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## Adequate Livelihood Security: A Study of the Relevance of State Objectives to the Protection of the Poor and Abandoned Children

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### ABSTRACT

Indonesia as a state of law in reality often encounters discrepancies between laws and regulations and facts in everyday life, especially related to the guarantee of a decent livelihood. The constitution stipulates that every citizen has been given the right to get a decent job and life solely for respect for human rights. If we look further at the poor, and abandoned children are basically the responsibility of the state to get attention and protection. But the reality is that vagrants and beggars get criminal penalties stipulated in Article 504 and Article 505 of the Criminal Code. This research uses the Normative Juridical research method, which uses a statutory approach and a conceptual approach. This study aims to provide a view related to the fulfillment of the rights of the poor, especially beggars and vagrants. There are several things behind the punishment of beggars and vagrants, one of which is considered to interfere with public interest. This is certainly not in accordance with the conception of the purpose of protecting all and all bloodshed as stated in Article 34 paragraph 1 of the Constitution of the Republic of Indonesia Year 1945, "The poor and abandoned children are cared for by the state". There are regulations issued by the government related to assistance and social security programs, but are not in line with established regulations, such as uneven and inaccurate aid programs distributed to the community.

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## 1. Introduction

The constitution is made on the basis of philosophical, juridical and sociological foundations. The existence of a philosophical foundation is a form of conformity with the Indonesian view of life. Similarly, sociological and empirical foundations are a form of conformity in the point of view of needs and also problems that exist in society to achieve state goals. The purpose of the Indonesian state itself is none other than to create sustainable development that is effective and beneficial for all Indonesian people. The purpose of the state contained in the fourth paragraph of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 NRI Constitution) where one of them is to provide protection for the entire Indonesian nation and all Indonesian bloodshed, as well as to promote general welfare. The 1945 NRI Constitution here is the legal basis for the realization of the goals of the Indonesian state.

Indonesia has declared itself as a state of law so that in this case the rule of law becomes very essential for a country. The law is used as a guideline or principle that must be carried out in every stage starting from preparation, realization, and supervision of development so that it can run efficiently and effectively so that in the end state goals can be achieved.<sup>1</sup> The conception of the purpose of the state itself is also inseparable from the thoughts of *the founding fathers*.

One of *the founding fathers* of Indonesia, namely Soekarno, once stated in one of his mandates that the ideal of the state is political independence which acts as a liaison to achieve the goal of forming a just and prosperous society based on Pancasila.<sup>2</sup> Political independence in question is the

freedom possessed by a country to regulate the conditions of its own country without the involvement of other nations. In this regard, Sukarno also mentioned the need for a just and prosperous society to achieve these goals where justice and prosperity of all Indonesian bloodshed are the main goals that the country wants to achieve. This means that the conception of the purpose of the state contained in the fourth paragraph of the preamble to the 1945 NRI Constitution was also stated by *the founding fathers* in achieving political independence. This means that the conception of the purpose of the state contained in the fourth paragraph of the 1945 NRI Constitution was also stated by the *founding fathers*, namely justice and prosperity that are entitled to all Indonesian bloodshed. Justice and prosperity that are the ideals of the state are the basis related to Human Rights (hereinafter referred to as human rights).

In the conception of the rule of law, human rights and the constitution are two things that are very related, like two sides of a coin, both have differences but are related and complementary.<sup>3</sup> Talking about human rights indirectly always refers to the *Universal Declaration of Human Rights* (hereinafter referred to as UDHR) or the Universal Declaration of Human Rights, because UDHR is a reference point for the conceptualization of all people in the world who express support and firm recognition of human rights.<sup>4</sup> Indonesia as a member of the United Nations must ratify international human rights instruments in accordance with the philosophy of Pancasila and the 1945 Constitution.<sup>5</sup> The result of ratification by the Indonesian state was embodied in Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as Law 39/1999) which specifically regulates issues related to human rights in

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<sup>1</sup> Kendry Tan, "THE LEGAL POLITICS OF RESPONSIVE LAW FORMATION IN REALIZING THE GOALS OF THE INDONESIAN STATE" (2022) p. 65.

<sup>2</sup> Abu Tholib Khalik, "THE JUST STATE PROSPERS IN THE PERSPECTIVE OF THE FOUNDING FATHERS OF THE INDONESIAN STATE AND MUSLIM PHILOSOPHERS" (2016) 27:1 TEO 147–172 p. 164.

<sup>3</sup> Abd Muni, "HUMAN RIGHTS IN THE INDONESIAN CONSTITUTION" (2020) 23:1 al'is 65–78, p. 65.

