

# PROGRESSIVE LEGAL CONCEPTIONS IN REGULATION OF CRIMINAL ACTIONS OF CORRUPTION IN INDONESIA

RASHDA BINTANG MUHAMMAD<sup>1</sup> and YUDHO TARUNO MURYANTO<sup>2</sup>

<sup>1</sup> Master of Law, Sebelas Maret University, Indonesia. E-mail: bintangmuhammed@gmail.com

<sup>2</sup> Faculty of Law Sebelas Maret University, Indonesia. E-mail: yudhotarunomuryanto@staff.uns.ac.id

## Abstract

Corruption is a white-collar crime that law enforcement officers are professionally qualified in eradicating this crime. Requiring a legal paradigm that is based on justice. The concept of law puts forward the sociology of law rather than legal by relying on perspective law progressive. The purpose of this research is to find out the obstacles faced by the law Commission Eradication in eradicating corruption and the actualization of the concept of progressive law in regulating criminal acts in Indonesia. The research method used is normative legal research using a statutory approach. The collection of legal materials in this study used a document study collection technique. The results of this study indicate that law enforcement carried out by law enforcement officers has problems with law enforcement officers. In this case, individuals are authorized to enforce the law. Progressive law can be an alternative as well as a solution in law enforcement that reflects the values of justice in society. With progressive law, law enforcers must have a progressive perspective so that they are not confined to legal formalism to uphold the values of justice in society

**Keywords:** Law Enforcement Institutions; Progressive; Justice.

## 1. INTRODUCTION

Corruption has become a kind of daily phenomenon in Indonesia. Various institutions, actions, and studies are carried out in a series of large actions which are usually under the title: "eradicating corruption". Along with these efforts, scepticism spreads around the actions and discourses of eradicating corruption, both those that are critical-constructive from the supporters or anti-corruption fighters, as well as those who weaken politically from a circle of collusive elites who feel threatened by their interests. That matter shows that the issue of law enforcement to eradicate corruption is not just the intention or achievement of the KPK, but also the responsibilities of various parties, starting from advocacy and monitoring agencies, existing legal institutions, to the Indonesian people themselves. Corruption or eradication of corruption is more rightly said as a social phenomenon that because it is considered a nation's culture and its eradication on the path of enforcement law should be able to touch the point like that. Inability to understand will result in stagnation, or worse, the decadence of ideas and anti-corruption measures because there are also opinions that say that corruption has entered widely into the organization of the mentality and spirit of society. Therefore, the most exposed to the target of criticism when things happen is the field of law enforcement and the agents and structures that work within it. Wider and farther even, the law graduates with legal scientific educational institutions that ultimately deserve to be responsible for it. As has been offended, signs of this kind of scepticism have as appeared and the signal is getting stronger with the emergence of ideas about the weakness of eradicating corruption that relies on only law enforcement mechanisms.

Mungiu-Pappidi himself firmly believes that anti-corruption movements often fail because they are essentially non-political movements, although there are indeed differences in the characteristics of corruption between developed and developing countries. Mungiu-Pappidi's depiction has an inquisitively point, where what is suggested by a political improvement is an endeavor to advance the plan of scattering of control in society, to be particular through a common choice change (optional guerilla) to demolish the organize of control organizations in society that has as of presently been held captive by deteriorate predators. That character of corruption by Mungiu Papidi is referred to as a particularism technique because it diverts distribution for the public interest to the vicious circle of the corruptor's power.

Progressive law aims to be able to apply scientific principles so that it can manage the economy, society, and politics of a country. It is believed that progressive legal theory will also provide a solution to social conflicts and improve economic order. Justice is an essential need for everyone, especially when it comes to legal issues. Because progressive law focuses on the needs of the community, not on legal certainty, it certainly has its effect on criminal law, specifically on the principle of legality (Christianto, 2011; Hayati, 2016). In principle, justice and legal certainty are two important elements in protecting the interests of the community at large. Therefore, it is of particular concern to see whether the concept of progressive law has been articulated in both positive law and future law.

Implementing the law does not always follow a statutory approach, but with dedication, empathy, determination, and commitment to the nation's problems, so that it can be produced solution ideas for the welfare of the people as formulated in the 1945 Constitution of the Republic of Indonesia. In achieving this goal, progressive law has a close relationship with the government. It is not only the government as a law enforcement officer who is concerned with progressive legal theory but the active participation and action of the people.

