

RELIGIOUS WELFARE STATE AS A MODUS VIVENDI OF UNITARY STATE OF THE REPUBLIC OF INDONESIA

Arif Hidayat,
H. Gunarto

ABSTRACT

This article examines the ideal concept of religious welfare state as a modus vivendi of the implementation of the Unitary State of the Republic of Indonesia in order to realize the ideals of Pancasila. Normative and hermeneutic juridical approaches are used to interpret the post-amendment constitution. Indonesia is a country that has a large area with the number of population number four in the world. In addition, Indonesia is included in the 16 largest countries in the world because of the wealth of natural resources owned. But sadly, the per capita income of US \$ 4,900 makes the welfare of most still felt low, because it only ranked 126 world. This is far below Malaysia which is ranked 69th, and Thailand ranked 92. Indonesia, even under Sri Lanka who ranked 116th in the world. The low level of welfare of the population of the country is indicated by the fact that the number of poor people is still high, that is 28.55 million or 14 percent of the total population of Indonesia reaching 250 million people. Of the total poor, 63 percent are in rural areas with the majority of farmers and fishermen. Therefore, Indonesia does face a fundamental problem of various social and economic disparities, as well as inequalities between regions, as well as uneven infrastructure. The results of this study indicate that the existence of a "religious welfare state" requires constitutionality of three things: (i) the consistency of fundamental values in Pancasila into every legal instrument for the realization of human welfare; (ii) the coefficients of three welfare stoves or welfare triangles, including education, health, and economics; And (iii) the coexistence of regulation and institutional arrangements in education, health and the economy. This analysis is expected to present data and information about the condition of people's welfare, especially in the field of education, health and economics so that it can become a reference in input formation of development program that will impact to improve prosperity of all Indonesian people.

Keywords: Religious, Welfare State, Vivendi Modus, Indonesia

INTRODUCTION

The principle of State of law Indonesia should be seen by way of view of Constitution, that State laws that put the principle of "the divinity of the one true God" as a main principle, as well as "religious" values informing the nation's life and motion to the State, not the country that separates the relationship between religion and the State (separation of state and religion), and not solely rely on the principle of individualism as well as the principle of communalism.¹

The fundamental question regarding the principle of this deity is related to aspects of freedom (free exercise), equality, and approval (accessibility). Sociological facts indicate that in the last 5 years is as much as a religious nuances violations 2,498, where 346 places of worship had been experiencing interference, include: 22 place of "worship beliefs", 180 Church, 5 Temple, 14 Vihara, 3 Klenteng, 121 mosques and the flow of the minority. In addition there are also 61 local regulations that are considered discriminatory related religious and belief.²

Although politically, religion also are locality, but religious institutions often covering ethnic and regional backgrounds. Indonesia is a unitary State (eenheidsstaat or unitary state), which is a sovereign State which is organized as a single unity, where the Central Government is the highest and sub units-the nation's only run a lot of power that is selected by the Central Government for delegated or devolved upon the principle of autonomy, dekonsentrasi and medebewind.³

Constitution of 1945 is a Constitution containing the idea of a welfare state⁴. This is reflected in the formulation of article 33 and article 34, which was formulated in one chapter, namely, Chapter XIV of the "social welfare".⁵ Nevertheless, the fine points of the social welfare system as the provisions of article 33 and article 34 of the Constitution of 1945 has not been fully detailed.

¹ Look The Ruling Of The Constitutional Court of The Republic of Indonesia No. 140/PUU-VII/2009, point 3.34.10, and point 3.34.11.

² Wahid Foundation, *Ringkasan Kebijakan Kebebasan Beragama dan Berkeyakinan (KBB) di Indonesia dan Perlindungan Negara*, Wahid Foundation, Jakarta, Januari, 2017.

³ Moh Kusnadi dan Harmaily Y. Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, Cet. VII, Pusat Studi Hukum Tata Negara FH UI dan CV Sinar Bakti, Jakarta, 1988, p. 241.

⁴ Sri Edi Swasono (ed.), *Sistem Ekonomi dan Demokrasi Ekonomi*, UI-Press, Jakarta, 1985, p. 3.

Substantively, the unifier contained in both articles, it shall become the mainstream in the entire discretion of the economic development and social well-being. Historically, (between 1967 until 1983), from 32% of the Act and Regulation on the economy set in Indonesia, only 11.6% percent, which refers to Article 33.⁶ That is, the principle of economic democracy and the implementation of welfare State in the Constitution of 1945 has not become the main reference point in economic development. There is even a potential "succumbed" to the demands of the development of pragmatic economic liberalization efforts on according the demands of the situation. Moreover, the global trend faced by Indonesia will continue to demand a change in the direction of liberalization at all in terms of nation-building.