<sup>4</sup> Elfia Farida, "IMPLEMENTATION OF THE MAIN PRINCIPLES OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS DISCRIMINATION AGAINST WOMEN (CEDAW) IN INDONESIA" p. 444.

<sup>5</sup> *Ibid.*

Indonesia. However, in reality, there is often a discrepancy between the laws and regulations and what happens directly, such as the guarantee of a decent livelihood for all Indonesian people.

As stated in Article 27 paragraph (2) of the 1945 NRI Constitution, legal protection for the guarantee of decent livelihood as stated in the constitution in Indonesia, where every citizen has been given the right to get a job and a decent life solely for respect for human rights. The mandate is intended for all Indonesian people who are comprehensive and integrated for the sustainability of life and realizing the goals of the country. In this case, it is the government's duty to ensure equal livelihood viability. This guarantee of a decent life must be addressed to all levels of society, especially the lower middle class. Security related to decent livelihood is naturally not intended specifically for people in the upper middle class because the livelihood is much more prosperous than the lower middle class in terms of daily income to meet their needs.

If we look further at the poor, and abandoned children are basically the responsibility of the state to get attention and protection. As stipulated in Article 1 paragraph (1) of Law Number 13 of 2013 that a poor person can be defined as someone who does not have any source of livelihood or has a source of livelihood but cannot meet the needs of his life. In another sense, poor people are conditions of inadequacy and low income which results in the inability to meet basic needs in the form of clothing, food, and shelter.<sup>6</sup> As stated in Article 1 paragraph (6) of Law Number 23 of 2002 that abandoned children can be defined as children who are not adequately met. The poor and abandoned children who basically do not have the ability

to support their needs eventually take the path to become vagrants and beggars.<sup>7</sup> This they did not because of their own volition but circumstances that forced them to beg and beg. Beggars and vagrants are considered as disturbers of public order and become a problem in society, even though beggars and vagrants are included in the group of poor and abandoned children who should be protected by the state because getting a job is also a difficult thing for them to get because of the low quality of education which is one of the benchmarks for someone to work.

Various efforts have been made by the government, such as preventive efforts, repressive efforts, and rehabilitative efforts as stipulated in Government Regulation Number 31 of 1980 concerning the Mitigation of Vagrants and Beggars (hereinafter referred to as PP 31/1980). However, until now these efforts have not been able to reduce the number of vagrants and beggars who are still relatively high. The high number of vagrants and beggars makes Indonesia called the country of a thousand beggars, this can be proven by the existence of approximately 77,500 vagrants and beggars scattered in big cities.<sup>8</sup> The failure of the government can be seen from the large number of vagrants and beggars and the absence of further monitoring in the implementation of the efforts made in PP 31/1980.

The failure of government efforts regulated in PP 31/1980, evidenced by data from the Pekanbaru City Social and Cemetery Service against raid networks, that some vagrants and beggars even though they have been caught in raids are still not deterred and afraid to become vagrants and beggars again, proving that government-regulated efforts are less effective.<sup>9</sup> The guidance and training carried out by the Pekanbaru City Social and

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<sup>6</sup> Triana Ohoiwutun, Aan Efendi & Al Khanif, *HUMAN RIGHTS: THEORY AND PRACTICE IN INDONESIA*, 1st ed (Yogyakarta: LKis, 2018) at 28.

<sup>7</sup> St FatmawatiL et al, "Criminal Law Enforcement against Vagrants and Beggars in Public Places" (2021) 1:3 AJSH 154–167, p. 155.

<sup>8</sup> "It is estimated that there are 77,500 Gepeng in Major Cities in Indonesia - Kompas.com", online: <<https://amp.kompas.com/nasional/read/2019/0>

8/22/21281421/diperkirakan-ada-77500-gepeng-di-kota-kota-besar-di-indonesia#amp\_tf=Dari%20%251%24s&aoh=16989150449318&referrer=https%3A%2F%2Fwww.google.com>.

<sup>9</sup> Yuki Deli, "THE EFFECTIVENESS OF COACHING AND TRAINING VAGRANTS AND BEGGARS BY THE PEKANBARU CITY SOCIAL AND CEMETERY SERVICE" (2014) 2:1 JOM Fisip 1–15 p. 1.

