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## Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law

Article	Abstract
<p><b>Author</b> Wawan Andriawan</p> <p>Universitas Islam Negeri Mataram</p> <p><b>Corresponding Author:</b> Wawan Andriawan, Email: <a href="mailto:andriawan.wa@gmail.com">andriawan.wa@gmail.com</a></p> <p><b>Data:</b> Received: Mar 14, 2022; Accepted: Jun 27, 2022; Published: Jun 29, 2022</p> <p><b>DOI:</b> <a href="https://doi.org/10.24090/VOLKSGEIST.V5I1.6361">DOI 10.24090/VOLKSGEIST.V5I1.6361</a></p>	<p>The development of philosophical science spreads to aspects of the operation of law along with the dynamics of human civilization. However, this philosophical concept must be filtered with the essential values of a country, including Indonesia. This is because the fusion of philosophical concepts with elements as stated in the state constitution of a country must be interpreted and crystallized in various legal products issued by a country. This study aims to describe the Pancasila perspective on the development of legal philosophy in Indonesia; and analyze the meaning of 'justice' from a progressive legal perspective. This research is legal research using a conceptual and philosophical approach. The legal materials used in this research are primary legal materials and secondary legal materials. The result of this research is that the philosophy of law in Indonesia is based on the precepts (sila) of all the precepts in Pancasila. On the other hand, Pancasila is actually in harmony with the flow of legal philosophy, namely Sociological Jurisprudence. Then, one of the progressive legal concepts of Sociological Jurisprudence states that Justice is more oriented as substantive Justice, not procedural Justice. This is because Justice is the essence of the law itself, so Justice cannot be calculated mathematically, cannot be interpreted purely textually or can only be said to be 'fair' when two people have the same share as others.</p> <p><b>Keywords:</b> <i>Pancasila; progressive law; justice; legal philosophy</i></p>

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## INTRODUCTION

The development of philosophical science is undeniable regarding the influence of various other concepts, including the concept of the welfare state. This is because countries are trying their best to develop science to create an orderly, safe, peaceful, and prosperous society.<sup>1</sup> These discoveries are based on developing pre-existing theories or concepts. Thus, the philosophical aspect also targets the development of scientific resources to provide elaborative and comprehensive knowledge and wisdom. Issues regarding philosophy also target the reflective thoughts of legal

<sup>1</sup> Nurianto Rachmad Soepadmo, *Filsafat Hukum* (Sidoarjo: Zifatama Jawara, 2020).

scholars who use philosophy as the root and parameter of legal issue identification.<sup>2</sup> This is due to the academic needs of legal scholars to achieve the substantial and objective truth of legal issues found in society. On the other hand, a systematic study of the science of law is required, as is the study of the concepts and methods used in the legal system. A critical review of the views of the philosophy of law is needed to obtain an objective analysis and one of the applicable legal basis schemes. It provides scientific theories and actions consistent with the legal instruments in force in a country. However, who must adjust legal philosophy to the ethical and moral values and cultural norms that apply in that country, not Indonesia. The legal system used in a nation certainly has different concepts and principles from the implementation of the legal system in other countries.

Several studies in the field of philosophy of law generally view legal philosophy as a “floating” and even too conceptual framework that creates an antinomy between “das sein” and “das sollen”. Discussions that overestimate the philosophical dimension related to the law have implications that law is just a floating value. As a value that overlies the law, it will be difficult to implement, and thus, the purpose of the law will be difficult to implement because the law is difficult and biased in its application. This study attempts to fill the various “gaps” in the research, which is oriented that there must be coherence between “das sein” and “das sollen” in the discussion of legal philosophy. Philosophy of law by nature must be acceptable or at least have a framework to be applied. In the das sollen aspect, legal philosophy should also explore, explore, and construct the conceptual basis for the presence of law as ideas and ideals to realize justice. In this case, this research is oriented towards reviewing the coherence between “das sein” and “das sollen” law associated with aspects of progressive justice in law. Therefore, the concept is that a country will have parameters regarding the appropriateness or inappropriateness of a value contained in the laws and regulations. On the other hand, each country often has a different view of the meaning of ‘justice’ at the level of legal philosophy. Because every country has a different philosophical orientation.<sup>3</sup> Thus, as a state of law, Indonesia certainly has a conception that can be a balancing bridge between perspectives that apply worldwide. One concept that is often used to filter western norms regarding legal philosophy is the concept of progressive law. Thus, this study raises two legal issues, namely: (1) What is the view of Pancasila towards legal philosophy?; (2) How does progressive law assess the meaning of justice in legal philosophy?

