



## The Effectiveness of Supported Decision-Making in Election for Persons with Disabilities in Indonesia

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### ABSTRACT

This research objective is to determine the effectiveness of implementing supported decision-making (SDM) in elections for persons with disabilities in Indonesia. Thus, there are two research questions: how is the current implementation of supported decision-making in Indonesia, and second, what are the issues Indonesia has encountered in implementing Supported Decision-Making (SDM), and what are the strategies to implement SDM effectively to fulfill the political rights of persons with disabilities in Indonesia. The research method is qualitative; we interviewed several relevant stakeholders to obtain primary data and used relevant literature and reports to obtain secondary data. Thus, the result of the research shows that currently, Indonesia has implemented SDM, which is known as guardianship, specifically for persons with intellectual and mental disabilities during the elections. However, several issues hamper the implementation, such as the lack of understanding or awareness from the families and providers regarding SDM, lack of regulations, and the dilemma of autonomy and secrecy. Thus, there must be some strategies to implement effective SDM, such as providing specific regulations on providing reasonable accommodation for election, providing training for the providers on the election, open accessible information to the public and persons with disabilities regarding SDM, and collaboration with Disabilities Organization.

**Keywords:** Persons with Disabilities; Political Rights; Supported Decision-Making

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### INTRODUCTION

Persons with disabilities consist of 16% of the global population, and most of them reside in the Global South<sup>1</sup>. Persons with Disabilities have been discriminated for a long-time including discrimination in enjoying their political rights, particularly on their right to vote. Providing and implementing political rights for persons with disabilities have always been exceedingly sensitive issues<sup>2</sup>. This is problematic since one way a democratic state manifests itself are through elections. An inclusive legal framework is necessary to achieve a high-quality democracy. It means that to ensure the elections are

<sup>1</sup> United Nations Office for Disaster Risk Reduction, '2023 Global Survey Report on Persons with Disabilities and Disasters' (Geneva, 2023)

<sup>2</sup> Enira Bronitskaya, 'Election Participation of Persons with Disabilities' in David Schultz and Jurij Toplak (eds) *Routledge Handbook of Election Law* (Routledge 2023)

conducted fairly and honestly, the legal framework for elections must control how they are implemented in conformity with the globally recognized norms and principles<sup>3</sup>.

The Universal Declaration of Human Rights (UDHR) 1945 has existed to encompass various human rights including the right to political participation. The International Covenant on Civil and Political Rights (ICCPR) also enshrined the right to political participation. However, neither UDHR nor ICCPR are explicitly protecting the political rights of the Persons with Disabilities<sup>4</sup>. Later, in 2006 Convention on the Rights of Persons with Disabilities (CRPD) was adopted and came into force in 2008. Approximately 90% of UN member states have ratified CRPD, it indicates the wide consensus on the rights stipulated in the convention.<sup>5</sup> Article 29 of CRPD emphasizes the political rights of all persons with disabilities, whether as voters or candidates<sup>6</sup>.

Indonesia, as one of the state parties of CRPD, also must ensure the political rights of persons with disabilities as enshrined in CRPD. In February 2024, Indonesia just conducted general elections, and all citizens of Indonesia are expected to participate including persons with disabilities<sup>7</sup>. Based on the data from the Central Bureau of Statistics (BPS), in 2020 there were 22.2 million persons with disabilities in Indonesia, and according to the World Health Organization (WHO) persons with disabilities in Indonesia around 10% of the total population, or about 27.3 million people<sup>8</sup>. According to the Indonesian General Election Commission (KPU), the total registered voters for the 2024 elections are 204,807,222 in Indonesia and 1,750,474 out-of-country voters<sup>9</sup>. Furthermore, based on data from KPU there are 1,101, 178 voters with disabilities registered to vote<sup>10</sup>. It indicates that the number of disabled voters is huge. Consequently, the government shall ensure that all registered disabled voters can participate fully in the general election of 2024.

Unfortunately, in the last election even in 2024, there are several issues in the election for people with disabilities, for instance regarding data optimization, the data lack of specification on the type of disability, accessibility, and reasonable accommodation<sup>11</sup>. Considering these issues, the government needs to take any necessary measures to

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<sup>3</sup> USAID, Perludem and The Asia-Pacific Regional Support for Elections and Political Transitions (RESPECT) Program, 'Guding Framework on Inclusive Election Observation' (Perludem, 2022)

<sup>4</sup> Mutiah Wenda Juniar, 'Political Participation for Persons with Disabilities: State's Obligation and Failure' (2018) 1(2) *International Journal of Global Community*

<sup>5</sup> Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, 'Disability Rights and Election Observation: Increasing Access to the Political Process' (2017) 35(4) *Nordic Journal of Human Rights*

<sup>6</sup> *Ibid.*

<sup>7</sup> International Foundation for Electoral Systems, 'Election in Indonesia 2024 General Elections Frequently Asked Questions' (Asia-Pacific International Foundation for Electoral Systems, February 2024) <https://www.ifes.org/tools-resources/election-snapshots/elections-indonesia-2024-general-elections> accessed on 2 September 2024

<sup>8</sup> Syifa Annisa Yaniar, Naufal Bariq Alauddin Simamora, Hana Tiara Hanifah and Sabrina Wijayani, 'Political Participation of Persons with Disabilities in Election: The Case of Regional Elections in Bantul, Indonesia' (2023) 13(1) *Jurnal Ilmu Sosial dan Ilmu Politik*

<sup>9</sup> International Foundation for Electoral Systems, Election in Indonesia, *op.cit.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Nadya Kharima and Mohamad Ihsan, 'Pemenuhan Hak Penyandang Disabilitas dalam Penyusunan Daftar Pemilih Tetap (DPT) pada Pemilihan Umum (Pemilu) Serentak Tahun' (2024) *Jurnal Pengawasan Pemilu*

solve these problems, if these problems still exist it could lead to discrimination and the violation of human rights to persons with disabilities.

