

The Existence of President's Authority and Responsibility in Realizing the Purpose of the State

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Abstract

The government protects the entire Indonesian nation and the entire Indonesian blood, promotes the general prosperity and educate the life of the nation. As a State that intended to promote the general welfare, the attachment of the function of promoting the general welfare in the welfare state raises several consequences to the implementation of government. The research used in this article is a normative research. The results show that the existence of arrangement on the President' authority and responsibility remain regulated and guaranteed by the 1945 Constitution of the Republic of Indonesia. Hence, in realizing the States' goal to prosper the people is depending on the morale and commitment of the President. The President' responsibility in realizing the State' goal in this matter Public Welfare in addition to carrying out what has been regulated by legislation, should formulate a program related to the promises at the time of the campaign as a form of commitment to the people. Based on the findings of this research, the authors suggested that for the next presidential election really pay attention to a candidate not only from physical appearance but need to track record how the commitment to the 1945 Constitution in in Realizing the Purpose of the State.

Keywords: Constitutional Rights, President, Welfare State

1. Introduction

The founding fathers' ideal when declaring the State of Indonesia with a principle as the Welfare state. This spirit as mandated in the Preamble of the Constitution of the Republic of Indonesia determines the goals of the State to protect the entire nation of Indonesia and to promote the common prosperity and social justice. Welfare is regarded as an implied concept of the State's natural goal, regardless of the type and goal of the State.

The concept of welfare state includes not only a description of a way of organizing welfare or social services.¹ It is also a normative concept or an ideal approach system that emphasizes that everyone should obtain social service as their right. Also, the welfare state is the derivative of ideological struggle and theory, especially the *left wing view*, such as Marxism, Socialism and Social Democratic. Nevertheless, and interesting the concept of welfare state actually develop in democratic and capitalist countries, not in socialist countries.

In the current era, the discourse of the welfare State to be a public attention, especially among academics where the concept of welfare State is considered as the right answer to the form of State involvement in this case the government specifically the president in promoting the people' welfare. The powerful opinion states that the Indonesia is designed as a welfare state and it can be seen from the preamble of the 1945 Constitution in paragraph IV which states that "the government protects the entire Indonesian nation and the entire Indonesian blood, promotes the general prosperity and educate the life of the nation."

The wishes and objectives of every president and parliamentarian when campaigning or beginning its administration is to realize the ideals and goals of the State as stated in the preamble of the 1945 Constitution. However, as *adigium* from Lord Acton states that "*absolutely power tends to corrupt but absolute power corrupts absolutely*," the great power will tend to be corrupt in the sense of abuse of power.

In addition, in a State where the peoples have not yet understood the State and rational and impersonal administration, then political and legal institutions tend to coincide with the concept of personal character. Thus, in such circumstances, all political decisions are largely influenced by the personal character and the personality and behavior of the leader who determines the decision.

View this matter if compared to other Asian countries such as South Korea, Taiwan and Singapore and even Malaysia that are so fast or have succeeded in building their welfare State while in terms of independence era, we are older and from the natural resources, we are richer, and our population is the world's largest fourth.

As a State that intended to promote the general welfare, the attachment of the function of promoting the general welfare in the welfare state raises several consequences to the implementation of government, namely the government must play an active role in interfacing the field of socio-economic life of the community. For that to the government delegated responsibility *bestuurszorg* or *public service*.² In conduct the governmental, the Government has been equipped with both attributive and delegative authorities.

In this context, the President of Indonesia, in performing the duties and responsibilities is very transparent

¹ Muryanto Amin, *Konsep Negara Kesejahteraan dari Waktu ke Waktu*, Jurnal Politica Vol.3 No.2 July 2011, 216-245

² SF. Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Yogyakarta: FH UII Press, 2011, pages. 137-138

and there is control among State's institutions. As described above, it can be understood that although the authority to the president has given great hope for every people of Indonesia to be able to realize the State's goal, but still many problems that require further assessment, so that any problems that arise can be overcome well. Achieving efforts to realize the goals of the State has not been maximal so that the people's welfare is still difficult to be realized.

2. Method of the Research

The research used in this article is a normative research. The type of normative juridical is conducted qualitatively by relying on library research. The method used in analyzing the data that is the secondary and it is analyzed qualitatively by describing descriptively the results of the relevant and appropriate data in this article.

