

FORMULATING THE CONCEPT OF PROGRESSIVE JUDGE IN HANDLING CORRUPTION CASES IN INDONESIA

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Abstract

The main problem studied in this writing is the failure of judges to eradicate corruption in Indonesia in their decisions. The data is collected by interviews and studies of verdict documents. To analyze that problem there needs a study in socio-legal research with the legal hermeneutical approach. The result of this research shows the weaknesses of judges in deciding verdicts for corruption. The narrow interpretation of corruption and the performance orientation of judges contributed to the failure of judges in eradicating corruption. There needs to be an introduction of the concept progressive judges to overcome the aforementioned problems. Progressive Judges are judges who can creatively interpret the law on existing regulations, without having to wait for regulatory changes. Poor regulation does not have to be a barrier for progressive judges to present fair, definite, and useful laws because they can make progressive interpretations of existing regulations.

Keywords: *The concept of progressive judges, eradicate corruptions, the legal hermeneutic approach.*

A. Introduction

One of the major problems faced by Indonesians today is eradicating corruption. The evolution of this crime is increasingly widespread and continues to increase every year both in the number of cases, the amount of national monetary loss, and the quality of the crimes committed.² Ironically, the corruptions that people thought of as a social deviation or anomaly have now become a common occurrence in this nation. The practice of corruption has influenced many aspects of Indonesia such as in the executive, legislative and judicial

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² Wicipto Setiadi, 'Korupsi di Indonesia (Penyebab, Bahaya, Hambatan dan Upaya Pemberantasan, Serta Regulasi) (2018) 15 (3) Jurnal LEGISLASI INDONESIA. 250.

institutions. There are even some with the opinion of corruption being a part of Indonesia's culture.³

Research shows that corruption in Indonesia has encroached legal institutions, from District Courts and up to the Supreme Courts. Corruption involves almost every figure related to the court such as judges, prosecutors, police, lawyers, and registrars. There are also external influences contributing to the acts of corruption such as case brokers. Because corruption is spreading across law institutions, it refers to the judiciary mafias. Judiciary mafias become connotative with the malpractice of collusion between judges, prosecutors, and lawyers, as well as other judiciary figures, which form conspiracies in manipulating victories to one specific side.⁴

Judiciary corruption becomes systematic and also a part of its judiciary system because it has been neglected for years. It is as if the practice of judiciary mafias slowly becoming a widely accepted and natural behavior in judicial environments. Case brokers in the judicial can safely operate in front of judges, registrars, prosecutors, and the police. The following research results in the success of unveiling about 300 respondents that becomes a source of research data in admitting of judicial corruptions.⁵

Based on the finding of corruption patterns, judicial mafias exist in every stage of events, from civil, criminal, and commercial judicial. In the stages of inquiry and investigations on criminal judicial, for example, with money, the suspects do not need to rest as inmates, even more so if the negotiation succeeds where the suspects can be acquitted as is. The same aspects can also happen in prosecutions. Articles in the law can be traded to relieve the prosecutor's demands in a case. It's present in the Judges, for every decisive verdict can be bargained with monetary rewards and amenities.⁶

The results from the research of the Indonesian Judicial Commission reveals the various problems faced by the judges in sentencing their verdicts. These problems include the weak ability of judges to interpret the facts of the law, the lack of sensitivity of judges to the theoretical basis or philosophy used, and the personal morality of judges. In short, in the judge's decision process there are many problems that have implications for the quality

³ Sahlan Said, 'Penegakan Hukum Anti Korupsi' (2005) 1 (74) Jurnal Demokrasi 64.

⁴ Wasingatu Zakiyah, *Menyingkap Tabir Mafia Peradilan* (ICW 2016) 217.

⁵ *Ibid* 218.

⁶ *Ibid* 220.

of the verdict. In short, the process of a judge's verdict lies many problems implicating the quality of a verdict's results.⁷

B. Problem Formulation

The problem formulations in this study are: 1) Why do judges fail in handling corruption cases in Indonesia to present a just law? 2). What is the urgency of presenting the concept of progressive judge in handling corruption cases in Indonesia?

C. Methodology

The data is collected by interviews and studies of verdict documents. The data is analyzed through an interactive model by Matthew B. Miles and A. Micheal Haberman.⁸ Data validation is completed through triangulating sources and methods.⁹

The main problem studied in this writing is the behavior of judges in the process of verdict decisions for corruption cases in the Anti-Corruption Court resulting in the failures of judges to eradicate corruption in Indonesia. To analyze that problem there needs a study in socio-legal research with hermeneutical approaches in law.

