

The Role of Law in Achieving Public Welfare

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Info Article	Abstract
Article History Received : 2023-07-03 Revised: 2023-07-12 Published: 2023-07-30	The purpose of establishing a state is essentially to realize the welfare of the people. The government, as the state administrator, formulates this goal into responsive, aspirational, and progressive laws and regulations according to the needs of the community. To ensure that these laws are truly grounded, law enforcers, particularly judges as the spearhead of law enforcement, must not only focus on legal certainty (<i>rechtsvaardigheid</i>), but also prioritize the values of justice that live, grow, and develop within society. The role of law in realizing the welfare of the people must be reflected both in the substance of the law and the moral integrity of law enforcement officials, especially judges in adjudicating cases. Therefore, implementing the welfare of the people requires synergy between regulations that favor the public and law enforcement that is substantive, not merely procedural, justice. Justice directly experienced by the people is a primary indicator of achieving national prosperity.
Keywords: <i>Public Welfare; Legal Certainty; Justice</i>	

I. INTRODUCTION

The primary purpose of establishing a nation is essentially to create prosperity for all its people. This is expressly stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, specifically in the fourth paragraph which states that the nation was established to protect all Indonesians and all of Indonesia's territory, advance public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace, and social justice. Thus, the welfare of society is not merely a slogan, but a constitutional mandate that must be realized by the nation.

According to the World Development Report published in 1997, the state has three primary functions in its efforts to achieve social welfare. The first is the minimum function, which includes providing for public needs, defense and security, upholding law and order, and protecting private property rights. The second is the intermediate function, which includes addressing external issues, education, the environment, regulating monopolies, improving the quality of education, insurance, financial regulation, and social insurance. The third is the activist function, which includes industrial policy and wealth redistribution (Francis Fukuyama, 2004).

Satjipto Rahardjo, a Professor Emeritus of Sociology of Law at Diponegoro University in

Semarang, even further stated that law should create happiness. This statement shifts the paradigm of law from merely a regulatory tool to a tool for achieving human happiness and well-being (Satjipto Rahardjo, 2006). Philosophers and legal experts from various eras have long advocated the importance of welfare as the primary goal of the state and law. Plato (428-348 BC), an Athenian Greek philosopher and student of Socrates, once stated that the goal of establishing a state is the greatest possible happiness for all the people, not the happiness of a particular group (Baharuddin Lopa, 2001). According to Plato, to create peace and prosperity in a state, justice must reign.

Law exists in society with the primary task of maintaining order and providing justice. In this context, a fundamental question arises: is law for society, or society for law? Choosing the former means creating a dynamic environment, where law serves the public interest. Conversely, choosing the latter will create a static and stagnant environment, one might even say deadlock, as society is forced to submit to the law without considering its own needs and interests (Satjipto Rahardjo, 2003).

Law can be viewed as an anthropological document. The consequence of this view is that we must place humans (*anthropos*) at the center of all discussions about law. This intellectual stance

makes law not merely revolve around legislative issues (binnen de kader van de wet). Law is essentially a human issue, and the appropriate paradigm is "Law for Humans." All discussions about law must be placed on the platform of "talking about humans." It is humans we are concerned with, not the law itself.

In essence, law plays a role in leading society to prosperity, which Jeremy Bentham called "Happiness." Furthermore, he stated that laws are beneficial to society if they bring happiness. Those that best serve the benefit or interests of an individual are those that tend to increase that happiness. Those that best serve the benefit or interests of society are those that tend to increase the happiness of the individuals who make up that society.

II. RESEARCH METHODS

To facilitate the implementation of this research, a research method, data collection techniques, and relevant approach methods are required. In this case, a descriptive analytical research method with a normative juridical approach is used. Data and information to be collected, both in terms of their assessment and management, are carried out in an interdisciplinary, multidisciplinary, and cross-sectoral manner. Secondary data consists of primary legal materials (the Preamble to the 1945 Constitution and Article 33 of the 1945 Constitution), secondary legal materials (legal philosophy books, legal theories, journal articles, expert opinions such as Satjipto Rahardjo, Jeremy Bentham, John Rawls, Theo Huijbers, Baharuddin Lopa, and articles from general newspapers such as Kompas, Suara Merdeka, Analisa, and Solopos), and tertiary legal materials (legal dictionaries and scientific journals). The information was then analyzed qualitatively and in-depth to obtain a picture of the role of law in realizing public welfare, specifically why this role is less significant due to the substance of the law that is less impartial and law enforcers (judges) who are still focused on legal certainty and ignore the justice that exists in society. The data collection technique used was a literature study.

