



The Presence of Law and Social Justice in Realizing the Concept of a Welfare State

Suhendar

Universitas Jenderal Soedirman, Purwokerto, Indonesia
suhendarabas_sap@yahoo.com

Abstract. The purpose of law includes 3 values, namely justice, expediency, and legal certainty. However, in practice, law often does not emphasize all values and tends to forget one of them. Therefore, there has been an understanding where the value of justice is the most important value in the legal world. The concept of a welfare state can be realized if the presence of law can guarantee social justice that can be felt by all people. Then the implementation of the welfare state includes the containment of rules in the Constitution regarding the role of the state in realizing welfare including Article 27, where every citizen has the right to work and a decent living for humanity, and article 31 which regulates education services, Article 33 and Article 34, where our natural wealth must be used for the greatest prosperity of the people and the poor and abandoned children are cared for by the State. The purpose of this study is to find out the concept of social justice in the rule of law in Indonesia to realize a welfare state, and describe the position of law can realize an ideal legal system in Indonesia so that the context of the welfare state can be realized. The type of research used in this writing is a type of prescriptive research, which is a study that aims to get suggestions on what to do to overcome certain problems. Then describe or provide a complete picture of the law and the concept of a welfare state in realizing social justice for all Indonesian people. The conclusion that the administration of the state and law must be based on a combination of political democracy and economic democracy based on one of the cosmology of the Indonesian nation and collectivism. On this basis, the state is a framework for national cooperation, so the purpose of the state is to realize common welfare.

Keywords: Law, Justice, Prosperous

1. Introduction

The law in this discussion is a law that is deliberately formed (by designed) by the state, not a law that occurs naturally in society, which is a crystallization of association between humans in society as a subject of law, or also not religious law, especially Islam, which comes from the revelation of God, Allah Almighty, either directly or through His prophets and messengers. Law in the last two senses, the first is known as customary law or customary law and the second is religious law, especially Islam with its Islamic law. The process of forming customary law or customary law is bottom-up while the process of forming Islamic law is top-down. [1]

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In this case, the presence of law must be able to realize 3 (three) basic values, namely: (i) the value of justice, (ii) certainty, and (iii) the value of utility. The synergistic application of the three is certainly not easy, but ideally, in every preparation of legal and law enforcement products, the presence of all three must get a balanced proportion. In addition to fulfilling in a balanced manner these three basic elements. Sudharto P. Hadi [2] Constitution that a good law (good norm) is a law that contains the principles of sustainability, justice and democracy.[3]

Ideally, a definite law should also be fair and a just law should also provide certainty. This is where both values experience an antinomic situation, because according to a certain degree, the values of certainty and justice, must be able to provide certainty for everyone's rights fairly. For this reason, in making and implementing laws must really consider that making laws is for happiness and welfare, not just relying on the rationale of rational-formal human behavior. Meanwhile, according to Theo Huijbers, if the realization of justice is handed over to the ruler of the state, then the element of justice in law is determined by the good soul of the rulers of the state, both the soul of his mind (logistics), the soul of his feelings and passions (epithumetikon), and the soul of good and evil feelings (thumoeses).[4]

Related to this, Satjipto Rahardjo requires the importance of State consistency, to carry out the task of State administration, as mandated by its constitution so that justice is truly realized. A just government is a government that runs the wheels of government by fulfilling its obligations in accordance with the constitution as well as possible.[5]

The welfare state is considered the most appropriate answer to the form of state involvement in advancing the welfare of the people.[6] In line with the purpose of the establishment of the Republic of Indonesia, basically to prosper all people without exception. In other words, the Indonesian state aims to form a welfare state. The goal of national development is the improvement of social welfare, not just economic growth, but to meet the basic social and economic needs of every citizen in order to achieve a minimum standard of living. Indonesia has 14 welfare articles in the 1945 Constitution but does not have the power to form a prosperous society.[7]