A hermeneutical approach in law assumes that every shape and behavioral results between humans (including the behavioral results of judges) will always be determined through interpretation made and agreed by each acting figures in said processions, which will also give variations of meaning to facts currently studied as objects. Hermeneutical approaches in law are done to understand (*verstehen*) the meanings of *emic* laws behind the phenomenon inside a judge's verdict about corruption through interpretations.¹⁰

D. Discussion and Results

1. Judges' Failures in Eradicating Corruption Cases

The result of the research shows various existing types of judges in understanding corruption across the judiciary. Viewing from the thinking process of judges, there are two types of judges, being positivistic and non-positivistic. Looking at how one

⁷ Suhadibroto, 'Catatan atas Hasil Evaluasi atas Penelitian Putusan-Putusan Hakim, Paper (Judicial Commission, Februari 2008) 6.

⁸ M. B. Miles, & A. M. Haberman, Analisis Data Kualitatif (Qualitative Data Analysis) (UI Press, 1999) 15.

⁹ Sudarwan Danim, Menjadi Peneliti Kualitatif, Ancangan Metodologi, Presentasi, dan Publikasi Hasil Penelitian untuk Mahasiswa dan Peneliti pemula Bidang Ilmu-Ilmu Sosial, Pendidikan, dan Humaniora (Pustaka Setia, 2002) 37.

¹⁰ Soetandyo Wignjosoebroto, Hukum Paradigma, Metode dan Dinamika (Huma, 2002). 104-105.

interprets laws, there are two types of judges, being the textual types and contextual types of judges. Each type has their standalone characteristics.¹¹

The positivistic judge heavily emphasizes to degrees of formal textual rules in understanding the factuality of laws, whereas the non-positivistic elaborates on textual rules of law in a socio-cultural context encompassing it. The main characteristic of the positivistic thinking process is to use articles of law as the only guidelines and sources with absolute legality in handling cases. The creativity of the judge does not have a place to find legalities and is oftentimes positioned as a funnel that speaks of legalities. The rules of law are placed on themselves as a purpose and become lacking in sensitivity to various dimensions outside of textual legalities. Honesty and wisdom in performing laws are devoid of attention, which caused sensitivity, empathy, as well as dedication to bring truths and justices to decline. Truth and justice become nothing more than a business of formal legality. This manner of thinking prioritizes the certainty of law in comparison to the values of justice and the benefits of the law. A striking characteristic of this thinking process is the deductive quality in finding truth by prioritizing formal logic.¹²

The positivistic belief is still dominating the way of thinking for judges in Indonesian courts today. The implication being the lack of freedom for judges to find material truths to introduce fair, just, and civilly beneficial laws. Judges in proving cases of corruption heavily believed in deductive thinking and less likely to develop inductive thinking in finding judicial truths and judicial facts.¹³

The quality of law understanding toward philosophical and theoretical questions for a judicial problem is still very weak and lacking. The thinking process of judges heavily enforces only formal logic. This thought process is commonly acquired in the first level of college in the Faculty of Law. The understanding of law theories are still low and lacking sensitivity to astronomical factors outside of law such as social,

¹¹ Muhamad Syamsudin, 'Understanding The Typology of Judge's Behaviour in Handling Corruption Cases in Indonesia', (2014) 1 (3) *The International Journal of Social Sciences and Humanities Invention (IJSSHI)* 136-141.

¹² Interview with AA Supreme Court Judge in Indonesian Republic Supreme Court. Satjipto Rahardjo, 'Pengadilan Progresif dan Kasasi (Kompas, February 2004). Satjipto Rahardjo, 'Indonesia Membutuhkan Keadilan yang Progresif (Kompas, November 2002).

¹³ Yusti Probowati Rahayu, *Dibalik Putusan Hakim Kajian Psikologi Hukum dalam Perkara Pidana*, (Penerbit Srikandi 2005) 95. Alkostar, A. 'Mencandra Hakim Agung Progresif dan Peran Komisi Yudisial' (Judicial Commission of Indonesian Republic 2009) < <http://www.komisiyudisial.org> > accessed 20 November 2012. 5.

economical, and political conditions that should become the basis of handling decisions in giving verdicts for cases to realize justice in its entirety.¹⁴

The thinking typology of positivistic and non-positivistic judges in its practical forms create textual and contextual law interpretation styles about corruptions. The positivistic judge creates a textual interpretation, whereas the non-positivistic judge creates a contextual interpretation. If judges follow the textual interpretation of corruption, there exist tendencies of not guilty verdicts, and or if one is given a guilty verdict the punishment is relatively light. Conversely, if the judge follows the contextual interpretation, there exist tendencies of giving a guilty verdict and becoming convicted.

