

Development of a Legal System to Strengthen the Direction and Structure of Social Welfare Policy

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ABSTRACT

This study discusses how legal frameworks can be developed to strengthen the direction and structure of social welfare policies in a substantial, responsive, and equitable manner. Using a normative juridical literature study approach, the discussion focuses on the study of applicable regulations in Indonesia such as Law Number 11 Year 2009 concerning Social Welfare, Law Number 13 Year 2011 concerning Handling the Poor, and other relevant regulations. The results of the study show that the law has not fully reached the dimensions of the dynamic and complex social needs of society. A number of problems were identified, such as weak synchronization of regulations, limited theoretical basis in norm formation, and lack of participatory and supervisory mechanisms in the implementation of social policies. These findings emphasize the need for structural and substantial legal reform in order to become an effective instrument in guaranteeing society social rights. This study provides a conceptual contribution in formulating the direction of legal development that is inclusive, fair and based on social reality, which is important for policy makers, academics and social advocacy actors.

INTRODUCTION

In the modern state system, the role of legal has expanded beyond the regulatory function. Legal rules are now an important instrument in directing social change and ensuring distributive justice. This change reflects the view that law does not stand outside the dynamics of society, but rather becomes an integral part of the process of social change and renewal. In a welfare state, law is not only seen as a collection of norms, but as a means to address the basic needs of society. The law becomes a tool to fight for the economic, social and cultural rights of citizens, rather than simply guaranteeing civil and political freedoms (Chapman & Russel, 2002). This shifts the legal paradigm from repressive to progressive and oriented towards meeting the basic needs of society. As awareness of the importance of social justice increases, countries that are building inclusive social structures are required to develop legal systems that can support this goal. The development of a legal system that is able to support efforts to improve social welfare is becoming an increasingly important issue, especially in states that are building inclusive and equitable social structures (Yuda, 2017).

In Indonesia, the mandate to realize social welfare is explicitly stated in the Preamble of the 1945 Constitution, specifically in the phrase “promoting general welfare”. This constitutional commitment demands consistent translation in the form of sectoral regulations and concrete public policies. The state has a legal and moral responsibility to implement the principles of social justice through regulations and policies that reach all levels of society, especially those in vulnerable positions. To date, there is a disparity between the ideals of the constitution and the reality of implemented policies. Many social policies have not been supported by a legal framework that is adaptive to the dynamic needs of society (Junaidi & Tatas, 2018).

The administrative approach to social welfare management is still dominant, so that the legal approach is often placed as a complementary aspect, not as the main normative basis. In fact, to create a sustainable welfare system, a legal foundation that is clear, structured, and in favor of social justice is needed. When the legal system functions passively or unresponsively, the risk of social inequality is increasingly difficult to suppress, and can even create new vulnerabilities in society (Muhammad & Husen, 2019).

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Through a juridical normative literature study, it is needed to review the existing regulations, institutional structures, and values that underlie the social welfare legal system in Indonesia. Through this approach, regulations governing social policy can be critically analyzed based on legal principles, constitutional values, and principles of social justice. This study is not only relevant in evaluative terms, but also within the broader framework of legal reform. The effort to re-examine the legal basis will provide a more complete understanding of how the state can be present effectively in ensuring the welfare of society through its legal instruments. Legal reforms that are based on a deep understanding of social needs will create an adaptive legal system that favors vulnerable groups. The results of this study will not only strengthen the legitimacy of welfare policies, but also encourage a more real and responsible presence of the state in efforts to improve the welfare of all Indonesian people.

One of the problems that continues to emerge is the lack of integration between legal norms and basic welfare principles in various sectoral regulations. While there are various regulations governing welfare issues such as education, health, labor, and social protection, many of them are partial and unconnected. Law Number 11 Year 2009 concerning Social Welfare has indeed become the main legal framework, but its implementation is often fragmented and unable to mobilize the social system as a whole. This condition has a direct impact on the fulfillment of the community's right to fair and equitable social services. In the field, the fulfillment of the right to social services has not been based on a well-coordinated legal system. This is especially true for vulnerable groups who need state protection the most.

Problems arise related to the weak actualization of Article 34 paragraphs (1) and (2) of the 1945 Constitution which mandates the state to develop a social security system. While it has been responded to through Law Number 40 Year 2004 concerning the National Social Security System, until now various obstacles in the integration of the implementation of social security programs continue to occur, especially in terms of funding, expansion of participation, and equitable access to services. Social security, which should be a universal and comprehensive right, is still limited in terms of both coverage and effectiveness of services. This shows that the legal framework is not yet strong enough to support the big goal of social justice. Without the strengthening of implementing regulations that are more adaptive, inclusive, and rights-based, the ideal of presenting a comprehensive social security system will only be rhetoric.

