

Progressive Agrarian Law as a Concept to Attain Social Justice

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DOI: <http://dx.doi.org/10.15294/pandecta.v17i1.34022>

Article Info

Article History:

Received : December 18th 2021

Accepted: June 15th 2022

Published: June 29th 2022

Keywords:

agrarian law; progressive law;
justice

Abstract

The management of Indonesian agrarian law has created discrepancy of resources ownership or injustice. This article offer a new perspective namely progressive agrarian law. This is a normative juridical research with conceptual approach by using primary, secondary and tertiary data. Those data are collected through literature research and analyzed with content analysis. Based on analysis, it can be concluded that there are several characteristic of progressive agrarian law, namely : (1) dynamic and contextual and respect the diversity because this consider social-political-cultural and economical condition of the society; (2) agrarian justice oriented to solve inequality of agrarian resources by doing affirmative action; (3) emphasize the importance of conscience in law making and law enforcement (involve intellectual, emotional and spiritual quotient); (4) give the chance for law enforcement to do rule breaking toward injustice regulation (substantive justice orientation); (5) pay attention disadvantage person (poor people) who lives under poverty and experience injustice.

A. Introduction

Management of agrarian law is tightly related to the prosperity of most Indonesia because there are a lot of people who work in the agrarian sphere such as farmer, sailors and etc. Most of them also live in poverty. Agrarian resources are also important to fulfill the daily necessity of Indonesian people. Based on such perspective, the management of agrarian law must be directed toward justice and prosperity for Indonesian people as regulated under Article 33 of Indonesia Constitution. Those can be achieved if agrarian law is directed toward social justice.¹ Right can be divided into civil rights, political rights, and social rights. So, it is necessary to

have holistic and comprehensive insight into agrarian law, not a partial, autonomous, stiff and narrow perspective.

The management of agrarian law recently has failed to bring prosperity and justice for Indonesian people. According to the report of National Development Planning Ministry in 2018, farming is a sector with high poverty mainly in Eastern Indonesia.² This is caused by the discrepancy of land ownership, even though regulation in Indonesia has stipulated that minimum land ownership for farmer is two hectares as regulated under article 9 (1) Law No. 56 of 1960 on Stipulation of Farm Land. It is also according to Article

1 Triana Rejekiningsih, Chatarina Muryani, and Diana Lukitasari, 'Study of the History and Dynamics of the Agrarian Policy in Transforming the Indonesia'S Agrarian Reform', *Yustisia Jurnal Hukum*, 8.2 (2019), 309 <<https://doi.org/10.20961/yustisia.v8i2.33610>>.

2 Muhamad Rusliyadi and Wang Libin, 'Agriculture Development Programs for Poverty Reduction Evidences from Indonesia and China - Comparative Study Case', *Asian Journal of Agriculture and Rural Development*, 8.2 (2018), 104-18 <<https://doi.org/10.18488/journal.1005/2018.8.2/1005.2.104.118>>.

11 (3) Resolutions of the People's Consultative Assembly No. XVI/MPR/1998 on Political Economy In Democracy of Economic which regulates that economical development must be directed toward protection of the poor and land use for the farm sector must be prioritized.

Regulation above is very contrast with reality in which most Indonesian farmers own less than ideal width.³ In dealing with such an issue, agrarian law must be progressive because it is related to a lot of Indonesian people's life. The number of people who work in this sector, based on Ministry of Agriculture data in 2021, reach 36. 123.820 people. The real number of Indonesian farmers is higher than that because the object of this survey is limited to farmer more than fifteen years old. Meanwhile, the number of farmers who are under such age has not been included in that statistic.⁴ Most of those farmer live under poverty.

Those data confirm that there is a mistake in the Indonesian agrarian law. In dealing with this issue, the first thing to be analyzed is the accordance of philosophical bases of agrarian law management with prosperity as the purpose. Current management of Indonesian agrarian law is still based on positivism which emphasizes rule and logic. It is imprecise because there are many weaknesses in agrarian regulation such as the contradiction between articles, unjust regulation, and the revocation of several regulations by the Indonesian Constitutional Court. Enforcing such an injustice regulation will bring detriment for the people and prevent them to get prosperity.

