

## The Proposed Progressive Law Enforcement Model: A Case Study of the Indonesian Law System Development

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### Abstract

The dynamics of social development continuously challenges law systems. Finding a new model of Indonesian law enforcement other than a normative one is required to attain a civilized society. Considering the law development, this study applied a normative legal research design to collect the data on the progressive law enforcement model. The sources of the data were collected from the law debates, discussions, and scientific reviews. The results of this study indicate the influential factors, which made the law enforcement blunted in Indonesia including the will of the government, officers, and courts to apply the law and regulations in the formalistic practices. It is necessary to renew the enforcement of the criminal law by applying the progressive model in which socio-cultural aspect to be considered. It is recommended that the for Indonesian law enforcement revise the formalistic procedures.

**Keywords:** Progressive law model, multi-factors, formalistic procedures, justice.

### Introduction

A new nation faces the implementation of the law enforcement in Indonesia. Some people complain about the justice system, which has not yet served all. Many criticize the rule of law in Indonesia; it is still questionable, especially with court decisions that do not reflect justice. The hope for equality before the law and no partiality towards the victims (Prasetyo, 2013: 145) has been in public debates. It is believed that the quality of development and law enforcement demanded by the community today is not merely a formal quality, but also material and substantial. The targets of development and law enforcement must be aimed at substantive qualities, namely: 1) Protection of the human rights. 2) Value of truth, honesty, justice and trust between people. 3) No abuse of power or authority. 4) Clean from the practice of favoritism, corruption, collusion and nepotism, and the justice mafia. 5) Realization of judicial power or

independent law enforcement and the establishment of a code of ethics. 6) Existence of a clean government.

Conceptually, law enforcement lies in the activities of harmonizing the relationships of values which are highlighted in the rules that are solid and are manifested in action as a series of final stages of value translation, to create and maintain life's social peace (Soekanto, 2010). The process of law enforcement in Indonesia is often not ideal; because it is hampered by various mistakes and shortcomings of law enforcers (Djanggih *et al.*, 2018). Indonesia as a legal state in essence, must make the law function as a human protector; so that human interests are protected. The law must be implemented normally as well as when there are violations of law. Therefore, the law violation must be enforced immediately.

The legal values that are intact in legal systems such as access to justice through an apology, payment of compensation or settlement by emphasizing the return of the original state before the occurrence of losses (criminal acts), which is known as restorative justice, are contained in the values of Indonesian ideology Pancasila (Wicaksono, 2018). In enforcing the law there are 4 (four) elements that must be fulfilled, namely: 1) Legal certainty (*Rechtssicherheit*). 2) Legal utilization (*Zechmaasigheid*). 3) Justice (*Gerechetigheid*). 4) Human well-being.

Law enforcement has been oriented towards the perpetrators. The law is considered to have enforcement if the perpetrators have been processed and punished, as in the case of liputan6.com, in Purwokerto of Central Java. An old woman, Mbok Minah (55), was accused of stealing three cocoa fruits at the Rumpun Sari Antan Plantation (RSA). She was charged according to Article 362 of the Criminal Code (KUHP) concerning Theft. The conscience was torn apart. Three cocoa weighing three kilograms with a value of IDR 30.000, according to the prosecutor, and only IDR 2,000 per kilogram when it was in the market, dragged Mbok Minah, the poor old woman to the court. Minah was convicted. She was sentenced to 1 month and 15 days with a 3-month trial period.

From the example above, the law enforcer in legal certainty is indeed substantially correct, but progressively does not reflect the law enforcer's partiality to humans. Thus this paper examined

how to develop progressive law enforcement. The purpose of this study is to seek the law enforcement model in the progressive law framework.

## Methodology

This research applied the normative law to seek the law in real sense and to examine how the law works in the community (Ali, 2012: 72). This is achieved through using legal materials, as an effort to produce new arguments, theories and concepts as prescriptions in solving the problems faced. Sources of data in this research were primary and secondary legal materials. Analysis of data applied the indicators of interpretations and comparative regulations and provisions regarding the progressive law enforcement.