Derivative regulations are often technocratic in nature and do not reflect favoritism towards the most need groups in society. Regulations that are supposed to be a means to realize social justice are often structured with a bureaucratic approach, which focuses on program implementation mechanisms and administrative requirements. For example, regulations on social rehabilitation and social assistance still emphasize administrative criteria rather than a human rights approach. When a human rights-based approach is not used as the main framework in drafting regulations, the social welfare system loses its reach and sensitivity to the diversity of social conditions on the ground. As a result, many poor in society and vulnerable groups are not fairly reached by the system that is supposed to ensure their welfare. In fact, the main objective of social welfare regulation should be to ensure that every citizen, without exception, can access the right to social protection.

In a changing social climate, the law has a vital role to play in shaping policy directions that are not only administratively efficient, but also socially just. Law has a normative function that can direct social development to go hand in hand with the principles of justice, equality, and protection of the basic rights of citizens. When legal norms are formulated without considering the dynamics of society, the function of law will lose its transformative power. The involvement of the juridical approach in welfare studies is not just a methodological choice, but a necessity in maintaining the orientation of social justice in national development. This approach allows for a more critical analysis of norms and policies, and promotes sustainable legal reform. By involving a legal perspective in the study and formulation of welfare policies, the state can ensure that every step of development is always in favor of those most in need, as well as guaranteeing the protection and fulfillment of the social rights of all citizens.

When the legal system fails to reflect the needs of society, especially those in marginalized social positions, there will be inequality that is constantly reproduced by policies that appear legal but are unjust. When public policies are formulated based on legal norms that are rigid, elitist, or not rooted in the real conditions of society, legal justice becomes an illusion. Positioning legal as an active element in driving social change will open up opportunities to build a system that is more responsive, contextual, and in favor of the values of substantive justice. Law should be seen not just as a collection of rules, but as a tool to intervene in unequal social structures and promote transformation towards a more just and equal society.

This research aims to analyze how the legal system can be strengthened and reformulated to support the development of social welfare in Indonesia through a normative juridical approach based on literature studies. This study focuses on analyzing the main regulations and their derivatives, assessing the carrying capacity of the legal system towards the principles of social justice, and revealing the relationship between legal norms and the effectiveness of social policies. The research is expected to make a scientific contribution to the renewal of welfare legal discourse and become a conceptual basis for the direction of regulatory reform that is more inclusive and adaptive to social change.

RESEARCH METHOD

This research uses a normative juridical approach that focuses on analyzing applicable legal norms, both in the form of legislation, legal doctrine, and relevant legal principles in the framework of social welfare legal reform. In this approach, the legal system is positioned as an autonomous and structured system of norms, so that the review is carried out on positive legal material and how the material accommodates the principles of social justice. This method allows researchers to trace the rationality of the legal system and its consistency with the constitutional goal of promoting general welfare as stated in the Preamble of the 1945 Constitution. As explained by Mardikaningsih and Darmawan (2013), the normative approach relies on legal logic and is prescriptive, because it not only portrays the applicable legal, but also assesses the suitability between legal norms and idealized values of justice. This makes this approach relevant for formulating legal policy recommendations that are not only formally legal, but also substantively just.

In its implementation, this research also relies on literature studies as the main technique for collecting legal materials, both primary and secondary. Primary legal materials include relevant laws, such as Law Number 11 Year 2009 concerning Social Welfare and Law Number 40 Year 2004 concerning the National Social Security System. While secondary legal materials were obtained from scientific journals, textbooks, and legal literature that discusses the relationship between law and social welfare theoretically and practically. This approach is in accordance with the views of Marzuki (2017), who states that literature study in the normative juridical method determines the quality of legal analysis because it presents a solid theoretical framework and allows critical reading of the norms that apply in complex social realities.

RESULT AND DISCUSSION

In the development of state life, legal functions not only as a regulatory device, but also as an instrument of social change. Within the framework of the functioning of the state as a public servant, the law assumes a strategic role in ensuring the fulfillment of the basic rights of society. When the state is faced with the reality of social inequality and the prevalence of structural injustice, the legal approach can no longer rely on mere formality, but must move towards a system that is able to touch the core needs of society concretely (Muhammad & Husen, 2019).

Social welfare is a pillar that cannot be separated from the existence of the rule of law. Within Indonesia's constitutional structure, the direction of social policy has been established as a non-negotiable priority. The phrase "promoting the general welfare" is not a symbolic slogan, but an affirmation of the state's responsibility to ensure that all society get protection and access to social services fairly. The interpretation of this mandate requires in-depth and systematic elaboration in the form of applicable legal norms (Roza & Parlindungan, 2019).

