

The Concept of Indonesian Welfare State: A Maqasid Al Shariah Welfare Index Perspective

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Abstract — This article examines empirical facts about market and state failures in improving people's welfare in Indonesia. The corporatocracy's hegemony, capitalism and neoliberalism do not provide a place for such country to make policies in generating prosperity. Therefore, a new concept is needed to create essential welfare. The concept of Indonesia welfare has been elaborated through the theory of *maqâsid al syari'ah*. The characteristic of Indonesian Welfare is by making *Pancasila* as the spirit and soul of the country (moral - spiritual). There are close relationships between religion and country (socio-religious) such as rests on the Godhead of the One (prophetic-transcendental), Guarantee of welfare and social justice for the whole community, Freedom of religion and worshipping (liberation - humanization) and the actualization of happy laws.

Keywords—*State Law of Indonesia Welfare, Maqâsid Al-Syari'ah, Welfare Index*

I. INTRODUCTION

The imperfection of market in providing social services which is the right of every citizen has caused social injustice. Market injustice should be diminished by the state to ensure social stability and reduce the negative effects on capitalism. Marshall argued that the welfare state system as compensation have to be paid by the ruling class and workers to create social stability and maintain capitalist society. [1] The social services provided are basically a material expression of the rights of citizens in responding to the consequences of capitalism. The ideology of capitalism has entered the economic spirit which have a negative impact on the role of the state as an institution that should have an important role in optimally managing natural resources for the maximum welfare of the society. The state as the most legitimate institution providing basic social services for citizens should not inhibit its citizens to meet and fulfill their basic needs. [2]

Mishra firmly emphasized that this was considered as the impact of globalization which has limited the country's capacity to carry out social protection. [3] Kenichi Ohmae explicitly announced this as the end of the 'nation-state'. [4] The disappearance of the country is a necessity as global

economic activity increases. Francis Fukuyama even shows that there is a reduction in the role of the state and strategic functions which exacerbate poverty and social inequality, predicted to ignite social conflict and civil war. [5] The transformation of the capitalistic paradigm experienced an extreme leap towards neoliberalism. Neoliberalism does not increasingly provide a place for the state, even to make policies for the sake of social justice. Subsidies, basic public service guarantees, and other social guarantees, considered as inefficiencies. Education, health, and basic human rights become commodities. Neoliberalism has made the capitalist economic system and the free trade system a tool to result in market crime. Borrowing John Perkin's language as a corporatocracy crime is a network aiming to profit through corruption, collusion and nepotism from the third world countries and how this work is similar to the mafia. [6]

The facts show that many countries implementing welfare states have higher poverty rates than those do not apply. International Monetary Fund (IMF) with the Letter of Intent agreement guides the process of making and implementation of socio-economic policies by offering the concept of palliative economics [7] as the scriptures are continuously held to this day, whose contents include: liberalization, privatization, and deregulation which have tendency to be a serious threat to the nation states in the world.

Global economic imbalances, poverty and unemployment accompanied by crime have plagued most of the world. The concept and program of the welfare state can be said to have failed in bringing up humanity towards the actualization of justice, peace and mutual prosperity in life. This failure is perceived since welfare is realized, especially in Indonesia.

The failure of the welfare state which is applied by the formulator of economic and political policies due to the impact and severe attack of the economic crisis, should be used as the way to reflect back on the mistakes made by this country. Moreover, Indonesia is

the most difficult country to get out of the shackles of the economic crisis until the Reform Order government.

Basically, the purpose of establishing the Republic of Indonesia was to prosper all the people without exception. In other words, the Indonesian state aims to form a welfare state. The aim of national development is to increase social welfare, not just economic growth but to meet the various basic social and economic needs of every citizen in order to achieve a minimum standard of living.