## RESEARCH METHODS

The research method used in this research is normative juridical research (legal research), which refers to legal norms contained in legislation and court decisions as well as legal norms that exist in society.<sup>4</sup> Then, through the philosophical approach and conceptual approach; the sources used to study this research are primary legal materials, secondary legal materials, and several non-legal materials covering economic, social, agricultural disciplines, and so on. The method of collecting legal materials used is the method of documentation and literature study. The analysis of legal materials used in this study is by the deductive method.

<sup>2</sup> Galang Taufani Suteki, *Metodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)*, 1st ed. (Depok: Rajawali Pers, 2018).

<sup>3</sup> George Duke and Robert P. George, *The Cambridge Companion to Natural Law Jurisprudence, The Cambridge Companion to Natural Law Jurisprudence*, 2017, <https://doi.org/10.1017/9781316341544>.

<sup>4</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cetakan ke (Jakarta: Prenadamedia Group, 2016).

## ANALYSIS AND DISCUSSION

### Philosophy of Law in Pancasila's Perspective

Discussion efforts to develop a view on legal philosophy on a national scale are based on three basic principles.<sup>5</sup> *First*, the meaning of law is not only reviewed based on normative aspects alone, as it sees legal instruments as a set of principles and norms that become guiding stars at the level of human interaction in the community. On the other hand, the legal perspective in this aspect provides protection regarding the regulation of institutions that can realize the enactment of the law. In this regard, the role of law in principle is all efforts to create certainty and order as a means to improve the fate and unity of the nation as well as the development and development of comprehensive legal modernization.<sup>6</sup> *Second, the purpose of law is a vital aspect* as it cannot be separated from the goals of a country as normally contained in the constitution. At the same time, it is the embodiment of the state's foundation. *Third*, the philosophical expectations of the founders of the state in the concept of Indonesia as a state of law means that Indonesia determines that all powers standing on Indonesian land must obey the law as the key to sustainable political stability. Not only that, Indonesia emphasizes that everyone has equality before the law so that legal instruments do not provide disparity or space for discrimination against legal subjects based on status, religion, power, descent, or social status.<sup>7</sup> Thus, every legal subject gets the same opportunity and right to get protection and assistance as well as to defend before the court.<sup>8</sup> Legal philosophy has an important role in the development as well as the development of law and law itself. This is done based on various aspects; starting from the ontology aspect which includes all the problems regarding the nature of science, asking for the truth of the science and asking about the reality inherent in knowledge.<sup>9</sup> The epistemological aspect is also one of the aspects that provides direction for legal development through various schemes as well as sources of knowledge in order to reach substantive and elaborative facts and truths.

Then, the axiological aspect also contributes to various normative values that serve as guidelines and standards for everything considered true or accurate in the symbolic world. Thus, in the element of legal philosophy on a national scale, it must be oriented and rooted in the legal philosophy of Pancasila. This is because, as the basis of the state, Pancasila is the legal philosophy of the nation, which has an imperative nature that serves as a guide as well as a guide in making laws and fostering laws that are relevant and consistent with the points of Pancasila.<sup>10</sup> In addition, Pancasila is the nation's view of life and the basis of the state, explored and found from the values that live and develop in Indonesian society, has positioned Pancasila as an ideology, namely a way of looking at the state.<sup>11</sup>

<sup>5</sup> Soepadmo, *Filsafat Hukum*.

<sup>6</sup> Paulus Effendi Lotulung, *The Role of Jurisprudence as a Legal Source* (Jakarta: National Law Development Agency, 1997).

<sup>7</sup> Teuku Saiful Bahri Johan, *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Tataran Reformasi Ketatanegaraan Indonesia*, 1st ed. (Sleman: Deepublish, 2018).

<sup>8</sup> Giampiero Lupo and Jane Bailey, "Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples," *Laws*, 2014, <https://doi.org/10.3390/laws3020353>.

<sup>9</sup> Soepadmo, *Filsafat Hukum*.

<sup>10</sup> Amran Suadi, *Filsafat Hukum Refleksi Filsafat Pancasila* (Jakarta: Prenada Media, 2019).

<sup>11</sup> Hariyanto Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (June 7, 2018): 53–63, <https://doi.org/10.24090/VOLKSGEIST.V1I1.1731>.