Social welfare in the Constitution of 1945 must be all-encompassing welfare policies, such as the education policy, the system of social security, health care⁷, and other public services. The social welfare system must be understood as a concept that became one of the staples of mainstream thought in national development.⁸

In fact, various data show that Indonesia is currently facing serious problems still associated the fulfilment of social welfare. Ironically, the contribution of the State as an institution that should have a significant role in its citizens prosper, was still far from expectations. Omnibus survey conducted of Pancasila Study Center for law and democracy (PUSKAPHEM), Semarang State University⁹ shows that income to meet daily needs to be felt more weight by the majority of respondents (76%), as many as 17% of the respondents felt the same; and only 7% are feeling increasingly lightweight. Related to the fulfilment of the above decent jobs, the majority of respondents (90%) feel more difficult now looking for new jobs, as many as 4% of respondents felt the same; 4% feel the more easily; and 2% stated not to know.

Education, including a mastery of science and technology is the main aspect that may determine the nation's welfare and progress of the nation in the future.¹⁰ The national education system became a tool of national integration especially for its creating a cohesive national elite. Likewise, Indonesia economy system in the future need to be developed based on the nation's culture and should be resting on the potential human not to potential natural resources.¹¹

Points to the economy and social welfare system should still refer to the values of Pancasila and the Constitution of 1945, as has been the commitment of the nation of Indonesia. Therefore, a model of religious welfare state should be made as a *modus vivendi* in the conduct of the unitary State of Republic of Indonesia. The reform of the economy and social welfare system needs to be directed to establish a balance between the role of the State and the people on the one hand, and between individual and collective strength forces on the other, appropriate "legal mind" Pancasila that put the main footing as religious aspects. Thus, increasing economic liberalization needs to be balanced with the wisdom of a law that encourages the strengthening and collective sectors oriented family and economic populist base.

This study originated from the unease regarding: (i) legal attempt scientists tend to ignore the religious aspects in the study of the destination country; (ii) religious aspects, philosophically and historically has interrelasi with the principles of the Organization of the constitutional State, unitary State, and the State of democracy; (iii) the urgency of religiosity is important in the relationship of religion, politics and the State; (iv) the development of the welfare State system tends to be a negative nuance, as done with the approach of wasteful, incompatible with economic development, causing a dependence on recipients

⁵ In Act No. 4 of 1974 regarding provisions of principal social welfare (LN 1974 No. 53, TLN No. 3039), the notion of ' social welfare ' is spelled out in a very narrow, that concerns only social welfare efforts in the context of field duty Ministry of social.

⁶ Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, Ichtiar Baru-van Hoeve, Jakarta, 1994, p. 204.

⁷ Dewan Jaminan Sosial Nasional, *Peta Jalan Menuju Jaminan Kesehatan Nasional 2012-2019*, Dewan Jaminan Sosial Nasional, Jakarta, 2012.

⁸ The form of the intervention, for example: (i) all private venture capitalist that is encouraged to expand his social responsibility according to principles of ' property rights ' social functioning within the legal system of Indonesia, such as through the company's involvement in the development of the environment, organization of education, scholarship, grant, and others arranged official under law; (ii) policy of the social security system that ensures the well-being of the community; (iii) the wisdom of deregulation, privatization, and debirokratisasi continue to be developed, while maintaining the ability of the Government to control the economy through instruments of strategic and effective administration.

⁹ This survey of 480 respondents drawn randomly (stratified random sampling) from a list of telephone owners in seven major cities in Indonesia (Jakarta, Bandung, Semarang, Surabaya, Medan, Yogyakarta and Makassar).

¹⁰ Mahkamah Konstitusi RI, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Latar Belakang, Proses dan Hasil Pembahasan 1999-2002): Buku I*, Sekretariat Jenderal dan Kepaniteraan MK RI, Jakarta, 2010, p. 352.

¹¹ Sekretariat Jenderal MPR RI, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1999-2002) Tahun Sidang 2000: Buku Dua*, Sekretariat Jenderal MPR, Jakarta, 2008, p. 502-503.

(beneficiaries)¹²; and (v) the need for measurement of consistency, coefficient, and the coexistence of aspects of assessment of religiosity in realizing the welfare state law.