Many states have established policies or programs to assist the fulfillment of the political rights of persons with disabilities, for instance in the United States of America, there is The Disability Vote California which has created two helpful guides for the family and supporters and for service providers<sup>12</sup>. These guides provide mechanisms on how to use Supported Decision-Making to assist people with intellectual and developmental disabilities in election<sup>13</sup>. Another example in Australia, in 2014 Australia through the Australian Law Reform Commission's report on 'Equality, Capacity, and Disability in Commonwealth Laws' established principles regarding the supported decision-making.<sup>14</sup> These principles will serve as a roadmap for the reform of all Commonwealth, state, and territory legislation regarding decision-making. These principles describe CRPD's paradigm shift that persons with disabilities are legal persons with the capacity to make choices and take charge of their lives<sup>15</sup>. Furthermore, the research on the development and testing implementation of supported decision-making in Australia, proves that this approach brings advantages for both those receiving and giving support with decision-making<sup>16</sup>. Consequently, the approach of supported decision-making could assist in the effectiveness of the fulfillment of political rights for persons with disabilities. it will have an impact on society, especially vulnerable people consisting of women, children, and people with disabilities.<sup>17</sup>

Moreover, considering the practice in Australia and America, Indonesia as one of the state parties of CRPD shall take action to increase the political participation of persons with disabilities when needed, voting assistance should also be given through supported decision-making, fully respecting the voter's right to free will<sup>18</sup>. In Indonesia, the right to political participation for persons is enshrined in Law No. 8 of 2016 on Persons with Disabilities, Article 13 stipulates that states shall ensure accessibility to conduct elections. However, this article does not mention specifically providing reasonable accommodation to assist the full participation in the election. Nevertheless, accessibility and reasonable accommodation are two different things. Accessibility is more general and planning to provide inclusive environments for all<sup>19</sup>, while reasonable

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<sup>12</sup> ACLU, Supported Decision Making & the Problems of Guardianship < <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making> > accessed 16 September 2024

<sup>13</sup> *Ibid.*

<sup>14</sup> Anna Arstein-Kerslake, Joanne Watson, Michelle Browning, Jonathan Martinis, and Peter Blanck, 'Future Directions in Supported Decision-Making' (2017) 37(1) Disability Studies Quarterly.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Orin Gusta Andini, "Dissecting the Position of Living Law in the Criminal Code 2023," *Rechtidee* 19, no. 2 (2024): 215–39, <https://doi.org/https://doi.org/10.21107/ri.v19i2.27640>.

<sup>18</sup> Committee on Equality and Non-Discrimination, 'The Political Rights of Persons with Disabilities: A Democratic Issue' (Council of Europe, 2017) < <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23491&lang=en> > accessed on 6 October 2024

<sup>19</sup> Accessibility University of Wisconsin-Madison, 'Accessibility vs. Accommodation' (University of Wisconsin-Madison) < <https://accessible.wisc.edu/guides/accessibility-vs-accommodation/#:~:text=Accessibility%20is%20proactive%20and%20strives,access%20as%20people%20without%20disabilities.> > accessed on 8 October 2024

accommodation is more case-by-case basis to guarantee equality<sup>20</sup> so the government shall eliminate the barriers based on the individual request<sup>21</sup>. Although Article 13 on Law No. 8 of 2016 does not stipulate reasonable accommodation, it is not the reason to justify that Indonesia has no obligation to provide reasonable accommodation since Article 5 on CRPD emphasizes that states shall promote equality and eliminate discrimination thus state shall take any action to guarantee that reasonable accommodation is provided<sup>22</sup>. As supported decision-making is considered a reasonable accommodation,<sup>23</sup> thus, Indonesia shall commit to providing reasonable accommodation to create a more inclusive election. Currently, Indonesia has two regulations on providing reasonable accommodation for persons with disabilities in the judicial process and in education<sup>24</sup>. However, there is no specific regulation to provide reasonable accommodation for persons with disabilities in the political rights field. Moreover, KPU has committed to establishing inclusive elections in the general election<sup>25</sup>. According to the IFES, there are 5 conditions on how to establish inclusive election including providing reasonable accommodation and assistance if needed<sup>26</sup>. Furthermore, KPU has adopted new tools to ensure inclusive elections such as the Election Management Body (EMB) self-assessment developed by the General Election Network for Disability Access (AGENDA), these tools might assist in finding if there are any issues exist in conducting the inclusive election of persons with disabilities<sup>27</sup>. Also, in Pekalongan City, KPU considers that persons with disability are a vulnerable group and might find difficulty in participating in elections, thus KPU has allowed persons with disabilities may be assisted by a companion in exercising their voting rights during the General Election on February 2024<sup>28</sup>.

Considering that inclusive election is necessary to uphold the political rights of people with disabilities one of the ways that Indonesia has provided a reasonable accommodation, in this case, is by supporting decision-making during the General Election in February 2024. However, the current implementation of supported decision-making has not been as effective, and several issues have obstructed the implementation. If these issues are prolonged it will lead to the discrimination of

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<sup>20</sup> Marianne Hirschberg and Chrian Papadopoulos, 'Reasonable Accommodation and Accessibility: Human Rights Instruments Relating to Inclusion and Exclusion in the Labor Market' (2016) 6(1) *MDPI Journal Societies*

<sup>21</sup> Accessibility University of Wisconsin-Madison, *op.cit.*

<sup>22</sup> Convention on the Rights for Persons with Disabilities, 2006

<sup>23</sup> Enira Bronitskaya, 'Election Participation of Persons with Disabilities (eds), *Routledge Handbook of Election Law* (Routledge 2022)

<sup>24</sup> Government Regulation Number 13 of 2020 on Reasonable Accommodation for Students with Disabilities; Government Regulation Number 39 of 2020 on Reasonable Accommodation for Persons with Disabilities in Judicial Process

<sup>25</sup> Komisi Pemilihan Umum, 'Wujudkan Pemilu 2024 sebagai Pemilu Inklusif dan Ramah Disabilitas' (KPU, 4 October 2023) < <https://www.kpu.go.id/berita/baca/11963/wujudkan-> > accessed on 8 October 2024

<sup>26</sup> IFES. Akses Setara: Cara Melibatkan Orang-Orang dengan Disabilitas dalam Proses Pemilu dan Politik. IFES. 2014

<sup>27</sup> International Foundation for Electoral Systems, 'Indonesia Election Commission Adopts New AGENDA Inclusion Tool' (IFES, 2017) < <https://www.ifes.org/news/indonesian-election-commission-adopts-new-agenda-inclusion-tool> > accessed on 8 October 2024

<sup>28</sup> Pemerintah Kota Pekalongan, 'Penyandang Disabilitas dan Lansia Bisa Didampingi Saat Memberikan Hak Pilih di Pemilu 2024' (Pemerintah Kota Pekalongan, 28 Desember 2023) < <https://pekalongankota.go.id/berita/penyandang-disabilitas-dan-lansia-bisa-didampingi-saat-memberikan-hak-pilih-di-pemilu-2024.html> > accessed 9 September 2024

persons with disabilities and violating their political rights. Consequently, Indonesia must identify the issues that hinder the implementation of supported decision-making and take any action to overcome them, so that Indonesia could effectively support the fulfillment of the political rights of persons with disabilities. Thus, this research objective is to find how effective the implementation of supported decision-making. To answer the research objectives, this research has two research questions: How does the current implementation of supported decision-making during elections in Indonesia; and what are the issues that impact the implementation and the strategies that Indonesia shall take so Indonesia can implement supported decision-making effectively during election. Consequently, this article will be divided into several chapters that discuss the legal basis for the political rights of persons with disability; the concept of supported decision-making; the current implementation of supported decision-making in Indonesia and the issues in implementing supported decision-making and the strategies to implement supported decision-making effectively in Indonesia. Moreover, the contribution of this research will assist the government on how to create effective policies and programs to fulfill the rights of persons with disabilities, particularly their voting rights.

