

The Construction of the Welfare State in Human Rights in Law Number 36 of 2009 concerning Health

Daisahbeny Daisahbeny

Tegal City Government Health Workers, Tegal, Indonesia

Abstract

In the Preamble of the 1945 Constitution of the Republic of Indonesia (UD 1945), it mandates that one of the objectives of establishing the Republic of Indonesia is to promote the general welfare and to educate the nation. This mandate implies an obligation to fulfill the needs of all citizens through a governance system that supports the creation of high-quality public services in order to meet the basic needs and civil rights of every citizen for public goods, public services, and administrative services. This is in line with the concept of a welfare state, which is the idea that the state is responsible for its citizens, ensuring their well-being through services, assistance, protection, and the prevention of social problems. Indonesia is one of the countries that adheres to this system by adopting a minimal welfare state model. One of the rights that the state must fulfill for its citizens is the right to access healthcare facilities, as outlined in Law Number 36 of 2009

concerning Health, which includes the obligation of every individual to respect the rights of others in their efforts to obtain a healthy environment, both physically, biologically, and socially. Every person is obligated to lead a healthy life to achieve, maintain, and improve their health to the highest possible level.

Keywords

Human Rights, Health Law, Welfare State

I. Introduction

As mandated by the founding fathers of the Unitary State of the Republic of Indonesia, which is enshrined in the foundational Constitution, the 1945 Constitution of the Republic of Indonesia. Indonesia is a welfare state. The concept of the welfare state is formulated in the preamble of the 1945 Constitution, in the fourth paragraph, which states:

"Then, therefore, to form a government of the State of Indonesia that protects all the people of Indonesia and the entire homeland of Indonesia and to promote the general welfare, to educate the life of the nation..."

When looking at the fourth paragraph of the preamble to the 1945 Constitution, it is mandated that one of the state's objectives is to promote the general welfare.(Nuriyanto, 2016) The state's objective outlined in the fourth paragraph of the 1945 Constitution's preamble is evidence that the Republic of Indonesia is a country that adheres to the concept of a Welfare State. To establish a Welfare State in Indonesia, the state is obliged to

develop a social security system for the well-being of the entire population.(Mardiansyah, 2018)

In the view of H. Cheyne, O'Brien, and Belgrave, social security is, fundamentally, the implementation of the social function of the state. The state's obligation to provide social security to the public is based on two principles: First, as a system of state financial support that is paid to those persons who are not adequately provided for by the market. Second, as a system of state financial support paid to those persons who are unable to secure adequate support. The state's obligation to create well-being is emphasized in one of the aspirations of the Indonesian nation, which is outlined in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia, which states, "*to form a government of the State of Indonesia that protects all the people of Indonesia and the entire homeland of Indonesia and to promote the general welfare.*" This is a reflection of the fifth principle of Pancasila, which states, "*Social justice for all the people of Indonesia.*"

This is a manifestation of the intention to establish a welfare state. The same principles are also reflected in Article 27, where every citizen has the right to work and a decent standard of living for the sake of humanity. Article 31 regulates education services, while Articles 33 and 34 state that our natural resources must be used for the greatest prosperity of the people and that the poor and neglected children should be cared for by the state. In addition, Article 28H(1) of the 1945 Constitution states that every person has the right to live in physical and spiritual well-being, to reside, and to have a good and healthy environment, and the right to obtain health services.

The right to health (right to health) is a human right, and therefore, the state is obligated to ensure its fulfillment. Free healthcare services in Indonesia were only implemented in 2008 through the Social Health Insurance Program (Jamkesmas). Jamkesmas is a healthcare program for Indonesian citizens that provides social health protection to ensure that the poor and less fortunate can access free healthcare services, with the costs covered by the government to meet their basic health needs adequately. Additionally, there are many government programs at both the central and regional levels that reflect the welfare state concept.

Therefore, the provision of professional and high-quality public services is a key instrument in realizing the welfare of society within the concept of a "welfare state," as envisioned in the Indonesian constitution (UUD 1945). In this regard, the development of social security in Indonesia began with the establishment of Law Number 40 of 2004 concerning the National Social Security System (SJSN). The state's efforts to develop social security didn't stop at the creation of the SJSN Law. In 2011, the state enacted Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS), aimed at implementing the social security system already developed by the state. The administration of the social security system is carried out by a legal entity called the Social Security Administering Body (BPJS). (Pamungkas & Hariri, 2022)

The establishment of BPJS is the government's way of implementing the national social security system outlined in Law Number 40 of 2004 regarding the National Social Security System to provide legal certainty for the implementation of social security programs throughout Indonesia. (Supriono, 2015)

Based on the above, the author has formulated research questions, including: What is the Welfare State concept in the Indonesian healthcare system? And, what is the Ideal Construction of the Welfare State in the context of Human Rights in Law Number 36 of 2009 on Health?