The condition above must be solved by turning positivism as the base of agrarian management into a holistic and comprehensive philosophical base namely progressive law which is introduced by Satjipto Rahardjo, one of a leading expert in sociology of law. Creating progressive agrarian law is an effort to return agrarian law to its core con-

cept as an instrument to bring prosperity as the dream of Indonesian founding father. The basic character of Indonesian agrarian law is progressive-responsive⁵ because Indonesian agrarian law is antithesis of colonial agrarian law whose character is dominative, dependency, exploitative and discriminative. So, agrarian law is very important to be progressive-responsive.

The novelty of this article is creating agrarian management based on progressive law. It is different from other agrarian articles. One of the comparative articles is Hannah Wittman et.al. (2017) who discuss new agrarianism. Because this article only emphasizes the community-based farmland access supported by political and social equity while progressive agrarian law has wider and comprehensive scope such as *rule-breaking*, contextual and interdisciplinary approach in agrarian law making and enforcement.⁶ In addition, this article is different from Chase's (2010) article which discuss on the importance of territorial based in agrarian management whereas this article not only contain the importance contextual aspect but also holistic approach in understanding law namely spiritual, emotional and intellectual approach.⁷ The other comparison is D Alan Orr's article (2014) which is limited to Sir Davies' concept of justice on agrarian reform whereas this article is not only limited to agrarian reform but to all aspects of agrarian law management. Agrarian progressive law influence philosophy, theory, science and also in law enforcement.⁸ This article is also different from Eitan Ginzberg's article whose focus only on democratic agrarianism meanwhile this article

3 Sulasi Rongiyati, 'Land Reform Melalui Penetapan Luas Tanah Pertanian (Kajian Yuridis Terhadap UU No 56/PRP/Tahun 1960 Tentang Penetapan Luas Tanah Pertanian)', *Jurnal Negara Hukum*, 4.1 (2013), 1–15.

4 Laelatul et.al. Hasanah, *Statistik Ketenagakerjaan Sektor Pertanian (Februari 2021)*. (Jakarta, 2021).

5 Moh. Mahfud MD, 'Politik Hukum Hak Asasi Manusia Di Indonesia', *Jurnal Hukum IUS QUIA IUSTUM*, 7.14 (2000), 1–30 <<https://doi.org/10.20885/iustum.vol7.iss14.art1>>.

6 Hannah Wittman, Jessica Dennis, and Heather Pritchard, 'Beyond the Market? New Agrarianism and Cooperative Farmland Access in North America', *Journal of Rural Studies*, Vol. 53 (2017): 303–316, <http://dx.doi.org/10.1016/j.jrurstud.2017.03.007>.

7 Jacquelyn Chase, 'The Place of Pluriactivity in Brazil's Agrarian Reform Institutions', *Journal of Rural Studies*, 26.1 (2010), 85–93 <<https://doi.org/10.1016/j.jrurstud.2009.07.001>>.

8 D Alan Orr, 'Sir John Davies ' s Agrarian Law for Ireland. *Journal of the History of Ideas* , , Vol . 75

has a wider scope than his article⁹

This article aims to explaining progressive law and also to explores the construction of progressive agrarian law as an effort to bring justice and prosperity to all Indonesian people

B. Method

This article applies a juridical normative research to establish a philosophical analysis of progressive law as the basis for developing Indonesian agrarian law. This type of research uses a conceptual approach namely an approach which discusses concepts, theories, and schools of thought in law. The type of data that are used in this article is primary (regulation), secondary (journal, book, bulletin, etc), and tertiary legal material.¹⁰ Those data are collected through literature research. Collected data are analyzed through (1) *coding* which is the classification of data based on them; (2) interpreting the data means the data are interpreted or analyzed based on the school of thought, legal theories, and legal concepts. (3) making conclusion.¹¹

C. Result and Discussion

1. Understanding Progressive Law

Legal positivism which stresses on legal formalism, legal determinism, reductionism, universalism and mechanistic perspective on the law has failed in creating substantive justice in agricultural sphere. Law in positivism perspective is a closed, finite system and autonomous system so that law is only understood as command sovereign power in form of text and the only instrument in determining the truth (deterministic). Satjipto Rahardjo addressed his critique over such

⁹ Eitan Ginzberg, 'State Agrarianism versus Democratic Agrarianism: Adalberto Tejeda's Experiment in Veracruz, 1928-32', *Journal of Latin American Studies*, 30.2 (1998), 341-72 <<https://doi.org/10.1017/S0022216X98005070>>.

¹⁰ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201-7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>.

