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JUSTIFICATION OF PANCASILA LAW STATE AS AN EFFORT TO REALIZE INDONESIAN PROGRESSIVE LAW

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Abstract

The law is actually present for humans, and not the other way around. It means that the law must be able to meet human needs that aim and lead to complete substantive justice. Pancasila and progressive law theory have fully accommodated that spirit, the second and fifth precepts are the two Pancasila precepts which expressly carry the spirit of justice as one of its main spirits. Justification for Pancasila values that have been accommodated in the context of the Indonesian rule of law is important to be juxtaposed with progressive law theory, because both will be able to reach the culmination of substantive justice, the goal of law, namely legal justice, legal expediency and legal certainty in a linear and parallel position. Law enforcers, especially judges, have an important role in implementing and building the legal structure of the Pancasila law state, one of the roles that became the main spearhead is justice for people with rule breaking efforts. Legislators also play an important role, the stages and process of legislation is one part of the frame of the fundamental structure of the Pancasila law state because at the stage of soul of spirit the regulation was formed. The participation of the community and related stake holders is also a supporting pillar, the Indonesian people must be good at law, not only limited to legal literacy. This normative juridical writing uses 3 research approach methods, namely the statute approach, conceptual approach and historical approach. The data used in this study was secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials which were processed through 3 phases of data processing, that is data reduction, presentation and verification.

Keywords

Pancasila Law State, Legal Purpose, Indonesian Progressive Law

A. Introduction

The State of Indonesia has established itself as a state of law, this is clearly stipulated in the constitution of the Republic of Indonesia, precisely in Article 1 Section 3 of the 1945 Constitution. The construction of the Indonesian law state is built on the wealth of existing values, explored since the existence of the *Nusantara* has existed, The condition of diversity of the Nusantara is one of the determining factors for the substance of the Indonesian law state, The rule of law of Indonesia is inseparable from the history that the state of Indonesia is a state of law which began with the Constitution of the Republic of the United States of Indonesia in 1949 which is explained in Article 1 Section (1), that:

“The independent and sovereign Republic of the United States of Indonesia is a democratic legal state in the form of a federation.”

Meanwhile, in the body of the 1945 Constitution of the Republic of the United States of Indonesia, it can be fully explained in the fourth paragraph of the Preamble to the 1945 Constitution of the United States of Indonesia which reads:

“ For this reason, we have compiled this independence in a State Charter in the form of a Unitary Republic, based on the acknowledgment of the One Godhead, Humanity, Nationality and Social Justice, to realize happiness, welfare, peace and independence in a perfect society.”

“ Meanwhile, in Article 1 section (1) of the 1950 Provisional Constitution, it is also stated that:

“ The independent and sovereign Republic of Indonesia is a democratic and unitary law state.”

The existence of a legal state in Indonesia is formally and legally stated clearly and unequivocally in the two constitutions. The development of the rule of law in Indonesia continued until finally it was constitutionally reaffirmed in the third amendment to the 1945 Constitution dated November 9, 2001, which is in Article 1 section (3) it was stated that Indonesia is a state of law. However, prior to the third amendment to the 1945 Constitution, the statement that the constitutional state of Indonesia was a state of law was not included in the Body of the 1945 Constitution, However, it is only included in the General Elucidation of the 1945 Constitution which states that the Indonesian state is based on law (*rechtsstaat*), not based on power alone (*machtsstaat*).

What is the purpose of the Indonesian rule of law based on the principles of Pancasila, of course this is the starting point for the discussion of this paper. By using one of the law theories proposed by Prof. Satjipto Rahardjo, an Indonesian law expert with his progressive law theory. The purpose of law will of course be directly proportional to the goals of the rule of law, especially if we enter into the level of certain legal state goals owned by each country. It will be influenced by various factors, especially the ideology of the country, the legal politics of the country, and of course the social, economic and cultural conditions. It seems like Indonesia, the Pancasila Law State has become a patent label for the Indonesian

legal state. Where Pancasila is the ideology of the Republic of Indonesia, as the theory compiled by Hans Nawiasky "*theorie von stufenbau der rechtsordnung*" where *staats fundamental norm* is the fundamental norm of the state, which is also a legal ideal (*recht idee*) according to Maria Farida.

One of the most relevant theories of purpose of the law to justify the state of Pancasila law in an effort to realize progressive law, one of which is the theory of purpose of the law according to Gustav Radbruch. According to Gustav Radbruch, there are three law purpose, as follows: :

1. The Purpose of Justice
2. The Purpose of Certainty
3. The Purpose of Expediency

The three purposes above, the writer considers the most relevant if we context it to the current legal conditions in Indonesia. The law must not be dry, the law must be able to quench thirst, the law must be useful not while still guaranteeing legal certainty which then must lead to the substance of essential justice. That is certainly the law ideal that we want, *ius constituendum*. But in reality, there will be many things that block our conscience and legal logic.

Progressive law must be one of the new paradigms in law enforcement in Indonesia, in theory and the strength of relations, in fact the essence of Pancasila ideology which wants complete justice, is also attached to this progressive law theory. The dynamics of the law that continues to struggle throughout the ages, with various influencing and shaping factors will make it very difficult for us to determine the purpose of the law itself. In the theory of progressive law, the initial analogy built by Prof. Tjip is that the law is for humans, while the word progressive itself means progressing. Progressive law itself is a law paradigm that means rapid change, making fundamental reversal efforts in law theory and practice, as well as making various breakthroughs. The liberation is based on the principle that the law is for humans and not the other way around and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory.

