

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System



Raden Maestro Broto Ariyo<sup>1</sup>, Bambang Eko Turiso<sup>2</sup>

<sup>1,2</sup> Diponegoro University, Jl. Imam Bardjo, S.H. No 1-3 Pleburan, Semarang City, Indonesia

**ABSTRACT:** Morals and the legal system in Indonesia correlate with forming laws in Legislative Regulations (legislators) and should make Pancasila values fundamental values or the source of all sources of law, bringing consequences for the makers of Legislative Regulations to become guides and guidelines in conducting legislative function. Ironically, the legislators show paradigmatic problems and a crisis of ethical awareness in the formation and enforcement of laws in Indonesia. This article examines the position of moral and progressive judges in the administration of justice in Indonesia. So what emerges is legal development and law enforcement that is stagnant, centralized, corruptive, very far from divine and humanist values, and far from achieving social justice, so that it will give birth to decisions that are effective and based on law in society and have social justice because law for humans, not humans for law and realizing substantive justice. In the practice of the judicial system, many judges decide cases progressively. It can be seen in the addition of Angelina Sondakh's sentence by Judge Artidjo Alkostar at the cassation level.

**KEYWORDS:** Legal System; Moral; Progressive Judge.

### I. INTRODUCTION

Human life cannot be separated from values, morals, and law. Problems in human life occur when there is no longer the role of values, morals, and law in life. Values are a very important foundation that regulates all human behavior. Values are a source of strength in upholding social order and regularity. Thus, morals are the basis of human behavior, which makes life run according to humanist-religious norms. The power of law is a control in regulating justice regarding the rights and obligations of every human being, which are important roles in human life. The role of values, morals, and law is an important part of the process of forming the character of a nation.<sup>1</sup>

The development of national law oriented towards religious and moral values means that the noble moral values rooted in Indonesia must be used as a starting point in formulating national legal policies. It means that the noble moral values rooted in Indonesia are influenced by transcendent religious values, namely Islamic science. There is nothing in Pancasila that conflicts with religious science. Implementing Pancasila values in national and state life can be understood as practicing religious science in an Indonesian context. In a society that adheres to the Civil Law legal tradition, legislation is the main source of law, so the process of forming laws influences the formation of a legal system.<sup>2</sup>

In the development of law, the existence of society becomes part and constitutes an inseparable whole. Based on the popular adage by Marcus Tullius Cicero, *Ibi Societas Ibi Ius* (where there is society, there is law). Society needs a government structure to create laws that provide order in social life. The expected law cannot be separated from moral rules because the formation of an orderly society comes from good moral behavior. Thomas Aquinas argued that moral commands contain the value of doing good things and avoiding evil. Therefore, moral commands need to be concretized as just legal rules.

In simple societies, moral standards are sufficient to create order, guide people's behavior, and maintain prosperity in society. Ethics gives a person the rules and laws to become a perfect human being. The consequences of these commands and prohibitions stem from moral standards based on individual freedom. His conscience will tell him what actions are wrong and determine whether he does something. However, in advanced societies, more than these rules are required. It is motivated by the fact that the moral

<sup>1</sup> Samekto, *Shift in Legal Thought from the Greek Era to Postmodernism* (Jakarta: Constitution Press, 2015).

<sup>2</sup> Suryani, "Moral Values in the Formation of Legislation," *Pena Justisia* Vol.19, No (2020), <https://jurnal.unikal.ac.id/index.php/hk/article/view/1147>.

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System

foundation is individual freedom. To regulate everything, it is necessary, among other things, not to be based on individual freedom but also restrictions on individual freedom in the form of coercion, intimidation, and punishment; these rules are called law.<sup>3</sup>

### II. FORMULATION OF THE PROBLEM

Based on the background above, two problems can be drawn, namely:

1. What is the meaning of the legal system in Indonesia and its relationship with morals?
2. What is the Impact of Socio-legal Jurisprudence on Progressive Judges in Deciding Cases in Indonesian Courts?