The result of the research shows the failure of the judge assembly in proving the elements of corruption based on the charges of the Public Prosecutor in court cases. Judges are still following a textual meaning of corruption. On the other hand, if judges follow the contextual meaning, then the verdicts for the criminal cases on corruption becomes provable. The implication of the two interpretations is if judges follow the textual interpretation in judging corruption that the accused have done, there are tendencies for a not guilty verdict and acquitted when convicted with a light sentence. Conversely, if the judge follows contextual interpretation in judging corruption that the accused have done, there are tendencies for a guilty verdict and becoming convicted. For this type of guilty verdict, there are variations of sentencing their punishments from being the lightest to the moderates and its harshest. That decision comes to the many bases of judgment based on the judges that gave the verdict.

The research shows the linking pattern between interpretation characteristics of judges about corruption with the verdict that the judges gave. If the judge follows the narrow interpretation of corruption, there are tendencies for a not guilty and acquitted verdict. Accordingly, if the accused receives a guilty verdict, the punishment is often relatively light. Conversely, if the judges follow a broad interpretation of corruption, there are tendencies to give a guilty and convicted verdict to the accused.

The basis of the narrow and broad interpretation of corruption is the types of corruption being an “action against the law” and “abuse of authority” that the perpetrators of corruption do in a legislative and executive environment. The basis of the narrow interpretation of corruption is the criteria of actions against the law and abuses of authority the only conflicts against the legislative rules. While the basis of the

¹⁴ Interview with SS, judge in Yogyakarta District Court.

broad interpretation of corruption is the conflict against legislative rules as well as the heinous, devious, and contradictory acts against the principles of justice in society and the general principles of a good government.

The result also shows the failure of the judge assembly in proving the elements for the acts of corruption charged by the Public Prosecutor in the court cases that the judges caused from still following the narrow interpretation of corruption. On the other hand, if the judges are following a broad interpretation, then the elements of the criminal acts of corruption charged by the Public Prosecutor in the court cases become provable. The implication from those interpretations is if the judge follows a narrow interpretation in judging corruption by the accused, there are tendencies in creating a not guilty and acquitted verdict. Accordingly, the criminal verdict for the guilty party is very light. Conversely, if the judge follows a broad interpretation in judging the corruption of the accused, there are tendencies to create a guilty and convicted verdict. For that guilty verdict, exist variations of a verdict that ranges from very light, to moderate, and at the highest. The particularity of cases depends on the basics of consideration, which becomes the basis of judges in proclaiming their verdicts. In general, the previous results of the research can be depicted according to Figure 1.

