

Article

Development Legal Theory and Progressive Legal Theory: A Review, in Indonesia's Contemporary Legal Reform

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Abstract

The development legal theory and progressive legal theory are legal theories that are widely known in Indonesia. Both of them have inspired many legal experts and legal actors in Indonesia. The slow pace of legal reform in Indonesia, especially in eradicating corruption, is a big challenge that this nation must face. Therefore, the contribution of various parties is needed to answer the challenge. This article attempts to review the development legal theory and progressive legal theory in the context of legal reform in Indonesia. The study finds that both theories are very relevant to the current development of law in Indonesia. From the perspective of development legal theory, legal reform must be carried out by formulating laws that can encourage community transformation. On the other hand, the progressive legal theory emphasizes reforms in legal institutions and individual law enforcers. The law must be carried out by actors who have integrity and dare to take methods of a legal settlement that are out of the ordinary while remaining oriented and committed to the values of justice and humanity.

Keywords

Mochtar Kusumaatmadja, Satjipto Rahardjo, Development Legal Theory, Progressive Legal Theory, Indonesia's Legal Reform

INTRODUCTION

Since its emergence, legal theory has emerged one after another, developing from generation to generation. Each theory appears to respond to the conditions and spirit of its era. It is not uncommon for encounters or frictions between theories to occur, as a result of different points of view and rationale. However, at the same time, it also enriches the dynamics of legal thought and its literature.

In legal discourse and legal studies in Indonesia, the terminology of “development law” attributed to Mochtar Kusumaatmadja and “progressive law” proposed by Satjipto Rahardjo are very popular legal ideas or legal theories. These two theories have attracted a lot of attention from legal experts, legal scholars, and the wider community. Both theories are studied in lectures and discussed in various forums and scientific publications. The thoughts of the two figures also inspired many legal experts in Indonesia to then provide theoretical reviews, corrections, and criticisms. There are even legal experts who put forward a new legal theory by integrating the two theories (Atmasasmita, 2019).

The popularity of the two legal theories is not surprising, for at least two reasons. First, both Mochtar Kusumaatmadja and Satjipto Rahardjo are legal experts whose quality has been recognized nationally, and both can inseminate their ideas well. Mochtar Kusumaatmadja is a legal expert as well as a technocrat who is active in the government. He had served as Minister of Justice and Minister of Foreign Affairs during the New Order government. Mochtar is also a lecturer who actively teaches at the law faculty of UNPAD. His students, who were scattered throughout Indonesia, later became the connector of his ideas and ideas when they became legal experts and occupied important positions in the government. In addition, Mochtar is also active in expressing his thoughts in various writings so that they can be read by the wider community.

The same goes for Satjipto Rahardjo, he is a very prolific legal expert in writing. Kompas daily noted that Satjipto’s writings were first published on January 11, 1975. Kompas also noted that until June 2008 at least 367 articles written by Satjipto Rahardjo were published by Kompas (Kompas, 2008). Besides being active in writing popular opinions, Satjipto is also active in writing books. There are at least 23 books published under his name, although some of them are codifications of his writings in Kompas daily (Marwan, 2013).

Second, both Mochtar Kusumaatmadja and Satjipto Rahardjo succeeded in demonstrating the consistency of their ideas and thoughts about the law with their respective characteristics and attaching the idea to a distinctive terminology. The idea of this distinctive term makes it easy for readers and legal scholars to remember and identify their ideas. So when you hear the term “development law”, you can be sure that what you imagine are Mochtar Kusumaatmadja and his ideas. Likewise, the term “ progressive law “, which comes to mind is the legal idea of Satjipto Rahardjo. Both terms seem to be the copyright of the two figures. The popularity of the two legal theory terms is also supported by the lack of legal figures or experts in Indonesia who have succeeded in proposing distinctive legal theory terms, as did Mochtar and Satjipto.

This article seeks to examine and discuss the theory of development law and progressive law and their actualization in the development of contemporary Indonesian law. The review of the two legal ideas is indeed not new, but following the suggestion of Karl Popper, a famous philosopher of natural and social sciences, that to perfect a theory, it must go through a process of falsification (blame/rejection). It means that a theory must always be studied and refined by confirming it with new facts, to look for weaknesses or possible anomalies (Britannica, 2021). Because basically reality is always evolving and changing.

