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## **Purpose of Implementing Progressive Law against Criminal Offenders in Order to Provide Legal Certainty and Legal Benefits**

**Muhammad Rafandi Harahap<sup>1\*</sup>, Andry Syafrial Tanjung<sup>2</sup>**

Master of Law Students at Universitas Pembangunan Pancabudi, Medan, Indonesia<sup>1</sup>

Master of Law Lecturers at Universitas Pembangunan Pancabudi, Medan, Indonesia<sup>2</sup>

Corresponding Email: muhammadrafandy26@gmail.com

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### **Abstract**

The implementation of Progressive Law Enforcement is motivated by the desire to avoid negative effects on the ineffectiveness of the criminal justice system in accommodating criminal cases so that the law enforcement process does not continue through the courts. This writing uses descriptive legal research, in which the author uses a normative juridical research type using the Library Research data collection method. This research aims to find out the philosophical basis of Progressive Law in providing legal certainty and legal benefits and the application of Progressive Law by the National Police in increasing the resolution of criminal cases. Based on the research and discussion results, a picture is obtained that law is the rules and guidelines that regulate life in society to create peace and order. Progressive legal ideas occupy a separate legal position. Various groups in handling legal cases, especially in the country, emphasize the preposition of Progressive Legal theory. Especially emphasizing the element of benefit in the form of human peace in society, nation, and state, the implementation of progressive law as an effort to improve the resolution of criminal cases requires that police investigators be able to carry out their duties and authority professionally, accountably and morally so that progressive law enforcement can be in line with legal objectives. It provides legal certainty, legal benefits, and a sense of justice.

**Keywords:** Criminal Perpetrators, Implementation of Progressive Law, Legal Benefits, Legal Certainty

### **Introduction**

Our country's "founding fathers" have launched the Continental European Legal Theory (common law) as the legal system in Indonesia. Nowadays, there are pessimistic voices about the existence of law enforcement in our country. This can be seen in the many cases handled by the National Police that have not sided with the community's interests. The case of

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Grandmother Minah (55), who stole cocoa beans from the PT plantation. Rumpun Sari Antan (RSA). Likewise, in the case of the theft of a watermelon, the two suspects served two months and faced a sentence of five years in prison. If the perpetrator is from a weak or lower class, then repressive action will not hesitate to be taken without seeking a resolution outside of court.

The National Police, as the leading subsystem of this legal system, of course, never ceases to receive attention, criticism, and blasphemy whenever it is deemed by the public to carry out their duties as not to their wishes and expectations so that to gain public trust and respect, then a change in legal culture is required that prioritizes preemptive and preventive actions rather than repressive ones (Rahardjo, 2006).

It is important for the National Police, as the front guard in law enforcement, to carry it out openly and transparently (must be open and transparent). There is an opinion among some people that the media have politicized that the National Police, in enforcing the law, has not prioritized the interests of the wider community. The Police have made various efforts to resolve reported criminal cases. One of the methods applied to increase Crime Clearance is resolving minor criminal cases, leading to a "win-win solution." This means both parties have obtained justice without going through several procedural processes up to the court level. This step Proven to be more effective in cases that result in material loss and are classified as light criminal cases (Trisusilowaty et al., 2019).

Starting from this problem, the author also contributed ideas for a "legal breakthrough" known as Progressive Law. The implementation of Progressive Law Enforcement is motivated by the desire to avoid negative effects on the ineffectiveness of the criminal justice system in accommodating criminal cases so that the law enforcement process does not continue through the courts. So, at the implementation level, it is often categorized as a form of discretion despite significant differences. In handling criminal cases at the Police level, the implementation of Progressive Law Enforcement is still the guiding aim of discretion, namely to find a way to handle minor criminal cases outside the court or formal justice system. There are similarities between the goals of discretion and Progressive Law Enforcement itself.