II. Method

In this research the author uses a qualitative approach to obtain facts related to concept healthcare based on welfare state in Indonesia.(Irwansyah, 2020; Marzuki, 2013) Then, the type of research used This research is included in empirical juridical research because it wants to find out how the Ideal Construction of the Welfare State in the context of Human Rights in Law Number 36 of 2009 on Health.(Sitompul, 2016)

III. Welfare State in the State Foundation

In the concept of a welfare state, the role of the state is predominant in all aspects of people's lives to achieve social welfare. The focus of welfare state policies includes social security, healthcare, education, and housing. A welfare state aims to provide social services to its entire population as well as possible. In the welfare state concept, the state offers assistance or guarantees to achieve prosperity and well-being. It is also said that the concept of a welfare state means that the state and its apparatus serve the interests, prosperity, and well-being of society, including providing social security.(Ayu et al., 2016)

The concept of a welfare state is an idea where a state uses a democratic governance system that is responsible for the well-being of its people. This program aims to alleviate the suffering of the population, such as poverty, unemployment, health issues, and so on. Therefore, a state that adopts the concept of a welfare state has public policies that are service-oriented, supportive, protective, or preventive in addressing social issues.(Lianos, 2020)

Indonesia is one of the countries that adheres to the concept of a material welfare state and implicitly appears in the general explanation of the 1945 Constitution. Upon closer examination of the entire content of the 1945 Constitution, it can be concluded that Indonesia is a material rule of law state or a welfare state concept, where the state has an absolute responsibility to promote the common welfare and achieve social justice for all its citizens.(Huda, 2009)

In the world, there are several models of a welfare state that align with the ideologies of each country. These models include:

1. Institutional Model (Universal) This model, often referred to as the Universal or Scandinavian Welfare State, is influenced by liberal ideologies. It views welfare as a right for all citizens, and services are provided universally without regard to social or economic status. This model is adopted by countries such as Sweden, Finland, Norway, and Denmark.
2. Corporatist Model (Bismarck) Similar to the Institutional/Universal model, the social security system in the Corporatist model is structured institutionally and covers a wide range of services. What distinguishes it is the contribution to social security, which comes from three

parties: the government, businesses, and workers. Social security services are provided by the state and are given to those who work or can contribute through insurance schemes. This concept is adopted by countries like Germany and Austria.

3. **Residual Model** The Residual model provides selective services and is influenced by conservative ideologies, driven by neoliberal and free-market principles. The state offers social services, particularly basic needs, primarily to disadvantaged groups, including the poor, unemployed, disabled individuals, and non-wealthy elderly people. This model is similar to the Institutional/Universal model, which offers social services based on citizens' rights and has broad coverage. However, in countries like the UK, the number of beneficiaries and services is relatively small and short-term compared to the Institutional/Universal model. Social protection and services are temporary and are provided strictly and efficiently, often for a short duration. When deemed sufficient, these services are terminated. This model is adopted by Anglo-Saxon countries, including the UK, the United States, Australia, and New Zealand.
4. **Minimal Model** The Minimal model is characterized by very low government expenditures on social development. Social security and welfare programs are provided sporadically, partially, and minimally. They are generally given to civil servants, military personnel, and private-sector employees who can afford to pay premiums. Typically, this model allocates very limited budgets to

social spending because the state is often considered poor or lacks the political will for social development. Consequently, social services are provided sporadically, temporarily, and minimally. This model is adopted by countries in Latin America, such as Brazil, Italy, Spain, and Chile, as well as some Asian countries like Sri Lanka, the Philippines, South Korea, and Indonesia.

Indonesia falls into the Minimal Model category, as evidenced by its legal foundation, the 1945 Constitution, and the 2004 Law on the National Social Security System. Additionally, government spending on social development is relatively low.(Nurhayanto, 2014)

IV. Law Number 36 of 2009 concerning Health in upholding the ideals of the welfare state

As the highest authority, the State is responsible for regulating all efforts to improve the health of the population. This is why the State has enacted the Republic of Indonesia Law Number 36 of 2009 concerning Health, which governs the health sector in Indonesia. Hereafter, the Republic of Indonesia Law Number 36 of 2009 concerning Health will be referred to as the Health Law.(Agustina, 2016)

In any administration and government operation, legitimacy is essential, meaning that authority is granted by laws. This normatively implies that all government actions must be based on legal regulations or within the scope of their authority. Government authority serves as a means of control by the people

over the government's actions. This authority is attributive and is derived from legal regulations. In other words, government agencies gain their authority directly from the specific articles within legal regulations. Every delegation of authority to specific government officials inherently carries the accountability of those officials.(Triwibowo & Bahagijo, 2006)

There are several legal protection methods, including the following:

1. Creating regulations (by giving regulation), which aim to: a. Establish rights and obligations. b. Ensure the rights of legal subjects.
2. Enforcing regulations (by law enforcement) through: a. Administrative law, which serves to prevent violations of consumer rights through licensing and supervision. b. Criminal law, which aims to address violations of legal regulations by imposing legal sanctions and penalties. c. Civil law, which aims to restore rights through compensation or restitution.