Likewise, with theories of development law and progressive law, these theories must always be studied and tested continuously by confirming them with contemporary realities. It is done to find possible anomalies in the theory itself and then refine it.

On the other hand, the long journey of legal reform which has become the mandate of reform since 1998 has created many unresolved challenges. Regulatory policies in Indonesia have not shown significant effectiveness. The Center for the Study of Indonesian Law and Policy (PSHKI) stated that Indonesia's legal ecosystem is now getting worse. The executive, legislature, and judiciary each have their particular contribution to the current situation. Ignorance for the sake of omission of policymakers is like perpetuating various bad state administration practices and this is not only happening in the government but also in representative institutions and the judiciary. This can be seen from the revision of the KPK Law which brought the eradication of corruption in Indonesia to its lowest point. The elite's neglect of society's needs is becoming increasingly visible real. In addition, there is no partiality for minority and disability groups in the formulation of policies and legislation. (PSHKI, 2021) .

This fact shows that legal development in Indonesia is not doing well. A joint contribution is needed to address the challenges of regulatory reform. It is at this point that existing legal theories can play a role. Not only as a perspective to assess and find the relevance of theory to the reality of legal development in this country but it is also expected to provide answers to the challenges of legal reform in Indonesia.

A BRIEF REVIEW OF MOCHTAR KUSUMAATMADJA AND THE DEVELOPMENT LEGAL THEORY

Mochtar Kusumaatmadja was born in Jakarta on February 17, 1929. He is the son of R. Taslim Kusumaatmadja from Mangunreja, Tasikmalaya and Sulmini from Cilimus, Kuningan . Mochtar completed his basic education and high school education in Jakarta. Muchtar also had education in Bandung, at the junior high school level when he followed his parents who moved to Bandung.

Mochtar graduated with a law degree with a specialization in international law at the Faculty of Law, University of Indonesia in 1955. Then earned a 'Master of Laws' (LL.M.) at Yale University Law School, United States in 1956. Mochtar is a legal expert confident. One of his professional friends, Soetandyo Wignjosebroto, said that Mochtar is not someone who has an arrogant personality, but he tends to make arrogant and high-pitched statements when the role of law is underestimated in the life of the nation.

From 1959 Mochtar worked as a lecturer at the Faculty of Law Unpad. At this university, Mochtar received a doctorate in regulatory science in 1962. His dissertation was entitled "The Problem of the Width of the Territorial Sea at the Conference Geneva Laws of the Sea 1958 and 1960". In the same year, he was appointed Professor of International Law at the Faculty of Law Unpad. Since that the name Mochtar Kusumaatmadja is attached and seems identical to the Unpad Faculty of Law.

In 1973 Mochtar was appointed Rector of Unpad. However, the position as rector was not long because, in 1974, Mochtar was trusted by President Suharto as Minister of Justice in the Development Cabinet II. Mochtar's position as Minister of Justice ended in 1978. However, when his position ended as Minister of Justice, Mochtar was again trusted to become Minister of Foreign Affairs in Development Cabinet III for two periods from 1978 to 1988. Of the many achievements obtained by Mochtar as Minister of Foreign Affairs, the acceptance of the Archipelagic

State concept in the 1982 Law of the Sea Convention is the culmination of these achievements. After becoming Foreign Minister, Mochtar is still active in various international forums, including being a member of the United Nations International Law Commission for two terms (Latipulhayat, 2014) .

The name Mochtar Kusumaatmadja has indeed been identified by the Unpad Faculty of Law. So it is natural that the development law theory that he put forward is also known as the "*Mazhab UNPAD* " legal thought. Although it can be questioned whether it is true that Mochtar's thought is a separate school of thought in the legal science discourse and whether it is true that all legal experts at UNPAD agree with this thought, Togi R. Sianturi said that the term has indeed been heard and mentioned by many people (Sianturi, 1994).

Meanwhile, the term "development law" which is also identified with Mochtar Kusumaatmadja, was not coined by Mochtar himself. In Mochtar's five main works, the word "development law" is not found, except for law as a means of development (Kusumaatmadja, 1986). Lili Rasjidi said the term "*development law*" was coined by Mochtar's students at UNPAD (Rasjidi & Putra, 2003, p. 17). However, some of Mochtar's works have the word development attached. Later Mochtar himself in an interview with Shidarta admitted his preference for the title of Development Law Theory (Shidarta, 2012, pp. 9-10).