The articles on welfare in the 1945 Constitution and its amendments are more numerous when compared to the constitutions of other countries aimed at welfare such as Norway, Japan, America and Malaysia which have relatively high human development indices. Indonesia has 14 articles of welfare in the 1945 Constitution, but does not have the power to form a prosperous society. Compared to other constitutions aimed at welfare such as Norway, Japan, America and Malaysia, they have a relatively high human development index. Norway only lists 3 articles in its constitutions Articles 110, 110a and Article 110b, [8] but such country is able to achieve an almost perfect HDI. Likewise with Japan, the country only included 1 article on welfare in the Japanese state constitution:

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs. [9]

Societies have the legitimacy to demand the state to carry out its obligations. Therefore, the people should be able to demand what is their right which has been regulated so clearly and firmly by the constitution. This is what drives the author to reconstruct Indonesian law so that the state can truly be responsible for bringing up about welfare.

II. DISCUSSION

Maqosid Al-Syari'ah Foundation of a Welfare Country

Literally, *Maqāshid Al-Sharī'ah* is a compound word (murakkab idāfi) consisting of the words maqāshid and al-sharī'ah. According to the basic words, the two words each has its own meaning. The word "maqāshid" is jama '(plural) from the word "maqṣad" (*maṣdar mimy*) from the verb *qaṣada*, *yaqṣidu qaṣ* and *wa maqṣadan*" which have meaning as legitimacy; [10] commitment to the right path (Surah Al-Nahl: 9) can also be interpreted as a balance and moderate (Surah Luqman: 19). Whereas the word "*al-sharī'ah*" literally comes from the root word "shara'a" and has two meanings: (a) as a source of water (spring) which can be used as drinking water, the Arabs call it: "*mashara*" at *al-mā'i* "means:" *maurid al-mā'i* "(source of water). (b) as the right path (straight) (Surah Al-Jatsiyah: 18). [11]

Maqāshid Al-Sharī'ah epistemologically can be found in the work of scholars such as *Ibn 'ūshūr*, '*Alal Al-Fasi*, and also *Ahmad Al-Raisuni* and others, as follows:

Firstly, According to Al-Ṭāhir Ibn 'Āshūr

مقاصد التشريع العام هي: المعاني والحكم المحوطة للشرع في جمع أحوال التشريع أو معظمها بحيث لا تحتص ملا حظتها بالكون في نوع خص من أحكام الشريعة

"*Maqāshid Al-Sharī'ah* are meanings and lessons that are recorded / demonstrated by Allah SWT in all or most of His Shari'a, also included in this area as the characteristics of sharia or its general purpose". [12]

Secondly, 'Alal Al-Fasi: [13]

المراد بمقاصد الشريعة: الغاية منها ولأسرار التي وضعها الشرع عند كل حكم من أحكامها

"*Maqāshid Al-Sharī'ah* is the goal of sharia and a secret which is placed by Allah SWT on each of His laws".

Ahmad Al-Raisuni:

الغاية التي وضعت الشريعة لأجل تحقيقها لمصلحة العبادة

"*Maqāshid Al-Sharī'ah* are the goals determined by the Shariah to be realized for the benefit of humanity". [14]

Seeing the definitions above, it can be highlighted that; the content of "*Maqāshid Al-Sharī'ah* or the purpose of law" is for the benefit of humans. Laws which have been determined and handed down to humans are not made for the law itself, but rather are made for the benefit of humans. [15] As for the scholars who have contributed greatly to the development of the *Maqāshid Al-Sharī'ah*: Imam Al-Juwainī, Izzū al-Din bin 'Abd al-Salam, Abū Iṣḥāq al-Shātibī and Al-Ṭāhir Ibn' Āshūr. [16]

The concept of Welfare State which is the focus of this study is based on the development of the contribution of the maqāshid al-syarī'ah; al-Syātībī, Abu al-Ma'ali al-Juwainy, 'Izzu al-Din ibn' Abd al-Salām, al-Thāhir ibn Asyur thus conceptualized a welfare state based on maqāshid al-syarī'ah. Al-Syātībī stated that the purpose of maqāshid al-syarī'ah is to fulfill the level of human needs: Dharuriyat (Primary Rights), Hajiyat (Secondary Rights), Tahsiniyat (Supplementary Rights). Thus, if applied to a welfare state based on maqāshid al-syarī'ah, then including Dharuriyat (Primary Rights) are: Fulfillment of basic needs (hifz an-nafs), provision of employment and independence (hifz al-mal), ensuring every citizen gets education (hifz al-'aql), marriage and proper childcare (hifz an-Nasl) and, creation of an environment of piety (hifz ad-din) and hifz al-'Irdh (Honor and Protection of Human Rights). When the citizens' needs are met, it means that the state has actualized sufficient welfare for its citizens.

