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The Effectiveness of Law Changes as Progressive Law Implementation on Law Enforcement by Prioritizing Islamic Law as a Benchmark

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Abstract. *Indonesia is a rule of law, carrying out an action, all based on the rules or in accordance with applicable law. Law enforcement institutions in Indonesia consist of the police, prosecutors, lawyers and judges. But from the law enforcement institution, the judge has a central role, because the judge has the authority to decide on the case, who is right and who is wrong. Efforts to provide a guarantee of a sense of justice for justice seekers are needed by judges who have an analysis that has good legal analysis, integrity, morals and ethics. The relationship between law, judges and justice is a manifestation of substantive justice in accordance with the values in Pancasila very dependent on the legal thinking applied by the judge in the court. Progressive legal thinking is a legal thought that places human factors more important and is above the rules. Written legal regulations (law) are static while human life is dynamic, often new problems that have never been regulated by previous laws and regulations. Therefore, statutory regulations need to be changed that can guarantee community justice by prioritizing sociological factors that grow in society. Basically, changes to the law can be carried out, but in practice compiling laws requires a long process and costs that are not small, it is less effective, because there are several conditions that may require a change of law as soon as possible. So that other regulations can be issued in addition to the law (PERPU, SEMA, SEJA, etc.) to overcome the situation. The law appeared together with the development of people's lives.*

Keyword : Guarantee; Islamic; Progressive.

1. Introduction

Indonesia is a country based on law according to the 1945 Constitution. This is stated in the 1945 Constitution article 1, paragraph 3 which reads: "The State of Indonesia is a country based on law". All aspects of life in society, statehood and

government must always be based on law, so that people are obliged to obey the rules that apply. A state of law or having the term rechtsstaat or the rule of law is a state which, in carrying out an action, is all based on rules or in accordance with applicable law. If someone commits an act that violates the rules, then he has the right to get a punishment because he is considered to have violated the law. The term rule of law began to develop around the 19th century. According to Plato, a state of law is a state that has aspirations to pursue truth, decency, beauty and justice. Meanwhile, according to Aristotle, a rule of law is a state that stands on law that guarantees justice for all its citizens. Indonesia is a constitutional state based on Pancasila. It aims to realize the life order of a country that is safe, peaceful, prosperous and orderly. Where the legal position of every citizen is guaranteed, so that harmony, balance and harmony can be achieved between individual interests and group interests.

Everyone's hope that the law will work in fulfilling justice has actually been felt since the concept of law came to the fore in the time of Socrates. How ideally a legal order in the life of the state should lead to the realization of three basic things, namely justice, liberty, and equality. In relation to the upholding of law, one must observe how the law works in society carefully considering that several schools of law have different points of view. Sharp difference occurs in the view of the positivists and the sociologists where in the view positivists that law and society should be separated. Background view pure legal theory according to the teachings of *freierechtslehre* from Hans Kelsen requires that so that the law is actually carried out objectively, the law must be sterilized or purified from non-legal factors such as social, cultural, economic, political, and philosophical religion. Meanwhile, sociologists say that there is no difference between law and non-law separated or sterilized because after all the law lives, grows, thrive, and die with that society.

Can be felt when the adoption of legal positivism teachings finally bring to a state where the law becomes so autonomous and sterile from moral elements because they are fixated on established norms by emphasizing that law is law. Then the certainty is determined based on the rules and judges as Law enforcers then only serve as mouthpieces so that the nature of the law becomes closed in his efforts to provide justice.

Law enforcement institutions in Indonesia consist of the Police, Attorney General's Office, Lawyers and Judges. However, from these law enforcement institutions, judges have a very central role, because judges have the authority to decide cases, who is right and who is wrong. Even the judge can be seen as the personification of the law. Thus, it has an obligation to guarantee a sense of justice for every justice seeker through the legal process in court.