Cemetery Office to homeless people and beggars in Pekanbaru City is still only non-orphanage and is realized through Empowerment Activities for former People with Social Diseases. Non-orphanage as referred to is training and coaching activities by organizations that exist in the community outside the institution in a short period of time so that it is not enough to change the mindset and lifestyle of coaching and training participants. This proves that PP 31/1980 has not been able to be applied optimally in every region to deal with vagrants and beggars.

Vagrants and beggars who should get further attention and monitoring related to the regulations that govern, on the contrary, receive inappropriate treatment. In fact, vagrants and beggars get criminal penalties stipulated in Article 504 and Article 505 of the Criminal Code (hereinafter referred to as the Criminal Code). The decision of the Constitutional Court (hereinafter referred to as the Constitutional Court ruling) states that *berbergang* is an act that disturbs public order so that the article above is useful to limit this.<sup>10</sup> The assumption that vagrants disturb public order should be a concentration on the treatment that should be given. The treatment in question is the provision of decent livelihood so that those who are considered to disturb public order no longer do so. Judging from this, we can see that vagrants and beggars who should be protected by the state are instead considered as disturbers of public order.

Therefore, the state through the government should provide protection and guarantee a decent livelihood for vagrants and beggars, especially the basic needs contained in article 1 paragraph (3) of Law Number 13 of 2011 concerning the Handling of the Poor (hereinafter referred to as Law 13/2011). The question that needs to be asked is whether the government's duties as stated in Article 28 of Law 13/2011 have reached every region in an effort to overcome the problem of poor and abandoned children.

Social facts say that there are still many poor people and abandoned children including beggars and vagrants in every area, especially big cities that are the center of gathering for beggars and vagrants. So, the guarantee of a decent livelihood that has been regulated in such a way in the laws and regulations is only a mere formality.

Thus, with the things that have been conveyed by the author above, where the guarantee of a decent livelihood for the poor and abandoned children can still be questioned in the future where the state has not provided proper guarantees. The guarantee of decent livelihood should be obtained by all Indonesians without exception, which is in line with the value of *No Poverty* in the *Sustainable Development Goals* designed by UN member states. So in this context, the author is interested in further examining the legal issues described above with an article entitled *Decent Livelihood Security: A Study of the Relevance of State Objectives to the Protection of the Poor and Abandoned Children*.

## 2. Results and Discussion

### RATIO LEGIS FRAMER OF LAW TO ARTICLES 504 AND 505 OF THE CRIMINAL CODE

The 1945 NRI Constitution, the poor, and abandoned children have a related relationship. Article 34 of the 1945 NRI Constitution means that the poor and abandoned children are cared for or empowered by the state through the government. In this case the author assumes that the poor and abandoned children are vagrants and beggars. Where the urgency related to vagrants and beggars is concentrated in every region of Indonesia.<sup>11</sup> The current issue is whether every individual, especially the poor and abandoned children, can receive and enjoy their constitutional rights as citizens as stipulated in the 1945 NRI Constitution. If reviewed further, theoretically related to state

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<sup>10</sup> *putusan\_sidang\_29\_PUU\_2012-KUHP - read January 3, 2013.pdf*.

<sup>11</sup> Adriana Mustafa, "IMPLEMENTATION OF ARTICLES 504-505 OF THE CRIMINAL CODE

AND REGIONAL REGULATION NO. 2 OF 2008 ON THE DEVELOPMENT OF HOMELESS PEOPLE IN MAKASSAR CITY" (2021) 1:1 Al-Risalah 60 p. 66.

protection for every individual, especially the poor and homeless children related to the provision of infrastructure facilities aimed at meeting their basic needs, is *qonditio sine qua non* for the welfare state.<sup>12</sup> In contrast to the theoretical context, what we often see in reality is very inversely proportional to the theory put forward by Von Buri above.<sup>13</sup> The case that occurred related to this problem is something that has never been resolved, even the government is difficult to find the right solution. There are many laws and regulations in Indonesia that regulate these problems, but they are not qualified in overcoming these problems. Even to overcome this, there are articles that regulate specifically related to criminal penalties for homeless and beggar groups.

In terms of legislation, the existence of articles 504 and 505 in the Criminal Code is very contrary to other laws that regulate the poor and abandoned children. The article does regulate the existence of vagrants and beggars who indirectly belong to the poor and abandoned children. Then the existence of the article raises a big question to the public about the seriousness of the state in dealing with problems related to vagrants and beggars which until now have not been reduced. Article 504 of the Criminal Code regulates the punishment given to groups of beggars, while article 505 of the Criminal Code regulates the punishment given to groups of vagrants.

