

International Symposium  
Pierre Bourdieu :

Yves Dezalay  
Bryant Garth  
Sudijono Sastroatmodjo  
Suteki  
Saru Arifin

# A Reflexive Sociology of Law and Society

Editor :  
Sandra Gomez Santamaria  
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Ade Saptomo



Thafa Media



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For the time being, there has been a predisposition to predominantly understand law as one of the autonomous knowledge having the characteristic of sui generis as elaborated by Roger Cotterel that one of the most fundamental characteristics of law from professional perspective is its intellectual alienation. In this sense, law has been imagined specifically in such a way as a doctrine and professional practice in which its internal ranking categories can be analyzed and understood without referring to social circumstances. Law disregards the core contribution of modern science development which gets more complex. Consequently, the invention in quantum physic proclaiming that all matters have relative characteristics has not resuscitated the egoism of law formalism fanatics on how the world phenomenon is actually related to each other. Further, the studied knowledge is merely examined the indications from its phenomenon and has not been able to trace and understand the essence of it. If the stance is defended, law will lose its preexisting identity as the tool of human being to regulate social life to maintain order and prosperity of the society.

In the study about law, Meuwissen distinguishes three levels of its domain viz. philosophy of law, theory of law and science of law. Basically, those three levels are integral parts that could not be separated from each other, thus every study involving law as an object shall include them. Meanwhile if law is examined in one perspective, it will be alienated from the basis of knowledge and social. Its philosophy, in fact, represents all fundamental issues related to the study of law, not only the reality and method of its science or knowledge, but also critical behavior toward the influence of ideology of modern philosophy. In this respect, the theory is placed at the higher abstraction than science of law since it becomes domain of transfer from philosophy. Further, it reflects the object and method from various forms. Science of law from pragmatic perspective is the development of the most essential theoretical view in the study about its mechanism as a tool of social work to maintain order in the society.

Law is superiorly examined with interdisciplinary optical; thus it could be sensed as the study of not only constitution products, but also law functionality, on how it immensely contributes to maintain the social order. We should bear in mind that constitution is only one of the endeavors contributing to the maintenance of social order. The signs of the extension of law paradigm

and the collapse of it as a set of rule have appeared after its examination in multidisciplinary and interdisciplinary studies; the paradigm of the constitution could no longer handle the issues of social order that are constantly changing in line with the advancement of other branch of knowledge. The further inventions in technology and information have resulted in the constriction of world and the static law could not keep pace with the trend of global alteration.

What is currently required in the study of law is its enactment as an institution which is capable of following the update in a particular period. It has close relation with other aspects of life for instance in the context of morality, state, history, economy, culture and so forth. Tamanaha has disclosed its relationships by sparking off the idea of "mirror thesis"; that law is essentially the reflection of the society life utilized for maintaining the social order. In contrast, this perspective is completely different with legal-positivism fanatics who regard law only from the juridical optic and exclude it from moral aspects guiding the behavior of the society.

According to Satjipto Rahardjo the science of law in Indonesia actually has been left for some decades behind the political and social domain since 1945. Indeed the cogitation and theorization of law in this country exemplifies slow-moving response in the long run before the realization of the need of its knowledge and theory that could possibly explain the political and social dynamism in this country. The theoretical framework of law, in point of fact, must reach the further social dynamism. It must be able to give the prognosis of framework as the alternative reaction to the further political, economical and social change so that the study of law will not be greatly burdened with the fast-growing phenomenon.

The international symposium held by Faculty of Law Semarang State University is one of the committed endeavors in the domain of law science to take advantage the outgrowth of the emerging phenomenon in the world. In addition, the focus on the influential thinking of Pierre Bourdieu shall contribute to the development in the domain of law. Towards this end, the study shall follow the up-to-date advancement in a number of disciplines so as law can immediately respond that progress in a directed as well as precise manner.

