

DOI: <https://doi.org/10.31933/unesrev.v6i3>

Received: 4 May 2024, Revised: 15 May 2024, Publish: 30 May 2024

<https://creativecommons.org/licenses/by/4.0/>

The Importance of Law Enforcement Based on Progressive Law in Realizing Community Welfare

Chandera Halim¹, Vincentius Patria Setyawan²

¹ Law Faculty, Universitas Atma Jaya Yogyakarta, Special Region of Yogyakarta, Indonesia

Email: h.chandera@uajy.ac.id

² Law Faculty, Universitas Atma Jaya Yogyakarta, Special Region of Yogyakarta, Indonesia

Email: vincentius.patria@uajy.ac.id

Corresponding Author: vincentius.patria@uajy.ac.id¹

Abstract: *Progressive Law emerged from Satjipto Rahardjo's idea of seeing the worrying reality of law enforcement in Indonesia. The law tends to favor the strong and oppress the weak, sharp downwards but dull upwards. This article discusses the importance of having behavior based on Progressive Law in law enforcement. The method used in writing this article is a normative legal research method with a conceptual approach. The results of this research are that law enforcement that improves the welfare of the people in the style of Progressive Law will be formed if law enforcement officers have progressive law enforcement behavior. The meaning of progressive behavior is law enforcement that is sensitive to the realization of the values of justice, and is not confined solely to the formulation of the text of the law. Such law enforcement will create justice, benefit and welfare for society.*

Keyword: *law enforcement, progressive law, welfare.*

Abstrak: Hukum Progresif muncul dari gagasan Satjipto Rahardjo melihat realitas penegakan hukum di Indonesia yang sedemikian memprihatinkan. Hukum cenderung berpihak kepada mereka yang kuat dan menindas yang lemah, tajam ke bawah namun tumpul ke atas. Artikel ini membahas terkait dengan arti penting memiliki perilaku yang dilandasi Hukum Progresif dalam penegakan hukum. Metode yang digunakan dalam penulisan artikel ini adalah metode penelitian hukum normative dengan pendekatan konseptual. Hasil dari penelitian ini adalah penegakan hukum yang menyejahterakan rakyat ala Hukum Progresif akan terbentuk jika aparat penegak hukum memiliki perilaku penegakan hukum yang progresif. Arti dari perilaku yang progresif adalah penegakan hukum yang memiliki kepekaan terhadap terwujudnya nilai-nilai keadilan, dan bukan semata terkungkung pada rumusan teks undang-undang. Penegakan hukum yang demikian ini akan mewujudkan keadilan, kemanfaatan dan kesejahteraan bagi masyarakat.

Kata Kunci: *penegakan hukum, hukum progresif, kesejahteraan.*

INTRODUCTION

Discussing Progressive Law as the result of Satjipto Rahardjo's thoughts will certainly discuss the relationship between law and the social reality of society (Al Arif, 2019). Progressive Law, which is related to the teachings of Sociological Jurisprudence, views that law does not operate in a vacuum, but rather that law moves in the vortex of society. At the beginning of this article, it was clear that the sociological aspect was a material for study in Progressive Law, apart from the legal aspect.

The same thing was said by Lawrence Friedman who gave an illustration that the legal system does not float in a cultural vacuum, is free from space, time and social context, it certainly reflects what is happening in society. In the long run, Friedman assumes the shape of society, such as a glove whose mold matches the shape of a person's hand (Sumarna, 2013). Vice versa, in social reality without law there will be chaos. So it is not wrong if there is the adage "ubi societas ibi ius", which means "where there is society, there is law". The presence of law in the midst of people's lives is none other than the needs of society itself in order to create a peaceful, orderly and safe life. In other words, the law has a sacred duty to maintain social reality in society so that it remains intact. However, when the law is carrying out its duties, it often causes friction with various levels of society.

