

**THE DYNAMIC CONCEPT OF WELFARE STATE IN INDONESIAN  
CONSTITUTION**

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**Mohammad Tavip**

**DOCTORAL PROGRAM OF LEGAL STUDIES  
FACULTY OF LAW  
BRAWIJAYA UNIVERSITY  
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# **THE DYNAMIC CONCEPT OF WELFARE STATE IN INDONESIAN CONSTITUTION**

**Mohammad Tavip**

**NIM. 0830104016**

## **ABSTRACT**

This paper analyzes the dynamics of welfare state concepts in Indonesia in accordance with the Indonesian Constitution (UUD 1945) through legalization spectrums and social policies in three regime orders, namely: old order, new order and reformation order. The welfare state concept is one enabling the government to measurably act as a social welfare accelerator. The legal review towards this concept is further elaborated in such a way that it touches the dimensions of ideology, democracy and politics. These dimensions advocates about the shadows of inevitable effects of two world ideology mainstreams to the legal realities and social policies in Indonesia as a welfare state based on its State Ideology (Pancasila).

With reference to the aforementioned facets of analysis, it is definitely implied that there were strong impacts from both technical and legal predicaments during the transition phase in the early independence of Republic of Indonesia and changes in constitutional structure in Indonesia post reformation to the dynamics of concepts of welfare state in Indonesia. Accordingly, this paper addresses the concept dynamics in terms of constitutional precisions in the line with welfare state of Indonesia.

*Keywords: Indonesian Welfare State Concept, State Ideology (Pancasila), Third-Way Ideology from minimal model to minimal-plural model.*

## A. Introduction

Indonesia is often identified as a state proposing the idea of welfare state as reflected from its constitution, i.e.: UUD 1945, stating that one of the objectives of the state is to bring welfare to its people at common. The idea to adopt welfare state as a state concept is not cited deliberately nor instantly. Referring to the historical perspectives, the welfare state in Indonesia was established under the shadows of two mingled major ideologies, i.e.: individualism and collectivism. Further, the development of welfare state inflates several concepts and generates a quite number variants, such as Residual Welfare State, Universalist Welfare State and Social Insurance Welfare State.<sup>1</sup>

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<sup>1</sup> Esping-Andersen's welfare state divided into three forms, namely:

- 1) Residual Welfare State, which includes countries such as Australia, Canada, New Zealand, and the United States, on the basis of the liberal welfare regime and characterized by limited social security on a selective target groups as well as a strong incentive for markets to take care of public services.
- 2) Universalist Welfare State, which includes countries such as Denmark, Finland, Norway, Sweden, and Holland, with a base of social democratic welfare regime and is characterized by a universal social security coverage and a broad target group as well as extensive dekomodifikasi level.
- 3) Welfare State Social Insurance, which includes countries such as Austria, Belgium, France, Germany, Italy, and Spain with a base of conservative welfare regime and social security systems are characterized by a segmented and important role as a provider of supply

In case those infiltrate to Indonesia, the obvious question to be addressed will be whether or not their dynamic properties bring impacts to the concept of welfare state in Indonesia as stated in its constitution. Moreover, the question will be how such development on concept of welfare state relates to the ideological aspects and affects the relation of state and market as well as drives globalization. The essence of this research is in search of the answer to the curiosity to trace and map the concept of welfare state adopted in Indonesia from its early independence through the era of New Order Regime and the era of Reformation Regime.

Having observed the way the Indonesian authorities govern the state constitutionally, I should address my initial strong premise that the go<sup>1</sup>vernment is the main actor in pursuing welfare state. However, considering the observed dynamics, the present adoption of welfare state by the Indonesian government is to be holistically redefined apart from its initial concept. Accordingly, it will academically stimulate a curiosity to find out the answer on this present phenomenon. A number of provisions illustrating this problem are, inter alia:

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welfare. Di family here, WAS move of shape ideas into concepts, models, and theories.

