

IMPLEMENTATION OF THE PRINCIPLES OF THE MODERN STATE OF LAW IN THE IMPLEMENTATION OF SOCIAL WELFARE IN INDONESIA

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ABSTRACT

The concept of the modern state of law not only emphasizes the rule of law, but also makes law an instrument to realize social justice and people's welfare. Indonesia as a state of law based on Pancasila has a constitutional responsibility to ensure public welfare as mandated in the Preamble to the Constitution of the Republic of Indonesia in 1945. This research aims to analyze the implementation of the principles of the modern state of law in the implementation of social welfare in Indonesia. This study uses a qualitative method with a normative juridical approach. Data was obtained through literature studies on relevant primary and secondary legal sources, then analyzed qualitatively. The results of the study show that Indonesia has adopted the principle of a modern state of law through social policy, namely Law Number 11 of 2009 concerning Social Welfare. However, its implementation still faces obstacles to law enforcement and social inequality. Therefore, the law needs to be directed in a substantive and humanist manner to realize the ideals of a Pancasila Law State that is socially just for all Indonesian people.

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INTRODUCTION

Since the beginning of civilization, humans have always sought the best form of organizing life together. The state was born as an institution that functions to maintain order, while guaranteeing the rights of the community. In its development, the idea emerged that the state should not stand on power alone, but must be subject to the law. This was the beginning of the birth of the concept of the state of law (Sumartini et al., 2022).

Initially, the classical law state was only oriented towards formal law enforcement and maintaining order in the state. However, as the times develop, the concept is considered inadequate. The community not only needs legal certainty, but also substantive justice and welfare guarantees. From this emerged the modern state of law, which is a state that not only makes the law the highest basis of power, but whose government is required to actively realize the welfare of the people ((Henry & Arsitha, 2024).

The concept of the state of law is one of the fundamental principles in the implementation of modern government. In the history of the development of legal thought, this concept has evolved from a liberal *model of rule of law* that emphasizes the limitation of state power, to the concept of a modern *rule of law* that places law as an instrument to achieve social justice and people's welfare. This paradigm shift shows that the law not only functions as a tool of controlling power but also as a means to realize social justice. The thought of R. Kranenburg, a constitutional law expert from the Netherlands, made an important contribution to the development of the theory of the modern state of law. According to Kranenburg, it is not enough for the state to be based on the law to maintain order and justice, but must also play an active role in realizing welfare for its citizens (Juanda & Juanda, 2023; Kurniyawan & Moeslim, 2024).

In the Indonesian context, the principle of the rule of law is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "*The State of Indonesia is a state of law.*" However, the concept of the state of law adopted by Indonesia is different from *the rechtsstaat* model in Continental Europe and *the rule of law* in the Anglo-Saxon world. Indonesia developed the concept of the Pancasila State of Law, which is a state of law that not only upholds the rule of law, but is also based on the values of God, humanity, unity, people, and social justice. The Indonesian state of law not only aims to create order, but must also ensure social justice and the welfare of the people. After the amendment of the 1945 Constitution, the concept of Indonesia's rule of law has evolved towards a modern constitutional law state that is more democratic, human rights-oriented, and responsible for the welfare of the people (Supena, 2023; Zhang, 2025).

In his research, he discussed the close relationship between a modern legal system with just social development. In a global context, law is no longer understood simply as a tool of social control (*law as social control*), but as the main instrument to create social well-being and equality Economy. that the concept *rule of law* Classical has shifted towards the modern rule of law, where the state has an active responsibility in ensuring the fulfillment of the basic rights of citizens. In this view, the function of law includes three main dimensions, namely: Upholding justice and legal certainty, Protecting human rights, and Realizing social welfare as the goal of the state.

In line with research, the Government has the responsibility to formulate every policy and legislation to be in line with the main goal of the state, which is to realize the welfare of the community. Through policies that are in favor of the people, the law is expected to be able to provide real benefits and be directly felt by all levels of society. This view is in line with the thinking of (Elviandri et al., 2019) Satjipto Rahardjo, who emphasized that the law should not only regulate people's lives, but also bring happiness to humans. The Indonesian Constitution expressly mandates the establishment of a welfare state, in which every citizen obtains social and economic rights in a fair manner. In this framework, the Indonesian state is not a *minimum state* that only maintains order, and it is also not an *enabling state* that merely facilitates market mechanisms. Based on the mandate of the 1945 Constitution, the state has a role as a developmental *state* that is responsible not only for creating *equality of opportunity*, but also for ensuring *equality of outcome*. Thus, the interests of the community must always be placed above the interests of individuals.