V. The Right to Health as a Human Rights

The right to health is a fundamental human right and, as such, it is the obligation of the State to ensure its realization. In various international conventions and legal documents, provisions regarding the right to health are established as one of the basic rights held by every individual.(Hunt & Backman, 2008) Provisions related to the right to health as a fundamental right possessed by every individual can be found in the preamble of the World Health Organization (WHO) Constitution, which states: "The enjoyment of the highest attainable standard of health is one

of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social conditions." Therefore, the right to health, as one of the fundamental rights held by every individual, must be respected and fulfilled by the State without discrimination based on race, religion, political beliefs, economic or social conditions (Darmawan, 2020).

Based on this, the right to health is recognized as a "fundamental right" by the international community since the adoption of the WHO Constitution in 1946. This recognition was further emphasized in the general comments of the Committee on Economic, Social, and Cultural Rights on the right to health, which states: "Health is a fundamental human right indispensable for the exercise of other human rights." According to the general comments of the Committee on Economic, Social, and Cultural Rights, health is placed as a fundamental and invaluable human right for the realization of other human rights.

Therefore, it is only fitting that the right to health is respected and implemented by the State as one of the fundamental rights. The State's duty to provide protection for the right to health held by all citizens is in line with what is stated by the WHO, which is that the State, in this case, the government, has a responsibility for the health of its citizens.

In Indonesia, the concept of human rights began to develop during the reform era, and the discourse for change or amendment to the 1945 Constitution was realized through several stages of change. Likewise, the concept of human rights within the 1945 Constitution evolved through various stages of change or amendments. The introduction of the human rights concept into the 1945 Constitution began with the second amendment to the

Constitution in 2000, where in Chapter XA of the Constitution, provisions regarding human rights were included. Most of these new provisions are based on the rights enshrined in international human rights treaties. These rights include civil and political rights (Article 28A), equality before the law (Article 28D), the right to a healthy environment and access to health services (Article 28H, paragraph (1)), and the right to social security (Article 28H, paragraph (3)). Challenges in Realizing the Right to Health:

1. **Economic Factors:** Poverty has a significant impact on the inability to access healthcare, leading to the violation of the right to health. In the economic sphere, a substantial portion of the population faces challenges in finding job opportunities and starting businesses. Additionally, there are limited economic resources such as technology, market information, credit, and working capital available to them.
2. **Poverty Factors:** Low levels of knowledge and education within the population have implications for the lack of awareness about health-related rights. Some individuals do not have adequate information about their own rights, including the right to health. Factors such as high school dropout rates, discrimination, low rates of higher education graduates, and high illiteracy rates need to be addressed. Education is a fundamental human right, and any factors, be they cultural (patriarchy) or others, that hinder the realization of the right to education must be eliminated.

These challenges highlight the economic and educational disparities within the population, which, in turn, affect their access to healthcare and their understanding of their health-related rights. To ensure the right to health is upheld, efforts should be

made to address economic inequality and improve educational opportunities and awareness among the population.

The relationship between the Welfare State and the right to health is of utmost importance. The ideal construction of the Welfare State in human rights within Law Number 36 of 2009 concerning Health is closely intertwined. The Welfare State aims to alleviate the suffering of the people, including issues related to poverty, health, unemployment, and more. Therefore, public policies of the state are oriented toward service, protection, assistance, and prevention of social problems. Additionally, a Welfare State necessitates stability in governance across all sectors of society.

In the context of Health Protection in Indonesia, Law Number 36 of 2009 concerning Health, also known as UU Kesehatan, underlines that health is a fundamental human right and a component of well-being that must be realized in line with the ideals of the Indonesian nation as enshrined in the Pancasila and the 1945 Constitution. It is established that every effort to maintain and improve the health of the population, to the highest degree, should be based on non-discrimination, participation, and sustainability principles. These efforts contribute to the development of human resources in Indonesia and enhance the resilience and competitiveness of the nation for national development.

The law emphasizes that any factor causing disruptions to the health of the Indonesian population results in significant economic losses for the country. Therefore, every effort to improve the health of the population is considered an investment in the development of the nation. Furthermore, it is stated that all development efforts should be underpinned by a health

perspective, implying that national development must consider the health of the people and should be a shared responsibility between the government and the community.

In conclusion, the Welfare State and the promotion of the right to health are closely aligned with the vision and mission of upholding human rights in the field of healthcare in Indonesia. Both concepts aim to reduce suffering and promote the well-being of the people by ensuring access to essential healthcare services and addressing the underlying social determinants of health.

