

Progressive Criminal Justice System; Alternatives in Criminal Law Enforcement in Indonesia

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Abstract

There will be some implications if the idea of progressive law is applied to the criminal justice system to enforce the law. The implication is. First, the police will not use written law as the main instrument in the fight against crime. Still, they will put forward conscience, second, dismantle coherent characteristics in public attorney, which is centralized bureaucracy, and come into force Comando system embrace - ing responsibility hierarchy. Third, the court (judge) should not handle the case only based on written law and conscience because who created the law for citizens and inexperienced. The duty of the judges is not only as a technical action, but they are also as social beings.

Keywords: Criminal Justice System, Progressive Law, and Law Enforcement.

Introduction

Law enforcement through the criminal justice system is still dominated by way of thinking legalism, the way of law enforcement (criminal) that relies only on legislation alone. This way is more seen in law as a black and white issue, whereas the law is not merely a sterile vacuum of non-legal concepts. Who must also see the law from a social perspective, a real behavior acceptable to all people in it?

This way of view of legalism is one of the causes of the law enforcement crisis in Indonesia. Therefore, there need to be other alternatives in enforcing the law to comply with its social context. This paper further examines the idea of progressive law, as well as analyzes the application of such ideas in the context of the criminal justice system.

Discussion

Understanding the Idea of Progressive Law

Law enforcement through the criminal justice system is currently under the intense spotlight from various parties; even the international world considers Indonesia's court institutions very bad, especially those carried out by elements of law enforcement ranging from police, prosecutors, judges to correctional officers (LP).¹ This condition is corroborated by Transparency International Indonesia (TII) data on the perception index that says that law enforcement agencies are the most corrupt institutions in Indonesia.² Regardless of whether the data is accurate or not, it becomes one of the real evidence portraits of law enforcement (criminal) today.

¹ www.kompas.com/kompas-cetak/0503/05/ln/15901323.htm

² Based on data from Transparency International Indonesia (TII), the police are still considered the most corrupt institution in Indonesia, in this case the police score a score of 4.2%. Court institutions are in second place with a score of 4.1%, while in third place are political parties with a score of 4.0%. See Kompas Daily, 7 December 2007

Through the criminal justice system, the law actually acts as a means of resolving conflict, upholding truth and justice. In fact, it can be a means of social engineering for the community. The reality is that it creates prolonged social anarchy. Not a few police officers act not with conscience, but it is not uncommon for prosecutors to blackmail and change cases only for material gain by abusing their power. Court rulings are often not accepted by the public. Such circumstances are exacerbated by the behavior of law enforcement officers who are less commendable and commit acts that tarnish themselves and their own institutions. Bribery cases that occur in the Supreme Court (MA). This is one sign that law enforcement in Indonesia is indeed facing a big problem.

Most law enforcement officials reduce the understanding that enforcing the law is defined as being the same as enforcing the law. This understanding has implications that the law (the law) is the center of attention. In fact, the problem of law enforcement can not only be seen from the glasses of the law but must be seen in full by involving all elements that exist, such as morals, behavior, and culture. Therefore, it is necessary to have a new orientation and perspective in law enforcement..

One of the efforts to overcome the above problem is to change the way of view, mindset, and paradigm of law enforcement officials who no longer put the law at the center but instead turn to humans. Man becomes central or central in condemnation. The law is only a guideline in enforcing the law, not as normative rules that its will must follow. This is what came to be known as the idea of progressive law.

Satjipto Raharjo was the first expert to spark the idea of progressive law..³ Satjipto Rahardjo offers perspective, spirit, and a new way of overcoming "legal paralysis" in Indonesia. Progressive comes from the word progress which means progress. The law should be able to keep up with the times, answer the changing times with all the foundations in it, and serve the community by relying on the morality aspect of the human resources of law enforcement itself..⁴

Judging by its emergence, progressive law is not something that happens; it is not born without cause, nor is it something that falls from the sky. Progressive law is part of a never- cease-and-desist process of truth-seeking. Progressive law – which can be seen as a concept of self-discovery – departs from the empirical reality of working law in society in the form of dissatisfaction and concern for the performance and quality of law enforcement in the setting of Indonesia in the late 20th century. In the search process, Satjipto Rahardjo concluded that one of the causes of the decrease in the performance and quality of law enforcement in Indonesia is the dominance of the positivism paradigm with its inherent formality..⁵ About the criminal justice system, failures in law enforcement and legal empowerment are characterized by submissive attitudes towards the completeness of existing laws such as procedures, doctrines, and principles of Indonesian law, in addition to the inability of the criminal justice system in carrying out its duties. As a result, several questions question the extent to which the efficiency of the judiciary can be relied upon as a justice-seeking agency, the unprofessionalism of prosecutors and other law enforcement officials, which then boils down to dissatisfaction with the existence of judicial institutions in the country..⁶