Within this framework, social welfare is one of the main goals of the Indonesian legal state as mandated in the Preamble to the 1945 Constitution, especially the fourth paragraph, which affirms that the state's goal is *to advance the general welfare and educate the life of the nation.* This principle is emphasized in Articles 33 and 34 of the 1945 Constitution which obliges the state to control the branches of production that are important for the livelihood of the people and to take care of the poor and abandoned children (Riwanto & Suryaningsih, 2022).

However, in practice, the implementation of the principles of the modern state of law in Indonesia still faces a number of challenges. Many social policies that have been designed with the aim of prospering the people have not been fully effective due to various factors, such as weak law enforcement, inequality of access to resources, and inefficient bureaucracy. As a result, laws often only function as administrative legitimacy without having a substantive impact on improving people's welfare. This is in line with criticism of Indonesia's economic law tendency to often bow to global interests and liberalization of investment, which has the potential to undermine national independence and the value of social justice, this is contrary to the goal of national economic development which should place the welfare of the people as the ultimate goal, not just investment growth. The Job Creation Law also tends to reduce protection for workers because it prioritizes economic efficiency, so it is contrary to the principle of the welfare state. The welfare state cannot be realized only through legal formalism, but through the active intervention of the state to guarantee the welfare of workers (Saputra & Emovwodo, 2022; Lismanto & Utama, 2020).

Therefore, it is important to examine how the implementation of the principles of the modern state of law is applied in the implementation of social welfare in Indonesia. This study is relevant to assess the extent to which the law has played a role as an instrument of social justice and welfare, as well as to formulate a direction for legal reform that is more responsive, humane, and on the side of the people in accordance with the ideals of the Pancasila Law State.

METHOD

This study uses a qualitative method with a normative juridical approach with the aim of analyzing the application of the principles of the modern state of law in realizing social welfare in Indonesia based on applicable legal norms and legal theories. This approach focuses on the literature review and analysis of laws and regulations that are the basis for the implementation of the state of law and social welfare policies. Data was collected through a literature study by examining various legal sources and academic references. Furthermore, the data was analyzed using descriptive qualitative analysis, namely by describing relevant legal norms and theories and interpreting their implementation in social and legal policies in Indonesia. The analysis was carried out by focusing on the conformity between the principles of the modern legal state and the realization of social welfare as mandated by Pancasila and the 1945 Constitution. (Miles et al., 1994)

RESULTS AND DISCUSSION

Implementation of the Principles of the Modern Legal State in Indonesia

The modern national welfare system cannot be separated from colonial relations and the exploitative global economy. Because, social welfare in developed countries is built through two main relationships: *relations of extraction and relations of redistribution*. Wealth extracted from the colonies became a source for the redistribution of welfare in the mother country. Bhambra criticizes that the conventional welfare state framework often covers this colonial dimension, so that social justice seen at the national level actually stands above global inequality. In the Indonesian context, this view is relevant to reflect on how the implementation of the *welfare state principle* must not

only ensure the redistribution of welfare within the country, but also ensure that the development process does not give rise to new inequality relations between regions or social classes. (Bhambra, 2022)

The concept of the modern state of law not only emphasizes the rule of law and the limitation of power, but also places the law as a means to achieve social justice and the welfare of the people. This principle requires that every state policy be oriented to the interests of the wider community, not just the enforcement of formal rules. In the Indonesian context, the principle of the rule of law is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "*The State of Indonesia is a state of law.*" However, in contrast to the concept of *the rule of law* in the Anglo-Saxon tradition or *rechtsstaat* in the Continental European tradition, Indonesia developed a model of the Pancasila Law State which has a distinctive character, namely the integration of law, morality, and social justice. (Iqbal Falerizki et al., 2025)

(Nasir et al., 2023) emphasized that the law must contain three main values, namely justice, utility, and legal certainty, all of which must run in balance so that the Indonesian legal system can be the foundation for the realization of a *welfare state*. The value of justice, according to Gustav Radbruch, has a normative and constitutive nature to a law without justice, a rule not worthy of being called a law. Therefore, the development of national law must place justice as the highest priority, then benefits, and then legal certainty. This view is in line with the concept of dignified justice put forward by Teguh Prasetyo, namely that the Indonesian legal system must be based on the values of Pancasila, not an absolute imitation of other legal systems, so that the justice produced has a typical Indonesian character that upholds humanity and social balance.