VI. Conclusion

Indonesia, as a developing country with a minimalistic welfare state model, still provides very limited allowances to its citizens. The role of the state within the perspective of the welfare state model is significant. The state's efforts to establish a welfare state primarily involve the formulation of social policies. In this context, social policies signify the state's obligation to fulfill the basic needs of its citizens. One of the ways the state fulfills its responsibility regarding the right to health, as stipulated in Law No. 36 of 2009, is through social services and the implementation of insurance programs that focus on healthcare.

The right to health, recognized as a fundamental right for every individual, is explicitly stated in the 1945 Constitution. It affirms that every person has the right to receive healthcare services, and the state is responsible for providing healthcare facilities. In essence, the principles of the welfare state align with the vision and mission of upholding human rights in the field of healthcare in Indonesia.

The objective of both concepts is to minimize the suffering and enhance the well-being of the population by ensuring access to essential healthcare services and addressing the underlying social determinants of health. This underscores the importance of the state's role in social welfare, particularly in promoting and safeguarding the right to health as a fundamental human right.

VII. References

- Agustina, B. (2016). Kewenangan Pemerintah Dalam Perlindungan Hukum Pelayanan Kesehatan Tradisional Ditinjau Dari Undang-Undang Republik Indonesia Nomor 36 Tahun 2009 Tentang Kesehatan. *Jurnal Wawasan Yuridika*, 32(1). <https://doi.org/10.25072/jwy.v32i1.91>
- Ayu, G., Damayanti, R., Freies Ermessen«, M. H., & Dosen, M. H. (2016). Freies Ermessen dalam Konsep Negara Kesejahteraan. *Jurnal Advokasi*, 6(1).
- Darmawan, A. (2020). Politik Hukum Omnibus Law Dalam Konteks Pembangunan Ekonomi Indonesia. *Indonesian Journal of Law and Policy Studies*, 1(1). <https://doi.org/10.31000/ijlp.v1i1.2655>
- Huda, M. (2009). Pekerjaan Sosial & Kesejahteraan Sosial: Sebuah Pengantar. In *Pustaka Pelajar* (Vol. 1, Issue 1).
- Hunt, P., & Backman, G. (2008). Health systems and the right to the highest attainable standard of health. *Health and Human Rights*, 10(1). <https://doi.org/10.2307/20460089>
- Irwansyah, I. (2020). Penelitian Hukum: Pilihan Metode \& Praktik Penulisan Artikel. *Yogyakarta: Mirra Buana Media*.
- Lianos, I. (2020). Competition Law as a Form of Social Regulation. *Antitrust Bulletin*, 65(1). <https://doi.org/10.1177/0003603X19898626>
- Mardiansyah, R. (2018). Dinamika Politik Hukum Dalam

- Pemenuhan Hak Atas Kesehatan Di Indonesia. *Veritas et Justitia*, 4(1). <https://doi.org/10.25123/vej.2918>
- Marzuki, P. M. (2013). *Penelitian Hukum*. Kencana Preneda Media Group.
- Nurhayanto. (2014). Penyelenggaraan Pelayanan Publik Di Indonesia , Sudahkah Berlandaskan Konsep “ Welfare State ”? *Jurnal Konstitusi*, 11(3).
- Nuriyanto, N. (2016). Penyelenggaraan Pelayanan Publik Di Indonesia, Sudahkah Berlandaskan Konsep “Welfare State”? *Jurnal Konstitusi*, 11(3). <https://doi.org/10.31078/jk1132>
- Pamungkas, T. J., & Hariri, A. (2022). Tanggung Jawab Negara dalam Pemenuhan Jaminan Sosial Persepektif Welfare State. *Media of Law and Sharia*, 3(4). <https://doi.org/10.18196/mls.v3i4.15198>
- Sitompul, M. S. (2016). Harmonisasi Pengaturan Tentang Kewenangan Dalam Penerbitan Surat Persetujuan Berlayar (SPB) Kapal Ikan di Pelabuhan Belawan Ditinjau Dari Undang-Undang Nomor 17 Tahun 2008 Tentang Pelayaran dan Undang-Undang Nomor 45 Tahun 2009 Tentang Perikanan. *Mercatoria*, 9(2), 136–153.
- Supriono, F. (2015). Implementasi Undang-Undang Yayasan dalam Mencapai Maksud dan Tujuan Yayasan. *Jurnal Ilmu Hukum Legal Opinion*, 3(Edisi 1, Volume 3, Tahun 2015), 104.
- Triwibowo, D., & Bahagijo, S. (2006). Mimpi Negara Kesejahteraan. In *Perkumpulan PRAKARSA*.

Acknowledgment

None

Funding Information

This research funded by Universitas Negeri Semarang (UNNES).

Conflicting Interest Statement

None

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.