Begging and begging are the choices of poor groups and abandoned children who are no longer able to compete with society with various backgrounds.<sup>14</sup> They do this solely to meet their daily needs. But by looking at this, the government that should provide protection instead provides criminal penalties related to this problem. There are many

reasons behind the existence of articles 504 and 505 of the Criminal Code as criminal penalties to deal with problems related to vagrants and beggars.

To strengthen the description above, it is necessary to describe the reasons behind the birth of articles 504 and 505 of the Criminal Code. The following are some legis ratios to articles 504 and 505 of the Criminal Code based on academic manuscripts from the thesis of the faculty of law, Atma Jaya University, Yogyakarta.<sup>15</sup>

#### 1. Environmental Issues

Beggars and vagrants have nowhere to live (homeless). Which in this case they use public facilities for them to make a place to live. From this reason, beggars and vagrants are considered to disturb public order and also damage the beauty of the city.

#### 2. Population issues

Beggars and vagrants generally do not register their residency, which means they do not have ID cards. In addition, many vagrants and beggars live as husband and wife without a legal marriage bond by the state, making it difficult for the government to record.

#### 3. Security and order issues

The number of beggars and vagrants in an area makes social vigilance arise so that it disrupts the security in the region.

#### 4. The problem of criminalism

Beggars and vagrants who basically have very low economic conditions are considered to be able to make them do all means such as theft and violence to make ends meet.

The government basically considers the act of begging and begging to be a criminal or criminal act that disturbs public order.<sup>16</sup> According to the framer of the Law, it also states that the Criminal Law is in accordance with the value and function of the law as a means to foster society which in the end can

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<sup>12</sup> *Qonditio Sine Quanon* is a theory put forward by Von Buri which means that it is an indispensable action or element, in another sense it can be said to be an absolute condition. See more on Triana Ohoiwutun, Aan Efendi & Al Khanif, *HUMAN RIGHTS: THEORY AND PRACTICE IN INDONESIA*, 1st ed (Yogyakarta: LKis, 2018) p. 33.

<sup>13</sup> What is meant inversely is when something that has been contained in the law but is not applied

in life, this is related to the fulfillment of the rights of the poor and homeless.

<sup>14</sup> Fatmawati.L et al, *Supra* note 6, p. 155.

<sup>15</sup> Hendra Buana Wahyuadi, "THE URGENCY OF THREATENING CRIMINAL CONFINEMENT TO OVERCOME BEGGING IN PUBLIC" (2014).

<sup>16</sup> Adi Syahputra Sirait, "PUNISHMENT OF VAGRANTS (ANALYSIS OF ARTICLE 505 OF THE CRIMINAL CODE AND MAQASYID SYARIAH)" (2018) 04:2 p. 331.

affect the pattern of human action itself not to do this.<sup>17</sup> According to some parties, if viewed from the conditions for the fulfillment of criminal elements, what is done by vagrants and beggars deserves to be charged and punished for something someone did and falls within the scope of the delict formulation, so it is against the law and can be reproached.<sup>18</sup> The government also considers that no matter how small the crime is, it must be punished to provide legal certainty.<sup>19</sup> According to the government itself, in substance, the criminal penalties contained in articles 504 and 505 of the Criminal Code are needed because they think that the existence of these articles will have a deterrent effect on homeless groups and beggars so that it will indirectly reduce this problem.<sup>20</sup>

Regarding these conflicting articles, the constitutional court has a ratio legis why the article is needed to address problems related to vagrants and the poor. According to the Constitutional Court, articles in the NRI Constitution relating to human rights do not mean giving freedom freely, but freedom that respects the surrounding environment as well.<sup>21</sup> The Constitutional Court's reasoning is strengthened by the statement that in obtaining and exercising the right to freedom, a person must also be subject to existing restrictions made by law where these restrictions are to respect the rights of others as written in Article 28 J paragraph (2) of the 1945 NRI Constitution, especially for the maintenance of public order. In terms of carrying out state responsibilities, especially in the fulfillment of public order, the state can regulate anything through *legal policy* regarding things that are allowed and not allowed in the law.<sup>22</sup> In this case, regarding the issue of vagrancy, the Constitutional

Court considers this act a crime which disturbs public order and violates the rights of others. Maintenance of the poor and abandoned children is indeed a state obligation carried out by looking at the state's capabilities, so that when these abilities are not sufficient to fulfill the obligations contained in the constitution, it does not mean allowing acts of mischief that can disturb public order.<sup>23</sup> The statement regarding the country's ability indirectly shows the failure of the state related to the endless problem of vagrants and beggars. The existence of articles 504 and 505 of the Criminal Code can also be reviewed through the theory of legal objectives proposed by Lawrence M. Friedman.