## **METHOD**

The research method used in this research is qualitative method.<sup>29</sup> We used primary and secondary data. We obtained primary data by interviewing Komisi Pemilihan Umum Makassar City and Pergerakan Difabel Indonesia untuk Kesetaraan (PerDIK) South Sulawesi. We obtained secondary data from relevant journals, reports, and other documents. The data we acquired was then analyzed with descriptive methods.

## **DISCUSSION**

### **Legal Instruments on the Fulfilment of Political Rights for Persons with Disabilities**

#### **International Legal Instruments**

Several international legal instruments have regulated the fulfillment of political rights to every individual. Universal Declaration on the Human Rights 1948 ensures various range of human rights, for the protection and fulfilment of political rights for persons with disabilities enshrined in Article 21. Article 21 emphasizes the fundamental principles of democracy is how the interest of the citizen should be the foundation of government authority, and every individual has the right to participate in governance whether directly or through freely chosen representatives<sup>30</sup>. In addition, to establish that, everyone has the right to equal access to public service, it calls for regular, legitimate elections with secret ballots and universal suffrage<sup>31</sup>. In addition, to support the inclusive election for persons with disabilities, it is important to fulfill the other rights as human rights are interrelated and interdependent. Furthermore, Articles 19 and 26

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<sup>29</sup> Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, 1st ed., vol. 1 (Yogyakarta: Mitra Buana Media, 2020).

<sup>30</sup> Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 21 (OHCHR, 30 November 2018) < <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-21> > accessed on 9 October 2024

<sup>31</sup> *Ibid.*

are pivotal to fulfilling the political rights of persons with disabilities. Article 19 addresses the freedom of opinion and expression, in the context of an election, every individual with disabilities is free to express their preference and may disseminate and receive political information from media<sup>32</sup>. Also, article 26 emphasizes the right to education, in the context of an election, all persons with disabilities need to have the same access and an equal basis to education on their political rights<sup>33</sup>.

On the other hand, ICCPR in Article 25 acknowledges and protects the rights of every individual to be involved in public affairs, the right to vote, the right to be elected, and the right to have access to public service. The Covenant compels states to enact whatever laws, and other measures may be required to guarantee that citizens have an effective opportunity to enjoy the rights it safeguards, regardless of the type of constitutions or government in place<sup>34</sup>. Furthermore, the Human Rights Committee, who monitor how the state parties implement ICCPR, has released a General Comment Number 25 regarding the interpretation of Article 25<sup>35</sup>. General Comment emphasizes that assistance is given to persons with disabilities and the assistance should be independent<sup>36</sup>. The voters with disabilities should be fully informed of this assurance<sup>37</sup>. Furthermore, independent assistance is necessary to prevent any coercion or compulsion to vote for specific candidates or to prevent any unlawful or arbitrary interference during the voting process<sup>38</sup>. CRPD is an international regulation that specifically regulates persons with disabilities. CRPD Committee itself has a significant contribution in switching from the medical model of disability to the social and human rights model of disability<sup>39</sup> even though the text of CRPD does not mention explicitly about human rights model of disability<sup>40</sup>. However, the concept of the human rights model can be found in Paragraph 9 of the CRPD Committee's General Comment No. 6 on the rights of persons with disabilities to equality and non-discrimination<sup>41</sup>. According to Degener, Paragraph 9 emphasizes that the human rights model of disability is predicated on a socially constructed idea of disability and additionally incorporates a concept of personhood that stipulates that impairment cannot be used as a justification for violating someone's human rights<sup>42</sup>. In this context, personhood refers to the state

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<sup>32</sup> USAID, Perludem and The Asia-Pacific Regional Support for Elections and Political Transitions (RESPECT) Program, 'Guiding Framework on Inclusive Election Observation' (Perludem, 2022)

<sup>33</sup> *Ibid.*

<sup>34</sup> Muhammad Al-Musbeh, 'Right to Vote and to be Elected in the International and Regional Standards and Legal Instruments' (October 16, 2013) < <https://ssrn.com/abstract=2341344> >

<sup>35</sup> Enira Bronitskaya, 'Election Participation of Persons with Disabilities (eds), *Routledge Handbook of Election Law* (Routledge 2022)

<sup>36</sup> OHCHR, 'General Comment No.25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art.25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25 (General Comments)

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Theresia Degener (2024). The Human Rights Model of Disability in Times of Triage. *Scandinavian Journal of Disability Research* 26 (1): 437-449. DOI: 10.16993/sjdr.1088

<sup>40</sup> Anna Lawson and Angharad E Beckett (2021). The Social and Human Rights Models of Disability: Towards a Complementarity Thesis. *The International Journal of Human Rights* 25 (2): 348-379. DOI: <https://doi.org/10.1080/13642987.2020.1783533>

<sup>41</sup> Degener, Theresia. 2024.

<sup>42</sup> *Ibid.*

of being human rather than possessing a functional ability that is considered typical<sup>43</sup>. Thus, personhood defines a person with disabilities who is also a subject of human rights or as a human rights holder<sup>44</sup>.

Furthermore, CRPD provides the most exhaustive and comprehensive description of the rights of persons with disabilities particularly on the political rights of persons with disabilities. Article 29 ensures the full participation of persons with disabilities in political life without any discrimination<sup>45</sup>. CRPD has stipulated any necessary measures have to be taken by state parties to ensure the fulfillment of the political rights of persons with disabilities. For instance, providing if it is necessary and requesting assistance in voting to help persons with disabilities in deciding their decision to vote. In addition, Article 12 acknowledges the legal capacity for all persons with disabilities without any discrimination in all aspects of life including political life. State parties shall take any appropriate action to support they may require in exercising their legal capacity.

Moreover, in Article 5, CRPD has guaranteed that all persons with disabilities have the same rights as others without any discrimination. Thus, to promote equality, the states must provide reasonable accommodation for people with disabilities, so they can enjoy all the rights that have been protected in CRPD. In this case, to ensure all people with disabilities can participate fully in the election, states shall provide reasonable accommodation, and supported decision-making can be considered as reasonable accommodation<sup>46</sup>. CRPD Committee in the General Comment also acknowledges the concept of supported decision-making for all persons with disabilities<sup>47</sup>.