The constitution clearly calls for the realization of a welfare state in Indonesia, where the state grants broad social and economic rights to every citizen. Thus, in Indonesia, the state is not a minimal state or necessary evil, and not even an enabling state that only modifies the market while still worshipping individualism. Based on the constitution in Indonesia, the state is a development agent that not only encourages equality of opportunity, but also actively strives to uphold social justice. The state is clearly mandated to put the interests of society above the interests of individuals.[8] However, the reality is that there are still many social inequalities, poverty, and human rights violations that occur in Indonesia. One of the contributing factors is the weak role of law in upholding social justice. Therefore, it is necessary to study how law and social justice can realize a prosperous state in Indonesia.

2. Problem

From the explanation above, it can be classified the scope of this research focusing on the following problems:

- a. How is the concept of the relationship between law and justice in realizing a welfare state?
- b. How the Role of Law and Social Justice in Realizing a Prosperous State in Indonesia?

3. Method

The type of research used in this writing is a type of prescriptive research, which is a study that aims to get suggestions on what to do to overcome certain problems. Then describe or provide a complete picture of the law and the concept of a welfare state in realizing social justice for all Indonesian people. For this, this research approach is juridical normative as a result of the problem under study. Normative research is a legal research method that serves to see law in an abstract sense and examine how law works in the community, it can be said that normative legal research sources are taken from existing past researches, so research with a normative approach must be done by sharpening analysis using research methods and techniques.

4. Discussion

4.1. Concepts of Law and Social Justice

The question of what law is is a question of a concept of law. Concept is a reality contained in the realm of ideas or ideas as a product of the construction process in capturing empirical reality, in this case about legal matters. The concept of law as an answer to the question of what law is has been put forward by many experts according to their respective points of view in capturing the empirical reality called the law. From some of these concepts in this discussion, the concept of law will be put forward whose substance is a rule or norm that regulates human behavior in common life in society.

Law in its concept as described above consists of (i) laws that occur naturally in society, which are crystallization of association between people in society as legal subjects, which are referred to as customary law; (ii) laws derived from the revelation of God, Allah Almighty, either directly or through His prophets and messengers, which are referred to as religious laws, such as Islam with its Islamic law; and (iii) laws formed intentionally by the state as an organization of power whose one function is regarding the field of legislation or court decisions, so that the latter law is referred to as law formed by enacted law.[9] Law in the first concept, namely customary law

or customary law seen from the process of formation is bottom-up. Law in its second and third concepts, namely religious law, especially Islam with its Islamic law and law in its concept as law that is formed or promulgated the process of formation is top-down. The only difference is, for Islamic law the formation comes from God, Allah SWT, while for legislation the formation is a state institution whose main function is as a legal former or by the court.

Social justice is another display of justice. Like law, the concept of justice has been put forward by many scholars according to their respective points of view, but the substance is about the correct moral attitude related to the relationship between people in common life in society or state. The concept of justice can be traced from its original understanding in language, because the substance of justice does start from its understanding in language. In the Big Indonesian Dictionary, justice is an adjective that describes a noun or pronoun that has three meanings. First, it is equally heavy; unbiased; impartial. Second, side with the right; hold on to the truth. Third, it should be; is not arbitrary. In English, a word that has the same meaning or at least is close to the word fair is just or justice. Just means fair or morally right. Justice has three of the following five meanings. First, it means behavior or treatment that is fair and morally correct. Second, the system of laws which judges or punishes people. Third, someone who judges in a court of law.[10]

The substance of justice as outlined above must be formulated at three levels. First, at the outcome level. Secondly, at the level of the procedure. Third, at the system level. At the outcome level, justice relates to division and exchange so that justice in this case relates to an object which in practice, among other things, can be objects or services. Meanwhile, procedures relate to the way of determination and systems related to or inter-linking that apply.