How to appraise and evaluate the dynamic and character of welfare state adopted in Indonesia when viewed from the spectrum of legislative products as well as executive policies.

In view of the aforementioned background and question, the analysis will be patterned in consistence with the ideas advocated by Nonet & Zelsnick, James Brice, A.A.H. Struyken, Hans Kelsen and Hans Nawiasky. Referring to their addresses, the legal characters, legal enforcements and coherence of the content of the Indonesian Constitution in its implementation, will be found. This paper will focus on and explore the issues against this background as follows:

1. The roles of state, market and society in a welfare state. With reference to the aforementioned reviews, it will lead to a way how to identify the constitutional precision of the meaning of dynamics and characters of welfare state in Indonesia.
2. The identification of relationship between the concept of welfare state and the idea on social welfare as stated in the Indonesian Constitution (UUD 1945).
3. The mapping of dynamics and characteristics of welfare state in Indonesia during the era of old order, the era of new order and the era of reformation order.

## **B. Methodology**

To find the answer of the research questions, the subject needs to be marked firstly is the history of welfare state, both from its mainstream ideology, i.e. socialist as well as the capitalist. Secondly, the historical stepping point will be continued with tracing the development of variant of welfare state both on concept, model, and theory. Further, it is important to observe the implementation of such concept, model, and theory of welfare state to several states. Thirdly, the implementation of welfare state concept in several states will be closely looked by relating it to the philosophy followed by each state (philosophical approach); the way to find out the philosophy followed by each state is by observing its constitutions (statute approach). Fourthly, in the frame of globalization, it is pretty relevant to observe welfare state concept in current context.

Through the elaboration among holistic approaches, the aims need to achieve are the map position and role of 1) state, 2) market, 3) society within a welfare state. The result of such mapping on position and role will be used as an entrance to appraise and evaluate the constitutional precision on the dynamic and character of welfare state employed by Indonesia. The ways to appraise and evaluate these are by examine the

legislative products and executive policies.

## **1. Justifying the Relationship between State Ideology (Pancasila) and Indonesian Constitution (UUD 1945) with Concept of Welfare State**

Although the concept of welfare state is not normatively stated in the Indonesian Constitution (UUD 1945), it is not conclusive that Indonesia is not a country adopting the concept of a welfare state. It is necessary to keep in mind that reading a legal text does not simply concern with what is expressed textually. In this respect, Philipus M. Hadjon and Tatiek Sri Djatmiati advocate<sup>2</sup> that norms are to be initiated with conceptual approaches since, as a proposition, norms comprises a series of concepts. In the meantime, Soepomo<sup>3</sup> addresses that perusing the Indonesian Constitution (UUD 1945) requires not only contemplation to its articles but also the dialectics when formulating in order

to able to capture the spirits behind each of the articles.

Considering the aforementioned two addresses, it is conclusive that perusing the texts of the Indonesian Constitution (points regarding and related with the concept of welfare state), one is to adopt both conceptual approach and initial history of its enactment.

### **1.1. Concept of Welfare State**

The concept of welfare state is often perceived differently, depending on the point of view of those discussing it. There are ones perceiving it from economic spectrum (Nicholas Bar)<sup>4</sup>, political spectrum (Briggs)<sup>5</sup> and ideological spectrum (Titmuss). In view of those perceptions, there are basic elements that can relate the multi-perceptions to cast an initial understanding on the concept of welfare state. Those elements are state (government), market and society. When those basic elements are elaborated and constructed, it will configure the basic shape for understanding the concept of welfare state, i.e.: a concept properly positioning the role of government and being committed to social equality and fairness in consistent with the following three principles:

- The cure and prevention of effects harmful to the functions of market economy, especially the

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<sup>2</sup> Philipus M hadjon, Tatiek Sri Djatmiati, Legal argumentation ... pp. 38-39.

<sup>3</sup> In relation with the reading on the Indonesian Constitution (UUD 1945). Soepomo was one of a number of public figures involved in the formulation of the text of the Indonesian Constituion (UUD 1945)

<sup>4</sup> Bar, The economics of the welfare state, Oxford, 1998.

