

Constitutional Reconstruction of Legal Protection and Social Welfare Based on Human Security from the Perspective of Substantive Justice

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Abstract : *The purpose of this study is to determine the normative construction of legal protection and social welfare in the current constitution, as well as the extent to which it reflects the principles of human security and substantive justice, and the ideal constitutional reconstruction in guaranteeing legal protection and social welfare based on human security to realize substantive justice. The research method used is normative juridical legal research. The results of the study indicate that the constitutional construction of legal protection and social welfare has implicitly reflected the principles of human security and substantive justice, but is still normative and has not been effective in its implementation. Ideal constitutional reconstruction requires strengthening norms that explicitly integrate the principle of human security, affirming the state's obligation to guarantee social welfare as a claimable right, and siding with vulnerable groups, in order to realize substantive justice effectively. It is necessary to carry out a constitutional reconstruction that emphasizes the integration of the principle of human security, strengthening the state's obligation to fulfill social welfare as a claimable right, and ensuring siding with vulnerable groups in order to realize substantive justice effectively.*

Keywords : *Constitutional Reconstruction, Legal Protection, Social Welfare, Human Security, Substantive Justice*

Abstrak : Tujuan penelitian ini adalah untuk mengetahui konstruksi normatif perlindungan hukum dan kesejahteraan sosial dalam konstitusi saat ini, serta sejauh mana telah mencerminkan prinsip human security dan keadilan substantif, dan rekonstruksi konstitusional yang ideal dalam menjamin perlindungan hukum dan kesejahteraan sosial berbasis human security guna mewujudkan keadilan substantif. Metode penelitian yang digunakan adalah penelitian hukum yuridis normatif. Hasil penelitian menunjukkan bahwa konstruksi konstitusional perlindungan hukum dan kesejahteraan sosial telah mencerminkan prinsip human security dan keadilan substantif secara implisit, namun masih bersifat normatif dan belum efektif dalam implementasinya.



Rekonstruksi konstitusional yang ideal menuntut penguatan norma yang secara eksplisit mengintegrasikan prinsip human security, penegasan kewajiban negara dalam menjamin kesejahteraan sosial sebagai hak yang dapat dituntut, serta keberpihakan terhadap kelompok rentan, guna mewujudkan keadilan substantif secara efektif. Perlu dilakukan rekonstruksi konstitusional yang menegaskan integrasi prinsip human security, memperkuat kewajiban negara dalam pemenuhan kesejahteraan sosial sebagai hak yang dapat dituntut, serta memastikan keberpihakan terhadap kelompok rentan guna mewujudkan keadilan substantif secara efektif.

Kata kunci : Rekonstruksi Konstitusional, Perlindungan Hukum, Kesejahteraan Sosial, Human Security, Keadilan Substantif

Introduction

As the highest legal norm in a country, the constitution serves not only as an instrument for limiting power but also as a normative means of guaranteeing the protection of citizens' basic rights, including the right to social welfare. In the context of a welfare state, the constitution plays a central role in ensuring that the state is not passive, but rather active in realizing social justice through responsive legal policies oriented toward fulfilling the rights of the people. This aligns with the constitutional mandate that places the general welfare as the primary goal of state governance.¹

However, in practice, constitutional constructions related to legal protection and social welfare in various countries, including Indonesia, still face fundamental challenges. These problems relate not only to disharmonious norms but also to the gap between constitutional norms (*das sollen*) and the reality of implementation (*das sein*). Social inequality, structural poverty, and limited access to basic services demonstrate that constitutional guarantees have not been fully and effectively realized.² In this perspective, law is often trapped in a formalistic approach that emphasizes legal certainty alone, without paying attention to the substantive dimension of justice, which is the main objective of the law itself.³

The development of the human security paradigm provides a new analytical framework for understanding the relationship between the state, law, and social welfare. This concept, first introduced globally through a 1994 United Nations Development Program (UNDP) report, emphasizes that security is no longer solely oriented towards state security, but rather towards protecting individuals from various multidimensional threats, such as poverty, hunger, disease, and social injustice. Thus, human security broadens the scope of the state's responsibility to ensure social welfare as an integral part of human rights protection.