## Background

### Law Enforcement Theories

#### A. Law Enforcement

Law enforcement in Indonesia must be based on the state administrative law. Law enforcement that is carried out by the state administrative is produced from a healthy and orderly government. In the sense, it is adequate or at least can be said to run the state law towards a state of law supremacy. Indonesia is a legal state described in the 1945 Constitution, namely a country based on law (*rechtstaat*), not based on mere power (*machtstaat*).

However, the implementation of the law in Indonesia still shows some gaps among the wider community. In this problem, two state functions are needed: namely the state as a forum for the protection of citizen rights and the welfare of the people. This function of the state does not occur in the form of disruption to the private rights of citizens, and the functions of the state not only to maintain security for the society, but to also achieves and manifests prosperity for the community.

Raharjo argued that the law enforcement is essentially the enforcement of ideas or concepts about justice, truth, and social benefit. Law enforcement is an attempt to realize ideas from concepts that become reality. Satjipto Rahardjo distinguishes the term law enforcement from the use of

law. Law enforcement and the use of law are two different concepts. Someone can enforce the law to provide justice, but someone can also enforce the law to be used for achieving other goals or interests, thus, enforcing the law is not exactly the same as using the law (Rahardjo, 2006: 169).

## **B. Progressive Law**

Progressive law arises because of the concerns about the legal situation in Indonesia. Observers, including international observers, have expressed it in various negative expressions, such as the legal system in Indonesia, as the worst in the world. Not only observers, but in general the people also think so. Even though they do not express it as clearly in words, but through their concrete experience with everyday law officials, such as their weakness when dealing with the law and the superiority of strong people who tend to escape the law. Thus, the people experience and live it every day, while the observers pour it contemplatively and analytically.

Progressive law was born because so far the teachings of positive law (analytical jurisprudence) practiced in empirical reality in Indonesia were unsatisfactory. The progressive legal idea arose out of concern about the quality of law enforcement in Indonesia especially since the reformation in mid-1997 and solving social problems ideally. What is experienced in Indonesia today is very contrary to these ideals (Rahardjo, 2005: 35).

The basic assumption to consider is about the view of the relationship between law and mankind. The desire for the assertion of the principle is for humans, not vice versa. In this regard, the law does not exist for itself, but for something wider and bigger. Therefore, whenever there is a problem with the law, the laws that are reviewed, corrected, and not forced by human beings are included in the legal scheme.

Law is not an absolute and final institution. It depends heavily on how humans see it and use it. The human being is the determinant. Indeed, confronting humans with the law encourages us to make complicated choices. However, in essence, the existing legal theories are rooted in these two factors. The more the foundation of a theory shifts to legal factors, the more a theory considers

the law something absolute -onomist and final, the more it shifts to humanity, and the more it gives space to human factors (Rahardjo, 2009: 5).

## **Findings**

When implementing the law it cannot be separated from the community as a place for the operation of the law. The law is between the world of values and ideas and the world of reality. Therefore, the law runs between two different paths, which results in frequent tensions when it is applied. When the law is full of values, it is closely related to various factors that affect the environment and the social structure of the community where the law was put into effect.

Law enforcement is a social subsystem, so its enforcement is influenced by a very complex environment such as politics, the economy, the society and culture, defense, science, technology and education. Law enforcement must be based on the principles of the rule of law, as implied in the 1945 Constitution and the principles of law that apply in civilized nations (such as the Basic Principles of Independence of Judiciary).

