedish State Constitution also include rights for people with mental disabilities in the country. |
| Italy | Article 11, Law Number 180/1978 | The Italian state applies a law called Basaglia Law. This concept removes restrictions, and everyone is able to access their political rights. The Italian state considers political rights as something inherent from birth and cannot be revoked by any party. |

Source: (European Union Agency For Fundamental Rights, 2010).
4. Conclusion
Voting rights are fundamental rights that are guaranteed by the constitution, laws, and international conventions. Limiting, deviation, negating and abolishing these rights constitute a violation of the human rights of citizens. However, the Constitutional Court Decision Number 135/PUU-XIII/2015 has limited the rights of people with permanent mental disabilities. However, there is no clear distinction between permanent and non-permanent mental disabilities, because mental disabilities are not just about mental health, but it is also related to environmental healing. The Court’s decision tends to create the assumption that mental illness is permanent and cannot be cured. Article 28 J Paragraph (2) of the 1945 Constitution regulates limitation of rights specifically based on the considerations of morality, religious values, security and public order. Therefore, the Constitutional Court’s interpretation is deemed inappropriate and potentially violates the voting rights of people with permanent mental disabilities without cogent reasons. In contrast to the situation in Indonesia, six European countries provide guarantee of protection to their citizens in any condition. It is the duty of the Indonesian government to take measures that will facilitate the fulfillment of the voting rights of people with permanent mental disabilities.

Funding
The author received no direct funding for this research.

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Citation information
Cite this article as: The limitation of voting rights for people with permanent mental disabilities in Indonesia: a debate between reasonable and unreasonable rights, Diantara Anggita Ramadhan, Cogent Social Sciences (2021), 7: 1932032.

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