### **Literature Review**

According to (Rahmad & Hafis, 2020), the view of progressive law emphasizes that law is not just text. Progressive law emphasizes behavior as an internal factor more than regulations that are nothing but text. The legal scheme from behavior to text makes the law stagnant, stiff, and rigid (*a complex law, but still written*). Legal texts are not fully trusted as representations of social life. Social life emerged because humans started living together, thereby building a society. From social life, law is born. *Society* is the entity that causes the law to operate. Without social life, the law becomes lifeless; if it is not alive, then the law is just text. A progressive method of law rejects rigid attachment to regulatory texts but instead relies on human behavior, of course, good behavior,

The existence of laws in society helps serve human needs and aims to provide justice, legal certainty, and benefits. The idea of progressive law emerged to emphasize that law is not just text but places more importance on behavior or humanity as a factor in law. Progressive law adheres to formal bureaucratic procedural matters and substantive material. It must be remembered that this law is not necessarily free from existing regulations (Sujono & Nugroho, 2023). Instead, it collaborates with existing rules, but what is prioritized is sensitivity to behavior and the social impact of the law itself. Judges, as parties tasked with enforcing the law, have the freedom to decide cases based on their thoughts and conscience. When choosing something, a judge should not only use written law but must pay attention to living values and fulfill the sense of justice of the community concerned or the social environment. Judges have a significant and strategic role in distributing justice *for people* with the courage to do rule-breaking. This noble mission will be realized if judges dedicate themselves as guardians and enforcers of justice. The legal interpretation that is carried out seriously is an implementation of the spirit of progressive law, namely the spirit of liberation, to find and realize justice in the text of laws that are sometimes unclear or do not yet have regulations.

According to (Putri, 2022), the main principle used as the basis for progressive law is: "Law is for humans," not the other way around, humans who are forced into the legal scheme. Even the law is not made for itself (law for law). So, it is humans who are the determinants, and it is understood that, in this case, humans are good. This principle wants to shift the theoretical basis from legal to human factors. As a consequence, the law is not something absolute and final. Still, it is always "in the process of becoming" (law as process, law in the making), namely towards perfection in the sense of becoming a just law, a law capable of realizing prosperity, or a law that cares for the people (Putra & Rahayuningsih, 2023). Therefore, progressive law does not place favorable legal rules as a complete source of law. Humans must be able to give meaning to a legal rule beyond the written text to realize substantive justice. This principle has inspired legal workers to practice progressive law enforcement.

The need for law enforcement officials to make legal breakthroughs or legal discoveries when positive law limits the space for law enforcement officials to implement the law and must look at essential things needed by society because the nature of the law must be dynamic by developments in the times and society in a country. Progressive law enforcement on extraordinary crimes such as Corruption Crimes is essential, considering that this crime has become a chronic epidemic in Indonesia but remains in a capacity that is in line with and in line with positive law in Indonesia, thus making the perspective or point of view of law enforcement officials better. Broad and open in the context of law enforcement.

## **Research Methods**

The type of research used in this research is normative legal research methods or library legal research (study approach). Namely, legal research was carried out by reviewing library materials, namely primary and secondary data. The legal materials are arranged systematically to make drawing conclusions from the problems studied easier. In approaching this problem, the normative Judicial approach method was used.

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This approach is an approach to applicable laws and regulations. The legislative approach examines all statutory regulations related to the content of the law being handled. The normative juridical problem approach is an approach used to approach statutory regulations (statute approach); this approach examines statutory regulations related to the legal regulations of the problem being studied. A conceptual approach is also used to look at legal concepts related to existing problems.

### **Result and Discussion**

#### **A. Philosophical Foundations of Progressive Law**

According to Satjipto Rahardjo, since modern law was used, the court has no longer been a place for seeking justice but has become an institution focusing on rules and procedures. Law is then understood solely as a state product through statutory regulations (Elviandri, 2019; Sukadi, 2011)

Therefore, for Satjipto Rahardjo, the law is not a final scheme (finite scheme) but continues to move and change, following the dynamics of human life. The law must continue to be dissected and explored through progressive efforts to reach the light of truth in achieving justice (Rahardjo, 2010; Sinaga, 2022).