3. Legal Policy of President in Realizing the Public Welfare

Since the independence of Indonesia on 17 August 1945 till now, there have been up and downstream in terms of the President's power. Indonesia has had a welfare state since the establishment of the 1945 Constitution as the nations' constitution. The 1945 Constitution, which was drafted on the basis of the spirit and awareness to build a model of the State of social-democracy, which combines principles in socialism and democracy at the same time, aims to create a socially equitable, welfare and prosperous society together. Thus, it implicitly outlines the responsibility and role of the State in the fulfillment of justice and social welfare, as in the concept of the welfare state.¹

Welfare state is a system that gives greater role to the State (government) in the development of social welfare is planned, institutionalized and sustainable. It believes that the State has an obligation to provide its citizens with a decent standard of living. Because each country has different standards, that connected directly to the State's capability.

The important value of the welfare state to minimizes the gap between rich and poor by distributing money from the "rich" to the "poor". The distribution of profits regulated by this State is one way to do it by placing the workers and employers in a balanced, equitable and equal way. Legally, Indonesia can be called a welfare state. This is included in the 1945 Constitution, Act No. 40 of 2004 on National Social Guarantee System, Act No. 11 of 2011 on Social Welfare, Act No. 13 of 2011 on the Poor's Overcoming, Act No. 24 of 2011 on the Social Guarantee Administering Body.

In the welfare state, solutions to social welfare problems, such as poverty, unemployment, inequality and neglect are not done through short-term partial social projects. Instead it is managed in an integrated manner by social guarantee programs, such as social services, social rehabilitation, as well as various educational, health, old age, and unemployment benefits. Actually, the concept of the welfare state is embodied in the fifth precept of Pancasila as well as the 1945 Constitution and Article 34 which points "the poor and abandoned children are maintained by the State." But in reality, the concept of such State has not been fully applied in Indonesia.

If reflects in Pancasila and the Constitution of the Republic of Indonesia, it is proper that Indonesia implements the welfare state, especially in the era of local autonomy like this time. Each region has the authority to manage the existing natural resources and government, which is certainly a strategic means to better prospering the people in the area. But it again requires a shared commitment and a common point of view to achieve prosperity. In addition, there are still many obstacles that exist is also something that must be addressed first.

The common obstacles in Indonesia and as the supporting factors in realizing the welfare state in Indonesia includes; still confuses the existing data, such as population data, income, poor peoples, disabled, and displaced people, as a basis for providing social guarantee as well as unrealized tax system in Indonesia. It is feared arise a point of view in society that without work the State will provide many things for its citizens. In addition, a very disturbing for the realization of welfare state in Indonesia is still high levels of corruption in various government agencies, from billions to trillions. Funds that should be utilized for the benefit of society are misused to enrich themselves.

It is undeniable that the realization of welfare state in Indonesia is not as easy as "making fried banana," similar a point of view, shared commitment from stakeholders, society, and related elements are needed. In addition, it must firmly combat the rampant corruption in Indonesia.²

If the prison does not create a deterrent effect on the corruptor, the penalty of moral sanction may be the solution of a corrupt person being punished to return all corrupt money and interest thereafter. Because indirectly and without the corruptor realize, that given additional punishment such as social work by sweeping in the

¹ Wolfgang Friedman, "Law in a Changing Society", Compared to Karl R. Popper, 2002, *Masyarakat Terbuka dan Musuh-musuhnya*. Pustaka Pelajar, Jakarta, pages 23-25.

² B. Arief Sidharta, "Kajian Kefilsafatan tentang Negara Hukum", *Jentera (Jurnal Hukum)*, "Rule of Law", Pusat Studi Hukum dan Kebijakan (PSHK), Jakarta, third edition Year II, November 2004

protocol streets in their residence. This may further bring the deterrent effect because everyone sees it and includes all their family. Their actions can also kill slowly of marginal people who desperately need the flow of funds from what they have corrupted.

But behind all that, we should be grateful, that the system of democratic governance slowly began to institutionalized, political institutionalization and government institutions that characterize modern democracy and continue to proceed to consolidation. Hopefully in the future, our leaders will be more able to introspect themselves and improve themselves to be able to carry out their obligations seriously to the Indonesia' people, and realize that their duties today is an absolute mandate to be accounted for one day, where there is no bargaining in it and no word "while an opportunity" to be able to defend themselves, and hide behind the "tie suit."

4. Implementation of Peoples' Welfare Program

Viewed from the principle of democracy when it is proclaimed this country, it states that "Independence on behalf of the Indonesian Nation," therefore the Unitary State of the Republic of Indonesia is a constitutional Democratic state, so any policy on this government should be based on the voice of the people as framed in a regulation. This can be seen in article 1 paragraph (2) of the 1945 Constitution which points: "Sovereignty in the hands of the people and implemented according to the Constitution."

If we analyze the content of the preamble of the 1945 Constitution, especially the goal of the Indonesian State, in essence it can be formulated as "promoting the general welfare and educate the life of the nation based on the principle of social justice for all Indonesian people." The goal contained in the preamble and then in the body of the 1945 Constitution set forth in various provisions concerning the people's welfare.