¹¹ Markus Oermann and Lennart Ziebarth, 'Interpreting Code - Adapting the Methodology to Analyze the Normative Contents of Law for the Analysis of Technology', *Computer Law and Security Review*, 31.2 (2015), 257-67 <<https://doi.org/10.1016/j.clsr.2015.01.008>>.

a concept and introduced progressive law as a correction on the weakness of modern (positivistic) legal system.¹²

The first thing to be emphasized in this article is progressive agrarian law which is different from recent positivistic agrarian law. Progressive law is directed toward substantive justice meanwhile positivism is legal certainty oriented and trapped in procedural justice. The difference between positivism and progressive law can be seen in Table 1.

Table 1. The Difference of Legal Positivism and Progressive Law

Indicator	Legal Positivism	Progressive Law
Character-istic of Law	Textual, autonomous, esoteric	Considering behavioral aspect, contextual and opened Law is not a finite scheme
Approach	<i>Rule and logic</i>	Not only rule and logic but also conscience. The approach is combination of intellectual quotient, spiritual quotient and emotional quotient Deep Ecology
Main Value	Legal certainty, emphasize procedural aspect	Substantive Justice

Source : *Extracted From Many Sources*

Progressive law considers that regulation or rule is important but the law is not only limited to rule or regulation but also must consider behavior and social condition of the society. So, the law for Satjipto Rahardjo is not a closed system but an open and dynamic system. Through such a perspective, regulation can not be enforced as it is but also

¹² Satjipto Rahardjo, *Hukum Progresif : Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009) hlm. 67

must consider social context which influences it. Chambliss and Seidman in their book *Law, Order and Power* state that law-making, law enforcement and the response of role occupants are influenced by social context.¹³

In Satjipto Rahardjo point of view, law is imperfect even it is flawed since born. Because law making is an effort to reduce reality into text or articles so that actually law is a language game. Language can not fully describe the reality into article because it heavily depends on vocabulary and other aspects.¹⁴ Incapability of article in law to reach every reality means law is only a myth than a reality.¹⁵ Moreover, Indonesian language is a very young language which continuously develops. So that, academically, it is imprecise to state that there is a clear regulation.¹⁶ In addition, text is so stiff so that it can not fulfill human necessity for long period.¹⁷

Law making means making a concept on particular circumstance. The process of law making is always begun by making limit to differ between the object and other things. Making the limit has its own risk namely imprecision or lack in conceptualizing the object. Even, Satjipto Rahardjo state that such an imprecision will happen so that the law-making is project in fiasco.¹⁸ It is according to Scholten statement that rule can not regulate everything completely. So, the rule can not give a precise answer for every case which is submitted to him.

The previous statement is also according to Ronald L. Goldfarb perspective that articles in regulation can't create stability, durability or precision. Every law officer has a potency to have a different interpretation on

13 William J Chambliss and Robert B Seidman, *Law, Order and Power* (Massachusetts: Addison-Wesley Publishing Company, 1971).

14 Keebet von Benda-Beckmann and Bertram Turner, 'Legal Pluralism, Social Theory, and the State', *Journal of Legal Pluralism and Unofficial Law*, 50.3 (2018), 255-74 <<https://doi.org/10.1080/07329113.2018.1532674>>.

15 Satjipto Rahardjo, *Hukum Dan Perilaku : Hidup Baik Adalah Dasar Hukum Yang Baik* (Jakarta: KOMPAS, 2009).

16 Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006).

17 Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010).

18 Rahardjo, *Hukum Progresif : Sebuah Sintesa Hukum Indonesia*.

particular article in regulation.¹⁹ It is according to language game as stated by Wittgenstein that the same word has different meaning for each people. Meaning truly depends on language and context which surrounds it.²⁰ Law is very difficult to be made in a particular language because of change in word meaning which also influence legal interpretation.

Law-making in form of regulation articles is impossible to create legal certainty because an article is a series of word that can be interpreted certainly and reach all conditions. Besides, the use of those words depends on the space and time of the word is used. Written law lies under its stiffness (*lex dura sed tamen scripta*).²¹ Law enforcement must not only be based on text or rule and logic but also use *conscience*. In progressive law perspective, state is the construction of conscience so the rule of law must be based on conscience. The importance of conscience usage in law enforcement is also addressed by John Finis, one of the prominent figure of natural law 21st century, who put *conscience* as one of practical reasonableness, he says that law-making and law enforcement must not only hang on logic but also combined with conscience. In the last part of his journal, he states that practical reasonableness is not only a mechanism to produce precise understanding based on rule and logic but also a full being that must be figured out.²²