III. RESULTS AND DISCUSSION

A. Research result

This study found that the role of law in achieving social welfare in Indonesia remains insignificant. Seven key findings are as follows:

1. Existing laws do not yet represent the interests of the wider public. They primarily serve the interests of those in power and business, while often neglecting the interests of the people.
2. The quality of lawmakers (the government and the House of Representatives) remains low and corrupt. The House's focus encompasses many aspects, but it neglects the interests of the people. As a result, the resulting laws are not responsive, aspirational, or progressive.
3. Judges in Indonesia remain focused on legal certainty and under-emphasize the justice inherent in society. Judges rarely exercise conscience in deciding cases. As a result, many major corruptors escape justice, while only small-time corruptors are prosecuted. This phenomenon is like a "spider's web," where small insects are caught but large ones escape.
4. The moral integrity of law enforcement officials, especially judges, remains low. However, according to BM Taverne, the most important elements in law enforcement are good judges, prosecutors, police, and advocates. Indonesia once had exemplary clean and honest officials like Baharuddin Lopa.
5. The principle of "the welfare of the people is the supreme law" (*Salus populi suprema lex esto*) has not yet become the guiding principle for judges. Judges still use the method of "enforcing the law according to the letter of the text" (black-letter law), so that nineteenth-century legal thinking is still in use today.
6. The state has not yet fulfilled its function as a welfare state (*welvaartstaat*). The government has not been able to create regulations that favor the people. As a result, the law has not paved the way for the creation of public welfare.
7. Philosophers such as Plato, Jeremy Bentham, and Satjipto Rahardjo agreed that the primary purpose of law is to

create happiness and social welfare. However, this goal has not been achieved in Indonesia because law is still viewed merely as text, not as a tool to serve humanity.

Research conclusion: The role of law in realizing public welfare will be effective if the three pillars—government, laws, and judges—work together to prioritize justice within society, not just legal certainty. The welfare of the people must be the highest law in Indonesia.

B. Discussion

1. Community Welfare as a goal

Many terms are used but all of them lead to the welfare of society. The "founding fathers" of our country used the term "just and makmud" as stated in the Second Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Other terms are "general welfare" and "social justice" as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution. In Article 33 1.-JUD 1945 uses the term "Social Welfare and "people's prosperity" in Paragraph 3 of the Article.

According to the World Development Report (1997), the state has three functions: a minimum function, a middle function, and an activist function. The state's minimum functions are: first, providing for public needs, defense, law and order, and private property rights. Second, macroeconomic management and public health. Third, promoting justice, and fourth, protecting the poor.

The minimum functions include: first, addressing external issues, education, and the environment. Second, regulating monopolies. Third, improving the quality of education, insurance, financial regulation, and social insurance. The state's activist functions include industrial policy and wealth redistribution. In relation to these state functions, the government, as the state administrator, must be able to create laws and regulations that favor the people. Laws will pave the way for the creation of public welfare.

Therefore, the state's task, in this case the government, is to formulate laws to ensure that this goal, namely public welfare, can be realized. This will ensure that the law plays a significant role in realizing public welfare. Satjipto Rahardjo

(Professor Emeritus of Sociology of Law at Diponegoro University, Semarang) even goes so far as to say, "Law should create happiness."

In that context, the question is asked, "Why do we have a nation based on law?" Does the law regulate solely to regulate, or is it for a greater purpose? Furthermore, it is said that society apparently cannot tolerate the operation of (liberal) law that only pays attention to individual freedom and liberty (Satjipto Rahardjo, 2006).

Society wants the law to actively address the true well-being of its citizens. Thus, a new era emerged, the post-liberal era, in which the state actively intervenes in ensuring public welfare. This is known as the "Welfare State" (welvaartstaat). The law also intervenes to regulate the implementation of various welfare efforts, such as health care, education, and other public needs.

So legal studies that only use positive law as their basis fail to guide humans out of difficulties and changes that give rise to new developments. The essence of progressive law lies in progressive thinking and acting that frees it from the shackles of legal document texts because in the end the law is not a legal text but for human happiness and well-being (Satjipto Rahardjo, 2005) Bernard L. Tanya uses the term, "the law is a supporter of happiness.