Abu al-Ma'ali al-Juwainy, initiated al-maqāshid as Al-Hajat Al--Mamah (Public Needs). Meeting public

needs can be actualized through freedom of business, freedom of association, infrastructure development and transportation, fair and equitable distribution of both opinions (income) and wealth, as well as access to libraries, research and information technology. As for Al-Ismah (protection or guarantee of life) to guarantee life, health, and property so that citizens' lives are guaranteed.

'Izzu al-Din bin ' Abd al-Salâm, the truth of a rule depends on its purpose and the wisdom behind it. Therefore the aim of realizing prosperity is a state obligation and therefore, the state must regulate it in legislation and Honor (Hifz 'Ird) Protection of Human Rights which is part of the state's protective obligations towards its citizens so that human rights and honor and dignity someone can be awake.

Al-Thâhir ibn 'Âsyûr discovered that the main objectives of *maqâshid al-syarî'ah*; Order (al-fitrah), Equality (equality, *al-musawah*), Freedom (freedom, *al-hurriyah*), tolerance (magnanimity, *al-samahah*) when the country is able to present and ensure the main objectives of the *Maqâsid Al-Sharî'ah* al-Thâhir ibn 'ssyûr, it can be said that the existing law and applicable in the welfare state based on the *maqâshid al-syarî'ah* is a happy law, not just a happy one bring order, but it has exceeded all that every citizen is no longer just prosperous, but has come to a happiness level.

Based on the explanation of the *maqâshid al-sharî'ah* above, it can be seen that the concept of *maqâshid al-sharî'ah* shows various improvements based on the contextuality that is being responded by the Ulema *maqâshid al-sharî'ah*. In mapping the concept of *Maqâshid Al-Sharî'ah* which was contributed by the *Maqâshid Al-Sharî'ah* scholars, it can be seen in Table 1.1. below. [17].

Tabel. 1.1 Concept of *Maqâshid Al-Sharî'ah*

NO	NAME OF SCHOLARS	CONTRIBUTION (THEORY)
1.	Abū Iṣḥāq al-Shāṭṭibī	<ul style="list-style-type: none"> ▪ The Purpose of <i>Maqâshid Al-Sharî'ah</i> is to achieve prosperity ▪ The levels of human needs: <ul style="list-style-type: none"> ○ <i>al-darūrīyah</i> (primary right) ○ <i>al-hājīyah</i> (secondary right) ○ <i>al-tahsīnīyah</i> (supplementary right)
2.	Imam Al-Juwainī	Purposing <i>al-Maqâshid</i> as public needs. There are 5 levels of <i>al-Maqâshid</i> : <ul style="list-style-type: none"> ▪ <i>al-darūrīyah</i> (inevitabilities) ▪ <i>al-hājīyah al-'ammah</i> (public needs) ▪ <i>al-makrūmah</i> (principal acts) ▪ <i>al-mandūbah</i> (recomendations) ▪ <i>al-ismah</i> (protection)
3.	'Izzu al-Dīn bin 'Abd al-Salām	<ul style="list-style-type: none"> ✓ The validity of a rule depends on its purpose and wisdom behind it ✓ Adding <i>a-ird</i> (honour and the protection of human rights) to <i>maqâshid al-darūrīyah</i>