The Pancasila State of Law is based on the basic values of Pancasila which include Godhead, Humanity, Unity, People, and Social Justice. This means that every legal formation and implementation of state power must reflect fair and civilized human values, and be oriented towards common welfare. As stated by R. Kranenburg, the ideal state of law not only maintains order and justice, but must also function to realize welfare for its citizens. This concept is known as *the welfare state* or the state of law in a broad sense. Thus, the law must be understood not only as a tool of power control, but also as an instrument of community welfare.

The findings in the research on the implementation of (Nguyen et al., 2023) *welfare conditionality* and *marketisation* in the Pre-Employment Card Program strengthen the argument that Indonesia has sought to implement the principle of a modern legal state oriented towards the welfare state. In the program, the government not only provides passive financial assistance, but also requires active participation of the community through digital job training which shows that the combination of economic incentives and training obligations results in a high level of participation and increases the professionalism of training institutions. This is in line with the idea that law and public policy should be a tool for empowering citizens, not just a tool of administrative control. In other words, the Pre-Employment Card reflects a concrete form of implementing the principle of "*law as a tool of social welfare*" which is the core of the modern legal state.

The Role of Law in Realizing Social Welfare

In the context of the Pancasila legal state, the role of law not only functions as an instrument of order, but also as a means to realize social justice and people's welfare. The ideal law in the context of *the welfare state* must be able to integrate social, moral, and humanitarian values in public policy. The concept of a welfare state requires the state to actively ensure the fulfillment of the needs of its citizens in the fields of health, education, social security, and the economy (Nasir et al, 2023).

Constitutional law plays an important role in shaping regulations that are fair, inclusive, and in favor of the public interest. As explained by social and economic inequality in Indonesia, it is still the main challenge that hinders the realization of social justice. Therefore, constitutional law must be a means of social transformation through the formulation of policies that favor vulnerable communities, such as the implementation of progressive taxes, social assistance programs, and policies of equitable development between regions. The principles of transparency,

accountability, and justice in constitutional law are the basis for strengthening access to justice and reducing social inequality. According to him, the essence of *good governance* is the implementation of public services that are efficient, transparent, accountable, and oriented to the needs of the community (Rasya & Triadi, 2024; Salam, 2023). Good governance is a tangible manifestation of a state of law that protects and prospers its people.

One of the tangible manifestations of the application of the modern state of law in Indonesia is the role of law in realizing social welfare as mandated in Articles 33 and 34 of the 1945 Constitution. The state is obliged to control the branches of production that are important for the livelihood of the people and to take care of the poor and abandoned children. To realize this, the government has given birth to a number of social policies, including: Law Number 11 of 2009 concerning Social Welfare, and social programs such as BPJS Kesehatan, Family Hope Program (PKH), and social assistance (Bansos). (Mustikasari, 2024)

These programs are a concrete form of state responsibility in carrying out *the social welfare* function as mandated by the constitution. However, its effectiveness still faces various obstacles, such as overlapping policies, long bureaucracy, and a lack of transparency in the distribution of social assistance. In line with Satjipto Rahardjo's thoughts, the law should not only be a means of order, but also a tool that brings happiness and prosperity to society. The state, therefore, must not be passive (*minimal state*), but must become a *developmental state*, that is, a state that actively ensures social justice and equitable distribution of development results (Azharie, 2023).

The application of *the welfare state* principle is also reflected in the legal protection of intellectual property rights (IPR). Protection of IPR is a concrete form of the state's responsibility to recognize, respect, and protect the intellectual works of citizens that have economic and moral value. According to legal protection in the field of IPR, it not only safeguards the interests of individual creators, but also functions strategically in encouraging creativity, innovation, job creation, and national economic growth. Thus, IPR protection is one of the legal instruments in realizing social welfare through the empowerment of the intellectual potential of the community. The state of law Pancasila views that welfare is not only sourced from natural resources, but also from intellectual capital and community innovation that are legally protected (Santoso & Santoso, 2022).

In the context of the Pancasila legal state system, law enforcement in Indonesia is not only oriented to legal certainty, but also to substantive justice that upholds human values and social justice as stated in the second and fifth precepts of Pancasila. This principle is in line with the concept of *the welfare state*, where the state is responsible for creating a balance between law enforcement, human rights protection, and improving people's welfare. The investigation process in the Pancasila legal system must be carried out humanely, professionally, and transparently to ensure the protection of the rights of suspects while fulfilling broader social interests. By placing Pancasila as the source of all sources of law, the Indonesian legal system emphasizes that justice is not only interpreted formally, but also as the state's effort to realize social welfare through just, civilized, and socially just law enforcement. (Purwono, 2024).