On the other hand, Pancasila is also a guide for the formation of our national legal philosophy that inspires moral values that live in society. In this regard, the Pancasila philosophy must be developed so that it can produce various implementations that are in line with advances as in the community for the values of Pancasila itself.<sup>12</sup> The product of legislation which is positioned as one of the most representative objects of law is a normative work. On the other hand, everything that is normative opens itself up to deviations. Normative laws are closely related to humanitarian laws, considering that only humans deserve to be called normative beings. The potential for irregularities in the law creates a so-called legal gap. The gaps or lacunae that occur actually proceed through simple patterns. The process begins with the availability of positive laws that are waiting to be activated through contact with concrete events. When this contact occurs, there is a possibility that the positive law will not be able to properly answer the needs of the concrete event. This occurs mainly because positive law as a legal product is always perceived as photographing society in the context of a certain portion of time (synchronous).<sup>13</sup>

Thus, Pancasila must always remain open, not interpreted and interpreted doctrinally and dogmatically, without losing its philosophical substance creatively and dynamically because of the present and the future. Therefore, it is necessary to develop a pattern of development carried out by legal scholars to dare to reveal various philosophical problems so that academic research is critical, creative, explorative, radical, and comprehensive. In such an atmosphere, intellectual values must be explored again to review the equivalent elements for these sources of law in general and in particular. Therefore, the urgency of developing the Pancasila legal philosophy is a moral responsibility for academics, especially law scholars. What's more, the scheme that becomes the system as the basis for the enactment of law on a national scale is the Pancasila legal system. This system is an elaborative elaboration of all the elements contained in the points of Pancasila and the precepts of Pancasila itself. Then, how is the relationship between the concept of legal philosophy and Pancasila? The concept of Pancasila by using a causal theory that discusses the relationship between one thing and another.<sup>14</sup> This theory illustrates that everything that can be seen with the naked eye has a cause.<sup>15</sup>

When viewed on the basis of materialist causes, Pancasila was formed on the basis of culture, customs, habits, and religion adopted in Indonesia itself. These customs and habits are interpreted extensively which are rooted in aspects of socio-political economy, citizenship, and so on. Meanwhile, Pancasila is the basic philosophy of the Indonesian state as a finalist cause; in line with one part of Ir Soekarno's speech which stated that Pancasila was a *filosofische grondslag*.<sup>16</sup> Pancasila as the state philosophy has also been contained in the Jakarta Charter which is currently used in the opening of the 1945 Constitution of the Republic of Indonesia.<sup>17</sup> Pancasila is a form of unity that cannot be separated from one another; Therefore, Pancasila as the nation's legal philosophy

<sup>12</sup> Marjan Miharja, *Filsafat Hukum* (Bandung: CV Cendekia Press, 2021).

<sup>13</sup> Hariyanto, Kadar Pamuji, and Tedi Sudrajat, "The Ideals of Pancasila Law in the Process of Forming Legislation," December 14, 2020, 166–73, <https://doi.org/10.2991/ASSEHR.K.201209.281>.

<sup>14</sup> Anthon F. Susanto, *Filsafat Dan Teori Hukum Dinamika Tafsir Pemikiran Hukum Di Indonesia* (Jakarta: Prenada Media Group, 2019).

<sup>15</sup> Susanto.

<sup>16</sup> Syamsuddin Haris, ed., *Menimbang Demokrasi Dua Dekade Reformasi*, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2019).

<sup>17</sup> Haris.

has a hierarchical-pyramidal structure.<sup>18</sup> A partial understanding of Pancasila also requires a comprehensive description so that Pancasila can be part of the development of the legal system. In general, there are five positions of Pancasila seen from various aspects of life: community, nation and state life. These five things. *First*, Pancasila is placed as a way of life in social life. In this case, Pancasila is a guide for behavior for the Indonesian people in social life. *Second*, in the aspect of national life, Pancasila is placed as the state ideology. In this case, Pancasila is the ideal and main idea to realize the state's goals. *Third*, in the state's life, Pancasila is placed as the basis of the state. Placement of Pancasila as the basis of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Although the Preamble to the 1945 Constitution of the Republic of Indonesia does not explicitly state the term Pancasila, it is seen that the Pancasila precepts have been stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Juridically, the term Pancasila does not mean that it does not exist but is juridically accepted as part of a constitutional convention with binding power like a written constitution or constitution. *Fourth*, in its position in the hierarchy of laws and regulations, Pancasila is placed as the source of all sources of law, including commonly referred to as *rechtsidee* or the legal ideals of Pancasila. In this case, Pancasila is positioned as a *leistern* or guiding norm of the hierarchy of laws and regulations in Indonesia.