The conceptualization of a welfare State based on the principle of the Godhead is the inevitability, considering that: *first*, the unitary State of the Republic of Indonesia is an archipelago country as "Nusantara"¹³, which has sovereignty over its territory, and has sovereign rights outside its territory, as well as certain other authorities to be managed and utilized the maximum for the welfare and prosperity of the people¹⁴. *Second*, Indonesia Country agree on philosophical foundation of Pancasila as the attempt to contain the values of the Godhead, humanitarian, nationality, populist, and justice based on religion, culture and customs to achieve social well-being and prosperity of the people.¹⁵

MATERIAL AND METHODS

This study is the doctrinal legal research,¹⁶ with normative juridical and hermeneutic approach¹⁷. This type of qualitative data consists of primary legal materials, legal secondary materials, and legal materials tertiary¹⁸. In addition, the primary data are also needed in the form of records/archives/documents about the empirical facts of social welfare in Indonesia.¹⁹

Secondary data this study is a form of empirical material, i.e. material law²⁰, consisting of:

- 1) The primary legal materials that are authoritative, namely an official document or a mandatory primary source and persuasive primary source (in the form of Official Texts of the Constitution of the Republic of Indonesia in 1945, along with the official Script Changes, the Constitution of the Republic of Indonesia States 1949, Provisional Constitution of 1950, the treatise 1957-1959 Constituency, the Presidential Decree of 1959, as well as legislation, such as: legislation; Government Regulation; Rules/Regulations and presidential decree/decision of the Minister regarding social welfare, particularly in the fields of education, economics, and health, as well as the ruling of the Constitutional Court);
- 2) Secondary legal materials, namely academic texts (treatises) and scientific papers as supporting data (in the form of academic texts and draft legislation concerning social welfare, particularly in the areas of education, health, economics, and research results related to legal welfare State, scientific references and other official publications such as dissertations, theses, journals, books, magazines, and other data regarding the religious and moral law); and
- 3) Legal materials tertiary, i.e. the relevant supporting data as a complement (great dictionary of Indonesian Language (KBBI), encyclopedia of law, Black's Law Dictionary, cumulative indexes and statistics of Indonesia's National Statistics Agency (Badan Pusat Statistik: BPS).

RESULTS AND DISCUSSION

Discourse of Pancasila: The Consistency of the Relationship of Religion and The State

Indonesia's independence was marked by recognition of the principle of the Godhead, as stated in Paragraph III of the Preamble of Constitution 1945 that "*Upon the blessings of God Almighty and impelled by the desire of the sublime, that the non-national ones, then the people of Indonesia declares independence*". This gives a meaning that the doctrine of the Godhead is the modus vivendi of authentic-religious nation of Indonesia, so Indonesia must be based on the belief to the divinity of the one true God, and guarantee the independence of each population to embrace his religion and to worship according to his religion and beliefs were²¹. This means that Indonesia is not a theocratic State, and also not a secular State, but the multireligious State..

¹² Edi Suharto, "Peta dan Dinamika *Welfare State* di Beberapa Negara: Pelajaran apa yang bisa dipetik untuk membangun Indonesia?", Paper presented at the Seminar "Mengkaji Ulang Relevansi *Welfare State* dan Terobosan melalui Desentralisasi-Otonomi di Indonesia", Institute for Research and Empowerment (IRE) Yogyakarta dan Perkumpulan Prakarsa Jakarta, Wisma MM Universitas Gadjah Mada, Yogyakarta 25 Juli 2006, p. 1-3.

¹³ Chapter IXA, article 25 of the Constitution of 1945. Indonesia is a big country which has 17,000 islands, 516 counties and cities, 34 provinces, 714 original tribe, more than 1,100 local language, and diverse religions and beliefs embraced. (Interview by Bey Machmudin, head of the press Bureau, the Media and Information Secretariat of the President, Monday, June 5, 2017, at 11.45 am GMT).

¹⁴ *Konsiderans "Menimbang"*, butir a, UU No. 43 Tahun 2008 Tentang Wilayah Negara

¹⁵ Indonesia is a country that has tremendous natural resources, the country with the largest muslim population in the world.

¹⁶ Soetandyo Wignjosoebroto, "Penelitian Hukum: Sebuah Tipologi", *Majalah Masyarakat Indonesia*, Tahun ke-I, No.2, 1974, p. 15-19.

¹⁷ Bagir Manan, "Sistem Pengajaran dan Penyelidikan Ilmu Hukum Tata Negara", *Jurnal Mahkamah*, No. 14, Vol. 1, April, 2003, p. 58-60; Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, RajaGrafindo Persada, Jakarta, 2003, p. 13-14.

¹⁸ Peter Mahmud Marzuki, *Metode Penelitian Hukum*, Prenada Media Group, Jakarta, 1996, p. 141-163.