The idea of development law put forward by Mochtar arose because he was concerned about the role of law in the life of society and the state (Indonesia). Mochtar considered that during the incessant development efforts carried out by the new order, the law shows its lethargy (*malaise*). Law is considered not to play many roles in development (Kusumaatmadja, 1970, pp. 2-3).

Mochtar argued that in a developing society, the law should not only maintain order but also direct social change and development to take place in an orderly and orderly manner. This is based on Mochtar's reflection on the nature of law and its function. According to Mochtar, the law is part of the social rules that exist in society. Other social rules are religion, customs, social norms, and others. Law, like other social rules, is used as a moral guide for humans. However, the law has characteristics that distinguish it from other social rules. The law has a binding or coercive nature. Provisions in law can be enforced in an orderly manner. How the form of coercion must also be subject to certain rules, related to the form, method, and means of its implementation (Kusumaatmadja, 1970, pp. 3-4)

Because of the nature of "coercion", the law requires power. Therefore, in a society based on law, power is an absolute element. But power must also be subject to legal provisions. So, there is a reciprocal relationship between law and power. So the French philosopher Blaise Pascal said, " justice without might is helpless might without justice is tyrannical " (Jerphagnon & Orcibal, 2022).

Meanwhile, the purpose of the law, according to Mochtar, is to achieve order. Order is the main requirement for an orderly society. In addition, another goal of the law is the achievement of justice, which differs in content and size according to the times and conditions of society. So the function of law in society is as a means to create order, legal certainty, and justice (Kusumaatmadja, 2002, pp. 3-4).

However, in Mochtar's view, the function of law as a tool to maintain order in society as described above, in the context of development, is not enough. Mochtar calls such a function a conservative function. Such a function in a developing society is still needed, especially to maintain stability, but in a society that is actively changing the function of the law must be expanded. The law

must also be able to assist the process of community change so that the change takes place in an orderly and orderly manner. In a society that is developing law, it should not only maintain order but also direct social change and development to take place in an orderly and orderly manner.

This kind of conception is in line with the theory put forward by Roscoe Pound, "law as a tool of social engineering" which developed in the United States (Shidarta, 2006, p. 411). However, Mochtar Kusumaatmadja changed the notion of law as a tool into law as an instrument for community development. Because the law can indeed function as a tool (regulator) or a means of development. This means that the law can play a role in providing directions for human activities in the direction desired by development or reform (Kusumaatmadja, 1986, p. 13).

Furthermore, Mochtar argues that the notion of law as a means is broader than law as a tool for several reasons:

1. In Indonesia, the role of legislation in the legal reform process is more prominent. Because Indonesia is not like the United States which places jurisprudence (especially court decisions) in a more important place.
2. The concept of law as a "tool" will result in results that are not much different from the application of "*legism*" that was held during the Dutch East Indies era. Because of that, the Indonesian people who are still sensitive to colonialism will likely reject it.
3. If "law" here includes international law, then the concept of law as a means of community renewal has been applied long before this concept was officially accepted as the basis for national legal policies (Shidarta, 2006, p. 415).

Then what are the tactical steps for the role of development law in legal development in Indonesia? Mochtar stated the need for the "development of national law". In this context, Mochtar proposes a legal conception that not only constitutes the entirety of the principles and rules that govern human life in society but also includes the institutions and processes that make these rules come into effect in reality (Kusumaatmadja, 1986, p. 11; Shidarta, 2012). With this legal conception, it appears that law is a system composed of three components (subsystems), namely: 1) legal principles and rules, 2) legal institutions, and 3) the process of an embodiment of the law. (Atmadja & Budiarta, 2018, p. 120)

The national legal development referred to by Mochtar, according to M. Zulfa Aulia, is carried out by reforming the law and improving legal education (Aulia, 2018). Legal reform is carried out by selecting or determining the priority of the legal field to be developed. This is important because certain legal areas are deemed urgent to be developed to help smooth development. The selection and determination of the priority scale must also be carried out because certain fields need fundamental changes for political, economic, and social considerations. Other considerations are "neutral" fields, which are not related to religious, cultural, and social norms such as agrarian, labor, mining, and other fields related to the industry. Meanwhile, legal reforms for the so-called "non-neutral" areas can be suspended. That is, fields related to complex norms such as cultural, religious, and sociological norms (Kusumaatmadja, 1970, p. 14, 1986).