### National Legal Instruments

In the Constitution of the Republic of Indonesia Article 27 Paragraph (1), Article 28D Paragraph (3) and Article 28E Paragraph (3) stipulate the right to vote and be elected for all individuals in Indonesia including persons with disabilities<sup>48</sup>. Furthermore, Law No. 39 of 1999 on Human Rights Article 43 Paragraph (1) also recognizes the right to participate in political affairs for all citizens of Indonesia on an equal basis. However, in practice, persons with disabilities still experience discrimination that impedes the fulfillment of their rights<sup>49</sup>. Thus, Indonesia enacted Law Number 4 Year 1997 concerning Persons with Disabilities. Unfortunately, this Law refers to persons with disabilities as crippled and supports the nuance of the medical model of disability as persons with disabilities become “objects of rights”, for instance, the government shall provide social aid to persons with disabilities indicating that persons with disability as object of charity. As Indonesia is one of the state parties of CRPD that supports the social model and human rights model of disability, Indonesia 2016 adopted Law Number 8 the

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<sup>43</sup> *Ibid*

<sup>44</sup> *Ibid*

<sup>45</sup> Convention on the Rights of Persons with Disabilities, 2006

<sup>46</sup> *Ibid*.

<sup>47</sup> Committee on the Rights of Persons with Disabilities. 2014. General Comment No. 1 on Article 12: Equal Recognition before the Law

<sup>48</sup> Wiwit Pratiwi, Sherly Nelsa Fitri, Zizo Junius Fernando, Jaco Barkhuizen (2023). Evaluation of the Fulfillment of Political Rights for Persons with Disabilities to Welcome the 2024 General Election. *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi* 6(1)

<sup>49</sup> *Ibid*.

Year 2016 concerning Persons with Disability in line with the CRPD. Law Number 8 Year 2016 Article 13 recognizes the political rights of persons with disabilities. Additionally, Law Number 7 Year 2017 concerning General Elections emphasizes every individual shall meet certain requirements to become eligible voters. Thus, this law also recognizes that people with psychosocial disabilities are eligible to vote unless proven otherwise by a medical professional<sup>50</sup>. Thus, fulfilling the voting rights for people with psychosocial disabilities requires action from the government to ensure they enjoy their rights on an equal basis with others. Consequently, reasonable accommodation is important to guarantee their voting rights. Indonesia has enacted two government regulations on providing reasonable accommodation (Government Regulation Number 13 the Year 2020 on Reasonable Accommodation for Students with Disabilities and Government Regulation Number 39 the Year 2020 on Reasonable Accommodation for Persons with Disabilities in Judicial Process) but none of them specifically regulates providing reasonable accommodation for persons with disabilities in enjoying their political rights.

## Concept of Supported Decision-Making

### Legal Capacity

Article 12 of CRPD acknowledges that persons with disabilities have rights to legal capacity on an equal basis with others. It means that people cannot lose their legal capacity to act just because of their disability<sup>51</sup>. The concept of supported decision-making was not explicitly mentioned in CRPD. However, the CRPD Committee in General Comment Number 1 (2014) on Article 12: Equal Recognition before the Law explains how persons with disabilities also have the right to legal capacity and supported decision-making as one of the ways to fulfill their right to legal capacity. Legal capacity for persons with a disability means that persons with disabilities regardless of their disabilities have the right to be recognized as individuals before the law and because of their status, they can fulfill their legal obligation and obtain legal rights<sup>52</sup>. Furthermore, legal capacity emphasizes the liberty to make choices, thus it is not in line with the concept of 'guardianship or substituted decision-making' that addresses the incapacity of people with disabilities and this concept allows someone to make decisions on behalf of persons with disabilities or without consultation with a person with disabilities<sup>53</sup>.

According to the Council of Europe Commissioner for Human Rights the reason why legal capacity is important because first, it is not only about decision-making, but it is more

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<sup>50</sup> International Foundation for Electoral Systems, Election in Indonesia, *op.cit.*

<sup>51</sup> United Nations. Chapter Six: From Provisions to Practice: Implementing the Convention-Legal Capacity and Supported Decision-Making. < <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-six-from-provisions-to-practice-implementing-the-convention-5.html>> accessed on 18 October 2024

<sup>52</sup> LBHM and AIPJ2 .Towards a Supported Decision-Making Model in Indonesia < [https://lbhmasyarakat.org/wp-content/uploads/2021/02/Narrative-Knowledge-Product-SDM\\_English\\_FIN-2.pdf](https://lbhmasyarakat.org/wp-content/uploads/2021/02/Narrative-Knowledge-Product-SDM_English_FIN-2.pdf)> accessed 18 October 2024

<sup>53</sup> Nandini Devi, Jerome Bickenbach and Gerold Stucki (2011). 'Moving towards Substituted or Supported Decision-Making? Article 12 of the Convention on the Rights of Persons with Disabilities 5 European Journal of Disability Research, 249-264



about what it means to be a human<sup>54</sup>. As an individual, there are so many choices that require decision-making, the decisions they have made define who they become. Thus, without having the legal capacity we cannot enjoy our rights fully for instance freedom of religion, it is meaningless to have legal capacity if someone else is the one who decides the choice for us<sup>55</sup>. Second, the denial of legal capacity for persons with disabilities will have a huge impact on a group of persons with disabilities since most people with intellectual and psychosocial disabilities are put under guardianship for all their lifetime, the guardianship is also difficult to revoke, thus it makes persons with disabilities become dependence in all their time to their lifetime<sup>56</sup>. The last is the stigma of persons with disabilities incompetence becomes reality, this happens when a person with disabilities loses control of their life because they lost their legal capacity putting them under guardianship, which leads to make them dependence and helplessness<sup>57</sup>. Thus, they will never learn how to make decisions for their own life and consequently, society will view them as someone powerless, vulnerable, and incompetent, which will lead them to be excluded from public participation<sup>58</sup>.

### Switching from Substitute Decision-Making to Supported Decision-Making

CRPD Committee acknowledges that there are several issues on the legal capacity, particularly in the existence of substitute decision-making in state parties' initial reports. This indicates that several state parties are still implementing the substituted decision-making. Persons with mental or intellectual disabilities who struggle to make judgments in various contexts often become the subject of designating "guardians" or substitute decision-makers<sup>59</sup>. The concept of substitute decision-making permits a person or organization to make decisions on behalf of persons with disabilities, therefore persons with disabilities have no right to decide for themselves<sup>60</sup>. In most cases, if people with mental or intellectual disability under the law prevent them from making some decisions, their family members or carers can assist them in making a decision, and this person may be acknowledged informally as being able to decide for them<sup>61</sup>. Substitute decision-making has various forms such as partial guardianship, plenary guardianship, and judicial interdiction. These forms have the same characteristics such as persons with disabilities' legal capacity being revoked, the decision maker being designated by

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<sup>54</sup> Council of Europe Commissioner for Human Rights (2012). Who Gets to Decide? Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities < <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9>> accessed 23 October 2024

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Trevor Ryan, Andrew Henderson and Wendy Bonython (2016). Voting with an Unsound Mind? A Comparative Study of the Voting Rights of Persons with Mental Disabilities. Trevor Ryan, Andrew Henderson and Wendy Bonython, 'Voting with an Unsound Mind? A Comparative Study of the Voting Rights of Persons with Mental Disabilities' (2016) 39 (3) UNSW Law Journal 39 (3)