There are still a number of law cases in our minds, which may be conscientiously it is inappropriate if it is like that, it is appropriate to be like this. So do not be surprised if in the discussion among people at any level in Indonesia, it will be agreed that our law is a chaotic law strengthened by one of the proverbs that Indonesian law is sharp downwards and blunt upwards. We feel this and we may have experienced it in our daily conversations. An optimistic space, of course, we must prepare in responding to it, that it turns out that the trend of progress in law enforcement in Indonesia must experience positive developments and trends. Here are some cases that can serve as a reminder for us, of the real purpose of the law.

One of them is the case of Granny Minah, This case occurred in the Banyumas area, Central Java, Granny Minah received a sentence of 1 month 15 days with a probationary period of 3 months by a panel of judges at the Banyumas District Court led by Muslih Bambang Luqmono, S.H because it has been legally

and convincingly proven to violate Article 362 of the Criminal Code regarding theft. This case shocked the Indonesian people in 2009, how could a grandmother not get a criminal sentence just for stealing 3 cocoa beans belonging to PT. Rumpun Sari Antan (RSA), sad and very ironic (detik.com : <http://news.detik.com/berita/d-1244955/mencuri-3-buah-kakao-nenek-minah-dihukum-1-bulan-15-hari> accessed on Friday, 18 June 2021 at 13.00). One of the areas of law that directly and closely intersect with people's daily lives is criminal law. One of the important processes in criminal law cases is proof, the legal basis of this evidence is regulated in Articles 183 to 189. Judges in criminal law cases are active, meaning that the judge is obliged to obtain sufficient evidence to prove the suspicion to the suspect. Unfortunately, most of the judges' decisions are considered not to fulfill the sense of justice for the community as experienced by Granny Minah, who was ensnared and sentenced only normatively by Article 362 of the Criminal Code.

Then the second case is the case of Granny Asyani who was sentenced to 1 year in prison for stealing 7 teak sticks which she used as a chair, the case had been in the spotlight of many experts and legal observers, 6 years after Granny Minah's case resurfaced a similar case experienced by Granny Asyani. The case of grandmother Asyani occurred in the Situbondo area, East Java in 2014-2015. Granny Asyani and Ruslan (daughter-in-law) along with Cipto (carpenter) and Abdussalam (car driver) were brought to court on charges of illegal logging, Article 12 in conjunction with Article 83 of Law Number 18 of 2013 concerning Illegal Logging with a threat of 5 years in prison. Even though Granny Asyani has provided information along with evidence, that the wood she was transporting was the wood that her late husband had saved, which he planted himself on his own land. From all the evidence made by the Public Prosecutor and the defendants, it is clear that the ownership of the wood belongs to Granny Asyani. What is even more ironic is why the Articles of Allegation and Allegations used are Article 12 in conjunction with Article 83 of the Illegal Logging Law, why not Article 362 of the Criminal Code. According to the response of a professor at the Faculty of Law at Pahariyangan University (UNPAR) Bandung, Asep Warlan Yusuf, according to him, the use of Article 12 in conjunction with Article 83 of the Illegal Logging Law with a threat of 5 years in prison is not appropriate, because Asyani's grandmother did not carry out the transportation of the wood in an organized manner and not in large number, this is contrary to the offense of the article itself. In line with Asep Warlan Yusuf's answer, Arsul Sani, a member of the Indonesian House of Representatives Commission III, assessed that the indictment submitted to Grandmother Asyani did not have a social justice perspective. In his view the charges were too heavy and did not match his guilt of stealing seven teak logs. According to him, in cases like this, both the public prosecutor (JPU) and the panel of judges need to apply the concept of social justice which leads to retributive justice, namely examining, prosecuting, and deciding cases by prioritizing a sense of justice and not just looking at the sound of criminal articles that in the Criminal Code and other laws and regulations (Sindonews, <https://nasional.sindonews.com/berita/974906/149/kasus-nenek-asyani-potret-buram-hukum>, accessed on Friday, 18 June 2021 at 13:58).

Based on the two cases above, it can be seen that the title of the two cases seems forced, the upstream of criminal cases like this is the police, investigators are the main spearhead in our efforts to enforce the law, we need competent, intelligent, professional and integrity investigators and investigators and of course conscience. Do not let the cases that go to trial are cases that seem forced like the two cases above, cases which then darken the color of law enforcement itself. We believe that in practice law enforcers prioritize legal certainty, carry out the sounds and mandates of each article in the legislation, but do not then forget about other legal objectives, namely legal justice and expediency.

The cases of Granny Minah and Granny Aryani above are only a few examples of cases where our legal conditions are blurry. These two cases can serve as examples. The analogy of a sting knife is correct, the law is blunt up and sharp down. Let's compare it with some cases that became anti-action against the cases of Granny Minah and Granny Aryani, that is the case that until now has not ended or is not finished, namely the Century Bank case. Who doesn't know about this case, whether it's been included in the episode and volume of the story, this case has shocked Indonesia and even abroad, which until now this case has not been completed, as it should be.