<sup>5</sup> A Briggs, The welfare State in historical Perspective, European Journal of Sociology, 1961.

one unfavorable to those with less social and economic power;

- The distribution of prosperities and opportunities for all fairly and evenly, and
- The promotion of social welfare and security system for the poor to get greater benefits.

When operated based on the aforementioned three principles, the concept of welfare state presents six fundamental objectives, namely : economic growth, ample job opportunities, price stability, development, expansion of social security system and improvement of working condition, capital distribution and common welfare, and promotion of diverse social and economic interests and groups<sup>6</sup>.

For analytical purposes, the concept of welfare state is more greatly stressed on the aspect of social security system. The social security system in a country is often represented in a social legislation and policy. It is inevitable that the concept of a welfare state is not identical with a social policy. However, a country

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<sup>6</sup> Understanding such concept of welfare state, the legal characteristics of in a welfare state should be responsive (democratic). The responsive legal concept was addressed by Nonet and Zelnick.

<sup>7</sup> Read Dina Wisnu, *Politics of Social Security System, Creating Sense of Security in Market Economy*, Gramedia Pustaka Utama, Jakarta 2012, pp. 33

<sup>8</sup> Darmawan Tri Wibowo, *Dreams of Welfare States*, LP3ES, Jakarta, 2006, pp. 8

adopting a concept of welfare state will be meaningless when it has no social security system cited in its social legislation and policy.

Dinna Wisnu<sup>7</sup> reminds us about confusing definitions about welfare state and social security. Similarly, as quoted by **Darmawan Triwibowo**,<sup>8</sup>

***Esping-Andersen*** advocates :

“ Welfare state is not a concept with a standard approach. It is more frequently associated with attributes of service policy and social transfer made available by the state (c.q. government) to its people, such as : services on education, income transfer and poverty combat so that both (welfare state and social policy) are commonly identical. It is certainly unacceptable as the social policy has no implication against welfare state. A social policy may be applied without the presence of a welfare state. On the other hands, a welfare state always needs a social policy to support its existence”.

Under such a circumstance, it is unquestionable that a social security system is an important element to support the existence of a welfare state of Indonesia.

## **1.2. History of Indonesian Constitution (UUD 1945) Enactment : Overview to Existence of Social Welfare Idea**

Historically, it is recorded that on 01 March 1945, the Japanese Government established Agency for Investigating Efforts for the Preparation of Indonesian

Independence (BPUPKI). This agency was to study and observe important points related with political, economic, governmental aspects and some others required for the establishment of Republic of Indonesia as an independent country<sup>9</sup>.

On 29 May 1945, Moh. Yamin addressed his proposal before a BPUPKI assembly. He advocated five, i.e.: (i) Nation State; (ii) Humanity; (iii) Divinity; (iv) Democracy and (v) Social Welfare<sup>10</sup>.

On 01 June 1945, in his oration consisting of 6,480 words, Soekarno addressed his proposals about ideology of Indonesia as an independent country. Later, the proposal is commonly known as *Pancasila* (State Ideology) consisting the following :

1. Nation State;
2. Internationalism;
3. Democracy;
4. Welfare;
5. Divinity.

Referring to the aforementioned proposals, the relevant point is the fourth one, i.e.: Welfare. Soekarno addressed :

"I should propose the fourth principle. During the last 3 days, I have heard none about welfare. There should be no poverty in independent Indonesia. Therefore, if we truly understand, remember and love the Indonesian people, let's accept the principle of this *sociale rechtvaardigheid*, not only the equality in politics. Ladies and gentlemen, we also have to secure equality in economy, in

the sense of true common welfare".<sup>11</sup>

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At the end of the session in the BPUPKI assembly, there was dialectics and formulation of the Indonesian Constitution (UUD 1945). When closely perusing the preamble of the Indonesian Constitution (UUD 1945), it is clear that the notions of *Pancasila* as State Ideology expressed therein. In addition, the preamble also indicates the objectives of the state. The correlation between the state objectives and concept of welfare state is illustrated as follows:

Preamble : Whereas independence is a genuine right of all nations and any form of alien occupation should thus be erased from the earth as not in conformity with humanity and justice, Whereas the struggle of the Indonesian independence movement has reached the blissful point of leading the Indonesian people safely and well before the monumental gate of an independent Indonesian State which shall be free, united, sovereign, just and prosperous, By the grace of God Almighty and urged by the lofty aspiration to exist as a free nation, Now therefore, the people of Indonesia declare herewith their independence, Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's

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<sup>11</sup> Ibid., pp. 75-76.

intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice, Indonesia's National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as the State of the Republic of Indonesia with sovereignty of the people and based on the belief in the One and Only God, with obligation to the Moslems to deliver Islamic rules, for on just and civilized humanity, on the unity of Indonesia and on democratic rule that is guided by the strength of wisdom resulting from deliberation / representation, so as to realize social justice for all the people of Indonesia."

The composition of the aforementioned preamble was revised by deleting 7 words (underlined by the writer).

Having been officially enacted on 18 August 1945, the Indonesian Constitution (UUD 1945) is systematically worded as follows :

The first - the heading covering preamble. The second – the body of constitution consisting 36 Articles. The third – the closure consisting 1 article (Article 37), Transitional Provisions consisting 4 articles and Addendum Provisions expressed in 2 sentences.<sup>12</sup> Systematically, the constitution is worded as<sup>13</sup>:

"PREAMBLE  
(four sentences)  
CONTENT OF CONSTITUTION  
CHAPTER 1. The State Form  
and Sovereignty

(1 Article)  
CHAPTER 2. The People's  
Consultative Assembly  
(2 Articles)  
CHAPTER 3. The Executive  
Power of State  
(12 Articles)  
CHAPTER 4. The Supreme  
Advisory Council  
(1 Article)  
CHAPTER 5. The Ministers of  
State  
(1 Article)  
CHAPTER 6. The Local  
Government  
(1 Article)  
CHAPTER 7. The House of  
Representatives  
(4 Articles)  
CHAPTER 8. The Finance  
CHAPTER 9. The Judicial Power  
(2 Articles)  
CHAPTER 10. The Citizens  
(3 Articles)  
CHAPTER 11. The Religion  
(1 Article)  
CHAPTER 12. The National  
Defense  
(1 Article)  
CHAPTER 13. The Education  
(2 Articles)  
CHAPTER 14. The Social  
Welfare  
(2 Articles)  
CHAPTER 15. The Flag and  
Language  
(2 Articles)  
CLOSURE  
CHAPTER 16. The Amendment  
of Constitution  
(1 Article)  
TRANSITIONAL PROVISIONS  
(Article I-IV)  
ADDENDUMS  
(2 Sections)".

Referring to the aforementioned, the issue about social welfare is found in Chapter 14.

In short, it can be constructed that *Pancasila*, as *philosophische grondslag* is



expressed in the Preamble of the Indonesian Constitution. As a *philosophische grondslag*, *Pancasila* lawfully serves as a source of Indonesian constitutional law and inspires the formulations of laws in Indonesia. Accordingly, the existence of Preamble of the Indonesian Constitution is so strategic in the Indonesian constitutional system<sup>15</sup>.

<sup>5</sup>As the idea about social welfare is expressed in the Preamble of the Indonesian Constitution (as previously described), it is conclusive that it only relates with state ideology (*Pancasila*) and the objectives of state but also serves as a constitutional obligation in the Indonesian constitutional system.