Progressive law offers another avenue that is different from the main mainstream of legal flows in Indonesia. If the current flow of legalism or positivism still dominates the

³ The idea was first put forward in 2002 in an article written in the Kompas Daily entitled "Indonesia Needs Progressive Law Enforcement"

⁴ Satjipto Rahardjo, *Dissecting Progressive Law*, Publisher Kompas, Jakarta, 2006, p. ix

⁵ *Ibid.*, Pp. 10-11. See also Satjipto Rahardjo, *Other Sides of Law in Indonesia*, Kompas Publisher, Jakarta, 2003, p. 22-25

⁶ *Ibid.*, P. x

mindset and perspective in law enforcement, then progressive law rejects this tradition in the sense that the paradigm is reversed. That is, in contrast to rule-centered legalism, progressive law reverses this understanding. Honesty and sincerity become the crown of law enforcement. Empathy, caring, and dedication brings justice, becoming the spirit of the organizers of the law. Human interests (their well-being and happiness) become the point of orientation and the ultimate goal of the law. Law enforcement is spearheading change.

It is in this logic that the revitalization of the law is carried out. Changes are no longer to the rules but to the creativity of law actors actualizing the law in the right space and time. Who can change action immediately without having to wait for a change in the law because progressive law actors can make progressive use of existing regulations? Faced with a rule, although the rule is not aspirational, for example, progressive law enforcement officials do not have to rule out the existence of that rule. He can each time make a new interpretation of the rule to give justice and happiness to the seeker of justice.

Based on the description above, progressive laws, like other laws such as positivism, realism, and pure law, have characteristics that distinguish them from others, as described below:

First, the paradigm in progressive law is that "the law is for man." This basic grip, optics, or belief does not see the law as central to the law, but rather it is a man who is at the center of the legal turnaround. The law revolves around the man at its center. The law exists for man, not man for the law. When it comes to the belief that man is for the law, he will always be tried, perhaps also forced, to enter into the schemes made by law. Man or human action is always unique. Nevertheless, that characteristic has no place in the law. The law already works like a machine that presses a button, like a tomato machine (autosumptie subsumption). Meanwhile, the law must work with legal formulations in legislation, narrowing or reducing that unique human deed into certain schemes or standards.

Second, progressive law refuses to maintain the status quo in law. Maintaining the status quo gives the same effect, as at the time people argue, that the law is the benchmark of everything, and man is for the law. Such a legal way is in line with the positivistic, normative, and legalistic way. Once the law says or formulates like that, we can't do much unless the law is changed first. There is another matter related to the rejection of the pro-status quo way of law, which is related to the formulation of problems into legislation. The substance of the law departs from certain ideas in society that then roll into the institution or legislative body.

Third, if it is recognized that legal civilization will bring about all the consequences and risks posed, then the way we are punished should also anticipate overcoming obstacles in using written law. Extremely we cannot give up society to fully submit to that written law. Giving up such a round is tantamount to allowing ourselves to be governed by a formal written text that does not necessarily contain the original idea that it wants to be poured into the text and has the risk of being creaminogen.

Fourth, progressive law pays great attention to the role of human behavior in the law. This is contrary to diametral with the understanding that the law is only a matter of regulation. The role of a man here is a consequence of recognizing that we should not hold absolutely to the formal text of a rule. The above has been explained how great who will face the risks and consequences if we submit fully to the rules. An important way of punishing to overcome manhood or stagnation is to break free from the dominance that is blind to the text of the law.

who can do this way if we involve the human element or human actions in the law? Because basically the life of the law has not been logic, but experience.⁷

Progressive legal ideas and characteristics that distinguish them from others, as described above, give new colors and perspectives in understanding the law and its enforcement. The idea is at least a breath of fresh air amid the "paralysis" of law enforcement in Indonesia.

Progressive Criminal Justice System

Who can simply say that the criminal justice system is a means of tackling crime in interrelated sub-systems? In other words, the criminal justice system can be briefly described as a system aimed at "tackling crime," one of the community's efforts to control the occurrence of crimes to be within the limits of tolerance that it accepts..⁸

The above understanding reflects that there are groups of institutions interconnected with each other in the criminal justice system, including the police, prosecutors, courts, and correctional institutions.