In 2014, the former deputy governor of Bank Indonesia, Budi Mulya, will face a sentencing hearing related to the case of providing bailout funds for Century Bank. The following is a brief explanation of the journey of the Century Bank case, December 2012 Chairman of the Corruption Eradication Commission Abraham Samad told the Century Bank supervisory team at the House of Representatives that Budi Mulya and former BI Deputy Governor Siti Fajriah were responsible for state losses due to the disbursement of Century bailout funds. February 2013 The Corruption Eradication Commission named Budi Mulya as a suspect on suspicion of jointly committing unlawful acts or abuse of authority related to the provision of Short-Term Funding Facilities and the determination of Century as a failed bank with systemic impact. 15 November 2013 The Corruption Eradication Commission detained Budi Mulya after being questioned for the first time as a suspect. March 6, 2014 Budi Mulya had his first trial. June 16, 2014 Prosecutors charged Budi Mulya with 17 years in prison and a fine of 800 million for abusing his authority or unlawful acts related to the designation of Century Bank as a failed bank with systemic impact and the provision of Short-Term Loan Facility causing a loss to the State's finances of IDR 7 trillion. (bbc : https://www.bbc.com/indonesia/berita_indonesia/2014/07/140716_bankcentury_101, accessed on Friday, 18 June 2021 at 14.06).

If we compare it with the case of Granny Minah, Robert Tantular was only sentenced to 4 years in prison and a fine of IDR 50 billion / subsidiary 5 months in prison, even this verdict is much lighter than the prosecutor's demands. The person who had harmed the state of nearly 9.2 trillion was only given a light sentence with a loss ratio of IDR 2,000 for 3 cocoa beans from granny Minah, and 1 million for granny Aryani's teak wood. Not to mention the other high-profile corruption cases,

for example the Bank Indonesia Liquidity Assistance case which has no idea how many series, the Bank Bali cessie by Djoko Tjandra, Anggoro Widjojo in the Ministry of Forestry's Household Health Survey case, the Hamallang case, and this last one is the corruption of Covid-19 social assistance funds.

We cannot allow this condition to linger, in fact, there are already many concepts and theories of the ideas of legal experts that we can apply, one of which is the thought of Prof. Satjipto Raharjo, he was born in Banyumas, 15 February 1930 – died in Semarang, 9 January 2010 at the age of 79 years he was a professor emeritus in law, lecturer, writer and Indonesian law enforcement activist. In the 1970s and 1980s, he was also known as the dean of the Faculty of Law, Diponegoro University, Semarang. In 2008, a group of young Undip Masters in Law students formed a legal thought study group called "*Kaum Tjipian*". At the beginning of the period, they systematically dissected Satjipto's books of thought. In the sequel, the Tjipian continued their study of thought by exploring various legal ideas, from classical European legal thought to critical American legal studies. In addition, the Tjipian also published a book resulting from a series of studies entitled "The Evolution of New Legal Thought; From Apes to Humans, From Positivism to Progressives". After Satjipto's death in 2010, an NGO (Non-Government Organization) was initiated which is concerned with the study of progressive law. This institution was established in 2011 under the name "Satjipto Rahardjo Institute".

One of his masterpieces that we can inspire as a form of our weapon in maintaining the conception of the Indonesian legal state is the progressive legal theory that he has proposed. He pioneered this idea when after the reformation, precisely in 1998, he was concerned about the legal life of Indonesia at that time. The law, which was supposed to be a tool for progress and prosperity at that time, turned into a downturn and setback. This can be seen in the rampant practice of judicial mafia, legal commercialization. The main concepts of progressive law are (Satjipto Rahardjo, 2007, p. 154):

"Change quickly, make fundamental reversals in legal theory and practice, and make various breakthroughs. The liberation is based on the principle that the law is for humans and not vice versa and the law does not exist for itself, but for something wider, namely for human dignity, happiness, welfare, and human glory".

According to Prof. Satjipto Rahardjo, the law must dare to go out of conventional ways and the status quo. The legal text that has been deified and prioritized has made the law too arid so that the three legal objectives (justice, certainty and expediency) are not achieved perfectly. Legal certainty is indeed one of the goals, but do not leave the goals of justice and the expediency of the law itself, being in a linear line with the progressive legal theory that law exists for humans, not humans exist for law. It is also in line with the ideology of our country, Pancasila. The legal view of the Indonesian state which has characteristics and characteristics that originate from an in-depth excavation of all the values of the Indonesian nation, which was later agreed upon by the founding fathers of Indonesia to become a view of the nation's life in various aspects, including legal

life. One of the values that is upheld in the structure of the substance of Pancasila is justice, explicitly stated in the second and fifth precepts of Pancasila, which of course are closely tied to other precepts, including one of them is the divine message in the first precept. It is also in line with the ideology of our country, Pancasila. The legal view of the Indonesian state which has characteristics and characteristics that originate from an in-depth exploration of all the values of the Indonesian nation, which was later agreed by the founding fathers of Indonesia to become a view of the nation's life in various aspects, including legal life. One of the values that is upheld in the structure of the substance of Pancasila is justice, explicitly stated in the second and fifth precepts of Pancasila, which of course are closely tied to other precepts, including one of them is the divine message in the first precept.

In this paper, the author tries to dig deeper into the correlation between the conception of the state of Pancasila law, legal goals and progressive legal theory. It will be very interesting, of course, as to what the justification for the concept of the state of Pancasila law is to the legal objectives in the framework of progressive legal theory. Pancasila with the value of justice which is certainly linear with all legal objectives that are also equally looking for the top point, namely the goal of justice, through the framework of progressive legal theory by trying to get out of the textual study of legal articles, towards the pure substance of the legal articles themselves.