Based on the theory of legal effectiveness proposed by Soekanto, there are five factors that affect the effectiveness of law enforcement. These include 1) The legal or regulatory factor itself (the law), which is indicates a possibility that there is a discrepancy in the laws and regulations regarding certain areas of life. Another possibility is the incompatibility of the laws and regulations with the unwritten law or customary law, which is sometimes incompatible between the recorded law and so on. 2) Factors of law enforcement, including those who form and apply the law and their mentality. These include judges, police, prosecutors, defenders, correctional officers and so on. If the law is good but the mentality of those responsible for enforcing it is not, it can cause a breakdown in the legal system itself. 3) Factors of facilities or facilities that support the law enforcement. To explain, if the law is good and the mentality of the person in charge of enforcing it is also good, but the facilities do not comply, then the law can be implemented not according to plan. 4) Community factors, namely the environment in which the law applies or is set. The community factor here refers to the awareness of the public regarding the existence of the law. 5) Cultural factors, namely as a result of work, creativity, and taste based on the human

intentions in social life, how existing laws can enter into and unite with the existing culture, so that everything goes well.

The relevance of the theory of legal effectiveness put forward by Soekanto, and Atmasasmita further emphasizes that the factors that hinder the effectiveness of law enforcement not only lie in the mental attitude of the law enforcement officials (judges, prosecutors, police and legal counsel), but is also highlighted by legal socialization which is often ignored (Atmasasmita, 2001: 55). The operational conception of the operation of law in society is based on two different concepts: the concept of predictions concerning the prediction of consequences proposed by Lundberg and Lansing, and Kelsen's concept of multiple aspects in a legal regulation (Soemitro, 1989: 23).

It is necessary to create social conditions that enable the true growth of the collective groups of the lower classes of society to organize and fight for their rights. This strengthens the community access to courts. Moreover, non-state social groups of the government must move to realize the rights of the lower society, and good government important executives and legislatures are encouraged to respond to the interests of the lower classes of society.

To provide an example, there is the stealing case in Jakarta by a junior high school student, Deli Suhandi (14), who curled up at Pondok Bambu Prison House, East Jakarta. He was accused of stealing a prime voucher for a cellphone (cellphone) worth IDR 10,000. Deli was subject to Article 363 of the Criminal Code concerning Theft. Another example; at a court in Situbondo; against an old woman, Asyani, in a case of timber theft belonging to PT Perhutani finally reached the final round. The panel of judges at the Situbondo District Court (PN) on Thursday (23/4) stated that the 63-year-old grandmother was guilty. The panel of judges' decision immediately made Asyani angry. She insisted that she was innocent. To the judge, Asyani asked to be sworn in for five consecutive days.

The panel of judges sentenced the defendant to one year in prison with a one-year probation period plus three months for Asyani. That is, the defendant can still go home. However, if during the 15-month probationary period the offender again commits an offense, the grandmother who works as a masseur is immediately sent to prison for a year. In addition, the judge ordered that the

defendant's 38 wood shingles be seized and given to the state. Then, the L-300 pickup evidence used to transport teak was returned to the witness. The verdict for the defendant was lighter than the prosecutor's demands. Previously, the prosecutor demanded that the defendant be sentenced to prison for a year with an 18-month probation period and a fine of IDR 500 million a day in prison. (1) Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H Law).

Furthermore, the post observation of Javanese Radar Banyuwangi, at the hearing the decision of the case began with the panel of judges at 11:30. In the courtroom, the judge immediately read out the verdict after asking the defendant's readiness; the attorney of the defendant, as well as the public prosecutor. The panel of judges then read out the demands of the prosecutor as well as the proof of witness testimony and expert action to replicate and duplicate. One element that makes the accused convicted is the act of an individual as stated in the P3H Law. The element of the individual is stated in accordance with the demands of the Prosecutor by using the article in the Indonesian Law.

## **Renewal of Criminal Law Enforcement**

The implementation of development needs to be supported by the law as a guide and suggestion towards the *Pancasila* (Indonesian Ideology) society that is aspired based on the 1945 Republic of Indonesia Constitution. Law is expected to function in a variety of community reforms and community services, and appear to give direction to the formation of an aspired society, so that the whole system is integrated, acknowledged, and respected. The renewal of the legislation becomes in accordance with the demands of reform through the legislation program (Rochaeti, 2018: 198-214).