The definition of the criminal justice system is also called the law enforcement system.⁹ Because it contains an understanding that basically what the institutions do is a concrete effort to enforce the rules of abstract law, thus, Who can conclude that the criminal justice system is a component (subsystem) of criminal justice that is interrelated/dependent on each other and works to achieve the goal, namely to tackle crime to the extent that can be tolerated by society. Explicitly, the understanding of the criminal justice system describes the integration between sub-sub-systems in the judiciary, so it is known as the integrated criminal justice system.

As a system, the criminal justice system has certain characteristics that distinguish it from other systems. These characteristics are; open system, has goals, value transformation, and control mechanisms. Also, in the criminal justice system, the plural is always involved. It covers sub-sub-systems with the scope of each criminal justice process, among others police, prosecutors, courts, correctional institutions, and advocates.

Understanding the criminal justice system through a progressive legal approach is not an easy job. Who will surely encounter challenges and rejections of this? Because it is so powerful and gripping the flow of legalism in the enforcement of criminal law in Indonesia, when a new idea emerges that tries to "dismantle" the old understanding, it is considered illegitimate item defiance.

From a legal point of view, the work of the police is nothing but the application or enforcement of the law. Thus, the police become the guardians of the status quo of the law. It has consequences that what the police do will not deviate from completeness for law enforcement, such as its own legislation, its doctrines, and its principles that are commonly accepted in the criminal law world. No wonder then comes the mention that the police are "servants of the law," "law enforcement officers," and so on.

the "employer." In such an understanding, the police have no other call except to apply or enforce the law. When he has proven that all the law commandments have been carried out,

⁷ For an explanation that law is behavior, not rules, see Satjipto Rahardjo, "The Law is Our Own Behavior", article in Kompas Daily, 23 September 2002

⁸ Mardjono Reksodiputro, Criminology and Criminal Justice System, Cetk. First, Book Two, Center for Justice and Legal Services, University of Indonesia, Jakarta, 1994, p. 140

⁹ Bryan A. Garner, Black's Law Dictionary, Eighth Edition, West Publishing CO, United States, 2004, p. 901

then it is finished, and the task is complete. Such a style of policing, known as "antagonistic police," is a policeman who positions himself face to face with the people.

When viewed from the point of view of progressive law, the police paradigm above must be dismantled and have no place because it will only serve as servants to the status quo. Therefore, the police do not make law the center, but the people (humans) are the main concern.

When the police become the protector and protector of the people, then it is not the law that becomes the main benchmark, but the conscience. When there is a case, what is first seen is not the legal rules relating to that case but other matters outside the law. He is no longer confined by the formal formulation of laws that threaten imprisonment for a thief but sees the case according to his heart and mind. Such policemen are called "protagonist police," namely the police who nurture and protect the little people. He has the patience, the courage to get out of the written rule of law that has been his employer is dedicated, and is pro the little people.

This understanding can mean that it is time for the police to become part of society. He must be sensitive to the interests of society. Here the emphasis is not on hierarchical accountability and regulations but rather sociologically closer to society and its citizens. Here the police are more substantially responsible for the demands and needs of the community. This concept became known as community policing. Indeed, this concept weighs heavily.

The above understanding implies no other legitimacy for the police, except as law enforcement officers. The responsibility that Who must give is solely applied considering the strong understanding of formalism applied by the police in tackling crime. If this concept is applied, there will be a change in the police's mindset, perspective, and paradigm in treating criminals who are actually human beings themselves. The criteria for creating community policing include at least; draw closer to the people, in the sense that the people are not made opponents; make it accountable to society; substitutes for "destruction" by serving and helping; sensitive and involves the civil affairs of citizens (society), such as helping the weak, ignorant and confused, frustrated, unemployed, sick, hungry, agreement, and hopeless.

The application of progressive legal ideas is also found in the system used in the police, namely what is known as discretion. If progressive law, as described above, prioritizes purpose and context rather than the mere text of rules. This has resulted in discretion known in police duties is highly recommended in the administration of law. This means that the police are required to choose by policy how they should act. The authority that belongs to it based on official rules is used to justify taking a wise way in approaching the reality of the task based on a moral, humanitarian and conscientious approach rather than formal stipulations.