Within this framework, legal protection cannot be separated from efforts to fulfill social welfare. Law must be understood as an instrument that not only

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2010), p. 123

² Adnan Buyung Nasution, *Demokrasi Konstitusional* (Jakarta: Kompas, 2011), p. 87.

³ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), p. 45.

guarantees certainty, but also justice and utility. Sudikno Mertokusumo's thinking emphasizes that good law balances certainty, justice, and utility.⁴ However, this balance is often not achieved, so that the law loses its social function as a means of social engineering (law as a tool of social engineering).⁵

Furthermore, a substantive justice approach is crucial in critiquing the limitations of formal approaches to law. Substantive justice focuses not only on procedural appropriateness but also on outcomes that reflect the true values of justice within society. From this perspective, the law is required to address the real needs of society, especially vulnerable groups who are often marginalized in formalistic legal systems.⁶ Therefore, constitutional reconstruction is a necessity to ensure that legal norms are not only formally valid, but also substantively just.

In Indonesia, constitutional guarantees for social welfare are stipulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945), specifically in provisions regarding the rights to work, education, health, and social security. However, the implementation of these norms still faces various structural and cultural obstacles, including weak inter-institutional coordination, budget constraints, and suboptimal law enforcement.⁷ In this context, a constitutional reconstruction is needed that is not only normative, but also transformative, by integrating the paradigms of human security and substantive justice as the main foundation.

Thus, this research is relevant for examining in-depth how constitutional reconstruction can be implemented to strengthen legal protection and social welfare guarantees based on human security. This approach is expected to produce a more responsive, inclusive, and equitable legal concept, so that the constitution becomes not only a normative document but also an effective instrument for realizing social welfare for all citizens.

Methods

This research is normative legal research that focuses on the study of legal norms related to legal protection and social welfare within a constitutional framework. This research is prescriptive, meaning it not only describes the applicable law (*ius constitutum*) but also formulates an ideal legal construction (*ius constituendum*) through a human security and substantive justice approach.⁸

The approaches used include the statute approach, the conceptual approach, and the philosophical approach.⁹ The statutory approach is used to examine constitutional provisions and related regulations, while the conceptual

⁴ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2005), p. 160.

⁵ Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1954), p. 47.

⁶ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 3–4.

⁷ Philipus M. Hadjon, "Perlindungan Hukum bagi Rakyat Indonesia," *Jurnal Ilmu Hukum*, Vol. 7, No. 2 (1998): 15–16.

⁸ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: RajaGrafindo Persada, 2015), p. 13

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), p. 35.

approach relies on the development of the concept of human security as introduced by the United Nations Development Program and the concept of substantive justice in the thinking of John Rawls. The philosophical approach is used to explore the values of justice that underlie legal protection in the welfare state.

Data collection techniques were conducted through literature studies, compiling primary legal materials in the form of laws and regulations, secondary legal materials in the form of books and scientific journals, and relevant tertiary legal materials. Data analysis was conducted qualitatively using legal interpretation, legal reasoning, and legal construction methods to produce a constitutional reconstruction concept that can guarantee legal protection and social welfare in a fairer and more human-oriented manner.¹⁰

Result And Discussion

Normative Construction of Legal Protection and Social Welfare in the Current Constitution, and the Extent to Which It Reflects the Principles of Human Security and Substantive Justice

The constitution, as a written basic law, plays a fundamental role in determining the direction of legal protection and social welfare guarantees within a country. In the Indonesian context, the 1945 Constitution of the Republic of Indonesia (UUD 1945) explicitly contains norms that affirm the state's commitment to protecting human rights and social welfare. This is reflected in the Preamble to the 1945 Constitution, which affirms the state's goal of "protecting the entire Indonesian nation and its entire homeland" and "advancing the general welfare." This formulation demonstrates that from its inception, the Indonesian constitution has adopted the principle of a welfare state, which places the state as the primary actor in ensuring the welfare of society.