This book is a collection of writings presented in international symposium concentrated its study on thinking postulated by Pierre Bourdieu, a French sociologist and contemporary anthropologist who influences the development of multidisciplinary knowledge. I hope you find this proceeding useful particularly for the development of law science in Indonesia.

Sartono Sahlan<sup>1</sup>

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1 Dean Faculty of Law Semarang State University

On November 30, 2012 an international symposium themed *Pierre Bourdieu: a Reflexive Sociology of Law and Society* had been successfully conducted by Semarang State University. In this event, the main speakers Yves Dezalay and Bryant Garth presented their paper entitled: *Lost in Translation: on the Failed Encounter between Bourdieu and Law and Society Scholarship and their respective Blindness*. In addition, both reputable scholars also presented the results of their four books derived from their research. As far as history records, this symposium becomes one of the milestones of Bourdieu discussion in Asia. The discussion in symposium about philosophy as well as framework of social research method was first organized by the Faculty of Law, Semarang State University.

Faculty of Law adheres to the purposes for the advancement and education of agents as technocrats, politicians, activists, journalists, bureaucrats, and intellectuals. To these ends, it is the heart of power and knowledge. Further, its alumni are expected to give social influence in the realm of political battles in the state and the global competitive market. They shall uphold idealism and social capital as a weapon of war. In order to speculate the tendency of the faculty of law's alumni agents, observing their behavior is not sufficient. It should be explored in more detail within a certain timeframe research by taking into account the micro and macro aspects. The observation also requires historical context (ranging from Bologna school tradition, Roman law, tradition *professorenrecht* Germany), politics, economics, and culture.

The international symposium on *Pierre Bourdieu: a Reflexive Sociology of Law and Society* did not only discuss the themes presented by the main speakers. Yet, the forum also invited several speakers selected by the committee to present their papers. Dozens of articles were gathered to put together the writings of Dezalay and Bryant. This implies the arrangement of proceeding that was initiated by Dezalay and Bryant masterpiece, subsequently followed by other speakers' articles. By examining the context of Indonesia on Bourdieu's philosophy and practice research areas, deeper and sharper analysis can be developed.

At the opening session, this international symposium officially declared the establishment of a research institute named: Unnes Center for Contemporary Legal Studies. The institute is expected to follow up the recommendations

resulted from this forum by encouraging activities such as research, training, advocacy, and publishing scientific papers. Since Bourdieu is one of the main objects of study in this institution, his works will be the main reference for establishing a tradition of philosophical and intellectual in Faculty of Law, Semarang State University.

Social philosophical thoughts of Pierre Bourdieu (1930-2002) have given a great contribution to the development of jurisprudence. Through its theoretical perspective, jurisprudence is developed from correspondence with the concept of homoaeconomicus, symbolic violence, social capital, cultural social, habits, doxa, field and reflexive sociology. By using Bourdieu's view, scholars will find it easier to have in-depth analysis on the operation of a political domination, the movement of social agents, and the practical habits of law enforcers.

In its last development, jurisprudence takes a lot of considerable multidisciplinary study which does not only examine the norms, legislation, and the authority of apparatuses. Jurisprudence needs the other branches of disciplines, such as economics, politics, culture, technology, and social post-structuralism. Bourdieu's social philosophy believes that the object of study of jurisprudence will clearly describe the collision of philosophy, science, theory, and practice in the legal framework. On the matter of its agents, there are fragments of habitues among academicians, judges, public prosecutors, lawyers, and law enforcers who build their own conduct and cultures. Each of these communities possesses the interconnected power that competes with each other in authoritarian discourse. Each of them has their own unique features to spread hegemony and form separated social scheme to shape a tradition of jurisprudence, to review legal practice, and to enhance research.

In Bourdieu's perspectives, media also plays a significant role in building the tradition of law and determining the conduct of the agents. By the means of television, pictures, and media's symbols, the culture is gradually formed. In other words, a symbolic system is built in a media filled with the conflict of interest which competes with each other to determine the model, fashion, workstyle, and ideology of law enforcers.