Discussing legal issues will of course always be linked to the enforcement process. Law can primarily be seen in its form through explicitly formulated rules. Legal rules or regulations contain actions that must be implemented, such as law enforcement (Setyawan, 2021). Legal desires are carried out through humans on the basis of this vision, humans who carry out law enforcement truly occupy an important and decisive position. What the law says and promises, will eventually come true through the hands of these people. So it can also be said that legal work will be seen by law enforcement officials in interpreting the law itself. The existence of friction in society can a priori be said to be due to differences in the interpretation of the law by law enforcement officials.

The thinking patterns of law enforcement officials will greatly influence the law enforcement process. Especially in looking at society's sense of justice and the obligation to implement the law. Understanding and interpreting the socio-cultural values of society and the values that live in society is important for law enforcers in enforcing the law. Because, this will influence the mindset of law enforcers in applying the law to the community. Law enforcers' ignorance and lack of understanding of the values that exist in society is the forerunner to rigid law enforcement without paying attention to the rights of the community (Danardana & Setyawan, 2022).

The decline in law enforcement in Indonesia is caused by 2 (two) things, namely the behavioral pattern of law enforcement officers which tends to be corruptive and the mindset of law enforcement officers which strictly adheres to positivistic-legalistic ideas (Patria & Kurniawan, 2022). The pattern of corrupt behavior carried out by law enforcement officers is caused by the bureaucracy in law enforcement in Indonesia which is already patterned to be corrupt because it was formed from the patterns of colonial nations in the past. Meanwhile, positivistic-legalistic teachings are nothing but influenced by the legal rules inherited from the colonial past which are still enforced.

The Progressive Law introduced and developed by Satjipto Rahardjo could actually be an alternative and solution. Moreover, the idea of progressive law actually stems from concern about the legal situation in Indonesia which is increasingly backward and deteriorating. The increasingly widespread phenomenon of judicial mafias, commercialization and commodification of law are conditions that at a macro level show that the law has never approached the ideal state, namely making its people prosperous and happy (Aulia, 2018).

Progressive law is a thought that wants to find ways to overcome legal adversity more meaningfully, in the sense of faster changes, fundamental reversals, liberation, breakthroughs

and so on. These methods are carried out by emphasizing "law for humans and not vice versa humans for law", "law substantially, not artificially", and "law holistically, not skeletically" (Aulia, 2018). Law enforcement based on Progressive Law is considered a solution to the current decline in law enforcement, and an effort to achieve prosperity for society.

This article will discuss the contribution of Progressive Law in realizing justice, and the benefits of law enforcement, until society achieves prosperity.

METHOD

This article was written using normative legal research methods with a conceptual approach. The legal materials used in writing this article are primary legal materials and secondary legal materials. The technique for collecting legal materials uses library study techniques. Legal material analysis techniques use deductive logic.

RESULT AND DISCUSSION

The reality that has occurred so far is that the practice of law by law enforcers in Indonesia, such as the practice of courts, police, prosecutors and legal practitioners (the pillar groups of the criminal justice system) tends to always be based on legalism as the main characteristic. of legal positivism. In this case, the legal perspective is seen from a mere legislative telescope to then judge the events that occur. This kind of practice does not mean that it must always be interpreted wrongly because legalism itself has and always gives the meaning of legal certainty. Meanwhile, legal certainty is an absolute necessity in legal practice itself (Rhiti & Setyawan, 2023).

Updating the understanding of textual legislation so that it is in line with society's sense of justice is much easier than revising, updating or adding to and enacting statutory regulations. In fact, sometimes a change in the law is not always a better one, sometimes it is more of a dilemma, bringing new problems, as well as carrying out revisions, legal rules become patchwork which in the end does not lead to society's hope of justice. For this reason, a new perspective is needed in understanding the articles of existing laws that place greater emphasis on the purposes for which the law was created. So far, critical legal studies have highlighted that legal practices that occur must be considered as enthusiasm to remain adhered to the great goal of law, namely creating the greatest happiness for the greatest number (Sarmadi, 2012).

Law enforcement in Indonesia is less sensitive to the values of justice due to a major factor in the aspect of law enforcement. Law enforcers have a legalistic-positivistic perspective as a consequence of Dutch colonial law which is still used by Indonesia (Setyawan, 2020). This pattern of thinking is closely related to belief in legalism. Legism is a thought that glorifies positive law.