In the justice of division and exchange, that is, justice at the first level related to outcomes, at the empirical level there is often unequal in the process. The dividers seen by people are generally clearly higher than the recipients, or the parties in the exchange process are unbalanced due to social, economic, political, or cultural factors. The inequality that occurs in the subject in the process is potentially a factor that can lead to injustice. Therefore, morally normative in justice in the first instance rules the principle of equity in the relationship between the two parties and especially regarding its input. With regard to inputs, equity requires the comparability received by both parties and between one person and another person who is in the same position. In addition, in fairness the exchange of rules must place more emphasis on the principle of no harm no intervention.[11]

In procedural justice, that is, justice at the second level related to the manner of determination, which is related to the process and treatment of the people involved in it, requires the existence of three components. First, the regulatory nature of the applicable procedure is formal. Second, clarity on procedures and decision making. Third, interpersonal treatment. Substantially procedural justice is more determined by the second and third components, because based on these two components procedural justice realizes justice that can be seen by society, which even ultimately makes looking fair more important than being fair.

Whereas in system justice, namely justice at the third level related to the system, which is the pattern on which procedures, distribution and exchange are based on general policies that are realized as a basis for determining procedures and outcomes. Thus, the fairness of this system is also related to structure. Justice related to that structure is really the substance of social justice. Leventhal determines six criteria. First, be consistent with time and people; Second, it is unbiased; Third, it is arranged according to accurate data and information; Fourth, high correctability to errors; Fifth, representative; and Sixth, based on ethical and moral standards.[12]

The big question of social justice is related to the development of a pluralistic modern society, so the question that arises related to it is how a stable and just society whose citizens are free and equal but deeply divided in conflicting and even irreconciled moral doctrines, philosophies, and religions is possible. Or, how can we expect to achieve a national political consensus in a modern pluralistic society.[5]

The answer to that big question has been given, among others, by Rawl and Habermas at its core is social justice. How it was formed, each theorized. Rawl: through a contract procedure based on fairness that unites the principles of independence and equality in a substantive social justice that includes the entire distribution of primary social favors, whether political, economic, or social. Habermas: through inter-subjective practical discourse as a procedure for making decisions in determining what is fair.[13]

In line with Rawl and Habermas, justice or injustice is not something natural (given), but is the result of human actions. Therefore, injustice can be changed. When you want to change, according to Brian Barry, it must be regulated how the distribution of favors and burdens in society is summarized in 3 (three) groups, economic (money), political (power), and social (status).

4.2. Theories About the Relationship Between Law and Justice

The issue of law and justice arises when law becomes a state affair. This happens because the law becomes something deliberately formed by state power, so the law is an artificial artificial substance. That's when there is polarization between the state with its laws and society with its justice. Law itself, justice itself, so the question arises whether the law has replaced justice. Thus, is it still relevant to raise the question of both. Or if it's still relevant to ask questions about the two, what is the hook between the two.

To answer the question as stated, here are theories about law and justice. When, why and how the law becomes a state affair. For example, when man came to a certain stage in his developmental history, the renaissance, man saw himself as "individuals of freedom." At that time, the fundamental question arises, how to establish order and security for himself so that every individual with his freedom can be guaranteed and does not threaten his security. It was then that man found the answer, which was to "surrender the right of liberty to a sovereign power, the state, through a social contract" so that with that power the state made laws that guaranteed its order and security. Law as an answer to man's need as a "free individual" still remains relevant as man enters the next stage in his historical journey, Aufklärung. At that time man saw himself not only as a "free individual", but also as a rational man,

with whose rationality "man knows what is good and what is bad for him", so that the "requirements" for the law to be handed over to the state must: (i) be rational and objective; (ii) reflect the aspirations of the people[14].

Law as a state affair became even stronger when in history man experienced the "industrial revolution" and the scientific world experienced a stage called "positive", which made empirical experience the sole measure of truth. In accordance with that, the law inevitably became the answer to the challenges that grew from its time. In it there is power as a former, namely a state with laws that rule, prohibit, and declare permission, and determine sanctions for violators. Meanwhile, there are also those who obey, and vice versa there are also those who violate and then sanction. By studying such empirical facts, by comparing one with another and then using, among other things, the most prominent, "analytical legal positivism" obtained a general idea of law called legal principles, which in turn formed the juridical system used as positive law. Such is the positive law whose formation is left to the "experts" and the State.