Very few legal experts describe that law plays an important role in creating public welfare (bonum commune communitatis) or for the public good (pro bono publico). Among them are Jeremy Bentham and John Stuart Mill with their very popular formulation, namely "The greatest happiness of the greatest number"¹⁷, saying that the purpose of law is to provide the greatest happiness to the greatest number.

Plato (428-348 BC), a Greek Athenian philosopher who was a student of Socrates, once said that, "Our object in the construction of the state is the greatest happiness of the whole, and not that of any class", our goal in establishing a state is the greatest happiness of all the people, not the happiness of a group (JW Haris, 1980). According to Plato, to create peace and prosperity in a country, justice must reign in the country.

In the tradition of political philosophy, the state's duty is to maintain social harmony, or in Thomas Aquinas's words, to strive for peace and

justice. However, human development, particularly in the economic sphere, forces the state to broaden its understanding of its responsibilities; it is not enough to simply maintain or restore harmony in society; society must also be developed or constructed. In one form or another, every modern state strives for development. This means the state participates in determining the conditions for social life. This development pattern has a significant impact on the happiness or misery of society (Baharuddin Lopa, 2001).

2. Law for Humans

Law exists in society, tasked with maintaining order and dispensing justice. The question arises: "Law for society" or "Society for law." Choosing the former creates a dynamic environment, while the latter creates static and stagnant conditions (Satjipto Rahardjo, 2003).

Humanity becomes the framework when we discuss law. This conceptual philosophical approach carries far-reaching consequences when it begins to be implemented concretely. In today's nomenclature, it becomes the foundation that determines our work in the fields of legislation, judiciary, and law enforcement. In all these areas, we will work with full determination, believing that "Law is for humanity" (Satjipto Rahardjo, 2006). Therefore, humanity and humanity become the initial discourse in law. Discussing and implementing law begins with discussing humanity and humanity. We discuss and complete discussions about humanity before discussing law.

Humanity and justice are the goal of everything in our legal life. Therefore, the phrase, "Law for Humanity" also means "Law for Justice." This means that humanity and justice are above the law. The essence of law is to bring just rules to society (*rapport du droit, inbreng van recht*). All other meanings point towards this as the basic meaning of all law.

Parsonian sociological theory is used in legal science to demonstrate that law is an integral part of the social system. Talcott Parsons' Cybernetics theory, which describes the flow of information and energy in an integrated manner, is also used to help explain certain aspects of legal dynamics (Satjipto Rahardjo, 2004).

Regarding law as an integral part of the social

system, Satjipto Rahardjo stated that law is an anthropological document. Consequently, we place humans (*anthropos*) at the center. This intellectual stance prevents law from revolving around legislative issues (*binnen de kader van de wet*). Law is a human issue, and the paradigm here is "Law for Humans." Discussions about law are placed on the platform of "discussions about humans." It is humans we are concerned with, not laws (Satjipto Rahardjo, 2007).

Indeed, the concept of national development recognizes that the goal of national development is to create a complete Indonesian human being, a just, prosperous, and physically healthy Indonesian human being. Therefore, any development, whatever its name, must place humans as the subject of development.

After all, humans who have agreed to live in an orderly and disciplined manner have a noble goal: to create prosperity in their lives. Therefore, it is fitting to say, "law is for humans." In this regard, Marcus Tullius Cicero (106-43 BC), a Roman orator, lawyer, politician, and philosopher, said, "*Sa/us populi suprema lex esto*"—the welfare of the people should be the supreme law.

Cicero firmly believed that the cause of the republic's collapse was the loss of political leadership and concern for public affairs. While our nation may not have physically collapsed, the welfare of the people has not yet become a central element of the constitution.

The special circumstances faced by these developing countries have even prompted people to consider the existence of a legal science specifically focusing on these countries. A collection of essays edited by Marasinghe and Conklin in 1984 was entitled, "Collection of Essays on Third World Perspectives in Legal Science." In the preface to the book, it was written that discussions about the Third World in legal science fall into the category of applied legal science. In this legal science, emphasis is placed on the problems characteristically faced by these countries, such as:

- a. The problem of improving people's welfare or building the economy.
- b. Uplifting human dignity in the midst of the process of social change

- c. The unification of various ethnic communities into one society (Satjipto Rahardjo, 2006)

Compared to practical jurisprudence, progressive jurisprudence is not at all failing or unable to address practical demands. The difference lies in practical jurisprudence's use of the regulatory paradigm (role), while progressive jurisprudence employs the human paradigm (people). The acceptance of this human paradigm leads progressive jurisprudence to consider behavioral factors (behavior and experience). In the words of Oliver Wendell Holmes, the logic of regulations is perfected by the logic of experience. For progressive jurisprudence, law is for humans, while in practical jurisprudence, humans are more for the law and legal logic. Herein lies the enlightenment of progressive jurisprudence.

