

The Dilemma of Fulfilling Informal Sector Workers' Rights in the Indonesian Welfare State Concept

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ABSTRAK

Konsep negara kesejahteraan berkaitan erat dengan pembatasan kemiskinan (poverty threshold) dan standar minimum kesejahteraan masyarakat. Bahkan, jauh sebelum Goodin, Ass Briggs (1961) menyatakan kewajiban negara kesejahteraan yaitu melakukan peningkatan kesejahteraan warganya, yang dimulai dari fase awal (origins) menuju negara berkembang (development) sehingga bermuara kepada welfare state. Dengan demikian, negara kesejahteraan merupakan negara yang menjalankan kekuasaan untuk mencapai tujuan yang bermuara pada terwujudnya kesejahteraan bagi rakyatnya. Tujuan dari penelitian ini untuk menganalisis pemenuhan hak atas tenaga kerja sektor informal ditinjau dari konsep welfare state. Penelitian ini adalah terkait bagaimana bentuk pemenuhan hak pekerja sektor informal di Indonesia yang diatur melalui Undang-Undang Nomor 13 tahun 2003 Tentang Ketenagakerjaan yang disempurnakan dengan Undang-Undang Nomor 11 tahun 2020 Tentang Cipta Kerja Undang-Undang Nomor 40 Tahun 2004 tentang Sistem Jaminan Sosial Nasional, Undang-Undang Nomor 24 tahun 2011 tentang Badan Penyelenggara Jaminan Sosial. Penelitian hukum normatif dengan pendekatan undang-undang dan

konseptual digunakan sebagai metode dalam penelitian ini. Data yang digunakan yaitu data sekunder yang memuat bahan hukum primer dan sekunder. Teknik pengumpulan data yang digunakan yaitu studi literatur review yang kemudian dianalisis menggunakan metode deskriptif kualitatif. Dari hasil penelitian ini menunjukkan bahwa Undang-Undang Ketenagakerjaan yang kemudian lebih lanjut diatur dalam ketentuan Undang-Undang Cipta Kerja belum memberikan kesejahteraan yang sepadan terhadap pekerja sektor informal di Indonesia. Hal ini tentu bertentangan dengan ketentuan yang diatur dalam sistem jaminan sosial nasional guna mewujudkan negara yang makmur dan sejahtera dalam hal sosial, sehingga perlu diatur terkait pengaturan hal tersebut.

Keywords: Pekerja Informal, Sejahtera, Welfare State

ABSTRACT

The concept of a welfare state is closely related to poverty thresholds and minimum standards of public welfare. In fact, long before Goodin, Ass Briggs (1961) stated that the obligation of the welfare state is to improve the welfare of its citizens, which starts from the initial phase (origins) to the developing state (development) so that it leads to the welfare state. Thus, a welfare state is a state that exercises power to achieve goals that lead to the realisation of welfare for its people. The purpose of this research is to analyse the fulfilment of the rights of informal sector workers in terms of the concept of welfare state. This research is related to how the form of fulfilment of the rights of informal sector workers in Indonesia is regulated through Law Number 13 of 2003 concerning Manpower which is enhanced by Law Number 11 of 2020 concerning Job Creation Law Number 40 of 2004 concerning the National Social Security System, Law Number 24 of 2011 concerning the Social Security Provider Agency. Normative legal research with a statutory and conceptual approach is used as a method in this research. The data used is secondary data containing primary and secondary legal materials. The data collection technique used is a literature review study which is then analysed using a qualitative descriptive method. The results of this research show that the Manpower Law which is then further regulated in the provisions of the Job Creation Law has not provided commensurate welfare to informal sector workers in Indonesia. This is certainly contrary to the provisions stipulated in the national social security system in order to realise a prosperous and socially prosperous country, so it is necessary to regulate this matter.