4.3. Law, Justice, Social Justice in the 1945 Constitution

The 1945 Constitution as a written constitution, today, consists of a preamble and articles. The written Constitution or Constitution, especially the preamble, contains historical records of the people's struggle to become a nation that then formed a state, its cosmology that gives direction in the formation of the ideal, function, basis and purpose of statehood.

Thus the constitution is a cultural document of a nation that forms the state. [15] Given such a position, there is an opinion that states, the Preamble to the Constitution of the Republic of Indonesia in 1945 cannot be changed, because change means the dissolution of the formed state and the formation of a new state that is philosophically different from the country that was first formed. In addition, in a legal perspective, the state is a legal system (legal system). In this perspective, as outlined above, the constitution is positioned as the supreme law, which is because of its position the constitution becomes a measure of the validity of the law and the formation of the laws under it within a country, both laws and court decisions.

Based on this description, the main problem is, what is the relationship between law and justice or social justice in Indonesia. To answer this, the 1945 Constitution will be referred to as the written constitution and the highest law in Indonesia in which, as described above, contains historical records of the people's struggle to become a nation that then formed a state, its cosmology that gives direction in the formation of the mind, function, basis and purpose of statehood.

4.4. The Presence of Law and Social Justice in Realizing the Concept of a Welfare State

According to the online Merriam-Webster Dictionary, the word 'welfare' is defined as '*the state of being happy, healthy, or successful*'. In free translation, the word 'welfare' contains several meanings, namely a state of happiness, health, or success. In one of his studies, Andersen revealed that the welfare state is a state institution where the power it has (in terms of economic and political policies) is aimed at ensuring that

every citizen and his family earns a minimum income in accordance with eligibility standards. Provide social services for every problem experienced by citizens (whether due to illness, old age, or unemployment), as well as other conditions such as economic crises. Ensure that every citizen gets his or her rights regardless of differences in status, economic class, and other differences.[16]

The concept of the welfare state is often interpreted differently by different people and states. Referring to Spicker, Midgley, Tracy and Livermore, Thompson, and Suharto, the notion of welfare has at least four meanings; First, as a state of well-being. This definition usually refers to the term social welfare as a condition of meeting material and non-material needs. Midgley, defines social welfare as "...a condition or state of human well-being".[17] Second, as a social service, in the United Kingdom, Australia, and New Zealand, social services generally include five forms, namely social security, health services, education, housing and personal social services. Third, as a social benefit that, especially in the United States, is given to the poor. Since most welfare recipients are poor, disabled, unemployed, this situation then gives negative connotations to the term welfare, such as poverty, laziness, dependence, which is actually more accurately called "social illfare" than "social welfare". Fourth, as a planned process or effort carried out by individuals, social institutions, communities and government agencies to improve the quality of life through the provision of social services and social benefits.

As mandated by the founding fathers of the Unitary State of the Republic of Indonesia as stated in the basis of the Constitution of the Republic of Indonesia in 1945. Indonesia is a welfare state. The formulation of the concept of the welfare state is contained in the Preamble of the 1945 Constitution in the fourth paragraph which reads: "*Then instead of that to form an Indonesian State Government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educate the life of the nation...*" is a manifestation of the intention to form a welfare state. The same formulation is also reflected in Article 27, where every citizen has the right to work and a decent living for humanity, and Article 31 which regulates education services, 33, and 34, where our natural wealth must be used for the greatest prosperity of the people and the poor and abandoned children are cared for by the state. The inclusion of the provisions of the national economic system in the constitution is the laying of the constitutional foundation for national economic policy. The constitution is a policy reference for the government of a welfare law state in taking every economic policy. The constitution must not be violated and defeated in the interests of the economy. While Article 34 emphasizes that state philanthropy must be carried out for those who are unable to work due to poverty, poverty, and neglect. In the 1945 Constitution, which has been amended, the social and economic rights of citizens that must be fulfilled by the state are further expanded, towards extensive positive rights.