Law is the rules and guidelines regulating society's life to create peace and order. Progressive legal ideas occupy a separate legal position. Various groups in handling legal cases, especially in the country, emphasize the preposition of Progressive Legal theory. The emphasis is especially on the element of benefit in the form of human peace in society, nation, and state. Legal thinking must return to its basic philosophy: law for humans. With this philosophy, humans become the determinant and point of orientation for law. The law is tasked with serving humans, not the other way around.

Therefore, law is not an institution that is free from human interests. The quality of law is determined by its ability to serve human welfare. This causes Progressive Law to embrace the ideology of "pro-justice law and pro-people law." With this ideology, the dedication of legal practitioners takes a primary place carry out recovery. Legal actors are required to prioritize honesty and sincerity in law enforcement. They must have four and care about the suffering experienced by the people and this nation. The interests of the people (their welfare and happiness) must be the point of orientation and the ultimate goal of administering the law. The assumptions underlying legal progressivism are:

- 1) The law is for man and not for himself.
- 2) The law is always in the status of law in the making and is not final
- 3) Law is an institution with humanitarian morals and not technology with no conscience (Nawawi, 1984).

The assumption underlying legal progressivism emphasizes that progressive law is liberating law. "Law for humans" means that if there are obstacles to their achievement,

liberations are carried out in knowledge, theory, and practice. The Progressive Legal Perspective is not pragmatic and rigid, working on law solely using "rule and logic" or *rechtsdogmatigheid*, with a linear, marginal, and deterministic line of thinking.

The Progressive Law paradigm will always seek justice and legal benefits and must dare to move away from the linear, marginal, and deterministic path and move more towards a law that is always in the process (law as process, law in the making) (Rahardjo, 2010).

### **Progressive Law Enforcement Theory**

According to Satjipto Rahardjo, law enforcement always involves humans and human behavior. The law cannot be enforced by itself, meaning that the law cannot realize the promises and desires contained in legal (regulations) on its own. These promises and wishes, for example, to give rights to someone, give protection for someone, imposing a penalty on someone who meets certain requirements, and so on. Furthermore, Satjipto Rahardjo also stated that law enforcement is an effort to transform abstract ideas and concepts into reality, including ideas about justice, truth, and legal certainty (Rahardjo, 2010).

Law enforcement begins when legal regulations are made or created. Formulating the lawmaker's thoughts as expressed in legal regulations will also determine how law enforcement is carried out. Law enforcement requires legal institutions such as judges, prosecutors, advocates, and Police. Each institution works by influencing each other to realize legal objectives. Therefore, law enforcement does not work in a vacuum and is impermeable to influence; instead, it always interacts with the larger social sphere. Progressive efforts in law enforcement encouraged Satjipto Rahardjo to give birth to the concept of Progressive Law Enforcement. Progressive Law Enforcement is implementing the law not just according to the black-and-white words of the regulations (according to the letter) but according to the spirit and deeper meaning (to the very meaning) of the statute or law. Law enforcement is done not only with intellectual intelligence but also with spiritual intelligence (Rahardjo, 2010).

In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the nation's suffering, and courage to look for other ways than usual. According to Satjipto Raharjo, thinking progressively means having the courage to move away from thinking about legal absolutism and then placing the law in a relative position.

In this case, the law must be placed in all humanitarian matters. Towards a Progressive way of law is a willingness and readiness to free oneself from legal-positivistic understanding. The idea of self-liberation is closely related to the psychological factors that exist within the enforcers the law is courage. This courage factor expands the way of law, namely not only prioritizing aspects of regulations (rules) but also aspects of behavior (behavior).<sup>10</sup>

### **A. Implementation of Progressive Law by the National Police in Increasing the Settlement of Criminal Cases**

Nowadays, most law enforcement officials have reduced the understanding that enforcing the law is the same as enforcing the law. This understanding implies that law

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(legislation) becomes the center of attention. In reality, law enforcement issues cannot only be seen from the legal aspect but must be seen as a whole, involving all elements, such as morals, behavior, and culture. Therefore, a new orientation and perspective in law enforcement is needed, namely by changing the perspective, mindset, and paradigm of law enforcement officers, which no longer places the law as the center but instead shifts to humans. Humans are the center or center of law.