The legalism school really glorifies written law, so this school believes that there are no legal norms outside of positive law, all problems in society are regulated by written law. This view that glorifies written law in legal positivism, is essentially an exaggerated view of the power that creates written law, so that it is considered that power is the source of law and power is law (Vincentius Patria Setyawan, 2023). This understanding of positivism is not wrong, because law must have an element of certainty. Certainty here is having a definite size, not relative and not changing. The definite measure of law enforcement is what is formally written in statutory regulations.

However, holding tightly to positivism without looking at social reality has the potential to lead to law enforcement that departs from a sense of justice. Progressive Law style law enforcement views law not only as its normative aspect but also its empirical aspect. Viewing law only from a normative perspective will result in textual law enforcement, and will deny justice which should be the goal of law.

Progressive law is a legal concept that is not confined to the concept of the legal text alone, but also pay attention a sense of justice that lives in society (Ansori, 2018). The law enforcement process is not a machine that is structured based on mechanical concepts in its working process. Law enforcement must consider the community's needs for the law.

Progressive law was born from dissatisfaction among legal circles towards developing traditional legal theory and practice. Legal experts adherents criticize the huge "gap" between practiced law and legal theory. The law is considered failed to respond to any problems that occurred in the middle public (Islamiyati, 2018). The reality is that this gap in law enforcement theory and practice continues to occur, and when talking about justice it seems like a dream.

The application of law has changed over time. The aim of this reform is how to make the law come true substantive so that justice can be achieved. How to judge positivity often cannot realize justice substantive, especially for weak and marginalized parties. A modern legal system that relies on a liberal spirit and capitalism will clearly only benefit the strong, both economically and politically. Distinctive features of the legal system in modern law is a way of law that focuses on the text of the law (textual approach).

In this way, progressive law changes the way of law simply applying positive law textually is a way law by utilizing the law with goals, missions and spiritual and social dimensions. Only formal rules when applied in the judiciary where the judges also share their views It is feared that legal-positivism will suppress lawsuits substantiate the vision of structural legal assistance in order fighting for human rights, justice and democracy. By therefore the judge must make a breakthrough to make a discovery law in the context of the vision of realizing substantive justice.

Pay a attention to this reality, law enforcers should must not only prioritize formal legal aspects. Enforcement law that only starts from the substance of formal legal norms is in the law (law in the book's), will tend to hurt feelings societal justice. The emphasis should also be on a starting point on living law. Furthermore, law enforcers must pay attention to legal culture, to understand attitudes, beliefs, values and expectations as well as people's thoughts on the law in the applicable legal system (Fadlail, 2023).

Reform of law enforcement institutions should be aimed at strengthen the rule of law. The principle of the rule of law necessitates the existence of something commitment to human rights norms. Based institutional reform the rule of law emphasizes that a law enforcer must not only enforce the law based on applicable positive legal provisions, but must be sensitive to the principles of justice and humanity (Kristiyadi & Setyawan, 2022).

In this way, reading the context of the text becomes a reference for law enforcers in reading legal texts. It is hoped that by reading this context we can discover the spirits of justice and change the rigid nature of the law in the text to become elastic in applying the law. So that laws are produced that reflect justice in society.

Apart from that, using conscience is also essential in law enforcement. The paradigm that must be adhered to by law enforcers in order to create law enforcement that is humanistic and reflects justice is that they must believe that the law does not stand alone (autonomous). Law is always in contact with the social dynamics of society and the values contained therein

CONCLUSION

Progressive Law teaches a method of law that is not only based on formal reading of legal texts. Progressive law requires law enforcement officials to look at the context of the case, and not just the text. Where looking at this context is looking at social reality which is a factor that is no less important than law.

Progressive Law also emphasizes legal behavior that uses conscience in implementing the law. The use of conscience is important for us to measure the sense of justice in the law

enforcement process. In this way, Progressive Law becomes a solution in overcoming legal chaos and realizing just laws based on humanist values.