To ensure that the law can function as a means of development in the long term, Mochtar proposes the improvement of legal education. Mochtar considered that the reform of the legal system in a country must be supported by the reform of its legal education. For this reason, Mochtar stated the importance of reorienting legal education in Indonesia. Legal education in Indonesia must be directed to

serve the needs of the Indonesian people who are actively developing. Legal education must not only be improved in quality to produce reliable legal actors but must also be oriented towards directing the law as a means of development (Kusumaatmadja, 1975, pp. 11-12).

In general, the theory of development law suggests that the law must function as a supporter of development, along with its philosophical foundations and arguments. The development legal theory also offers tactical steps on how its function as a means of supporting development can be implemented. And last but not least, Mochtar also gave directions on how to prepare human resources to carry out these legal functions.

A BRIEF REVIEW OF SATJIPTO RAHARJO AND PROGRESSIVE LEGAL THEORY

The term “progressive law” in Indonesia has indeed been attached and seems to be the copyright of the figure of Satjipto Rahardjo. Satjipto was born in Banyumas, Central Java on December 15, 1930. His educational history is quite long. He completed his legal education at the Faculty of Law, University of Indonesia (UI) Jakarta in 1960. In 1972, he attended a visiting scholar at California University for one year to deepen his studies in Law and Society. Then he took his doctoral education at the Faculty of Law, Diponegoro University, and was completed in 1979. In addition to teaching at the Faculty of Law, Diponegoro University, he also taught at several Postgraduate Programs outside Undip, including at Gadjah Mada University (UGM) Jogjakarta, University of Indonesia (UI).) Jakarta, Police College (PTIK), resource person at several universities abroad (Suteki, 2019).

The legal expert who is usually called Prof. Tjib once held the position of Chair of the Doctoral Program in Legal Studies (PDIH) at Diponegoro University. As the first person to lead the UNDIP PDIH, Prof. Tjip has a very big role in running this multi-entry program, which allows people with non-law graduate (SH) backgrounds to participate in this program. As an expert, Satjipto has also held positions in the Suharto era. Ali Said (Former Chief Justice of the Supreme Court) based on Presidential Decree Number 50 of 1993 appointed several national figures as members of the first National Human Rights Commission (KOMNAS HAM) in Indonesia. On December 7, 1993, Satjipto Rahardjo became one of 25 figures who served as the first member of KOMNAS HAM (Marwan, 2013).

Satjipto Rahardjo is very productive in writing to spread his ideas. Most of them are in the form of popular articles published in the Kompas daily, and some are in the form of books. Because of his dedication to the progress of society and his concern for the nation’s problems, Kompas Daily in the context of its 43rd Anniversary in 2008 awarded Satjipto Rahardjo as a “dedicated scholar” (Kompas, 2008). Of course, the ideas that Satjipto put forward through his various works are about his views on the development of law in Indonesia and ideas that are widely known as progressive legal thought.

The term progressive law was introduced by Satjipto for the first time in his article published in the Kompas daily, June 15, 2002, with the title “Indonesia Needs Progressive Law Enforcement”. In addition, the term also appears in several of his works in the form of books including *Dissecting Progressive Law* (2006), *Progressive Law: A Synthesis of Indonesian Law* (2009), and *Progressive Law Enforcement* (2010).

Although the term progressive law has been widely known by the public, there is no fixed definition and understanding of the term. Suteki, as Director of the Satjipto Rahardjo Institute, said that it is very difficult to define progressive

law because it is a law that continues to evolve. The late Satjipto said that law is qualified as a science that is consistently undergoing formation (legal science is always in the making). Progressive law is a liberation movement because it is fluid and always restless in its search for one truth to the next (Suteki, 2019). Former Chief of Constitutional Court, and Coordinating Minister for Political, Legal, and Security Affairs, Moh. Mahfud MD, admits that progressive law is difficult by definition. However, in general, he understands that progressive law is a law that is based on the judge's conviction, where the judge is not shackled to the formulation of the law. (Hukumonline, 2013) .