¹⁹ Sunaryati Hartono, *Penelitian Hukum di Indonesia Pada Akhir Abad Ke-20*, Alumni Bandung, 1994, p. 134, 151;

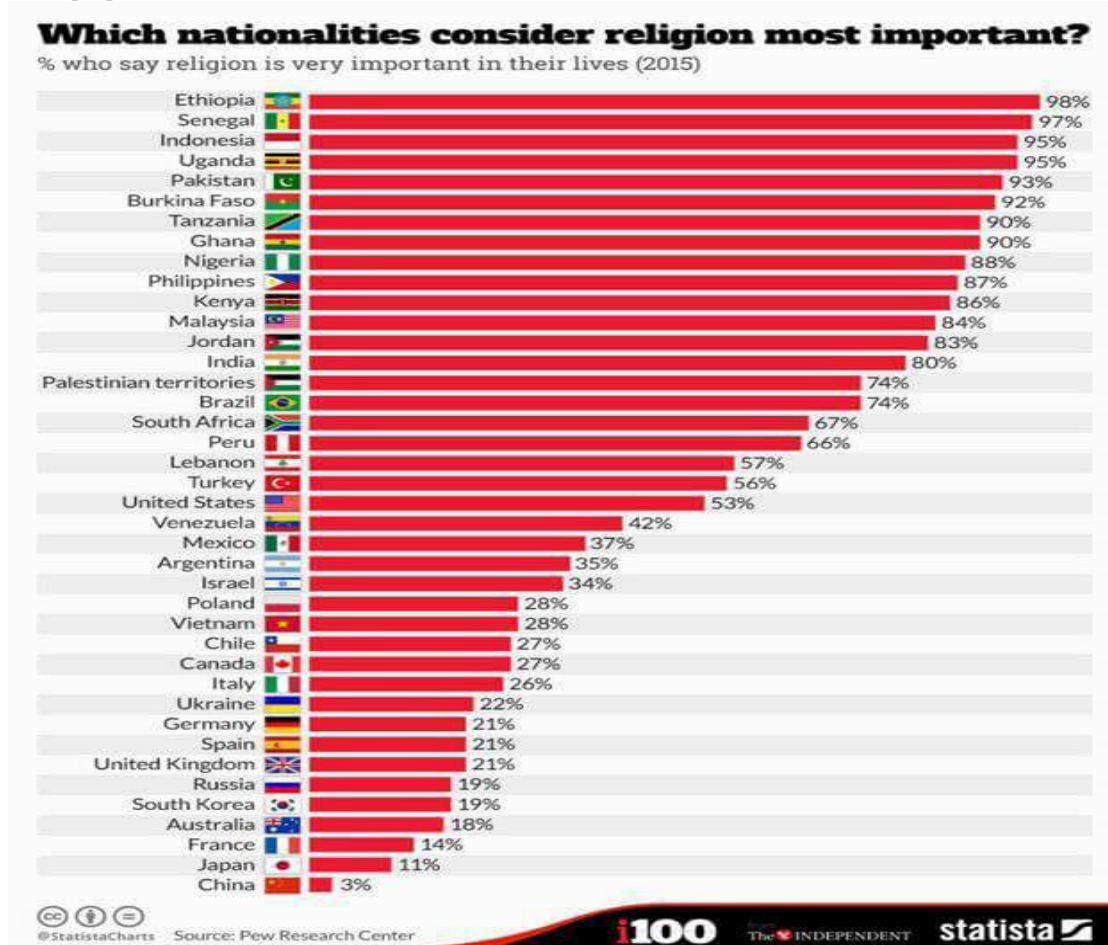
²⁰ Bagong, Suyanto dan Sutinah (Ed). *Metode Penelitian Sosial Berbagai Alternatif. Pendekatan*, Prenada Media Group, Jakarta, 2006, p. 186; J. Supranto, *Metode Penelitian Hukum dan Statistik*, PT Rineka Cipta, Jakarta, 2003, p. 14; Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, 1996, p. 14.

²¹ RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan*, Edisi Revisi, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, 2009, p. 150.

The relationship of the State and religion in the State based on Pancasila where "sila" divinity of the one true God confirms that Indonesia is not a State based on a religion and not also the country that separates religion and State. But the country that believe in God, in which the State put religion and belief as the spirit or spirit wholeness unitary State of the Republic of Indonesia. The relationship of religion and the State is the relationship of interdependence, where religion gives a spiritual in a nation and a country whereas the State guarantees religious life.