### III. RESEARCH PURPOSES

This article aims to:

1. To find out and describe the meaning of the legal system in Indonesia and its relationship with morals
2. Analyzing the impact of socio-legal jurisprudence on progressive judges in deciding cases in Indonesian courts

### IV. RESEARCH METHODS

In this research, the researcher used normative legal research with a descriptive-analytical nature, which used secondary data obtained from reading results which were then analyzed qualitatively.<sup>4</sup> Therefore, in this research, law is interpreted as a written value or norm which is used as an analysis of the concept of ownership of intellectual property rights in copyright regulations and analyzes related to the concept of ownership in the cosmology of Indonesian society from the laws and regulations that regulate it. As well as making copyright regulations a reference for protecting a work.

### V. DISCUSSION

#### 1. Definition of the Legal System in Indonesia and Its Correlation with Morals

Before talking about Indonesia's legal system, first understand the system in general. A system is a complex unit consisting of parts that are related to each other. Understanding systems as a method is known as approaching a problem through systems approaches. Talking about legal principles, it can be seen that legal regulations appear to stand alone without these ties.<sup>5</sup>

The ideals of law originate from the ideals of Pancasila, and these legal ideals are then operationalized into reality through the principles of national law in forming positive law through legislation and jurisprudence. These national legal principles consist of legal principles that are applicable and universally recognized, principles distilled from customary law, legal principles derived directly from Pancasila, and technical-sectoral legal principles.<sup>6</sup> The ideals of Pancasila law and these legal principles act as "guiding principles" and touchstones for the process of forming laws and forming laws through jurisprudence and legal practice.

According to B. Arif Sidharta, the legal system that will be built is hierarchically pyramidal, composed of the ideals of Pancasila, national legal principles, positive legal rules consisting of statutory regulations, jurisprudence, institutions, and customary legal rules as long as they are still alive in reality and have not been adopted become provisions of law, Islamic legal principles as long as they have been accepted in customary law or law become provisions of law and customary law.<sup>7</sup> What Sunaryanti and B Arief Sidharta stated above can be described in more detail by adding elements of substance, structure and legal culture. For these nuances to be fully reflected in the following body creations, all the elements of the legal system above are given attention, plus the dimension of legal practitioners or students. This legal system building, which consists of three main elements, applies to all legal systems, but in this context, it is linked to the Indonesian national legal system, namely:

1. The legal structure is symbolized by the pillars supporting upholding a legal system of legal bodies such as the House of Representatives and the president and other government bureaucracies such as the police, the prosecutor's office, as well as the judiciary and legal aid institutions, all of this is seen from the institutional aspect, namely what is meant by legal structure.
2. The legal substance of the elements is symbolized by layers, which hierarchically consist of sharing positive legal norms; at the top layer, there is a guiding star, namely the legal ideals of Pancasila. The legal ideals of Pancasila consist of values before they are realized as norms so that they are not combined with these layers. Because they contain a constellation of positive norms, these elements are called a legal norm system

<sup>3</sup> Cahya Wulandari, "The Position of Morality in Legal Science," *Progressive Law Journal* 8, no. 1 (2020): 1–14, <https://doi.org/10.14710/hp.8.1.1-14>.

<sup>4</sup> Jonaedi Efendi; Johnny Ibrahim, *Normative and Empirical Legal Research Methods* (Depok: Pranadamedia Group, 2018).

<sup>5</sup> Satjipto Rahardjo, *Legal Studies* (Jakarta: PT Citra Aditiya Bakti, 2006).

<sup>6</sup> Shidarta, *Legal Reasoning and Legal Reasoning* (Yogyakarta: Genta Publishing, 2006).

<sup>7</sup> B. Arief Sidharta, *Reflections on the Structure of Legal Science: A Research on the Philosophical Foundations and Scientific Nature of Legal Science as a Foundation for the Development of Indonesian National Legal Science*. (Bandung: Mandar Maju, 2000).