B. METHOD

1. Research Design

This research was legal research, legal research is also called normative research, normative juridical research or it can also be referred to as doctrinal research that looks at legal goals, state values, validity of the rule of law, legal concepts, and legal norms (Peter Mahmud Marzuki, 2012; Aliu & Hajdini, 2021). This legal research was a qualitative research, the data used was non-numerical data in the form of legal literature study data sourced from primary legal materials, secondary legal materials and tertiary legal materials. Therefore, in this normative juridical research, the research specification used was descriptive analysis, which was trying to describe problems related to the object of causality research, the reality of the concept of the state of Pancasila law with the current conditions of Indonesian law enforcement. In this research, the writer tried to analyze the causality between the conception of the state of Pancasila law, legal goals and progressive law theory.

2. Research Approach and Data Analysis Technique

The research approach used data approach that comes from legislation (statute approach), conceptual approach and historical approach. The data used in this study was secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Analysis of all the data that has been

collected was carried out in a qualitative juridical manner, namely analysis without using numbers (mathematical or statistical), but arranged in the form of sentence descriptions (Lili Rasidji and Liza Sonia Rasidji, 2005; ALSoud et al., 2021; Cesarec, Mikac, & Spevec, 2020). The technique used in analyzing the data was by means of descriptive analysis, which provided an overview of the problem to be studied by outlining the existing facts so that they can be drawn. The analysis process was divided into three components, namely data reduction, data presentation and verification (drawing conclusions).

C. RESULTS

1. Pancasila Law State

In the context of the rule of law Indonesia, to better reflect the characteristics of Indonesia (nationalism), Indonesia uses the term state of law with the addition of the attribute Pancasila so that the state of law is Pancasila. This means that the highest power lies in the law or there is no other power except legal power which in this case comes from Pancasila as the source of all sources of law (Sjachran Basah, 1982, p. 1). Sjachran Basah named the rule of law in Indonesia as a state based on Pancasila as stated below (Sjachran Basah, 1982, p.3):

“The meaning of the rule of law cannot be separated from the pillar itself, namely understanding the rule of law. This understanding is a teaching which states that the highest power lies in the law or there is no other power except legal power which in this case is based on Pancasila as the source of all sources of law”.

In addition, Sjachran Basah also stated that a legal state based on Pancasila is a state of prosperity based on law based on Pancasila both as the basis of the state and as a source of all sources of law, by rejecting absolutism in all forms (Sjachran Basah, 1985, p. 148).

In relation to the rule of law in Indonesia, formally there are six elements including (Padmo Wahjono, 1983, p.132):

- a. Pancasila is the source of all sources of law;
- b. The highest power is exercised by the People's Consultative Assembly;
- c. Government is based on a constitutional system;
- d. Judicial power is an independent power in the sense that it is free from the influence of government power;
- e. Equality in law and government for all citizens and the obligation to uphold the law and government, without exception;
- f. The law functions as a protector in the sense of upholding a democratic life and a life of social justice.

It is said that Pancasila is the source of all sources of law in Indonesia because Pancasila is the basis of the Indonesian state, meaning that legislators can make laws and regulations but must not conflict with the values of Pancasila and if they conflict with the values contained in Pancasila, the legislation/law is null and void. Besides these values, laws must be made in a hierarchical manner where

lower rules must not conflict with the rules above, meaning they must use the theory of synchronization and harmonization. The state of Pancasila law not only protects the entire Indonesian nation and the entire homeland of Indonesia but also seeks to advance the welfare of the general public and educate the nation's life as stated in the Preamble to the 1945 Constitution.

In relation to the rule of law in Indonesia, according to Jimly Asshiddiqie, he formulated the main ideas of the concept of the rule of law and the pattern of its application in the current Indonesian situation, which formulated the basic principles of the Indonesian state of law that apply today, including (Jimly Asshiddiqie, 2011, p. 34):

- a. Supremacy of Law, it is explained that all problems are solved by law as a constitutional guideline that reflects the highest law and not human;
- b. Equality before the Law, the existence of equality in the position of everyone in law and government which is recognized normatively and implemented empirically;
- c. The principle of legality (due process of law) requires the application of the principle of legality in all forms (due process of law) where all government actions must be based on legal and written laws and regulations. This means that the written legislation must exist and apply first or precede the applicable administrative actions or actions;
- d. The judiciary functions as a means to realize the goals of the state (Welfare Rechtsstaat), the law is a means to achieve the goals that are idealized together. In Indonesia, national ideals have been formulated in the Preamble to the 1945 Constitution.
- e. Transparency and Social Control, law enforcement and prison officials must all require social control in order to work effectively, efficiently and ensure justice and truth.
- f. Belief in the One Supreme God, as a modern legal state, the Indonesian state must uphold the principle of the rule of law and do not conflict with not neglecting the Oneness and Almighty God.

According to Sukarto Marmosudjono, in relation to the rule of law there are 4 principles contained in Pancasila and the 1945 Constitution, including (Hotma P. Sibuea, 2010, p. 4):

- a. The principle of the rule of law is realized in two ways. *First*, the order of human life in society, nation and state must have clear legal provisions and contain legal certainty. *Second*, All actions in the life of society, nation and state are really carried out on the basis of legal provisions.
- b. The principle of legal protection is realized by providing a sense of security and peace for the lives of the people as a whole. This principle is reflected in the Preamble to the 1945 Constitution of Indonesian blood.
- c. The principle of equal rights and obligations before the law.
- d. The principle of legal awareness is manifested by the awareness to comply with legal provisions and the awareness to share responsibility for upholding the law.