The nature of the renewal of the criminal law enforcement is inseparable from the manifestation of the background that has only been based on laws that have been codified regardless of the culture that prevails in the midst of society. Law enforcement officials must obey legal norms, such as humanitarian norms, justice norms, equality norms, and propriety norms. However, in reality, they are seen in practice, as inhumane, people are criminalized and some are even paralyzed because they can run away, in the event that the person is not guilty.

Analyzing these problems requires a policy that is based on a means of reasoning to determine what is a criminal act and what sanctions should be used against the violator (Arief, 2008: 26). Therefore, the renewal of the criminal law must be oriented towards a value approach and policy approach as part of humanity in order to achieve national goals, and efforts to protect the community, as well as renewing legal substances in order to make law enforcement more effective.

## **Progressive Law Enforcement Model**

The function of law, besides aiming to maintain order and realize justice, also be used as a tool in carrying out community development. Furthermore, Rahardjo emphasized that law is only one of the institutions in society that helped create order, law is a configuration of various institutions such as tradition (Rahardjo, 2009: 23). This was confirmed again by Atmadja. The law is one of the social rules, in addition to moral, religious, and moral norms, and customary rules. It is a reflection of the prevailing values in society, so that a good law is a living order (Atmasasmita, 2001: 55). By referring to the definition and origin of the law as described above, the law established must contain some components: 1) It must be one of the institutions in society. 2) It must be a reflection to the values that apply in society. 3) It must consists of components of structure, substance and culture. 4) It should be reinforced by forceful elements.

Law enforcement is the activity of harmonizing the relationships of values outlined in rules, and it is solid and manifested in attitudes and actions as a series of final stages of translation to create peace in social life. In the implementation of law enforcement in Indonesia, it was echoed as an honorable profession, but on the other hand, law enforcement's image has been exacerbated by corrupt behavior, and by justifying any means that were deemed it. Law enforcement had begun when the legal regulations were made or created to apply the enforcement.

A progressive Law Model would offer the right point of wisdom and would help achieve community justice without sacrificing the justice of the individual. Progressive law contains the essence of not wanting to implement the law by spelling out the rules, but by trying to pull out the meanings contained in it. Progressive law requires the law enforcers to implement it not only through their mind, but also in all their capacities, which means not only through ratio or



syllogism, but also with compassion (Bandes, 2017). It means sharing empathy, honesty and courage in fulfilling the rights of the victims. Now the rights of the victims are corrected and the victims are only part of giving work to the authorities. If the justice system works; when there is a crime with victims, the results obtained are not for victims. In essence, progressive law requires the contemplation process and acts by freeing the shackles of legal documents. Because ultimately law is not for the legal texts, it is for happiness and human welfare.

A progressive law creates the self-transformation, which has been carried out; the rule breaking becomes a visible attitude. It is the progressive law that has been used as an offered model for a law enforcement approach. Law enforcement is not merely the *logosentrism* of the legal text put forward. *Logocentrism* is a tendency of the system of thought that seeks its legitimacy by referring to the arguments of universal truth or that guarantees central and original meaning (Rustamaji, 2017). Being the main barrier, law enforcement needs a series of self-enforcing law enforcement transformations. Other aspects such as sociological, anthropological and cultural values can be explored in the framework of the formation and renewal of progressive law. Law is always related to human life (Sudikno, 1988: 1) and it is in a group of people or a society, so that a society has a law.

Law enforcers in a progressive law model are transformed independently to a wider scope, thus raising awareness that law enforcement must be carried out. The aim of law enforcement in progressive law model is for achieving the citizen rights and welfare. Progressive Law is used to broaden and simultaneously sharpen multiple guided prophetic intelligence. For justice, the law enforcement efforts at all the stages get through. It is important to consider a holistic effort in the series of law justice enforcement, fulfillment, and protection of human rights which are vertically accountable to God Almighty, and simultaneously horizontally to all humans.

## Conclusion

The collected data revealed that the progressive law enforcement model could be an alternative for revising the formalistic procedures. The development of law enforcement in the perspective of progressive law would be applied by considering compassion, sharing empathy, honesty and courage in fulfilling the rights of the victims. It has a harmonizing aspect of a substantive justice.

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