At the authorization level, energetic law improvements are outlined through the utilize of propriety or legal breakthroughs (portion breaking) by energetic law necessity administrators, who utilize their pro to secure the interface of the down and out and marginalized. Laws at the regional and remote levels run creatively, as explained in Woodhouse (2005), law enforcers at the local level make things beyond job descriptions that cannot be reached. They make the task more effective, the settlement of and cases is faster and shorter while still being based on the existing law (Rahardjo, 2010).

In law enforcement in Indonesia, the position and function of law enforcement agencies play a major role in its implementation. Law enforcement officials in maintaining their institutions, both their existence and their profiles, theoretically must refer to the conception of state law and practical normative directions based on applicable laws and regulations. The duties and authorities of law enforcement agencies have been established as institutions related to judicial power in law enforcement. They must uphold the rule of law as an absolute requirement in maintaining the life of society, nation, and state. As stated by Supriyono & Kusumawati, I. (2020) law and its enforcement in Indonesia should use the concept of humanist law for the sake of justice and the prosperity of society.

The progress of information and technology (IT) certainly affects the development of the method of operand crime in Indonesia. The problem that is often found in developing countries is corruption which can be said to be the most prominent crime. It can be said that typically since these exceptional organized and efficient steps, prioritizes consistency in prevention and law enforcement.

Finally, the publics believe within the law and its authorization officers started to blur, since numerous issues were not unraveled by the pertinent law (Arif, 2019). Law is not seen as a solution provider; it becomes a separate problem for law enforcement. Our legal world doesn't seem to have changed much. It is getting further away from the sense of justice. Amidst the poverty and suffering experienced by the people of Indonesia, the law fails to provide justice. Based on the description of the problems described above, the main problems can be defined, including: a) Progressive Legal Formulation on Criminal Law in Indonesia, b) What are the obstacles faced by Law Enforcement Institutions in efforts to enforce the law to eradicate corruption? c) How is the actualization of the concept of progressive law in the regulation of criminal acts in Indonesia? So, this research is written in an article entitled PROGRESSIVE LEGAL CONCEPTIONS IN REGULATION OF CRIMINAL ACTIONS OF CORRUPTION IN INDONESIA.

## 2. METHOD

The type of research used in writing is normative research. Normative legal research uses a statutory approach and a conceptual approach because what is being studied are various legal rules that are the focus of research as well as the theme of research, and research approaches that sometimes point to general things or objects, which attracts attention from the point of view of science. In this case, the science of law. In this research, the sources used are primary, secondary, and tertiary legal materials. The primary legal materials include the KUHP, the law on judicial power, and other laws and regulations that are related to the problem to be solved in this research. Secondary sources of legal material are taken from literature, legal book, and scientific journals that discuss the problems in this research, and tertiary legal sources are legal materials obtained from internet searches or websites that can be used to answer existing problems in this research.

The legal material that has been obtained in this research uses a document study collection technique or what is often referred to as a legal material collection technique quoted from laws and regulations related to the research taken. Then the technique of collecting legal library materials collects material by taking on literature, books, and also scientific works related to research, and also internet studies, techniques for collecting legal materials from the internet or social media that are related to the research being researched. In processing and analysis using descriptive methods.

### 3. ANALYSIS AND DISCUSSION

#### 3.1 Formulation of Progressive Law on Criminal Law in Indonesia

The definition of progressive law according to Satjipto Rahardjo includes:

- a. Humans are good; this trait becomes the capital in building a legal life. Law is only an instrument or tool used to benefit the world and humanity.
- b. The principle is that progressive law is in favor of the people, pro-justice. Justice must be placed above formal rules. Law enforcers are expected to be able to carry out 'legal mobilization' if the rules textually have injured the people's sense of justice.
- c. The role of the public is a progressive legal encouragement. Since the law is considered to have constrained capabilities. Entrusting everything to the power of law is unrealistic and wrong. Public power is currently going down under the domination of modern law or state law. The presence of progressive law is to re-mobilize the role of society.
- d. Building a conscientious rule of law is a progressive legal ideal. The culture that is built in a legal state is "the cultural primacy", the culture of making people happy. This situation can be achieved if you prioritize "a state with a conscience" rather than "the legal structure of the state".