Bourdieu's books and articles are: *Homo academicus* (1990), *Distinction: A social Critique of the Judgement of Taste* (1984), *On Television* (1999), *Practical Reason: On the Theory of Action* (1998), *the Force of Law* (1987), *Sur L'Etat* (1989), etc. Many of Bourdieu's work are worthwhile for the development of jurisprudence. For the study of law and society, Bourdieu's thoughts are especially beneficial when being used to observe social interaction, the structure of society, and the culture of law itself, etc. Jurisprudence will not finally be about the study of acts, but also on the domain of socials, politics, and cultures. The power of law does not merely prevail over the nation, but also on the other informal institutions which have social authority such as churches, mosques, monasteries, temples, dan the other social agencies. In particular, Indonesia

has a special study of indigenous community law well-known as custom law.

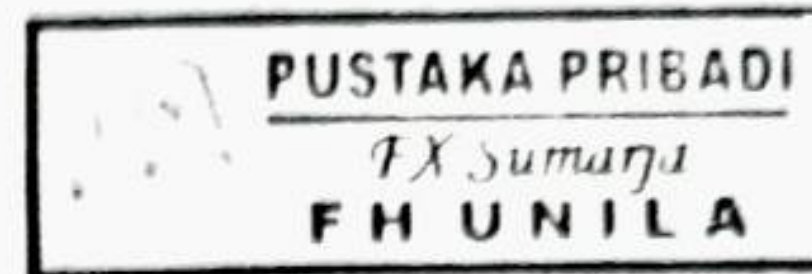
Bordieu's theories that discuss the social phenomenon factually and critically analyse the historical treatise of "Western" imperial with the model of influential westernization by the means of post-colonialism. The mechanism of law operation in Roman and American democracy or the other developed countries have after all influenced the historical stories of eastern and southern third world nations. By that means, law cannot be separated from the history of dominating power along with the agents who are there to compete with each other.

This is the proceeding of international symposium on a Reflexive Sociology of Law and Society by Semarang State University. Enjoy your reading.

Editor



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- Adil lugianto

# Globalization and Fundamental Value of UUD 1945 as the Social Constitution (Debating State Policy within the Laws Aegis Framework)

By: Dr. H.S.Tisnanta, S.H.MH  
(Lecturer at the Faculty of Law University of Lampung)

## Abstract

UUD 1945 is the Constitution as fundamental norm of social state policy to realize the ideology of Pancasila's law. However, the strong influence of liberal ideology, which tends to place market as its goals, causing marginalization of social rights and economic rights of citizens. A strategy in the legal development is strongly needed through the conceptual approach to pursue state roles and responsibilities.

According Jimly Asshidiqie, state roles and responsibilities are developed through triadic relationship among state, civil society and market. This role is manifested in the formulation of state policy in accordance with the position and function of each actor. Economic welfare and sovereignty as a fundamental value are state responsibility. Those ideological values are the essential parts of our nation dignity. The state has responsibility to improve welfare policy through affirmative action policy and to improve the quality of public services. Those roles and responsibilities shall be manifested by respecting upon human dignity.

State policy is an instrument in structuring socials and economics by giving preference to citizens and creating citizens' access. The state has the responsibility to distribute welfare and resources equally. The state shall regulate political and economic justice. Structuring conducted within the framework of law and order to integrate the efficiency and justice between liberty and excellence. The preference shall become the basic to uphold the unity and sovereignty of substantial aspects of the welfare state policies. Thus, the character of the state policy shall be aimed to encompass both nurture the citizens and became the aegis in dealing with global challenges.