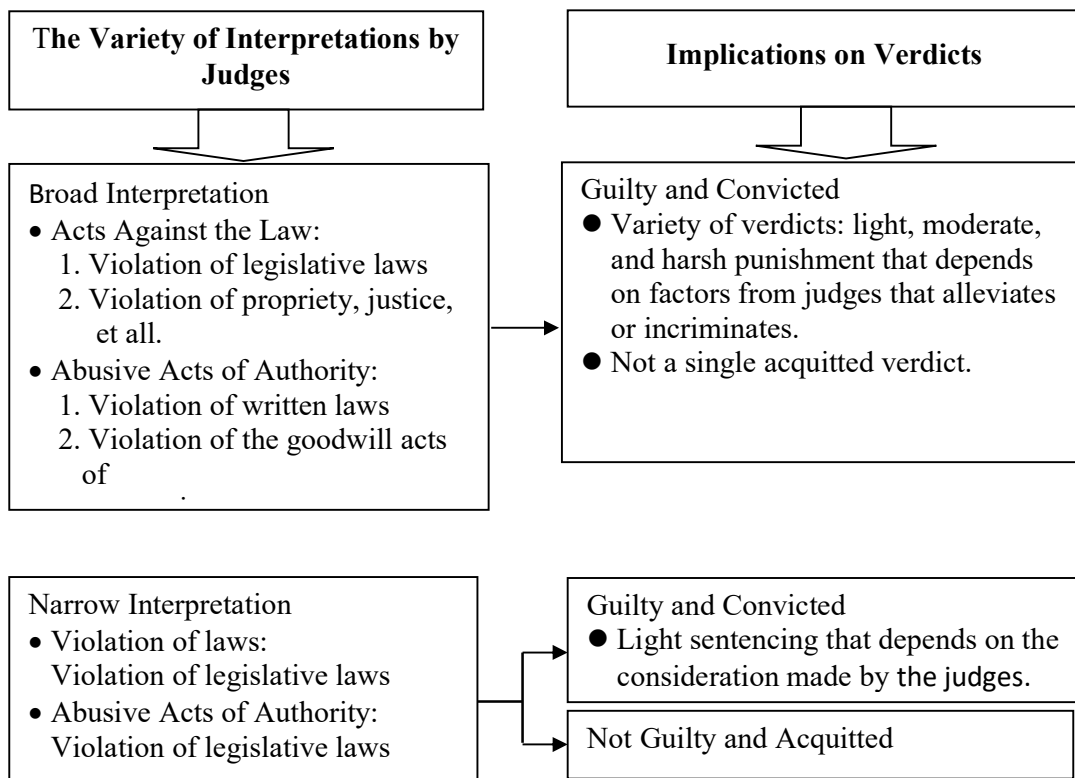


Figure 1. Varieties of Judges' Interpretation of Corruption and its Verdict Implications

From that schematic, there are patterns known that depict interactions between characteristics of interpretations of laws about corruption and its resulting verdicts. If a judge follows a broad interpretation for corruption, there are many strong tendencies for judges to decide a guilty and convicted verdict. Conversely, if judges follow a narrow interpretation for corruption, there are strong tendencies for judges to decide a not guilty and acquitted verdict, and or leading to a guilty but lightly punished verdict.

On the other hand, the result of research also shows, that judge activities in handling cases in courts, are not exempt from and influenced by a believed cultural value system. The judge will always be struggling and dialoguing with the value system that hid inside the spirituality and the mentality of the judges. Judges will select what the most important and prioritized values are for each case that they handled.¹⁵

The judges are always struggling and dialoguing with values when handling cases. If a judge diverts their held values, then they can feel guilty, sinful, sleep-deprived, and other haunting feelings. This fact happens to judges that have moral sensitivities and a good conscience. However, if the said judge does not have moral sensitivities or good consciences, then what follows are the drives of lusts and needs for their selfish gains.¹⁶

The process of handling cases by judges in court is not only a judicially and procedurally technical matter for the application of regulations but also involving the orientation of values held by the judge. In the process of passing decisions, there are processes for thinking, weighing, and dialoguing with values that reside in the judge's mentality. Ronald Beiner precisely said that the judge's decision was "... mental activity that is not bound to rules ...".¹⁷

The judge will sort out and select the realization of values. The realization and selection of these values in practice are largely determined by factors that include the level of interest, knowledge, life necessities, environment, and habits as well as the personal characteristics of the judge. These factors will determine the direction of the judge in deciding the case.

In practice, there is a shift in selections of values from their basic, ideal values, or judicially objective values to instrumental, pragmatic, or subjective values that are

¹⁵ Interview with AA, Supreme Court Judge in Indonesian Republic Supreme Court.

¹⁶ Ibid.

¹⁷ Esmi Warassih, 'Mengapa Harus Legal Hermeneutic?' (Faculty of Law Diponegoro University November 2009) 3.

important to the subject at certain times, contexts in various ways, and opportunities that can be utilized. This has the meaning that in handling cases, judges cannot become sterile from interests outside the judicial aspects. Objective conditions indicate that several factors are influencing the decisions of judges, such as the interests and necessities of life that are material/financial, the dynamics of the organizational environment, external pressure, the influence of personal characteristics, and the influence of past circumstances or old habits. Likewise, the judicial mafia sometimes also colors the processes of judges in its decision-making processes.¹⁸

Normatively, judges receive freedom by law for trials following their beliefs without outside influences. The judge is free to decide the case based on their thoughts and consciences while free from the interference of extra-judicial parties. The Law prohibits all interference in judicial affairs by other parties outside the jurisdiction of the judiciary, except in the cases stated in the Law.

However, what happens in practice normative provisions do not fully show the real thing. At the level of practice, some judges do not fully carry out their functions in an authentic way to realize the true legal objectives. The function of law enforcement should have the direction to achieve the objective objectives of the law, namely "FOR JUSTICE OF THE ONE ALMIGHTY GOD" in the process of travel experienced distortions, dysfunctions, and even malfunctions performed by law enforcement itself, including in this case the judge. This situation is described as "Mafioso Justice".

From this perspective, the judges while handling a submitted case cannot separate themselves from the choice of held and believed values, residing in the thoughts of the judge's head. This also influences their attitudes and behaviors to determine whether a person is wrong (accused/defendant) and determine a suitable sentence handed down to the defendant, if he is guilty. The selection of values also determines the quality of judges' decisions considered righteous and fair.

In practice, there are records of judge activities when handling cases, because there are many temptations, especially material temptations, which can influence judges. In this context, the case handlings are a source of commodities to gain material benefits. In brevity, the activities of judges and their decisions for cases are very vulnerable to corrupt practices such as bribery.¹⁹

¹⁸ Zakiyah (n.4) 122.