In Indonesia, although the concept of a welfare state has been proclaimed since August 18, 1945 in line with the establishment of the 1945 Constitution as the basis for the constitution of the administration of the Indonesian government. The implementation of the welfare state concept was only implemented in 2005 through Presidential Instruction No. 12 of 2005 concerning the Implementation of Direct Cash

Transfers to Poor Households. Where in the Presidential Instruction the government provides assistance in a sum of money to poor families affected by the reduction in fuel subsidies, especially kerosene. Because before the implementation of the kerosene conversion program to Liquefied Petroleum Gas fuel, the lower middle class at that time was very dependent on their needs for kerosene to cook and meet other living needs, so that when fuel prices rose, including kerosene, the lives of the poor in Indonesia were increasingly miserable. And to overcome the adverse effects of the policy, the government of Susilo Bambang Yudoyono and Jusuf Kalla proclaimed the Presidential Instruction.

Free services in the field of education in Indonesia only materialized after the promulgation of Law Number 20 of 2003 concerning the National Education System, which mandates that every citizen aged 7-15 years must attend basic education. In addition, Article 34 paragraph (2) states that the Government and Regional Governments guarantee the implementation of compulsory education at least at the basic education level without charging fees, while in paragraph (3) states that compulsory education is a state responsibility organized by Government educational institutions, Local Government, and communities. The consequence of the mandate of the Law is that the Government and Regional Governments are obliged to provide free education services for all students at the basic education level (elementary and junior high school) and other equivalent education units.

Based on the constitution in Indonesia, the state is a development agent that not only encourages equality of opportunity, but also actively strives to uphold social justice. The state is clearly mandated to put the interests of society above the interests of individuals. By interpreting the economy of the constitution, in the case of Indonesia, the welfare state model based on the 1945 Constitution will consist of four main pillars, namely: First, the universal social security system, as the backbone of the welfare program; Second, development based on the superiority of economic productive resources for the fulfillment of the basic rights of citizens, especially health and education, as a support for the social security system to achieve efficiency and prevent escalation of social security costs, as well as facilitate workers with the skills needed to enter the labor market, job creation at large as a starting point for development, and rearrange the economy in order to redistribute assets and productive tools, with cooperatives as the most dominant form of business entity in the economy; Third, high economic growth, inclusive, equitable, and oriented towards redistribution with growth, as a result of the redistribution of assets and means of production, as well as the control of production together through cooperatives, with strategic sectors that control the livelihoods of many people controlled by the state. Fourth, bureaucratic reform and strengthening fiscal capacity, For the creation of a strong and responsive government as an agent of development and provider of public goods and services at large, as well as the management of natural resources and strategic sectors that control the lives of many people and are important for the state, as a support for the welfare state to uphold social justice. The focus of the study of the discussion of the Indonesian welfare law state is on the first pillar, namely the universal social security system, as the backbone of the welfare program. The government's policy to implement a social security system that applies universally to all Indonesian citizens is a consequence of the second amendment to the 1945 Constitution approved on

August 18, 2000, especially on Human Rights "Everyone has the right to social security...", see Article 28H (3). Also, the fourth amendment approved on August 10, 2002, specifically the revision of the social welfare clause, under which the government is responsible for developing a social security system for all Indonesians. In the view of the People's Consultative Assembly, as an institution authorized to make and amend the constitution, the function of the state to develop social security is not only considered relevant but is actually emphasized in order to realize the ideals of general welfare as referred to in the Preamble to the 1945 Constitution fourth paragraph.