*Key words:* Globalization, Fundamental Value, Social Constitution, State Policy, Laws Aegis Framework

## I. Introduction

Globalization is a process of economic, political and cultural depth intensity to accelerate economic interaction among countries. The process of globalization is led by the market (market lead) and technological advances as well as the applicable law "zero sum game". Inefficient economies would be crushed to death. On the other hand, rejection of the state intervention and market distortion are considered. Washington Consensus<sup>1</sup> requires the liberalization of trade and the diminishing role of the state in the economy. National sovereignty is replaced by the rule of the market because the market mechanism (market mechanism) is believed to drive the wheels of the economy (facilitate the production, distribution and consumption).

Countries are no longer able to make policies independently without market approval. Space and national government intervention on the wane since the country is weakened by the growing power of multinational corporations and the owners of capital. Global competition threatens the collapse of social welfare sectors and lead to social disintegration. Actual subsidy policy required for the particular group of people is a violation of state and society "forced" to perform various forms of privatization of public services much needed citizens.

Indonesia's position in the process of economic globalization is left behind especially after the economic crisis of 1997, a multi-dimensional crisis. IMF prescription is not efficacious to overcome the problem and even brought the nation stuck in a pile of debt<sup>2</sup>. Policies of privatization and withdrawal of various subsidies are gradually adding the woes of society. Liberalization policy of the country, causing a lawsuit against the value of the fundamental objectives defined in the preamble of the 1945 Constitution that places human dignity. These objectives are the responsibility of the State which manifests itself in various forms of policy.

Various problems that are still twisted must be addressed. One of the problems faced by this nation is poverty in a multidisciplinary approach, including using legal instruments. Legal reform is closely related to civilization that the people of Indonesia as a nation to live in dignity (freedom to live in dignity). The law has a very important role, namely as an instrument or tool of reform and democratization machinery. Indonesian positive law is an instrument to solve the problem of poverty that must be built by considering the values and order of the growing global world society, such as human rights, democracy and so forth. However, above all, more importantly are the values

<sup>1</sup> See I Wibowo in *Neoliberalism*. p. 287. Further by quoting Hertz saying that "Round the clock doormen at the headquarters of the private sector plc" has now stated that the country is already a security for entrepreneurs who are ready to drive away anyone who tried to disturb their comfort.

<sup>2</sup> See the preface Dradjad H Wibowo in the book, "Utang yang Memiskinkan", ICW, Yogyakarta, 2002.

of nationalism, especially the value of national objectives formulated by the founding fathers.

Responsibility of the state Indonesia cannot be separated from the constitutional perspective UUDNRI 1945 that is the general principles system of positive law. The existence of the Constitution is not just an ordinary rule, but a moral text that contains the values, vision and cosmology of Indonesia<sup>3</sup>. State law as regulated in Article 1, paragraph (3) UUDNRI does not just stop the tasks of organizing various public functions. State laws of Indonesia based on Pancasila constantly strive to realize the fundamental value in social justice and the general welfare.

## II. Problems

From the description above, important issues formulated in this study are:

- a) What is responsibility of the state to create prosperity in globalization era economy?
- b) What is the position of the 1945 Constitution as the basis of social constitution?
- c) What is the policy framework as a legal shelter?

## III. Discussion

### 3.1 Responsibility in Creating the Welfare State in the Era of Economic Globalization

Roles and responsibilities to create welfare state can be traced starting from the view of John Locke and Rousseau's philosophy, which provide a foundation for thinking about the task of creating social justice<sup>4</sup>. Conceptual understanding led to the birth of the welfare state that affects the liberal legal order. The state's role is no longer just a "night watchman" but also must seek the common good.

Roles and responsibilities of the state are distorted by the influence of the global market. Country is able to make policy independently in its role as regulator, provider, umpire and Entrepreneurs<sup>5</sup>. In such a position that the state's role as a carrier of such strategic regulatory authority. Presented by Satjipto Rahardjo<sup>6</sup> that the strength of the country lies in the ability of countries to design and implement policies and enforce a clean and transparent. Building the capacity of the state does not need to collide with the development aspirations of a free society.

<sup>3</sup>Compare with writing Satjipto Rahardjo in the book " Mendudukan UUD," p. 57.