### **1.3. The Idea of social welfare is a proposition intact to the concept of welfare state**

According to the Indonesian law, "Social Welfare" is defined as a condition where material, spiritual, and social needs of the people to be satisfied in order to be able to live prosperously and have self development so that they can

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<sup>15</sup> Adagium demonstrating how strategic the Preamble of the Indonesian Constitution is as "modifying the Preamble of the Indonesian Constitution is construed to dissolve the Nation of Indonesia". It is due to the fact that the Preamble of the Indonesian Constitution contains the Constitution and Objective of the Nation. Referring to the theory of constitution addressed by A.A.H.Struycken, the Preamble of the Indonesian Constitution serves as the most important constitution of a nation containing the wills and results of the past struggle.

undertake their social functions properly".

In order to be able to attain such a condition, it certainly requires a series of programs and actions as follows:

1. Social Security that serves as an institutional scheme to secure that the people can meet their normal basic needs through social insurance scheme and sustainable direct aids.
2. Social Protection as presented in all efforts directed to prevent and cope with risks against social shocks and susceptibilities.
3. Social Safety Net as derived from social protection efforts.

Considering the elaborated definition of social welfare in accordance with the Indonesian law, it is definitely clear that by reviewing the propositions from some concepts and history of the Indonesian constitution enactment it will be identified that the idea of social welfare is expressed in the Indonesian constitution is congruent with the propositions of the characteristics of a welfare state.

Accordingly, as Indonesia constitutionally is determined to present social fairness among all of its people as an obligation as well as objective to attain, it is relevant to well consider an adagium : "*There is no social justice without social welfare, and there is no social welfare without social security.*"

*Edy Suharto<sup>16</sup> added that " there is no social security without social solidarity."*

## **2. Development of Types and Characteristics of Indonesian Welfare State**

### **2.1. Era of Old Order : Poorly Managed Transitional Era**

Although Malaysia and Singapore were ex-colonies of the Great Britain, these two countries have better and more favorable social security systems than Indonesia does. Ahmad Subianto, when attending a workshop on pension fund in England, titled : "*Pension Scheme: Security and Choice, The UK Experience*" 2004, he addressed a question to the speaker and got an answer that in regard with social security, especially pension fund, England practically copied the system applied in the Netherlands.

This statement is very inspiring (when connected to the previous narration, i.e.: that Malaysia and Singapore have better and more favorable social security systems than Indonesia does), as they have passed their transition phases from colonies to sovereign countries with the right paces.

In considering the aforementioned narration, Indonesia should have been potential to apply the same since it was an ex-colony of the Dutch. The social security in Indonesia is not yet favorable up to the present date. Such a condition

leads to a question: What and where is the problem? In fact, the Indonesian Constitution has clearly accommodates a corridor through its Transitional Provisions in order to be able to prevent any possible legal gap during the transition phase towards a sovereign country by keeping employing legal institutions and adopting legal products, including but not limited to social security system, effective in the colonial era. How could Indonesia be inferior when compared to those two next door countries? It leads to a strong allegation that during the transition era in its early independence, Indonesia failed to manage the legal product, i.e. : social security system, properly.

In view of the jurisprudence in the era of old order, it is identified that the social welfare oriented legal products as follows:

1. Act Number 33 Year 1947 About Accidents
2. Act Number 12 Year 1948 About Working
3. Act Number 9 Year 1960 About Fundamentals of Health;
4. Act Number 3 Year 1961 About Approval on International Labor Organization Convention Number 106 About Weekend Holiday in Trading and Offices.
5. Act Number 22 Year 1961 About Higher Education.

## 6. Act Number 18 Year 1961 About Employment.

Ideologically, the aforementioned Acts were collective-socialist in nature. Similarly, it was also identified in the socio-economic policy affecting 'nationalization' over foreign companies as a part of thought mainstream at that time and in attempt to revive the roles of the government in public sectors as the main actor<sup>22</sup> after, in the previous period, the dominant roles of the government in public sectors was perceived to be bad for the human beings.

Actually, Jimly Asshidiqy has addressed the dynamics of ideology behind the legal reality and socio-economic policies in Indonesia from 1945 through 1990. In one of his conclusions, he stated that political policies had developed from the basis of collectivism thought, while the economic policies had tended to be individualism-capitalism.