Furthermore, the strengthening of legal protection and social welfare is regulated in the body of the 1945 Constitution, specifically Article 27 paragraph (2), Article 28H, and Article 34. These provisions regulate the right to work and a decent living, the right to social security, and the state's obligation to care for the poor and neglected children. Normatively, these provisions reflect the recognition of socio-economic rights as an integral part of human rights. From the perspective of modern constitutionalism, the recognition of these rights marks a shift from a formal state of law to a material state of law oriented towards social justice.¹¹

However, upon closer examination, this normative construction still exhibits several limitations, particularly in terms of the implementation and effectiveness of legal protection. In practice, constitutional norms are often declarative in nature and have not been fully followed up by concrete and consistent policies. This results in a gap between legal norms (*das sollen*) and social reality (*das sein*), where various problems persist, such as poverty,

¹⁰ Sudikno Mertokusumo, *Penemuan Hukum* (Yogyakarta: Liberty, 2009), p. 73

¹¹ Bagir Manan, *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia* (Bandung: Alumni, 2001), p. 56.

social inequality, and limited access to basic services.¹² This condition shows that the legal protection provided by the constitution has not been fully able to guarantee social welfare evenly.

Within a more progressive analytical framework, the concept of human security offers a new perspective on understanding legal protection and social welfare. This concept, as developed by the United Nations Development Program, emphasizes that security must be understood as protecting individuals from various multidimensional threats, including economic, health, environmental, and social threats. Thus, human security demands a more comprehensive and people-centered approach, in which the state functions not only as a guardian of security but also as a guarantor of welfare.

When linked to the normative construction of the 1945 Constitution, it can be said that the principle of human security is implicitly reflected in the provisions regarding social rights and state obligations. However, this reflection remains partial and has not been systematically integrated into the overall structure of the constitution. This is evident in the absence of a formulation that explicitly links legal protection to the overall dimension of human security. As a result, the resulting policies are often sectoral and unable to address the complexity of social problems faced by society.

Furthermore, from a substantive justice perspective, the normative construction of the constitution still faces serious challenges. Substantive justice demands that the law not only provides formal equality but also considers the actual conditions of society, thus achieving true justice. John Rawls's thinking emphasizes that justice should provide the greatest benefit to the least advantaged. In this context, legal protection and social welfare should be directed toward reducing inequality and improving the wellbeing of vulnerable groups.

However, in practice, the Indonesian legal system still tends to be oriented toward formal justice, emphasizing legal certainty. This is a point criticized by Satjipto Rahardjo, who stated that the law often loses its human dimension due to its over-reliance on procedures and formalities.¹³ As a result, the law is unable to function optimally to achieve social justice. In this context, the legal protections provided by the constitution are not fully able to address the diverse needs of society, particularly vulnerable groups.

Furthermore, Philipus M. Hadjon's thoughts on legal protection emphasize the importance of the state's role in providing guarantees for citizens' rights, both through preventive and repressive mechanisms.¹⁴ From this perspective, legal protection means not only the existence of regulatory norms, but also effective mechanisms to enforce those norms. Therefore, constitutional reconstruction is crucial to ensure that legal protection and social welfare are not only normative but also implementable.

Based on this description, the normative construction of legal protection and social welfare in the current Indonesian constitution demonstrates recognition of the principles of human security and substantive justice, but these

¹² Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, (Yogyakarta: Genta Publishing, 2009), p. 78.

¹³ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Op.Cit., p. 45.

¹⁴ Philipus M. Hadjon, "Perlindungan Hukum bagi Rakyat Indonesia," *Jurnal Ilmu Hukum*, Vol. 7, No. 2 (1998): 15–16.

principles remain implicit and have not been optimally integrated. This limitation demands a more comprehensive constitutional reconstruction, explicitly integrating the paradigms of human security and substantive justice into constitutional norms. Thus, the constitution serves not only as a normative document but also as a transformative instrument for realizing equitable social welfare.

