

## POVERTY AS A BARRIER TO THE ACHIEVEMENT OF THE RIGHT TO HEALTH

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**Abstract** The problem of economic weakness, which until now hasn't been resolved, creates conditions for the inability of the community to fulfill their welfare. The welfare includes the right to live a decent life, the right to obtain health, and the right to education. People's welfare should be the responsibility of the states as the bearer of the obligation to fulfill the rights of every citizen. The right to health that is not fulfilled is a form of human rights violations. Because basically health is a pillar of a nation's development. Health becomes a basic need for every human being. Judging from the many cases that occur in society as a result of the unfulfilled welfare, especially in terms of economy and health. So the author, in this case the author is interested in studying these problems by taking the case of Baby Deborah. The research method that the author uses is normative juridical, using law as the basis for research. In this case the writer also uses descriptive research method in the Longitudinal way. The data used are sourced from events in the community, as well as supporting statistical data. So from this research, it can lead to a conclusion that the people's welfare should be the responsibility of the state. This is as stated in the 1945 Constitution of the Republic of Indonesia and is also contained in the International Economic, Social and Culture Convention. If the state is unable to create such prosperity, then the state is considered negligent and violates the human rights of its citizens. So from not achieving this welfare, there will be many rights that aren't achieved, one of which is the right to health.

**Keywords** — People's welfare, right to health, economy, poverty

### I. INTRODUCTION

The big problem that still worries the Indonesian people is the high poverty rate which is increasing from year to year. An awareness of poverty will be felt when comparing the life that is being lived with the lives of other people who are classified as having a higher level of economic life.[1] This makes it difficult for the government to determine the poor population, because they themselves aren't aware of their poverty. Apart from that, poverty can be seen as a multidimensional problem because it's related to the inability to access economically, socially, culturally, politically and to participate in society. Poverty has a broader meaning than simply the lower level of one's income or consumption than measured welfare standards such as the minimum calorie requirement or poverty has deeper meaning because it relates to the inability to achieve aspects outside of income (non-income factors) such as access to minimum needs; health, education, clean water, and sanitation.

Poverty is considered as a form of human rights violations committed by the state.[2] That said, because it's fitting for the welfare of the people to be the responsibility of the state. The community gives it's sovereignty to the state, with the hope that the government is able to fulfill and provide facilities for the needs of the community. However, if in practice this cannot be realized properly, then it can be said that the government is negligent in fulfilling the rights of the people. Communities living in poverty aren't only deprived of their right to enjoy an adequate standard of living, but also make them vulnerable to barriers to the enjoyment of other human rights, such as lack of access to education and health services. The state, as the holder of responsibility for the people's welfare, must be able to provide that welfare to all citizens. In the 1945 Constitution of the Republic of Indonesia it's also stated that the state is obliged to choose and guarantee the fulfillment of rights that can create welfare for it's people. However, in fact, if we look at the current conditions where there are still many people who are unable to fulfill their basic needs, fulfillment of these rights has not been implemented evenly and maximally.

The inability of the community to meet their needs also creates social status in society. This social status will then be the difference between capable and poor people.[3] It can be taken for example, the difference in health services. There are several health agencies that still treat patients on the basis of their social status. When

a patient is considered capable of fulfilling all existing financial administrations, he will receive optimal service. But if on the other hand, when a person is incapable, the treatment will be very different. In fact, health agencies often prioritize administration more than the mental and health safety of a patient. Things like this that ultimately will not give equal rights to health for everyone. However, please note that no one wants to live in poverty. Lack of equal distribution of social and development funds in this country is one of the causes of the increasing poverty rate. Not to mention the lack of employment opportunities for the people which causes many residents to be unemployed so they are unable to meet their daily needs. This needs special attention for the government and the state.[4] Because if the distribution of welfare hasn't been carried out properly, the people will lose the opportunity to enjoy their rights.

For example, the author takes an incident in society that reflects that poverty has taken away everyone's human rights. This is the case with Baby Deborah. This case is a violation of human rights from 2 parties. The first party is carried out by the health service provider. Hospitals don't provide health services that should be the right of everyone. The hospital didn't immediately take seriously what the Baby was experiencing. Regardless of the amount of costs that must be borne, the critical condition experienced by the baby should be a top priority. But what the hospital did was just the opposite. The hospital as a health service provider, only provides makeshift services after diagnosing that the Baby must be treated specifically. However, the baby's parents have to make a very large down payment to get the service. This is clearly contrary to Article 32 of the Health Law. Then, the second party to be the offender is the state. The welfare of life is the right of every citizen and should be the responsibility of the state. Deborah's parents condition which reflects that the welfare in this country isn't evenly distributed. The inability of the community to meet their daily needs is considered a negligence of the state for the welfare of the people. As experienced by the parents of Baby Deborah. The limitations of the costs that are owned by the parents of the babies become a barrier to achieving the right to health.