Efforts to guarantee a sense of justice for justice seekers really need judges who have analysiswho have good legal analysis skills, integrity, morals and ethics. Judges may not side with one of the litigants in court, such as prosecutors who must side with the interests of the state and try to prove the defendant's guilt for the sake of upholding law and justice, while lawyers side with the interests of clients so they try to find weaknesses and relief for Prosecutor's evidence, also with the same reason, namely for the sake of upholding law and justice.[1]

The relationship between law and judges as central in law enforcement as described above, greatly influences the attainment of substantive justice in accordance with the values set forth in Pancasila. In other words, the relationship between law, judges and justice is the embodiment of substantive justice according to the values in Pancasila which is very dependent on the legal thinking applied by judges in court. The fact that is happening in Indonesia is that most law enforcers, including judges, in the law enforcement process have not been based on progressive legal thinking but are based on positivistic-legalistic legal thinking by viewing law as just a law and solely for the pursuit of legal certainty, at the expense of social justice. public.

Progressive legal thinking is legal thinking that places the human factor as more important and above regulations. Written legal regulations (laws) are static while human life is dynamic, new and more complex problems often arise that have never been regulated by previous laws and regulations. Therefore, it is necessary to make changes to laws and regulations that can guarantee social justice by prioritizing sociological factors that grow in society. However, making changes to the law requires time and a process that is not short. So if you encounter these problems, you can use Islamic law as a benchmark for judges in deciding a case.

2. Research Methods

The research method used is normative juridical. because this research is only aimed at written regulations so this research is very closely related to the library because it will require data that is secondary to the library. In normative legal research, written law is examined from various aspects such as aspects of theory, philosophy, comparison, structure/composition, consistency, general explanation and explanation of each article, formality and binding force of a law and the language used is the language of law. So that we can conclude that normative legal research has a broad scope.

3. Results and Discussion

[1]A. Mulladi, 2011, The Role of Legal Politics in Equitable Law Enforcement, Journal of Fair Law, Vol. 2, No. 2, Jakarta, p. 160

3.1. Overview of Criminal Law

a. Definition of Criminal Law

The views of several scholars regarding the notion of Criminal Law, among others[2]:

1. According to Moeljatno Criminal Law is part of the overall law that applies in a country, which provides the basics and rules for:

a) Determine which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for those who violate them;

b) Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened;

c) Determine in what way the imposition of this penalty can be carried out if there are people who are suspected of having violated the prohibition.

2. According to Soedarto, it provides limitations on the meaning of criminal law as a rule of law, which binds to an act that fulfills certain conditions as a consequence in the form of a crime.

Thus basically criminal law is based on 2 things, namely:

a) Actions that meet certain conditions.

By "acts that meet certain conditions" is meant an act committed by a person, which allows the imposition of a sentence. Such acts can be called "criminal acts" or abbreviated as "evil acts".(Verbrechen or crime). This "evil deed" has to be someone who commits it, so the issue of "certain acts" is broken down into two, namely the actions that are prohibited and the person who violates the prohibition.

b) Criminal,What is meant by punishment is suffering that is deliberately imposed on the person who commits it. Actions that meet certain conditions. In modern criminal law, this punishment also includes what is called "orderly action" (tuchtmaatregel, Masznahme). In the science of customary law, Ter Haar

[2]Didik Endro Purwoleksono, 2014, Criminal Law, Surabaya: Airlangga Universitv Press (AUP). Pages 3-4.

uses the term (adat) reaction. In the current Criminal Code, the types of punishment that can be applied are listed in the 10th Criminal Criminal Code

3. According toSimons criminal law is the entire prohibition or order that the state threatens with sorrow, namely a "criminal" if it is not obeyed, the entire regulation that determines the conditions for the imposition of a sentence, and the entire provision that provides the basis for the imposition and application of a sentence.

4. According toVan Hamel provides a limitation that criminal law is the entire basis and rules adopted by the State in its obligation to enforce the law, namely by prohibiting what is contrary to the law (onrecht) and imposing a sorrow (suffering) on those who violate the prohibition.

From some of the definitions above, in essence, criminal law can be divided into 2 namely[3]:

1. Material Criminal Law, here as mentioned by Moeliatno in letter a and letter b. Thus what is regulated in material criminal law, namely:

a) Pactions that are prohibited or actions that can be punished;

b) The conditions for imposing a sentence or when or in what case a person who has committed a prohibited act may be punished;

c) Criminal Provisions.

An example of material criminal law is the Criminal Code.

2. Formal Criminal Law, as mentioned by Moeljatno in letter c. The formal criminal law is a criminal procedural law or a process or procedure for carrying out all actions when the material criminal law will be, is being and or has been violated' Or in other words, the formal criminal law is a criminal procedural law or a process or procedure for carrying out all actions when there is a suspicion that there will be, is being or has been a criminal act.