Considering those collected legal references, it is conclusive as follows:

1. That the legal configuration affecting the social welfare in the early period of the Indonesian independence until about the end of era of old order regime tended to be less integrated (not systemic).
2. Due to the unsystematic legislation, the social protection, social security, social rehabilitation and social

empowerment that should have been presented in a welfare state as a result to less integrated legislation in form of umbrella provision.

3. One of the weaknesses in a less systemic legislation is that it is potential to be overlapping that, in practice, leads to difficult coordination and controls.

By considering the legal configuration on social welfare and reviewing their legislation norms, it is conclusive that conceptually, in the early period of the Indonesian independence, the model of welfare state in Indonesia was minimal-cooperative.

The model is regarded to be minimal since Indonesia is classified to be a developing country allocating very little funds for social development. The welfare programs and social security are provided sporadically, partially and minimally, and in general are only available for public servants, members of armed forces and private employees capable of paying premiums.

The model is considered corporative or called work merit as the norms of social security scheme are applied institutionally and massively, yet the contributions to various social security schemes are from three parties, namely: government, business entities and labors. The social services delivered by the main actor, i.e.: government,

mainly to those working and giving contributions through benefit schemes and social insurance. The welfare state system stresses on the importance of management and state funding for providing basic social services on the ground of, such as : education, health, housing and social security, that is strongly influenced by Keynesian demand-management economic approach.

## **2.2. Era of New Order**

The economic growth became the upper most concentration of the government in the early era of new order. In his book titled "Breaking Economic Centralization, Rizal Mallarangeng addresses that the Indonesian economy in the early era of new order was much influenced by economists behind the scene (academicians). With the slogan : "No More Soekarno No More Hatta", the only ultimate point is how to boost the Indonesian economic growth. As a result, economic acceleration with individualism nuances strongly characterized the enacted jurisprudences early in this period.

In this period, privatizations and liberalizations took place in various fields, including but not limited in health, education and housing in Indonesia. When viewed from the legal perspectives, the privatization practices

were based on legal references on sectoral legislation systems. This trend was identifiable in sectors of health and education, especially the concerning health service, i.e.: Hospital.

During the era of new order the legislations, especially on the ground of social welfare development, the following were identified:

1. Act Number 12 Year 1970 About Occupational Safety;
2. Act Number 6 Year 1974 About Fundamentals of Social Welfare.
3. Act Number 8 Year 1974 About Employment;
4. Act Number 16 Year 1985 About National Education System;
5. Act Number 2 Year 1992 About Insurance;
6. Act Number 3 Year 1992 About Labor Social Security;
7. Act Number 4 Year 1992 About Housing and Dwelling;
8. Act Number 10 Year 1992 About Population and Prosperous Family Development;
9. Act Number 11 Year 1992 About Pension Fund;
10. Act Number 23 Year 1992 About Health;
11. Act Number 25 Year 1992 About Cooperative;
12. State Regulation No.33. Year 1977 About Labor Insurance.

In addition to the aforementioned legal references, the government

affected a number of social welfare action programs. In education sector, it was proposed to apply mandatory 6-year education in year 1984. In year 1994, it was improved into mandatory 9-year education. It was, thereafter, accelerated and escalated through National Movement for Poster Parents (GN OTA) in year 1996 as cited in the Decision of Minister of Social Affairs, Republic of Indonesia, Number : 52/HUK/1996, dated 20 August 1996. The movement led to institutionalization of a social-empowerment friendly independent social organization. When the crisis was on set at the end of nineteen eighties, there was fund raising for facing the problem<sup>36</sup>. In addition, to facilitate job opportunities to cope with the unemployment and poverty problems, the government stimulated labor-intensive programs. As those programs were principally short-term ones, they were then called social safety net programs.