In order to realize the welfare of society, the government's position as a protector and bearer of public welfare is highly expected. Relevant to this is what Caius Suetonius Tranquillus (71-135), the Roman scholar, said: "Boni pastoris est tondere pecus, non deglubere" the duty of a good shepherd is to shear his livestock, not skin them. In the context of a state, this means that a ruler has an obligation to prosper his people, not to make them suffer.

The persistently high rate of corruption committed by nearly all institutions in Indonesia is a factor hindering the achievement of public welfare. The government has so far been deemed unsuccessful in recovering hundreds, even billions, of state funds embezzled by state officials. Corruption handling remains selective, especially in cases involving hundreds, even billions of rupiah. Most corruptors who are successfully brought to justice and subsequently imprisoned are small-time corruptors. Therefore, the existence of laws and regulations that facilitate corruption eradication efforts must continue to be championed. As Satjipto Rahardjo stated,

"This nation has designated corruption as an extraordinary crime, therefore it is logical that it must be dealt with with extraordinary means. This also means that the corruption law has not been able to create opportunities and chances for the realization of public welfare.

The quality of a law is also influenced by its human resources, particularly in the House of

Representatives (DPR) and the government. Besides the low quality of our DPR members, they also harbor a corrupt mentality. News reports of corruption and bribery committed by the DPR, and most often by the Regional People's Representative Council (DPRD), at the provincial, district, and city levels, have consistently been a source of concern.

The current condition of the DPR is exactly as described below: "Attentio senatus multas res praeter rempublicam pertinet, absurde est", it is very strange that the attention of the House of Representatives (DPR) covers many things, except the interests of the people. What should apply is, "Principes et senatores discite exemplum populorum, et agite pro republica populorum", the leaders and representatives of the people should learn from the example of the people and work for the public interest of the community.

It is very appropriate what Thomas Jefferson (1743-1826), President of the United States, once said, namely "When a man assumes a public trust, he should consider himself public property", if a person gains public trust, then he must consider himself the property of the community (Yohanes Suhardin, 2007). The DPR is a public official in Indonesia, a country in the form of a Republic (from the words *res* and *publica* which means "public interest") should devote itself to the public interest, the community to be prosperous, just and prosperous as mandated by the Preamble and Body of the 1945 Constitution.

The law, which has not been in favor of the people from the outset, is further exacerbated when judges resolving various corruption cases solely utilize and emphasize aspects of legal certainty (*rechtszekerheid*), ignoring justice (*rechtsvaardigheid*) and neglecting their conscience. The work of judges is no longer seen as merely a legal matter, but as a broader social and humanitarian issue. In Indonesia, it even has a transcendental dimension (Satjipto Rohardjo, 2007).

The author interprets the terms "social matters" and "community" as indicating proof that the law is for humans, namely Indonesians or Indonesian society. This also indicates a bias towards broader interests, namely the welfare of society.

How to overcome corruption? According to

Satjipto Rahardjo, a breakthrough is needed that refers to classical legal theory. There are three options. What can be done is, first, create comprehensive and clear regulations. Second, urge the ruling regime to fulfill its duty to uphold the law. Third, create a legal culture. If this can be done, the country can hope again for the restoration of the rule of law (HCB Darmawan, 2004).

The author interprets the words "social matters" and "society" as indicating proof of the affirmation that the law is for humans, namely Indonesian humans or Indonesian society. Here it also shows a bias towards broader interests, namely welfare public.

How to overcome corruption? According to Satjipto Rahardjo, a breakthrough is needed, drawing on classical legal theory. There are three possible options: first, creating comprehensive and clear regulations. Second, pressuring the ruling regime to fulfill its duty to uphold the law. Third, creating a legal culture. If this can be done, the country can once again hope for the restoration of the rule of law.

Thomas Jefferson described it as follows: "It does no good to have laws drafted, debated, and approved, if the will and means to enforce them are weak." (Charles Himawan, 1993) He further said, "The execution of the laws is more important than making them."

In connection with this implementation, it is precisely what BM Taverne said that the most important thing is good judges, prosecutors, police and advocates, then any crimes and violations can be prevented even though the law itself is not perfect. (author's interpretation).