REFERENCE

- Al Arif, M. Y. (2019). Penegakan Hukum dalam Perspektif Hukum Progresif. *Undang: Jurnal Hukum*, 2(1). <https://doi.org/10.22437/ujh.2.1.169-192>
- Ansori, L. (2018). REFORMASI PENEGAKAN HUKUM PERSPEKTIF HUKUM PROGRESIF. *Jurnal Yuridis*, 4(2). <https://doi.org/10.35586/.v4i2.244>
- Aulia, M. Z. (2018). Hukum Progresif dari Satjipto Rahardjo. *Undang: Jurnal Hukum*, 1(1). <https://doi.org/10.22437/ujh.1.1.159-185>
- Danardana, A., & Setyawan, V. P. (2022). KRIMINALISASI FENOMENA PENYIMPANGAN SOSIAL KUMPUL KEBO (SAMENLAVEN) DALAM PERSPEKTIF HUKUM PIDANA. *Justitia et Pax*, 38(1). <https://doi.org/10.24002/jep.v38i1.5713>
- Fadlail, Ach. (2023). MEMBANGUN KESADARAN HUKUM BAGI MASYARAKAT DAN PENGAK HUKUM AGAR TERCIPTA PENEGAKAN HUKUM YANG BERKEADILAN. *HUKMY: Jurnal Hukum*, 3(1). <https://doi.org/10.35316/hukmy.2023.v3i1.330-345>
- Islamiyati, I. (2018). Kritik Filsafat Hukum Positivisme Sebagai Upaya Mewujudkan Hukum Yang Berkeadilan. *Law, Development and Justice Review*, 1(1). <https://doi.org/10.14710/ldjr.v1i1.3574>
- Kristiyadi, & Setyawan, V. P. (2022). Keadilan Restoratif dan Mediasi Penal Dalam Tindak Pidana Ringan. *Jurnal Kepastian Hukum Dan Keadilan*, 4(1).
- Patria, V., & Kurniawan, I. dwi. (2022). CORRELATION AND IMPLEMENTATION OF PHILOSOPHY OF PANCASILA IN INDONESIAN CRIMINAL SYSTEM. *Jurnal Global Citizen: Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan*, 11(2). <https://doi.org/10.33061/jgz.v11i2.7676>
- Rhiti, H., & Setyawan, V. P. (2023). The Role of Legal Philosophy in Forming the Rule of Law in Indonesia. *Jurnal Kewarganegaraan*, 7(1). <https://kumparan.com/febylestari026/peranan-filsafat-hukum-terhadap-hukumdi-indonesia-1uqrXdrs6Er/full>,
- Sarmadi, As. (2012). MEMBEBAHKAN POSITIVISME HUKUM KE RANAH HUKUM PROGRESIF (Studi Pembacaan Teks Hukum Bagi Penegak Hukum). *Jurnal Dinamika Hukum*, 12(2). <https://doi.org/10.20884/1.jdh.2012.12.2.58>
- Setyawan, V. P. (2020). PROSPEK PEMBERLAKUAN HUKUM ADAT DALAM HUKUM PIDANA NASIONAL. *Justitia et Pax*, 35(2). <https://doi.org/10.24002/jep.v35i2.2069>
- Setyawan, V. P. (2021). ASAS LEGALITAS DALAM PERSPEKTIF FILSAFAT HUKUM. *Justitia et Pax*, 37(1). <https://doi.org/10.24002/jep.v37i1.3276>
- Sumarna, S. (2013). Keberlakuan Sosiologis dalam Pelaksanaan Putusan Pengadilan Negeri dan Berbagai Ekseksnya di Indonesia. *ATIKAN*.
- Vincentius Patria Setyawan. (2023). Pemaknaan Asas Legalitas Materiil Dalam Pembaruan Hukum Pidana Indonesia. *Gudang Jurnal Multidisiplin Ilmu*, 1(1). <https://doi.org/10.59435/gjmi.v1i1.3>