*Fifth*, in international life or the relationship between the Indonesian people and other countries, Pancasila is placed as the margin of appreciation. The placement of Pancasila as the margin of appreciation shows that concerning relations between nations in the world, Pancasila is still positioned as the nation's morals which are continuously maintained concerning other nations. With the position of Pancasila as the margin of appreciation, Indonesia, concerning other countries, seeks to maintain the values contained in Pancasila while taking new values from other countries that are relevant to current conditions. The five Pancasila positions above are relevant if they are described as a means to realize progressive justice in law. *First*, as a way of life. Pancasila is a guide for behavior for the Indonesian people. In this case, Pancasila should not be interpreted in a written juridical manner, even in the constitution. Pancasila as a way of life must be interpreted as a guide to nationality and civilization whose values existed before Indonesia's independence. Efforts to explore the values of nationalism and civilization before Indonesia's independence became an important study because progressive justice has an orientation to go beyond (law). Going beyond is not the same as breaking the law because going beyond means exploring the law as deeply as possible against values outside the law. The ability to go beyond that, on the one hand, can be a justification for the existence of positive law, but on the other hand, it can also be an attempt to break down and overhaul positive law. In this case, Pancasila as a way of life is a manifestation of cultural and national values that the Indonesian people have lived, developed, and believed in.

*Second*, in the aspect of national life, Pancasila is placed as a state ideology oriented to ideals and main ideas to realize the state's goals. In this case, Pancasila must be understood as a worldview that "intermediates" over all nationalism that the founders of the republic tried to initiate. In this case, Pancasila is placed as an "integrating value" or values that can integrate and summarize various Indonesian ideological views before being established into five aspects in a nutshell. *Third*, Pancasila is the basis of the state. The placement of Pancasila as the basis of the state is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. In this case, Pancasila becomes a

<sup>18</sup> Miharja, *Filsafat Hukum*.



*staatsfundamentalnorn* as a guiding norm in positive legal order in Indonesia. Positive law, which has a tiered and hierarchical character, as emphasized by Hans Kelsen, Adolf Merkl, and Hans Nawiasky, is a real praxis of how the positive legal system applies and is implemented. In this case, as a *staatsfundamental norm*, Pancasila ranks highest in the order and level of positive law. This confirms that positive law in Indonesia must be based on Pancasila as the *staatsfundamentalnorn*. Fourth, in the hierarchy of laws and regulations, Pancasila is placed as the source of all law sources, commonly referred to as *rechtsidee* or the legal ideals of Pancasila. In this case, Pancasila does not act as a legitimacy for the application of positive law, but Pancasila is a means of extracting legal values which are a means of positive law to explore normative provisions in a positive legal rule. The rule of positive law must be interpreted as a mirror system, meaning that positive law reflects unwritten law. To see positive law, it is necessary to look at unwritten law and vice versa. In this case, Pancasila must be used as a guide for written and unwritten law to become the applicable law (*ius constitutum*). Fifth, as the margin of appreciation in international relations. In this case, Pancasila as the margin of appreciation can be instrumented on a free and active foreign policy in Indonesia. In this case, Pancasila is the guiding principle for free and active politics in Indonesia in observing various developments and configurations of the world that are taking place now and in the future.

