

The Indonesian Constitutional Court Decisions as a Social Engineer in Improving People's Welfare

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Abstract: One of the national goals of the establishment of the Indonesian state is to improve the people's welfare. To support this achievement, the law comes to bring its functions as a social engineer. It means the law plays a role in influencing the occurrence of a social change in a planned manner to achieve prosperity. The Constitutional Court decision is one of the sources of law that is expected to improve people's welfare. This article aims to analyze the Constitutional Court decisions that have significant implications for maintaining and improving the people's welfare in Indonesia. The methodology used in this research is a normative juridical with library research and case study approaches on decisions declared by the Constitutional Court in the last five years (2013-2018). This study found that there are socio-economic rights of citizens that have been protected and restored by the Constitutional Court. These erga omnes decisions indirectly contributed to the improvement of the people's welfare, in particular regarding the rights of a pension fund, a minimum wage and severance pay. This article concludes that an effort to maintain and improve the people's welfare in Indonesia can also be enforced effectively through a social engineering based on the Constitutional Court decisions.

1 INTRODUCTION

In its Preamble, the Indonesian Constitution clearly mentions that one of the general goals of the state as a national ideal is to improve the people's welfare based on the five principles (Pancasila), namely: (1) Belief in the One and Only God; (2) A just and civilized humanity; (3) A unified Indonesia; (4) Democracy led by the wisdom of the representatives of the people; and (5) Social justice for all Indonesians. The people's welfare discussed in this article is referred to the welfare economic conception that is concerned explicitly with the distribution of income (Kaplow 2011), while improving people's welfare mostly refers to the efforts of the government to improve the living standards of every citizen and family. The improvement of people's welfare can be achieved through government programs in education, health, housing, culture, old age and unemployment insurance, the environment and others (Coatsworth 1996).

Therefore, the role of the state is significant in shaping policies that can improve people's welfare. This role can be expressed through laws and

regulations. The law acts as a means to achieve common idealized goals that can be intended to improve public welfare. Thus, the welfare improvement policy needs to be based on the rule of law reflected not only in the law and regulations but also on the court decisions.

In the Indonesian legal system, the judicial power is not only carried out by the Supreme Court but also the Constitutional Court that has an authority to examine the constitutionality of the law. With this authority, the Constitutional Court can form and exercise social control over social policies contained in the law. If the policy is contrary to the Constitution because it does not guarantee the realization of social welfare, the Constitutional Court can annul the law or make a constitutional interpretation towards its implementation. Thus, this article discusses the role of the Indonesian Constitutional Court as a social engineer in improving the people's welfare. Given that the parameters of people's welfare are very much, this article will limit its discussion on a pension fund, a minimum wage and severance pay for retirees and workers.

2 THEORETICAL FRAMEWORK

2.1 Law as a Social Engineer

The government has a constitutional duty to determine the form and type of law that shall be used in maintaining the ideals of the state. In other words, the law is a means for the state in preserving its national ideals. Since the state is necessarily a political order of a society, the legal ideals of a nation are ideally the further result of political ideals. Therefore, the applicable law created by the government indeed contains political ideals from influential people or groups in the country concerned (Merton 1957).

Law through its fair enforcement plays a vital role in creating public welfare (*bonum commune communitatis*) or for the public good (*pro bono publico*). Jeremy Bentham and John Stuart Mill, as cited by Harris, formulated it with the phrase “the greatest happiness of the greatest number.” It means the purpose of the law is to provide as much happiness as possible to many people because the law essentially aims to create prosperity in the life of society (Harris 1989).

Through his theory, Roscoe Pound argues that law functions as a tool of social engineering. He interprets the law as a type of social engineering or social control in a political society of the state. According to him, as explored by Huijbers, the purpose of the law is to compensate for the social and individual needs of one another (Huijbers 1999). Roscoe Pound also discussed the use of decisions as a tool of social engineering. He even criticized the ‘old-fashioned view’ of the law which emphasized the maintenance function of the order in a static sense and the conservative nature of the law. The United States’s experience, for instance, proves that court decisions become essential instruments in social change in the country (Ali 2011).

Pound is a prominent legal thinker whose thoughts are discussed and taken into account in various issues (Pound 1940). He is also one of the supporters of sociological jurisprudence and pragmatic legal realism (Wacks 2005). Pound has changed the concept of ‘law in books’ into ‘law in action’. He argues that the real law is the law that is carried out. It means the law is not only written in statute, but also what is done by legal officers and law enforcers or anyone who carries out the law enforcement functions based on the concept of law as a tool of social engineering (Pound 1940).