Pancasila is the philosophy, values and norms of the basis for the unitary State of the Republic of Indonesia to achieve goals through State law. View of life Pancasila dotted decline from the belief that the universe and all its contents (including humans) as a whole are entwined harmoniously is a creation of God. A philosophical view on the nature of human beings as Indonesia unity in harmony with the universe created by God is the first premise in the derivation of the ideal of the law (*rechtsidee*) Pancasila. This is called with religiosity, which derives from the doctrine of the faith, collective rituals or social exchanges (*collective instrument*).²²

Based on the results of the PEW Research Center in 2015, Indonesia put religion as an important factor which determines nearly all aspects of people's lives.



A political contestation for the sake of keeping the "neutrality of the State" that is very important. "Nationalism of the Godhead"- which became the dominant interpretation of the first principle of Pancasila – gave birth to the so-called "communal tolerance" which had four dimensions, i.e. "emphasizes the rights of the individual, rather than group support self-communal governance through legal pluralism, the separation of Social Affairs with the religious, as well as important as the value of faith to believe than any other basic values".²³ Of course, this has to be the most serious and difficult challenges for those who fight for freedom of religion/belief. Because the building "communal tolerance" that described exactly the contrary Menchik in diametral with ideals of freedom of religion/belief that emphasizes individual rights, the separation between the realm of private, as well as with publik believes the value of freedom and autonomy as the most important values. There, the principle of "State neutrality" becomes very crucial to keep the process encounter deliberative in the realm of society can take place peacefully, without

²² Bernard Arief Sidharta, *Refleksi tentang Struktur Ilmu Hukum, Sebuah Penelitian tentang Fondasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Unpad, Bandung, 1999, p. 183.

²³ Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism*, Cambridge University Press, Cambridge, Mass., 2016, p. 146.

coercion, especially the use of violence. It is hoped through the process-the process quality of democratization in Indonesia was further increased.

Coefficient and Coexistence of Religious Welfare State

People's welfare is a priority in the legal policy and public policy. Problems of poverty, social inequality, underdevelopment, and even social conflict which led to the disintegration of the nation, originated from the weak role of the State in realizing the people's welfare. It can be seen from the experiences of Somalia, Cambodia, Sudan, Haiti, Palestine, etc. It also identified that global conflicts at present is rooted in the religious conflict.²⁴ People's welfare can only be achieved with the presence of a strong and capable State plays its function significantly in realizing equitable social welfare, through the fulfillment of basic rights²⁵, such as economic rights, health care, and education.

The State is not the sole offender in organizing social services, but also takes a vital role stakeholders and shareholders, the corporate world and even international humanitarian institutions. However, social services as one form of social policy and public goods, can not and should not be handed over to the public and private parties. Unfortunately, globalization has provided the impact against the limitations of the capacity of the nation-State in the conduct of social protection. Economic and social policy institutions of international donors like the World Bank (IDB) and the International Monetary Fund (IMF) against the developing countries and the countries of Eastern Europe have been lining in order to minimize the expenditure of the Government in providing social services that are selective and limited, as well as submit social security to private parties.²⁶

The country is the institution that owns the legality and legitimacy of the public –as selected and financed by the people– who have an obligation in the meet (to fulfill), protect (to protect) and appreciate (to respect) the fundamental rights of its citizens, the economy and culture. Mandate the State to carry out social services is stronger than the public or the business world. Based on international conventions, mandates the State in social services are "mandatory". Meanwhile, the mandate of the community and the business world in social services is "responsibility".²⁷

Inner atmosphere (*geistlichen hintergrund*) discussion of the draft Constitution in the fifth, putting the education, health, and economy, as the field is very important in realizing the concept of the welfare state. This is so-called "theory of three furnaces", as submitted by Vincent t. Radja from the regional envoy of Fraction (F-UD) in the 20th meeting of the Ad Hoc Committee I working body people's Consultative Assembly on 27 March 2002, at a time when discussing the provisions of article 33 and article 34 of the fifth draft Constitution.²⁸ When referring to the proverbial Minangkabau "*Tugku nan Tigo Sajarangan*"²⁹, then the third field is the role which are equally important and mutually conditioned each symbiosis mutualis in an attempt to realize the welfare state.

When this is the case, then the health field that has a number or the same constant factor (coefficient) by education and the economy as well as the three fields should always be side by side (coexistence) to materialize a welfare state. With a coefficient and the coexistence of these three fields in understand welfare State, certainly the paradigm that is carried in the development and organization of health shall guarantee the desired paradigm in the mandate of the Constitution, namely the paradigm that prioritizes efforts not only curative (healing) only but also the intellectual effort or educating that health is more valuable than anything so that the efforts of maintaining health (promotif) and attempts to prevent pain (preventive) better than cure (curative) and restore (rehabilitative).