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System

3. Legal culture: This element provides an environment for the functioning of the structure and substance of the law. But this living environment called legal culture, legal structures, and substations will not be able to survive.<sup>8</sup>

From the explanation above, the moral relationship with the legal system in Indonesia still fully adheres to the principle of coordination, which uses legal systems from the Netherlands or continental Europe, which is what is known as civil law. The source of law is statutory regulations or written law so that the legislative institution is the main law-making institution in written form so that judges are only mouthpieces for the law.<sup>9</sup>

So, when deciding a case in the civil law legal system, you must prioritize the highest legal source, namely the law. If a statutory regulation requires judges to make decisions based on customs, jurisprudence, and other legal sources, then new judges can be used to handle cases. Adherents of the Civil Law system provide great freedom for judges to decide cases without needing to follow previous judges' decisions. Judges rely on the rules made by parliament, namely laws.<sup>10</sup>

Discussing the position of moral values in legal science and the implications for its enforcement requires first looking at the relationship between law and morals, which, in essence, has a close relationship with 5 close relationships, including:

- a) Laws require morals;
- b) Laws are codified and more objective than unwritten morality;
- c) Law is related to external actions, while morals are related to a person's inner self;
- d) Morality is "the contents of the legal drink." Legal norms and moral norms both contain rules that serve as guidelines for human behavior and;
- e) Law is normative and inner, which is morally binding if it is believed in the heart, while morality is only related to human inner attitudes.<sup>11</sup>

Immanuel Kant argued that the formation of law is part of a moral demand that is imperative (everyone must live by moral principles and just laws).<sup>12</sup> However, at the practical level, society has high hopes for the operation of the law itself. So the relationship between morals and the existing legal system in Indonesia is that the existence of morals can only be seen at the time of the formulation and formation of positive law itself so that when the law is an enactment, the provisions apply based on what is contained in the positive regulations.

In connection with the formation of laws, according to Bagir Manan, the formation of laws produces strong and quality laws. Three foundations can be used in drafting laws: First, the juridical basis (Yuridische gelding); Second, the sociological basis (Sociologische gelding); Third, the philosophical basis (Filosofische gelding). The importance of these three basic elements for forming laws is that the laws formed have legal principles (legal validity) and can be effective because they can or will be accepted by the public as a matter of course and are valid for a long time. The moral aspect plays an important role in forming laws because, with good morals from the legislators, the resulting laws are optimal in accommodating all aspects of society's life.

Fuller proposed eight famous legal principles, and then, at that time, a clear moral paradigm emerged. According to Fuller, law cannot be accepted unless it departs from a certain morality. The law must meet certain moral standards, and it is not worthy of being called a law if it shows the following failures:

- a. Failure to issue rules (to chief rules) a legal system must contain rules that are only ad hoc
- b. Failure to announce these regulations to the public. Because the rules that have been made must be announced
- c. Failure due to misuse of retroactive legislation. There may be no rules that apply retroactively; therefore, such rules cannot be used as guidelines for behavior
- d. Failure due to making contradictory rules. A system should not contain rules that conflict with each other
- e. Failure because it requires behavior beyond the capabilities of the person being regulated. Therefore, rules should not contain demands that exceed what can be done.
- f. Failure due to frequent changes. Therefore, there should not be a habit of frequently changing the rules, resulting in people losing orientation.
- g. Failure to align rules with performance practices. So, a regulation must have a match between what is legislated and its daily implementation.<sup>13</sup>

It seems to be due to, among other things that national legal reform seems to be at a dead end due to the existence of various "restrictions and limitations," which are, among other things, due to the following things:

---

<sup>8</sup> Miswardi, Nasfi, and Antoni, "Ethics, Morality and Law Enforcement," *Science Tower* 15, no. 2 (2021): 150–62, <https://jurnal.umsb.ac.id/index.php/menarailmu/article/view/2425/1896>.

<sup>9</sup> Sundari, *Comparison of Law and the Phenomenon of Legal Adoption* (Yogyakarta: Cahaya Atma Pustaka, 2014).

