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Progressive Legal Thinking in Achieving Justice in Judges' Decisions

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Abstract

As a judicial power institution independent in upholding the law, the authority of the court must be realized to meet the sense of justice in society, which is the ideal manifestation of Indonesia as a state of law. In Law Number 48 of 2009 concerning Judicial Power, Article 3 paragraphs (1) and (2) state that in carrying out their duties and functions, judges and constitutional judges are obliged to maintain judicial independence by prohibiting any interference from parties outside the judiciary in judicial matters. In exercising judicial power, judges have a great responsibility to decide cases that reflect certainty and justice for those seeking justice. The issues surrounding judicial decisions that overturn the logic of societal justice not only give rise to skepticism and pessimism toward law enforcement but also impact the decline in the authority of the courts, which in turn tarnishes the "face" of the law reflected in law enforcement practices. Let's just say the classic case that is often used as an example in law faculty lectures, namely the case of Sengkon and Karta, who had to languish behind bars due to "malpractice" in the judicial process, which later became a "legend" of miscarriages of justice in Indonesia. Another case that turned our legal logic upside down is the case of Lanjar, who was imprisoned because his wife died after falling from the motorcycle Lanjar was riding. Satjipto Rahardjo emphasized the importance of uniting the forces of progressive law to combat the status quo of legal schools of thought that have been applied in the Indonesian legal system

for so long, especially in producing fair judicial decisions. This research falls under normative legal research. The research approach is normative jurisprudence, which aims to uncover the scientific logic from a normative perspective. The data sources used in this study were obtained from primary data, secondary data, and tertiary data. The primary data used in this normative juridical research were data obtained from literature studies, using legislation and court decisions as media. Secondary data came from books, magazines, newspapers, articles, journals, internet media, and other references that supported the research. Tertiary data is supporting legal material that provides guidance and explanation for primary and secondary legal materials. Tertiary legal materials include information sources such as legal dictionaries, Indonesian language dictionaries, and encyclopedias. The data was analyzed qualitatively to obtain a description of progressive legal thinking in realizing justice in judges' decisions. The application of law changes from time to time. The purpose of this improvement is how to realize substantive law so that justice can be achieved. The positivistic way of judging often fails to achieve substantive justice, especially for the weak and marginalized parties. A modern legal system based on the spirit of liberalism and capitalism will clearly only benefit the strong, both economically and politically. A distinctive feature of the modern legal system is its method of legal reasoning, which focuses on the text of the law.

Keywords: Progressive Law, Justice, Judge's Decision

Introduction

Judicial power is an independent power exercised by the Supreme Court and subordinate judicial bodies within the general judiciary, religious judiciary, military judiciary, administrative judiciary, and by the Constitutional Court, as stated in Article 24 paragraph (1) and (2) of the 1945 Constitution of the Republic of Indonesia. To administer justice to uphold the law and fairness; to realize an independent judiciary and a clean and authoritative judiciary with an integrated judicial system, as was the purpose of the enactment of the Judiciary Law.

The court is an institution that serves as the legal "infrastructure" for realizing the existence of law, and is empowered to administer judicial power to uphold the law and achieve justice.

As an independent power in upholding the law, the authority of the judiciary must be realized to meet the sense of justice in

society. In Law Number 48 of 2009 concerning Judicial Power, Article 3 paragraphs (1) and (2) state that in carrying out their duties and functions, judges and constitutional judges are obliged to maintain judicial independence by prohibiting any interference from parties outside the judiciary in judicial matters. The implementation of this independent judiciary is carried out to realize justice based on the Almighty God, which is based on Pancasila as the source of all legal sources.

The ideals of a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, contain the understanding of recognizing the principle of the supremacy of law and the constitution. The separation of powers between the government (executive), the legislature (legislative), and the judiciary (judicial) guarantees human rights and a free and impartial tribunal.