The promotif and preventive efforts, certainly takes the role of education, so that every person is able to understand, and enlightened. So it is with the need to afford economic role in this wide range of activities is more detailed and more concrete in practice of the Organization of the State.

Efforts to narrow economy, education and health inequality are vital and can lay a foundation for more inclusive growth towards fair social welfare. The difference in the level of the economy, health care, quality education and the duration of the education children receive can fundamentally affect their future livelihoods. Poor Children who fail to master basic skills are more likely to end up in an insecure, low-paid job, as compared to children who leave school equipped with the skills needed in current labor markets.

²⁴ Francis Fukuyama, "Social Capital, Civil Society, and Development", *Third World Quarterly*, Vol. 22, No. 1, 2001, p. 7-20; Francis Fukuyama, "Social Capital and Development: The Coming Agenda", *SAIS Review* XXX, Vol. 1, 2002, p. 23-27.

²⁵ Fukuyama, Francis. *The Great Disruption Human Nature and The Reconstitution of Social Order*, Profile Books, London, 2000, p. 22; Fukuyama, Francis. *Trust: Social Virtues and Creation of Prosperity*, Free Press, NY, 1995, p. 78.

²⁶ Ramesh Mishra, *Globalization and the Welfare State*, McMillan, London, 2000, p. 71-72.

²⁷ Paul Spicker, *The Welfare State: A General Theory*, Sage Publication, London, 2000, p. 47.

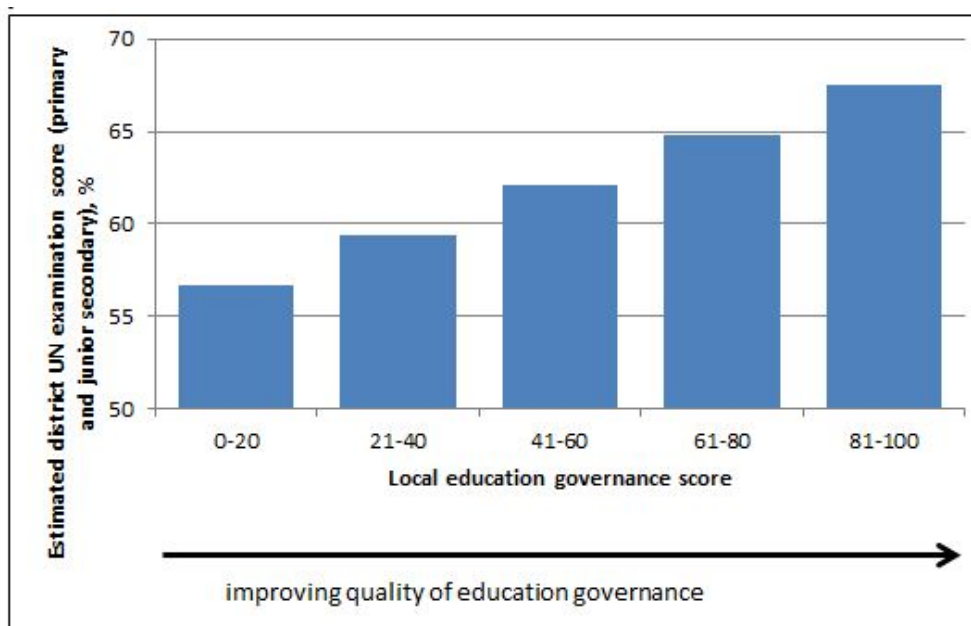
²⁸ MPR RI, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Tahun Sidang 2002. Buku Dua*. Edisi revisi. Sekretariat Jenderal Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta, 2010, p. 103.

²⁹ Amir M.S., *Adat Minangkabau: Pola dan Tujuan Hidup Orang Minang*, Cetakan Ke-6 Revisi, Mutiara Sumber Widya, Jakarta, 2007, p. 129-130.

Yet in most countries, large disparities in educational attainment remain the norm. Indonesia is no exception. A poor child born in Papua leaves school with approximately 6 years of education, compared to a child in Jakarta who can expect to complete 11 years of schooling. Differences in learning achievement can be equally stark; junior secondary school students in Bali averaged 80% in the national examination, compared to students in parts of Kalimantan who scored less than 60%.

Much of the global discourse highlights the lack of resources and their unequal distribution as a key cause of education inequality. But this is only part of the story in Indonesia. In the last decade, public investment in education has tripled in real terms --a rate of increase not seen in many other countries. Some of the poorest districts spend large sums on education for each school-aged child. For example, some districts in Papua, one of the poorest provinces in Indonesia, spend nearly as much as countries in Eastern Europe that rank far higher on international assessments of learning achievement.