2. Purpose of The Law

Immanuel Kant put forward the notion of a law state in a narrow sense, that the state is only the protection of individual rights, while state power is interpreted passively, tasked with maintaining public order and security. The concept of a law state in this sense is known as *nachtwakerstaat*. Subsequent developments, the understanding of the rule of law proposed by Immanuel Kant underwent a change with the emergence of the understanding of the welfare state. As stated by Friedrich Julius Stahl, the characteristics of the rule of law are as follows (S.F Marbun and Moh. Mahfud MD, 1987, p. 44):

1. There is protection of human rights.
2. There is Separation or division of powers to guarantee human rights.
3. Government is based on regulations, and
4. There is the existence of a state administrative court in disputes.

Sri Soemantri put forward the most important elements of the rule of law, namely (Sri Soemantri, 1992, pp. 29-30):

1. That the government in carrying out its duties and obligations must be based on the law or legislation.
2. There is a guarantee of human rights (citizens).
3. There is a division of power.
4. There is supervision from judicial bodies (*rechterlijke contole*).

In Indonesia, it is inseparable from history where the legal term adopted is derived from the civil law legal system and in its development is also strongly influenced by legal developments from the Anglo Saxon legal system, So besides using the term law state which is a direct translation of *rechtsstaat* (Philips M Hadjon, 1996, p. 30), the term the rule of law is also used., menurut Sunaryati Hartono, misalnya menggunakan istilah negarahukum dengan *the rule of law*, this can be seen from the title of his book "What is the rule of law" and also explained in his book which was written because of that, in order to create a state of law that brings justice to all the people concerned, enforcement of the rule of law must be in a material sense (Sunaryati Hartono, 1991, p. 35), so that constitutionally in Indonesia, the term rule of law has been stipulated in Article 1 section (3) of the 1945 Constitution in the third amendment. In addition, according to Jimly Asshiddiqie, the principles that are considered important characteristics of the rule of law according to independence and impartiality of judiciary are (Jimly Asshiddiqie, 2011, p. 7): 1. The state must comply with the law; 2. Government respects individual rights; and 3. An independent and impartial judiciary.

Based on the description above, regarding the rule of law, both thoughts or concepts or understanding of *rechtsstaat* and the rule of law are essentially the same principles, which both contain the principle of legality, the principle of separation (sharing) of power, the principle of an independent judiciary and respect for and protection of human rights. All of this is aimed at preventing the actions of the state or government from committing abuse of power or arbitrary and tyrannical actions.

The purpose of a country's law will depend on the context of the rule of law it adheres to. One of the theories of legal objectives that are in accordance with the factual conditions of the Indonesian state is the theory of legal objectives by Gustav Radbruch, the three purposes of law are:

1. Legal Justice;
2. Legal Certainty;
3. Legal Expediency.

3. Indonesian Progressive Law

So far, we agree that the legal life in Indonesia has not satisfied many parties along the way, one of which is the comparison of the case of Granny Minah and Bank Century or the case of Granny Aryani with the case of the Bank Indonesia Liquidity Assistance which has many volumes. The rigidity of law enforcement is considered as one of the causes of not achieving the three legal objectives in Indonesia.

Regarding this dilemma, which later became the main idea of progressive law theory, the following outlines the strong characteristics possessed by progressive legal theory (Satjipto Rahardjo, 2006, pp. 24-40), namely:

1. The nature of law is dynamic, even very dynamic. That legal life will always go hand in hand with human life, following the patterns and dynamics of human life, this condition will create pro status quo to pro change; (law as a process, law in the making);
2. Law exists for humans, and not humans present for law. The understanding of this adegium is that the law is a human teaching. Progressive law thought departs from the basic assumption that law is for humans and not the other way around. Based on that, the birth of law is not for itself, but for something wider, that is; for human dignity, happiness, welfare and human glory. That is why when there is a problem in the law, it is the law that must be reviewed and corrected, not humans who are forced to be included in the legal scheme;
3. Law as a tool to achieve justice, law is not the goal of humans, but the law is only a tool. So that substantive justice must take precedence over procedural justice, this is solely in order to present the law as a solution to human problems;
4. Law as a teaching of liberation, the method is to free oneself from legalistic-positivistic types, ways of thinking, principles and legal theories. This release will lead to creative, innovative steps and, if necessary, "rule breaking" while still prioritizing the logic of social propriety, the logic of justice and morality.

Progressive law is a law that is in progress, meaning that we cannot go back to the pre-positivism era of law. Progressive law is a legal structure with a progressive and responsive system, not merely glorifying article clauses and the sound of regulations, progressive law is much more than that. Progressive law is

able to adapt to the dynamics of the times, which is globalization without ignoring the glocalization aspect. Spreading Social Justice with Progressive Legal Hermeneutics Law is the result of human construction, both social, political and cultural constructions. The construction includes the provision of doctrines, principles and others in part. The presence of law in society actually aims to serve the interests of the community which is increasingly complex.

Law as an ideal is closely related to the conceptualization of justice, but it turns out that law cannot operate only with these abstract concepts. Law can only work through human assistance. The true ideology of the nation already has a thick substance of substantive justice, it is only the political will of the policy makers, the conscience of law enforcement and the reality of the law-savvy community that determine the journey. According to Satjipto Rahardjo, progressive law enforcement is carrying out the law not just black-and-white words from regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law. Law enforcement is not only intellectual intelligence, but also spiritual intelligence. In other words, law enforcement that is carried out with full determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find other ways than what is usually done, this is very possible for judges to realize justice in every decision. This means that a progressive judge is a judge who has the will and ability to think and act progressively which frees him from the shackles of legal document texts, but for human happiness and welfare. The spirit that must be possessed by judges is not only according to the legal way but rather according to the reasonable way. If there is a deadlock, then the judge is required to find alternative ways that are innovative and creative when carrying out the law to the letter. This is important because the application of the principle of seeking and realizing justice is the parameter of the public's assessment of the performance of judges.