The law is only a guideline for enforcing the law, not a normative rule that one's will must follow. This is what became known as the idea of Progressive Law. Satjipto Rahardjo, through his thoughts on Progressive Law, has provided a legal concept with a new perspective, spirit, and 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, be able to respond to changes in the times with all the basics in them, and be able to serve society by relying on the moral aspects of the law enforcement human resources themselves. 11

It is possible for the Progressive Law put forward by Satjipto Rahardjo to be implemented in the law enforcement process, considering that the law enforcement implemented so far cannot run effectively and efficiently. Enforcement institutions have carried out law enforcement.

The law has been far from a sense of justice in society. Law enforcement through a Progressive Law approach will be more effective and efficient in realizing the objectives of the law itself, namely a sense of social justice, without reducing/overriding other legal objectives, namely legal certainty and legal benefits, especially in cases of criminal acts where the perpetrator is from a weak or lower class. (lower class), as well as cases that result in material loss and are classified as light criminal cases.

The implementation of Progressive Law as an effort to improve the resolution of criminal cases requires that National Police Investigators be able to carry out their duties and authority professionally, accountably, and morally so that Progressive Law Enforcement can be in line with the objectives of the law itself, namely providing legal certainty, legal benefits and a sense of justice in society. Therefore, the implementation of this Progressive Law requires readiness for the Police in terms of increasing the quality and quantity of Polri human resources, strategic policies in carrying out duties and authority, as well as increasing supervision of the attitudes and behavior of Police Investigators through empowering the investigative supervision function. The National Police also needs public support and trust in law enforcement efforts by increasing the resolution of criminal cases through implementing Progressive Law Enforcement, quickly, cheaply, and with legal certainty, legal justice, and benefits.

With internal improvements in the National Police and strong support from the community, it is hoped that progressive law enforcement with substantive justice will be realized in order to improve the resolution of criminal cases by upholding the values of legal rules and norms that apply in society so that they can meet expectations. Society will realize legal certainty, legal justice, and legal benefits.

### **A. Alternative Resolution of Criminal Cases to Provide Legal Certainty**

Law enforcement mandated by the constitution is essentially based on law (*rechstaat*) and not on mere power (*machstaat*). However, this constitutional basis is often interpreted narrowly by viewing the law as only understood through legal-positivistic thinking; that is, the law is only limited to formulating statutory regulations. Statutory regulations do not just formulate law but have a deeper meaning (to the very meaning) to realize the objectives of the law itself. Satjipto Rahardjo raised the awareness of all parties involved that it turns out that the law is constantly moving, changing to follow the dynamics of human life so that it can create harmony, peace, order, and social welfare. The law is for humans and the law shackles non-humans.

Progressive Legal Theory generally worries about legal methods because of the possibility of errors or lack of accuracy in understanding legal fundamentals, so legal development cannot be directed to the right goals. The existing reality shows that law enforcement is only based on formulating statutory regulations (F. S. Nugroho, 2023; Zaidan, 2022).

This then forces law enforcement institutions to be the mouthpiece of the law without any space and willingness to act progressively when the law enforcement carried out is no longer able to present the spirit and substance of the existence of the law itself, as in the case of Minah's grandmother who stole seeds. Cocoa and the case of theft of a watermelon, where these cases are categorized as minor crimes.

The completion of the handling of minor criminal cases in the case of Minah's grandmother, as well as the case of theft of a watermelon, which was handled by the National Police and other law enforcement institutions, shows that the National Police Investigators only based the formulation of the articles included in the law by handing over these cases. To court without having Courage to seek alternative solutions to minor criminal cases outside of court.

The completion of the handling of this minor crime case shows that there was coercion of the will of law enforcement institutions regarding alleged minor criminal acts, resulting in being forced to go to trial. Forcing the resolution of minor criminal cases that end up in court will obscure the professionalism and proportionality of law enforcement officials, including investigators, public prosecutors, and judges. Therefore, National Police Investigators, as the spearhead in resolving cases of minor crimes, must be able to act progressively by looking for alternative solutions without following the usual process, namely through the courts (Hartini, 2010; Hutajulu et al., 2014).