Since decentralization reforms were introduced in 1999, district governments have been responsible for the provision and most of the financing of basic education. The report shows that the priority given to education, the quality of the inputs supplied, and their distribution tend to be better in districts with higher quality governance. Moreover, districts that enable local participation in planning processes build more transparent and accountable systems of management; improve incentives for education staff tend to produce better outcomes; and ensure teachers are better equipped to provide quality education for all. Higher quality local education governance is associated with better education performance.



Yet the study also found that local education governance had improved little over the last three years. In some areas, governance had even backtracked. For example, the number of districts with effective systems for documenting and disseminating good practice appeared to have declined significantly. Planning practices also appeared to circumvent efforts to increase local community participation. For example, in 2016, only 12% of districts consolidated school development plans to use in their district education planning process.

While the study highlights some gains at the school level, improvements in district-level management were more modest. Two important lessons emerged from the experience of implementing a capacity building program of this kind: *First*, a multisectoral approach to capacity building is needed. District education officers recognized that many key challenges are related to district-level systems (e.g. planning and budgeting systems) rather than specifically to the education system. However, the district education office is often powerless to address these broader constraints.

Second, capacity building efforts need to be tailored to local circumstances. Strengthening governance is easier in some districts than others. For example, publicizing information on the education budget is much easier in a well-connected district with a vibrant local media than in a remote location with limited infrastructure. To be successful, future capacity-building programs need to take account of the specific constraints that districts face. The big message is that strengthening the management and governance of district education systems can help narrow education inequality. It can also help Indonesia lay the groundwork to ensure that no child is left behind as the new development agenda gets under way.

A constitutional obligation already reserves 20% of the government budget for education, and it is unlikely that the Ministry of Finance will provide much more. There are also many other claims on the education budget.

Tackling some of the big inefficiencies in current education spending will be necessary to afford such a large expansion. A lot of the existing school infrastructure is not used efficiently. For example, one-fifth of primary schools in Indonesia have only 90 students. In schools like this, teachers teach classes with an average of only 10 students. Some say that these low school

utilization rates are just a function of low population densities in remote places (think here of cut-off villages in the Papuan highlands) but many of these underutilized schools are in densely populated areas. For example, 39% of primary schools in East Java, one of Indonesia's most densely populated provinces, have fewer than 120 students.

Low school utilization also results in low teacher utilization. Indonesia has some of the lowest student teacher ratios in the world and well below levels associated with good quality education. In our latest public expenditure review (World Bank 2016) we calculated that raising student teacher ratios to international averages could realize savings equivalent to about 10% of the education budget. This doesn't mean that schools need to be closed and teachers fired. Far from it. The teachers and schools in basic education provide a base for senior secondary expansion. With a program of teacher retraining and a well-planned program of school conversion and rebuilding the goal of 12 years compulsory education could be made more affordable.

Efforts to increase educational attainment are urgently needed to satisfy the growing demand for skills in the labor force and to drive Indonesia's future growth. Finding the resources to fund these improvements while at the same time putting in the vital investments to improve the quality of the entire education system is challenging. But finding these resources will be key if the Minister's vision of an education system carrying youth into a golden age is to be realized.

CONCLUSION

Relations among the state and religion in the state of Pancasila, where in the first principle of Pancasila is Belief in the one and only God asserted that Indonesia is not a country which is based on a religion and not a state that separates religion and state. But countries that believe in the existence of God, wherein the state puts the religion and belief as spirit of integrity of the Unitary Republic of Indonesia. Relations among the state and religion are interdependent relations, where in religion gives spirituality in the nation and state, while the state guarantees religious life.

The existence of the "religious welfare state", requires the constitutionality against three things, namely: (i) the consistency of the fundamental values of Pancasila into every legal instrument for the realization of human well-being; (ii) koefisiensi the three furnaces of well-being or welfare of triangle, covering education, health, and economics; and (iii) institutional arrangements and coexistence education, health, and economy.

ACKNOWLEDGEMENT

This research was supported by dissertation research grants, DP2M, Directorate General of the Ministry of Research, Technology and Higher Education of the Republic of Indonesia. The authors thank to Prof. Dr. H. Gunarto, S.H., S.E., Akt., M. Hum., in Islamic Sultan Agung University, Semarang for advice in the writing of this manuscript. This research was supported in part by the Semarang State University.