The combination of logic and conscience will bring out justice which is understood as common kindness for all members of community, not individual interest orientation. Justice can be achieved through cooperation among members. There are three roles of practical reasonableness in achieving justice namely control of individual emotion and behavior, honest toward mind, and attention to conscience.²³

19 Ronald L Goldfarb, 'Mellinkoff : The Language of the Law', *Michigan Law Review*, 63.1 (1964).

20 Roshan Ara, 'Wittgenstein ' S Concept of Language Games', *Al Hikmat*, 26 (2006), 47-62.

21 Rahardjo, *Penegakan Hukum Progresif*, Loc. Cit.

22 John Finnis, 'Natural Law Theory: Its Past and Its Present', *The American Journal of Jurisprudence*, 81 (2012), 16-30 <<https://doi.org/10.4324/9780203124352>>.

23 Diksha Sarma., 'The Idea of Practical Reasonableness.', *International Journal of Advanced Research*, 5.1 (2017), 357-62 <<https://>>

Agrarian justice in Indonesia is a reflection of social justice in Pancasila as Indonesian *staats fundamental norm, state ideology, legal and moral desires which encompass the desire of all Indonesian*. Those dreams are individual freedom, nation-state freedom, humanity, social justice, and Indonesian peace. The political dream is the desire to bring prosperity to all Indonesian. Moral desire means morality in social intercourse and religious value which is the actualization of human conscience.²⁴ The social justice dream as stated under The Fourth Paragraph of the Constitution Preamble is the highest source and orientation in determining, developing, and implementing state law and national development at national as well as regency level.²⁵

All of the law-making and law enforcement must be based on social justice. It means every law-making and law enforcement must not only be based on ratio but also on conscience. The combination of both aspects will bring out substantive justice as the purpose of agrarian law. One of the illustration is progressive agrarian court in which the judge not only use his thought but also the conscience, put ahead humanity and protection of disadvantage people's interest. So that agrarian law can bring prosperity to all people.

The term prosperity must be completely understood, prosperity has two dimensions namely physical (material) prosperity as well as spiritual (mentality/happiness) aspect.²⁶ Justice is a condition in which every person get prosperity according to his effort and protection over his necessity, dignity, and position in society. **This is one of the main principles in progressive law which is law exist not only for itself but for human kindness. Another important principle is law is not a finite scheme, it continuously changes.**

The implementation of progressive
doi.org/10.21474/ijar01/2754>.

- 24 Astim Riyanto, "Pancasila Dasar Negara Indonesia," *Jurnal Hukum & Pembangunan*, Vol. 37, no. 3 (2007): 457.
- 25 F. Soeroso, 'Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi', *Jurnal Konstitusi*, 11.1 (2014), 64-84.
- 26 Rebekka Friedman and Andrew Jillions, "The Pitfalls and Politics of Holistic Justice," *Global Policy*, Vol. 6, No. 2 (2015): 141-150.

law is open, not autonomous, and possible to do rule-breaking. This is a dynamic system because law exists for the human being who is always dynamic. So, law is *pantha rei* (continuously flows and changes) as stated by Heriklitos according to the change or context of law exist. Even though, the law also can be a trigger for society to change through its function as a tool of social engineering. Law as an open system means law is not esoteric or it is not only the sphere of law scholars and law officials but to fully understand the law, it is necessary to involve other scholars. Through involvement of scholars from other field in law make we can get a comprehensive depiction and understanding of law. So that, law-making and law enforcement can be effective and according to the stipulated purpose. Law is a multi facet that can be understood from many perspectives.²⁷ Moreover, law can not be separated from society because creating prosperity is the purpose of agrarian law and the object of law-making as well as law enforcement. That's why in a progressive law perspective, the law is never final but continuously change according to the dynamic of society and law is for human not law for itself. This is a dynamic system because law exists for a human being who is always dynamic.

So, the law is *pantha rei* (continuously flows and changes which stem from Heriklitos statement) according to the social change or context of law. Even though, law also can be a trigger for society to change through his function as a tool of social engineering besides law as a tool of social control. In this way, law can bring justice and prosperity for public.

Progressive law not only considers reciprocal relationship between law and people but also the entire aspect of life. Such a perspective is depicted as a deep ecology concept which is not anthropocentrism but considers the entire aspect of human goodness and environmental goodness. Through this perspective, the long-term justice can be attained namely intra and intergeneration justice.