D. DISCUSSION

So far, we agree that legal life in Indonesia has not satisfied many parties along the way, one of which is the comparison of the case of granny Minah and Bank Century or the case of Granny Aryani with the case of Bank Indonesia Liquidity Assistance which has many volumes. The rigidity of law enforcement is considered as one of the causes of not achieving the three law objectives in Indonesia. The stages of legislation also play an important role, how reliable are our legislators or legal drafters taking part, meaning that the quality and urgency of the birth of a statutory regulation must also be the main focus. Do not let it be later when legal matters have reached the court, it will give birth to rigid conditions that are very contextual based on article clauses which only refer to the purpose of fulfilling legal certainty which then ignores the purpose of justice and the expediency of law.

The first point that we have to fix is that this country must be able to guarantee the textual articles in the legislation comprehensively, meaning that at

the legislative stage it must be good and correct first. Law enforcers who incidentally are downstream actors are a position that certainly does not have a bargaining position, as an example of a criminal case judge who, although attached to the principle of an active judge, is still limited by the principles of legal certainty. This is what happened in the case of granny Minah, where Article 365 of the Criminal Procedure Code which became the main actor in the legal dilemma of granny Minah took a rigid role in law enforcement. All of these variables begin with the conception of the rule of law of the state itself, Indonesia with its conception of the rule of law based on its Pancasila, the theory of the purpose of law being the basis of the State in determining the framework of its state in terms of achieving the goals of state law. A law theory in its development is able to influence the dynamics of legal life in the country, one of the theories that has developed is the progressive legal theory, whether the three variables are able to influence each other in order to achieve the main legal goal, which is legal justice in the context of the Pancasila law state.

Law state, in terminology in various countries such as European and American countries, uses different terms, for example Germany and the Netherlands use the term *Rechtsstaat* as opposed to state power (*machstaat*). The term *Rechtsstaat* has a meaning that is parallel to the notion of the Rule of Law, in France the term *Etat de Droit* is used, while in Spain the term used is *Estado de derecho*. In addition, in Italy, the term *Stato di Diritto* is used, but in English terminology it is known as the expression the state according to law or according to the rule of law (A.R. Brewer Carias, 1984, p. 7). The term *rechtsstaat* which is translated as a law state according to Philipus M. Hadjon has become popular in Europe since the 19th century, even though the idea has been around for a long time (Philip M. Hadjon, 1996, p. 72). The ideal of the law state was first put forward by Plato and later confirmed by Aristotle (Ni'matul Huda, 2005, p. 1). According to Aristotle, it is not humans who rule in a country, but a just mind and morality that determines the good or bad of a law. According to Aristotle, a good state is one that is ruled by a constitution and has legal sovereignty. Aristotle stated (George Sabini, 2005, p. 22):

Constitutional rule in a state is closely connected, also with the question whether is better to be ruled by the best men or the best law, since a government in accordance with law, accordingly the supremacy of law is accepted by Aristoteles as mark of good state and not merely as an unfortunate necessity.

Aristotle also put forward three elements of a constitutional government. First, the government is implemented in the public interest. Second, government is carried out according to laws based on general provisions, not laws made arbitrarily that override conventions and constitutions. Third, a constitutional government which is carried out by the will of the people (George Sabini, 2005, p. 22). Aristotle's thoughts are recognized as the ideals of a state of law known to this day. In fact, the three elements are almost found and practiced by all countries that identify themselves as state law.

The concept of *rechtsstaat* in Continental Europe from the beginning was based on an individualistic liberal philosophy. This individualistic characteristic is very prominent in the rule of law thought according to the Continental European concept, the concept of *rechtsstaat* according to Philipus M. Hadjon was born from a struggle against absolutism, so that it is revolutionary (Philipus M. Hadjon, 1987, p. 72). The characteristics of *rechtstaat* according to Philipus M. Hadjon are as follows (Ni'matul Huda, 2011, p. 9):

1. The existence of a constitution or constitution that contains written provisions regarding the relationship between the ruler and the people.
2. There is a division of state power.
3. Recognition and protection of people's rights and freedoms.

The main ideas of the rule of law, both those put forward by Jimly Asshiddiqie and Sukarto Marmosudjono, are in accordance with the principles and values contained in Pancasila. Thus the law was not made to guarantee the interests of a few people in power, but to ensure the interests of all Indonesian citizens. The constitution is the only law instrument capable of accommodating and guaranteeing the rights or interests of citizens, Indonesia already has it, namely the 1945 Constitution.

The will of all citizens is reflected in the 1945 Constitution which is a form of general agreement from all Indonesian citizens. Therefore, the 1945 Constitution is the highest law of all lower legal norms and all practices of state and national life must be in accordance with the provisions of the 1945 Constitution without neglecting the principle of Belief in One God which is one of the ideals of the state of Pancasila law.