In exercising judicial power, judges have a great responsibility to decide cases that can reflect certainty and justice for those seeking justice. Formally, judges hold a central position in the world of justice. In his hands, the fate of those accused is determined, whether good or bad. Judges are the only profession in the world that is called 'God's representative' or 'Your Honor'. In academic language, it is often referred to as officium nobile (a noble profession).

As stated by Arief Sidharta, judges, in carrying out their duties, bear a great responsibility and must understand that responsibility, because a judge's decisions can have far-reaching consequences for the litigants and/or other individuals affected by the scope of those decisions. Therefore, an unjust judicial decision can cause physical and mental suffering that will always remain in the minds of the relevant litigants throughout their lives.¹

As "God's representative" in realizing justice based on the One God, as stated in the heading of a case decision letter, the judge's obligation to provide justice is not merely a formal task as a "craftsman" of the law bound by the law as its "mouthpiece", but rather the judge's necessity to provide justice, certainty, and benefit in every decision.²

The issues surrounding judicial decisions that overturn the logic of societal justice not only give rise to skepticism and pessimism toward law enforcement but also impact the decline in the authority of the courts, which in turn tarnishes the "face" of the law reflected in law enforcement practices.

Let's just say the classic case that is often used as an example in law faculty lectures, namely the case of Sengkon and Karta, who had to languish behind bars due to "malpractice" in the judicial process, which later became a "legend" of miscarriages of justice in Indonesia. Another case that turned our legal logic upside down is the case of Lanjar, who was imprisoned because his wife died after falling from the motorcycle Lanjar was riding.³

Unlike Lanjar's fate, where law enforcement officials seemed to only decide the case for the sake of the law, not for the sake of justice. The superficiality of law enforcement is evident when it involves the upper-middle class, such as the corruption case involving Social Minister Juliari Batu

¹ Suhrawardi K. Lubis, *Etika Profesi Hukum*, Jakarta, Sinar Grafika, 2000, p. 25.

² Abdul Manan, *Penerapan Hukum Acara Perdata di Peradilan Agama*, Jakarta: Kencana, 2012, p. 291.

³ <https://news.detik.com/berita/d-1275815/pengacara-bap-lanjar-dibuat-seolah-olah-kecelakaan-tunggal>, accessed on 20/11/2021 at 10.00 am.

Bara, who was sentenced to 12 years in prison for proven embezzlement of social assistance funds for people affected by the Covid-19 pandemic. The 12-year sentence, which was higher than the prosecutor's demand of 11 years, is difficult to comprehend with legal common sense. This is because the judge should have had the alternative to sentence him to life imprisonment or the death penalty, as stipulated in Article 2 paragraph (2) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption. This is because what Juliari Batu Bara did hurt the hearts of the public who were experiencing the negative economic and social impacts of the global health disaster Covid-19.⁴ Therefore, the biggest criticism of the courts relates to a range of issues such as slow case resolution, high costs (which can be caused by long resolution times), unresponsive courts, non-final and non-definitive decisions, and concerns about the professionalism and integrity of judges as the ultimate guardians of the bastion of justice. The courts are often considered unfair, especially toward the poor, which has led to negative adages about the law, such as "the law is sharp against the poor, but dull against the rich." Even Oliver Goldsmith said, "law grinds the poor, but the rich men rule the law.⁵

Given the legal system and the problematic state of law enforcement in Indonesia, to break free from the positivist legal school that has inherited conventional ways of working with its formal doctrines and procedures, which then give rise to formal justice rather than substantive justice, enlightenment and liberation from the shackles of formal procedures must be pursued thru a legal paradigm that not only achieves certainty but also realizes the ideals of just and prosperous law, thru the progressive legal paradigm. Satjipto Rahardjo emphasized the importance of uniting the forces of progressive law to counter the status quo of legal schools of thought that have long been applied in Indonesia's legal system,⁶ especially in producing fair judicial decisions. From the brief overview of the issues above, this research aims to analyze the concept of progressive law in producing fair legal applications through court decisions.