Based on the materially legal inventories and program activities of policies described above, it is conclusive that:

1. The legislation of social welfare in the era of new order was consolidated as evidenced with the updates of thought systems and paradigms in their formulations as found in the Act about Accident in the era of old

order that was superseded with Act about Occupational Safety in the era of new order. Besides, the occupational safety and security was enhanced with labor insurance schemes through an enactment of government regulation. The similar efforts were also found in the legislation of housing, employment and education.

2. The legislation of social welfare in the era of new order was more focused and specialized. However. It was not yet well-integrated.
3. The nuance as a country with strong familial ties characterized the social welfare development in Indonesia. Accordingly, the social welfare model in Indonesia in the era of new order tended to be minimal-charity with better qualification and quality. It was regarded minimal since the social safety net was a short-term and sporadic program. It was considered charity as it was simply for sympathy arousal and imaging to the public.

One thing to be worth noted in that period was that although there was such a strong influence of capitalism ideology in the economy, the legal concepts, legislations and social welfare development were still collective

(familial)<sup>37</sup>. Both operated on basis of their own distinctive ideologies.

### **2.3 Era of Reformation Order: Implication of Changes in Constitutional Structure in Year 1999 Towards Type and Characteristics of the Indonesian Welfare State.**

During the era of reformation order<sup>38</sup>, as characterized with the establishment of development reformation cabinet on 21 May 1998, under the administration of Baharuddin Jusuf Habibie, the analysis on legal reality and socio-economic policy in Indonesia as a welfare state was exercised by well considering the notable points from the previous orders.

In the early era of new order, the transitions of power proceeded within alarming legal, political and economic realities. Accordingly, in that era the new government was acting as the main actor through formal and procedural authorities derived from a centralized political system, later identified as executive heavy. Accordingly, in the early era of the reformation order the government adopted capitalist development strategy for reconstructing solid national economy, and in view of political-economic perspective, such a step led to centralized economy<sup>40</sup>. Moreover, such a long span of administration period has caused gigantic centralization that even touched political

aspects. As a result, there was an emerging movement urging holistic changes through what is called reformation and climaxing in May 1998<sup>41</sup>.

One of the demands of the reformists was on the ground of legal reformation. In considering the social welfare schemes, it leads to a question on how the system of social welfare schemes in reformation era is. Is there any point substantially reformed?

The reality of legal products typically characterized with social welfare development in that period are as follows:

- a) Development Reformation Cabinet : B.J. Habibie
  1. Act Number 11 Year 1998 About Amendment to Act Number 25 Year 1997 About Employment;
  2. Act Number 13 Year 1998 About Elder Welfare;
  3. Act Number 43 Year 1999 About Amendment to Act Number 8 Year 1974 About Fundamentals of Employment<sup>6</sup>

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<sup>39</sup> Philip Nonet and Zelzinek

<sup>40</sup> Read Rizal Mallarangeng

<sup>41</sup> When closely observed, at the end of their administration it is found that the new order regime tended to be aspirative , rather than democratic. Their pro-social welfare policy at that time (through legal product update) encourages the writer to draw a conclusion that Indonesia remains a welfare state adopting minimal-corporative model.

b) National Unity Cabinet : K.H. Abdurrahman Wahid.

In that period there was no national legal product enactment related with social welfare development.

c) Gotong Royong Cabinet : Megawati Soekarnoputri

1. Act Number 13 Year 2003 About Employment;
2. Act Number 20 Year 2003 About National Education System;
3. Act Number 2 Year 2004 About Industrial Relationship Dispute Settlement;

d) Unified Indonesian Cabinet : Susilo Bambang Yudhoyono

1. Act Number 39 Year 2004 About Employment and Protection of Indonesian Migrant Workers Overseas;
2. Act Number 40 Year 2004 About Social Security System;
3. Act Number 24 Year 2007 About Disaster Handling;
4. Act Number 11 Year 2009 About Social Security;
5. Act Number 36 Year 2009 About Health;
6. Act Number 44 Year 2009 About Hospitals;
7. Act Number 52 Year 2009 About Population Development and Family Development;