Keywords: Informal Workers, Welfare, Welfare State

INTRODUCTION

Indeed, the law is not just a goal, more than that the law is a reflection of the will of society in terms of protecting the rights and interests of individuals embodied in legal norms / rules as a bridge that will lead the Indonesian people to the aspired idea (Juniarta, 2022). Thus, the law is not only a tool to achieve a certain goal but also reflects the values, will and aspirations of society.

Nowadays, the concept of the rule of law (*rechtstaat*) is widely applied by countries in the world as a system in regulating their government. Indonesia is one of the countries that adheres to this concept (Aswandi & Roisah, 2019). This concept emphasises that the government and all its citizens are subject to the same rule of law. Guided by the principles of the rule of law. The purpose of the rule of law is to organise order that grows in society with the hope that everything runs according to the law in the Indonesian context, hence known as the Pancasila state of law (Mulyadi, 2012).

In the view of Robert E. Goodin (1988), the concept of a welfare state is closely related to poverty thresholds and minimum standards of public welfare. In fact, long before Goodin, Ass Briggs (1961) stated that the obligation of the welfare state is to improve the welfare of its citizens, which starts from the initial phase (origins) towards a developing country (development) so that it leads to a welfare state. Thus, a welfare state is a state that exercises power to achieve goals that lead to the realisation of welfare for its people.

Indonesia also adheres to the welfare state concept, in which the state can use law as a means to regulate and organise and ensure the welfare of its people. This is in line with the goal of national development, which is to realise a just and prosperous society (Sembiring, 2017). The ideals of labour law, which are in line with the objectives of national development, appear in Pancasila as the basis of the state by emphasising the principles of social justice which are then set out in the constitution in Article 27 paragraph (2) jo. Article 28D paragraph (2) of the 1945 Constitution which aims to realise welfare for all Indonesian people (Febriansyah, 2017).

Putra (2021) argues that the concept of the welfare state, which was introduced in the 20th century, comes as an answer to the development of the concept of the night watchman state (*nachtwachter staat*). The modern state, or welfare state, is considered to have an obligation to organise welfare for its people. Because of this, the state is required to expand its responsibilities to issues related to the economy, social, health to matters relating to employment.

The domain related to employment includes everything related to labour before, during, and after the working period (Syahrial, 2020). The concept of employment applied by the Central Bureau of Statistics (BPS) refers to the concept of employment developed by the International Labour Organization (ILO). Labour is defined as the population of working age who are ready to do work, namely the age range of 15-65 years (Soleh, 2017). In achieving development goals, labour has an important role. Because work is not only limited to economic value, but also its human value.

There are various types of jobs available in the world and are divided into various categories. One of them is formal and informal work. The Central Bureau of Statistics in the 17th International Conference on Labour Statistics in 2013, defines formal workers as workers with employment relationships that in practice are covered by legislation and are subject to labour, tax, income and social protection laws (ILO, 2015). Formal workers are often known as white collar employees because they usually perform "delicate work" and are generally an educated and well-trained workforce with a high level of education.

This is in contrast to informal workers who are defined as workers with employment relationships that in practice are not covered by legislation, not subject to labour, tax, income, and social protection laws. Informal workers are often known as blue collar employees because they usually perform "manual labour" and are generally labourers who come from low levels of education or even no education at all (BPS, 2020).

In order to realise the mandate of Article 28D, namely that everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law, the government took the initiative to provide social security protection to all workers in Indonesia. The legal umbrella related to the regulation of all aspects of labour is currently summarised in Law Number 13 of 2003 concerning Manpower (Manpower Law) which was later enhanced by Law Number 11 of 2020 concerning Job Creation (Job Creation Law) (Endrawati, 2012). However, in reality, the presence of the Labour Law and the Job Creation Law is not optimal because they are limited to providing protection for formal sector workers while informal workers do not get the same treatment.

In fact, if we look closely, one of the objectives of the Job Creation Law as stated in Article 3 letter (b) is to ensure that every citizen can get a job, and receive fair and decent compensation and treatment in labour relations (Indonesia, 2020). This provision should indicate to the state to provide equal treatment for workers, both formal and informal. This

condition is certainly not in line with the purpose of the Job Creation Law, which is expected to be able to make improvements to the main labour issues that exist in the Manpower Law, such as related to the right to work and decent livelihoods, such as recognition of the existence of workers in certain sectors, protection, social security, and health and safety at work.