Roscoe Pound’s theory was later developed by Mochtar Kusumaatmadja by introducing a legal

development theory by combining the thoughts of Myres. S. McDougal and Harold D. Lasswell. Kusumaatmadja transformed the notion of law as a tool into law as an instrument to develop society. The main idea underlying the theory of legal development is the need for an order in the development and reform efforts. Law in the sense of norms is expected to direct human activities towards the desired development and reform. In addition, the concept of law as a means of reform is the law in the sense of the rule or regulation functioning as a regulator or means of development in the sense of channeling the direction of human activities in the direction desired by development and reform (Kusumaatmadja 1995). With respect to legal development, Rahardjo argues that the most effective way to adjust legal development to social change is through the court because the court is considered relatively more dynamic and flexible in keeping up with the times (Rahardjo 2009). Therefore, the best way to interpret the law is by exploring the lawmakers’ intention when the law is formed through the words, the context, the subject, the effects, and consequences, or the spirit and the legal reasons that can be examined through a court decision (Wolfe 1994). However, when the lawmakers and judges are anti-social, the social engineering theory will lose its function (Grossman 1935).

2.2 Constitutional Court Decisions as Sources of Law

Sources of law are a crucial matter in legal science. It refers to the origin of a specific value or norm. The sources of law can be generally divided into two senses, namely informal sense (*formele zin*) and in material sense (*materiele zin*). Sources of law in a formal sense can be defined as formal places in written form where a legal rule is taken, while sources of law in material sense is the place where the norm comes from both written and unwritten meanings. Thus, the formal sources of law must have one form, among others: (1) the form of legislative products or certain regulations (*regels*); (2) certain types of agreements that are binding between the parties (*contract or treaty*); (3) Form of a judge’s decision (*vonnis*); or (4) certain forms of administrative decisions (*beschikking*) from the holder of the authority of the state administration (Asshiddiqie 2014).

The judge’s decision as a formal source of law is a statement from the judge as a state official authorized to do so. This decision is pronounced at a court hearing and aimed to resolve a case or problem

between parties. It also refers to the statement stated in written form. A written decision concept has no power as a decision before it is pronounced in a court hearing by a judge (Mertokusumo 2006). The judge's decision is important since the other written sources of law are inadequate for keeping the law up to date (Watson 1983).

English law, for instance, also has a system of binding precedent. The element in a decision that is binding is the *ratio decidendi*. It is the propositions of law that the court appeared to consider necessary for its judgment. The court usually will not declare what is the *ratio decidendi*, and judges in subsequent cases are therefore forced to find it themselves. This task may often prove to be quite tricky mainly because there is no theoretical method for uncovering the ratio. This reliance on precedent may create persistent ambiguity. Naturally, it does not necessarily result in improved quality in the law, because the subsequent court may, as the first could also have done, give an unfortunate ratio.

Referring to the hierarchy of laws and regulations in Indonesia, the legal status of the Constitutional Court decision in judicial review cases is equivalent to the law. The decision is also final and binding. It means that the Constitutional Court decision binds not only to the parties, but also to state institutions, public officials, and all citizens. This principle is known as *erga omnes*. Thus, an independent judiciary, particularly the Constitutional Court, plays a pivotal role in interpreting and enforcing citizens' rights enshrined in the Constitution (Steytler 2017).

3 METHODOLOGY

The research method used in this article is a juridical normative using library research and cases study approach on the Indonesian Constitutional Court decisions declared in the last five years (2013-2018) that have impacts on the improvement of the people's welfare. The decisions examined in this article are related to the rights to pension fund, minimum wage and severance pay.

4 RESULT AND DISCUSSION

4.1 Constitutional Court Decisions on People's Welfare

As discussed earlier, Roscoe Pound approved a law-free development of the activities of judges as long as

they pay attention to a legitimate objective that is the public interest (Huijbers 1999). This perspective is called *recht ist was dem volke nützt* in Germany. It means the law is whatever is useful to the nation because the law is a supporter of happiness (Tanya 2006). However, this vital role has not become a reality in many countries, especially in developing countries, including in Indonesia. The law is considered not to provide a sense of justice that plays a role in realizing the welfare and happiness of the people.

By using Pound's theory, the law can be used as a type of social engineering or social control in a political society. The aim is to balance the needs of social and individual between one another (Huijbers 1999). Using the concept of social engineering, legal experts and judges must abandon their rigid attitude in understanding the law. They must also accommodate changes that occur in the society so that the law can be a bridge for the creation of satisfaction in meeting the interests and aspirations of the people and minimizing the occurrence of social friction. In this context, Pound defines the interests as claims, wants and desires as well as expectations of the people. With this concept, a legal expert or judge must be able to balance the conflict of interests in society into balanced happiness (Pound 1940).