⁴ Most recently, the panel of judges at the Supreme Court's cassation level upheld the sentence of former Minister of Marine Affairs and Fisheries Edhy Prabowo in the case of bribery related to the export of lobster larvae or seeds, reducing his previous sentence of 9 years in prison to 5 years with a fine of Rp400 million, with the provision that if the fine is not paid, it will be replaced with 6 months of imprisonment. This decision amends the decision of the Corruption Court at the DKI Jakarta High Court. Although it feels strange that the bribery practice was carried out during difficult times, namely the COVID-19 pandemic, because the decision is normatively legally binding, the KPK will execute the decision...see <https://nasional.tempo.co/read/1570340/kpk-bakal-eksekusi-putusan-ma-yang-korting-hukuman-penjara-edhy-prabowo/full&view=ok>, diunduh pada kamis, 10 Maret 2022 Jam 22.00 wib.

⁵ Edi Setiadi, *Kontruksi Hukum: Dalam Perspektif Spiritual Pluralistik*, Thafa Media, Yogyakarta, 2021, p 675.

⁶ Satjipto Rahardjo, *Membedah Hukum Progresif*, Jakarta: Penerbit Buku Kompas, 2006, p. 114.

Methodology

It is normative legal research. The approach applied in this research is normative jurisprudence, which aims to discover the scientific logic from its normative perspective. In regard to data analysis, it is analyzed qualitatively to obtain a description of progressive legal thinking in realizing justice in judges' decisions.

Discussion

Dynamic change of law application

The judge, as an organ of the court, is considered to understand the law. Litigants come to him seeking justice. If he cannot find written law, he is obliged to delve into unwritten law to make a decision based on the law, acting as a wise and fully responsible individual. Therefore, in making a decision, judges should be accountable to God Almighty, themselves, society, the nation, and the state, so that justice can be realized in society.

The final step in the entire criminal case process is the judge's decision, often referred to as a "Court Decision," "Final Decision," or more commonly, simply a "Decision." The Criminal Procedure Code (KUHAP) defines a verdict in Article 1, paragraph 11, which states: "A court decision is a statement by the judge delivered in an open court session, which can be a conviction, acquittal, or release from all legal charges, in the cases and manner regulated by law." The verdict issued by the judge is intended to conclude or resolve a case presented to them. Before a judge decides a case, the judge must first examine it. In handling a case, judges are given freedom by law, and other parties are not allowed to interfere with or influence the judge, except in cases permitted by law. The highest supervision of court actions is carried out by the Supreme Court based on legal provisions. In addition, judges are required to be honest and impartial so that their decisions truly provide justice and can be held accountable to God Almighty, themselves, the nation, and the state.

Judges essentially play a very central role and hold a very central position in the enforcement of law and justice. So central is the role of judges that Sydney Smith described it as "Nation Fall When Judges Are Unjust." Meanwhile, B. M. Taverne, a Dutch legal expert, always described judges with the statement, "Give me good judges, prosecutors, police, and lawyers, and I will eradicate crime even without a single piece of legislation."

In Law No. 8 of 1981, which is named the Criminal Procedure Code, Article 1, paragraph 8 states that a judge is a state judicial official authorized by law to adjudicate. In the process of adjudicating, examining, and deciding a case, as the center of excellence for judges in the Indonesian judicial system, which adheres to civil law, judges are not only fact-finders. Article 28, paragraph (1) Judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society. Paragraph (2) In considering the severity of the punishment, the judge is also obliged to take into account the good and bad nature of the defendant.

When appointed as a state official, as stated in Article 19 of Law Number 48 of 2009 concerning Judicial Power, judges commit to be servants of the law, with the oath as stated in Article 30 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power. The oath or promise of a judge as referred to in paragraph (1) reads, "In the name of God, I swear that I will fulfill the duties of a judge to the best of

my ability and most fairly, uphold the 1945 Constitution of the Republic of Indonesia, and carry out all laws and regulations to the fullest extent according to the 1945 Constitution of the Republic of Indonesia, and be devoted to the nation and country." or they make the promise, "I promise that I will sincerely fulfill the duties of a judge to the best of my ability and most fairly, uphold the 1945 Constitution of the Republic of Indonesia, and carry out all laws and regulations to the fullest extent according to the 1945 Constitution of the Republic of Indonesia, and be devoted to the nation and country."

