Protection and Certainty of Social Welfare Law in the Concept of a Welfare State: Perspective of State Administrative Law

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Received: 2022-08-12
Revised: 2023-02-28
Accepted: 2023-03-31

Keywords:

WHO; Social welfare; The concept of the Welfare State;Legal certainty; State Administrative Law.

The intervention of the state administration in providing legal protection and certainty for social welfare insurance is very important. However, there arestill problems occurring in society, including acts of discrimination against accessing social needs, causing social inequality. The goal of this research is to determine how the government's responsibility in implementing social welfare is to provide legal protection and certainty to the community in the concept of a welfare state from the standpoint of state administrative law and how Arrangements for Social Welfare Policy Based on Government Regulation of the Republic of Indonesia Number 39 of 2012 Concerning Implementation of Social Welfare Thisresearch method is normative-juridical. The results of this study show that the responsibility and authority of the government in implementing social welfare and carrying out the duties of executive power must be based on the will of the state, which is based on statutory regulations established by the legislature. Thepolicies regulated in the Government Regulation of the Republic of Indonesia Number 39 of 2012 concerning the Implementation of Social Welfare are rehabilitationpolicies, social security policies, social empowerment policies, social protection policies, infrastructure standard policies, community participation policies,registration procedures policies, and policies forinstitutions that organize social welfare.

I. Introduction

The emergence of the concept of a welfare state proposes the involvement of the state inthe economic sector related to the distribution of people's income and social welfare, from thetime humans are born until they die (from the cradle to the grave). In practice, the welfarestate requires a responsive government role to manage and organize the economy so thatpeople receive social welfare services of a high standard. In the reform of the welfare state,the state is obliged to create an optimal degree of social welfare for its citizens by improvingthe quality of public services and being adaptive to fluctuating social and economic changes.[1] State interference in activities in the field of social welfare and social protection is the task of regulating (*regeling*) and managing (*bestuur*) the government, especially through economic regulation and the formation of strong social norms. Sri Redjeki Hartono believes that state interference in economic activities is one of three important principles required in the framework of fostering legal ideals based on national law principles. That state interference in economic activities in general remains within the limits of the balance of common interests of all parties and in the context of maintaining the balance of interests of all parties in society, protecting the interests of producers and consumers, occasionally protecting the interests of the state and the public interest against corporate or personal interests, and furthering economic activation. This target encourages the occurrence of various irregularities and even fraud that can be detrimental to certain parties.[2]

This means that state interference in social welfare has a specific purpose in the state's strategy for fulfilling people's welfare as an effort to achieve the ideal condition of Indonesia adhering toa welfare state following the legal ideals it adheres to.[3] The role of government is the actualization of state sovereignty in achieving the goal of regulating (*reguleren*) and administering (*bestuur*), which is controlled by basic norms and values, in influencing relations between states and their citizens to achieve the common goal mandated by the Constitution of creating and realizing social welfare for the entire society.[4] Indonesia is often

[1] Barbara Vis Politics of Risk-taking: *Welfare State Reform in Advanced Democracies*, Amsterdam University Press, Amsterdam, 2010, p. 100.
[2] Johnny Ibrahim. *Hukum Persiangan Usaha. Filosofis, Teori, dan Implikasi Penerapannya di Indonesia*. Cetakan Pertama, Bayumedia, Malang. 2009, p. 35.
[3] Pasal 4 Undang-Undang Number 11 Year 2009 tentang Kesejahteraan Sosial.
[4] Pasal 3 Undang-Undang Number 11 Year 2009 tentang Kesejahteraan Sosial

referred to as a country that embodies the idea of a welfare state.

This is because in the preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), one of the goals of the state expresses the idea ofa welfare state.[5] In order to realize a welfare state that aspires to social welfare, a certain kind of tool is needed to make it happen, namely administrative law.[6] In a modern rule of law or welfare state, the government's expanded role necessitates the adoption of a State Administrative Law(HAN), which aims to enable state administration to carry out its functions on the one hand while also protecting citizens from the attitude of acts of state administration, so that there is a limitation of power in the state on the attitude of state administration, which is very decisive for the implementation of state welfare.[7] According to Lemaire, the task of state administration in the welfare state is *Bestuurzorg*. It is the responsibility and function of the government to organize public welfare.[8]

Based on the foregoing, if in a welfare state, it is necessary to have legal protection and certainty not only for the people but also for the state administration in carrying out its duties, then state administrative law is an important element in the welfare state as the basis for achieving social welfare in the community. According to Goodin, without the intervention of the state administration, it is easy to be exploited without any mercy at all. Furthermore, according to Sri Redjeki Hartono, state intervention is necessary to maintain a balance between the interests of all parties in society (government, private sector, and civil society) while protecting the interests of the state and the public interest against corporate or personalinterests.[9]