The latest data from the Central Bureau of Statistics shows that Indonesia' economic growth in 2014 is the lowest level over the last five years. As the data, in 2014 economic growth is about 5.01 percent (on a comparison basis in 2010). Though the government targeting growth 5.5 percent.

The administration of President Jokowi hopes that this situation could be better again by 2015, after several steps are taken to re-growth the economy. Some government measures, such as cut fuel subsidy, Jokowi has implemented some very important sensitive steps. He cut fuel subsidies by more than 30 percent and hopes to save the State budget up to Rp. 100 trillion and cut the budget of government travel and meetings by 30 percent, and save about Rp.16 trillion. But Indonesia still has to do fundamental reform. And one major problem is corruption that has spread to almost all state institutions.

President Joko Widodo and Vice-President Jusuf Kalla,¹ in realizing the campaign promises is *Nawa Cita* is a common term that is absorbed from Sanskrit, *nawa* (nine) and *cita* (hope, agenda, desire). In the context of Indonesian politics prior to the 2014 Presidential Election, this term refers to the vision and mission used by the presidential candidate and vice-presidential candidate Joko Widodo/Jusuf Kalla containing the candidates' agenda. In the vision-mission is presented nine main agenda to continue the spirit of struggle and ideals Sukarno known as *Trisakti*, to sovereign politically, independently in the economy, and personality in culture.

An agenda in "*Nawa Cita*" which is the most discussed and even debated by public is point number 8 that is revolution of nation character or commonly called mental revolution. Warm discussion about mental revolution took place since the campaign period 2014 Presidential Election, even had a trending topic on social networking. In a paper in the national daily, Jokowi explains that the meaning of the mental revolution as he initiates is promoting the development of character to reinforce the personality and become the nation in accordance with the mandate of Soekarno's *Trisakti*. To achieve these goals, according to Jokowi, the education system should be directed to help build the identity of a cultured and civilized Indonesian nation, which upholds the moral values of the living religion of Indonesia. Access to programmed and targeted education and community health education by the State can help build social personality and Indonesia cultural.

After elected as President, Jokowi implements *Nawa Cita* into his government programs through a cabinet called the Working Cabinet. The composition and structure of the Working Cabinet are designed to accommodate the agenda contained in *Nawa Cita*. Here's the essence of the nine programs:

1. Re-bringing the country to protect the entire nation and providing security to all citizens, through active-free foreign policy, reliable national security and the integrated defense of *Tri Matra* State based on national interests and strengthening identity as a maritime country.
2. Make governments not absent by building clean, effective, democratic, and reliable governance by giving priority to restoring public confidence in democratic institutions by continuing to consolidate democracy through party system reform, elections and representative institutions.
3. Building Indonesia from the periphery by strengthening the regions and villages within the framework of the unitary State.

¹ Ateng Syafrudin, (2000). *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab*, Jurnal Pro Justisia Edisi IV, (Bandung, Universitas Parahyangan).

4. Refuse weak countries by conducting system reform and law enforcement that is free of corruption, dignity and trust.
5. Improving the quality of Indonesian' human life by improving the quality of education and training with the "Smart Indonesia," program as well as improving people's welfare with the "Working Indonesia" and "Prosperous" by encouraging land reform and a 9-hectare land tenure program, the Row Village (*Kampung Deret*) or subsidized low-cost housing and social security for the people in 2019.
6. Increasing the productivity and competitiveness of the peoples in international markets so that the nation of Indonesia can advance and rise with other Asian nations.
7. Realizing economic independence by mobilizing the strategic sectors of the domestic economy.
8. Revolutionize the nations' character through the policy of rearranging the national education curriculum by prioritizing the aspect of civic education, which puts proportional aspects of education, such as teaching the history of nation-building, patriotic values and love of the country, the spirit of State defense and manners in the curriculum education of Indonesia.
9. Strengthening diversity and Indonesia social restoration through a policy of strengthening diversity education and creating dialogue spaces between citizens.

5. The President Liability of in Realizing State' Goals

In the course of a nation, something that becomes a common goal is the realization of the development of the nation towards real progress. Of course, it is not just a wish that is limited to wishful thinking, the need for an effort order to bring and as a guide in running a mobility of a nation, in order to always appropriate as expected and have a strong basis to prevent all the possibilities that occur.

In the government, the Government has been equipped with both attributive and delegative authorities. By the development of peoples, there are often certain urgent circumstances which make Government Administration Officials cannot use their authority, especially *gebonden bevoegheid* authority, to take legal action and factual action normally.