4.	Al-Tāhir Ibn 'Āshūr	The main purposes of <i>maqâshid al-sharî'ah</i> is: <ul style="list-style-type: none"> ○ Order ○ Equality ○ Freedom ○ Simplicity ○ The protection of human <i>fitrah</i>
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The construction of Islamic reasoning about law, benefit and justice represents a view that links justice with truth. To act fairly is to act properly. Looking for justice is the same as searching for truth. Truth is a representation of God's will for humans which is elaborated through al-ahkam al-khamsah, which is obligatory, sunnah, mubah, makruh, and haram. Substantial justice in Islamic law is always associated with the will of the maker of syara '(Allah) towards humans, whether the will is understood through logical deduction (*lughawīyah method*), analytical deduction (*qiyas*), or deduction from general sharia rules (*Maqâshid Al-Syarî'ah*). In the end, justice refers to the judge's efforts to find the truth and provide the law if there is a violation for which there is no formal strict rules. This is a form of procedural justice. Procedural justice is an external aspect of law, where substantive justice is actualized. Without procedural justice, substantive justice will only become theories that do not touch the reality of society. However, the value of certainty and usefulness of the law is also important to consider in law enforcement.

As explained earlier that the concept of welfare in conventional economics is widely questioned. This is because the welfare indicator is only aimed at the financial (monetary) approach and ignores other approaches, such as the capability and non-financial approaches. This is not in accordance with the concept of *Maqâshid Al-Syarî'ah* in Islam, where basically, *Maqâshid Al-Syarî'ah* is the goal of sharia as a whole, and religion is the most basic basic requirement.

Based on the formulation of the welfare state according to *Maqâshid Al-Syarî'ah* presented in the discussion above, this research formulates the *Maqâshid Al-Syarî'ah Welfare Index (MWI)* as an indicator and a measure that can be used as a holistic indicator to measure poverty and welfare in one country. [18] The formulation can be described in table 1.2 as follows.

Tabel.1.2 *Maqâshid Al-Syarî'ah Welfare Index (MWI)*

No	<i>Maqâshid Al-Syarî'ah Welfare</i>	Indicator (needs Levels)
1.	Fulfillment of Individual Needs	<ul style="list-style-type: none"> ▪ Fulfillment of Primary Rights: <ul style="list-style-type: none"> - حفظ النفس - حفظ المال - حفظ العقل - حفظ النسل - حفظ الدين - حفظ العرض ✓ Fulfillment Basic Needs ✓ Availability of Employment and Economic Independence

		<ul style="list-style-type: none"> ✓ Civilized Education ✓ Marriage, and Proper Child Care ✓ Creation of the Environment of Godliness (Spiritual) ✓ Protection of Human Rights ▪ Access to Secondary Rights ▪ Access to supplementary rights
2.	Public Needs (Al-Hajat Al-'Amah)	<ul style="list-style-type: none"> ▪ Decent, Fair and Equitable: <ul style="list-style-type: none"> ✓ Freedom of Business ✓ Freedom of Association ✓ Infrastructure Development And transportation ✓ Equitable and equitable distribution: Income and Wealth ✓ Library / Research / Information Technology Access ✓ Cultural Resilience and Resilience of the Nation's Character
3.	Protection or Guarantee (Al-Ismah)	<ul style="list-style-type: none"> ▪ Guaranteed Life of Citizens: <ul style="list-style-type: none"> ✓ Availability of Health Protection ✓ Availability of Citizens' Housing Ownership Guarantees
4.	Law Enforcement	<ul style="list-style-type: none"> ▪ Law gives happiness: <ul style="list-style-type: none"> ✓ <i>Al-Fitrah</i> (naturally) ✓ <i>Equality - al-Musawah</i> ✓ <i>Freedom - al-Hurriyah</i> ✓ <i>Magnanimity - al-Samahah</i>

Based on the Maqâsid Al-Syarî'ah Welfare Index (MWI) as an indicator and measure for the construction and design of Indonesia's welfare state law.

MWI Basis for the Indonesian Welfare Law State

The constitution clearly wants the actualization of a welfare state in Indonesia, where the state bestows broad social and economic rights to every citizen. Thus, Indonesia is not a minimum state or necessary evil, and it is not even an enabling state that only modifies markets while still worshipping individualism. Based on the constitution, the state is a development agent who not only encourages equality of opportunity, but also actively seeks to enforce social justice (equality of outcome). The state is clearly mandated to place the interests of society above those of individuals.

