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**REFORMULATION OF THE LEGAL REGULATION ON THE  
INTEGRATED HANDLING OF THE POOR BASED ON  
A WELFARE LEGAL STATE**



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**Abstract**

This study analyzes the legal policy of handling the poor in Indonesia, which is constitutionally mandated by Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia as the embodiment of the ideals of a Welfare State. Normatively, this state obligation is implemented through Law Number 13 of 2011 and Law Number 11 of 2009. The results of the study indicate horizontal disharmony and dualism of regulations, data inaccuracy, and weak institutional coordination. This condition creates inefficiency and indicates that poverty handling is still charity-based rather than rights-based. Based on John Rawls' Distributive Justice theory (Difference Principle) and the principles of the Pancasila Welfare State Law, this study proposes an Integrated Codification Strategy for the Law on Handling the Poor. This codification aims to unify legal substances, organize institutional structures, and definitively shift the policy paradigm from compassionate discretion to the obligation to fulfill citizens' human rights in order to realize integrated social justice.

**Keywords:** Legal Politics, Poor, Welfare Legal State, Regulatory Codification

## INTRODUCTION

The Republic of Indonesia was founded on the basis of a Welfare State rooted in Pancasila, particularly the Fifth Principle, Social Justice for All Indonesian People. This concept rejects the *laissez-faire* system and obligates the state to actively intervene (Khudzaifah Dimiyati, 2020). The most tangible manifestation of this state commitment is Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which imperatively mandates: "The poor and neglected children shall be taken care of by the state." This mandate is a constitutional obligation inherent to the existence of the state (Todung Mulya Lubis, 1993).

A welfare state is a term used to describe a country's commitment to improving the well-being of its citizens by providing primary and secondary needs for those who are less fortunate. This is one of the best ways for the government to actively and directly engage in efforts to enhance the welfare of the people (Khudzaifah Dimiyati, 2020). The normative idea or ideal approach system, which emphasizes that receiving social services is a fundamental right of every member of society, is part of the welfare state concept, alongside the depiction of the welfare or social service system itself (Khudzaifah Dimiyati, 2020). "Welfare is divided into three categories, according to Pierson: (1) social welfare, which focuses on the collective reception of welfare; (2) economic welfare, which refers to security guarantees through formal markets or the economy; and (3) state welfare, which refers to the guarantee of social welfare services through state agencies. The welfare state is described as an accountable state that offers a standard guarantee of welfare to its population up to a certain level of social welfare." (Khudzaifah Dimiyati, 2020).

Rawls' theory of justice, which emphasizes the difference principle, fails to be operationalized when development policies instead result in structural inequality (John Rawls, 1971), as criticized by Booth (Anne Booth, 2016) and McCawley (Peter McCawley, 2015). On the other hand, the welfare state concept in Article 34 of the 1945 Constitution of the Republic of Indonesia is ineffective because the state does not substantively intervene; its interventions are charitable, such as short-term social assistance, and lack transformative power to break the cycle of poverty (Ian Gough, 2004). This situation is worsened by the failure of Plato-Aristotle's theory of state responsibility, which ideally guarantees the "good life" for citizens but in practice is reduced to a subject-object relationship where the state acts as the caretaker and the poor as the cared-for, perpetuating dependency (James C. Scott, 1972). This disconnection between theory and reality gives rise to legal uncertainty and structural failure in fulfilling citizens' constitutional rights. The absence of a solid theoretical foundation (such as the failure to comprehensively implement welfare state principles) deepens juridical ambiguity, while legal vagueness hinders the emergence of policies based on substantive justice. As a result, poverty is simplistically understood as an "individual fate" rather than a structural product arising from state negligence, as seen in Mulya Lubis' practice of structural poverty (Todung Mulya Lubis, 1993).

Philosophically, this obligation aligns with John Rawls' Difference Principle, which states that economic inequality is only justified if it provides the greatest benefit to the least advantaged members of society (John Rawls, 1971). The legal policy governing the handling of the poor must reflect this principle, transforming poverty alleviation from mere social programs into the fulfillment of citizens' human rights (T. Mulya Lubis, 1986).