## II. METHOD

This study uses normative legal research based on legal principles and a case approach.[5]

## III. RESULT AND DISCUSSION

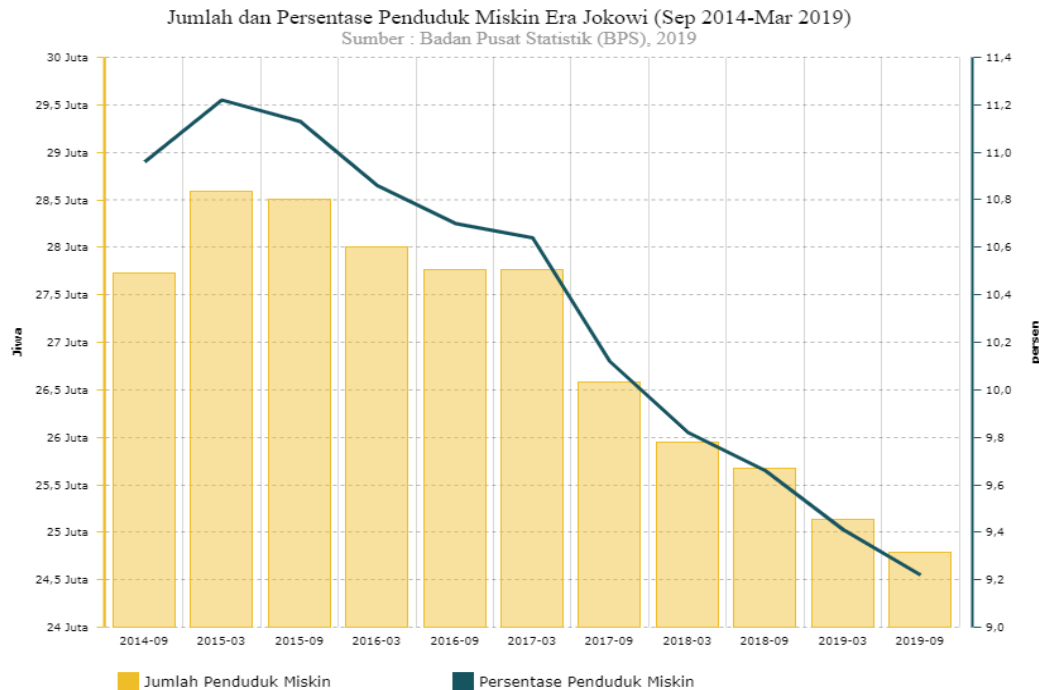
Poverty can be caused by several factors. The causes of poverty mentioned by Kuncoro include the following :

- a. At the macro level, this poverty arises due to different patterns of ownership of resources, which creates an imbalance in one's income distribution. Poor people only have limited resources and low quality.
- b. Poverty can arise because of differences in the quality of human resources. If the quality of human resources is low, it means that productivity is also low, and the wages they receive are also low.
- c. There are differences in access and capital. Limitations and lack of human access make them ultimately have limitations to develop their lives. As a result, everyone's potential cannot be maximally developed because of these limitations. Then, to improve the quality of human resources, capital is also needed which can help them to develop themselves. However, due to the differences in capital within the community, it's ultimately difficult to fulfill.

When described one by one, the factors affecting the level of poverty, either directly or indirectly, are starting from the level and rate of growth in labor productivity; the amount of net wages (basic salary) ; opportunity to get a job, in this case including the type of job available; inflation rate; taxes and subsidies; level and type of education; physical and natural conditions in an area; to politics.

Poverty has actually existed in Indonesia since before independence. At that time the Indonesian people were far from prosperous. Even for fulfilling daily needs, it is lacking. At the end of the 1990s, during the Asian financial crisis, the poverty rate in Indonesia rose rapidly. From the original 11 percent to 19.9 percent at the end of 1998. This was the era of President Soeharto's new order. However, over time, Indonesia has experienced a number of improvements, especially in the field of welfare. Efforts have been made to improve people's welfare, such as the distribution of social assistance in the form of basic necessities, cash and so on.

Since the era of President Jokowi's leadership, poverty in Indonesia has indeed decreased significantly. This can be seen from the table below.



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databoks

Figure 1. Percentage of Poor Population During President Jokowi's Era. The source of the databoks.