The components of the legal system as proposed by Lawrence M. Friedman are *legal structure, legal substance* and *legal culture*.<sup>24</sup> *Legal structure* is the basis that becomes a reference for the establishment of the legal system. In this case, there are articles 504 and 505 of the Criminal Code which should refer to the constitution to protect and maintain vagrants and beggars who are part of the poor and abandoned children. *Legal substance* is the entire rule of law both in writing and not which is used as a reference by the community and government. With regard to *legal substance*, we can see that the legislation clearly and unequivocally regulates vagrants and beggars, especially in articles 504 and 505 of the Criminal Code. *Legal culture* is the values, thoughts and behavior patterns of the community related to the application of law. If viewed in this case, the existence of legislation regulating vagrants and beggars should be answered by reducing the number of these groups. But in reality this is not the case, poor groups and abandoned children choose to become vagrants and beggars because of the lack of monitoring and protection that should

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<sup>17</sup> *Ibid.*

<sup>18</sup> Erly Pangestuti & Retno Sari Dewi, "APPLICATION OF CRIMINAL SANCTIONS AGAINST BEGGARS AND VAGRANTS" (2023) 6:1 Transparency, online: <<https://ojs.unik-kediri.ac.id/index.php/transparansihukum/article/view/4222>> p. 3.

<sup>19</sup> *Ibid.*

<sup>20</sup> Adrianus Terry Febriken, Nur Rochaeti & Endah Sri Astuti, "CRIMINAL LAW POLICY ON

TACKLING VAGRANTS AND BEGGARS IN SEMARANG CITY" (2016) 5 at 2.

<sup>21</sup> Note 10.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Rut Setialinsi, "NON-PENAL POLICY ON THE EXPLOITATION OF CHILDREN WHO ARE USED AS BEGGARS AND BUSKERS IN MEDAN CITY" (2023) 2 p. 454.

be given to them.

The state through the government can be judged to have failed in dealing with problems related to vagrants and beggars. We can see this failure in the existence of articles 504 and 505 which contradict other legislation. What reinforces this failure is the Constitutional Court's ruling on Article 505 of the Criminal Code which indirectly shows the state's inability to take care of this problem. If we examine it from a human rights perspective, the existence of the article is very contradictory. As stated in Article 5 paragraph (3) of Law 39/1999 and Explanation of Article 5 paragraph (3) of Law 39/1999 where every individual belonging to vulnerable community groups has the right to get protection and treatment according to their needs. If we look further, berbid means not having a proper place to live for himself, which reinforces that the existence of articles 504 and 505 of the Criminal Code is very contrary to Article 40 of Law 39/1999 because everyone has the right to get a decent living and shelter. In this case, changes should be made to the article which contains things that benefit the poor who in this case are beggars and vagrants so that they are in accordance with the constitution. The changes in the content of the article in question are as follows:

#### Article 504.

Whoever begs in public, can be rehabilitated and empowered within a certain period of time by the state so that his rights are fulfilled and in accordance with the objectives of the state.

#### Article 505.

Whoever wanders in a public place, and is considered to disturb public order, can be rehabilitated and empowered within a certain period of time by the state so that his rights are fulfilled and in accordance with the objectives of the state

In line with the formulation of the law, the fulfillment of the rights of beggars and vagrants as poor people will be fulfilled and in accordance with the objectives of the

state contained in the 1945 NRI Constitution. Regarding the fulfillment of the rights of beggars and vagrants groups is not only regulated in the 1945 NRI Constitution.

If further reviewed in Article 25 of the UDHR, every individual has the right to health and welfare guarantees both for himself and for his family, especially basic needs in the form of shelter, food, and clothing which must be fulfilled when the individual is unable to meet his needs because of things that are not of his own volition. The failure of the state to deal with this problem is an urgency that should be of serious concern.

In handling, we also often see discrepancies between law enforcers who here are police in an effort to handle cases related to vagrants and beggars. There are often forced transports and improper treatment given to groups of beggars and vagrants because they are considered to disturb public order. However, in essence, this treatment is again very contrary to human rights because as stated in Article 5 of the UDHR that no individual should be tortured and treated cruelly or receive inappropriate legal treatment in the sense of inhuman and degraded. Law enforcers who here are the police should give more proper treatment to homeless people and beggars which in essence they also belong to the poor group that should be protected by the state but in reality there are many discrepancies between the constitution, legislation, and also application related to the problem of vagrants and beggars.