<sup>4</sup>Reza AA Wattimena. 2007. *Melampauai Negara Hukum Klasik*. Jakarta: Kanisius.

<sup>5</sup>W. Friedmann. 1973. *The State and the Rule of Law in A mixed Economic*. London: Steven and Son.

<sup>6</sup>Satjipto Rahardjo. 2008. *Negara Hukum Yang Membahagiakan Rakyatnya*. Yogyakarta: Genta Press.

The state is organized on the basis of the Constitution or the constitution. The text in the Constitution contains moral values, vision and cosmology of Indonesia that aims to please the people. According to Jimly Asshiddiqie<sup>7</sup>, the consensus which ensures the enforcement of constitutionalism in the modern era is understood as the agreement rests on three elements, namely: a) The general goals of society or the general acceptance of the same philosophy of government), b) the basic of government, c) the form of institutions and procedures. Agreement on purpose or collective goal (the general goals of society or the general acceptance of the same philosophy of government) of Indonesia can be seen in the opening paragraph UUDNRI the 2nd and 4th paragraphs Opening section<sup>8</sup>.

In paragraph 2 states that there is a purpose statement: "The State of Indonesia shall be independent, united, sovereign, fair and prosperous". While the paragraph - 4th Opening UUDNRI 1945 formulated the goal, namely a) Protecting the entire Indonesian nation and the entire country of Indonesia, b) Promoting the general welfare, c) Prospering the nation; d) Participating in the establishment of world order based on freedom, eternal peace and social justice.

The first and the fourth are external covering external passive and defensive purposes in the continuum. While the purpose of the second and third are internal and a unity that cannot be separated. The general welfare cannot be achieved except by increasing the intelligence of the nation's life, and attempts to make this nation will not succeed if it is not supported by welfare. From the formulation of the objectives as stated in the second paragraph and the four opening UUDNRI 1945 the State Law Staatsidee Indonesia is a welfare state based on Pancasila. Pancasila is the foundation of morality and ethics state administration explicitly stated in the Preamble and the substance of UUDNRI 1945.

Indonesia is a welfare organization, not the organization of power<sup>9</sup>, as a welfare organization, the use of authority based on the morality and ethics of state administration. Morality and ethics Pancasila became the foundation of the welfare state to realize the responsibility of the state in seeking the common good for the whole community. Conception of the welfare state is the option variant of Indonesian law. The role and function of the state are to intervene and prosecute based on the principle of legality in order to create the general

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<sup>7</sup> Jimly Asshiddiqie. 2006. *Hukum Tata Negara dan Pilar-Pilar Demokrasi*. Jakarta: Konpress. p. 286-287.

<sup>8</sup> RM. A.B. Kusuma. 2009. *Lahirnya Undang-Undang Dasar 1945*, Jakarta: the Agency Publisher FH University of Indonesia. Understanding the organizers suggested that the state of the basic values, the concept of power ("concept of authority", "means") and the concept of destination country ("concept of purpose", "goal")

<sup>9</sup> B. Sidharta Arief, *Ilmu Hukum Indonesia*, Faculty of Law, Catholic University of Parahyangan, Bandung, 2010. p. 93.



welfare.

Efforts to create the general welfare in the state cannot be separated from economic development, as stated by Paul Spicker<sup>10</sup> that "welfare depends on economic development." Economic development requires economic structure appropriate with their social and cultural conditions in which economic rights and social rights can be realized. It is also expressed by Spicker that "welfare also requires the avoidance of poverty". Economic development should be correlated with the welfare and prosperity of the people.

Prosperity/welfare related to aspects of sovereignty. Sonny Keraf<sup>11</sup> argued that Indonesia's economic vision is clearly stated in Pancasila and UUDNRI 1945. At least two major aspects of economic development are to realize and ensure the welfare of all the people of Indonesia (social justice) and guarantee sovereignty in economics. The welfare of economics and economic sovereignty is a matter of ideology, which means with regard to the vision, commitment and attitude of political partisanship. The values of ideology are the dignity of the sovereign nation.