It should be realized that the main purpose of law is order. Obedience to order is a basic condition for an orderly society. In addition to the purpose of law, it is also necessary to achieve justice and to achieve this order, it is necessary to interact between the community which must reflect the existence of legal certainty, meaning that the law must be implemented and enforced so as to create legal certainty. Law can provide a more orderly community situation so that it has a big impact on society and not only creates justice but can provide welfare to the people of Indonesia.

Even as Indonesia's national ideals adhere to a welfare law state or a material law state, it can refer to Pancasila as the main basis and source of law, namely the 5th precept of Pancasila which obliges the state to ensure the realization of social justice for all Indonesian people. This is very clearly mandated in the Second Paragraph of the Preamble to the 1945 Constitution with the words fair and prosperous which are interpreted and understood as the needs of the people, both physically and spiritually. In addition, it is also explained in the Fourth Paragraph of the Preamble to the 1945 Constitution, which reads:

The government of the state of Indonesia which protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate people and participate in implementing world order based on independence, peace and social justice.

Furthermore, this is emphasized in the body of the 1945 Constitution Article 33 section (3) of the 1945 Constitution which is the legal ideal of Pancasila, namely:

“Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”.

Thus, the law state functions as a means to realize and achieve the goals of the Indonesian state so that the state in the context of realizing prosperity can function as a servant of the people and therefore, the Indonesian state is required to provide the best and widest possible service to the Indonesian people. This is the characteristic of a country that adheres to the notion of a welfare state law that is oriented to the values of Pancasila.

In addition to Pancasila as the source of all legal sources in Indonesia, Pancasila also acts as the ideology of the Indonesian nation, as a way of life because Pancasila is able to unite the entire pluralistic Indonesian nation. If we draw a common thread, one of the substance of the Pancasila precepts is justice, in the fifth principle of Pancasila it has been firmly established that one of the goals of an educated Indonesian state is to achieve a point of justice for the Indonesian people. One of the important discourses in the life of the nation and state is legal justice.

The purpose of the essential law should fulfil these three elements, without exception. It's just that in practice, there is a clash between the three, such as legal justice clashing with legal certainty or legal certainty clashing with legal expediency. Based on Gustav Radbruch's theory, a scale emerges that the first thing that must be achieved is legal justice, then legal expediency and finally legal certainty. Law performs its function as a means of conserving human interests in society. The purpose of law has a goal to be achieved which divides rights and obligations between every individual in society. The law also gives authority and regulates how to solve legal problems and maintain legal certainty.

But before talking more deeply about the purpose of the law is not an easy thing. Because talking about the purpose of law and the definition of law is equally difficult. Both have the same object of study which discusses how the law itself is. Law is an important part in regulating and creating order in society. Therefore, the law is used as an instrument in regulating the behaviour of each individual in society in achieving a goal. The purpose of the law needs to have a clear object of study. For this reason, it is necessary to understand the basis and background of the object of the discussion. This is very important to make it easier to understand. The study of the purpose of this law is oriented so that the description of the definition and boundaries of the topic of the problem is easy to understand.

Justice, is the ultimate goal that will be achieved if we look at the traces of the Pancasila framework of thought. Where the first precept, divinity in the one and only God is the first beginning as the first and main capital of Indonesian citizens in carrying out the life of the nation and state, that if every citizen carries out religious teachings that have been recognized and established by the State properly and correctly, it is certain that every citizens will become citizens who obey the law, obey the rules and have good character, because it is certain that the values

of all religious teachings contain the value of goodness. The second precept is a line of thought that is the goal of the implementation of the first precept, that justice and civility will be achieved afterwards. After the first and second precepts are implemented, national unity and integrity will be realized in all aspects of state life. This union will then transform into a new order in the sphere of state administration, guaranteeing this nation to be led by leaders who are just and wise and think about the fate of the nation. So then at the end, social justice will be achieved for all Indonesian people. That's at least the mind-set of the Pancasila legal state that the author understands. The first key is to become a human being, a godly citizen, this is the initial capital towards true justice. Why then emerged a very famous adage that put morals first, then knowledge.

Progressive law must become one of the new paradigms in law enforcement in Indonesia, in theory and the strength of relations, in fact the essence of Pancasila ideology which wants complete justice is also attached to this progressive legal theory. The dynamics of law that have continued throughout the ages, with various influencing and shaping factors, will make it very difficult for us to determine the purpose of the law itself. In the theory of progressive law, the initial analogy built by Prof. Tjip is that the law is for humans, while the word progressive itself means progressing. Progressive law itself is a legal paradigm which means rapid change, making fundamental reversal efforts in legal theory and practice, as well as making various breakthroughs. The liberation is based on the principle that the law is for humans and not the other way around and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory.

The understanding as stated by Satjipto Rahardjo means that progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and welfare. In simpler terms, progressive law is a law that makes liberation, both in the way of thinking and acting within the law, so that it is able to let the law flow only to complete its task of serving humans and humanity. So there is no engineering or partiality in enforcing the law. Because according to him, the law aims to create justice and prosperity for all people. Satjipto Rahardjo tried to highlight the above conditions into the situation of the social sciences, including law, although not as dramatic as in physics, but basically there was a phenomenal change in the laws he formulated in sentences from simple to complex and from separated to united. unity. This is what he calls a holistic view of science (law).

This holistic view provides a visionary awareness that something in a certain order has parts that are interrelated either with other parts or with the whole. Progressive law means law that cares about humanity so that it is not merely dogmatic. Specifically progressive law, among others, can be referred to as pro-people law and just law. The concept of progressive law is that the law does not exist for its own sake, but for a purpose that is outside of itself. Therefore, progressive law leaves the tradition of *analytical jurisprudence* or *rechtsdogmatiek*.