¹⁹ Interview with RMT, judge in Riau District Court.

Responding to this situation, there are several judges' attitudes with possibilities of submissions. Firstly, there are judges with verified greed and actively offering a case settlement via material compensation. These judges are in the category of a materialistic judge. Secondly, judges who always flow with the winds, if given a gift by the concerned parties they accept them and remain silent when they do not receive anything. This group ranks the most numerically. These judges are in the category of pragmatic judges. Thirdly, active judges refuse to receive anything from certain parties (the defendants), but this third group is very few numerically. These judges are in the category of idealist judges.²⁰

Factual conditions have proven and at the same time have strengthened the thesis, which states that there are two types of judges for case verdicts. Firstly, before taking the judge's decision first, only performing dialogues based around the laws alone. They begin the law's application after finding the legal basis in the legislation for concrete cases. In applying the law, the judges do not question whether the formulation of the law is still relevant to the sense of justice in society. The judge feels it is enough if the formulation in the law is following the case he is handling. The judge morphs and acts as a mere trumpet for the law, where the positivist judges follow the stated procedures.

Secondly, in making a decision, the judge firstly reasons with his conscience. He asks his conscience about the accuracy of the decision he takes. After having a dialogue with his conscience, he then sought his legal basis in legislation. After finding the legal basis, the judge decides to do the said decision. However, the verdict applied is not following legality alone but adjusted to the sense of justice in its society. Judges with a progressive outlook follow this procedure.

Rahardjo once makes a classification of judges in Indonesia: (i) The type of judge who, when examining, begins by asking their consciences or listening to their consciences and then looks for articles and regulations to support said decision; and (ii) the types of a judge who, when deciding, first consults with the interests of his greed and then seeks articles to give legitimacy to the decision based of his greed.²¹

The orientation of judges in handling cases as explained creates typologies of judges as illustrated in Figure 2.

²⁰ Ibid.

²¹ Satjipto Rahardjo, 'Indonesia Membutuhkan Keadilan yang Progresif' (Kompas, November 2002).

Orientation of Judges' Performance in Handling Court Cases		
Materialistic: Heavily influenced by orientations for materialistic rewards when handling cases.	Pragmatic: Heavily influenced by orientations for the difficulties when handling cases.	Idealistic: Heavily influenced by orientations of the ideal judicial values when handling cases.

Figure 2. Findings on Orientation of Judge's Performances when Handling Court Cases

2. The Importance of a Progressive Legal Approach for Judges in Handling Corruption Cases

Referring to the findings of this study, Progressive Laws are very important as a presentation for a philosophical and theoretical basis to eradicate corruption in Indonesia that experiences many moral declines and regulation failures. Progressive Law originates from dissatisfactions and concerns over the performance and quality of law enforcement in the latest Indonesian setting. Progressive Law departs from the basic assumptions that the presence of law is for humans, and not vice versa where humans are for laws. This assumption carries the consequence that the presence of the law is not for the merits of itself, but a bigger and broader purpose. Therefore, if there are legality issues, then there must be reviews and corrections of laws, without humanities forcefully included in its legal schematics. The law is not an absolute and final institution, because the law is always in the process of continuous progressions (law as a process and in the making).²²

In Progressive Law, humans are above the law. The law is only a means to guarantee and protect various human needs. The law is not an absolute and autonomous document. Progressive Laws rest on human decisions and bring the consequences of the importance of creativities in humanities. Creativity is in the context of law enforcement as an addition to the intention to overcome underdevelopment and legal inequality, which is also intended to make breakthroughs of the law. This is intended to realize humanitarian goals through the operation of the law, which is to create happiness for the citizens of the community. This also means that the rules of law must also make people happy. The spirit of progressive laws is the spirit of liberation. This liberation includes (i) Liberations from the conventional types, ways of thinking, principles, and

²² Satjipto Rahardjo, 'Hukum Progresif, Kesenambungan, Merobohkan, dan Membangun (2006) 2(1) Jurnal Hukum Progresif 5. 5-6.

theories; (ii) liberation from cultures of ruling law enforcements that have hampered the legal efforts to resolve the various problems.²³

Progressive Law encourages that in law enforcement, judges must dare to free themselves from the use of conventional patterns. The method has been done before, including in the United States. This method is called rule-breaking.²⁴ There are 3 (three) ways to do rule-breaking: (1) Use every potential knowledge and dare to find a new path and disallow yourself to be restrained by conventional ways that have hurt various sensibilities of justice; (2) The search for additional meaning to create a new measure when carrying out the law and each party involved in the law enforcement process is encouraged to ask their conscience about the deeper meaning of the law; (3) In carrying out the law, use not only logic, but also feelings, care, and involvement (compassion) to the weak group. The search for justice is not only possible from the normative aspect, but also the sociological aspect, especially when it concerns aspects of social justice and the constitutionality of laws.²⁵