According to Friedmann, in his book The Rule of Law and The Welfare State, the functionof the welfare state is as a protector, provider, regulator, entrepreneur, and arbitrator. The state is given the mandate to carry out its obligations to fulfil the rights

[5] Nur Rohim Yunus, "Aktualisasi Welfare State Terhadap Kehidupan Bernegara Dalam Dimensi Keislaman dan Keindonesiaan", *Mizan; Jurnal Ilmu Syariah*, FAI Universitas Ibn Khaldun (UIKA) Bogor, Vol. 3 No. 2, 2015, pp. 253-276 https://www.jurnalfai-uikabogor.org/index.php/mizan/issue/view/12

[6] L. Lismanto1, Yos Johan Utama, "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial dalam Perspektif Negara Demokrasi", *Jurnal Pembangunan Hukum Indonesia,* Volume 2, Number 3, yeat 2020, p. 416-433. DOI: https://doi.org/10.14710/jphi.v2i3.416-433

[7] Mashudi, *Negara Kesejahteraan dan Hukum Administrasi dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara,* Penyunting SF, Marbun dkk. Cet.I, -Yogyakarta UII Press, 2001, p. 61.

[8] Budi Ispriyarso. *Hubungan fungsional antara kedaulatan rakyat dan kedaulatan Hukum terhadap perkembangan Hukum Administrasi Negara dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara*, Penyunting SF, Marbun dkk. Cet.I, -Yogjakarta UII Press, 2001, p. 19.

[9] Sri Redjeki Hartono, *Kapita Selekta Hukum Ekonomi,* mandar Maju, Bandung, 2000, p. 35.

of its citizens.[10] Froma broad perspective, the welfare state can be described as government intervention through public policies, including housing policies, labour regulations, tax laws, and environmental policies aimed at the welfare of society.[11]

It is necessary to pay *Atensi* to the problems mentioned above to ensure legal protection andcertainty that social welfare is a right for every citizen. As mandated by the 1945 Constitutionof the Republic of Indonesia, the state has the responsibility to protect the entire Indonesian nation and promote public welfare in realizing social justice, a decent and dignified life, and fulfilling the rights to the basic needs of citizens for the sake of achieving social welfare in a planned, directed, and sustainable manner for all Indonesian people.[12]

II. Methodology

The research method used in this research is qualitative. The researcher used a normative juridical approach as the major data and an empirical juridical approach which uses interviewsas supporting data. The data obtained from this study uses both primary and secondary literature as well as other supporting documents sourced from other literature such as websites,books, and interviews). Then, it is analysed and described to find out what is the problem in this research.

III. Result And Discussion

The Government's Responsibility in the Implementation of Social Welfare that ProvidesLegal Protection and Certainty to the Community in the Concept of a Welfare State fromthe perspective of State Administration Law

The 1945 Constitution of the Republic of Indonesia mandates that the state must protectthe entire Indonesian nation and promote public welfare within the framework of realizing social justice for all Indonesians. To realize a decent and dignified life, as well as to fulfil citizens' basic needs to achieve social welfare, the

[10] Fuadi, A. "Negara Kesejahteraan (*Welfare State*) dalam Pandangan Islam dan Kapitalisme". *Jurnal Ekonomi Syariah Indonesia*, Vol.V, No.1, 2015, p. 18. DOI : 10.21927/jesi.2015.5(1).93-111

[11] Elviandri., Dimyati, Khuzdaifah., & Absori. "Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia". *Jurnal Mimbar Hukum*, Vol.31, (No.2), (2019), p. 254. DOI : https://doi.org/10.22146/jmh.32986

[12] Saut P. Panjaitan. *Makna dan Peranan Freies Ermessen dalam Hukum Administrasi. Dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara*, Penyunting SF, Marbun dkk. Cet.I, -Yogjakarta UII Press, 2001, p. 106.

state organizes social welfare services and development in a planned, directed, and sustainable manner. Based on the foregoing, the stateshould facilitate the full fulfilment of the rights of every citizen. Indonesia, as a country with the concept of a modern legal state (welfare state), attaches the function of advancing public welfare so that the administration of government must play an active role in the field of socio-economic life of the community to realize the function of law in public services for the social welfare of society.

The government's responsibility in implementing social welfare, based on Article 25 of Law Number 11 of 2009 concerning Social Welfare, includes a. formulating policies and programs for the implementation of social welfare; b. providing access to the implementation of social welfare; c. carrying out social rehabilitation, social security, social empowerment, and social protection according to the provisions of laws and regulations; d. providing social assistance as a stimulant to people who organize social welfare; e. encouraging and facilitating the public and the business world in implementing social responsibility; f) increasing institutional capacity and human resources in the field of social welfare; g) establishing servicestandards, registration and accreditation, and certification of social welfare services; h) administering social impact analyses and audits of development policies and activities; i) organizing social welfare education and research; j) carrying out guidance and supervision as well as monitoring and evaluation of the implementation of social welfare; k) developing a network and coordination across actors in the implementation of social welfare at the nationaland international levels; l) maintaining the heroes' cemetery and national hero's graves; m) preserving the values of heroism, pioneering, and social solidarity; and n) allocating a budget for the implementation of social welfare.