(Pitoyo (2016) revealed that the reason why the informal sector does not get the same treatment is due to assumptions about the informal sector that are identical to small-scale economic activities, workers with low education levels, still using simple tools, less productive, unpromising prospects due to their nature as independent businesses, dominantly unorganised and unregistered/illegal. Because of this, informal sector workers are analogous to shadow workers so that they do not need to get economic rewards and also their existence is not guaranteed by existing laws (Wicaksono et al., 2023)

According to data released by the Central Statistics Agency (BPS) as of August 2022, 80.24 million people or equivalent to 59.31% worked in the informal sector. Meanwhile, formal workers were 55.06 million people or equivalent to 40.69% (BPS, 2022). This data shows that work in the informal sector is still favoured as an alternative way to earn a living and improve family welfare conditions. The existence of so many informal workers means that the presence of adequate security is important for every worker. This is important because in certain conditions such as illness, accidents at work, termination of employment and even death, workers need support, especially financial or other guarantees as a solution. With the presence of such social security, workers can feel safe and comfortable and do not need to worry if something unexpected happens.

Seeing this, through Law Number 40 of 2004 concerning the National Social Security System (SJSN Law) requires the government to organise comprehensive social security and develop the implementation of social security for all its citizens. According to research by (Heniyatun et al (2018), the required social security programmes are health insurance, work accident insurance, old age insurance, and death insurance. The presence of the SJSN Law aims to show the role of the state in protecting its citizens and in developing the economy in Indonesia.

Over time, the rules regarding labour social security follow the rules of the International Labor Organization (ILO). One of them is in terms of the implementation of social security organised by an agency that is non-profit and mutual assistance. As it is in line with the ideals of the nation's founders, namely "from and for the people". So on that basis, the Social Security

Organising Agency was formed based on Law Number 24 of 2011 concerning the Social Security Organising Agency. However, in fact, the implementation of the SJSN Law and the BPJS Law has not met expectations because it still cannot protect workers in Indonesia, which in this context is for informal workers. In fact, looking at the conditions in Indonesia, informal workers dominate compared to formal workers.

It is appropriate to see the reality experienced by informal workers to review or form a firm provision in the law related to the fulfilment of comprehensive social security rights to accommodate the needs of informal sector workers. The differences in rights received by informal workers prove that the application of the concept of the Indonesian legal state is not in line with the fulfilment of the concept of a welfare state, which is actually expected to be able to provide social equity and welfare for all citizens. As according to James Midgley, there are 3 elements that measure welfare, namely 1) needs are met, 2) problems are resolved, and 3) there are opportunities for advancement (Arsyadi & Arif, 2022; Midgley, 1995). Therefore, this research aims to provide a balance of rights in obtaining welfare and fair and equitable protection for informal workers as an obligation of a state that applies the concept of welfare state.

RESEARCH METHOD

This research is a juridical-normative research using a statutory approach. In addition, the data used in this research includes secondary data consisting of primary legal materials obtained from several regulations such as Law No. 13 of 2003 concerning Manpower, Law No. 11 of 2020 concerning Job Creation, and Law No. 40 of 2004 concerning the National Social Security System and Law No. 24 of 2011 concerning the Social Security Provider Agency. This research also uses secondary legal materials derived from books, journal articles, and other relevant legal documents in supporting the research. Then this research uses data collection techniques carried out by reviewing literature studies and analysed with qualitative descriptive methods.