In addition to the requirement for professional experience in the field of law to maintain judicial independence in carrying out its duties and functions, the integrity and personality of judges are also essential, requiring them to have an impeccable, honest, and fair personality as mandated in Article 3. According to Satjipto Rahardjo, a profession not only contains technical and skill dimensions, but also moral and philosophical ones. Every profession tends to have the following three characteristics:⁷

1. Utilizing a range of academic knowledge, both theoretical and applied, in providing services to the community;
2. Prioritizing theoretical standards in measuring the success of a profession;
3. Having a system of oversight for the practices of professionals by establishing a code of ethics as one of the behavioral standards for professionals.

Based on Satjipto Rahardjo's view regarding the profession described above, the obligations of a profession are not identical to legal obligations, nor do they contradict each other. In some ways, professional obligations are the same as legal obligations, so every professional violation can result in legal sanctions in addition to professional sanctions. The difference is that professional obligations are often considered ethical guidelines, so violations of these obligations are outside the legal realm. However, professional violations with unclear sanctions will hinder the development of the profession itself. Professional ethics focuses more on practical application in the workplace, resulting in a unique set of standards for individuals bound by their profession, as outlined in the professional code of ethics law. Professional ethics is social ethics within a specific ethical framework, with duties and responsibilities toward the science and profession one holds. In this case, scientists must be oriented toward a sense of professional responsibility and their responsibility as scientists, which underlies their scientific thinking and scientific attitude.⁸

The judge's decision is the true law. This basic assumption was put forward by the legal realism school, which states that "all the law is judge-made law," meaning that all law is essentially the judge's decision, making the judge's position and status the central source of law.⁹ Therefore, the judge's decision, as true law, must be able to achieve the very purpose of the law itself. There are at least 3 (three) purposes of law: justice, which is viewed from a

⁷ Satjipto Rahardjo, *Masalah Penegakan Hukum*, Suatu Tinjauan Sosiologis, Sinar Baru, Bandung, 1983, p. 1.

⁸ Abbas Hamami, *Etika Keilmuan dalam Filsafat Ilmu*, Tim Dosen Filsafat Ilmu, Liberty, Yogyakarta, 1996, p. 176.

⁹ Darmodiharjo, Darji & Shidarta. *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*.: PT Gramedia Pustaka Utama, Jakarta, 2004, p. 138.

philosophical perspective; certainty, which is viewed from a legal perspective; and usefulness or utility.¹⁰

These three goals of law (justice, utility, and certainty) are difficult to achieve simultaneously in practice. In practice, there are often conflicts or tensions between legal certainty and utility, between justice and certainty, and also between justice and utility. According to Radbruch, if such a situation arises, it is recommended to apply the principle of priority, where justice takes precedence, followed by utility and certainty.¹¹

Legal justice, according to L.J. Van Apeldoorn, should not be equated with equalization; justice does not mean that everyone receives an equal share.¹² Meaning, justice demands that each matter must be weighed separately, meaning what is fair for one person is not necessarily fair for another. The purpose of law is to regulate social life peacefully if it leads to just rules, meaning rules where there is a balance between the interests protected, and everyone gets as much as is due to them. In another sense, according to Satjipto Rahardjo, "formulating the concept of justice means how to create justice based on the values of balance between equal rights and obligations." However, the suitability of the mechanisms used by law must also be considered. By creating and issuing legal regulations and then applying sanctions to members of society based on those regulations, what actions are permitted and not permitted is substantive. However, regulations must also be issued that govern the procedures and order for implementing those substantive regulations, which are procedural. For example, civil law (substantive) is paired with civil procedure law (procedural).