The Ideal Constitutional Reconstruction in Guaranteeing Legal Protection and Social Welfare Based on Human Security to Realize Substantive Justice

The limitations of the constitution's normative construction, which remains partial and tends to be declarative, demand a more progressive and transformative constitutional reconstruction effort. This reconstruction goes beyond merely amending the wording of norms but also addresses paradigmatic aspects by placing humans at the center of legal protection and social welfare policy. In this context, integrating the human security paradigm into the constitutional structure is a necessity, given the complexity of threats to human life, which are no longer limited to state security but also encompass economic, social, health, and environmental aspects.¹⁵

Conceptually, human security, as developed by the United Nations Development Program, emphasizes two main dimensions: freedom from fear and freedom from want. These two dimensions imply that the state has a constitutional obligation not only to protect citizens from the threat of violence but also to ensure the fulfillment of basic human needs. Therefore, an ideal constitutional reconstruction must explicitly and operationally integrate these two dimensions into the state's fundamental norms.

Within the framework of a welfare state, constitutional reconstruction must be directed at strengthening the state's role as a duty bearer in fulfilling socio-economic rights. This aligns with Jimly Asshiddiqie's view, which asserts that a modern constitution not only regulates the division of power but also contains norms that bind the state to achieve the welfare of the people.¹⁶ Thus, constitutional norms must be formulated more firmly in determining the state's obligations, including through strengthening the principle of justiciability regarding social rights, so that they can be enforced through judicial mechanisms.

Furthermore, from a substantive justice perspective, constitutional reconstruction must address the structural inequalities that have hampered the realization of social welfare. Substantive justice demands differential treatment of unequally situated groups to achieve equitable outcomes. John Rawls's thinking on the difference principle asserts that inequality can only be justified if it provides the greatest benefit to the least advantaged group. Therefore, constitutional norms must provide clear affirmation for the protection of vulnerable groups, such as the poor, neglected children, people with disabilities, and other marginalized communities.

Constitutional reconstruction must also address institutional and implementation dimensions. This requires strengthening the role of state

¹⁵ Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999), p. 3.

¹⁶ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Op.Cit., p. 130

institutions in ensuring effective legal protection and social welfare. Philipus M. Hadjon's thinking on legal protection emphasizes the importance of effective preventive and repressive mechanisms to guarantee citizens' rights. Therefore, constitutional reconstruction must include strengthening oversight mechanisms, accountability, and access to justice for all levels of society.

Furthermore, a progressive legal approach is also relevant in promoting constitutional reconstruction oriented toward substantive justice. Satjipto Rahardjo emphasized that law should be positioned to achieve human wellbeing, not an end in itself.¹⁷ From this perspective, the constitution must be understood as a living document capable of adapting to social dynamics and societal needs. Therefore, constitutional interpretation should not be rigid, but rather progressive and responsive to changing times.

Furthermore, human security-based constitutional reconstruction also demands holistic, cross-sectoral policy integration. This is because threats to human well-being are multidimensional and interconnected. Therefore, the constitution must serve as a normative foundation for integrated public policy, preventing fragmentation in the implementation of social welfare programs.¹⁸ In this context, the human security approach not only functions as a theoretical concept, but also as an operational framework in formulating state policy.

Thus, an ideal constitutional reconstruction must encompass several key aspects, namely: (i) strengthening constitutional norms that explicitly adopt the principle of human security; (ii) affirming the state's obligation to guarantee social welfare as an enforceable right; (iii) providing affirmative action to vulnerable groups in order to realize substantive justice; and (iv) strengthening institutional mechanisms and effective implementation. This reconstruction is expected to make the constitution an instrument that is not only normative, but also transformative in realizing legal protection and equitable social welfare.

Conclusion

The constitutional construction of legal protection and social welfare implicitly reflects the principles of human security and substantive justice but remains normative and ineffective in its implementation. The Ideal constitutional reconstruction requires strengthening norms that explicitly integrate the principle of human security, affirming the state's obligation to guarantee social welfare as a claimable right, and taking sides with vulnerable groups to realize substantive justice effectively.

Recommendation

It is necessary to strengthen constitutional norms in a more operational and implementable manner so that the principles of human security and

¹⁷ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Op.Cit., p. 45.

¹⁸ Mahbub ul Haq, *Reflections on Human Development* (New York: Oxford University Press, 1995), p. 15.

substantive justice are not merely implicit but can be effectively realized in practice.

It is necessary to undertake constitutional reconstruction that emphasizes the integration of human security principles, strengthens the state's obligation to fulfill social welfare as a claimable right, and ensures support for vulnerable groups to realize substantive justice effectively.

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