An example of formal criminal law is the Criminal Procedure Code.

b. Criminal Law Functions

[3]Ibid. Educate Endro Purwoleksono. Pages 4-5.

Criminal law is public law, because criminal convictions are imposed to defend the public interest and its implementation is entirely in the hands of the government.The function of Criminal Law in particular is to protect legal interests against disgraceful acts. According to Satochid Kartanegara in his book "Criminal Law" and Hermain Hediati Kooeswidji in his book "Development of Types of Criminals in the Context of Development of Criminal Law", the legal interests are categorized as[4]:

a) Human Life, for those who violate the interests of this law, namely killing other people's lives, will be threatened with, among others, Article 338 of the Criminal Code. If the act is carried out with planning, it will be threatened with the provisions of Article 340 of the Criminal Code. Likewise, if an act or action is carried out due to negligence, causing the death of another person, then it will be threatened with Article 359 of the Criminal Code.

b) Bodies or human bodies, criminal threats for anyone who commits an act or action that can harm the body or bodies of other people, will be threatened, among others, with Article 351 of the Criminal Code.

c) A person's honor, the Criminal Code regulates the matter of a person's honor with the provisions of 310 of the Criminal Code, meaning that anyone who attacks a person's honor or good name, will be threatened with criminal punishment based on Article 310 of the Criminal Code. When the defamation is carried out via the internet, it will be charged with Article 27 Jo Passal 45 of Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

d) Freedom of a person, Article 333 of the Criminal Code threatens with criminal penalties for anyone who intentionally and unlawfully deprives a person of freedom.

e) Property, Article 362 of the Criminal Code which is a clause on theft, anyone is prohibited from committing acts or acts of stealing other people's belongings either in whole or in part.

c. Purpose of Criminal Law

The purpose of criminal law, among others[5]:

1. To frighten people not to commit crimes, whether it is intended:

1) frighten the crowd (generale preventie)

[4]Ibid. Educate Endro Purwoleksono. Pages 5-6
[5]Ibid. Didik Endro Purwoleksono Hal : 7.

2) frighten certain people who have committed crimes so that in the future they will not commit crimes again (specific prevention)

2. To educate or improve people who have indicated that they like to commit crimes so that they become people of good character so that they are beneficial to society.

3. According to Wiriono Prodiodikoro, these two objectives are additional or secondary objectives, and according to him through these objectives, they will play a role in straightening the social balance sheet which is the primary objective.

4. As quoted further by Andi Hamzah, in the book "Principles of Criminal Law", Van Bemmelen's view states that criminal law is the same as other parts of law, because all parts of the law determine regulations to enforce norms recognized by law. . Criminal law, in one respect, deviates from other parts of the law, namely in criminal law it talks about the intentional addition of suffering in the form of a crime, even though the crime has another function of increasing suffering. The main objective of all parts of the law is to maintain order, calm, welfare, and peace in society, without intentionally causing suffering.

3.2. Overview of Progressive Law

a. Understanding Progressive Law

Law can be classified in two senses, objective meaningful law and subjective meaningful law. Objective law is the rules governing relations between members of society, while subjective law is the authority or right that a person obtains based on objective law.[6]Meanwhile, progressive means advancing, wanting to progress and always progressing. 7 From these two terms it can be said that progressive laws are regulations which regulates relations between fellow citizens that are made by a person or group who has the authority to make laws on the basis of a desire to move forward.[7]

In Indonesia, the so-called progressive law emerged around 2002 with the initiator Satjipto Raharjo. Progressive law was born because so far the teaching of positive law (analytical jurisprudence) that has been practiced in empirical reality in Indonesia has been unsatisfactory. Satjipto Raharjo interprets progressive law with the sentence, first, law is for humans and not the other way around. The law does not exist for himself but for something broad, namely for

[6]Liky Faizal, 2016, Progressive Legal Problems in Indonesia", j*urnal Ijtimaiya, Vol. 9, No. 9*, Matter. 4
[7]Ibid.

human dignity, happiness, welfare and human glory. Second, law is not an absolute and final institution, because law is always in the process of being made (law as a process, law in making).