The government remains responsible for the social security of all citizens by administering a social security program managed by a legal entity established by the government under the law. In addition, the principle of subsidies that characterize the Conservative regime is also applied where the government is responsible for citizens who are poor and/or unable to pay compulsory social welfare insurance contributions (Article 10 paragraph (1), paragraph (2) of Law Number 11 of 2009 concerning Social Welfare and Health Insurance (Article 17 paragraph (4), Article 20 paragraph (1), and Article 21 paragraph (1), paragraph (2), paragraph (3) of Law Number 40 of 2004 concerning the National Social Security System and then as an effort to provide free services in the health sector in Indonesia which was only implemented in 2008 through the Public Health Insurance program. Public health insurance is a health service program for Indonesian citizens that provides social protection in the health sector to ensure that the poor and indigent can get free health services, whose contributions are paid by the government so that their basic health needs can be met.

The Constitutional Court's consideration that Indonesia's welfare state understanding is an open understanding is more in line with the historical facts of social welfare policy in Indonesia. The founders did not specify what welfare state model was meant by Pancasila and the 1945 Constitution, even though when the understanding of the Indonesian welfare state was included in the state foundation in 1945 two welfare state models (institutionalist and residualist) and their three variations (Social Democracy, Conservative, and Liberal) had developed. In the course of national life, the state also plays no greater role than civil society (family and society) in advancing general welfare. The state seems to have played a big role through its social programs, direct cash transfers, subsidies, and market operations) when the issue of social inequality is increasingly evident as a result of the economic crisis which causes the number of poor people to increase and also people's purchasing power to meet basic needs to decline sharply. All of these social programs are part of welfare state policy, because welfare state is not only related to the provision of social security, but also policies related to the welfare of citizens aimed at improving the external impact of the market economy through the allocation of social programs in public expenditure/budget.

5. Conclusion

The basis of relations between nations is complemented by the basis of its implementation, civilized, namely relations between cultured nations, which uphold

the values of universal humanism and with respect to their respective national cultures. The final justice in the Preamble to the 1945 Constitution is contained in the fifth state policy with the full formulation, "... and by realizing a social justice for all Indonesian people". With such a formulation, it is reasonable to say, apart from being the basis of the state, social justice is also the goal of the state. With this basis, the administration of the state and law must be based on a combination of political democracy and economic democracy based on one of the cosmologies of the Indonesian nation, collectivism. On this basis, the state is a framework for national cooperation, so the purpose of the state is to realize common welfare.

The 1945 Constitution constitutionally stipulates that Indonesia is a unitary state in the form of a Constitutional Democratic Republic. A unitary state is to have one government and a republic headed by a president or another name similar to it that is democratically elected through a certain mechanism, not headed by a king or another name similar to it elected through a certain mechanism hereditary. A democracy is a state formed and organized by and for the people. A constitutional state or rule of law is a state that, both its organizers and its people, must be subject to legal restrictions or a democratically formed constitution. The article is then elaborated in other articles in the establishment of several state institutions with their respective functions and relationships with each other, including how the recruitment system for filling positions in it, in order to achieve the objectives of the State.

Specifically related to economic democracy, among others, the 1945 Constitution constitutionally stipulates that the state budget as a state financial management is determined annually by law for the greatest prosperity of the people in accordance with Article 23 of the 1945 Constitution. Even in the 1945 Constitution specifically held a special chapter with the title "National Economy and Social Welfare" The articles stipulate constitutionally that the national economy should be structured as a joint enterprise based on the principles of kinship and economic democracy, which determines that the state controls important branches of production and controls the livelihoods of the people and natural resources for the greatest prosperity of the people, maintains the poor, and develops a social security system in order to empower the weak and indigent. Law and social justice are two interrelated concepts in realizing a prosperous state in Indonesia. The law must serve as a tool to uphold social justice for all Indonesians. Therefore, it is necessary to improve the Indonesian legal system oriented towards the welfare of the people, such as harmonization of legal regulations, strengthening law enforcement, increasing public access to the law, and empowering public participation in law formation.

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