### 3.2 Position the 1945 Constitutional as Basis for Social

The role and duty of the state can only be carried out when the state is strong because the pressures of the free market can cause damage to the public welfare system. Related to the country facing the dilemma to create welfare, on the one hand, it should minimize the role of the state in accordance with the demands of the global marketplace and on the other; it must intervene for the benefit of society marginalized by the existing system.

Faced with these conditions, the existence of the constitution is a central aspect for answers to global challenges. Building the capacity of the State is carried out by based on 1945 UUDNRI system of life that is the foundation of political, social and economic life of the state in creating value. As a political constitution, UUDNRI 1945 governs the dynamics of the national life, the social constitutions regulate social life, and economic constitutions govern the dynamics of the business world.

UUDNRI 1945 is the cornerstone in forming the policy of state and government in the political, social and economic domains. Policy of the country set out in the form of legally binding force state, civil society and market<sup>12</sup>. The three forces Formatting Triadik relationship and a new *trias politica* modern human civilization. Triadik relationship is the foundation in achieving the idealized values in the civic life of freedom, justice and wealth/prosperity. UUDNRI 1945 is a means of control and the dynamics of economic change as

<sup>10</sup>Paul Spicker, *The Welfare State - a general theory*, Sage Publications Ltd. 6 Benhill Street, London. 2000.

<sup>11</sup>Sonny Keraf, *Kesejahteraan Yang Berdaulat*, Kompas, Monday, October 11<sup>th</sup>, 2010. p. 6.

<sup>12</sup>Jimly Asshiddiqie, *Konstitusi Ekonomi*, Kompas, Jakarta, 2010. p. 374.

well as an instrument of protection in planning economic development towards the goal state. Morality and ethical development must be oriented to guarantee freedom (liberty) justice (equity, justice) and equity wealth.

Amendment I - IV UUDNRI 1945, has changed the institutional structure of the state and the substance of the roles and responsibilities of the state, especially the concept of the welfare state (welfare state). Amendment XIV chapter describes the influence of the receipt of socialism in the formulation of state goals (staatsidee) in our constitution<sup>13</sup>. As the social/welfare state is expected to take responsibility to intervene in the market, take care of poverty and care for the poor.

UUDNRI economic constitution of 1945 is explicitly stated in paragraphs 4 and formulation chapters. The formulation of the country's goal in the opening paragraph 4 including "creating general welfare" suggests that the economy is the constitution UUDNRI. Principle of the family is a guarantee of the establishment of the national economy towards the common good with five shades of the independent-united, sovereign, fair and prosperous<sup>14</sup>. The relationship between the state and the economy, which is based in a state-based integrative unity, then in the economic field will use a system of "state socialism".

National economy and social welfare defined in chapter XIV of Article 33 and Article 34 of the 1945 Constitution. Article 33 which consists of 5 subs is the result of the fourth amendment of the 1945 Constitution. The provision was amended of the two verses that paragraph (4) and paragraph 5. In Article 33 paragraph 4 formulated the principles of economic democracy in the national economic system which covers the principles of togetherness, efficiency, justice, sustainability, environment, independence, and balancing economic and national unity. These principles must run in parallel and should not be contrary to the principle of the family. Morality arrangement embodied in the form of article 33 of the statute referred to in paragraph (5). The problem which then arises is the loss of the spirit of socialism and neoliberals replaced with the spirit of the people who entrust the welfare of the market.

UUDNRI 1945 explicitly gives setting its protection and promotion for the welfare of the people. The provisions of Article 28A to 28J and 31 are settings that should be considered. But the fact remains that the legislation system built is not always consistent, coherent and correspond to the provisions of Article 33 are round and full. Constitutional review of various laws by the Constitutional Court to prove the spirit of Pancasila as the basis socialism welfare of the people has been violated.