- 27 Esmi Warassih, "Peran Politik Hukum Dalam Pembangunan Nasional," *Gema Keadilan*, Vol. 5, No. 1 (2018): 852-863, <https://ejournal2.undip.ac.id/index.php/gk/article/view/3592>.

2. The Construction of Progressive Agrarian Law

Progressive agrarian law is a conception to create a holistic and comprehensive understanding about agrarian law making and its implementation. The purpose of agrarian law is to bring justice and prosperity for the people as stated under article 33 section 3 of Indonesia Constitution. There are several characteristics of progressive agrarian law, namely :

1. National agrarian law is dynamic, law is always in the making to respond social change in society;
2. Agrarian law presence is for humans not for the law itself. Justice and prosperity of the people can not be derogated because the text
3. Progressive agrarian law wants to create agrarian justice. The concept of justice continuously changes. Aristoteles divide justice into distributive and commutative justice. In the 20th century, John Rawls introduce different principle namely the principle that everyone deserves in developing his life and fulfill its necessity. He also states that law must help the disadvantaged person who lives under poverty to fulfill their necessity. Besides, there is also the concept of justice from Ronald Dworkin which he named equality of resources. In this concept, justice owns two elements, namely : (1) law must help the poor named political preference concept and (2) respect the culture of society which he calls as personal preference concept.²⁸ This personal preference concept is also according to social justice addressed by Gary Craig that social justice must be based on social and cultural consideration so that it can be achieved through an interdisciplinary approach.²⁹

28 Ronald Dworkin, "What Is Equality ? Part 1 : Equality of Welfare," *Philosophy & Public Affairs* 10, no. 3 (1981): 185–246, <http://www.jstor.org/stable/2264894>.

29 Gary Craig, 'Poverty, Social Work and Social Justice', *British Journal of Social Work*, 32.6 (2002), 669–82 <<https://doi.org/10.1093/bjsw/32.6.669>>.

Agrarian justice is always related to agrarian reform as a program to solve land ownership discrepancy in Indonesia. This is done through land distribution program. Agrarian reform also guarantees that land is actively used by the owner. The last report on Land Discrepancy by Ministry of Agrarian and Spatial Planning in 2019 show high discrepancy in land ownership in Indonesia namely 0.59 to 0.88. Province with the highest discrepancy is Gorontalo namely 0.88 which means 1 % of Gorontalo people own 88 % land or 12 % of land must be divided for 99 % people. It shows high discrepancy in land farming mainly in irrigated land.³⁰

The discrepancy of land ownership in the farming sector brings out high poverty in the village. Based on Central Bureau of Statistic data on September 2020, there is high poverty in the village consists of 15.510.000 people, and most of them work as farmer. This number increases about 249.100 people from the previous year.³¹ Moreover, most of Indonesian farmers are not land owner but land cultivator. For example, research in 2017 on Cimarenten Village, Kuningan regency, shows that the income average of one farmer family is Rp. 750.000,00 that is only enough to fulfill 28 until 31 % of household necessity in a month. The low of farmer income finally brings out poverty.³²

Progressive law will not let discrepancies in agrarian sector happen. One of the important aspects of progressive law is to bring justice for the poor whose small parcel and also smallholders with little income. Protection of the poor in agrarian resources as regulated under Article 11 verse (2) Basic Agrarian Law which gives particular response and protection for the poor. This is according to affirmative action and different principles

30 Eliana. Sidipurwanti, *Laporan Akhir Penelitian Ketimpangan Penguasaan Dan Pemilikan Tanah : Analisis Di Tingkat Wilayah Dan Rumah Tangga Petani*. (Jakarta: Pusat Penelitian dan Pengembangan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, 2018).

31 Badan Pusat Statistik, *Indikator Pertanian 2020* (Jakarta, 2021).

32 Deni Lubis and Ira Roch Indrawati, 'Analisis Pendapatan Petani Penggarap Dengan Akad Muzara'ah Dan Faktor Yang Mempengaruhinya', *Maqdis : Jurnal Kajian Ekonomi Islam*, 2.1 (2017), 6.

as stated by John Rawls in his book *A Theory of Justice*. John Rawls stated that every person deserve to develop his life in every sphere of law but he realize that there is economic inequality in society. In order that all people can develop his life, the poor must be given particular attention and access because if they must freely compete with the have, they will not be able to develop his life.