During the drafting of the RUU KUHP, the conflict over the regulation of the laws that live in the community in the RUU KUHP continued in the meetings to discuss the RUU KUHP in the DPR RI. Several factions criticized both ideologically and the effectiveness of the implementation of the regulation. Many bunches communicated that: in case what is suggested by living law in society is standard criminal law, at that point this course of action is inverse to the rule of legitimacy, as certified in Chapter 1 entry (1) of the RUU KUHP. The un-bias principle of legality cannot be applied to an unwritten law, in this case, customary criminal law. In addition, the applicability of laws that live in society contradicts Chapter 1 paragraph (2) concerning the prohibition of analogies. Even factions openly request that Chapter 2 paragraph (1) concerning the recognition of laws that live in society, should be repealed. Regarding this conflict, the team of RUU KUHP has always expressed the view that the recognition of the law that lives in society is a mission to realize the uniqueness of criminal law in Indonesia (decolonization).

It is emphasized in the 1945 Constitution that the judiciary is one of the powers of the state. This power is specifically granted to carry out judicial functions. The formulation related to judicial power has not been clear since the establishment of the Indonesian state. The current judicial law is Law no. 48 of 2009 concerning Judicial Power. Judges have the authority to seek, interpret, and apply legal provisions when deciding a case does not mean that there are no restrictions imposed. Judges cannot act freely. As confirmed in Chapter 1 point 1 of Law no. 48 of 2009 which states that judges must keep their gaze on judicial duties.

#### 3.2 Obstacles Faced by Law Enforcement Agencies in Combating Corruption

Judges are still expected to have the task of balancing legal certainty and justice in each of their decisions. Judges are obliged to explore the norms that apply in society as an objective measure

and the truth of the decisions taken are based on the values of Pancasila. Judges in making decisions must have a clear legal basis and provide a sense of justice. As we have seen, law enforcement officers in carrying out their duties and authorities sometimes experience disturbances as well as challenges in some of the cases they encounter. Many of the obstacles faced in eradicating corruption stem from the dynamics of Law Enforcement Agencies (Fachner, George & Thorkildsen, 2016). Indeed, they should uphold the rule of law as an absolute requirement in maintaining the life of society, nation, and state. In law enforcement in Indonesia, the position and function of law enforcement agencies have a central role. Law enforcement officials in maintaining their institutions, both their existence and their profiles, theoretically must refer to the conception of state law and practical normative directions based on applicable laws and regulations.

The criminal justice system for corruption is special, so the investigation, prosecution, judiciary, and even the institutions that handle these cases, are distinguished from law enforcement agencies in general. This means that the eradication of corruption can only be carried out by the Komisi Pemberantasan Korupsi (KPK) to carry out investigations, while those who carry out prosecutions are the Pengadilan Tipikor (Pengadilan Tindak Pidana Korupsi) and LSM that are oriented toward corruption. They are called by the super body's institution since it has colossal master to demolish corruption, the KPK has the pro to require over, look at, and arraign those carried out by the police and the prosecutor's office. The granting of this great authority is an effort by the state to fully support the KPK in eradicating corruption. With this great authority, we certainly hope that the KPK can take progressive action in eradicating corruption in Indonesia. Law enforcement agencies must have leaders who have the characteristics of acting correctly, responsibly, transparently, and intelligently in thinking<sup>1</sup>.

However, it can be seen that the handling of corruption eradication in Indonesia is still experiencing obstacles in it, such as the following:

a. Law enforcement factors

Stakeholders are still unreliable because of the tendency to prioritize personal affairs rather than professional ethics that must be adhered to.

b. Synergy between organizations

Most organizations that handle corruption cases still highlight their respective institutions, so it appears that there is a lack of integrated cooperation between them in eradicating these cases.

c. Regulations that regulate

Some of the regulations that have been made are suspected to indicate legalizing corrupt practices.

d. Awareness of the surrounding community

People who witness corruption are still reluctant to report the incident, which is even worse if they receive bribes so as not to report the perpetrator's actions.

e. The education factor of the perpetrators of corruption

Most of the corruption cases involving the perpetrators of these acts are highly educated people, therefore they get a high position in the work. So, it is likely to abuse its power by committing criminal acts of corruption.<sup>1</sup>

Ideally, law enforcers (Sidharta, 2007) need to see and pay attention to the Tri Atmaka or three characters and essences, that are single, independent, and quality; also, Tri Karma Adyaksa who upholds the qualities of Satya, Adhy, and Wicaksana or Loyalty, Perfection, and Wisdom. The community here is expected to participate in surveillance. As in the process of making regulations, the community is useful for anticipating the emergence of regulations that have multiple interpretations so that they can be used by a group of people for certain purposes. The part that must be monitored by the community is the operational activities of the government. Monitoring methods can be done with a network system, such as forming an LSM<sup>2</sup>.