The idea of Progressive Law comes from concerns over the low contribution of Legal Studies in Indonesia to help enlighten the nation out of the crisis, including the crisis in the legal field related to fighting corruption. In the Indonesian context, the importance of Progressive Law is because of experience including the failure of the law to bring corruptors to prison by law enforcement by judges. Almost the same as the experience that has been experienced by America, that the failure was caused by the submissive nature of the completeness of existing laws, such as procedures, doctrines, and principles. As a result, the law would be a haven for corruptors.²⁶

Viewed from the perspective of Progressive Laws, the methods and practices of law like that classified as being counter progressive. Therefore, there is a need for Progressive Law, under the watchwords of pro-justice and pro-people law. Progressive laws put the dedication of legal actors at the forefront. The perpetrators of the law are required to uphold honesty and sincerity in carrying out the law. They must have empathy and care for the suffering experienced by the people and this nation. The

²³ Satjipto Rahardjo, *Negara Hukum yang Membahagiakan Rakyatnya* (Genta Press, 2009) 54.

²⁴ Satjipto Rahardjo, 'Pengadilan Progresif dan Kasasi' (Kompas, February 2004) 15.

²⁵ Yusriadi, 'Paradigma Sosiologis dan Implikasinya terhadap Pengembangan Ilmu Hukum dan Penegakan Hukum di Indonesia' (Faculty of Law, Diponegoro University, February 2006) 32.

²⁶ Satjipto Rahardjo, 'Hukum Progresif: Hukum yang Membebaskan (2005) 1 (1) Jurnal Hukum Progresif 10. 12.

interests of the people, especially welfare and happiness, must be the point of orientation and the goal of the administration of law.²⁷

In a Progressive Law, the process of change does not center on regulations anymore, but on the creativity of legal actors to actualize laws in the right time and space. Actors of Progressive Law can make changes by doing "creative meaning" of existing regulations, without having to wait for changes in regulations. Bad regulations do not have to be a barrier for the perpetrators of Progressive Law to bring justice to the people and justice seekers, because they can make new interpretations of a regulation.²⁸

Based on the results of the study, it is very relevant that Progressive Law has the presentation as a basis for interpreting the law by the judge in handling cases. Progressive Law requires a holistic interpretation of a solution to legal problems so that substantive justice will be realized and not merely pursuing mere formal procedural justice. Interpretation means the granting of meaning to the regulatory text and facts and does not stop with the literal reading of the texts and facts. This is the progressive interpretation of the law, namely placing the text/facts in a particular context and then beginning its contextualization.

Progressive interpretation puts the formulation of the rules in the position of initial copies, whereas the intended product results in a deeper meaning, namely justice. Thus, the initial position of the written law is not final and absolute. Regulations only remind, wherein society there must be justice and that justice becomes formulated in the form of wordings of the legal formulation. The new justice is one thing because there are still others, such as justice, utility, *doelmatigheid*, and *billijkheid*. In other words, every time someone reads the rules, someone always has to look for the deeper meanings behind the rules.²⁹

Progressive interpretation understands the legal process as a process of liberation from legal concepts and doctrines that are outdated to serve the quality of human life today. Progressive interpretation holds to the "legal for human" paradigm, in contrast to analytical jurisprudence, where it follows the "human for law" paradigm. Humans are a symbol of reality and the dynamics of life. A lawyer must guide and serving the community. A balance is needed between "statics and dynamics" between rules and

²⁷ Ibid 3.

²⁸ Ibid 4.

²⁹ Satjipto Rahardjo, 'Penafsiran Hukum Progresif' (Faculty of Law of Diponegoro University, 2007). 6.

open roads. In the view of Progressive Law, the perception of law and justice are not of machines or robots, but as creative institutions that guide and serve the community. If the law receives the freedom of interpretation, this task becomes possible. Interpreting is the task of guiding and serving it.³⁰

The presence of progressive judges is very important in the context of law enforcement, especially for judges in courts. Judges are central figures in the judicial process. A fair judge's decision will be the peak of wisdom for solving legal problems that occur in the life of the state. Judges' verdict pronounced in the words of "FOR JUSTICE OF THE ONE ALMIGHTY GOD" shows the obligation to uphold justice, which is vertically accountable to God Almighty, also horizontally to fellow human beings (A Judge's Code of Conduct 2007, p.1).