Affirmative action in United Nations Human Rights Office of The High Commissioner document is defined as a series of related action and mechanism to create justice for the poor. This is introduced by Rudi G Tittle to protect the war victim after world war II but this concept has flourished and identic with transitional justice. The understanding of affirmative action is more general include economical equality.³³

Besides the characteristic above, there are several other characters of agrarian progressive law namely not limited to rule and logic but use a holistic approach to understand law comprehensively. Law is a multi-facet that can not be viewed from law science but also use other sciences such as sociology of law and legal anthropology. Through this approach, the law can be holistically understood. The usage of multi-disciplinary or inter-disciplinary approach is relevant to agrarian justice because Dworkin state that to bring out justice, social and cultural condition must be figured out. The usage of other sciences in understanding law also shows its difference from legal positivism which is oriented to procedural aspects.

Progressive agrarian law making and law enforcement not only thread on intellectual quotient but stress on the combination between intellectual quotient, emotional quotient, and spiritual quotient. To make a rule-breaking, law officials can not only thread on logic (linear thought).³⁴ Through the combination of those three intelligent, law-making can not be considered a mechanical approach like positivism do. In emotional

33 David Hollenbach, *The Common Good & Christian Ethics* (Cambridge University Press, 2004).

34 Satjipto Rahardjo, *Biarkan Hukum Mengalir : Catatan Kritis Tentang Pergulatan Manusia Dan Hukum* (Jakarta: Kompas, 2007).

quotient, progressive law stress conscience in law-making and law enforcement. The protection of the poor can not be achieved without empathy which stem from conscience.

Finnis also introduce the use of conscience in law-making and law enforcement. His perspective is influenced by Thomas Aquinas as one of the prominent figure in natural law. Thomas Aquinas considers that all men has a proclivity to make a good deed which is called *synderesis* as basis of *syndesis* or good behavior.³⁵ The desire to make a good deed must be basic in law-making and law enforcement. This also must base academician in developing the legal concept as well as other theory/philosophy related to law.

The usage of conscience in law is ever stated in *Paragraph IX of the Introduction to the Agreement of October 18, 1907 concerning Land War Laws and Customs* (about war zone in Hague Treaty) which regulate that if there is no special rule about war zone, the decision must be based on humanity and conscience of society (*les lois de l'humanité et des exigences de la conscience publique*).

The usage of conscience in agrarian law making and law enforcement is very important even it is a prerequisite to create agrarian justice. It is also relevant with creating justice in the midst of agrarian poverty, the discrepancy between the effort of farmer and his income, low smallholder income, and high conversion of farmland for the corporation or industrial interest.

In progressive agrarian law, rule of law is the construction of conscience (*kokoro* in japan) so that must be based on conscience. To embody a conscience state, state must have a personality which means all planning, as well as implementation, must be based on conscience which brings us to kindness. Through conscience, the state can bring justice and security to the people. It means, the use of morality in law not only limited to public function but also actualizes particular values or rule of law by moral design.³⁶ Values

35 Gunther Kuchenhoff, "Law and Conscience," *Natural Law*, Vol. 53 (2017): 120-131.

36 Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (Yogyakarta: Genta

in the context of Indonesian law is Pancasila as the moral basis of Indonesian nation. So that law-making and law enforcement must be based on Pancasila as the source of law and state ideology.

Progressive law with a desire to make law by moral design through a combination of the intellectual, emotional, and spiritual quotient will be embodied. Besides, use emotional quotient, progressive law also use spiritual quotient. On the last phases of his life, Satjipto Rahardjo emphasizes on spiritual quotient in law enforcement and law-making. The spiritual quotient shows a reflective contemplative process of thought which is directed by the spiritual to attain substantive justice. Through the combination of those quotients, a progressive law officer can make a comprehensive assessment of a legal case and even do rule-breaking if the regulation is unjust.

One of the scholars who allow disobedience to bad law is Gustav Radbruch. He said that intolerable law and the inexistence of equality in law can not be considered law. Related to this view, there is a prima facie in organized society to obey the law if it stress on equality. This conception is based on his experience in Germany under Hitler administration.³⁷ Saint Augustine address that *lex iniusta non est lex* (unjust law is not a law). This is quoted by Martin Luther King in his *Letter from a Birmingham jail*.

In his letter, Marthin address a question whether somebody must obey a rule or break it? For Marthin, the answer lies in the fact that there is a just and unjust law. Obedience toward regulation is a good deed if it is according to morality. In contrast, obedience to the rule is not morally binding if the rule is unjust. Justice in Dworkin perspective is the best political morality, Bur Rasuanto state that justice is the ultimate value or primacy of justice.