### 3.3 Actualization of the Concept of Progressive Law in the Regulation of Criminal Acts in Indonesia

Progressive law is an idea that wants to find a more meaningful way of overcoming legal adversity, in terms of faster changes, fundamental reversals, releases, breakthroughs, and others. These procedures are carried out by emphasizing "law for individuals and not awful propensity versa for individuals for the law", "lawing significantly, not erroneously", and "judging comprehensively, not skeleton calmly".

Satjipto Rahardjo in his book *Progressive Law: Action, Not Text* states that progressive law will proceed when law enforcers are wise and creative in doing so because, in essence, the change lies in the contextual interpretation of the law (Rahardjo, 2004). In line with this thought, success in carrying out legal settlements must be measured by consistent law enforcement, both morally preventive and morally proactive, so it is not only based on existing laws and regulations (Atmasmita, 2004). By considering a progressive legal approach, the idea of law enforcement is not only to carry out the law but also to understand the legal desires of the community. Therefore, when a regulation (Kristiana, 2009) is seen as threatening law enforcement, the creativity of law enforcement is required to be able to produce legal products that accommodate the will of the community and concentrate on the values that live in society. In line with the above thought, Mahfud (2007) states that law enforcement efforts in Indonesia require unconventional actions<sup>3</sup>.

The implementation and application of Law No. 8 of 2010 concerning the Prevention of Money Laundering can also be said to be problematic in eradicating corruption, particularly regarding the eradication of corruption at the Kejaksaan Agung Republik Indonesia. Therefore, eradicating corruption, especially in each region, has not created a frightening deterrent effect for corruptors and their partners. The presence of the Komisi Pemberantasan Korupsi (KPK)

to assist in the implementation of corruption eradication presents a challenge for the Kejaksaan Agung Republik Indonesia to be more introspective to increase its role and professionalism in dealing with corruption. Take the case of the Indonesian Minister of Social Affairs, Juliari Batubara, who received a sentence of only 12 years in prison. If viewed from the perspective of progressive legal theory, the punishment should be the death penalty. Because it is based on the sociology of law, the disadvantaged here is the state of Indonesia where the condition of the people at that time was experiencing an economic crisis. So, the punishment according to the theory of Progressive Law is the death penalty, which is based on justice for all Indonesian people<sup>4</sup>.

Looking at another example, the Corruption Eradication Commission arrested Prosecutor Urip Tri Gunawan for a corruption case. Likewise, the Public Prosecutor, Cirus Sinaga, was forced to serve a sentence for cooperating with Gayus Tambunan. However, in the era of democracy and with Information Technology (IT) which is very developed. The guidance of the bearers at the Kejaksaan Agung Republik Indonesia (Prosecutor General of the Republic of Indonesia) does not publish the work performance of several members of the Kejaksaan Agung who received disciplinary punishment and or were fired. Some corruption cases even involve law enforcement officers such as the former chairman of the Kejaksaan Negeri (Prosecutor General) Praya, Central Lombok, West Nusa Tenggara, Subri. SH was sentenced to 12 years in prison for accepting bribes for an assembly of Tipikor. These things show the low integrity of law enforcement officers in the context of dealing with corruption.

Refer to the things above and see how inefficient conventional crime law enforcement methods are (Muladi, 1995) [39]. In particular, in dealing with the current modus operandi of corruption, which is systematic and widespread, and tends to become an extraordinary crime, as well as responding to concerns about uncontrolled human rights violations. Therefore, a new law enforcement model is needed based on progressive legal principles that place the interests of the nation and state or the economic and social rights of the people above the rights and interests of the individual suspects or defendants. The success of solving legal problems from corruption will bring the spirit of law enforcement and the apparatus themselves in dealing with existing corruption.