### **LOOKING BACK AT THE STATE GUARANTEE FOR THE POOR AND ABANDONED CHILDREN IN THE 1945 NRI CONSTITUTION**

Indonesia actually has the goals and ideals of the state as stated in the 1945 NRI Constitution. In this case, the author wants to aim at one of Indonesia's goals, namely protecting the entire Indonesian nation and all Indonesian bloodshed as a study to guarantee a decent livelihood for the poor and abandoned children. The conception of the goal of protecting all and all bloodshed is key to the constitution in Indonesia. Thus, Indonesia means that it must protect all components in

the country, including the region, cultural values and especially its citizens. This conception of protection is continuous with the purpose of the Indonesian constitution as a welfare state in caring for poor citizens.

In every preamble of the Constitution that has ever been established and applied in Indonesia, starting from the 1945 Constitution to the changes that led to the current Indonesian constitution, namely the NRI Constitution of 1945, it has been explained regarding the welfare state. The welfare paradigm has been designed by the founder of the Indonesian nation to place the State of Indonesia as a welfare state.<sup>25</sup> It is stated in the constitution that has been in force that the state has an obligation to provide social rehabilitation, social security, social empowerment, and social protection as a form of fulfilling the rights to the basic needs of poor and indigent citizens.<sup>26</sup> Positioning the welfare state must be strengthened by the construction of sustainable development, because by combining these two conceptions can achieve efforts to realize social welfare.

The construction of sustainable development is a human effort to improve the quality of life while still trying not to go beyond its life-supporting ecosystem.<sup>27</sup> Sustainable development is mainly closely related to economic aspects which ultimately aim to increase economic growth.<sup>28</sup> Thus, poverty management is the main focus in this regard, because there are still unresolved problems that include the problems of the poor in Indonesia. The seriousness of sustainable development in Indonesia still cannot be clearly seen even though many

international conventions have been followed and agreed.<sup>29</sup>

In order to achieve the goals of the Indonesian state, the state must cover as a whole based on and measured with the values of Pancasila and the Indonesian constitution as guidelines for its realization. Protecting the entire nation and all Indonesian bloodshed is the basic goal of the state, which is actually a universal humanitarian goal. This is because the state not only protects all Indonesian citizens, but also all foreign residents who are within the jurisdiction of the Indonesian state. In an effort to realize this, Indonesia strives to protect the entire Indonesian nation such as protecting the rights and obligations of its citizens in various aspects of life. In fact, the state also considers the guarantee of maintenance for the poor and abandoned children, in accordance with the principles stipulated in the constitution and clarified by appropriate laws and regulations.

In line with state guarantees, there is also a theory of legal protection as a basis for the construction of decent livelihoods for the poor and abandoned children. Satjipto Rahardjo in his book entitled "Legal Science" explains the meaning of legal protection theory from Fitzgerald's opinion or also called Salmond's legal protection theory, that creating legal objectives must be accompanied by the aim of protecting the interests of the community by uniting and coordinating various interests in society because in a traffic of interests, protection of certain interests can only be done, if the other party's various interests have been restricted.<sup>30</sup> The legal interest in question is to take care of human rights and interests, so that the law has the

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<sup>25</sup> Bayu Dwi Anggono et al, *BPJS EMPLOYMENT*, 1st ed (Jakarta: PT Raja Grafindo Persada, 2021) p. 12.

<sup>26</sup> The 1945 Constitution (post-independence) is regulated in Chapter XIV of Social Welfare contained in Article 33 and Article 34. Furthermore, in the RIS constitution, the welfare state has been regulated in Section 6 of the Basic Principles of Article 35 and Article 36. Meanwhile, in the 1950 Constitution, there are in Chapter VI Basic Principles of Article 36, Article 37, Article 38 relating to social welfare. Then, in the current NRI Constitution of 1945, Article 33 and Article 34 have been refined to reinforce the state's

commitment in aspects of economic justice and enthusiasm for protection of people's welfare. Read more on the 1945 Constitution (before the amendment), the RIS Constitution, the 1950 Constitution, and the 1945 NRI Constitution.

<sup>27</sup> Nur Arief Hapsoro & Kresensia Bangun, "THE DEVELOPMENT OF SUSTAINABLE DEVELOPMENT SEEN FROM THE ECONOMIC ASPECT IN INDONESIA" (2020) 3:2 LJA 88 p. 89.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid* p. 92.