Some ambiguities in the regulations concerning the poor include debates over who exactly qualifies as poor and what the criteria are, as outlined in Law No. 13 of 2011 on the Handling of the Poor, which may overlap with provisions in Law No. 11 of 2009 on Social Welfare. The debate over the criteria for being classified as poor has led to various confusions in poverty alleviation efforts. The definitions in the legislation also fail to provide certainty about who qualifies as poor.

A notable case is the lawsuit filed by Serikat Rakyat Miskin Indonesia (SRMI) and the ruling by the Central Jakarta District Court on February 19, 2009, which dismissed all claims brought by the union. This is one example of disagreement over the criteria for categorizing individuals as poor (Badan Pusat Statistik, 2009). The Central Jakarta District Court's ruling in Case No. 311, filed by SRMI regarding the determination of criteria for poor families, is being enforced by the government through the Central Statistics Agency.

The poor and vulnerable population is instead disrupted and hindered in exercising their basic rights. The concept of the state as a ruler must be avoided, and no party should disrespect the constitutional rights of the poor. According to Article 9 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), ratified in Law No. 11 of 2005, every citizen has the right to the security necessary for a decent life and full personal development (Joko Riskiyono, 2015).

The first goal of the Sustainable Development Goals (SDGs) among the 17 objectives to be achieved by 2030 is to eradicate poverty in all its forms. Citing [cnnindonesia.com](http://cnnindonesia.com), Indonesia is among the 100 poorest countries in the world based on Gross National Income (GNI) per capita. According to the World Population Review, Indonesia ranks as the 73rd poorest country globally. In 2020, Indonesia's GNI per capita was recorded at US\$3,870. Additionally, according to Global Finance on [gfmag.com](http://gfmag.com), Indonesia ranked as the 91st poorest country in the world in 2022.

Currently, the legal policy for addressing poverty in Indonesia faces structural issues in the form of regulatory dualism between Law No. 13 of 2011 on Poverty Alleviation and Law No. 11 of 2009 on Social Welfare. According to Mahfud MD, legal policy is the foundational policy that determines the direction of law. In this context, Indonesia's legal policy has failed to create an effective legal framework (Mahfud MD, 2009). This disharmony results in: 1) Legal Uncertainty: Overlapping definitions and authorities between the two laws and other implementing regulations hinder program effectiveness; (Murdiyana, dan Mulyana, 2017) 2) Integrated Data Crisis: Inaccurate management of the Integrated Social Welfare Data leads to high exclusion and inclusion errors, confirming that the system remains rooted in patron-client politics rather than a rights-based system; and 3) Charity Paradigm: Poverty alleviation is still viewed as an act of charity rather than the implementation of human rights (Imron, 2012).

This research aims to formulate a philosophical and theoretical framework for the reformulation of an integrated legal policy on poverty alleviation, shifting from a charity-based to a rights-based paradigm. It also proposes a codification strategy for laws as a fundamental solution to achieve a welfare state. Codification is necessary to create legal unity and certainty in addressing the multidimensional issue of poverty alleviation.

## RESEARCH METHOD

This research is a Normative Legal Research, which focuses on the study of legal rules, legal principles, and legal doctrines. The type of research used is doctrinal research, based on library research. The approaches used include: 1) Statute Approach: Conducted by examining all relevant legislation, particularly the 1945 Constitution of the Republic of Indonesia, Law No. 13/2011, Law No. 11/2009, and implementing regulations (Presidential Regulations, Ministerial Regulations), to identify consistency, synchronization, and normative dualism; 2) Conceptual Approach: Analyzing core concepts such as the Welfare State, Difference Principle, Social Justice, and Rights-Based Approach to build a philosophical framework for solutions; and 3) Philosophical Approach: Exploring the foundational values of Pancasila, especially the Fifth Principle, as the ethical foundation and legal purpose in formulating new legal policies.