RESULTS & DISCUSSION

Understanding the Concept of Welfare State

The concept of the welfare state has been known since the 17th century, starting from Adam Smith, Jeremy Bentham, John Maynard Keynes, Sir William Beveridge, and T.H. Marshall, which boils down to one conclusion, namely the need for the state's role in realising

social welfare for its citizens (social well-being) and distributing that welfare evenly (Zaini, 2015). The welfare state is a state policy model that leads to social protection or public welfare through various programmes such as public health, social security benefits, unemployment, and so on (Jamil, 2021). The noble ideals of the founding fathers of the Indonesian nation who wanted the state to play a role in facilitating and guaranteeing every citizen fairly in order to realise social welfare for all Indonesian people without exception. This is as stated in the fourth paragraph of the opening of the 1945 Constitution that the purpose of the state is to improve the welfare of the people.

The welfare state concept is an idea that the state is considered to have the responsibility to improve the welfare of its citizens through services, assistance, protection and prevention of inequality of social problems (Hadiyono, 2020). One form of responsibility in improving the welfare of the people is in the aspect of employment. In general, according to (Sukmana (2017) a country can be classified as a welfare state if there are four main pillars, namely social citizenship, full democracy, modern industrial relations system, right to education and the expansion off modern mass education system.

Social citizenship refers to rights and obligations where citizens have the right to social protection, economic security, and access to public services. Then full democracy refers to a political system where decisions related to welfare and social policy are taken through a democratic process of all citizens by considering all the risks that may arise in the process. Furthermore, modern industrial relation systems refer to the way in which the relationship between workers, employers, and the government regulated in existing regulations can be equal without discrimination. Right to education and the expansion of modern mass education systems are seen in the recognition and implementation of the right of every citizen to gain access to quality basic education because it is the main key in improving the quality of life and skills of individuals and society as a whole (Pamungkas & Hariri, 2022).

In a welfare state, these four pillars must be implemented because the government is responsible for enacting policies that provide social rights to all its citizens based on citizenship, regardless of performance or social status. Thus, the state is expected to fulfil its responsibility in providing an adequate level of welfare for all its citizens. In this case, the state implements social policy as a guarantor of the fulfilment of social rights (the granting of social rights) to its citizens (Triwibowo & Bahagijo, 2006). This is in line with the thinking of the founding fathers, who wanted Indonesia to be a welfare-orientated country.

Sometimes, implementing the concept of a welfare state is challenging, especially in terms of employment. To support the implementation of development, there are several supporting factors, including capital, nature and labour. All three have an equally important role in development. The labour factor is no less important. This is supported by a very large population which is an important capital and cannot be underestimated (Sinaga & Zaluchu, 2021).

The state in optimising the labour factor needs to make efforts to foster, direct, and provide protection for labour to create prosperity for what it has done. According to Soepomo, labour protection is divided into 3 (three) types, namely Economic Protection, Social Protection, and Technical Protection (Sali Susiana, 2017).

Economic Protection or Social Security is intended as a protection for workers in the form of compensation in the form of income compensation as a substitute for part of the lost or reduced income due to certain conditions experienced by workers, such as work accidents, illness, pregnancy, childbirth, old age, or even death. Then Social Protection or Occupational Health where Occupational health is a form of social protection because the provisions on occupational health are related to the social aspects of society. It reflects regulations that aim to regulate restrictions on the authority of employers to treat workers or labourers without regard to prevailing norms, without ignoring the human rights of workers or labourers as individuals who have rights. Occupational health aims to protect workers or labourers from situations or conditions within the scope of their employment that may be detrimental to their health and dignity. The emphasis on "in an employment relationship" indicates that all workers who are not involved in an employment relationship with an employer will not receive social protection. Technical or Safety Protection aims to maintain the safety of workers or labourers from potential risks that may arise from the use of work tools or materials used in work.

Thus, as workers, informal workers also have the same rights as formal workers. Because as we know, formal workers or those who are bound by a contract have their work guaranteed by the company or employer so that they can be sure to get access to these three types of protection (Adrika, Frinaldi, & Dela, 2023). In contrast to the treatment received by informal workers, the right to guarantee their work is not guaranteed, which causes the fulfilment of the three types of protection. Informal workers should be treated the same because they are also included as objects regulated in Law Number 13 of 2003 concerning Manpower which was later enhanced by Law Number 11 of 2020 concerning Job Creation. So that the

fulfilment of welfare and protection for informal workers can strengthen Indonesia as the embodiment of a welfare state.