<sup>10</sup> Jeremias Lemek, *Seeking Justice: A Critical View of Law Enforcement in Indonesia*. (Jakarta: Galang Press. 2007), Pg. 45

<sup>11</sup> Fithriatus Shalihah and Oksep Adhayanto, "Law, Morals, and Power in Analysis (Law is a Social Technical Tool)," *FIAT JUSTISIA: Journal of Legal Studies* 10, no. 4 (2017): 671, <https://doi.org/10.25041/flatjustisia.v10no4.735>.

<sup>12</sup> Latifah Ratnawaty Didi Hilman, "Building Moral Justice in Law Enforcement in Indonesia," *YUSTISI* 4, no. 1 (2017), <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/1123>.

<sup>13</sup> Satjipto Rahardjo, *Sociology of Law, development of methods and choice of problems*, (Yogyakarta: Genta Publishing, 2010).

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System

- 1) There is a battle of political interests so that the legal system is often built without paying attention to fulfilling the community's needs for a sense of justice, usefulness, and legal certainty, but its orientation is more towards fulfilling the interests of the group;
- 2) There is a target orientation, namely that the development of the legal system is often focused on work plan targets made with or without financial assistance from abroad so that it is often late in responding to legal developments that occur due to community dynamics, which are outside the work plan;
- 3) The existence of sectoral ego: This can be seen often when a government institution issues regulations without paying attention to whether the matter it regulates falls within the scope of its duties and authority or whether another institution has already adopted it in the regulation of the same level;
- 4) There is a romantic attachment to the past, namely that the regulators assume that the old regulations are still able to overcome the problems that exist today, even though the values that live in society in the past and currently are different;
- 5) The existence of superiority in the face of inferiority, that is, there is a difference in understanding on one side. Regulators think that the business of making and supervising the implementation of regulations is the authority of the ruler so that the people do not need to interfere in making them, while the people think that making and supervising the implementation of regulations is not only the authority of the ruler so that the people also feel compelled to participate in making regulations."<sup>14</sup>

### 2. The Impact of Socio-legal Jurisprudence on Progressive Judges in Deciding Cases in Indonesian Courts

According to Satjipto Rahardjo, progressive law agrees with the flow of legal realism and *Freirechtslehre*, which sees law not from the perspective of the law itself but rather seen and assessed from the social goals it wants to achieve and the consequences that arise from the operation of the law.<sup>15</sup> In other words, progressive law can integrate two things, namely regulations and community needs, both of which are taken into consideration in making legal decisions.<sup>16</sup>

The concept of progressive law starts from two basic assumptions. First, that law is for humans. It means that humans are the determinants and orientation of the law. The laws created must be able to serve humans, not the other way around. Therefore, law is not an institution that is free from human interests. Humans determine the function of law in realizing human welfare. Therefore, if a legal problem occurs, the law must be reviewed or corrected, and not humans who are forced to follow legal schemes. Humans are above the law, and the law is a means of guaranteeing and safeguarding human interests. Second, that law is not an absolute and final institution because the law is in the process of continuing to become (law as a process, law in the making).<sup>17</sup> To be called a court decision that has progressive value, it must at least contain legal findings. In this regard, Ahmad Rifai dissects the three main (characteristics) of legal discoveries by judges from a progressive legal perspective, namely:<sup>18</sup>

- a. A visionary method of legal discovery by looking at legal problems for long-term future interests by looking case by case;
- b. A bold method of discovery in making a breakthrough (rule of breaking) by looking at the dynamics of society but still guided by law, truth, and justice and being sensitive to the fate and condition of the nation and state;
- c. Methods for finding laws that can bring society prosperity and the nation and state out of adversity and social instability.

Progressive law is also often associated with Roscoe Pound's understanding of sociological jurisprudence. Roscoe Pound is a sociological jurisprudence legal expert who directs his attention to "legal reality" rather than the position and function of law in society. The reality of law is the will of the public, so it is not just law in the sense of law in books. Sociological Jurisprudence shows a careful compromise between written law as a need for the legal community to create legal certainty (positivism law) and living law as a form of appreciation for the important role of society in the formation of law and legal orientation.