The idea of progressive law arose out of concern for the quality of law enforcement in Indonesia, especially since the reformation took place in mid-1997. If the function of law is intended to ideally participate in solving societal problems, then what Indonesia is experiencing and happening right now is very much the opposite of the ideals. that ideal.

Progressive law, as described earlier, has the desire to return to legal thinking on its basic philosophy, namely law for humans. Humans become the determinant of the orientation point of the existence of law. Therefore, the law cannot be an institution that is free from the interests of serving the welfare of humans. Law enforcers are required to prioritize honesty and sincerity in law enforcement. They must have empathy and concern for the suffering of the people and their nation. The interests of the people, both their welfare and happiness, are the orientation point and the ultimate goal of administering law. In this context, the term progressive law actually adheres to a legal ideology that is pro-justice and pro-people law.

b. Progressive Law characteristics

In order to obtain the maximum legal objectives, according to Satjipto Raharjo, it is built with the term progressive law, which depends on the human ability to reason and understand and the human conscience to make legal interpretations that prioritize the moral values of justice in society. Besides that, another idea is that law must be pro-people, pro-justice, aiming for prosperity and happiness based on a good life, responsive in nature, supporting the formation of a constitutional state that is conscientious, run with spiritual intelligence and is liberating.[8] The character of progressive law includes the following:[9]

a. Progressive law is a type of responsive law, while at the same time rejecting legal autonomy which is final and inviolable;

b. Progressive law cares about meta-juridical matters and prioritizes "the search for justice";

[8] Moh. Mahfud MD, 2011, (et al), Satjipto Rahardjo and Progressive Law -Urgency and Criticism, Series of Indonesian Legal Figures, Jakarta: Epistema Institute and HuMa. Matter. 5
[9]Bayu Setiawan, 2018, The Application of Progressive Law by Judges to Realize Transcendence Substantive Justice, Journal of Cosmic Law, Vol. 8, No. 1, p. 4.

c. Progressive law also idealizes that law is assessed from social goals and the consequences of the operation of law;

d. Progressive law confronts "completeness, adequacy, facts, actions and powers". Therefore, progressive law wants to dismantle the tradition of making judge's decisions on the basis of construction alone. This needs to be done so that the law is in accordance with the real life needs of the community;

e. Progressive law contains substantial criticism of legal education, formulation, implementation and up to law enforcement;

f. Progressive law places more importance on the human factor and is above regulation. Greget elements in humans such as compassion, empathy, sincerity, edification, commitment, dare and determination, are considered more decisive than existing regulations. Based on this view, progressive law agrees with the expression "give me good prosecutors and judges, then even with bad regulations I can make good decisions";

g. Progressive law places the concept of progressivism to accommodate all aspects related to humans and law, both now and ideal life in the future. The concept of progressivism includes the views, as follows:

1) Humans from the beginning have good qualities. On the basis of these characteristics, progressive law is obliged to encourage the development of the potential for goodness, so that the law functions as a tool to spread grace to humans and the world in it;

2) Progressive law is a moral-laden legal concept. Morality is aimed at realizing justice, welfare and human happiness. The moral content makes progressive law sensitive to changes that occur in human life and the laws that apply in society. With that sensitivity, when faced with negative changes, progressive law appears with the courage to free people from bad situations and is called upon to protect and keep the Indonesian people in the legal ideal. The actual bad situation that the Indonesian nation is currently facing is none other than the domination of the liberal type of law;

3) Progressive law rejects the status quo situation, if this condition creates decadence, a corrupt atmosphere and harms the interests of the people. Such character makes progressive law more courageous and creative in seeking and finding the right format, thoughts, principles and actions to change the status quo situation. If necessary, this courage is shown by carrying out "rule breaking" of positive laws which are clearly flawed and do not take sides with the people or carry out rule making in the context of overcoming deficiencies and legal voids needed to realize substantial justice.

3.3. The Effectiveness of Law Changes in the Application of Progressive Laws

a. Effectiveness Theory

According to Soerjono Soekanto theory of legal effectiveness that effective is the extent to which a group can achieve its goals. A law can be said to be effective if it has a positive legal impact, where the law achieves its goal of directing or changing human behavior so that it becomes a legal behavior. Alluding to the effectiveness of law means leading to a discussion of the power of law in regulating and/or forcing people to obey the law. The law can be effective if the factors that influence the law can function as well as possible. The effectiveness of a law or statutory regulation has been achieved if the community behaves in accordance with what is expected or desired by the said statutory regulations.