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<sup>13</sup> Jimly Asshiddiqie, *Konsolidasi Naskah UU1945 setelah Perubahan Keempat*, HTN Study Center UI School of Law, 2002. p. 55.

<sup>14</sup> RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945*, the Agency Publisher FH University of Indonesia, Jakarta, 2009, p. 132.

As the economy UUDNRI 1945 constitution provides a basis for the government to intervene so that the principles of justice, equity and the advancement of national economic unity can be realized. Morality setting section 34 indicates the obligation and responsibility to make policies and actions in favor of the less fortunate people through the security system and the provision of public facilities. Article 34 paragraph (2) asserts that the constitutional guarantee of the welfare state must develop a policy that is "affirmative action" for the benefit of people who are structurally disadvantaged. In addition, as the welfare state (welfare state) affirmed the state's responsibility to develop a "welfare policy" in various fields, as well as responsibility for improving the quality of public services (public service) in accordance with the provisions of Article 34 paragraph (3). Such provisions indicate that the spirit UUDNRI 1945 in carrying out its functions based on the spirit (compassion), empathy, dedication, determination and commitment<sup>15</sup>.

### 3.3 State Policy Framework for Legal shelter

Francis Fukuyama<sup>16</sup> explores the idea how to strengthen the role of the state with minimal functionality, high function and activists function. The functions are oriented in an effort to address market failures and simultaneously create social justice. Efforts to create social justice requires the state to protect the poor, holding anti-poverty programs, disaster relief, providing social insurance, pension fund redistribution, giving relief to the family, unemployment insurance, and asset redistribution. Liability is done through various forms of state policy.

Instrument of state policy is the fulfillment of the constitutional rights and guarantees of freedom, the availability, accessibility and quality of the various forms of service held by the State. State policy is also an instrument for creating social justice through economic restructuring<sup>17</sup>. The arrangement is done efficiently and equitably distributions of the economic benefits are achieved<sup>18</sup>. Economic arrangements directed to the creation and availability of social goods that support the public goods, so that distributive justice can be realized<sup>19</sup>. Socio-economic development is the responsibility of the State which carried out the perspective of the welfare state. Economic development

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<sup>15</sup> Satjipto Rahardjo, 2008, *Negara Hukum Yang Membahagiakan Rakyatnya*, genta press, Yogyakarta.

<sup>16</sup> Francis Fukuyama. 2005. *Memperkuat Peran Negara*. Jakarta: Gramedia. p. 9.

<sup>17</sup> Justice in the economic arrangement can be read in his book, Andre Ata Ujan, *Keadilan dan Demokrasi- telaah filsafat politik John Rawls*, Jakarta, Publisher Kanisius, 2001. p. 114 -122.

<sup>18</sup> See the opinion of John Rawls, *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press, 1971. p. 266.

<sup>19</sup> Andre Ata Ujan, *Keadilan dan Demokrasi- telaah filsafat politik John Rawls*, p. 115.

has a very close relationship with the integrated justice by law<sup>20</sup>. The duty of government to redistribute wealth and resources are equal (equality of welfare and equality of resources) using legal instruments<sup>21</sup>.

Economic development must not be merely pursuing economic growth because experiencing shows there should be the cost paid is the gap (inequality) and poverty<sup>22</sup>. Economic development must go hand in hand with moral state policies<sup>23</sup> that cause imbalances. Inequalities mentioned include inequality and poverty because the integrity of the organic systems is inter-related and interdependent has been violated<sup>24</sup>.