According to Salman Luthan, as quoted by M. Syamsuddin, justice in the context of a judge's decision can be viewed from two sides: procedural justice and substantive justice. Procedural justice is justice related to the protection of human rights and the legal rights of the parties (suspects, defendants, convicts, witnesses, and victims, as well as plaintiffs and defendants) at every stage of the judicial process. Substantive justice is justice related to a judge's decisions in examining, trying, and ruling on a case, which must be made based on considerations of honesty, objectivity, impartiality, without prejudice or discrimination, and in accordance with conscience. As long as the judge's decision is based on those considerations, it can be qualified as substantively fair.¹³

According to Artidjo Alkostar, as central figures in law enforcement, judges have a moral obligation and professional responsibility to master knowledge, possess skills in the form of legal technical capacity, and have a standard moral capacity. With sufficient knowledge and technical skills, judges will be able to provide accurate and correct legal reasoning when deciding a case. If a court decision does not adequately consider (is insufficiently

¹⁰ Ali, Ahmad, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*. Chandra Pratama, Jakarta, 1996, p. 84.

¹¹ *Ibid*, p 96.

¹² L.J. Van Apeldoorn, *Pengantar Ilmu Hukum*: Terj. Oetarid Sadino, Pradnya Paramita, Jakarta, 1993, P. 11.

¹³ M. Syamsudin, *Keadilan Substantif Yang Terabaikan Dalam Sengketa Sita Jaminan (Kajian Putusan Nomor 42/PDT/2011/PT.Y)*, Jurnal Yudisial Vol. 5 No. 1, April 2012, p. 38-39.

reasoned) legally relevant and legitimate matters that arose during the trial, it will feel strange and lead to a loss of common sense. According to him, illogical court decisions will also be felt by the most common people, because court decisions concern the human conscience. Law enforcement officers are not slaves to the words crafted by lawmakers, but rather, they create justice based on legal norms and common sense.

Satjipto Rahardjo's on Progressive of Law

In Satjipto Rahardjo's thinking, he attempts to provide an understanding of the State Based on Law, which tends to be equated with the rule of law. According to him, such an interpretation practice is a way of thinking that is not independent, including practicing the institution called the State Based on Law. This must be realized because the rule of law and the state based on law have their own sociological structures and cannot be equated so easily.¹⁴ In its journey, the rule of law, with its high spirit of justice aligned with democracy, was able to displace the absolute state. However, this spirit and idealism were later pushed aside by technical matters that are indeed an absolute requirement of modern law, which then led to much criticism, such as that spearheaded by the Critical Legal Studies movement in the United States in the 1970s. According to Max Weber, the modern legal system built on the doctrine of the rule of law is inseparable from the emergence of industrial-capitalism, which is why it is not surprising that modern law tends to be repressive and does not tolerate "relaxed" loopholes for freedom.¹⁵ However, despite this, according to Prof. Tjip, the inherent nature and characteristics of the rule of law should not be immediately set aside.

The most appropriate step is to ensure that the direction and character of the legal system developed in Indonesia truly become Indonesian law, synergizing with the wealth that Indonesia possesses. The Indonesian nation must be brave enough to elevate Pancasila as a refreshing alternative in the development of the Indonesian version of a Law-Based State. This is done by projecting alternative doctrines to replace the Rule of Law, which has already been used as a guideline for structuring the legal system in Indonesia, with doctrines such as the rule of morality or the rule of justice, or, somewhat boldly, by introducing the doctrine of the Rule of Pancasila. Therefore, large-scale legal development and construction activities involving various parties are needed. The courage of legal decision-makers to create extraordinary procedures and build a corporate culture within the judicial process, especially among judges, prosecutors, and advocates, may be achievable because there are individuals from the legislative, executive, and judicial branches who are willing not to be easily defeated by words written in "black and white" in the legislation.¹⁶ However, he believed that whatever is done in law should never disregard the human aspect as a central part of that law, because law is made for humans, not the other way around. Thus, law is a field and a struggle for humans in the context of seeking happiness, according to Prof. Tjip, "Both human and societal factors are brought forward, so that law appears

¹⁴ Satjipto rahardjo, *Sisi Lain Dari Hukum di Indonesia*, PT Kompas Media Nusantara, Jakarta, 2006, P. 3.