<sup>60</sup> Devi Nandini, Bickenback Jerome and Stucki Gerold (2011). Moving towards Substituted or Supported Decision-Making? Article 12 of the Convention on the Rights of Persons with Disabilities. *European Journal of Disability Research* 5, 249-264 doi: 10.1016/j.alter.2011.07.002

<sup>61</sup> Mental Health Rights Manual (2020). Chapter 5 Section A: Substitute Decision Making (Mental Health Coordinating Council 25 March 2020) < <https://mhrm.mhcc.org.au/chapters/5-substitute-decision-making-and-capacity/5a-substitute-decision-making/>> accessed on 17 October 2024

someone else, and possibly against the will of a person with disabilities, and any choice made by a substitute decision-maker is not determined by the individual's wishes and preference, but rather by what is thought to be in the objective "best interest" of the person with disabilities.<sup>62</sup> However, there are several issues regarding substituted decision-making such as misconception and negative stigma regarding people's decision-making abilities, violation of a person with disabilities' right to legal capacity and disregard for the person with disabilities as a decision-maker<sup>63</sup>. Thus, the committee emphasizes in the General Comment on Article 12 that substitute decision-making is not in line with the CRPD<sup>64</sup>. Consequently, the Committee obliges states to abolish the substitute decision-making and replace it with supported decision-making<sup>65</sup>.

Supported decision-making authorizes persons with disabilities to make decisions about their own lives with the people they choose<sup>66</sup>. To assist in decision-making people with disabilities choose people they know and believe to support them with decision-making<sup>67</sup>. Supported decision-making enables people with disabilities to make decisions for themselves rather than having guardians decide on their behalf<sup>68</sup>. Hence, it changes the principle of 'best interest' for people with disabilities into the 'best interpretation of preference and will' of people with disabilities<sup>69</sup>. Supported decision-making acknowledges that people with disabilities who are struggling in making a decision and communicating their preferences could make positive decisions and choices that develop their self and their participation in their community<sup>70</sup>. For instance, people with learning disabilities might receive assistance or support to read and focus on making any decision, or people with no verbal communication might need someone who understands their preference and will and can interpret and implement their decision<sup>71</sup>. Furthermore, supported decision-making can assist people with severe mental disabilities, for example, a family of someone with severe mental disabilities stated that 'Charlie' still cannot express their decisions alone even with all available tools, the family did not know what Charlie wants, however, the family can support Charlie to decide what he is willing to do<sup>72</sup>. Moreover, it is important to acknowledge that implementing supported decision-making for all types of disabilities is not easy as it depends on the health condition of the person, and it is more of a case-by-case situation<sup>73</sup>.

In implementing supporting decision-making there should be an assessment method on whether the individuals need supporting decision-making and if they need it, what kind

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<sup>62</sup> Committee on the Rights of Persons with Disabilities. 2014. General Comment No. 1, *op.cit.*

<sup>63</sup> World Health Organization (2019). Supported Decision-Making and Advance Planning. <<https://www.jstor.org/stable/pdf/resrep27901.14.pdf>> accessed on 1 October 2024

<sup>64</sup> Committee on the Rights of Persons with Disabilities. 2014. General Comment No. 1, *op.cit.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Supported Decision-Making, 'About Supported Decision-Making' <<https://supporteddecisions.org/about-supported-decision-making/>> accessed 10 September 2024

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> LBHM and AIPJ2 .Towards a Supported Decision-Making Model in Indonesia <[https://lbhmasyarakat.org/wp-content/uploads/2021/02/Narrative-Knowledge-Product-SDM\\_English\\_FIN-2.pdf](https://lbhmasyarakat.org/wp-content/uploads/2021/02/Narrative-Knowledge-Product-SDM_English_FIN-2.pdf)> accessed 18 October 2024

<sup>70</sup> Devi Nandini, Bickenback Jerome and Stucki Gerold, *op.cit.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

of support they could acquire<sup>74</sup>. Furthermore, in assisting, we shall determine who will assist and what kind of assistance.<sup>75</sup> The supporters can be provided by family, court representatives, formal organizations, and members of the community<sup>76</sup>. The type of support includes explaining the purpose and choices available for persons with disabilities, facilitating communication with others, and assisting persons with disabilities to fulfil their obligation or encounter any situation that arises from their decision<sup>77</sup>.

According to the Supported Decision-Making organization, these are the step by step how to implement supported decision-making<sup>78</sup>:

- a. Persons with disabilities determine what kind of support they require and which areas and types of support they need.
- b. Persons with disabilities choose supporters that they believe.
- c. Supporters promise to give the person with disabilities the information they need to make their own choices. Supporters pledge to respect the decisions made by persons with disabilities.
- d. Persons with disabilities and supporters implemented a supported decision-making agreement.

Supported decision-making is necessary to ensure the participation of people with disabilities in public life such as participation in general elections. It is also important that implementing supported decision-making will assist in the fulfilment of persons with disabilities for instance their political rights particularly their right to vote.

### Supported Decision-Making in Election

Supported decision-making in elections allows people with disabilities to choose their supporters such as trusted friends, advisors, professionals, or family to assist them in maximum using their unique abilities to make choices<sup>79</sup>. The supporters pledge to assist persons with disabilities in comprehending, deliberating, and communicating choices, providing them with the means to make well-informed choices such as exercising their right to vote<sup>80</sup>.

For instance, In the United States of America (USA), USA has The Disability Vote in California coalition has created helpful guidance for families and supporters and service providers. The guidance provides practical mechanisms on how to implement Supported Decision-Making to assist people with disabilities in making their choice in election<sup>81</sup>. These are mechanisms on how to provide supported decision-making for persons with disabilities on voting<sup>82</sup> a. Be attentive and make sure the supporters understand; b.

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<sup>74</sup> LBHM and AIPJ2, *op.cit.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> Supported Decision-Making, 'About Supported Decision-Making', *op.cit.*

<sup>79</sup> DVC Supported Decision-Making: Empower Their Right to Vote!, Family Members-Supporters (2020) <<https://files.constantcontact.com/eb101a2f101/a86a4824-2c2e-4e06-b783-a4ee97818276.pdf>> accessed 17 September 2024

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

Connect ballot issues to personal experiences, for instance, if persons with disabilities are interested in Disneyland, the supporters may explain that certain choices they make might affect the Disneyland characters; Referring to the personal experiences they had in their life, the supporters shall ensure how the person with disabilities choice could impact their life for instance in health care and education; d. Using plain language to make their persons with disabilities understand easily; e. Take your time, read the voting materials several times, and highlight various words; f. To give oneself time to consider the issues, read the ballot several times over several days using clear language or visual aids; g. Connect with other supporters by encouraging inquiries and remaining receptive to various points of view.