<sup>30</sup> JH Sinaulan & Jayabaya University, "Legal Protection of Community Citizens" (2018) 04, p. 80.



highest authority to determine human interests that need to be regulated and protected.<sup>31</sup>

Based on the theory of legal protection above, it can be said that the concept of state objectives with the theory of legal protection is interrelated. In this regard, it can be said that one of the main goals of the law is to protect the interests of society. This protection is provided along with the limitations stipulated in laws and regulations. Indirectly, these limits mean siding with the people. The basis of this conception of protection is a guarantee of decent livelihood for all people, especially groups that need special attention, which in this case are vagrants and beggars. Decent livelihood security has been provided through various programs realized by the government. But these programs have not yet become the answer to achieve the country's goals.

The government programs as a form of assistance to underprivileged communities are accompanied by the existence of a social security system that has been contained in laws and regulations, namely regulated in Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as Law 40/2004). The implementation of social security is carried out by the Social Security Organizing Agency (hereinafter referred to as BPJS). BPJS covers various fields, one of which is health insurance through BPJS Kesehatan. Health insurance is one of the fundamental rights for citizens, so it is an obligation for the state to provide health service facilities organized through government efforts.<sup>32</sup>

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<sup>31</sup> *Ibid.*

<sup>32</sup> Sopia Weni Anggriani, "QUALITY OF SERVICE FOR BPJS HEALTH AND NON-BPJS HEALTH PARTICIPANTS" (2016) 5:2 Journal of Social and Political Sciences, p. 80.

<sup>33</sup> Read more on the 1945 Constitution of the Republic of Indonesia.

<sup>34</sup> Kompasianacom, "Public Protest against Discrimination of BPJS Patients by Health Workers: Inappropriate and Detrimental Actions", (22 March 2024), online: *KOMPASIANA*

<<https://www.kompasiana.com/zulvinailafirdaus/65fd37f8de948f6b1e1d5d46/protes-publik->

Obtaining health services is a top priority as stated in article 28 H paragraph (1) and article 34 paragraph (3) of the NRI Constitution of 1945.<sup>33</sup> So it is appropriate for the government to provide decent health services and in accordance with the needs of the community. However, in the conditions that occur in most health services in Indonesia, there are poor services in the form of discriminatory treatment that are often experienced by BPJS Health users, for example cases of unfriendly services and lack of priority services by health workers to patients using BPJS Kesehatan.<sup>34</sup>

In addition, there is also BPJS Ketenagakerjaan which is regulated by the state to guarantee labor as an effort to provide protection for workers and their families from all possible risks, such as job loss, wage reduction, work accidents, disease, disability, old age, until death.<sup>35</sup> Thus, the government has issued programs in BPJS Ketenagakerjaan, such as work accident insurance programs, death insurance programs, old age programs, pension insurance programs, and job loss insurance programs.<sup>36</sup> This employment social security is expected to be able to provide estrangement during work and become a form of reciprocity from workers to improve performance and productivity during the employment contract period.<sup>37</sup> These programs are not fully running as they should, because there are still workers who do not get BPJS Employment guarantees such as informal workers. The obstacles in providing guarantees are caused by the lack of many government regulations that regulate, recognize and protect legally to informal workers.<sup>38</sup>

terhadap-diskriminasi-pasien-bpjs-oleh-nakes-tindakan-tidak-pantas-dan-merugikan>.

<sup>35</sup> Bayu Dwi Anggono et al, *BPJS EMPLOYMENT*, 1st ed (Jakarta: PT Raja Grafindo Persada, 2021) p. 43.

<sup>36</sup> *Ibid* p. 114.

<sup>37</sup> *Ibid* p. 43.

<sup>38</sup> Triyono et al, "Why do informal workers often escape BPJS Ketenagakerjaan? It's a strategy to expand social security.", (October 25, 2023), online: *The Conversation* <<http://theconversation.com/mengapa-pekerja-informal-kerap-luput-dari-bpjs-ketenagakerjaan-ini-strategi-untuk-memperluas-jaminan-sosial-207914>>.

There are other government programs as a form of social security, especially for the poor, namely Direct Cash Transfer. Direct Cash Transfer (hereinafter referred to as BLT) is assistance from the government in the form of cash, food, health insurance, and education to the poor. In the education sector, the government has also provided the Smart Indonesia Card program (hereinafter referred to as KIP). But the question is why with all these programs, the guarantee of a decent livelihood cannot be enjoyed by the entire community. The government should be aware of its commitment to state guarantees in caring for the poor and providing welfare for the people. Starting through awareness such as the distribution of government programs that should get further supervision so that recipients of programs provided by the country are right on target for groups in need, so that problems related to this are expected to be resolved.