The data analysis technique used is Qualitative-Normative Analysis, conducted through the following stages: 1) Norm Identification (Inventory): Collecting and classifying all norms regulating the handling of the poor and destitute; 2) Synchronization Analysis: Comparing similar norms (e.g., definitions of the poor and destitute, assistance mechanisms) from different laws (horizontal) and comparing laws with implementing regulations (vertical) to identify disharmony; 3) Normative Evaluation (Critique): Critiquing disharmonious norms based on philosophical and theoretical principles (Difference Principle and Rights-Based Approach); and 4) Construction and Reconstruction: Formulating a new legal policy model (Codification) capable of reconstructing chaotic norms into a coherent and effective legal system.

## RESULTS AND DISCUSSION

### Welfare Rule of Law and John Rawls' Distributive Justice

Indonesia, as a Welfare State, is recognized as the embodiment of Pancasila (Alfitri, 2012). The concept of a Welfare State is a paradigm that positions the state not only as a guardian of order (*nachtwachterstaat*) but also as an active agent responsible for the social and economic welfare of its citizens. This model demands active state intervention (Ni'matul Huda, 2020). The legal policies implemented must ensure that the rights of the poor are protected, not only by the government but also by society and the private sector (Ian Gough, 2004).

Classically, the Welfare State can be analyzed using Gøsta Esping-Andersen's typology, which divides welfare regimes into Liberal, Conservative, and Social Democratic models. Based on Esping-Andersen's typology (Esping-Andersen, 1990) Indonesia cannot fully adopt all three welfare state models due to philosophical-cultural incompatibility and its unique socio-economic context:

#### Table 4.1 The Model of Welfare State

Model	Esping-Andersen Characteristics	Incompatibility with Indonesia	Pancasila Solution
Liberal	<ol style="list-style-type: none"> <li>1. Selective assistance (<i>means-tested</i>)</li> <li>2. Minimalization of state intervention</li> </ol>	<ol style="list-style-type: none"> <li>1. Contradicts the 5th Precept (social justice)</li> <li>2. Creates stigma for social aid recipients</li> </ol>	Reject charitable approaches. Example: The PKH program is criticized for complicated verification bureaucracy and being charity-based.
Conservative	<ol style="list-style-type: none"> <li>1. Based on employment status,</li> <li>2. Exclusive to formal workers.</li> </ol>	<ol style="list-style-type: none"> <li>1. Contradicts the spirit of gotong royong (mutual cooperation),</li> <li>2. Ignores 74% of informal workers (BPS, 2023)".</li> </ol>	Reject exclusivity. Example: BPJS Employment is mandatory for informal workers since 2021.
Social Democratic	<ol style="list-style-type: none"> <li>1. Universalism,</li> <li>2. High taxes for public services</li> </ol>	<ol style="list-style-type: none"> <li>1. Fits with family values and gotong royong,</li> <li>2. But Indonesia's budget is limited (tax ratio only 10.3% of PDB)"</li> </ol>	Creative adaptation. Example: BPJS Health combines subsidized and non-subsidized premiums.

Indonesian Legal Policy, based on Pancasila and Article 33 of the 1945 Constitution, presents a unique blend, which can be referred to as the Pancasila Welfare State Model. The Pancasila Welfare State Model rejects economic liberalism (Anne Booth, 2016) and emphasizes Universal Gotong Royong (mutual cooperation), where social rights are universally guaranteed, but their implementation integrates local values and community roles. *Ius Naturale* and Human Rights recognize that the right to a decent life is a natural right (*ius naturale*) and a human right that must be fulfilled by the state (Article 28H paragraph (3) of the 1945 Constitution), making social assistance not charity but the restitution of rights.

Rawls' theory is highly relevant as it provides an ethical foundation for the state's obligations. The Difference Principle (John Rawls, 1971) explicitly justifies Resource Redistribution and Targeted Affirmative Actions for the poorest groups. Regulatory failures in ensuring accurate DTKS (Integrated Social Welfare Data) and well-targeted programs represent ethical failures in fulfilling this Difference Principle.