These schools only look into the law and discuss and conduct internal analysis, especially law as a building regulation which is considered as systematic and logical.

Progressive law is a law that is in progress, meaning that we cannot go back to the pre-positivism era of law. Progressive law is a legal structure with a progressive and responsive system, not merely glorifying article clauses and the sound of regulations, progressive law is much more than that. Progressive law is able to adapt to the dynamics of the times, namely globalization without ignoring the glocalization aspect. Spreading Social Justice with Progressive Legal Hermeneutics Law is the result of human construction, both social, political and cultural constructions. The construction includes the provision of doctrines, principles and others in part. The presence of law in society actually aims to serve the interests of the community which is increasingly complex.

Pancasila is the first and main foundation in the legal structure of Indonesia. The legal view of the Indonesian state which has characteristics and characteristics that originate from an in-depth exploration of all the values of the Indonesian nation, which was later agreed by the founding fathers of Indonesia to become a view of the nation's life in various aspects, including legal life. The mere legal power which in this case is based on Pancasila, as the source of all sources of law (Sjachran Basah, 1982, p. 1). Sjachran Basah named the rule of law in Indonesia as a state based on Pancasila as stated below (Sjachran Basah, 1982, p. 3):

“The meaning of the state law cannot be separated from the pillar itself, namely understanding the rule of law. This understanding is a teaching which states that the highest power lies in the law or there is no other power except legal power which in this case comes from Pancasila as the source of all sources of law.”

One of the values that is upheld in the structure of the substance of Pancasila is justice, explicitly stated in the second and fifth precepts of Pancasila, which of course are closely tied to other precepts, including one of them is the divine message in the first precept. That in fact, our nation already has a blueprint for a very superior nation's view of life, but the obstacle is that sometimes this ideology changes its face in every ruling regime, depending on the will that is conceived in the legal politics of each regime. But of course we can't even interpret the meaning of Pancasila outside the actual context. When Conscience speaks, we will actually agree on the arguments and the true meaning of the Pancasila precepts.

Law as an ideal is closely related to the conceptualization of justice, but it turns out that law cannot operate only armed with abstract concepts. Law can only work through human assistance. The true ideology of the nation already has a strong substance of substantive justice, only the political will of the policy makers, the conscience of law enforcers and the reality of the law-savvy community will determine the journey. According to Satjipto Rahardjo, progressive law enforcement is carrying out the law not just black-and-white words from regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law or law. Penegakan hukum tidak hanya kecerdasan intelektual, melainkan dengan kecerdasan spiritual. Dengan kata lain, penegakan hukum yang dilakukan

dengan penuh determinasi, empati, dedikasi, komitmen terhadap penderitaan bangsa dan disertai keberanian untuk mencari jalan lain daripada yang biasa dilakukan, hal ini sangat mungkin dilakukan oleh hakim untuk mewujudkan keadilan di dalam setiap putusannya. Artinya hakim yang progresif adalah hakim yang memiliki kemauan dan kemampuan untuk berpikir dan bertindak progresif yang membebaskannya dari belenggu teks dokumen hukum, melainkan untuk kebahagiaan dan kesejahteraan manusia). The spirit that must be possessed by judges is not only according to the legal way but rather according to the reasonable way. If there is a deadlock, then the judge is required to find alternative ways that are innovative and creative when carrying out the law to the letter. This is important because the application of the principle of seeking and realizing justice is the parameter of the public's assessment of the performance of judges. The judiciary is one of the institutions that is the main reflection of law, Indonesia must change the current paradigm of law enforcement, rigidity in embodying the sounds of the article will never be able to explore and achieve the substance of the purpose of the article itself. Moreover, there are still many regulations from colonial heritage that we still use in our legal system. Even though this is not supposed to be an alibi and justification for this nation's efforts to uphold the goals of the rule of law, especially a state based on Pancasila which is full of justice.

E. Conclusion

The law is actually present for humans, and not the other way around. This means that the law must be able to meet human needs that aim and ultimately lead to substantive justice as a whole. Pancasila and progressive law theory have accommodated that, Pancasila has existed long before progressive law theory was born, in contrast to the liberal perspective which sees the state as a certain state produced by a community agreement from free individuals or from naturalist status. to civil status with the protection of civil rights, so that in the state of Pancasila law there is an assumption that humans are born in their relationship or existence with God.

Progressive law theory is a product of thought that is extraordinarily powerful to treat law wounds that have been very severe in Indonesia. The justification of Pancasila values that have been accommodated in the context of the Indonesian rule of law is important for juxtaposing it with progressive law theory, because both will be able to reach the culmination of substantive justice with legal objectives, namely legal justice, legal expediency and legal certainty in a linear and equal position. Law enforcers, especially judges have an important role in carrying out and building the legal structure of the Pancasila law state, one of the roles that is the main spearhead is social justice with rule breaking efforts. Legislators also play an important role, the stages and processes of legislation are one part of the framework of the fundamental structure of the Pancasila legal state because at the stage of soul of spirit the regulation was formed. The participation of the community and related stake holders is also a supporting pillar, the Indonesian community must be good at law, not only

limited to legal literacy. This is of course in accordance with the spirit of progressive law which will annul the textual law which only defies legal certainty based on the clauses of the article alone with substantive legal justice, that legal justice and legal expediency are legal goals that cannot be separated.

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