As a State which aims to promote the general welfare, the attachment of the function of promoting the general welfare in the *welfare state* raises several consequences on the administration that government must play an active role in interfacing the field of social economic life of the peoples. For that to the government delegated *bestuurszorg* responsibility or public service.¹ Overtime, the development of era is not unstoppable. To follow these developments must have the power to be equal to the flow of development as well as to have a solid strength as a defense of sovereignty. The description is illustrated that a country requires the existence of a deep procedural thinking to achieve prosperity of the nation. And it is realized in the Politics and National Strategy.

Politics and National Strategy is a procedure of implementing national policy,² which is of course organized by the state government to dictate or as a guide in carrying out the policy of a country, and in this case concerning the guidance of national development and the defense of national unity.

Since the establishment of the State of the Republic of Indonesia, there have been seven President who governing in the history of politics in Indonesia especially at the time of the presidential change. Four of the seven Presidents who had been govern in Indonesia ended in an unusual way. The unusual factors of the transition process of power and unclear political responsibility of the president in Indonesia due to weakness in the constitution prevailing at that time. The 1945 Constitution is unable to construct a *balance of power* relationship between the president and other state high institutions. Although in the presidential government system is not known for the accountability of the House of Representatives and is only known in the Parliamentary system, but our country is a Pancasila democracy. In Pancasila, there are familial and mutual principles.

According to the author, this principle is one that animates our constitutional system so that the task of legislation is done by both institutions namely the House of Representatives and the President. In carrying out the duties and authority of the president in realizing the State's goals should be running the Poltrans and the National Long-Term Development Plan 2005-2025. The President makes a program or separate reference to realize his campaign promises because it is a political contract that has been made with constituents or people in general that turns into political and policy responsibilities that will affect the electability of president for the next period.

In the conception of the constitutional State, every act of that law must be in accordance with applicable law (*rechtmatigheid*). Also, the constitutional State requires that when legal acts are distorted and cause harm to other parties or violate the rights of other legal subjects, it is necessary to be resolved through the judiciary.³ To

¹ J.G. Brouwer dan Schilder, *A Survey of Dutch Administrative Law*, (Nijmegen: Ars Aequilibris, 1998)

² Amin, Ititahad Zainul. 1998. *Pendidikan kewiraan*. Jakarta: Universitas Terbuka. Pages 6-8.

³ Ridwan HR, *Peradilan Tata Usaha Negara: Wujud "Keberhasilan" Politik Hukum Pemerintahan Orde Baru*, (Paper). Graduate School - Fakultas Hukum UII, 2011, page. 5

find out who is responsible when there is a legal act that deviates and causes losses to other parties or violates the rights of other legal subjects (the community) by the organizer of the duties of government and service, it should first be mentioned about the governmental position which is attached to the function and authority government.

Logeman says that the State and the official organization “*de staat is ambtenorganisatie*.”¹ In a State, there is a government official, a employment environment which is attached with the authority to administer government affairs, namely all State duties unless the field of making law and justice, “*elke werkzaamheid van de overhead, welke niet als wetgeving of als rechtspraak is aan te merken*.”²

Every use of authority by officials is always accompanied by responsibility, in accordance with the principle of “*deen bevoegdheid zonder verantwoordelijkheid*” (no authority without responsibility). Because the authority is attached to the position/officials, but in its implementation, is run by human as the representative or functionary of position, then who should bear the legal responsibility when the deviation should be seen casuistically because the responsibility can be in the form of position’ responsibility and can also be a personal responsibility.

6. Conclusion

The existence of arrangement on the President’ authority and responsibility remain regulated and guaranteed by the 1945 Constitution of the Republic of Indonesia. Although, there have been four amendments but its substance is remains. Hence, in realizing the States’ goal to prosper the people is depending on the morale and commitment of the President. The President’ responsibility in realizing the State’ goal in this matter Public Welfare in addition to carrying out what has been regulated by legislation, should formulate a program related to the promises at the time of the campaign as a form of commitment to the people.

In running the government program from the old order to the reform order, experiencing many obstacles such as the political situation (the pull of interest in the Council when discuss the draft of law, the demand for party in the cabinet), the world economy and the main one is corruption in every line of the State. Based on the findings of this research, the authors suggested that for the next presidential election really pay attention to a candidate not only from his/her physical appearance but need to track record how the commitment to the Pancasila as the State’ fundamental, the Preamble of the 1945 Constitution in order to realize ideals and State’ goals to prosper the peoples.

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¹ Logemann, 1854:88

² C.J.N.Versteden as cited in Julista. Mustamu, *Diskresi dan Tanggung Jawab Administrasi Pemerintahan*, Jurnal Sasi Vol. 17 No. 2 Bulan April-Juni 2011, page. 6