It is called a hierarchical scheme because when viewed based on the substance of each existing precept, these precepts are a series pattern that has a broad interpretive aspect. On the other hand, it is called pyramidal because every precept (*sila*) contained in Pancasila is a 'pattern of specialization'. *Sila ke-1*, namely Belief in One God, has become the fundamental basis of the humanitarian aspect, Indonesian unity, democracy led by wisdom in the role of representation, and social justice. On the other hand, Belief in the One and Only God is a Godhead that is humane, unites Indonesia, populist led by wisdom in representative deliberation and social justice. Thus, the pyramidal concept in Pancasila means that every *sila* contained in Pancasila contains other *sila*. Thus, the pyramidal concept can be explained when the *sila ke-2* is a form of specialization of the *sila ke-1*, *sila ke-4* is a specialty of the *sila ke-3*, and the *sila ke-5* is a specialization of the *sila ke-4*. Pancasila, which has become the basis of the state, ideology, as well as the nation's view of life, is the basis for the implementation of the rights and obligations of every legal subject standing on Indonesian land.<sup>19</sup> The *sila* reflected in Pancasila are behavioral orientations that should be applied by every citizen in order to maintain the nature and shape the character of a virtuous and Pancasilaist society. In this regard, Pancasila is also the basis of the legal scheme that must be carried out by every citizen.<sup>20</sup> With its dimensions, Pancasila is actually in harmony with the flow of legal philosophy, namely *sociological Jurisprudence*. This departs from the three dimensions of Pancasila which is oriented to give birth to a harmony from the implementation of rights and obligations in every existing legal subject. Thus, the interests and legal needs of humans within the scope of society can be fulfilled by the state impartially. On the other hand, the sociological jurisprudence perspectives was born

<sup>19</sup> Fradhana Putra Disantara, "Pancasila Juga Volksgeist, Tanya Kenapa?," in *Filsafat Hukum Pancasila (Suatu Kajian Filsafat, Hukum, Dan Politik)*, ed. Irfan Ronaboyd and Fradhana Putra Disantara (Jakarta Selatan: Kreasi Cendekia Pustaka, 2020), 63–68.

<sup>20</sup> Luh Suryatni, "FILSAFAT PANCASILA DAN FILSAFAT HUKUM SEBAGAI DASAR RULE OF MORAL," *Jurnal Ilmiah Hukum Dirgantara* 6, no. 2 (2016): 53–70.

on a series of dialectics between the historical perspectives of thought and legal positivism.<sup>21</sup> Legal positivism is more oriented towards orders issued by the authorities as a law.<sup>22</sup>

Meanwhile, the historical perspectives of thought provides an understanding that a law can develop together with the community over time.<sup>23</sup> The difference between the two perspectives of thought can be studied based on their importance. In the aspect of positivism's view, they look primary to the logical side; while history puts forward the experience of every legal subject for everything he does. This goal is also in line with the opinion of Roscoe Pound;<sup>24</sup> The public interest, individual interest, public interest constitute a 'tripartite urgency' that the state must protect. These three interests are considered moral ideals of the state to provide authoritative legal certainty. Therefore, related to Pancasila, which is also a way of life as well as the basis of the state and state ideology, there are similarities with Sociological Jurisprudence; considering that there is a common goal to be achieved. As stated by Roscoe Pound who has the notion that law is a tool for community or social engineering; This concept is reflected in every precept in Pancasila as in each of its precepts there are hopes and ideals in order to create a just, prosperous, and prosperous society. Thus, the interpretation of the law must be considered both *das sollen* and *das sein* in order to produce a decision that touches a sense of justice and welfare for the community.<sup>25</sup> Thus, reflection on the legal system is very necessary in reviewing a problem, so that the legal policy in the frame of the decision is in accordance with the ideals of law and the nation's legal philosophy. Moreover, the law was formed with the orientation of providing a guarantee of mutual happiness to the wider community.<sup>26</sup> When we look at the perspective of the nation's legal philosophy, the law is not only based on itself textually, but who must review the law contextually in a case identified by the judiciary. Wisdom in the rule of law reflects morality, which is manifested in the form of boisterous decisions and becomes beneficial for the community, which in principle requires substantial justice. Moreover, the community is actually a party that has the right to evaluate a legal instrument, in fact they also have the right to weigh everything that is part of a legal instrument, whether it is in accordance with what is appropriate or not; as stated by Rawls. Therefore, the perspective of legal philosophy based on Pancasila views that issues of integrity and morality must always be consistently an element of every legal instrument presented by the judiciary and other institutions. This perspective provides reinforcement on ethical and religious aspects so that they can be used as a pattern of consideration to make decisions with the truth that should be defended. Even though the truth is subjective,<sup>27</sup> However, all elements of law enforcement must take part in respecting the aspect of morality to produce a wise and authoritative law. Legal philosophy based on Pancasila upholds the moral greatness and nobility of the noble character of every legal subject

<sup>21</sup> Hans Kelsen, "The Pure Theory of Law and Analytical Jurisprudence," *Harvard Law Review*, 1941, <https://doi.org/10.2307/1334739>.