The implication is that the country plays an important role in providing public goods and services (provider state) towards an unconditional welfare state. With fiscal policy (state finance), the country should be actively in carrying out the function of income redistribution for social justice. [19]

The Indonesian rule of law makes Pancasila as a grundnorm (basic norm) or staatsfundamentalnorm (the foundational norm of the state). Pancasila is guided by prophetic ethical ideals (historical activism, transcendence, humanization and liberation). Pancasila can also be considered as a social philosophy, the state's view of social phenomena. It can be derived into social theory. First, the divine precepts can be reduced to a social theory called pluralism (positive pluralism); besides religion itself, there are other religions that must be respected and each adherent must hold fast to his religion. From the social theory, called pluralism, the approach to religious tolerance was appeared, the application of Islamic law in Aceh should be reflected from this social theory of pluralism.

The second preception (Humanity) is a guarantee of freedom within the limits of justice and civilization. Freedom is limited by the freedom of others. Therefore, it needs to be regulated in legal regulations. Third, the derivative of the 3rd precepts (Indonesian Unity) is cultural democracy or cultural pluralism. In contrast to ethnocentrism which is strong in identity and rejects other elements of culture, and cultural melting (melting pot) blending the components into a new identity, pluralism is intended that each ethnic group still holds its group identity, but in some cases there is a different identity. Pluralism means that all regions, all traditions and all cultures should be preserved and developed.

Fourth, the derivation of the 4th precept (People's Sovereignty) is an objective state (technical and simple state), namely the state as a custodian (ambaureksa), the holder of the mandate rather than the holder of power. Likewise, fifth, the 5th precepts (Social Justice) can be reduced to sociological nationalism actualizing that in a unit called a nation, there are layers which have not been benefited by the existence of such a large unit. Social justice which is a social philosophy has been reduced to a social theory, which is a populist economy which can be said to be a new paradigm due to previous capitalistic economy. [20]

The state is not only a legal, political and social building, but it is also a cultural one. Therefore, it can be observed as cultural characteristics of a country. On the other hand, the rule of law is also "demanded" to display its cultural face as aspired by the Constitution of the Republic of Indonesia. Thus, the law should not take over the efforts to make the Indonesian people happy as the ideals of the Constitution.

The reading of the Basic Law raises an important moral value, which is to present and develop "a country with a strong commitment to make its people happy." All of the things contained in Pancasila demonstrate moral commitment. The

precepts of "God Almighty", "just and civilized humanity", "deliberation in making decisions" and "social justice for all people", make the state and the government bear the mandate to carry out duties with all morality. The inclusion of the meta-rational deity of Godhead, giving a unique color, a distinctive character, and at the same time being an important reason to say, the State of Indonesia wants its people to live happily not only materially but also based on spiritual values.

Characteristics of the Indonesian Welfare Law, related to the concept of *maqâshid al-syarî'ah*, can be interpreted in the scope of state life as the meaning contained, universality of *maqâshid al-syarî'ah* values. In the context of Indonesianism, the *maqâshid al-syarî'ah* is part of the basic conception of Godhead with the aim of creating prosperity for the people of Indonesia. [21] Making Pancasila Spirit of State (Moral-Spiritual), that the national legal development policy and economic, political, and cultural development, make Pancasila as the spirit of movement, not the values that are translated from other cultures and values. Thus, the universality of *maqâshid al-syarî'ah* values animates the concept of Pancasila in Indonesia.

Pancasila with its five principles starting from the Godhead of the Almighty, just and civilized humanity, Indonesian unity, democracy led by wisdom in consultation / representation, and social justice for all Indonesian people, are universal values of *maqâshid al-syarî'ah* in every precept. *Maqâshid al-syarî'ah* basically guarantees *kulliyatul khams*, namely the protection of souls, property (wealth), reason, descent, and religion.