Implementation of the Welfare State Concept towards Labour in Indonesia: Informal Worker

The need for employment is one of the basic needs for every citizen as a concrete step in improving the welfare of the people in the country. However, the essence of work is not limited to earning income or wages but so that humans are treated more humanely (Mujahid, 2021). This implies that through work, a person should get an increase in the quality of his or her life, which is not solely measured in terms of material fulfilment but also related to the fulfilment of rights and legal protection that must be received while doing his or her work.

The development of the labour sector, as an integral part of improving human resources, has a crucial role in improving the quality of Indonesian individuals and society, so as to achieve national development goals. "Every citizen has the right to a job and a livelihood worthy of a human being" as stated in Article 27 paragraph (2) of the 1945 Constitution, this provision explicitly provides guidance on the rights of citizens in accordance with the principles of justice and populism. Thus, employment should be focused on the output of achieving social welfare so that workers are able to obtain a livelihood worthy of humanity.

In developing countries such as Indonesia, the presence of informal workers is more dominant than formal workers, which is understandable. However, this is a big job for the government so that the dominant number of informal workers can fulfil their basic rights for welfare. Article 28D of the 1945 Constitution guarantees that everyone has the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law.

Table 1. Number and Percentage of the Population Aged 15 Years and Over Who Are Employed by Formal/Informal

Formal Informal Labour	[SAKERNAS] Number and Percentage of People Aged 15 and Over Who Are Employed by Formal/Informal (People)		
	Amount		
	2019	2020	2021
Formal	31437.00	30072.00	32432.00
Persen Formal (%)	44.73	39.10	41.71

Informal	38845.00	46830.00	45333.00
Persen Informal (%)	55.27	60.90	58.29
Jumlah	70282.00	76902.00	77765.00

In its development, the labour structure in Indonesia is dominated by informal workers as shown in Table 1. The number of informal workers in 2019 was 38,845 people while formal workers were 31,437 people. Furthermore, in 2020 the number of informal workers was 46,830 people while formal workers were 30,072 people. Then in 2021 the number of informal workers was 45,333 people while formal workers were 32,432 people. It can be concluded, from this data, that from 2019 to 2021 the number of informal sector workers is always greater than formal sector workers.

Table 2. Proportion of Informal Employment by Island 2020-2022

Island	Proportion of Informal Employment by Island in Indonesia (%)		
	2020	2021	2022
Jawa	60,66	59,21	59,54
Kalimantan	55,54	54,64	52,16
Sulawesi	64,16	63,51	63,24
Maluku	66,34	63,98	64,46
Bali	56,69	57,10	53,43
Nusa Tenggara	74,78	74,93	75,30
Papua	68,95	69,19	72,19
Indonesia	60,47	59,45	59,31

Furthermore, looking at the data in Table 2, the presence of informal workers is spread across various islands in Indonesia. Nusa Tenggara is the island with the largest proportion of informal workers and continues to increase every year. The number of informal workers in Nusa Tenggara in 2020 is 74.78%, then in 2021 it is 74.93% and in 2022 it is 75.30%. Such a large proportion of informal workers is partly due to the geographical condition of Nusa Tenggara, which is in the form of islands and mountains, which results in limitations in reaching formal employment opportunities. Thus, isolated areas can have an impact on the lack of formal employment opportunities.

Informal sector employment relationships are often based on informal (verbal) labour agreements based on trust and gotong royong (Safaria, Suhandi, & Riawanti, 2003). This causes the fate of informal workers to be ignored and not in accordance with what they expect. In the

absence of economic, social, and technical aspects of protection, informal workers often live in uncertainty and are vulnerable to inappropriate treatment compared to formal workers.