However, even though it has decreased, there are still many people who haven't been able to get their welfare. Which means, poverty still exists in the community. Of course, this must be immediately addressed so that the Indonesian people can fully enjoy this prosperity. This is as stated in Article 28C paragraph (1) of the 1945 Constitution, which explains that everyone has the right to improve the quality of life and welfare, both in terms of basic needs, education and science. In Article 1 point 1 of Law Number 11 of 2009 concerning Social Welfare, it explains that social welfare is a condition in which all the material, spiritual or social needs of citizens are fulfilled so that people get a decent life and are able to develop themselves, so that it can carry out its social functions.

#### POVERTY AS A HUMAN RIGHTS VIOLATION

Article 27 paragraph (2) of the 1945 Constitution provides the basis that poverty in Indonesia must be immediately overcome. Then in Article 34 of the 1945 Constitution, the state is the guarantor of public welfare. In paragraph (1) it's said "*that the poor and neglected children are cared for by the state*".[6] Proving that the state is responsible for the incapacity of it's people. If the state doesn't take action in order to fulfill, promote and protect the rights of ECOSOB (Socio-Cultural Economy), then this is considered a violation of human rights committed by the state in the form of fulfilling the Rights to the Welfare of the Indonesian People. As a rule of law, the fulfillment of human rights is the responsibility of the state, and the state is obligated to guarantee these of human rights. When the state doesn't fulfill this fulfillment, it can be said to be a human rights violation. The fulfillment of ECOSOB rights is an important matter and must be done by the state. And in Mastrich's guidelines on violations of ECOSOB rights, the category of human rights violations is when the State is unable to respect, protect and carry out it's obligations in the Covenant on ECOSOB Rights. Therefore, respecting, protecting and implementing these matters requires actions and results than can be calculated carefully for the fulfillment of these rights.[7]

In order to fulfill this right, real action is needed in order to get tangible results as well. However, in many cases regarding poverty, these actions are often not well realized, only partially implemented or even implemented but the resulting results are not optimal. Call it the Direct Cash Assistance (BLT) policy which

aims to provide subsidized assistance for the poor due to the increase in fuel prices. But in reality this policy cannot solve the problem of the poor, it actually increases the number of poor people. Because as is well known, when the price of fuel goes up, automatically all products that use BBM will also increase and BLT is unable to meet their needs. This means that the actions embodied in the formulation of policies don't provide solutions for the poor. So that the result is also not able to solve this problem of poverty and also this is a waste of state money with the existence of programs that don't provide protection of human rights for the poor.

Poverty is actually a humanitarian problem. In this dimension, poverty creates a consequence that there is a moral responsibility for everyone to pay attention to the lives of people living in poverty. Poverty is a violation of human rights. As we know, human rights are inherent in every person and cannot be reduced or deprived of them. So that it's from this that poverty cannot be seen only from numbers. The size of the statistical figures that show the problem of poverty is important because it threatens someone's life. Poverty is a threat to violations of other human rights. For example, if poverty occurs in a family. In it, it's possible that children or family members will face problems such as hunger, malnutrition, so that their health and life will be threatened. Not only that, if a family is in a poor condition, then their children will lose the opportunity to attend school due to limited costs, which means that the right to education has also not been fulfilled.

### MEETING THE RIGHT TO HEALTH

Public health is considered a pillar of development in a nation. Where this health is a basic need for every human being. So important that it is often said that health is everything, which without any health becomes meaningless. Indonesia is currently still faced with problems regarding the low public access to health services. The current provision of health services is unable to guarantee the complexity of the delivery and financing of health services, which from time to time depend on increasingly expensive and complex health technologies. Regarding health services in Article 34 paragraph (3) of the 1945 Constitution states that the state is responsible for the availability of proper health service facilities and public services for its people. It's said that "what should be done" is that the state not only provides public service facilities and health services, but also must pay attention to good and proper standards for the community. So that this can be a facility that can be enjoyed by the community as well as possible.

The state as the bearer of the obligations of human rights must embody the fulfillment of human rights for all citizens without exception. With the fulfillment of human rights, it can create a prosperous and prosperous community environment so as to reduce all forms of human rights discrimination problems that occur in Indonesia.[8] National health insurance is a state effort in providing social protection, which has regulated what is the state's obligation in fulfilling this guarantee. This is to provide and achieve a welfare for the community. It's the responsibility of the state to create welfare for its people, even the state should guarantee this welfare from the moment a human is born. In this case, the state acts as an obligation bearer for the fulfillment of the rights of every citizen, especially in terms of people's welfare. Positive fundamentalism says that the state isn't an end in itself, but is an institution created and maintained by society to provide certain services. So the people are automatically entitled to these services and the state is obliged to provide them.