REFERENCES

- Asshiddiqie, Jimly. 1994. *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, Ichtiar Baru-van Hoeve, Jakarta.
- Bagong, Suyanto dan Sutinah (Ed). 2006. *Metode Penelitian Sosial Berbagai Alternatif. Pendekatan*, Prenada Media Group, Jakarta.
- Dewan Jaminan Sosial Nasional, 2012. *Peta Jalan Menuju Jaminan Kesehatan Nasional 2012-2019*, Dewan Jaminan Sosial Nasional, Jakarta.
- Fukuyama, Francis. 1995. *Trust: Social Virtues and Creation of Prosperity*, Free Press, NY.
- Fukuyama, Francis. 2000. *The Great Disruption Human Nature and The Reconstitution of Social Order*, Profile Books, London.
- Fukuyama, Francis. 2001. "Social Capital, Civil Society, and Development", *Third World Quarterly*, 22 (1): 7-20.
- Fukuyama, Francis. 2002 "Social Capital and Development: The Coming Agenda", *SAIS Review XXX* (1): 23-27.
- Hartono, Sunaryati. 1994. *Penelitian Hukum di Indonesia Pada Akhir Abad Ke-20*, Alumni Bandung.
- Kusnadi, Moh. dan Harmaily Y. Ibrahim, 1988. *Pengantar Hukum Tata Negara Indonesia*, Cet. VII, Pusat Studi Hukum Tata Negara FH UI dan CV Sinar Bakti, Jakarta.
- Kusuma, RM. A.B. 2009. *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oontoeik Menyelidiki Oesaha2 Persiapan Kemerdekaan*, Edisi Revisi, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta.
- M.S., Amir. 2007. *Adat Minangkabau: Pola dan Tujuan Hidup Orang Minang*, Cetakan Ke-6 Revisi, Mutiara Sumber Widya, Jakarta.
- Mahkamah Konstitusi RI, 2010. *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Latar Belakang, Proses dan Hasil Pembahasan 1999-2002): Buku I*, Sekretariat Jenderal dan Kepaniteraan MK RI, Jakarta.
- Manan, Bagir. 2003. "Sistem Pengajaran dan Penyelidikan Ilmu Hukum Tata Negara", *Jurnal Mahkamah*, 14 (1): 58-60.
- Marzuki, Peter Mahmud. 1996. *Metode Penelitian Hukum*, Prenada Media Group, Jakarta.
- Menchik, 2016. *Islam and Democracy in Indonesia: Tolerance without Liberalism*, Cambridge University Press, Cambridge, Mass.
- Mishra, Ramesh. 2000. *Globalization and the Welfare State*, McMillan, London.
- Sekretariat Jenderal MPR RI, 2008. *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1999-2002) Tahun Sidang 2000: Buku Dua*, Sekretariat Jenderal MPR RI, Jakarta.
- Sekretariat Jenderal MPR RI, 2010. *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Tahun*

- Sidang 2002. Buku Dua*. Edisi revisi. Sekretariat Jenderal MPR RI, Jakarta.
- Sidharta, Bernard Arief. 1999. *Refleksi tentang Struktur Ilmu Hukum, Sebuah Penelitian tentang Fondasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Unpad, Bandung.
- Soekanto, Soerjono dan Sri Mamudji, 1996. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta.
- Soekanto, Soerjono dan Sri Mamudji, 2003. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, RajaGrafindo Persada, Jakarta.
- Spicker, Paul. 2000. *The Welfare State: A General Theory*, Sage Publication, London.
- Suharto, Edi. 2006. "Peta dan Dinamika *Welfare State* di Beberapa Negara: Pelajaran apa yang bisa dipetik untuk membangun Indonesia?", Paper presented at the Seminar "Mengkaji Ulang Relevansi *Welfare State* dan Terobosan melalui Desentralisasi-Otonomi di Indonesia", Institute for Research and Empowerment (IRE) Yogyakarta dan Perkumpulan Prakarsa Jakarta, Wisma MM Universitas Gadjah Mada, Yogyakarta.
- Supranto, 2003. *Metode Penelitian Hukum dan Statistik*, PT Rineka Cipta, Jakarta
- Swasono, Sri Edi (ed.), 1985. *Sistem Ekonomi dan Demokrasi Ekonomi*, UI-Press, Jakarta.
- Wahid Foundation, 2017. *Ringkasan Kebijakan Kebebasan Beragama dan Berkeyakinan (KBB) di Indonesia dan Perlindungan Negara*, Wahid Foundation, Jakarta.
- Wignjosebroto, Soetandyo. 1974. "Penelitian Hukum: Sebuah Tipologi", *Majalah Masyarakat Indonesia*, I (2): 15-19.

Arif Hidayat
,H. Gunarto