Based on this theory, the Constitutional Court as the guardian and the protector of citizens' constitutional rights has an authority to examine the constitutionality of the law. This authority has been widely used by citizens both individually and collectively in groups to obtain and defend their rights. Some of the decisions made by the Constitutional Judges are related to efforts to safeguard the people's welfare in the form of a pension fund, a minimum wage and severance pay for retirees and workers. These decisions are separately discussed as follows.

4.1.1 Pension Fund Case

Burhan Manurung, a retired civil servant from the Ministry of Trade, filed a petition on judicial review case related to the right to a pension fund under Article 40 paragraph (1) of Law Number 1 of 2014 on the State Treasury Law. According to Manurung, the article that regulates the pension fund will expire after five years is contrary to the Constitution.

The Constitutional Court through Decision Number 15/PUU-XIV/2016 on September 28, 2018 granted his petition. The Court is of the opinion that the pension fund is a right that must be guaranteed by the state. Therefore, the state must seriously pay attention

to and carry out the mandate. It means that those who have the right to a pension fund should not be reduced based on the time limit to receive it. Moreover, the pension fund is not merely a right, but it is also an appreciation from the state for the service given by the civil servant concerned.

The Court reaffirmed its opinion through Decision Number 18/PUU-XV/2017 on September 28, 2018 concerning a similar case submitted by Sri Bintang Pamungkas, a former lecturer and socio-political activist. The Constitutional Court decision is in line with Article 28D paragraph (2) of the Indonesian Constitution that stipulates every person has the right to receive fair and reasonable compensation and treatment in an employment relationship.

4.1.2 Minimum Wage Case

Several Trade Union's leaders filed a petition to the Constitutional Court because of the provisions in the Law Number 13 of 2003 on Manpower that give permission for companies to suspend the payment of minimum wages to workers or laborers. As a result, many workers and laborers cannot meet the needs of a decent standard of living. In its application, the petitioners submitted a judicial review case of Article 90 paragraph (2) of the Manpower Law and its explanation. Article 90 paragraph (2) states, "For businessperson who is unable to pay the minimum wage as referred to Article 89, a suspension can be done."

The explanation clause of Article 90 paragraph (2) of the Manpower Law states:

"Suspension of the implementation of the minimum wage for companies is intended to free the company concerned from implementing the minimum wage that applies within a certain period. If the suspension is over then the company concerned must implement the minimum wage that applies at that time but is not obliged to pay the fulfillment of the minimum wage provisions that apply when the suspension is given."

Based on the Decision Number 72/PUU-XIII/2015 on September 29, 2016, the Court stated that the provision is contrary to Article 28D paragraph (1) of the Indonesia Constitution which says that everyone has the right to a just recognition, guarantee, protection and legal certainty as well as equal treatment before the law. The Court is of the opinion that the payment of minimum wages by employers to workers or laborers is a necessity and cannot be reduced. The difference between the minimum wage and payments made by the employer during the suspension period is the employer's debt that must be paid to the workers or laborers. The decision provides legal protection and legal certainty for workers or

laborers to be able to receive income that is appropriate for humanity while giving responsibility to employers to fulfill their obligations.

The Court also held that the payment below the minimum wage by the employer based on a decision of the authorized officials at the request from the employer is very vulnerable to abuse of power.

4.1.3 Severance Pay Case

Marten Boiliu, a security guard who received a termination of employment, submitted a petition to the Constitutional Court. He asked the Court to examine the constitutionality of Article 96 of the Manpower Law that gives a time limit of two years for the demand for payment of wages and all payments arising from the employment relationship. As a result of this provision, Boiliu was unable to obtain severance pay because he filed a payment claim in the third year after being dismissed.

Based on Decision Number 100/PUU-X/2012 on September 19, 2013, the Constitutional Court overturned the provision because it was contrary to Article 28D paragraph (1) of the Indonesian Constitution. The Court is of the opinion that wages and all payments arising from the employment relationship are workers' rights that must be protected as long as the workers do not commit acts that are detrimental to the employer. Therefore, wages and all payments arising from employment relationships cannot be eliminated because of a specified period.

The Court affirmed that wages and all payments arising from employment relationships are private property and may not be taken arbitrarily by anyone, either by individuals or through statutory provisions.