Indonesia once had a law enforcement officer who was simple, honest and clean, namely Baharuddin Lopa, in a seminar said, "the availability of law enforcement officers who are clean, honest, authoritative and brave in implementing the law in accordance with the principles of justice. That is what is meant by good law enforcement officers. In that context, Plato once reminded that to create peace and prosperity in a country, justice must prevail. rule in the country (Baharuddin Lopa, 1996).

John Rawls's statement is certainly true, particularly in societies structured to improve the well-being of their members. However, the

problem is that legal practice has traditionally followed the "black-letter law" approach, which relies solely on the words and sentences within the text. Thus, nineteenth-century practice still dominates legal thought and practice today.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

1. In substance, law (read: statutes) has not fully supported the realization of public welfare. Yet, the primary and final (finite) function and role of law is to serve humanity. Serving humanity must be interpreted as making humans prosperous in their lives. Therefore, it is very appropriate to say that law is for humanity, meaning that law is created to create a just and prosperous society, a prosperous society, and a prosperous society. Thus, it places and positions humans as subjects in legal development.
2. The substantive nature of the law, which is less than conducive to achieving prosperity, is due to the unreliable quality of lawmakers, both the government itself and the House of Representatives (DPR). Often, the substance of laws is rife with the interests of those in power and business, ignoring the public interest.
3. Indonesian judges remain focused on the principle of legal certainty in resolving cases and have made little effort to examine the values of justice that exist, grow, and develop within society. In other words, judges are less likely to use their conscience for the greater good when deciding a case. Judges have yet to position "the welfare of the people" as the highest law.

B. Suggestion

1. Suggestions for the Government (Lawmakers)
 - a. The government and the House of Representatives (DPR), as lawmakers, must improve their moral quality and integrity. Members of the DPR and the government should dedicate themselves entirely to the public interest, not to personal or group interests. The principle "Principes et senatores discite exemplum

- populorum, et agite pro republica populorum" (leaders and representatives should learn from the people's example and work for the public interest) must be firmly established as a guiding principle.
- b. Every law created must be responsive, aspirational, and progressive, prioritizing the interests of the wider community (bonum commune), not merely the interests of those in power or business. The substance of the law must contain values of justice that live, grow, and develop within society.
 - c. The government must seriously eradicate corruption using extraordinary means, as corruption has become an extraordinary crime. Corruption eradication efforts must no longer be selective, but must be fair and firm against all perpetrators without exception.
2. Advice for Judges and Law Enforcement Officials
- a. Judges, as the spearhead of law enforcement, must not focus solely on legal certainty (rechtszekerheid), but must prioritize the values of justice (rechtsvaardigheid) that exist within society. Judges must exercise their conscience in deciding cases for the greater good of society.
 - b. Judges must position the "welfare of the people" as the supreme law (salus populi suprema lex esto), as taught by Marcus Tullius Cicero. The work of judges must be seen as a social and humanitarian matter, not merely a formal legal matter.
 - c. Law enforcement officials (judges, prosecutors, police, and advocates) must possess high moral integrity, be clean, honest, and authoritative, and courageously enforce the law in accordance with the principles of justice. Indonesia needs to emulate Baharuddin Lopa, known as a humble, honest, and clean law enforcement official.
3. Advice for the Community
- a. The public must actively monitor the performance of the government and the House of Representatives in formulating laws and the performance of judges in deciding cases. The public must not remain passive in the face of legal violations and injustice.
 - b. Society needs to build a legal culture that is law-abiding and aware of the law, and participate in creating values of justice that live in their environment.
4. Suggestions for Further Researchers
- a. Further research is recommended to conduct empirical research in the field, for example by interviewing judges, prosecutors, police, and the community to directly find out their perceptions about the role of law in realizing community welfare.
 - b. Further research can be focused on case studies of certain judges' decisions which are deemed to have prioritized substantive justice for the welfare of society, so that they can serve as examples for other judges.
 - c. Research on the comparison of the law enforcement system between Indonesia and other countries that have succeeded in realizing social welfare through law is also very necessary.
5. Suggestions for Legal Education Institutions
- Law faculties across Indonesia need to instill the "law for humanity" paradigm in students from an early age. The legal education curriculum should emphasize the values of justice and social welfare, rather than solely on legal certainty and procedural aspects. Progressive law, which views law as a tool for achieving human happiness and well-being, must be a crucial component of legal education in Indonesia.

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