In Australia, according to the Australia Law Reform Commission (ALRC), its Commonwealth Electoral Act Section 234 (1) has provided a form of supported decision-making. This Act stated that the presiding officer would allow a voter-appointed representative to accompany the voter into the voting booth and assist to mark, fold and deposit the voter's ballot paper only if the voter's vision is impaired or the voter is physically incapable, or the voter is illiterate that the voter cannot vote without assistance<sup>83</sup>. Even if this Act has provided a basis for providing supported decision-making, however, this act has covered only several types of disabilities. Thus, ALRC proposes amendment for this Act, so it could be consistent with the CRPD and extend the category for those who can rely on this provision<sup>84</sup>.

### **Current Implementation of Supported Decision-Making during Election in Indonesia**

In Indonesia, based on data from the Ministry of Social Affairs (Kemensos) on the Management Information System for Persons with Disabilities (SIMPDP), as of January 13 2021, the number of persons with disabilities recorded was 209,604 individuals. Referring to [simpdp.kemensos.go.id](http://simpdp.kemensos.go.id) data, there are 12 categories of people with disabilities, namely disabled (65,449 people), ex-leprosy/chronic disease (2,487 people), multiple/multiple (65,065 people), mental/mental disorders (26,561 people), autistic (3,820 people), hearing (13,800 people), speech (5,580 people), low vision (6,806 people), total blind (11,352 people), slow learner (3,658 people), mental (13,140 people) and Down syndrome (4,187 people) . Based on the data above, the potential for disabled people to become voters is large<sup>85</sup>.

In the 2024 General Election, Indonesia promised to establish an inclusive election<sup>86</sup>. Inclusive election means promoting, ensuring, and advocating for fair elections for all individuals to vote with no discrimination on any basis<sup>87</sup>. Inclusive elections ensure that all marginalized and vulnerable groups with diverse identities receive the same

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<sup>83</sup> Australian Government: Australian Law Reform Commission, 'Supported Decision-Making and Voting' (Equality, Capacity and Disability in Commonwealth Laws DP 81) < Commonwealth Electoral Act 1918 > accessed on 12 October 2024

<sup>84</sup> *Ibid.*

<sup>85</sup> Nadhiroh and Atika Nurfatmawati, 'Content Analysis of Disabled News on Kompas.com in the 2019 Presidential Election to Support Disabled-Friendly Media in the 2024 Presidential Election' (2022) Kalijaga Journal of Communication <https://ejournal.uin-suka.ac.id/dakwah/kjc/article/view/2464/1641> accessed 26 July 2024

<sup>86</sup> USAID, Perludem, *op.cit.*

<sup>87</sup> *Ibid.*

opportunities without experiencing discrimination or obstacles to participate substantively at every stage of the election.<sup>88</sup>

In Nusa Tenggara Province, General Election Commission Nusa Tenggara Timur (NTT) has a program called '*Peluncuran Gerakan Ramah Disabilitas*'. This program aims to promote the understanding of the rights and obligations of voters for all persons with disabilities in NTT Province. Also, this program aims to enhance the skills and ethics for ad hoc service body for people with disabilities as voters and create accessible and inclusive election<sup>89</sup>.

In Pekalongan City, General Election Commission Pekalongan City stated that an assistant is allowed to accompany voters to the voting booth or assist the voters to cast ballots. Assistant can be from the voter's family or officers of the Voting Committee Group (KPPS) officers<sup>90</sup>. Furthermore, there are no specific requirements for those who want to be the assistant of a person with disabilities. However, the assistant shall not leak the choices of voters they accompany to any party<sup>91</sup>. To ensure confidentiality, the assistant must complete a companion form after accompanying voters to vote in the booth. In principle, the assistant only helps disabled people to make casting votes easier in the 2024 general election<sup>92</sup>.

In Bengkulu, the right to confidential voting at polling stations in Bengkulu City has not been fully realized in some locations, despite the presence of election management committees and volunteers trained to assist voters with disabilities<sup>93</sup>. Voters with disabilities should have the option to be accompanied and assisted by a person of their choice<sup>94</sup>. However, individuals designated to assist them are required to maintain the confidentiality of the voter's selections<sup>95</sup>. This requirement, however, cannot be effectively ensured due to the absence of surveillance systems, such as cameras, to monitor the interactions between voters and their assistants<sup>96</sup>. Consequently, there is no assurance that the voting process conducted within the booth aligns with the voter's actual preferences or that the actions of the assisting officers adhere to procedural requirements<sup>97</sup>.

In Makassar, according to the General Election Commission (KPU) Makassar City, on the implementation level, the Indonesian General Elections Commission (KPU), particularly

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<sup>88</sup>Mitra Inclusion, 'Inclusive Elections and Elections Handbook', [www.inklusi.or.id](http://www.inklusi.or.id) accessed June 20, 2024

<sup>89</sup> Komisi Pemilihan Umum, 'Wujudkan Pemilu 2024 sebagai Pemilu Inklusif dan Ramah Disabilitas' (KPU, 4 Oktober 2024) < <https://www.kpu.go.id/berita/baca/11963/wujudkan-pemilu-2024-sebagai-pemilu-inklusif-dan-ramah-disabilitas> > accessed 23 August 2024

<sup>90</sup> Pemerintah Kota Pekalongan, 'Penyandang Disabilitas dan Lansia Bisa Didampingi Saat Memberikan Hak Pilih di Pemilu 2024' (Pemerintah Kota Pekalongan, 28 Desember 2023) < <https://pekalongankota.go.id/berita/penyandang-disabilitas-dan-lansia-bisa-didampingi-saat-memberikan-hak-pilih-di-pemilu-2024.html> > accessed 9 September 2024

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Wiwit Pratiwi, Sherly Nelsa Fitri, Zizo Junius Fernando, Jaco Barkhuizen, 'Evaluation of the Fulfillment of Political Rights for Persons with Disabilities to Welcome the 2024 General Election' (2023) 6(1) *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

the Public Participation Division, plays an active role in fulfilling the political rights of persons with disabilities, aiming to realize an inclusive election process. As the election organizer, KPU collaborates with disability groups, such as PerDik, to conduct election-related socialization efforts<sup>98</sup>. Consequently, there have been no significant obstacles in ensuring political rights for persons with disabilities during election implementation. Elections are designed to guarantee equal opportunities for all citizens to participate in political processes, recognizing and protecting their political rights regardless of gender, age, disability, ethnicity, religion, or socioeconomic background, provided they meet the necessary requirements. The 2024 elections are expected to be inclusive and disability-friendly<sup>99</sup>. There is a legal framework that supports the participation of persons with disabilities in elections, namely KPU Regulation No. 3 of 2022. However, challenges in implementation arise due to the uneven distribution of human resources, which sometimes hinders the realization of an inclusive electoral process<sup>100</sup>.