According to Jürgen Habermas, the construction of public policy must be based on rational and equal deliberation between the state and its citizens (Jürgen Habermas, 1996). A brief profile of his thoughts can be outlined as follows:

**Table 4.3 Habermas' Thought and Implications**

<b>Habermasian Element</b>	<b>Concrete Application</b>
<b>Public Discourse Space</b>	Village Consultations (Musdes) specifically on poverty issues involving the poor as active participants.
<b>Normative Legitimacy</b>	The Law on Handling the Poor must be born from a consensus between Parliament and the Community (through structured public hearings).
<b>Moral Autonomy of Citizens</b>	Social aid programs designed by the poor, for the poor (example: co-creation of Basic Food Cards by recipient representatives).

The problem of Top-Down Policy, specifically the formulation of Law No. 13/2011 regarding the Handling of the Indigent and the Poor, which lacked target group participation, resulted in definitional errors (equating indigent and poor) and non-contextual assistance mechanisms. Deliberation (Jürgen Habermas, 1996) guarantees policies born of inclusive consensus, not technocratic engineering.

**Reformulation of Legal Policy: Codification of the Law on Handling the Indigent and the Poor Towards a Welfare Rule of Law**

This study affirms that the current legal policy for handling the poor in Indonesia faces significant structural challenges rooted in regulatory disharmony and overlap. Various laws and implementing regulations, such as Law No. 13 of 2011 and Law No. 11 of 2009, despite having the same orientation, create regulatory dualism. This legal reality not only causes confusion and uncertainty but also directly hampers program effectiveness and triggers budget inefficiency.

Partial improvements are no longer adequate; a fundamental and holistic step is needed, namely the codification of laws. Codification in this context is not merely merging articles, but a legal paradigm transformation aimed at unifying all scattered provisions into a single, integrated, and comprehensive legal framework. This step is essential to create a clear, consistent legal policy direction oriented towards rights-based approach fulfillment, not just compassion.

This proposed codification cannot be separated from a solid philosophical foundation: Pancasila as a theological welfare state and Human Rights as constitutional welfare rights (Gøsta Esping-Andersen, 1990). From a legal perspective, Pancasila (especially the 5th Precept) functions as the grundnorm (basic norm) obliging the state to proactively guarantee the welfare of all its people (Jürgen Habermas, 1996). Thus, poverty handling policy is no longer viewed as a charitable program, but as a constitutional state obligation to fulfill citizens' basic rights.

This codification law must explicitly translate the noble values of Pancasila and Human Rights into binding legal norms. Principles of social justice and humanity will be the main principles guiding the formulation of every article, ensuring that every policy aims to reduce inequality and enhance human dignity. Furthermore, the revitalization of the gotong royong

spirit will be integrated as a foundation for building participatory mechanisms involving society and communities actively in program planning and implementation, in line with Jürgen Habermas's idea of deliberative democracy (Jürgen Habermas, 1996).

The codification must cover four main integrated aspects to ensure the effectiveness of the overall legal system:

1) Substance Regulation:

Codification will end existing multiple interpretations by establishing a single definition for "indigent" (fakir) and "poor" (miskin). Furthermore, uniform national criteria will be formulated and mandatory for all ministries/agencies. This will address data inefficiency issues and ensure social assistance programs are more accurate and targeted. Additionally, the basic rights of the poor will be reformulated and comprehensively expanded, covering social security for vulnerable groups (such as people with disabilities, neglected elderly, etc.), and rights to access legal justice, which are currently under-accommodated.

2) Institutional Arrangement:

Codification will create an integrated institutional structure authorized to coordinate all poverty handling efforts. The functions, duties, and responsibilities of each ministry/agency (e.g., Ministry of Social Affairs, Ministry of Public Works and Housing, Ministry of Health) will be clearly regulated in this codification law. The goal is to minimize overlapping authority and improve cross-sector cooperation synergy, which is currently weak.

3) Governance and Integrated Data:

To guarantee accountability and transparency, codification will mandate a national single data system fully integrated with population data. This system will be the foundation for accurate program planning. Moreover, codification will strengthen criminal sanctions to be more effective and provide a deterrent effect against data manipulation and aid fund corruption, so as not to cause a sense of injustice in society.