On the basis of these conditions, the government must intervene its role as regulator for the relationship between the moral with the economy being aligned within a development framework. State intervention is contrary to the ideal of economic efficiency, but such intervention is still needed as the government's efforts to reduce inequality and poverty as proposed by Posner<sup>25</sup>. Government intervention is necessary to carry out political and economic

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<sup>20</sup> See Jan M. Broekman, *Legal Subjective as precondition for intertwining of law and the welfare state*, Walter de Gruyter, Berlin - New York, 1985. The linkage between the laws of the welfare state argued that "the welfare state is generally understood as the integration of economic facts and general ideas about justice. It also includes the pervasive presence and functioning of law various aspects of social life "(p. 79). Furthermore, the law stated the relationship between the economy as a very important aspect in the welfare state "This also applies to the intertwining of law and economic one of most important aspects of the welfare state. It is also important to Realize that the influence of policies can without destroying the increase of influence or economic.

<sup>21</sup> See Ronald Dworkin, argued two theories of equality (equality) that equality in wealth and equality in resources within two series article titled what is Equality? Part 1: Equality of welfare and Part 2: Equality of Resources. Two posts accessible through the journal *Philosophy and Public Affairs*, Vol 10. No. 4 (Autumn, 1981), Princeton University Press. Downloaded via [www.jstor.org](http://www.jstor.org)

<sup>22</sup> See FX Sugiyanto, *Kritik Terhadap Metode Berfikir Ekonomi Neoklasik*, 2007. Page 12 suggests that "a mere reasonableness when high economic growth becomes the main orientation and basic strategy of economic policy should be paid to the high disparity (inequality) economic and even poverty.

<sup>23</sup> See Yuichi Shionoya, *Economy and Morality*, Edward Elgar Publishing Ltd., Northampton Massachusetts, 2005. Page 15. Further stated in page 16 of the third way that "I will venture to say that in the new relationship the economic and morality will be internally connected in such a way that the moral Imperatives will play a key role in regulating the economy, but will be feasible in terms of economic logic. Such coordination requires a new philosophy of welfare state".

<sup>24</sup> See Vandana Shiva, *Bebas dari Pembangunan - Perempuan, Ekologi dan Perjuangan Hidup di India*, Obor Indonesia, Jakarta, 1997. p. 7. further stated "Development encourages the looting, lameness, injustice and violence .....

<sup>25</sup> See Richard A. Posner, *Economic Analysis Of Law*, A Division of Aspen Publishers, Inc., A Wolters Kluwer Company, Fifth Edition, 1997. p. 507 "There may not be a compelling economic argument for a policy of making incomes more equal in general, but there are economical arguments for governmental efforts to reduce the gross inequality (in wealth a society) that we call poverty".

justice arrangement integrates efficiency and justice and between liberty and excellence<sup>26</sup>.

The realization of the state policy is determined by the legal framework in order to realize the rights of the people. Framework of the rule of law through three aspects of good governance, economic growth is pro-poor, as well as pro-poor budgeting (pro-poor budgeting). State policy is the cornerstone of social policy that serves to provide protection / shelter. Social policies are oriented to address market failure. The substance of policy oriented to the standards of living support (supporting living standards) and prevention of injustice (reducing inequality). Orientation is a cornerstone in shaping social policies that open up opportunities for the community.

#### IV. Conclusions and Recommendations

Based on the description above, the conclusions can be formulated as follows;

- a) Welfare economics and economic sovereignty are fundamental values as the responsibility of the State. The welfare problems and economic sovereignty are matters related to ideology as the vision, commitment and attitude of political alignments. The values of ideology are the dignity of the nation to sovereign over welfare independently.
- b) As the social constitution, UUDNRI 1945 is the cornerstone in shaping the policy of state and government in the political, social and economic forces that bind the state, civil society and market. Welfare state must develop a policy that is affirmative action, welfare policy, and responsible for improving the quality of public services. Roles and responsibilities are carried out based on respect for human dignity.
- c) Policy is an instrument of state government to carry out political and economic justice arrangement. Structuring conducted within the framework of law and order to integrate the efficiency and justice as well as between liberty and excellence. State policy is the cornerstone of social policy that serves to provide shelter to address market failures.

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<sup>26</sup>See Yuichi Shionoya, *Economy and morality*, p. 38-39.

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