Based on Article 29 of Law Number 11 of 2009 concerning Social Welfare, theresponsibilities of regency or city governments in the implementation of social welfare include:

a) allocating a budget for the implementation of social welfare in the regional income and expenditure budget;
b) carrying out the implementation of social welfare in the area or local, including assistance assignments; and
c) providing social assistance as a stimulant to people who organize social welfare.

The authority of the regency or city government in the implementation of social welfare, according to Article 30, includes:

a) the determination of policies for the implementation of social welfare in

national and provincial development policies in the field of social welfare;
b) the coordination of the implementation of social welfare programs in the region;
c) granting permits and supervising the collection of donationsand the distribution of social assistance following their authority;
d) maintaining the heroes graveyard; and
e) preserving the values of heroism, pioneering, and social solidarity.

The responsibility and authority of the government in implementing social welfare is theaction of the government and regional governments in carrying out the duties of executive power based on the will of the state, which is based on statutory regulations stipulated by the legislature.[13] According to Tatiek Sri Djatmika, every use of responsibility and authority, regardless of its form, whether in the framework of regulation, supervision, or the determination of sanctions by government agencies is always accompanied by responsibility. This is a requirement because the concept of administrative law on the granting of authority is complemented by a review and because mistakes in the use of authority always go to court, thus guaranteeing legal protection.[14]

Arrangement of Social Welfare Policy Based on Government Regulation of the Republicof Indonesia Number 39 of 2012 Concerning the Implementation of Social Welfare

In the implementation of the policy of implementing social welfare, the government, whichhas the task of regulating and managing various government affairs that are operationally based on the authority regulated in statutory regulations, is generally bound so those who are bound by regulations cannot do anything other than follow them. In the implementation of state administration tasks, the government issues many policies that are outlined in various forms, such as *beleidslijnen*.[15] essentially a product of state administrative actions aimed at "*naar buiten gebracht schricftelijk beleid*" namely putting out a written policy.[16]

[13] Ismail Suny.Pergeseran *Kekuasaan Eksekutif. Aksara Baru Jakarta*, p. 43., dikutip dalam "Julista Mustanu. Pertanggungjawaban Hukum Pemerintah (kajian Tentang Ruang Lingkup dan Hubungan Dengan Diskresi)" *Jurnal Sasi,* Vol.20, p. 22-23. DOI: https://doi.org/10.47268/sasi.v20i2.323
[14] *Ibid.,*
[15] Bentuk peraturan kebijakan, seperti *beleidslijnen* (garis garis kebijakan), *het beleid* (kebijakan), *voorschriften* (peraturan-peraturan), *richtlijnen* (pedoman-pedoman), *regelingen* (petunjuk-petunjuk), *circulaires* (surat edaran), *resoluties* (resolusi-resolusi), *annschrijvingen* (instruksi-instruksi), *beleidsnota* (nota kebijakan), *reglemen* (peraturan-peraturan menteri), *beschikking* (keputusan-keputusan)
[16] Ridwan HR. *Hukum Administrasi Negera*. Edisi Revisi-12. Jakarta : Rajawali Pers, 2016, p. 174.

Policy regulations only function as part of the operational implementation of government tasks; therefore, they cannot change or deviate from statutory regulations. These regulations are a kind of shadow law of the statute or law (*psudo-wetgeving* or *spigelsrecht*).[17] The *Commissie Wetgevingsvraagstukken* develops policy regulations as a general rule for the exercise of government authority over citizens (as well as other governments). It is determinedbased on its power by the authorized government agency or hierarchically higher governmentagency.[18]

According to several opinions of legal experts, the binding force of policy regulations is in disagreement. According to Bagir Manan, policy regulations, which are not statutory regulations, are not directly legally binding but contain legal relevance. Meanwhile, accordingto Indroharto, the policy regulations for the community create an indirect connection. In addition, Hamid S. Attamimi stated that policy regulations are binding in general because those affected by them cannot do anything else but follow them. Meanwhile, Marcus Lukman arguesthat the binding power of intra-legal and contra-legal policy regulations, whose formation is based on the freedom of intra-legal considerations, becomes an integral part of the hierarchy of laws and regulations.[19]

For guaranteed protection and legal certainty in the implementation of social welfare, it isnecessary to have concrete government policies that are used as guidelines in the developmentof social welfare, especially in the implementation of social welfare, so that it is expected to be carried out professionally following statutory provisions to realize social welfare for the Indonesian people. In Law Number 11 of 2009 concerning Social Welfare, in Article 8, Article11, Article 13, Article 18, Article 35 paragraph (3), Article 45, and Article 50, it is necessary to stipulate a government regulation concerning the implementation of social welfare. Based on these articles, the government makes a policy regarding policy guidelines for the implementation of social welfare through the Government Regulation of the Republic of Indonesia number 39 of 2012 concerning the Implementation of Social Welfare. The purpose of this policy is to work in a directed, integrated, and sustainable manner that is carried out by the government, local government, and community. These policies include:

1. Rehabilitation Policy

[17] *Ibid.*
[18] Juniarso Ridwam dan Ahmad Sodik Sudrajat. Hukum Administrasi Negara dan Kebijakan Layanan Publik. Cetakan VI. Bandung : Nuansa Cendekia, 2019. Hal 156
[19] *Ibid.*

The right to life is a right that cannot be reduced or revoked under any conditions or for any reason (non-derogable). The state has endeavoured to fulfil its obligation to protect the right to life. As stated in the 1945 Constitution of the Republic of Indonesia in Article 28F and Law Number 39 of 1999 concerning Human Rights in Article 14.[20] The public has the right tobe informed about all public policies that will affect their lives and future. Therefore, the state is obligated to provide information and consult with the public in every process of making rehabilitation and reconstruction policies.[21]

Conditions that require special protection include 1. people with physical disabilities; 2.people with mental disabilities; 3. prostitutes; 4. the homeless; 5. beggars; 6. Former patients with chronic diseases; 7. ex-convicts; 8. former drug addicts and ex-psychotics; 9. psychotropicusers with dependency syndrome; 10. people with human immunodeficiency; 11. Trafficking victims; 12. abandoned children; and 13. Children with special needs. To fulfil the special protection needs mentioned above and to overcome them, it is necessary to follow legal developments and community developments in organizational and management arrangements and optimize social rehabilitation services in the form of programs that are more holistic, systematic, and standardized to achieve individual, family, group, and/or society goals. The government, through the Minister of Social Affairs, establishes a policy regarding social rehabilitation assistance, namely Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 7 of 2022 concerning Amendments to Regulation of the Minister of Social Affairs Number 7 of 2021 concerning Social Rehabilitation Assistance. Social rehabilitation assistance, called *Atensi*, is a social rehabilitation service that uses family, community, and/or residential-based approaches. This is realized through activities such as support for fulfilment the needs of a decent life, social care and/or child care, family support, physical therapy, psychosocial therapy, mental-spiritual therapy, vocational training, entrepreneurship coaching, social assistance and assistance, and accessibility support.

The social rehabilitation program includes both indirect and direct services.

a) Indirect Service Program, through a. Increasing social campaigns by preventing publication, outreach, education, and expanding information on

[20] Pasal 14 Undang-Undang Number 39 Year 1999 tentang Hak Asasi Manusia.
[21] Mimim Dwi Hartono, "Pendekatan Berbasis HAM dalam Kebijakan Reahabiltasi dan Rekontruksi Pasca Erupsi". *Jurnal Dialog Penanggulangan Bencana,* Vol.6,No.2. Year 2015, p. 110. https://jdpb.bnpb.go.id/index.php/jurnal/issue/view/13

social rehabilitation inall sectors of society; b. providing competency-based technical guidance for social rehabilitation managers and assistance; c. policy reflection; d. supervision, monitoring, evaluation, reporting, formulating general handbook and operational guidelines; e. coordination fulfilments; and f. social advocacy.

b) Direct Service Program, implemented through social rehabilitation assistance or *Atensi*.The targets of the social rehabilitation program include children, the elderly, people with disabilities, and victims of disasters and emergencies. In addition to the program's objectives, the goals of the social rehabilitation program are also given to other social welfare service providers. *Atensi* is carried out based on family, community, and/or residency. The targets include individuals, families, groups, and/or communities. The criteria for targeting *Atensi* are poverty, neglect, disability, remoteness, social disability, deviant behaviour, disaster victims, and/or victims of acts of violence, exploitation, and discrimination. *Atensi* is implemented in the form of support for fulfilling the needs of a decent life, social care and/or child care, family support, physical therapy, psychosocial therapy, mental-spiritual therapy, vocational training, entrepreneurship coaching, social assistance and assistance, and accessibility support. Provision of *Atensi* services using the case management method. This is a systematic step to organize and perform services to address complex protection and/or welfare issues related to the need for Social Welfare Services in an appropriate, systematic, andtimely manner through direct support and referrals according to service objectives. Thecase management process is supervised by social workers. In an emergency, *Atensi* services can be provided with case responses.