1) The legal factor itself;

2) Law enforcement factors, namely parties who make or apply the law;

3) Factors of facilities or facilities that support law enforcement;

4) Community factors, namely public awareness to comply with a statutory regulation which is often called the degree of compliance;

5) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.[10]

According to Soerjono Soekanto, the measure of effectiveness in the first element is the regulation itself, namely:

a. Existing regulations regarding certain areas of life are quite systematic.

b. Existing regulations regarding certain areas of life are quite aligned, hierarchically and horizontally there is no conflict.

c. Qualitatively and quantitatively, the regulations governing certain areas of life are sufficient.

d. The publication of certain regulations is in accordance with the existing juridical requirements.[11]

[10]Muhammad Miftakhul Huda, et al, 2022, Implementation of State Responsibility for Serious Human Rights Violations Paniai Soerjono Soekanto's Legal Effectiveness Theory Perspective. Journal of Religion and Human Rights. Vol. 11, no. 1, Postgraduate Program at the State Islamic University of Maulana Malik Ibrahim Malang, Hal: 124-125

b. Changes to the Law

The formation of laws and regulations is a series of processes that include the stages of planning, drafting, discussing, ratifying or stipulating, and enacting. The series of stages are as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation (UU P3). Although not all types of laws and regulations have the same process at every stage. Each type of legislation has different content material, each of which has a specific function. For example the material lawOf course, it is different from the content material in the presidential regulation. Differences in content and matters regulated can certainly affect the speed with which these types of statutory regulations are formed. The more complicated the material is arranged, the longer the formation process will take.

Jimly Asshidiqie stated that the laws that have been stipulated and promulgated, of course, have gone through a very long process until they are finally ratified as open public property, binding on the public. If a law that has been prepared, discussed and debated in such a way is finally determined and promulgated as it should be, even though the statement is related to the judicial review of a law.[12]

As is known, there are still laws that are substantially important (urgent) to be enacted immediately but are still protracted in the discussion stage without having a definite time for completion. With various inhibiting factors ranging from the complexity of regulated substances to debates in the discussion of material that has not met an agreement or common ground. Meanwhile, the dynamics of law, the community's need for legal certainty and the very fast development of society will not wait for uncertainty when the law is formed.

Indonesia, which uses a continental European system, follows the civil law tradition. The style of law with the civil law tradition tends to be strong in accepting law as a finite scheme. Law is something that has been made (by the legislature) (Bergh, 1980) and not something that is made every time (by the court). This way of judging makes it difficult for the law to follow the dynamics of life. What Bergh put forward again adds to our insight that written law, in this case based on statutory regulations, will find it difficult to keep up with social developments in society.

However, as a consequence of the rule of law (rechtstaat) which has become a consensus in our constitution. All government actions in regulating people's lives must be based on statutory regulations (written rules). The law is required to be able to adapt to changes in society, none other than because the function of law

[11]Ibid p. 125
[12]Muhammad Fadli, 2018, Formation of Laws that Follow Community Development, Journal of Indonesian Legislation, Vol. 15, No. 1, p.3.

is to protect the interests of society. The law functions to overcome conflicts of interest that may arise between members of the community. According to Hugo Sinszheimer wrote that: "Waneer er tusschen recht en leven tegenstelingen betaan, dank men er steeds krachten in bewegingon deze op te heffen. And Begin teen tijdperk, waari nieuw recht onstaat…" it is always felt that legal changes need to begin since there is a gap between conditions, events, and relations in society, with the law that governs it. However, it is impossible for us to separate the rule of law from the things that should have been regulated, so that when the things that should have been regulated have changed in such a way, of course a change in law is required to adapt so that the law is still effective in regulating it.[13]

The application of progressive law which has the main characteristic of idealizing that law is judged by social goals and the consequences of the operation of law and prioritizing "the search for justice" in countries that adhere to positivism like Indonesia, where written law is the main basis for enforcing the law is arguably not easy. Even more so when there are already many laws and regulations that are no longer relevant to the problems that arise in society day after day. Indeed, in principle, amendments to the law can be made, but in practice drafting laws requires a lengthy process and costs a lot.