According to Alkostar, progressive judges cannot be separated from high standard qualifications which include the mastery of scientific competence, professional skills, and personal qualities attached to judges as law enforcement subjects. From their predicate, the ethical consequences of the emergence of a judge's decision are required, which shows moral, intellectual, and emotional intelligence. The verdicts that result can provide spiritual enlightenment for parties who litigate and strengthen social cohesion in social relations.

The predicates of progressive judges are closely related to the ideology of law and judges as law enforcers. Legal ideology is the ideas or values contained in legal norms, while the judge's ideology is the judge's view of and the function of law, which will certainly affect the value and quality of legal products and/or resulting decisions. Does the judge see the law legally and formally, or seeing it meta juridically, or see the law in a socio juridical perspective perspective, or sees the law as inseparable from its social relevance.

The roles and duties of the judges are not just readers of a series of letters in the law made by the legislative bodies. But in its decision to assume the responsibility of being a voice of common sense and articulating the spirit of justice in the complexity and dynamics of people's lives. Progressive judges will select the best law for the worst circumstances.³¹

³⁰ Ibid.

³¹ Interview with AA, Supreme Court Judge in Indonesian Republic Supreme Court.

The portrait of Progressive Law Enforcement, as stated by Rahardjo, among others, refers to the existence of law enforcement figures, which are oriented towards the value of justice and the value of truth. An example of a progressive judge's ruling is the decision of Judge Davide in the Philippines in the Oposa case at the Supreme Court level in 1993, which ruled that there was a right of suing for the unborn generation to file a lawsuit based on the principle of intergenerational justice.³²

Thus, in a Progressive Law, a judge in deciding to be handed down does not merely carry out the procedure and then apply the articles of the law which are suitable for the events or situations for the appropriate punishment, but sociologically (factually) many social variables also contribute. Indeed, in the process of enforcing the law, the procedures and articles of the law must not be ignored, because they are the main facilities/equipment. However, it must be remembered that being the facilities and equipment are not the actual goals that laws should achieve. These procedures and articles are only for facilities and types of equipment that are expected to accurately deliver law enforcers to arrive at their true legal objectives. That is why the facilities/equipment must be made clear, systematic, transparent, controlled, and logical to provide certainty for the seekers of legal justice.

With that in mind, a judge when upholding the law is essentially related to fundamental issues namely justice, certainty, and social benefits. Radbruch (1961) refers to these three things as basic values which are the goals of the law. Upholding the law is an effort to make these values come true. Once again, the judicial procedures and rules are not the judicial objectives, but the means or equipment whose function is to deliver law enforcers to arrive at their judicial goals so that they become reality, namely justice, certainties, and benefits.

Being aware of this, the work of upholding the law by the judge is certainly not an easy and simple job, like turning on the engine button, if the button is pressed then all the components work automatically. This work requires a lot of energy and is required to work hard and sincerely because it relates to the "fate of humans" which is subject to the law.

The deterioration of law enforcement in Indonesia occurs because the basic values of the law have been lacked to be realized in reality, especially the values of justice, so that the ultimate goal of the law is still far from expectations. Law enforcers

³² Ibid.

have not carried out their functions appropriately and optimally to realize the objectives of the law. The function of law enforcement that should be directed to achieve legal objectives in the process of travel experiences distortion, dysfunction, or even malfunction carried out by law enforcement itself, both from the elements of judges, clerks, lawyers, police, prosecutors, and case brokers. This describes the Judicial Mafia.³³

The failure of law enforcement regarding corruption, previously described at its peak, regards that the Indonesian nation has fallen into a state of legal crisis. The crisis is abnormal conditions from various normalized institutions that organize processions in society no longer being able to carry out their functions properly. The judiciary system loses trust and prestige to realize the value of justice that needs realization. They are no longer in an authoritative position to organize and control economic, social, political procession, etc., but to function as facilities for the interests of power. The law no longer works authentically. The impact of distrust on law enforcement, some individuals then take action on their settlement, which forms the act of vigilantes (*eigenrichting*).

In a crisis or abnormal situation, there are also ways that legal solutions are needed that are not normal or extraordinary, but still within the corridor of the legal objectives. This extraordinary method does not mean acting anarchistic, but rather embracing a progressive characteristic. Extraordinary thinking, in essence, is not reading the contents of law like someone spelling texts, but as a pursuit in looking for and revealing the meaning of said law. Because of the searches for said meaning, we should act and dare to act in a rule-breaking manner. This extraordinary thinking must start from the judicial community such as judges, prosecutors, advocates, police, and academics.³⁴

Rule-breaking requires various approaches on how to resolve the law that is holistic and extra-legal (outside the rule of law) to explore the meaning of the law. The experience of legal settlements that only relies on a linear-to-formal juridical approach adds to the row of a disappointment for the seekers of justice. It is time for academics and legal practitioners to transform themselves into finding alternative approaches and

³³ Busjro Muqodas, 'Peran Komisi Yudisial RI in Pemberantasan Mafia Peradilan di Indonesia (Paper in Public Discussion of Corruption, Collusion, and Nepotism Investigation and Eradication Commission, Central Java, 2006). 2.