2. Social Security Policy

The development of social welfare in Indonesia refers to the concept of a welfare state. Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to social security that enables his full development as a dignified humanbeing." Then, Article 34 Paragraph (2) states that "the state develops a social security system for all people and empowers people who are weak and unable to follow human dignity. Social security is a form of social protection that aims to provide guarantees for the fulfilment of the basic needs of a decent life for each participant and/or their family members. Based on Article18 of Law Number 40 of 2004, which has been amended by the Job Creation Law, there are several types of social security

programs organized by the Social Security Administering Body,which include:

a. Health insurance
   Health insurance is held with the aim of guaranteeing that participants receive health care benefits and protection to fulfill their basic health needs. Individual services in the form of health services include promotional, preventive, curative, and rehabilitative services, as well as medicines and consumable medical materials.
b. Work accident guarantee
   Work accident insurance is held to ensure that participants receive the benefits of health services and cash compensation if a worker has a work accident or suffers from a work-relatedillness.
c. Old age insurance
   Old-age insurance is held to ensure that participants receive cash when they enter retirementage, experience permanent total disability, or die. The old-age insurance benefit in cash is paidall at once when the participant reaches retirement age, dies, or experiences a permanent total disability.
d. Pension insurance
   Pension insurances are held to maintain a decent standard of living when participants lose or reduce their income due to entering retirement age or experiencing total permanent disability. The benefits of pension insurance are in the form of cash that you receive every month as follows:
   1) Old-age pension, received by participants after retirement until death.
   2) Disability pension, received by participants who are disabled due to accidents or dueto illness, until they die.
   3) Widow's or widower's pension, received by the widow or widower of the participant'sheirs until he dies or remarries.
   4) Child pension, received by the heirs of the participants until they reach the age of 23(twenty-three) years, work, or marry.
   5) Parents' pension, received by the parents of heirs of single participants until a certaintime limit following statutory regulations.
e. Life insurance
   Death allowances are held with the aim of providing death benefits paid to the heirs of participants who pass away. The death allowance in the form of cash is paid no later than 3(three) working days after the claim is received and approved by the BPJS.
f. Job loss insurance
   Job loss insurance is held responsible for maintaining a decent standard of

living when a worker loses his job. The benefits of job loss insurance include cash, access to information onthe job market, and job training.

3. Social Empowerment Policy

Social empowerment services are aimed directly at individuals, groups, and communities so they can act independently and place the community as a competent actor or subject as wellas an important agent that can influence change. It can increase the role both institutionally and individually.[22] Because empowerment is a collaborative process, social workers and the community must work together as partners. The process of empowerment is dynamic, synergistic, constantly changing, and evolutionary. However, problems always have various solutions.[23]

4. Social Protection Policy

Social protection is an integral aspect of the process of reducing poverty and reducing inequality within a country. The social protection policy is guaranteed by the 1945 Constitution of the Republic of Indonesia, which states that the government must protect the entire nation and all of its homeland, promote public welfare, and educate the people of the nation. In Article34 of the 1945 Constitution of the Republic of Indonesia, the state also mandates that the poorand neglected children are cared for by the state, and the state is obliged to develop a system of protection and social security nationally.

The national social security system is a state program that aims to assure social protection and welfare for all people. Everyone has the right to social security to be able to fulfil the basicneeds of a decent life and increase their dignity toward the realization of a prosperous, impartial, and prosperous Indonesian society. To provide comprehensive social security, the state develops a national social security system for all Indonesians. To realize this goal, the national social security system needs to establish a legal entity based on the principles of cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, trust funds, and the results of managing social security funds entirely for programdevelopment and the significance of participants.[24]

[22] M. J. Maspaitella, Nancy Rahakbauwi "Pembangunan Kesejahteraan Sosial: Pemberdayaan Masyarakat dalam Pendekatan Pekerja Sosial"., *Aspirasi*, Vol. 5 No. 2, December 2014, p. 163.
[23] *Ibid.*
[24] Lihat Undang-Undang Republik Indonesia Number 24 Year 2011 Tentang Badan Penyelenggara Jaminan Sosial.

The national social security system is administered through a legal entity, namely the Social Security Administration Agency (*BPJS*). It is the fourth transformation of a State- Owned Enterprise to accelerate the implementation of a national social security system for allIndonesians, which aims to realize the provision of guarantees for the fulfilment of the basic needs of a decent life for each participant and/or family member.[25] The form of providing guarantees is organized by *BPJS*, namely Health *BPJS* and Employment *BPJS*. Health *BPJS* organizes health insurance programs, while Employment *BPJS* organizes work accident insurance, old age insurance, pension security, and death insurance.[26] *BPJS* health participation means that every person, apart from employers, workers, and recipients of contributionassistance, who meets the requirements for participation in the social security program must register himself and his family members as participants with *BPJS* under the social security program he is participating in.