The Almighty God is considered as an effort to preserve religion (*hifz ad-din*) and religious people to carry out worship and beliefs based on their respective religions. Just and civilized humanity is an effort to recognize human rights in which there is also right to a decent and civilized life that is fair so that every citizen feels justice in civilization, especially in the protection of rights (*hifz mal*). The unity of Indonesia is to maintain the continuity of each tribe and customs in Indonesia. Thus, protection against (*hifz an-nasal*) can be realized. Popular descent which is led by wisdom in consultation / representation is a process of transformation of political thought and education from the ignorance and underdevelopment of citizens towards the formation of a progressive civilization which can be actualized, so that (*hifz al-'aql*) has been carried out carefully. Social justice for all Indonesian people is the government's effort to fulfill the basic needs of every citizen so that the gap between poverty and wealth does not have too much disparity, this is in accordance with (*hifz an-nafs*).

A closer relationship between religion and state (Socio-Religious) cannot be separated as Indonesia is not a liberal or communist country, and this is of course very closely related to the historicity of the Indonesian nation which seized its independence with religious zeal. Rests on the Godhead of the One (Transcendental), Welfare Guarantee and Social Justice for All Communities, Freedom of Religion and Worshipping (Liberation - Humanization) and Happy Laws are the characteristics, a prerequisite for actualization of the Indonesian Welfare Law.

III. CONCLUSION

The Republic of Indonesia Welfare Law was initiated based on *maqâshid al-syarî'ah*, moral - spiritual - religious and transcendental. The prosperity achieved or felt is not merely material but it is physical and spiritual happiness, not only for the world but also in the hereafter. Essential welfare cannot be achieved without the active role of the country within it. The concept of Indonesia Welfare offered is an essential one which has been elaborated through the theory of *maqâshid al-syarî'ah* and transcendental approaches.

The conception of Indonesian welfare law requires that every state or government action must be based on law, guarantee the security and public order, make the welfare state ideology as the basis for the position and function of the government (*bestuursfunctie*) in carrying out tasks, and broader responsibilities for the welfare of the people and social justice as the spirit of economic development. There is a state role in it along with a civil society movement (civil society) which can transform social and bring society to a higher stage where there is no longer an imbalance of welfare in Indonesia. Civil society has a very high level of social fragmentation.

Overall, the characteristics of Indonesian Welfare Law is given to make Pancasila as the spirit and soul of the country (moral - spiritual), in every direction of national, economic, political and cultural development policies, that the direction of developing the State is not uprooted from its roots, Pancasila which rests on the Godhead of the Almighty (transcendental), a close relationship between religion and the state (socio-religious), the existence of Welfare Assurance and Social Justice for the entire society, and freedom of religion and worshipping (liberation - humanization) and the actualization of a happy law.

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- [6] John Perkins, *Confession of an Economic Hit Man*, US, Read How You Want, 2008, pp. 12-13
- [7] Diidentifikasi Erik Reinert, adalah ekonomi sebagai obat yang tidak menyembuhkan, melainkan hanya berfungsi sebagai penawar rasa sakit. Ia tidak menyembuhkan penyakitnya (kurangnya industri lokal yang kuat di negara-negara berkembang), namun cuma meringankan dampak perda gangan bebas global (berupa bantuan keuangan bagi negara-negara miskin), palliative economics ini yang menurut Reinert merupakan pengganti dari development economics yang berkembang di era 1950-1970an, atau new-development economics di era 1990an. Erik S. Reinert, *How Rich Countries Got Rich... and Why Poor Countries Stay Poor*, London, Constable, 2008, hlm.26-27
- [8] Article 110. It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work. Specific provisions concerning the right of employees to co-determination at their work place shall be laid down by law. Article 110 a. It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life. Article 110 b. Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced. The State authorities shall issue further provisions for the implementation of these principles. Lihat: [http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library/files/Norway_Constitution_1814_\(as%20amended\)_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library/files/Norway_Constitution_1814_(as%20amended)_en.pdf), diakses pada 27 Juli 2019.
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