8. Act Number 1 Year 2011 About Housing and Dwelling Area;

9. Act Number 13 Year 2011 About Poverty Handling;

10. Act Number 20 Year 2011 About Flats;

11. Act Number 13 Year 2011 About Social Security Authorities.

Before analyzing the aforementioned legal references, it is necessary to illustrate that at the present period<sup>42</sup> the spirit of decentralization is definitely strong, especially as of the enactment of Act about Local Autonomy in year 1999. In addition, and amendment to the Indonesian Constitution (UUD 1945) is still on process. These two constitutional moments bring strong influences to social welfare policy in Indonesia, as they will fairly change the fundamentals of constitution in Indonesia.

In consistent with the amended Indonesian Constitution (UUD 1945), the obligations for the government to secure social welfare is more highlighted and emphasized<sup>43</sup>. The same affected the legislation of local autonomy where the constellation of the obligations of the government is reconstructed through decentralization of authorities to local governments. Accordingly, the obligations to realize social welfare that used to be on the hand of the central government are decentralized to the local governments. Accordingly, the activities

on local healthcare insurance (JAMKESDA) exercised by some local governments are definite examples of the decentralization implication. The same applies to free of charge schooling up to high education delivered by local governments, such as Surabaya City Government. When more closely observed, it will be found that there are significant differences in the social securities delivered to the communities in each city or regency. It will lead to consequences to the model dynamics and characteristics of welfare state in Indonesia.

The direction of the analysis is to be refocused on the proper track. In view of the aforementioned legal references and considering the up to date constitution setting in Indonesia, it is conclusive that in the reformation era, the format of welfare state in Indonesia is dynamic and oriented to Plural Welfare State Model. Its ideology is minimal-individual-collective.

It is regarded minimal-individual-collective as some social securities applied in some perspectives, for instance : education and health, are trapped in strong individualistic paradigm that in turn minimize collectivism.

It means that free of charge health and education services through limited insurance schemes by the government is to be competing with massively expensive health and education services

delivered by private entities for profit oriented motives.

### **3. How will the Indonesian welfare state be in the future, after the ideology of free market competition ruins?**

Governing the Indonesian welfare state in the future is to be consistent by well considering and properly identifying the link and match between the trends in global objective physical environments<sup>45</sup> and deductive construction of abstract concepts. In such an ambiguous point, it requires principles to lead the behaviors. The legal principles required for the Indonesian welfare state in the future<sup>46</sup> will concern with the following issues :

- 1) The duty of the government is not to earn incomes, but goodness.
- 2) The government, private entities and communities are to be duly present and wise to employ their energies to cope with common problems.
- 3) The internationalism adopted by Indonesia is the civilized one and it is not to drive problems to the world and its people.

If based on the descriptions of analysis, it is concluded that in the Indonesian welfare state there are two ways to understand the reality of social welfare policy and economic policy. In term of social welfare policy, Indonesia is identified to be collectivist base on the state ideology (*Pancasila*), while in view



of economic policy, it is identified to be individualist oriented to capitalist globalization.

Accordingly, in the future these two distinctive poles are to meet in the a shared central point, i.e. : a dynamic calibration point, in order to present a true Indonesian welfare state in a spectrum called 'dynamic calibration model' by the writer and certainly based on dynamically familial image.<sup>47</sup> The aforementioned principles addressed by the writer are congruent with the dynamic calibration model of welfare state.

### C. Conclusion

With reference to the aforementioned analysis descriptions , it is conclusive : That in view of the legislation and regulation products concerning social welfare under the three different government regimes, it shows that the Indonesian welfare state is at present searching for a proper shape. In search of such a shape, it finds how dynamic the type of the Indonesian welfare state is, shifting from minimal-collective model to minimal-charity through minimal-plural one, under the presence of two distinctive political and economic mainstreams of ideologies on their own ways. When related to the Indonesian Constitution (UUD 1945), it seems that in a certain period of administration, the government was not

consistent with the state ideology (Pancasila) that is definitely collective.

### D. References

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