5. Policy on Infrastructure Standards

Standards for social welfare facilities and infrastructure, including[27]a. social homes; b. social rehabilitation centers; c. education and training centers; d. social welfare centers; e. halfway houses; f. social protection houses. A social institution is an institution or service unitthat carries out social rehabilitation for one type of target to restore and develop the abilities of a person experiencing social dysfunction so he can carry out his social functions normally. Minimum standard of facilities and infrastructure for social institutions, includes a. an office consisting of a leadership room, staff work room, meeting room, living room, documentation room, data and information room, library room, bathroom, and kitchen; b. technical services consisting of dormitory rooms, nanny rooms, diagnostic rooms, psychosocial counselling rooms, production installation rooms, sports and physical coaching rooms, mental and social guidance rooms, skill practice rooms, and art rooms; c. Public services consisting of a dining room, study room, prayer room, medical room, hall, security post, living room,

[25] Lihat Pasal 5 ayat (1) dan Pasal 52 Undang-Undang Republik Indonesia Number 40 Year 2004 Tentang Sistem Jaminan Sosial Nasional.
[26] Lihat Pasal 18, Undang-Undang Number 40 Year 2004 Tentang Sistem Jaminan Sosial Nasional dan Pasal 5 dan Pasal 6 Undang-Undang Republik Indonesia Number 24 Year 2011 Tentang Badan Penyelenggara Jaminan Sosial.
[27] Lihat Pasal 37, Peraturan Pemerintah Republik Indonesia Number 39 Year 2012 Tentang Penyelenggaraan Kesehateraan Sosial.

warehouse, bathroom, parking lot, and official/administrative house; d. Service personnel for social institutions consisting of administrative staff, financial personnel, functional staff, and security personnel; e. Equipment for social institutions consisting of office support equipment, communication equipment, lighting, water, clean installations, and auxiliary equipment for service recipients; f. Transportation equipment consisting of office transportation equipment and service reception transportation equipment; g. Clothing and food for service recipients.

The education and training center is a place to educate and train human resources in the fieldof social welfare to have and improve professional attitudes, behaviours, and skills in implementing social welfare. The minimum standards for facilities and infrastructure for education and training centers include a. an office, which consists of a management room, a management meeting room, a staff work room, a meeting room, a living room, a documentationroom, a data and information room, a library room, a teaching room, a bathroom, and a kitchen; b. technical services consisting of discussion rooms, seminar rooms, romance rooms, study rooms, and laboratory rooms; c. Public services consisting of a guest house, ceremonial field, dining room, prayer room, polyclinic, hall, security post, warehouse, bathroom, parking lot, sports ground, and official/administrative house; d. Education and training center service personnel consisting of administrative staff, financial staff, functional staff, and security personnel; e. Education and training center equipment consisting of office support equipment, communication and information lighting, and learning technical support; F. Learning media equipment; g. Education and training center transportation equipment for students' needs; and h. Food for education and training center participants consisting of staple food and supplementary food.

The social welfare center is a place that functions to carry out joint social service activities in a synergistic and integrated manner between community groups in the community in the village or sub-district in implementing social welfare. The minimum standards for social welfare center facilities and infrastructure include a. place used as the center of joint activities; b. service personnel consisting of management and implementing staff; c. equipment consistingof office support equipment and technical service support equipment. A halfway house is a temporary residence for service recipients who are prepared to receive further services.

The minimum standard of facilities and infrastructure for shelters includes a. a house building consisting of office space, technical service rooms, rest and

sleep rooms, dining rooms, health rooms, living rooms, prayer rooms, and bathrooms; b. service personnel consisting of administrative staff and functional staff; c. equipment consisting of water and clean water installations, office support equipment, lighting, communication equipment, technical equipment for service recipients, and vehicles; d. food for service recipients consisting of staple food and supplementary food. The social protection house is a place of temporary service to provide a sense of security to service recipients who have experienced trauma due to acts of violence and abuse and social conflicts that need protection.

6. Community Participation Policy

Communities have broad opportunities to play a role in social administration, a role that iscarried out to support the success of social welfare implementation. Community participation can be carried out by individuals, families, and religious organizations. The role of the community in implementing social welfare can be in the form of thoughts, initiatives, expertise, support, activities, personnel, funds, goods, services, and/or facilities for the implementation of social welfare. The examples of activities are as follows: a. providing facilities and considerations in implementing social welfare; b. preservation of the noble values of the nation's culture, social solidarity, and local wisdom that support the implementation of social welfare; c. provision of human resources in organizing social welfare; d. providing funds, services, facilities, and infrastructure in implementing social welfare and/or; e. providing services to persons with social welfare problems.

7. Policy on Registration Procedures for Institutions Organizing Social Welfare

Social Welfare Institutions (*Lembaga Kesejateraan sosial* or LKS) are social organizations that organize the implementation of social welfare programs formed by the community, both those with legal entities and those without legal entities. LKS with a legal entity is a social organization or social association engaged in the implementation of social welfare in the formof a foundation or other form that is declared a legal entity. LKS without a legal entity is an LKS that has not been declared a legal entity. Foreign LKS is a social organization or social association founded according to the legal provisions of the country where the social organization or social association was founded and has received permission from the government of the Republic of Indonesia to administer social administration in Indonesia.