¹⁵ *Ibid*, p. 4.

¹⁶ *Ibid*, P. 5.

more as a field of human struggle and conflict. Law and its operation should ideally be viewed within the context of the law itself. Law is not for itself and its own needs, but for humanity, and specifically for human happiness.¹⁷

Law serves to protect human interests; for humans to be protected by law, it must be enforced. In upholding the law in a judicial decision (by a judge), three fundamental elements must always be considered: first, the legal value (legal certainty) to create order in society; second, the sociological value (benefit), where society must also benefit from the enforcement of the law and it should not cause unrest; and third, the philosophical value, which means that with the law enforced, society will achieve justice. A wise judge will compromise those three values if they conflict. According to Gustav Radbruch, these three elements are the pillars of the rule of law that will guide humans in their legal lives. These three core values must be balanced. However, these three values are not always in a harmonious relationship with each other, but rather face, contradict, and create tension, although justice should be prioritized.¹⁸

Amidst dissatisfaction among legal circles with legal practices that negate the aspect of justice, which should be the spirit of the rule of law, progressive legal thought emerged, with a concept that is not confined to the text of the law but also considers the sense of justice that lives within society. Another school of legal thought states that judges are merely the mouthpiece of the law, as expressed by Immanuel Kant and Montesquieu.¹⁹ We often hear about paradoxes directed at law enforcement agencies, especially judges, who decide cases, regarding the acquittal of corrupt individuals who have plundered large sums of public money and are then released by judges. It is also not uncommon for accusations that are detrimental to law enforcement officers to receive justice in court, in addition to the strong evidence they possess. There are still many more questions that are causing the law to become increasingly degraded at present.²⁰

The application of law changes from time to time. The purpose of this improvement is to realize substantive law so that justice can be achieved. The positivist approach to law often fails to achieve substantive justice, particularly for the weak and marginalized. A modern legal system based on the spirit of liberalism and capitalism will clearly only benefit the strong, both economically and politically. A distinctive feature of the modern legal system is its method of legal reasoning, which focuses on the text of the law (textual approach).

Satjipto Rahardjo's view of law, which involved correcting the errors and shortcomings of the positivist paradigm in legal science, led him to rethink the way law is studied and "how to do law," aiming to achieve "true justice," often

¹⁷ Satjipto Rahardjo, *Biarkan Hukum Mengalir* (catatan kritis tentang pergulatan manusia dan hukum), Kompas, Jakarta, p. ix.

¹⁸ Stefanus Laksanto Utomo, Dkk. *Kontruksi Hukum: Dalam Perspektif Spiritual Pluralistik*, Thafa Media, Yogyakarta, 2021, P. 165-167.

¹⁹ Mertokusumo, Sudikno. 1991. *Mengenal Hukum*, Liberty, Yogyakarta, p. 39.

²⁰ A.M. Mijahidin, *Hukum Progresif: Jalan Keluar Dari Keterpurukan Hukum di Indonesia: Majalah Hukum Varia Peradilan*, Edisi No 257 April 2007, Jakarta: Ikahi, 2007, p. 51.

referred to as substantive justice. "Judging by conscience" is the phrase that often flowed from the lips of this legal maestro.

We can see a portrait of judges' decisions that break out of the "comfort zone" of conventional thinking in applying the law in several progressive court decisions, for example:

1. The Supreme Court acquitted Mukhtar Pakpahan of the treason charges, even though the elements of the crime of treason were formally met legally. Supreme Court Justice Adi Andojo Sutjipto was the judge who presided over Mukhtar Pakpahan's cassation appeal during the Soeharto era. The District Court and High Court had imposed criminal sanctions (straf) on Pakpahan for alleged treason. At the cassation level in the Supreme Court, Pakpahan was found not guilty of treason. According to the Supreme Court, the judges below misapplied the law by using jurisprudence that has existed since colonial times. And sociologically, it is wrong to apply this to the population of a nation that is already independent and has begun to practice democracy and respect human rights.
2. Two cases of domestic violence, where the judge granted the dismissal of the case of husband (Dephi) against his wife Emi at the Lubuk Linggau District Court, and the Supreme Court decision granted the dismissal of the complaint against Sidarta (60 years old) in the case of abuse against his wife, Kamini. Although both cases were legally positivistically hampered by Article 75 of the Criminal Code regarding the statute of limitations for withdrawing a complaint, which is 3 (months), both the district court judges and the Supreme Court agreed that the decision should be interpreted as a just and peaceful resolution that benefits the victim-witness and the defendant in order to achieve truth and justice.²¹ Moreover, the spirit of the Domestic Violence Law is not solely to break up families if there are legal issues involved.

Since 2004, Professor Tjip has been calling for "unite the forces of progressive law." The prospects of progressive law will be determined by many factors, namely the ability of law enforcement officials to be courageous in making legal breakthroughs, *rule-breaking*²² when encountering

²¹ <https://news.detik.com/berita/d-2784668/maaf-istri-selamatkan-suami-dari-bui-ini-kisah-lautan-air-mata-di-sidang> Downloaded on Tuesday, 15 Maret 2022, pukul 20.00Wib.

²² According to Satjipto Rahardjo, there are three ways to break the rules: (1) Using spiritual intelligence to rise from legal setbacks provides an important message for us to dare to seek new paths (rule breaking) and not allow ourselves to be constrained by old ways, running old and traditional laws that clearly hurt the sense of justice more; (2) A deeper search for meaning should become a new measure in implementing law and the rule of law. Each party involved in the law enforcement process is encouraged to always ask their conscience about the deeper meaning of the law; (3) Law should not be implemented solely according to the principle of logic, but with feeling, care, and compassion for vulnerable groups...see, Yusriyadi, *Paradigma Sosiologis dan Implikasinya Terhadap Pengembangan Ilmu Hukum dan Penegakan Hukum di Indonesia: Pidato Pengukuhan Sebagai Guru Besar FH UNDIP*, Semarang, 18 Februari 2006, p. 32-33.

deadlocks in formal legalities, both in terms of legislation and procedure. The ability of law enforcement officers to go against the conventional flow, even if it's considered strange and unpopular, the mantras of bravery, discretion, rule-breaking, justice, and moral reading of the law are a must.²³ The role of a judge is to understand the purpose of law in society, to seek justice and the values that exist within society, because law in society is like a living organism. Law in society is always factual and in a state of constant change. The changes can be minor and gradual, making them difficult to observe, but they can also be drastic. The legal relationship with reality is so fluid that the law is also constantly changing. In many ways, changes in the law are a result of changes in social reality.²⁴ However, sometimes the law struggles to keep up with societal changes, creating a "gap" between society and the law. This means that law cannot exist in a vacuum, but rather attempts to adapt and adjust to societal developments. Legal history is the history of adaptation to the changing needs of life. In that regard, judges have a primary role and responsibility in making legal changes.

Conclusion

To sum up, In deciding cases, the judge's considerations result in a decision that embodies justice, utility, and certainty. The judge's courage to make a breakthrough in a decision when faced with a legalistic-positivistic deadlock characterizes a judge who possesses integrity and professionalism, not merely carrying out routines as a mouthpiece for the law, but becoming the guardian of the last bastion of justice based on legal norms and common sense, considering conscience and humanity.

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²³ Suteki, Catatan: *Rekam Jejak Pemikiran Hukum Progresif Prof Satjipto Rahardjo, S.H.*

²⁴ Judicial Commission of the Republic of Indonesia, *Problematika Hakim Dalam Ranah Hukum, Pengadilan, dan Masyarakat di Indonesia: Studi Sosio-Legal*, Pusat Analisis dan Layanan informasi Komisi Yudisial RI, Jakarta, 2017, p. 14.

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