Often there is a precarious situation in society that requires changes to laws and regulations as soon as possible. In critical cases like this, for example, the President can issue Government Regulations in Lieu of Laws, or several agencies in practice can issue regulations outside the categorization of statutory regulations, such as SEMA in the Supreme Court when urgent matters occur. However, what needs to be underlined is that these regulations must still refer to a higher law. This can indeed be an obstacle, but in practice this rarely happens.

Some examples of the application of regulations outside the statutory regulations are as follows:

1) Issuance of SEMA Number 3 of 1963 which states that several Articles of the Civil Code are no longer valid, including Articles 108 and 110 of the Civil Code concerning the inability of a wife to carry out legal actions in the field of assets, and the issuance of SEMA Number 2 of 2012 concerning Adjustments to the Limits of Misdemeanors and the Amount Fines in the Criminal Code, in essence the Supreme Court requests the attention of the Heads of the District Courts so that every case of theft, embezzlement, fraud and collection of goods whose value is below Rp. 2,500,000.- (two million five hundred rupiah), the perpetrators may not be subject to detention and examination through fast proceedings.

[13]Muhammad Fadli, Op City, Hal.5

Issuance of SEMA Number 3 of 1963 and SEMA Number 2 of 2012, although according to the positivistic-legalistic understanding it is legally flawed because according to the hierarchy of laws and regulations it is impossible for SEMA to override laws. For example SEMA Number 3 of 1963 which overrides Articles 108 and 110 of the Civil Code and SEMA Number 2 of 2012 which overrides the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code which requires cases such as theft, embezzlement, fraud and collection to be detained and examined through proceedings normal. But in reality SEMA is implemented in judicial practice and social justice can be realized in society. The issuance of SEMA Number 3 of 1963 guarantees the right of wives or women in general to take legal action without the consent of their husbands. while SEMA Number 2 of 2012 provides a sense of justice to the public so that the theft of a pair of flip-flops and a watermelon does not occur again and can be arrested and punished the same as the theft of Rp. 1,000,000,000.- (one billion rupiah) or big-time corruptors who cause state losses of trillions of rupiah.

2) The Constitutional Court at the time under the leadership of Moh. Mahfud MD has issued Constitutional Court Decree Number 102/PUUVII/2009 dated July 6 2009, which basically allows voters who have not obtained a Voter Identity Card to use an Identity Card (KTP) to be able to exercise their right to vote in the 2009 general election, even though The 2009 Election Law requires voters to have a Voter's Identity Card as a condition for being able to cast their right to vote. The consequence of the issuance of this Constitutional Court decision was that voters who did not have voter cards due to the negligence of the government were able to cast their right to vote in the 2009 elections and more than that the 2009 elections could take place properly based on the principles of LUBER and JUDIL elections.

Basically, changes to laws can be made, but in practice drafting laws requires a long process and costs a lot. However, this is less effective, because there are several conditions that may require changing the law as soon as possible. So that other regulations besides laws (Perpu, SEMA, SEJA, etc.) can be issued to overcome this situation.

3.4. Application of Progressive Law to the Judge Profession in Realizing Social Justice by Prioritizing Islamic Law.

Progressive legal thinking up to the reformation order has not fully underpinned the formation of law in Indonesia. On the other hand, according to the legalistic positivistic view that has so far dominated the thinking of law enforcers in Indonesia, the law enforcement process that is carried out must be based on the applicable laws and regulations. This means that if you follow the positivistic-legalistic view, the judge, whether he likes it or not, must try and decide on cases submitted to him according to the law, regardless of whether or not the

application of the law can bring justice and benefits to society. In an effort to overcome these contradictory issues, judges are required to decide cases by using progressive legal thinking.

One of the teachings or thoughts of progressive law is that progressive law places the human factor more important and is above regulations. Therefore, progressive law agrees with the phrase which states "give me good prosecutors and judges so that even with bad regulations I can make good decisions". The view of progressive law, which places the human factor as more important and above regulations, is consistent with Roscoe Pound's view of justice as described in the previous description which views justice as being carried out with or without law. Justice without law is carried out according to the wishes or intuition of someone who in making decisions has a wide scope of discretion and there is no attachment to a particular set of rules.