The position of LKS at provincial and regency/city levels is autonomous and

independent. LKS has a role in preventing the occurrence of social problems, providing social services to people with social welfare problems, and holding family welfare consultations. In administering social activity, it has a function as a government partner in district or city regional government. The scope of LKS activities covers the national, provincial, and district/city levels. Meanwhile, the scope of the typology is grouped based on characteristics, including type D/Embryo, type C/Grows, type B/Develops, and type A/Independent. Each of them has criteria:

a. LKS type D/Embryo has the following criteria:
   1) Have not fulfilled institutional and service standards;
   2) Still need assistance to fulfil the minimum standards;
   3) Get a score below 40%.
b. LKS type C/Growth has the following criteria:
   1) has fulfilled some of the institutional and service standards;
   2) Still need assistance for development;
   3) Get a score between 40% to 60%.
c. LKS type B/Developing has the following criteria:
   1) The majority of the institutional and service standards have been fulfilled;
   2) Has the potential to be developed-level;
   3) Get a score between 60% to 80%.
d. LKS type A/Independent has the following criteria:
   1) Has fulfilled the institutional and service standards;
   2) Do not depend on government assistance;
   3) Can be used as an example;
   4) Get a score above 80%.

In administering activities, it must be based on Pancasila and not conflict with the 1945 Constitution of the Republic of Indonesia by including it in the articles of association and bylaws. Besides, its registration must fulfil the requirements and procedures for registering LKS and comply with statutory regulations. The obligation of LKS to have a registration certificate includes the following:

1. Every institution that organizes social welfare is obliged to register with the ministry orinstitutions in the social sector according to its area of authority.
2. Foreign LKS that will organize social welfare must have principles from the

Ministry of Foreign Affairs, submit operational permits to the Ministry of Social Affairs, and technical permits from the Governor and regents/mayors.

3. The foreign LKS must be in the form of a legal entity and originate, be domiciled in, orbe registered in a country that has diplomatic relations with Indonesia.

Legal Entity LKS Registration Requirements, including:

1. Statutes and Bylaws
2. A notarial deed of establishment ratified by the Minister of Law and Human Rights asa legal entity
4. A statement of domicile from the village head or other local names for at least threeyears
5. The organizational structure of the institution and management composition, along witha copy of the management's identity card
6. Work programs in the field of social welfare
7. NPWP owned by LKS
8. Recommendations from the district or city social services for LKS applying forregistration at the provincial level
9. Recommendations from the District or City LKS
10. List of beneficiaries
11. Photos of the Secretariat and social welfare activities.

Not-Legal-Entity LKS Registration Requirements, including:

1. Statutes and Bylaws
2. A memorandum of establishment legalized by the village head (or another name),sub-district head, regent, or mayor.
3. Domicile information from the village head or other local names for at least 3 (three)years.
4. The organizational structure of the institution and management composition, alongwith a photocopy of the management's KTP
5. Work programs in the field of social welfare
6. Recommendations from the district or city social service for LKS applying forregistration at the provincial level
7. Recommendations from District/City LKS

8. List of beneficiaries
9. Photos of the Secretary and social welfare activities

Requirements for foreign LKS Applications for operational permits by foreign LKS must be accompanied by documents,including:

1. Status of LKS as a legal entity
2. Cooperation or assistance proposals, including activity plans and annual work programs
3. Information about local partners
4. Draft a cooperation agreement with the ministry that organizes government affairs inthe social sector
5. A letter of permission in principle from the minister who organizes governmentaffairsin the foreign sector

Sanctions for LKS registration are as follows:

1. LKS that organize social welfare programs but do not register are subject to sanctions in the form of written warnings or temporary suspension of activities.
2. Foreign LKS that do not have operational licenses or do not have technical licenses willbe subject to administrative sanctions in the form of a. a written warning; b. a temporarysuspension of activities; and c. license revocation.
3. Administrative fines with a maximum fine amount of Rp. 50,000,000.00 (fifty millionrupiahs).
4. Foreign LKS that do not report their activities periodically will be subject to administrative sanctions, in the form of a. a written warning; b. a temporary suspensionfrom activities; c. administrative fines, with a fine of up to Rp. 100,000,000 (one hundred million rupiahs); and d. license revocation.
5. Administrative fines by officials who are authorized by the Minister, Governor, or Regent/Mayor are assessed following their authority and scope of activities and deposited into the state treasury.

IV.CONCLUSION

The responsibility and authority of the government in the implementation

of social welfare is the action of the government and regional governments in carrying out the duties ofexecutive power based on the will of the state, which is based on statutory regulations stipulated by the legislature. Every use of responsibility and authority, regardless of its form, whether inthe framework of regulation, supervision, or the determination of sanctions by government agencies or organs, is always accompanied by responsibility. This is a must because the conceptof administrative law granting authority is completed by review, and errors in the use of authority always go to court, thereby guaranteeing legal protection.