Rule-breaking in agrarian law is very important because many agrarian regulations Publishing, 2009).

37 Bonnie Litschewski Paulson and Stanley L. Paulson, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies*, Vol. 31, no. 1 (2006): 1–11, <https://www.jstor.org/stable/3600538>.

is not according to the purpose of national agrarian law namely to bring prosperity for all people. There are many agrarian regulations that have been revoked by Indonesia Constitutional Court namely Law No. 41 of 1999 on Forestry, Law No. 7 of 2004 on Water Resources, Law No. 25 Yof 2007 on Investment, Law No. 30 of 2007 on Energy and many other regulations that have been revoked by Constitutional Court.

In terms of law enforcement, progressive law officers will not enforce unjust regulations. So that, the person will do rule-breaking. In progressive agrarian law, law for humanity and not law for itself. It means human kindness can not be derogated for regulation. Human interest is the main priority.

D. Conclusion

Justice and people's prosperity is the main value and priority of agrarian progressive law. Progressive law considers that law continuously changes to adapt to social change. Progressive agrarian law is not a textual and stiff law but a flexible and value-laden. In progressive perspective, law as an instrument in creating justice not only uses text but also conscience. Progressive agrarian law has several characteristics, namely : (1) dynamic and contextual to adapt to social change so that law is not a closed and finite scheme; (2) agrarian justice oriented to solve discrepancy of land ownership and income (directed to attain social justice); (3) Stress on conscience in agrarian law making and law enforcement not only rule and logic; (4) permit rule-breaking at the midst unjust regulation (substantive justice not procedural justice); (5) give attention toward agrarian worker (farmer) who lives under poverty and experience injustice

E. References

- Ara, Roshan, 'Wittgenstein ' S Concept of Language Games', *Al Hikmat*, 26 (2006), 47–62
- Benda-Beckmann, Keebet von, and Bertram Turner, 'Legal Pluralism, Social Theory, and the State', *Journal of Legal Pluralism and Unofficial Law*, 50.3 (2018), 255–74 <<https://doi.org/10.1080/07329113.2018.1532674>>
- Chambliss, William J, and Robert B Seidman, *Law, Order and Power* (Massachutes: Addison-Wesley Publishing Company, 1971)