Legal policy in the field of social welfare often operates within a fragmentary framework. Many regulations are made without a strong theoretical foundation and without sufficient connection to existing social realities. This results in the legal system failing to function as the main driver of social transformation. It is time for a serious review to rebuild the structure of social welfare law with a more unified approach, based on justice values, and sensitive to society dynamics (Bagiastra, 2020).

In the Indonesian legal system, social welfare is not just a normative aspiration, but a binding constitutional mandate. The phrase "promoting the general welfare" in the Preamble of the 1945 Constitution of the Republic of Indonesia confirms that the state has the responsibility to create a just and equitable social order. The implementation of this mandate still faces various challenges, especially in terms of developing substantial, responsive and equitable laws.

Law Number 11 Year 2009 concerning Social Welfare provides a legal framework for the implementation of social welfare in Indonesia. This law affirms that social welfare is the right of all citizens, and the state is obliged to organize services that guarantee basic needs, protection, and empowerment. In practice, there is still a disparity between legal norms and social reality. For example, many welfare programs have not fully reached vulnerable groups, such as persons with disabilities and indigenous peoples. This shows the need for legal development that is more inclusive and adaptive to society's needs.

Integration between various regulations in the development of social welfare law is a crucial aspect that can determine the effectiveness of policies in achieving the goal of society welfare. Law Number 13 Year 2011 concerning the Handling of the Poor and Law Number 40 Year 2004 concerning the National Social Security System must be harmonized to create a strong synergy in handling poverty and social security issues. Without proper integration, the resulting policies can become fragmented, where each regulation runs independently without supporting each other. This can lead to confusion at the implementation level, where people who should benefit from these programs do not get optimal access.

Fragmentation in social welfare policies can lead to uncertainty and inequity in resource distribution. For example, if the poverty management program is not integrated with the social security system, individuals or families who are eligible to receive assistance may not be enrolled in both systems, depriving them of the opportunity to receive the needed support. Without proper coordination between the various responsible agencies, such as the Ministry of Social Affairs and Social Health Insurance Administration Body, it will be difficult to identify and meet the needs of the society in a holistic manner. It is important to create mechanisms that enable information exchange and collaboration between agencies, so that policies can be more comprehensive and responsive to society's needs.

Regulatory harmonization also requires an approach that involves various stakeholders, including the government, civil society, and the private sector. By involving various parties in the policy development and evaluation process, there will be more perspectives considered, so that the resulting policies can be more relevant and effective (Blau & Abramovitz, 2010). Training and capacity building for implementers on the ground is also crucial to ensure that they understand and can properly implement integrated policies. Thus, effective integration between various regulations in the development of social welfare legal will not only improve the efficiency and effectiveness of the program, but will also create a more equitable and inclusive system for the entire society.

Legal development must take into account changing social and economic dynamics. For example, in facing the challenges of the COVID-19 pandemic, flexibility in regulations is needed to ensure that social assistance can be distributed quickly and on target. This shows the importance of legal responsiveness to emergency situations and the urgent needs of the society.

The role of local governments is also crucial in organizing social welfare. Law Number 23 Year 2014 concerning Regional Government gives local governments the authority to organize government affairs, including in the social sector. There are still challenges in coordination between central and regional governments, as well as in institutional capacity at the local level. Legal development should strengthen synergies between different levels of government to ensure the effectiveness of social welfare policies.

Society's participation is also an important element in the development of social welfare legal. Law Number 11 Year 2009 encourages society participation in the administration of social welfare. In practice, this participation is often symbolic and not substantive. A stronger legal mechanism is needed to ensure that the voices of the society, especially vulnerable groups, are truly heard and considered in the policy-making process.

The development of legal principles that take into account the principles of social justice is an important step in creating a legal system that is not only procedurally fair, but also provides fair results for all levels of society. Social justice demands that the legal system not only functions as a tool to enforce rules, but also as an instrument to achieve welfare and justice for the most vulnerable individuals and groups. The legal system must be able to identify and address existing injustices, as well as provide more protection to those who are in a weak position. As such, legal instruments should be designed to create a balance between the interests of individuals and the interests of society as a whole (Craig et al., 2008).

One concrete example of the application of social justice principles in legal development is in the distribution of social assistance. This process should not only be based on rigid administrative criteria, such as economic status or geographical location, but should also consider the needs and vulnerabilities of the individuals or groups receiving assistance. Laws and policies should be designed to be flexible and able to accommodate the real conditions of society. For example, in emergency situations or natural disasters, those most affected should be prioritized in receiving assistance, regardless of administrative criteria that may not reflect their real conditions. This approach requires a deeper understanding of the social and economic context faced by society, as well as the ability to adapt to changing needs (Breton et al., 2003). This requires not only revisions to technical regulations, but also strengthening institutional and apparatus capacity to understand and assess social conditions directly.