This is based on the lack of knowledge about social security, the difference between savings, education insurance, health insurance, and employment insurance. Most informal workers have a low level of education. Table 3 presents data that the majority of informal workers come from the elementary school education level (SD) where as many as 69.18% in 2020, 70.26% in 2021, and 70.59% in 2022. this has implications for low literacy related to this matter, causing them to be less responsive to the above problems.

Table 3. Proportion of Informal Non-Farm Employment by Education Level (%)

Education Level	Proportion of Informal Non-Farm Employment by Education Level (%)		
	Jumlah		
	2020	2021	2022
SD	69,18	70,26	70,59
SMP	59,25	59,82	59,40
SMA	45,15	44,76	42,03
SMK	34,71	35,24	33,47
Diploma I/II/III	23,71	23,71	22,75
Universitas	16,16	14,57	14,35

The responsibility of the welfare state concept is claimed to have more obligations in providing social justice guarantees, which are realised in one way by protecting informal workers from the possibility of unlimited power from employers, through existing legal mechanisms. The economic dilemma of the informal sector arises as a result of the modernisation process that leads to dualistic characteristics. The focus of development on the macro scale produces an alternative economic system, namely the informal sector, which is dominant in developing countries including Indonesia. The dynamics of the informal sector in Indonesia cannot be separated from the development process and paradigm that has been going on so far (Glied & Lleras-Muney, 2008).

Although in terms of production, the informal sector is economically less profitable, it can in fact support the lives of most of the population in Indonesia who are below the poverty line. Therefore, informal workers can be used as an alternative solution to the increase in unemployment when there is an excess supply of labour. B. J. Habibie in (Kamelia & Nugraha (2021) said that the existence of the informal sector in an area's economic order is because this

sector has proven to be more resistant to economic recession than large-scale businesses. The informal sector is a saviour of employment in Indonesia by opening up employment opportunities and providing additional income for the perpetrators.

The above description shows that workers in the informal sector have played an active role in promoting economic growth and achieving development goals. In fact, they tend to be independent and do not depend on government assistance at all. One thing that is important to note is the protection of informal workers. It is not only about decent wages, but also about access to social security as citizens. As mandated in Article 28D paragraph (2) which states that "Everyone has the right to work and to receive fair and equitable remuneration and treatment in labour relations". Furthermore, social security in Indonesia is organised through Law No. 40 Year 2004 on the National Social Security System (SJSN). Social security is divided into 2 (two) types, namely social security for health and social security for labour.

The BPJS Employment serves as the implementer of social security protection for informal sector workers through the use of a social insurance system. Because the informal sector is vulnerable to economic shocks, the government has taken various measures to provide social protection for informal workers. This includes providing incentives for businesses to avoid terminating employment relationships, offering relief or relaxation of BPJS contributions, providing social assistance to informal workers classified as poor, and offering other facilitations to alleviate the economic burden on workers. In a study by R & Westra (2011), it was found that social security programs for informal sector workers can be organized independently or through non-wage earning members. Therefore, it is expected that the existence of social security for informal workers can provide equivalent well-being.

In order to provide better social protection for informal workers, the government, in 2006, through the enactment of Law Number 40 of 2004 concerning the National Social Security System, is obligated to comprehensively organize social security by developing the implementation of the National Social Security System for workers (Heniyatun et al., 2018). The presence of Law No. 40 of 2004 is expected to offer various forms of social security organized by several providers to reach and provide uniform benefits to workers, and also serve as the legal framework for social implementation in Indonesia.

CONCLUSION

Based on the analysis and discussions outlined above, it can be concluded that a welfare state, with the concept of a welfare state, is required to organize well-being in various aspects, especially in the context of employment. The existence of the informal sector is crucial, yet its presence is often overlooked. This is because the status of informal workers has not been comprehensively regulated in the Employment Law and the Omnibus Law on Job Creation. Consequently, informal workers cannot be considered prosperous, as per the principles of a welfare state, which should be demonstrated by comprehensive economic, social, and technical protection.

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