Supported Decision-Making (SDM) is relatively new to KPU, but its essence has already been applied. For example, this is reflected in the provision of braille materials and the accommodation of guardianship for leprosy patients, where forms are provided to allow family members to assist them. Furthermore, In Article 43 PKPU Number 3 of 2019, voters with disabilities can be assisted by companions from KPPS members or other people at the request of the voter concerned. In practice, voters requiring assistance are accompanied during voting, facilitated by polling station officials (KPPS)<sup>101</sup>. KPU has expressed concerns regarding the insufficient intensity of election socialization efforts. Additionally, for the 2024 elections, there is a demand for the development of braille templates for guidance materials. The Public Participation Division (ParMas) of KPU receives technical guidance from the central government to enhance election administration. Furthermore, KPU organizes face-to-face socialization events and collaborates with various institutions to meet facility requirements. The KPU also conducts evaluation meetings to review the election process and improve its implementation<sup>102</sup>.

Furthermore, elections in Indonesia have been fairly inclusive, but they have yet to reach an ideal level. Achieving full inclusivity requires time and a long-term process rather than short-term training. A deep understanding of the values of inclusivity is essential across all societal layers, particularly among election organizers. Technical implementation to support the diverse needs of persons with disabilities still requires significant improvements<sup>103</sup>.

The concept of supported decision-making, which provides assistance to persons with disabilities in making decisions, has been informally applied by those who have companions. However, a significant challenge lies with individuals who lack such support. Awareness and dissemination of this concept remain limited, leaving many

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<sup>98</sup> Firmansyah, (Interview with Representative from Civil Participation KPU Kota Makassar, 29 April 2024)

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Ridwan (Interview with Representative from PerDIK Sulsel, 24 Maret 2024)

people unaware of or unable to implement it effectively<sup>104</sup>. So far, the government of Indonesia has tried to implement inclusive elections by providing reasonable accommodation and accessibility for persons with a disability. Thus, it is important to identify the challenges in implementing supported decision-making in Indonesia to improve its effectiveness. The current challenges that halt the implementation of supported decision-making is regarding the dilemma of autonomy, secrecy of vote, legal and policy barriers, lack of awareness and resource constraints.

## **Issues and Strategies in Implementing Supported Decision-Making during Election in Indonesia**

### **Supported Decision-Making vs Autonomy**

To respect individuals, then, we must treat individuals as autonomous agents. Autonomy, fundamental to law, is commonly characterized as independence and self-rule or self-determination<sup>105</sup>. The concept of autonomy for a person with disabilities is part of independent living. Independent Living has been recognized in the CRPD Article 19 regarding Living Independently and Being Included in the Community. According to the CRPD Committee General Comment on Article 19, independent living refers to a condition where individuals with disabilities are equipped with the necessary resources to exercise autonomy and control over their lives, allowing them to make decisions regarding all aspects of their existence. Personal autonomy and self-determination are central to the concept of independent living, which encompasses access to transportation, information, communication, and personal assistance. This also extends to choices about the fulfillment of political rights<sup>106</sup>.

The question here is whether the autonomy concept aligns with Supported Decision-Making. A relational account of autonomy recognizes that autonomy is inherently and inextricably intertwined with our relationship with others<sup>107</sup>. Decision-making takes place within a complex web of interdependent relationships<sup>108</sup>. This interdependence does not undermine the autonomy of the individuals within the couple. Instead, as highlighted by the concept of socially extended cognition, their interdependence shapes and enriches their decision-making process. From a relational perspective, delegating some or all decision-making authority to another person does not signify a loss of autonomy<sup>109</sup>. Thus, supported decision-making aligns with autonomy since supported decision-making supports the concept of autonomy and part of autonomy. It is also stated in the CRPD General Comment that independent living may need personal assistance through supported decision-making<sup>110</sup>.

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<sup>104</sup> *Ibid.*

<sup>105</sup> Andrew Peterson, Jason Karlawish and Emily Largent, 'Supported Decision Making with People at the Margins of Autonomy' (2020) 21(11) *The American Journal of Bioethics* 4-18

<sup>106</sup> Committee on the Rights of Persons with Disabilities, 'General Comment on Article 19: Living Independently and Being Included in the Community.' (2017)

<sup>107</sup> Andrew Peterson, Jason Karlawish and Emily Largent, *op.cit.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> Committee on the Rights of Persons with Disabilities, 'General Comment on Article 19', *op.cit.*

## Secrecy of the Vote

Voter secrecy is a fundamental democratic principle ensuring voters can vote anonymously in elections<sup>111</sup>. The idea of voter secrecy was introduced to prevent influential individuals or groups from pressuring voters to select specific candidates<sup>112</sup>. Implementation of supported decision-making means that the person with disabilities will be accompanied during the voting process on the ballot. This means that during the vote, there is no secret. The secrecy of voting has also become an issue in Australia. While secrecy of voting is important, ALRC has confirmed that support or assistance concerning the voting procedure shall respect the right to a secret ballot. However, it has not been available for persons with disability<sup>113</sup>. Thus, there should be an alternative voting mechanism provided for people with disabilities, even if they are accompanied. Still, it shall ensure secrecy, and people with disabilities could make a free choice without intimidation and pressure<sup>114</sup>. Furthermore, to support people with disability to vote secretly and independently, the states shall provide various supports such as using symbols or logos, assisted voting, templates, electronically assisted voting, and outreach models<sup>115</sup>.

## Legal and Policy Barriers

Currently, Indonesia lacks specific regulations to ensure reasonable accommodations for persons with disabilities in the exercise of their political rights. Unlike the provisions addressing the rights to education and access to justice, Article 36(2) of Law Number 8 of 2016 on Persons with Disabilities mandates that legal enforcement bodies provide reasonable accommodations for persons with disabilities during judicial processes. This requirement is further detailed in Government Regulation Number 39 of 2020 on Reasonable Accommodation for Persons with Disabilities. The regulation stipulates that legal enforcement bodies must conduct personal assessments to determine the type of disabilities and specific needs of individuals, enabling tailored accommodations<sup>116</sup>. It also requires the provision of a "Pendamping Disabilitas" (Companion for Persons with Disabilities) to support individuals throughout judicial processes<sup>117</sup>. Similarly, the right to education, as outlined in Article 10 of Law Number 8 of 2016, obliges the government to provide reasonable accommodations for students with disabilities. This is further elaborated in Government Regulation Number 13 of 2020 on Reasonable Accommodation for Students with Disabilities, which emphasizes the provision of resources such as funding, facilities, trained educators, and an inclusive curriculum.

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<sup>111</sup> POLYAS Election Glossary, 'Voter Secrecy' < <https://www.polyas.com/election-glossary/voter-secrecy> > accessed on 20 August 2024

<sup>112</sup> *Ibid.*

<sup>113</sup> Australian Government: Australian Law Reform Commission, *op.cit.*

<sup>114</sup> UNPRPD, Inclusion International and UNDP, 'Political Participation of Persons with Intellectual or Psychosocial Disabilities' (2021) < <https://www.undp.org/sites/g/files/zskgke326/files/2021-12/UNDP-II-UNPRPD-Political-Participation-of-Persons-with-Intellectual-or-Psychosocial-Disabilities-V2.pdf> > accessed 10 September 2024

<sup>115</sup> Australian Government: Australian Law Reform Commission, *op.cit.*

<sup>116</sup> Article 3 and Article 4 Government Regulation Number 39 on Reasonable Accommodation for Person with Disabilities in Judicial Process, 2020.