As can be known, poverty is a serious problem faced by countries in the world. In fact, United Nations (UN) member states agreed on the existence of 17 *Sustainable Development Goals* (SDGs) which are the main goal is *no poverty*. Sustainable Development Goals (SDGs) are new development agreements based on human rights and equality to promote social, economic and environmental development. In this regard, various countries have made efforts to overcome poverty, including dealing with homeless people or homeless beggars who are also factors in poverty in a country. As for the capital of another country that has felt the difference with reduced or even almost no homelessness, namely the capital Helsinki, Finland. For decades, homelessness-related problems have also been the focus of the Finnish government. The solution to this problem is the construction of housing for homeless groups so that in the end they have a place to live and

then try to support themselves. Of course, this solution costs a lot, but it is a form of government responsibility to protect its people.<sup>39</sup>

Indonesia as a country that until now has not found an effective solution related to handling vagrants and beggars should look at several countries that have been separated from this problem. Basically, regulations made regarding the handling of homeless and beggar groups have been made, but the government cannot just sit idly by relying on these regulations. The government considers that this problem has not been reduced because of the need for two-way cooperation with the community to get a structured solution that ultimately realizes welfare, especially for homeless and beggar groups.<sup>40</sup>

If reviewed further, then Indonesia in this case can be considered to have failed to follow up on problems related to the poor and abandoned children which can be proven by the large number of beggars and vagrants who should be maintained and empowered by the state. Tackling poverty is a very complicated basic thing and a big challenge in overcoming it, which in the end cannot be separated from sustainable development in Indonesia. Therefore, the author wants to provide a recommendation for alternative solutions to the problem of vagrants and beggars, as well as programs or efforts that have been regulated by the government in such a way in laws and regulations, which are actually sufficient if applied in an organized and seriously allocated manner. In order for government programs to run effectively and efficiently, regular means of control are needed to become continuous supervision. These facilities are arranged centrally, which then become the focus of each province under the supervision of the governor and are spread again in each city/district area through Non-Governmental Organizations (NGOs) to ensure that the targets of the programs given are appropriate and

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<sup>39</sup> Nathania Riris Michico, "This is the City in the World with Almost No Vagrants and Beggars", (5 February 2019), online: *iNewsID* <<https://www.inews.id/news/internasional/ini-kota-in-the-world-the-way-barely-without-vagrants-and-beggars>>.

<sup>40</sup> Pipi Susanti, "IMPLEMENTATION OF LAW NUMBER 13 OF 2011 IN HANDLING THE POOR IN EDUCATION AND HEALTH SERVICES" (2020) 2:2 *eshum* 1–12 p. 4.

comprehensive.

### 3. Conclusion

The reasons behind articles 504 and 505 of the Criminal Code are several reasons that consider begging and vagrants a form of crime. Beggars and vagrants who generally have no place to live are considered to disturb public order and become fields of emergence of no crime. The ratio legis put forward by the Constitutional Court in its ruling on this matter indirectly shows the government's inability to overcome this problem. If reviewed further, the article violates the rights of vagrants and beggars who are poor and abandoned children who should be given protection as mandated by the constitution. In addition, articles 504 and 505 of the Criminal Code also conflict with other laws that regulate the problem of poor and abandoned children which in the end are also not in line with state goals.

Indonesia actually has the goals and ideals of the state as stated in the preamble of the 1945 NRI Constitution. Its main purpose lies in the sentence of protecting the entire Indonesian nation and all Indonesian bloodshed, which is a study for the guarantee of decent livelihoods for the poor and abandoned children. State guarantees as in line with Salmond's theory of legal protection that the purpose of the law must be juxtaposed with the purpose of the interests of the community, the interests of the community are protected in accordance with the limitations in a law in laws and regulations. This shows that the basic conception of legal protection is also a guarantee of decent livelihood for all people, including the main focus on vagrants and beggars.

Indonesia as one of the UN member states has also agreed on 17 *Sustainable Development Goals* (SDGs) with the first goal of *no poverty*. Therefore, Indonesia must participate in reducing poverty as an effort to realize sustainable development goals through programs that have been formed. Basically, Indonesia already has appropriate programs and regulations in handling homeless and poor people, but in its

application there is still a lack of supervision so that there is an inaccuracy of targets for the programs provided. Therefore, the author provides solutions as a manifestation of government programs to run effectively and efficiently through means of continuous supervision control.

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