4.2 Implications of the Constitutional Court Decisions towards People's Welfare

Law, justice and people's welfare are three keywords for the realization of a just and prosperous society. This notion can be traced from the Preamble of the Indonesian Constitution. The existence of the rule of law or rechtsstaat as implied in the Preamble leads to human happiness in casu the Indonesian people. The second paragraph of the Preamble of the Indonesia Constitution states:

"And the struggle of the movement towards the independence of Indonesia has now reached the moment of rejoicing to guide the people of Indonesia safely and soundly to the threshold of the independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous."

Furthermore, the fourth paragraph of the Preamble states:

"Subsequent thereto, to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to improve the public welfare..."

In addition, Article 27 paragraph (2) and Article 28D paragraph (2) of the Indonesia Constitution stipulate that every citizen has the right to work and to earn a humane livelihood as well as to receive proper remuneration in employment. These conditions can be fulfilled if they receive fair and decent compensation and treatment in the employment relationship. Thus, it is the responsibility of the state to carry out its duties to fulfill people's welfare as a mandate of the Indonesian Constitution to the government in implementing the concept of the welfare state.

In addition, the right to work that provides a decent living is also recognized in the International Covenant on Economic, Social and Cultural Rights (ECOSOC) adopted by the United Nations General Assembly on December 16, 1966 after the International Covenant on Civil and Political Rights (ICCPR). Indonesia is a state party to these two International Conventions.

Therefore, in implementing the mandate of the Constitution and international conventions contained in various legal products that aim to improve the welfare and happiness of the people, the Constitutional Court examines the constitutionality of law so that harmony and realization of the people's welfare can be achieved. The decision of the Constitutional Court has indirect implications for maintaining and improving the people's welfare because some of the Constitutional Court decisions still require implementing rules or follow-up from the parties concerned, particularly the government and the parliament.

The Constitutional Court decisions as analyzed above are a form of protection for the people that the right to welfare is constitutionally guaranteed by the Constitution. In accordance with the Roscoe Pound's theory, the decisions have become a tool of social engineering in maintaining and improving the people's welfare as well as in realizing the concept of a welfare state (*welvaartstaat*) in Indonesia.

In order to implement the general aims of the state in promoting prosperity, the Constitutional Court has the primary function as the guardian of the Constitution. The Court carries out its role through decisions in exercising social engineering to improve the people's welfare, as follows:

First, revoking provisions regarding the expiration to receive pension fund for retirees. In the previous

provisions, there was a limitation of time for five years to take the right of a pension fund. After the Constitutional Court declared a relevant decision, the restriction is no longer valid. Thus, if there is a delay in taking pension fund, it shall not reduce the right to fulfill a decent and fair livelihood for retired civil servants. Second, there is a legal certainty for workers or laborers in obtaining salary in accordance with the minimum wage to meet the needs of a decent life. Payment of the minimum wage can also not be suspended anymore by the company. Thus, workers and labours will get a minimum wage on time to finance their living needs. Third, a new legal policy has occurred that the payment of severance pay does not have an expiration date. It means that workers and labours who have been laid off can apply for and receive severance payments over two years after being dismissed.

With those Constitutional Court decisions, it is expected to improve the standard of living of workers and laborers as well as to ensure the welfare of retirees. With the revocation of the time limit for receiving the payments, it will provide more guarantees on the fulfillment of basic needs for workers and retirees. The decisions are also in line with the International Covenant on Economic, Social and Cultural Rights that has been ratified by the Indonesian government. Article 6, Article 7 and Article 11 of the Convention state that the state recognizes the right to work and the right to enjoy and favorable conditions of work, as well as further recognize rights to an adequate standard of living.

With the attainment of legal certainty for workers or labours in obtaining minimum wages, it can directly improve their welfare in meeting basic needs that include food, health, housing and education. These needs are also in line with the mandate of the International Labor Organization (ILO) Conference in Geneva 1976, which revealed that the concept of basic needs covers two things, namely: (1) minimum consumption for families, such as food, clothing, housing, education and health; and (2) public services for the general public, such as clean water, and transportation (Tjokrowinoto 1987).

5 CONCLUSION

This article has analyzed several decisions of the Constitutional Court which have implications for the people's welfare in Indonesia, particularly in terms of fulfilling the right to a pension fund, a minimum wage, and severance pay for retirees and workers. Therefore, workers and labours can meet the needs of a decent

standard of living. Unlike the ordinary court, the Constitutional Court has the characteristics of a binding decision for all state institutions, state officials, and citizens known as *erga omnes*. Therefore, every decision of the Constitutional Court that protects and restores the rights of the applicants will also have a direct effect on the protection of every Indonesian citizen. Thus, the Constitutional Court through its decisions has an important and effective role as a social engineer in maintaining and improving the people's welfare in Indonesia.

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