<sup>117</sup> Article 15 Government Regulation Number 39 on Reasonable Accommodation for Persons with Disabilities in Judicial Process, 2020.



Given these precedents, the Indonesian government must introduce specific regulations that address reasonable accommodations for persons with disabilities in political participation. Such regulations should include mechanisms for providing decision-making support, defining the qualifications for individuals who can serve as assistants, and establishing clear procedures for implementing supported decision-making. Additionally, the government should develop comprehensive guidelines to facilitate the implementation of supported decision-making during elections. These measures would clarify for the General Election Commission (KPU), relevant stakeholders, and society at large, ensuring the effective exercise of political rights by persons with disabilities.

### Lack of Awareness

One of the main constraints on implementing supported decision-making is the lack of awareness of society<sup>118</sup>, perceptual understanding and interpersonal support<sup>119</sup>. The limited involvement of families in providing political education to family members with disabilities and the continued apathy of persons with disabilities regarding the significance of their participation in elections<sup>120</sup>. Thus, Information campaigns that simplify the electoral process and voter rights need to be widely disseminated to ensure that information is accessible and understandable to all voters, including those with intellectual and psychosocial disabilities. Many voters with intellectual disabilities feel they do not receive enough information about the election process<sup>121</sup>. Therefore, information campaigns should be designed in various easy-to-understand formats, such as plain language videos, infographics, and visual guides, and disseminated through various communication channels, including social media, television, radio, and local community organizations.<sup>122</sup> Collaboration with disabled organizations in Indonesia, as the Ministry of Social Affairs recorded, is very important to ensure that the support system designed is relevant and effective<sup>123</sup>.

A high level of awareness encourages them to seek and receive the support necessary to make decisions independently. When people with disabilities and their families understand the political rights they have, they are more likely to take advantage of available resources and supports to actively participate in elections. This includes understanding voting procedures, access to relevant information and how to use the facilities provided to voters with disabilities. Information campaigns that simplify the

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<sup>118</sup> Nadya Kharima and Mohamad Ihsan, 'Pemenuhan Hak Penyandang Disabilitas dalam Penyusunan Daftar Pemilih Tetap (DPT) pada Pemilihan Umum (Pemilu) Serentak Tahun' (2024) *Jurnal Pengawasan Pemilu*

<sup>119</sup> Nizar A, 'Political Participation of People with Disabilities in Indonesia: Legal Framework and Practical Challenges' (2023) *Journal of Southeast Asian Studies* 15(2) 89-112.

<sup>120</sup> Syida Annisa Yaniar, Naufal Bariq Alauddin Simamora, Hana Tiara Hanifah and Sabrina Wijayani. (2024) *JISPO Jurnal Ilmu Sosial and Ilmu Politik Political Participation of Persons with Disabilities in Election: The Case of Regional Elections in Bantul, Indonesia*. Available from: [https://www.researchgate.net/publication/378475986\\_Political\\_Participation\\_of\\_Persons\\_with\\_Disabilities\\_in\\_Election\\_The\\_Case\\_of\\_Regional\\_Elections\\_in\\_Bantul\\_Indonesia](https://www.researchgate.net/publication/378475986_Political_Participation_of_Persons_with_Disabilities_in_Election_The_Case_of_Regional_Elections_in_Bantul_Indonesia)[accessed Sep 06 2024].

<sup>121</sup> Hakim R, 'Evaluation of the Implementation of the Law on Persons with Disabilities in the 2019 Election' (2019) *Journal of Law and Justice* <https://jurnal.hukumkeadilan.ac.id> accessed 25 June 2024.

<sup>122</sup> Setiawan B, 'The Role of Government in Increasing the Political Participation of Persons with Disabilities' (2020) *Journal of Government Science* <https://jurnal.ilmu-anggaran.ac.id> accessed 25 June 2024.

<sup>123</sup> Martorell A and others, 'Caregiving for Individuals with Intellectual Disabilities: Emotional and Practical Impacts' (2019) 12(2) *Journal of Intellectual Disability Research* 160-175.

election process and voter rights also need to be widely disseminated to ensure that information can be accessed and understood by all voters, including those with intellectual and psychosocial disabilities. Taking into account the wide variety of disabilities that exist, information must be easy to understand by being disseminated through various communication channels, such as social media, television, radio, and local community organizations, to ensure that voters with various levels of understanding can obtain the information they need to participate in the election.

### Resource Constraints

In reality, committee in the polling station are unprepared to accommodate the needs of persons with disabilities<sup>124</sup>. Thus, training and capacity building for election officials and supporters must be carried out to ensure they can provide appropriate and effective assistance. According to data from the Indonesian General Election Commission (KPU), in the 2019 elections, there were around 1.2 million registered voters with disabilities, with the majority requiring special support in the election process<sup>125</sup>. This training should include an in-depth understanding of intellectual and psychosocial disabilities, which include developmental disorders such as autism and Down syndrome, as well as mental disorders such as schizophrenia and bipolar disorder. Techniques for providing appropriate support should also be taught, including effective communication, use of simple language, and structured decision-making methods. For example, officials need to be trained to use visual and verbal aids that can help voters better understand their options. Also, there shall be involvement of disability organization. Disability organizations can provide valuable insight, help develop training materials, and monitor and evaluate the effectiveness of implemented programs. Through this approach, elections in Indonesia can be more inclusive and representative, respecting and hearing the voices of every citizen without exception. In addition, support from family and social networks is also an important factor. Family and friends can provide the emotional and practical help needed to understand the election process and make informed decisions. This social support helps increase the self-confidence and independence of people with disabilities in exercising their voting rights.

### CONCLUSION

Indonesia has tried to implement supported decision-making during the general election of 2024. However, the implementation is still ineffective since several issues hinder the implementation of supported decision-making, such as lack of awareness of the supported decision-making, the existing policies not accommodating reasonable accommodation in the election, resource constraints, secrecy issues, and the dilemma on autonomy for people with disabilities. Thus, there are several strategies that Indonesia can use to overcome the issues, such as reforming the policy, capacity building for the committee and providers, public awareness campaigns, and developing a support network by involving Disability Organizations.

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<sup>124</sup> Syida Annisa Yaniar, Naufal Bariq Alauddin Simamora, Hana Tiara Hanifah and Sabrina Wijayani, *op.cit.*

<sup>125</sup> Firmansyah H, 'Challenges of Democracy in Indonesia in the Context of Disabilities' (2019) Journal of Democracy and Inclusivity <https://jurnal.democracidaninklusivitas.ac.id> accessed 25 June 2024.

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