In the context of this discretion, it draws on the idea of Japan in their police force as reported by John Owen Haley, which is what separates authority and power. Legalistic thinking usually looks at formal authority and a signal to exercise the power that comes from that authority. Formal powers are exercised by legislation and actualized by enforcement agencies. This means that the formal powers given do not automatically give powers to agencies to implement these powers. Formal authority only provides legalization, while the actualization of power is spread to the community. If this concept is applied, although the police (police) have the authority to process a person's case to the prosecutor's office, it cannot automatically be actualized. It depends on how the perpetrator's characteristics and the crime committed, and the contextualization with the social aspects of the community. In other words, formal rules are not the only masters to be served but turn to conscience and people. The notion of progressive law can also be applied in the prosecutor's office. To understand this, it is necessary to describe

the characteristics inherent in this institution, namely: bureaucratic, centralistic, adhering to hierarchical accountability, and a command system in place. These four characters are derived from the doctrine that "the prosecution is one" (een en ondeelbaar). The bureaucratic character requires that case handling be carried out with strict, sequential, and tiered stages carried out by different fields (investigation by intelligence and prosecution investigation by a special criminal section). The centralistic character requires that all stages of case handling (investigation, investigation, and prosecution) be controlled and based on hierarchical leadership policies and instructions. The command system places the bureaucracy at a higher level as a commander who can give orders to the lower-level bureaucracy. The lower-level bureaucracy is obliged to carry out orders. Control of case handling is carried out in stages starting from the level of the Head of the State Prosecutor's Office (Kejari), the Head of the High Prosecutor's Office (Kejati) to the Head of the Attorney General (AGO), which is manifested in the form of (1) preparation of case handling reports (results of the investigation, results in the judge); (2) exposure (results of investigations, results of investigations, planned charges); (3) planning indictments before being delegated to court; (4) filing a prosecution plan (rentu) prior to the reading of the criminal charges.

The characteristics of the prosecutor's office above, of course, are still pro-status quo in the sense that they are still servile to formal legal rules with a positivism paradigm which is the mainstream. The system applied does not give prosecutors the freedom to do creations, especially in relation to the mechanism for drafting charges and prosecutions. This rigid system must be dismantled and abandoned if progressive ideas are to take part in changing the mindset and perspective of the prosecutors in the effort to enforce criminal law. Progressive law makes efforts to liberate concepts that are considered established. System rigidity and formal rules are still shackled and become the center of attention, but turn to humans as the central point because the law is for humans, not the other way around. Such characteristics, according to Satjipto Rahardjo, are characteristics of modern law which have led to a paradigmatic change from the order of justice to the order of laws and procedures with the rationalization of structurization, formulation, and bureaucratization. The focus of attention has also shifted from people and humanity towards enforcement of rules, structures, and procedures.

With this understanding, prosecutors become the central point. When dealing with criminals, what is in his mind is not how to apply the rules contained in the formulation of the article, but to emphasize the aspects of humanity, empathy, conscience, and courage, because progressive law involves human elements or human actions in law. This concerns the culture of law enforcement officers (prosecutors) in constructing their views on law enforcement, which are not fully subject to the rules, but to other elements outside the law. Courage is needed here because progressive law requires courage in it. Who must do law enforcement with courage? Especially in the face of the current extraordinary situation, what is urgently needed is progressive law enforcement. Progressive law enforcement by prosecutors cannot be left to conventional means of pressing the button but requires a strong type of enforcement (compassion, empathy, commitment, and courage or courage). Therefore, the courage factor becomes important and has a place.

This courage includes the courage to punish someone who has actually committed an act that is detrimental and contrary to the sense of justice and the conscience of society, as well as the courage not to bring a case to court. This last thing is usually called wisdom. Wisdom is one part of progressive law because it deals with matters of conscience, empathy, and humanity. Progressive law rejects the notion that man is for law, but the law is for man. If the prosecutor believes that bringing a case to court will only make a person (criminal) more

miserable, then courage, empathy, honesty should not do that. He rebelled from the confines of formal, procedural, and centralized rules.

Likewise with the judiciary. He can apply this progressive legal idea amidst the sharp spotlight of various circles for his dubious performance. So far, the court is still considered part of the formal legal system independent of the community, so it is not surprising to say that the court is isolated from the dynamics of the community in which the court is located.

This isolation also invites association to the judicial dictatorship because it decides solely by remembering what, according to its interpretation, the law requires without involving in or listening to the community's dynamics. That is why sociologically, the judiciary becomes isolated from the overall dynamics of its society and becomes a foreign object from the body. Not a few of the court decisions are far from the dynamics of society. It only refers to formal rules. The court which is supposed to be a place to find justice, is "turned" into a battlefield to win (to win the case). The practice based on this liberal philosophy is increasingly being carried out in the world so that it has become more or less the standard. A nation that tries to tamper with the establishment of the liberal system will be labeled as uncivilized, violating universal principles, human rights, and so on.

In this regard, progressive courts reject the above understanding, with a maxim "the law is for the people, not the other way around." If the people are for the law, whatever the people think and feel will be rejected because what they read are the words of the law. In this connection, a judge's job is not only a statutory technician but also a social being. Therefore, the judge's job is actually noble because it is racking his brain and his conscience so that it is not wrong to say that the imposition of punishment is a human struggle.