To realize social justice in legal development, a more substantive and results-oriented approach is needed. This includes developing policies and regulations that focus not only on the legal enforcement, but also on achieving broader social goals. For example, in formulating laws or public policies, it is important to involve various stakeholders, including civil society, to ensure that their voices and needs are heard. Ongoing evaluation and supervision of legal implementation is also crucial to ensure that the outcomes achieved truly reflect social justice. Thus, the development of social justice-oriented laws will create a more inclusive and equitable society, where every individual has equal opportunities to prosper (Zejnuni, 2014).

The development of social welfare legal should be based on accurate data and evidence. Law Number 25 Year 2004 concerning the National Development Planning System emphasizes the importance of data-based planning. Without valid data, it is difficult to design effective and targeted policies. The legal system must support a strong data collection and analysis system.

In the era of globalization and climate change, the development of social welfare legal must be able to answer increasingly complex and interrelated challenges. One of the main issues that need to be considered is the impact of climate change on vulnerable groups, such as the poor, small farmers, and coastal societies. Climate change can worsen their social and economic conditions, for example through increased frequency of natural disasters, decreased agricultural yields, and loss of livelihoods. In formulating social policies, it is important to consider how climate change can affect social welfare, so that the resulting policies can be more responsive and adaptive to changing conditions.

An interdisciplinary legal approach is very important because the issues faced cannot be separated from various sectors, such as the environment, economy and health. For example, policies relating to social protection must be integrated with environmental policies that aim to mitigate and adapt to climate change. Legal policies that are only based on one field of science will tend to be narrow and less able to capture the root of the problem as a whole. This requires collaboration between various government agencies, non-government organizations and the private sector to create a holistic solution. By involving various disciplines, such as environmental science, economics, and sociology, the development of social welfare legal can be more effective in identifying and addressing the challenges encountered by vulnerable groups.

An interdisciplinary approach also makes it possible to create innovations in policies and programs that can improve people's resilience to climate change impacts. For example, training programs that teach sustainable agriculture techniques or environmentally friendly natural resource management can help vulnerable groups to adapt to climate change while improving their well-being. Thus, the development of social welfare legal that considers cross-cutting issues and applies an interdisciplinary approach will not only provide better protection for vulnerable groups, but will also contribute to the achievement of overall sustainable development goals.

Education and training for legal officers and social welfare providers is also important to ensure effective implementation of the legal requirements. Without an adequate understanding of social welfare principles, it is difficult to apply the law consistently and fairly. Legal development must be accompanied by efforts to improve the capacity of human resources.

Evaluation and supervision of law implementation is also an integral part of social welfare legal development. This mechanism is important to ensure that the legal system does not exist only on paper, but is actually applied in practice. This requires a transparent and accountable supervision and evaluation system.

In the digital era, the use of information technology can improve the effectiveness of social welfare implementation. For example, management information systems can be used to supervise the distribution of social assistance in real-time. The use of technology must also be legally regulated to protect privacy and individual rights.

Finally, the development of social welfare legal must be dynamic and adaptive. Legal processes must be able to respond to social, economic and political changes that occur. This requires a legislative process that is participatory and open to input from various stakeholders.

CONCLUSION

Legal reform in the field of social welfare reflects the urgency of establishing a legal system that is not only legal-formal, but is able to answer social needs substantively. Legal systems cannot stand apart from the reality of society, as they must be instruments to ensure distributive justice, protection of vulnerable groups, and equal access to social services. In normative juridical terms, social welfare law should be grounded in constitutional values, coordinated across sectors, and responsive to evolving social dynamics.

Multidisciplinary approach that combines social theory with legal regulation is very important to strengthen the direction and structure of social policy in a systemic and sustainable manner.

If the legal system fails to develop in accommodating the principles of social justice and the reality of people's lives, then the consequence is not only a failure of policy, but also a neglect of the state's constitutional mandate to ensure public welfare. Weak coordination between regulations, lack of theoretical basis in the formulation of social policies, and limited participatory mechanisms in legal formulation will have a direct impact on hampering efforts to equalize welfare. Social inequality and unequal distribution of resources will continue without structural correction from appropriate and visionary legal instruments.

The government and policy makers need to place the legal framework as a framework that is able to bridge social reality with the principles of substantive justice. Every legislative process in the field of social welfare must be based on a measurable analysis of social needs, involve meaningful public participation, and be built on strong regulatory consistency. The formulation of legal norms must be in line with the evidence-based approach and the actual dynamics of society, so that the legal system does not only become a normative product, but a means of concrete and equitable social transformation.

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