- Chase, Jacquelyn, 'The Place of Pluriactivity in Brazil's Agrarian Reform Institutions', *Journal of Rural Studies*, 26.1 (2010), 85–93 <<https://doi.org/10.1016/j.jrurstud.2009.07.001>>
- Christiani, Theresia Anita, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7 <<https://doi.org/10.1016/j.sbspro.2016.05.006>>
- Craig, Gary, 'Poverty, Social Work and Social Justice', *British Journal of Social Work*, 32.6 (2002), 669–82 <<https://doi.org/10.1093/bjsw/32.6.669>>
- Deni Lubis, and Ira Roch Indrawati, 'Analisis Pendapatan Petani Penggarap Dengan Akad Muzara'ah Dan Faktor Yang Mempengaruhinya', *Maqdis : Jurnal Kajian Ekonomi Islam*, 2.1 (2017), 6
- Dworkin, : Ronald, 'What Is Equality ? Part 1 : Equality of Welfare', *Philosophy & Public Affairs*, 10.3 (1981), 185–246
- Finnis, John, 'Natural Law Theory: Its Past and Its Present', *The American Journal of Jurisprudence*, 81 (2012), 16–30 <<https://doi.org/10.4324/9780203124352>>
- Friedman, Rebekka, and Andrew Jillions, 'The Pitfalls and Politics of Holistic Justice', *Global Policy*, 6.2 (2015), 141–50 <<https://doi.org/10.1111/1758-5899.12193>>
- Ginzberg, Eitan, 'State Agrarianism versus Democratic Agrarianism: Adalberto Tejeda's Experiment in Veracruz, 1928-32', *Journal of Latin American Studies*, 30.2 (1998), 341–72 <<https://doi.org/10.1017/S0022216X98005070>>
- Goldfarb, Ronald L, 'Mellinkoff : The Language of the Law', *Michigan Law Review*, 63.1 (1964)
- Gunther Kuchenhoff, 'Law and Conscience', *Natural Law*, 53 (2017), 120–31 <<https://doi.org/10.4324/9781315250731>>
- Gustav Radbruch, Bonnie Litschewski Paulson and Stanley L. Paulson, 'Statutory Lawlessness and Supra-Statutory Law (1946)', *Oxford Journal of Legal Studies*, 31.1 (2006), 1–11
- Hasanah, Laelatul et.al., *Statistik Ketenagakerjaan Sektor Pertanian (Februari 2021)*. (Jakarta, 2021)
- Hollenbach, David, *The Common Good & Christian Ethics* (Cambridge University Press, 2004)
- MD, Moh. Mahfud, 'Politik Hukum Hak Asasi Manusia Di Indonesia', *Jurnal Hukum IUS QUIA IUSTUM*, 7.14 (2000), 1–30 <<https://doi.org/10.20885/iustum.vol7.iss14.art1>>
- Oermann, Markus, and Lennart Ziebarth, 'Interpreting Code - Adapting the Methodology to Analyze the Normative Contents of Law for the Analysis of Technology', *Computer Law and Security Review*, 31.2 (2015), 257–67 <<https://doi.org/10.1016/j.clsr.2015.01.008>>
- Orr, D Alan, 'Sir John Davies 's Agrarian Law for Ireland Author (s) : D . Alan Orr Source : Journal of the History of Ideas , January 2014 , Vol . 75 , No . 1 (January 2014) , Published by : University of Pennsylvania Press Stable URL : <http://Www.Jstor.Com/Stable/>, 75.1 (2014), 91–112
- Rahardjo, Satjipto, *Biarkan Hukum Mengalir : Catatan Kritis Tentang Pergulatan Manusia Dan Hukum* (Jakarta: Kompas, 2007)
- , *Hukum Dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006)
- , *Hukum Dan Perilaku : Hidup Baik Adalah Dasar Hukum Yang Baik* (Jakarta: KOMPAS, 2009)
- , *Hukum Progresif : Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009)
- , *Negara Hukum Yang Membahagiakan Rakyatnya* (Yogyakarta: Genta Publishing, 2009)
- , *Penegakan Hukum Progresif* (Jakarta: Kompas, 2010)
- Rejekiingsih, Triana, Chatarina Muryani, and Diana Lukitasari, 'Study of the History and Dynamics of the Agrarian Policy in Transforming the Indonesia's Agrarian Reform', *Yustisia Jurnal Hukum*, 8.2 (2019), 309 <<https://doi.org/10.20961/yustisia.v8i2.33610>>
- Riyanto, Astim, 'Pancasila Dasar Negara Indonesia', *Jurnal Hukum & Pembangunan*, 37.3 (2007), 457 <<https://doi.org/10.21143/jhp.vol37.no3.151>>
- Rongiyati, Sulasi, 'Land Reform Melalui Penetapan Luas Tanah Pertanian (Kajian Yuridis Terhadap UU No 56/PRP/Tahun 1960 Tentang Penetapan Luas Tanah Pertanian)', *Jurnal Negara Hukum*, 4.1 (2013), 1–15
- Rusliyadi, Muhamad, and Wang Libin, 'Agriculture Development Programs for Poverty Reduction Evidences from Indonesia and China - Comparative Study Case', *Asian Journal of Agriculture and Rural Development*, 8.2 (2018), 104–18 <<https://doi.org/10.18488/journal.1005/2018.8.2/1005.2.104.118>>
- Sarma., Diksha, 'The Idea of Practical Reasonableness.', *International Journal of Advanced Research*, 5.1 (2017), 357–62 <<https://doi.org/10.21474/ijar01/2754>>
- Sidipurwanti, Eliana., *Laporan Akhir Penelitian Ketimpangan Penguasaan Dan Pemilikan Tanah : Analisis Di Tingkat Wilayah Dan Rumah Tangga Petani*. (Jakarta: Pusat Penelitian dan Pengembangan Kementerian Agraria dan Tata Ruang/ Badan Pertanahan Nasional, 2018)
- Soeroso, F., 'Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi', *Jurnal Konstitusi*, 11.1 (2014), 64–84
- Statistik, Badan Pusat, *Indikator Pertanian 2020* (Jakarta, 2021)
- Warassih, Esmi, 'Gema Keadilan Edisi Jurnal Peran Politik Hukum Dalam Pembangunan Nasional', *Gema Keadilan*, 5.1 (2018), 852–63
- Wittman, Hannah, Jessica Dennis, and Heather Pritchard, 'Beyond the Market? New Agrarianism and Cooperative Farmland Access in North America', *Journal of Rural Studies*, 53 (2017), 303–16 <<https://doi.org/10.1016/j.jrurstud.2017.03.007>>