Challenges of Implementing the Modern Legal State in Indonesia

Although various regulations have been drafted, the implementation of the principle of the modern state of law in Indonesia still faces a number of challenges. Among them, (1) socio-economic inequality which shows that development outcomes are not evenly distributed throughout the region, (2) weak law enforcement, especially in the protection of vulnerable groups, and (3) less responsive legal bureaucracy, which often makes the law lose its social usefulness.

In addition, there is still a tendency for legal formalism that places law as a rigid text, not as a means of social engineering. In fact, as stated by Jimly Asshiddiqie (2009), law in the modern legal state should be dynamic, adaptive, and socially just, so as to be able to respond to the changing needs of society. The research discusses the urgency of labor law reform in Indonesia, especially for informal sector workers, within the framework of a (*welfare state*). (Hamid et al., 2022) The study shows that around 60% of Indonesia's workforce is in the informal sector, but has not received

legal and social protection as mandated by Pancasila and the 1945 Constitution. This condition shows that there is a *legal vacuum* in national labor laws, which has left informal workers' rights such as social security, living wages, and humane working conditions unguaranteed.

The implementation of *the welfare state* principle in realizing social welfare in Indonesia does not only depend on the government's responsibility, but also requires the active participation of the community as an integral part of the social development process. In line with , that successful social welfare development requires strong political commitment, institutional capacity building, and the use of technology and innovation to expand the reach of social services. In addition, cross-sector collaboration and strengthening community participation are key factors in realizing equitable, inclusive, and sustainable social welfare throughout Indonesia.

The concept of a welfare state requires collaboration between the state and citizens in ensuring the fulfillment of basic rights such as health, education, employment, and social protection. Community participation is a key element because it allows the social policies implemented by the government to truly reflect the needs and aspirations of the people. Community involvement can increase the effectiveness and efficiency of social programs such as (Triono, 2024) *Social Safety Nets*, direct cash assistance, and local economic empowerment programs. In addition, the active participation of citizens strengthens the democratic principle of Pancasila, where government is carried out "from the people, by the people, and for the people." Thus, the implementation of *the welfare state* in Indonesia is in line with the ideals of social justice enshrined in the fifth precept of Pancasila. The government needs to strengthen coordination, transparency, and accountability in managing public resources and open up a wide space for participation so that social welfare can be achieved in a sustainable manner. (Riyanto & Kovalenko, 2023)

The idea of *a sustainable welfare state* put forward by Max Koch (2022) also broadens the understanding of the principle of *the welfare state* by including the dimensions of ecological sustainability and social justice within the limits of the earth's carrying capacity (*safe operating space*). IPR protection, social policy reform, and transparent and participatory governance are important instruments in integrating the value of social welfare with ecological responsibility. This approach is in line with the ideals of the Pancasila legal state which places the welfare of the people as the highest goal, not only through economic growth, but also through the equitable distribution of development results, protection of social rights, and environmental sustainability for future generations. Thus, the implementation of the (Koch, 2022) *welfare state principle* in Indonesia must move towards the sustainable *welfare state* paradigm as stated by Koch, namely by reorganizing the legal system, economic policy, and social to be oriented towards sustainability and social justice.

CONCLUSION

The concept of the modern state of law emphasizes that law not only functions as a tool of controlling power, but also as an instrument to realize social justice and the welfare of the people. In the Indonesian context, the application of the principles of a modern state of law is reflected in the concept of the Pancasila State of Law, which integrates moral, human, and social values in its legal system. The State has a constitutional responsibility to ensure the general welfare as mandated in the Preamble and Articles 33 and 34 of the 1945 Constitution of the Republic of Indonesia. Policies such as Law Number 11 of 2009 concerning Social Welfare show the state's efforts in realizing the welfare of the people. However, its implementation still faces obstacles in the form of weak law enforcement, social inequality, and inefficient bureaucracy. Therefore, it is necessary to reorient the national legal paradigm towards a substantive, humanist, and socially just law. The implementation of Pancasila values in every legal policy is the key to strengthening the role of law as a means of equitable distribution of welfare and the realization of the ideals of an Indonesian Legal State that is just, prosperous, and prosperous for all people.

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