Progressive legal thinking in relation to the embodiment of justice was also put forward by one of the Supreme Court justices, Bismar Seregar, by stating "If I sacrifice legal certainty to uphold justice, I will sacrifice that law. Law is only a means while the goal is justice, why is the goal sacrificed for means?[14]Thus, in applying progressive law to realize social justice, judges must have the courage to set aside legal substances that are considered bad and hinder the achievement of social justice in society.

Indonesia is a country with a majority Muslim population, even the largest Muslim population in the world. For now, Indonesia is still ranked first in the world's largest Muslim population.[15]In addition, in its history, Islamic law (together with Adat law) also lived in the midst of people's lives before the enactment of European law during the colonial period. This is what makes law in Indonesia refer to 3 (three) sources, namely: Islamic law, customary law, and European law. In recorded history, the application of Islamic law and customary law is recognized and applied as a source of legal reference. This policy was taken with the consideration that the Islamic kingdoms at that time had imposed Islamic law on their people, although it was still limited to marriage and inheritance laws.

However, Ibn Qayyim stated, because we do not understand the concept of benefit, we have been trapped in a big mistake in understanding the Shari'a so that it is often debated. The author is of the opinion that if the Shari'a is properly understood it should be considered as a theoretical basis in an effort to

[14]Bayu Setiawan, Op City, Hal. 49
[15] Huda, "The World's Muslim Population: Statistics and Key Fact," 2019,https://www.learnreligions. com/worlds-muslim-population-2004480, accessed 9 November 2022.

participate and contribute to designing the development of national law in Indonesia. In discussions of Islamic law, justice is a form of benefit itself. This is where the philosophical foundation of Islamic law.[16]

When viewed, Islamic law is more flexible than the statutory regulations currently used by Indonesia. The rigid nature of the law tends not to be able to keep up with community developments in the long term, so changes to the law must be made beforehand, which has been explained previously, that changing laws requires a long process. The law is the basis for judges to decide on a case, but many new cases that have not been regulated in the law have sprung up along with developments in people's lives.

In cases like this, in applying progressive law, judges can use their rights to adhere to Islamic law as the basis for deciding the case. Where we know that Islamic law can cover complex problems in society and can fill a sense of justice in accordance with the expectations of society where it is known that the majority of Indonesian people are Muslims.

In its application, it is necessary to know the principles that a judge should have in order to be used as a driving force for applying progressive law in order to realize substantive justice or social justice in society, namely:

1) Judges must have the courage to break away from positivistic-legalistic notions by setting aside formal law in the interests of society and the interests of the state;

2) Judges in deciding cases may not limit themselves to the text of laws and regulations but need to use conscience, common sense, honesty, courage and skill so that the resulting decision can realize social justice;

3) Judges must have the principle that the law is not autonomous but the operation of the law is influenced by various other non-legal factors such as political, economic, social, cultural, religious and others.

4. Conclusion

The application of progressive law which has the main characteristic of idealizing that law is judged by social goals and the consequences of the operation of law and prioritizing "the search for justice" in countries that adhere to positivism like Indonesia, where written law is the main basis for enforcing the law is arguably not easy. Even more so when there are already many laws and regulations that

[16]Sarifudin, 2019,*Progressive Islamic Law: At-Thufi's Maslahat Theory Offer as Epistemology for the Development of National Law in Indonesia. Vol. 2, No. 3*, Matter. 5.

are no longer relevant to the problems that arise in society day after day. Indeed, in principle, amendments to the law can be made, but in practice drafting laws requires a lengthy process and costs a lot. Often there is a precarious situation in society that requires changes to laws and regulations as soon as possible. In critical cases like this, for example, the President can issue Government Regulations in Lieu of Laws, or several agencies in practice can issue regulations outside the categorization of statutory regulations, such as SEMA in the Supreme Court when urgent matters occur. However, what needs to be underlined is that these regulations must still refer to a higher law. This can indeed be an obstacle, but in practice this rarely happens. The law can be effective if the factors that influence the law can function as well as possible, including the law itself, law enforcers, namely parties who make or apply the law, facilities or facilities that support law enforcement, the community in this case public awareness. to comply with a law and regulation which is often referred to as the degree of compliance and culture which is the result of work, creativity and taste based on human initiative in social life. Basically, changes to laws can be made, but in practice drafting laws requires a long process and costs a lot, this is less effective, because there are several conditions that may require changing laws as soon as possible.

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