On the other hand, progressive law that rests on humans requires creativity. Creativity in the context of law enforcement, apart from overcoming legal backwardness, overcoming legal inequality, also means making legal innovations. These innovations (Kristina, 2009), which are expected to be able to realize humanitarian goals through the law, are referred to as happy laws by Satjipto Rahardjo. According to Satjipto Rahardjo, to verify the quality of the law, the benchmarks that can be indicators are justice, prosperity, and taking sides with the people. Therefore, when the law becomes the realization of law enforcement (Sudarto, 1983), the entire process of law enforcement instruments must be returned to the question of whether it has brought justice. To begin with, judges with the control they have can consider the social setting of the community in making choices. Moment, judges, prosecutors, and attorneys can certainly examine together related to debasement violations committed by people and make choices with the inspiration to supply social equity for all Indonesian individuals for the realization of

Pancasila within the life of the country and state. In law authorization in Indonesia, judges generally only center on lawful certainty (*rechtszekerheid*) and don't prioritize equity (*justisia*). While the law plays an imperative part in realizing the welfare of society. This part will as it were be realized on the off chance that the substance of the law is really in favor of the interface of the more extensive community and law requirement by law authorization on-screen characters, and prioritizes the values of equity since the quintessence and quintessence of law is equity (*gerechtigheid*)<sup>5</sup>.

In addition to judicial power, the power to enforce the law is also the duty and authority of the police and prosecutors. Therefore, it is necessary to reconstruct and redefine the powers of law enforcement. The KPK has enormous authority and is even said to be a super body to eradicate corruption. KPK has the authority to take over investigations.

Examinations, and indictments carried out by the police and prosecutors. The giving of this extraordinary specialist is an exertion by the state to completely back the KPK in annihilating debasement. Among other things, campaigning for the soul of anti-corruption, expanding ethical instruction and information, and partaking in administering the government. On the off chance that supervision isn't carried out, inner debasement happens. The community is exceedingly anticipated to play a part in supervision. For illustration, in making directions. Expecting the rise of directions that have numerous elucidations so that they can be utilized by a bunch of individuals for certain interface, the making of these controls must be protected as well as conceivable (Reda, Budiarta, and Widyantara 2020).

Here the law has experienced a shift in the form of the law, from the law that appears immediately (*interactional law*) becomes law that is made and promulgated (*legislated law*). Since it became law in the form of text, language has played a major role. Law is something in the form of language (*talig*, Dutch) or a language game. Without realizing it or realizing it, the way of punishment has also entered a new dimension, namely judging by/through schemes. The legal stage has changed from the real world to the virtual world, consisting of sentences and words. The change can also be interpreted as a development from a whole to something that is reduced. Every time we make a written formula, every time we reduce a whole idea into a sentence structure. Since the law has changed from the substance of justice and living with justice into text, schemes, and language, then we are dealing with a substitute substance (*surrogate*), no longer original goods. There we are no longer talking about the "real law", but "legal corpses"<sup>6</sup>.

Such provisions are certainly not in line with the paradigm of progressive law, in progressive law, where the paradigmatic choice that places humans above the law, because the law is for humans, brings consequences to the way of law, that the text of regulations is not something final and must be sacred or cult. The progressive way of law refuses to rigidly adhere to the text of the rules, but leaves it up to human behavior. Of course, in this case, it is good behavior. If human interests and human desires, then the text of the regulation can be ignored.

#### 4. CONCLUSION

To be successful in eradicating corruption in Indonesia, the synergy between the institutions is certainly a major factor in determining success. The context of implementing progressive law in the context of eradicating corruption is certainly varied. First, the judge with the power they have can explore the values that live in society and make decisions. Second, judges, prosecutors, and lawyers can certainly discuss together that related the corruption crimes committed. Next with the great authority possessed by the KPK, we certainly hope that the KPK can take progressive actions in eradicating corruption in the country. We certainly trust that the open can be dynamic in managing with the issue of debasement. A few things can be done by the community, expanding the control of control over approaches made by the government related to debasement, overseeing how law requirement is running and can set up LSM as a control work. In addition, the morality of law enforcement, community participation, and non-governmental organizations are factors that determine the actualization of progressive law in the enforcement of criminal acts of corruption in Indonesia. As stated in the progressive theory, the active role of the community is very influential in achieving a goal, as well as in the implementation of eradicating corruption where the people are expected to have a stronger awareness in helping to eradicate existing corruption.

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