For example, through a peaceful settlement and legal certainty regarding law enforcement by terminating the investigation. This alternative solution for handling minor criminal cases is not intended to obscure or exclude legal certainty precisely because law enforcement in minor criminal cases that end up in court cannot present the spirit and substance of the existence of law, namely, creating harmony, peace, order, and social welfare.

Therefore, the alternative solution for handling minor criminal cases outside of court

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supports the creation of a judicial process that is cheap, simple, and can protect human rights, as well as the existence of checks and balances or balances in enforcing material criminal law in order to seek material truth in the context of realizing legal certainty that is oriented towards the community's sense of justice. Legal certainty in alternative solutions for handling minor criminal cases outside of court aligns with the Progressive Law paradigm. Progressive Law does not exclude the law itself, but creativity in interpreting the law progressively with a logical line of thinking that touches justice in society. The implementation of the Progressive Legal Paradigm has put the law in place. He is more honorable and functional because he appears as a humanist who places human interests above the law.

Even though the progressive legal paradigm places humans at the core or center of the operation of the law and tries to release the shackles of legal rigidity in the meaning of the text of the law, this does not mean that this negates the law. So that the progressive legal paradigm is not trapped in absolutism, in the sense of eliminating the rule of law, the progressive concept should be rooted in the attitude of "Respecting and Placing the Law as a Basis Even though It is Not Absolute." (S. S. Nugroho & SH, 2019; Prasetyo, 2024)

This alternative out-of-court settlement is not a procedure that requires the National Police to use but is a resolution option for criminal case handlers. Alternative solutions outside of court cannot be applied to all types of criminal acts but can only be applied to minor crimes where the perpetrator is from a weak or lower class and has disturbed society's sense of justice, as well as cases that result in material losses and classified as a light criminal case.

The alternative out-of-court settlement carried out by the National Police is a form of implementing Progressive Law, which will depend heavily on subjective assessments. Progressive Polri behavior will always reject all assumptions that legal institutions are final and absolute institutions; on the contrary, progressive Polri behavior believes that legal institutions are always in the process of continuing to become (law as a process, law in the making). The progressive behavior of the National Police positions itself as a "liberation" force, freeing itself from legal-positivist types, ways of thinking, principles, and legal theories. This means that the Police's behavior prioritizes objectives rather than procedures (Jainah, 2021; Samodra, 2022).

## **Conclusion**

The context of legislative products that needs to be considered is that they are not seen as the result of professional work but as objects of knowledge. The development of pro-bono legal assistance for people experiencing poverty, formulated since the 80s, underlies the ICCPR as a basis for protecting human rights. Pro Bono for low-income people is a question of whether it is discriminatory or a matter of legal loyalty, which is not intended for all Indonesian citizens. Progressive law aims at moral aspects and incorporates values/moral principles in forming law. So, pro bono for low-income people is often considered a progressive step as the government's obligation to protect the nation and achieve justice before the law. Reading the law is interpreting the law; therefore, legal interpretation is the heart of



the law. So, a law with the form of *lex scripta* must maintain legal certainty, and law enforcers must take the view that law is not just a collection of norms and logic. However, we should look at conscience through empathy, honesty, and courage. So, prophetic intelligence is a progressive pillar that allows humans to transform themselves through interaction, socialization, and adaptation.

Progressive law indeed emerged from our concern regarding the need for more success in how we use the law to help solve the big problems of our nation and state. Since progressive law holds many alternatives to the old legal methods, it needs to be deployed, starting from reconceptualizing law, law enforcement paradigms, law-making, and legal education.

Alternative solutions for handling criminal cases outside of court, especially for minor crimes that have disturbed the community's sense of justice, strongly support the creation of a judicial process that is cheap, simple, and can protect human rights in the context of realizing legal certainty that is oriented towards the community's sense of justice.

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