In Law Number 11 of 2009 concerning Social Welfare, in Article 8, Article 11, Article 13,Article 18, Article 35 paragraph (3), Article 45, and Article 50, it is necessary to stipulate a government regulation concerning the implementation of social welfare. Based on these articles, the government makes a policy regarding policy guidelines for the implementation ofsocial welfare through Government Regulation No. 39 of 2012 of the Republic of Indonesia concerning the Implementation of Social Welfare. The purpose of this policy is to be directed, integrated, and sustainable, carried out by the government, the local government, and the community. These policies include rehabilitation policies, social security policies, social empowerment policies, social protection policies, infrastructure standard policies, communityparticipation policies, and registration procedure policies for institutions that administer socialwelfare.

REFERENCES

Book

Barbara Vis. (2010). *Politics of Risk-taking*: *Welfare State Reform in Advanced Democracies*, Amsterdam University Press, Amsterdam

Johnny Ibrahim. (2009). *Hukum Persiangan Usaha. Filosofis, Teori, dan Implikasi Penerapannya di Indonesi*a. Cetakan Pertama: Bayumedia, Malang.

Mashudi, *Negara Kesejahteraan dan Hukum Administrasi dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara*, Penyunting SF, Marbun dkk. Cet.I, -Yogyakarta UII Press

Budi Ispriyarso. (2001). *Hubungan fungsional antara kedaulatan rakyat dan kedaulatan Hukum terhadap perkembangan Hukum Administrasi Negara dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara*, Penyunting SF, Marbun dkk.

Cet.I, - Yogjakarta UII Press.

Ridwan HR. (2016). *Hukum Administrasi Negera*. Edisi Revisi-12. Jakarta : Rajawali Pers.

Saut P. Panjaitan. (2001). *Makna dan Peranan Freies Ermessen dalam Hukum Administrasi. Dalam Dimensi-dimensi Pemikiran Hukum Administrasi Negara*, Penyunting SF, Marbun dkk. Cet.I, -Yogjakarta UII Press.

Juniarso Ridwam dan Ahmad Sodik Sudrajat. (2019). *Hukum Administrasi Negara dan Kebijakan Layanan Publik*. Cetakan VI. Bandung : Nuansa Cendekia.

Journal

Elviandri., Dimyati, Khuzdaifah., & Absori. (2019), "Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia". *Jurnal Mimbar Hukum*, Vol.31, (No.2), DOI : https://doi.org/10.22146/jmh.32986

Fuadi, A. (2015) "Negara Kesejahteraan (Welfare State) dalam Pandangan Islam dan Kapitalisme" *Jurnal Ekonomi Syariah Indonesia*, Vol. V, No.1 DOI : 10.21927/ jesi.2015.5(1).93-111

Julista Mustanu. (2014). "Pertanggungjawaban Hukum Pemerintah (Kajian Tentang Ruang Lingkup Dan Hubungan Dengan Diskresi)" *Jurnal Sasi*, Vol. 20. Number 2. DOI:https://doi.org/10.47268/sasi.v20i2.323

L. Lismanto1, Yos Johan Utama, (2020) "Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial dalam Perspektif Negara Demokrasi", *Jurnal Pembangunan Hukum Indonesia,* Volume 2, Number 3, DOI: https://doi.org/10.14710/jphi.v2i3.416-433

Mimim Dwi Hartono, (2015). "Pendekatan Berbasis HAM dalam Kebijakan Reahabiltasi danRekontruksi Pasca Erups"i. *Jurnal Dialog Penanggulangan Bencana* Vol.6, No.2. https://jdpb.bnpb.go.id/index.php/jurnal/issue/view/13

M. J. Maspaitella, Nancy Rahakbauwi, (2014). "Pembangunan Kesejahteraan Sosial:Pemberdayaan Masyarakat dalam Pendekatan Pekerja Sosial"., *Aspirasi,* Vol. 5 No. 2.
https://jurnal.dpr.go.id/index.php/aspirasi/issue/view/Volume%205%20Number%202% 20Tahun%202014

Nur Rohim Yunus, (2015). "Aktualisasi Welfare State Terhadap Kehidupan Bernegara DalamDimensi Keislaman dan Keindonesiaan", *Mizan; Jurnal Ilmu Syariah,* FAI Universitas Ibn Khaldun (UIKA) Bogor, Vol. 3 No. 2 https://www.jurnalfaiuikabogor.org/index .php/mizan/issue/view/12

Law

Undang-undang Dasar Negara Republik Indonesia Tahun 1945
Undang-Undang Republik Indonesia Number 39 Tahun 1999 tentang Hak Asasi Manusia. Undang-Undang Republik Indonesia Number 11 Tahun 2009 tentang Kesejahteraan Sosial Undang-Undang Republik Indonesia Number 40 Tahun 2004 tentang Sistem Jaminan Sosial

Nasional

Undang-Undang Republik Indonesia Number 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial

Peraturan Pemerintah Republik Indonesia Number 39 Tahun 2012 tentang Penyelenggaraan Kesejahteraan Sosial