<sup>22</sup> Wil Waluchow, "In Pursuit of Pragmatic Legal Theory," *Canadian Journal of Law & Jurisprudence* 15, no. 1 (January 2002): 125–52, <https://doi.org/10.1017/S0841820900002496>.

<sup>23</sup> Brendan F. Brown, "The Definition of Law," *New Scholasticism* 34, no. 2 (1960): 254–56, <https://doi.org/10.5840/newscholas196034226>.

<sup>24</sup> Atip Latipulhayat, "Khazanah: Roscoe Pound," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (2014): 413–24, <https://doi.org/10.22304/pjih.v1n2.a12>.

<sup>25</sup> Abi Adams-Prassl and Jeremias Adams-Prassl, "Systemic Unfairness, Access to Justice and Futility: A Framework," *Oxford Journal of Legal Studies* 40, no. 3 (September 2020): 561–90, <https://doi.org/10.1093/ojls/gqaa017>.

<sup>26</sup> MICHAEL MARTIN, "Roscoe Pound's Philosophy of Law," *Philosophy* 51 (1965): 37–55.

<sup>27</sup> Arthur Taylor von Mehren, "Roscoe Pound and Comparative Law," *The American Journal of Comparative Law* 13, no. 4 (1964): 507, <https://doi.org/10.2307/838426>.

as being the two main components to give birth to personal self-responsibility in an excellent way towards their rights and obligations as citizens. The existence of Pancasila must be returned as the basic principle of every legal subject of Indonesian citizens in law, so that Pancasila enters into the soul and body of the human being itself, which in the end implies what actions have a good impact on society as well. Thus, the reflection of the legal philosophy of Pancasila, which can reside in the instincts and actual actions of the legal subjects of citizens, can be based on the precepts of all the doctrines in Pancasila. When the subject of the concept of the *sila ke-1*, the law understands and understands that he has grown consciously as a creature created by God Almighty. Then, from the perspective of the *sila ke-3*, legal subjects should have the awareness that they are human beings who have customs and a sense of justice. Furthermore, when viewed from the *sila ke-3*, the subject of stuck law is aware that he is a social being who has a sense of solidarity with other legal issues to provide a substantive facet of unity in the life of the nation and state. Furthermore, because of the *sila ke-4*, legal subjects must prioritize mutual agreement in the deliberation scheme for consensus. Finally, based on the announcement from the *sila ke-1* to the *sila ke-4*, legal issues have a growing desire to have an attitude that is fair to fellow human beings.

### Progressive Law's Perspective Against of Justice

The presence of progressive law is motivated by the existence of a single paradigm of positivism which is actually no longer functional as an analytical basis or control rather than existing legal instruments. Progressive law demands courage from law enforcers to interpret the provisions in order to prepare a nation.<sup>28</sup> This is carried out to reach the point of ideality between the nation's common goals and the purposes of law enforcement in Indonesia. Thus, Indonesia will no longer have any legal events experienced by the community in the future. Moreover, who must realize legal equality for every legal subject. Furthermore, the law was created not only to provide legal certainty but also for the happiness or health of the community.<sup>29</sup> Progressive law has a perspective on justice that to carry out the law is not only guided by the words contained in a statutory norm, but is reviewed based on the spirit or meaning of the law or law.<sup>30</sup> This is because law enforcement is not only oriented to intellectual intelligence but also requires spiritual intelligence. Thus, justice is not only in the form of verification of implicative sentences as stated in the norms of legislation, the point of justice is not only reviewed when Palu is knocked at the court building by a judge.<sup>31</sup> Justice also does not require law enforcers who do not pay attention to ethical and moral aspects, so that their humanity is not used in law. Thus, justice is needed in order to elevate human dignity and dignity in Indonesia. The progressive legal view also provides an understanding that human factors and human behavior are above the aspects of the legislation.<sup>32</sup>

Progressive law in legal instrumentation must be seen in three frameworks: value-oriented or unwritten law, process-oriented and efforts to reject legal finality, and law that is always oriented to transcending. The character to be value-oriented or unwritten law emphasizes that progressive law does not see the law as monolithic, which is only written regulations by the state or the authorities.

<sup>28</sup> Satjipto Rahardjo, "PEMBANGUNAN HUKUM DI INDONESIA DALAM KONTEKS GLOBAL," *Perspektif* 2, no. 2 (July 1997): 1, <https://doi.org/10.30742/perspektif.v2i2.153>.

<sup>29</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2014).

<sup>30</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010).