The strategic role of judges in a sociological jurisprudence perspective is to apply the law not only to be understood as a formal social control effort in resolving conflicts but also to design the application of the law as a social engineering effort. The judicial task of judges is no longer understood simply as applying the law to concrete events (in the form of various cases and conflicts) or as merely mouthpieces for the law (*boncha de la loi*) but also as drivers of social engineering. Law administrators must pay attention to the functional aspects of the law, namely, to achieve change by making legal changes always using all kinds of interpretive techniques. In this school, the presence of law is also linked to its social goals, as is the concept offered in progressive legal theory. Due to the dynamics of society that continue to develop, the law must always strive to be aware of these dynamics.

Since the 19th century, the rise and dominance of analytical positivism began now; we still inherit a legal science that emphasizes the "discriminate, measure, categorize" method of describing laws in pieces. Socio-legal jurisprudence seeks to unite

---

<sup>14</sup> Maroni Maroni, "The Existence of Moral Values and Legal Values in the National Legal System," *Legal Problems* 1945, no. Uud (2012): 306–14.

<sup>15</sup> Satjipto Rahardjo, *Progressive Law A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009).

<sup>16</sup> Mukhidin, "Progressive Law as a Legal Solution that Brings the Welfare of the People," *Journal of Legal Reform* 1, no. 3 (2014): 267–86, <http://jurnal.unissula.ac.id/index.php/PH/article/viewFile/1488/1156>.

<sup>17</sup> Haryono, "Law Enforcement Based on Substantive Justice Values (Study of Constitutional Court Decision No. 46/PUU-VII/2012 Tanggal 13 February 2012)" 7, no. 46 (2019): 20–39, [https://ejournal.undip.ac.id/index.php/Hukum\\_progressive/article/view/23611](https://ejournal.undip.ac.id/index.php/Hukum_progressive/article/view/23611).

<sup>18</sup> Suwito Suwito, "Progressive Judge's Decision in Civil Cases (Review of the 'Mango Tree Case')," *Hasanuddin Law Review* 1, no. 1 (2015): 101, <https://doi.org/10.20956/halrev.v1n1.43>.

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System

legal science with its environment, namely society, including nature, which is its social basis, and social sciences are used to study the logical consequences of this school on the working system of the court represented by judges, including:<sup>19</sup>

- a. There is respect for the living law
- b. Providing freedom for judges to decide cases based on the living law, based on non-positivistic legal understanding
- c. Conduct an inventory of judges' decisions that contain legal values that grow and develop in society as a reflection of legal awareness as primary legal material and the creation of legislative regulations, which can be used as material for consideration by other judges.
- d. Developing a judicial institution that can become a body that resolves legal disputes between the central government and regional governments.
- e. Developing public control over legislative products.

Sociological jurisprudence is not very influential in the law enforcement process in Indonesia, especially by judges in court. Law No. 48 of 2009 concerning judicial power in Article 5 paragraph (1) emphasizes that judges and constitutional justices must explore, follow, and understand society's values and sense of justice. Based on the description above, it appears that to avoid decisions that do not fulfill society's sense of justice, judges, when deciding cases, should also pay attention to the social reality where the case occurred. It can be seen from the cassation that the panel of judges led by Artidjo Alkostar found the defendant, Angelina Sondakh, guilty and added a sentence at the court level.

## V. CONCLUSION

The moral relationship with the Indonesian legal system still fully adheres to the principle of concordance. It uses the legal system from the Netherlands or continental Europe, known as civil law. The source of law is statutory regulations or written law, so the legislative institution is the main law-making institution in written form, and judges are the only mouthpieces for the law.