The above expression describes how heavy and drained the judge is when carrying out his duties because he must undergo an inner struggle. This atmosphere occurs because he has to make choices that are often not easy. The judge must be well aware that there is a humanitarian struggle in the face of the rule of law, facts, arguments from the prosecutor, the defendant's arguments or advocate, and more than that, he still has to put his ear in the heart of society. There is a beautiful expression that says that judges must also represent silent people, who are not represented, and who are not heard (unrepresented and under-represented). How noble is actually the duty of the judge? Listening, looking, reading, and making a fair choice is very tough, draining work and mind. This is added by the determination to resist temptation and attraction to the material world in the present situation.

Conclusion

The idea of progressive law offered by Satjipto Rahardjo has its own meaning in law enforcement in Indonesia. In the midst of the grip and domination of the positivism paradigm, which is suspected to be wrong due to the deterioration of law enforcement, especially in the context of the criminal justice system, he came to offer a new spirit, perspective, and paradigm starting from a large maxim "law is for humans, not humans for the law." This idea is the antithesis of the characteristics of the criminal justice system, which still "cult" modern law so that it is considered unable to bring justice to justice seekers. Most police, prosecutors, and judges still use formal rules as "employers" who must always be "worshiped" and used as a benchmark in resolving a case.

If this idea is implemented, there will be a new perspective on law enforcement in Indonesia, which is based not only on formal regulations but also on things outside of it.

Patience, honesty, empathy, dedication, commitment, courage, and conscience are important parts of law enforcement. Although who must also admit that this progressive legal idea is not to be used as the only instrument in the criminal justice system.

Bibliography

- Bernard Arief Sidharta, 2000, Reflections on the Structure of Legal Studies A Research on Philosophical Fundamentals and the Scientific Nature of Law as the Foundation for the Development of Indonesian National Law, Cetk. Second, (Bandung: Mandar Maju, Bandung).
- Fall, 1991, Police Criminal Case Screening (Police Discretion), Cetk. First, (Jakarta: Pradnya Paramita).
- Mardjono Reksodiputro, 1994, Criminology and the Criminal Justice System, Cetk. First, Book Two, (Jakarta: Center for Justice and Legal Services, University of Indonesia).
- Muladi, 1995, Kapita Selektta on the Criminal Justice System, Cetk. First, (Semarang: Diponegoro University Publishing Agency).
- Pudi Rahardi, 2007, Police Law (Polri Professionalism and Reform), (Surabaya: Laksbang Mediatama).
- Zonyfar, C., Maharina, Zayn, M. & Barack, E., 2020. Student Enrollment: Data Mining Using Naïve Bayes Algorithm. Journal of Advanced Research in Dynamical and Control Systems, pp. 1077-1083.
- Satjipto Rahardjo, 2007, Let the Law Flow, (Jakarta: Kompas Publisher). , 2006, Law in the Universe of Order, (Jakarta: UKI Press)._____, Law is Our Own Behavior, article in Kompas Daily, 23 September 2002
- , "Legal Education as Human Education," article in the Journal of Legal Reform, Vol. 1 No. 1 of 2005
- , Progressive Law as the Basis for the Development of Indonesian Legal Studies, in Ahmad Gunawan and Mu'ammarr Ramadhan, 2006, Initiating Indonesian Progressive Law, (Yogyakarta: Pustaka Pelajar in collaboration with IAIN Walisongo and the Diponegoro University's Doctor of Law Program).
- "Indonesia Needs Progressive Law Enforcement," Kompas, 15 June 2002._____, 2007, Building a Civil Police with a Legal, Social and Community Perspective, (Jakarta: Kompas Publisher).
- , 2006, Dissecting Progressive Law, (Jakarta: Kompas Publisher)._____, 2003, Other Faces of Law in Indonesia, (Jakarta: Kompas Publisher)
- Sidik Sunaryo, 2004, Kapita Selektta Criminal Justice System, Cetk. Second, (Malang: UMM Press).
- Soetandyo Wignjosoebroto, 2002, Law of Paradigm, Methods and the Dynamics of the Problem, (Jakarta: ELSAM and HUMA)
- Sudijono Sastroatmojo, "Configuration of Progressive Law," Article in the Journal of Legal Studies, Vol. 8 No. September 2, 2005
- www.kompas.com/kompas-cetak/0503/05/ln/15901323.htm, accessed on 27 January 2008
- Reconstruction of the Prosecutor's Office using a Progressive Legal Approach, Investigation Studies, Investigation and Prosecution of Corruption Crimes, at www.antikorupsi.org, accessed on 28 December 2007