<sup>31</sup> Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

<sup>32</sup> Rahardjo, *Penegakan Hukum Progresif*.



Understanding written rules without values is the basis of “failing to understand” law. Therefore, progressive law offers extracting values or unwritten law as a compliment and, if needed, as a breakthrough (tease out) from written law. Furthermore, regarding the orientation to the process and efforts to reject legal finality, it is emphasized that progressive law provides a large space for the skills of certain judges and/or government officials to find the law in certain situations and cases. This is in line with the case law view, which emphasizes that the existence of law can be seen from the application of law to certain cases. This confirms that the law is a process scheme and rejects the stagnation and finality of the legal method. Furthermore, related to law, which is always oriented towards going beyond, it means efforts to construct and even deconstruct law when there is a legal urgency.<sup>33</sup> Legal construction and deconstruction efforts are carried out to glorify law and justice. In practice, the tendency of judges to carry out judicial activism and efforts to exercise discretion from government officials is an orientation to enforce progressive law.

Therefore, the behavior of legal subjects will drive the legal instrument itself and the legal system as it has been built. In this regard, the law which is a part of human *Cipta Karsa* cannot be relied on solely on symbolic matters, both alphabetically and; as contained in the legislation. The law has a moral purpose to lift and uphold moral and human values. The law will always develop and follow the dynamics of human life.<sup>34</sup> Law is a dynamic institution and aims to bring people to feel justice which actually gives a sense of welfare and happiness. The progressive legal view also states that the law is not the goal of the law book, but the law is only a tool to achieve dignified justice.<sup>35</sup> Thus, substantive justice must take precedence over procedural justice. This is done in order to show the law as a solution tool for humanitarian problems. The concept of progressive law provides the view that justice is more oriented as substantive justice, not procedural justice.<sup>36</sup> Justice is the essence of the law itself, so justice cannot be calculated mathematically or can only be said to be ‘fair’ when two people have the same share as others. Justice is behind something that appears in the numbers written in the sanctions in the laws and regulations because justice is formulated philosophically behind those provisions. Justice is something that becomes a hunt in the workings of the legal system. Legal instruments included in the judiciary are a means to achieve justice.<sup>37</sup> The existence of progressive law is a search for truth that will never stop because advanced law seeks identity as the law itself and departs from the facts of the operation of law in society. Justice according to progressive law is a substantive work, where justice is said to be justice based on the values of integration, balance, and equal rights and obligations of legal subjects. The values of justice are found in the work of law in society so that the importance of justice is not only based on textual or black-and-white aspects, which have limited meaning. Justice is also not everything that who can review based on procedures that can obscure values from justice itself.

<sup>33</sup> Fradhana Putra Disantara, “Perspektif Keadilan Bermartabat Dalam Paradoks Etika Dan Hukum,” *Jurnal Litigasi* 22, no. 2 (2021): 205–29.

<sup>34</sup> Satjipto Rahardjo, “Etika, Budaya, Dan Hukum,” *Jurnal Hukum & Pembangunan* 16, no. 6 (June 2017): 549, <https://doi.org/10.21143/jhp.vol16.no6.1229>.

<sup>35</sup> Satjipto Rahardjo, “Pemanfaatan Sosiologi Untuk Pengembangan Ilmu Hukum,” *Jurnal Hukum & Pembangunan* 9, no. 2 (April 1979): 156, <https://doi.org/10.21143/jhp.vol9.no2.743>.

<sup>36</sup> Rahardjo, *Ilmu Hukum*.

<sup>37</sup> Rahardjo, “Etika, Budaya, Dan Hukum.”

## CONCLUSION

The existence of legal philosophy in Indonesia is based on the values contained in every precept in Pancasila. This is because, as the basis of the state, Pancasila is the nation's legal philosophy, which has an imperative nature that becomes a guide as well as a guide in making laws and fostering laws that are relevant and consistent with the points of Pancasila. Moreover, Pancasila has relevance to the flow of legal philosophy, namely Sociological Jurisprudence. Therefore, Pancasila aims to give birth to harmony by implementing rights and obligations in every legal subject. Thus, the view of legal philosophy must contain the points or values collected in Pancasila. Then, the concept of progressive law provides the idea that natural justice is substantive justice, not procedural justice. This is because justice is the core of the law itself. Justice cannot be calculated mathematically, cannot be interpreted purely textually, or can only be said to be 'fair' when two people have the same share as others.

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