However, in the implementation of law in Indonesia or the application of law in courts, progressive decisions are often found through progressive judges because progressive law agrees with the flow of legal realism and *Freirechtslehre*, which sees law not from the perspective of the law itself, but rather seen and assessed from the social goals it wants to achieve and the consequences that arise from the operation of the law.

## REFERENCES

- 1) B. Arief Sidharta. *Reflections on the Structure of Legal Science: A Research on the Philosophical Foundations and Scientific Nature of Legal Science as a Foundation for the Development of Indonesian National Legal Science*. Bandung: Mandar Maju, 2000.
- 2) Didi Hilman, Latifah Ratnawaty. "Building Moral Justice in Law Enforcement in Indonesia." *YUSTISI* 4, no. 1 (2017). <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/1123>.
- 3) Haryono. "Law Enforcement Based on Values of Substantive Justice (Study of Constitutional Court Decision No. 46/puu-vii/2012 Tertanggal 13 February 2012)" 7, no. 46 (2019): 20–39. [https://ejournal.undip.ac.id/index.php/Hukum\\_progressive/article/view/23611](https://ejournal.undip.ac.id/index.php/Hukum_progressive/article/view/23611).
- 4) Ibrahim, Jonaedi Efendi; Johnny. *Normative and Empirical Legal Research Methods*. Depok: Pranadamedia Group, 2018.
- 5) Maroni Maroni. "The Existence of Moral Values and Legal Values in the National Legal System." *Legal Problems* 1945, No. Uud (2012): 306–14.
- 6) Miswardi, Nasfi, and Antoni. "Ethics, Morality and Law Enforcement." *Menara Ilmu* 15, no. 2 (2021): 150–62. <https://jurnal.umsb.ac.id/index.php/menarailmu/article/view/2425/1896>.
- 7) Mukhidin. "Progressive Law as a Legal Solution that Brings Prosperity to the People." *Journal of Legal Reform* 1, no. 3 (2014): 267–86. <http://jurnal.unissula.ac.id/index.php/PH/article/viewFile/1488/1156>.
- 8) Samekto. *Shift in Legal Thought from the Greek Era to Postmodernism*. Jakarta: Constitution Press, 2015.
- 9) Satjipto Rahardjo. *Progressive Law A Synthesis of Indonesian Law*. Yogyakarta: Genta Publishing, 2009.
- 10) Satjipto Raharjo. *Legal studies*. Jakarta: PT Citra Aditiya Bakti, 2006.
- 11) Satjipto Rahardjo. *Sociology of Law, development of methods and choice of problems*. Yogyakarta: Genta Publishing, 2010.
- 12) Shalihah, Fithriatus, and Oksep Adhayanto. "Law, Morals, and Power in Analysis (Law Is a Social Technical Tool)." *FIAT JUSTISIA: Journal of Legal Studies* 10, no. 4 (2017): 671. <https://doi.org/10.25041/fiatjustisia.v10no4.735>.
- 13) Shidarta. *Legal Reasoning And Legal Reasoning*. Yogyakarta: Genta Publishing, 2006.
- 14) Sundari. *Comparison of Law and the Phenomenon of Legal Adoption*. Yogyakarta: Cahaya Atma Pustaka, 2014.
- 15) Syriac. "The Value of Morality in the Formation of Legislation." *Pena Justisia* Vol.19, No (2020). <https://jurnal.unikal.ac.id/index.php/hk/article/view/1147>.

---

<sup>19</sup> Suteki, *Law and Society* (Yogyakarta: Thafa Media, 2021).

## Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System

- 16) Sutek. Law And Society. Yogyakarta: Thafa Media, 2021.
- 17) Suwito, Suwito. "Progressive Judge's Decision in Civil Cases (Examination of the 'Mango Tree Case')." *Hasanuddin Law Review* 1, no. 1 (2015): 101. <https://doi.org/10.20956/halrev.v1n1.43>.
- 18) Wulandari, Cahya. "The Position of Morality in Legal Science." *Progressive Law Journal* 8, no. 1 (2020): 1–14. <https://doi.org/10.14710/hp.8.1.1-14>



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.