4) Empowerment-Based Program Direction:

The codification law will shift program focus from a charitable assistance approach (charity) to productive empowerment. Regulated programs will not be limited to direct aid but must include skills training, access to business capital, and sustainable coaching, aimed at increasing the capacity of the poor so they can be economically independent and exit the cycle of poverty.

This codification approach positions law as a tool of *social engineering*, a concept promoted by Roscoe Pound (Lily Rasjidi, 2030). In this context, the law functions not only as an instrument to bring order to society but also as a proactive means to create desired social change, namely, realizing justice and welfare for all people. The codification of the law on handling the poor will be the main instrument to direct the policies and behaviors of all stakeholders, from the government to society, toward a common goal: holistic and sustainable poverty alleviation.

Considering the complexity and breadth of the scope, here are points regarding options and strategies that can be considered, consistent with the view that a single codification may not be possible:

1. Thematic Codification (Based on Main Topics):

This strategy involves collecting and restructuring all legislation (from the law level to Government or Ministerial Regulations) governing one key aspect of poverty handling. Implementation examples: 1) Codification of Social Security and Social Assistance Law (merging PKH, BPNT, JKN for PBI, etc.); 2) Codification of Empowerment and Social Welfare Law (economic empowerment, skills training, etc.).

2. Tiered Codification (Based on Regulatory Level):

Focusing on codification at different regulatory levels to achieve vertical harmonization. Implementation examples: 1) Parent Law Codification (Omnibus Law/Codification) containing basic principles, definitions, and sanctions; 2) Implementing Regulation Codification (Lower Level) harmonizing Government, Presidential, and Ministerial Regulations.

3. Codification Based on Target Groups (Demography/Classification of the Poor):

Grouping regulations based on beneficiary categories. Implementation examples: 1) Codification of Law on Handling the Poor and Productive Age Vulnerable Groups; 2) Codification of Law on Social Welfare for the Elderly and Neglected Children.

The most rational decision is to use a combination of **Thematic and Tiered Codification**. This allows for the realization of several Codification Laws focusing on specific aspects while ensuring harmonization of implementing regulations at the lower level. The main goal is to achieve harmonization, simplification, and legal certainty.

However, implementing codification is not without challenges. Sociologically, the biggest challenge is overcoming a legal culture that is still paternalistic, where poverty handling is often seen as compassion, not rights fulfillment. Politically, the tug-of-war of legislative and executive interests can hinder the formulation of an ideal law. Therefore, success depends on strong political commitment and deliberative public participation, as advocated by Habermas.

The codification of the law on the handling of the indigent and the poor is a fundamental and inevitable step to overcome the existing regulatory chaos. Codification will unify legal substance, restructure institutional frameworks, and strengthen a legal culture oriented toward rights fulfillment. This will serve as a crucial pillar in building an integrated, effective, and equitable legal system.

This measure will also bring Indonesia closer to realizing the ideals of a welfare rule of law, where the state is fully present to protect, fulfill, and guarantee the basic rights of every citizen, particularly those living below the poverty line. This legal codification is not merely an improvement in legal administration, but a visionary project of legal policy to realize social justice for all Indonesian people, as mandated by the 1945 Constitution of the Republic of Indonesia.

## CONCLUSION

Based on philosophical and normative analysis, it is concluded that the legal policy for handling the indigent and the poor in Indonesia must be based on the unique Pancasila Welfare Rule of Law Model, which rejects liberalism and adopts John Rawls' Distributive Justice principles as an ethical foundation for resource redistribution. Current reality shows structural failure due to regulatory dualism, a charity-based paradigm, and top-down mechanisms lacking Habermasian deliberation, hindering the fulfillment of the state's

constitutional obligations. Therefore, a Fundamental Legal Policy Reformulation is required through the Codification of the Law on Handling the Indigent and the Poor, which is holistic and inevitable. This Codification Project aims to create a single integrated legal framework, unifying substance, arranging institutions, strengthening data accountability, and definitively transforming policy from compassion to the restitution of citizens' rights, so that the law functions optimally as a tool of social engineering to realize social justice for all Indonesian people.

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