Indonesia since 2014 has provided a national health insurance system, where this system aims to provide a social protection especially in the health sector for all Indonesian citizens.[9] This system is provided in the form of social security administered by the Social Security Administering Body (BPJS). BPJS or Social Security Administering Bodies is actually a legal entity established on the basis of humanitarianism which aims to guarantee basic human rights, especially those related to social welfare.[10] In essence, the BPJS is divided into two, namely BPJS Health and BPJS Ketenagakerjaan. Where the Health BPJS is to ensure public health, while the BPJS Ketenagakerjaan is the guarantor of work accidents, old age security, pension and death benefits. One of the missions of the Health Social Security Administration (BPJS) is to expand JKN-KIS membership to cover all of Indonesia by January 1, 2019, by increasing partnerships with all stakeholders and encouraging community participation and increasing membership compliance. Efforts to encourage public participation in order to achieve universal health coverage means that all Indonesian citizens must be registered as JKN-KIS participants. However, in practice, there are still many problems regarding the implementation of BPJS with significant differences in service quality based on class according to the premium paid and patient satisfaction between class 1 and class 3 patients paid by the government. From these differences, it's necessary to get further

response by the government for evaluation in order to improve the quality of health services which is the obligation of the state.

The failure to fulfill the right to true health is a violation of human rights. As discussed in the previous chapter, health is a part of human rights that cannot be revoked and must be accepted by everyone without exception. This has also been regulated in the 1945 Constitution as the basis of the Indonesian state, as well as in the International Convention on Human Rights.

If the fulfillment of these rights cannot be carried out properly, then this is a violation of human rights. In this case, the author takes an example of a case that happened to baby Deborah where this case occurred in 2017. This case began where a baby named Tiara Debora experienced symptoms of shortness of breath that never subsided. The baby's parents, Henny Silalahi and Rudianto Simanjorang, then took him for treatment at a private hospital not far from his house. Arriving at the ER (Emergency Gawa Unit), baby Debora was given help or care given to patients in general. After the examination, the hospital doctor said that baby Deborah needed special treatment and had to be treated in a special care room. However, to get this service, the baby's parents have to pay an upfront fee which isn't quite a small amount. The condition of Deborah's parents at that time couldn't be said to be capable, and the condition at that time was night which made it difficult for the parents of the baby to get the amount requested by the hospital. Debora's parents had said they would use BPJS services, but because the hospital was a private hospital, the BPJS couldn't guarantee special care. Then, the private hospital helps make a referral for another hospital that can cover the same medical costs using the BPJS. However, due to the delay and the long process, baby Deborah was not referred to the hospital until she died. Here, it can be seen that the BPJS as the agency that guarantees the implementation of social health has not been able to reach out to private hospitals. Not many private hospitals also impose BPJS in their treatment system. Most BPJS can only be accessed at local or government-owned hospitals. In fact, if we look at this case, the private hospital is the closest to the victim's house. Meanwhile, the regional hospital is quite far away. However, it turns out that even hospitals that are close by cannot fulfill the right to health that is needed by the baby. This is clearly not very *accessible* in terms of cost and distance. On the one hand, it's close but doesn't provide BPJS Health services for those who cannot afford it, on the other hand, the hospital is far away but provides BPJS health services. This is clearly causing confusion and must be corrected immediately. Health services should be accessible to all people, and have easy access. So that the right to health can be fulfilled even for those who cannot afford it.

Based on the above case, the authors assess there are 2 forms of violations committed by the state and hospitals as health service providers. First, the state as the bearer of the human rights obligations of every citizen has failed to guarantee the welfare of its citizens. Even though it has been mentioned in Article 28H paragraph (1) where everyone has the right to live a physically and mentally prosperous life. The inability of the parents of baby Deborah to pay for the hospital fees was a concrete manifestation that welfare in Indonesia at that time had not been fully achieved. This inability is the result of poverty that still resides in the country and cannot be fully resolved. As the author has said, no matter how small the statistics on the poverty chart are, it remains a serious problem. Because, poverty will threaten the welfare of society, human rights will also be threatened. Various problems will arise, such as discrimination, violence, and unfair treatment of the poor. As happened in this case of Deborah. Unable to pay the intended costs, the baby eventually lost his life.

The author believes that the failure to fulfill human rights can cause many problems in the balance of life of society. Both the state and the community itself must create a safe and prosperous environment in the life of the nation and state. This is done in a way that respects and doesn't violate the human rights that are owned by everyone.

#### IV. CONCLUSION

Poverty is actually a form of violation of human rights, where this should be the responsibility of the state because it concerns the welfare of society. Poverty is something that needs to be taken seriously, considering that the impact of poverty is very broad when it's related to the fulfillment of human rights. If poverty is still allowed, then this is a form of violation of human rights. We can see this from the state's responsibility in terms of the welfare of its people.

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