³⁴ Satjipto Rahardjo (n.22) 1-2.

ways of thinking to solve the varieties of increasingly convoluted and complex legal problems. The various approaches made before no longer requires contesting or blame, but instead in complementing each other's shortcomings with their respective strengths. The lawyers must be open with developments that occur which does not require alienation. Knowledge and Intelligence should be dynamic and never-ending with innovations. Progressive Law is an alternative approach to participate in fulfilling the needs for rule-breaking.

Law enforcers require progressive laws to expand and simultaneously hone multiple intelligences, namely intellectual, emotional, spiritual, and even prophetic intelligence. As a requirement for their profession, law enforcers need to manifest their doctrine in every final decision of the judicial enforcement process, which reads: 'FOR JUSTICE OF THE ONE ALMIGHTY GOD?' This doctrine requires law enforcers to develop and at the same time equip themselves with the respective knowledge needed. The concept of prophetic intelligence is a concept taken from psychology to measure the level of maturity of the personality of an individual. This concept is useful for the development of an individual personality, especially those involved in efforts to solve humanitarian problems. Prophetic Intelligence is a holistic approach in the world of psychology that unites and perfects previous approaches, namely: Cognitive Intelligence, Emotional Intelligence, Adversity Intelligence, and Spiritual Intelligence. Law enforcement requires all of this intelligence to overcome the legal crisis that occurs, especially related to the declining morality of law enforcement that has always been in the public spotlight lately.³⁵

In the end, typologies of progressive judges are formulated with the dimensions and characteristics of the following Figure 3.

Dimension	Characteristics
Basic Overview	<ol style="list-style-type: none"> 1. Judges have the beliefs that laws are for humans and not humans are for laws. 2. Judges have the beliefs that laws are not absolute figures because laws themselves are still in the process of making. 3. Judges must refuse the status-quo because it creates decadency, corruptive degeneracy, which does not benefit the interests of society. 4. Judges must view the law as closely tied to the progress of social and cultural relevancy.

³⁵ Hamdani Bakran, Prophetic Intelligence, Kecerdasan Kenabian (Islamika, 2005) 38.

Thought Process	<ol style="list-style-type: none"> 1. Judges must have the necessary spirits to release themselves from positivistic thinking when hitting a dead wall through daring to do rule-breaking; 2. Judges must be sensitive to the changes in society, be it national and international changes. 3. Judges must use the law both creatively and contextually.
Work Procedure	<ol style="list-style-type: none"> 1. Judges must be impartial in their works and only side with their beliefs of truths and justices; 2. Judges must be able to do changes through the usage of creative law interpretations to existing laws without the need to wait for additional changes to the existing laws. 3. A bad law does not become a hindrance for judges to bring justice for every member of society and every member of the seekers of justice.
Personal Qualification	<ol style="list-style-type: none"> 1. Judges must have multiple intelligences; intellectual intelligence (IQ), emotional intelligence (EQ), and spiritual intelligence (SQ). 2. Judges must have intellectual competencies and professional skills. 3. Judges must have a benevolent personality and values good morality highly.
Work Orientation	<ol style="list-style-type: none"> 1. Judges must orientate to realize a substantial amount of a just and fair law undertaking, not only stopping at a fair law procedurals. 2. Judges must not be materialistic or pragmatic in handling their court cases;

Figure 3. The Concept of Progressive Judges

E. Conclusion

This paper concludes the following matters: (1) there are weaknesses of judges in deciding corruption cases. These weaknesses are caused by the obsolete way of interpreting judges in interpreting corruption and disorienting the performance of judges in carrying out tasks that give birth to the judicial mafia. That all contributed to the failure of judges in fighting corruption in Indonesia; (2) a progressive law and judge is important to present to overcome the problem of eradicating corruption in Indonesia. In Progressive Laws, the meaning of the law is not centered on the text of the regulation, but on the creativity of judges to actualize legal values in decisions made. Progressive Judges are judges who can make creative legal interpretations of existing regulations, without having to wait for changes in regulations. Bad regulations do not have to be a barrier for progressive judges to present fair, certain, and useful laws because they can make progressive interpretations of existing regulations.

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