Understanding of the term progressive law always develops in line with the development of legal studies. Several legal experts have tried to provide a basic framework for progressive law following their respective understandings. Denny Indrayana, a legal expert from Gadjah Mada University Yogyakarta who was also the Deputy Minister of Law and Human Rights stated the general characteristics of progressive law, including:

“Progressive law is not just text, it is context. Progressive law positions certainty, justice, and expediency in one line. Laws that are too rigid will tend to create injustice. Progressive law is not only obedient to bureaucratic procedural formalities but also material-substantive. But what is no less important is the progressive legal character that holds fast to conscience and rejects material interests” (Hukumonline, 2013).

Satjipto Rahardjo in several of his works suggests the characteristics of progressive law which are characterized by the following (Rahardjo, 2003, p. 233) :

1. The law exists to serve mankind.
2. Progressive law will continue to live because the law is always in its status as law in the making and is never final, as long as humans still exist, then progressive law will continue to live in managing people's lives.
3. In progressive law, there are always very strong ethics and morality of humanity, which will respond to human development and needs and serve justice, welfare, and concern for humans in general.

The idea of progressive law put forward by Satjipto Rahardjo was motivated by his concern about the legal situation in Indonesia. This concern is mainly related to the law enforcement crisis in Indonesia. Satjipto Rahardjo considers that at a macro level, the law in Indonesia does not show an ideal situation, namely the welfare and happiness of its people. On the other hand, it is only seen as textual and positivistic, ignoring the aspect of justice which is its spirit. Institutions and legal apparatus only prioritize formal justice without regard to the substance and purpose of the law. This situation occurs because honesty, empathy, and dedication in carrying out the law are becoming increasingly rare and expensive. As a result, judicial mafia, commercialization, and legal commodification are increasingly widespread. In fact, according to Satjipto, the law should be able to give happiness to the people and the nation. Because the true meaning of the rule of law is more than just an effort to settle all cases by law. More than that, the rule of law must be oriented to “promoting public welfare” and “educating the nation”, which means guiding the nation towards a happy life. (Rahardjo, 2003, pp. 9-10) .

To support this idea, Satjipto Rahardjo provides a philosophical basis for the relationship between law and humans. According to Satjipto, humans and humanity occupy the main position in discussing and enforcing the law. In other words, the interaction of law and humans applies the pattern of “law for humans, not vice versa for humans for the law”. This means that the law must serve the interests of humans and humanity, the law does not exist for itself. This pattern of relationships shows that law is not a sterile institution, but only part of humanity (Rahardjo, 2003, p. 5, 2006, pp. 55–56).

Man’s conceptual choice over the law has the consequence that the text of the regulation or legislation is not something sacred, or something that should be cult. A progressive way of law refuses to rigidly adhere to regulatory texts but must be oriented to the substance of the law, namely the interests of humans and humanity. If justice and humanity want, then the text of the rules can be ignored. Thus, Satjipto prioritized substantive law rather than artificial law. Thus, the written law or regulation is basically just a tool or means, not a goal. In Satjipto’s view, artificial law is no longer sufficient to bring the law to justice and human welfare.

Because the legal actors who make laws artificially are not free to see the reality in society. They are confined to definitions and written sentences in rules, schemes, or procedures that do not describe the real reality. Because when the law is ‘forced’ to enter the realm of language, with formulas or definitions, then at the same time it has failed to carry out its task. Thus, according to Satjipto, the law has been flawed since birth. (Rahardjo, 2006, p. 167) Law has become more of a rigid formality. Emphasizes measurable relationships, as embodied in the written formulation, and not real relationships that are rich and full of nuance and complexity. Because of that, substantive law becomes very necessary. Judges and legal actors must read the regulations not only using the logic of the regulations but by reading and interpreting the law progressively. Interpreting regulations by reading the reality in society (Rahardjo, 2006, pp. 163–177).

Although Satjipto recommends substantive law, it does not mean that written law must be ruled out. Because the existence of legal texts has become a necessity in today’s life, especially in Indonesia. To carry out the law progressively, judges or legal actors must dare to go out of the status quo to serve human and humanitarian needs. They must dare to leave the view that the legal text is a closed and final scheme. (Rahardjo, 2009b, p. 93) .

This conception is in line with the concept of *Rechtsvinding* (legal discovery). This concept is based on the understanding that written laws or rules cannot keep up with the speed of movement of society or the process of social development. Laws cannot be flawless, sometimes vague terms are used and judges have to give further meaning by giving interpretations. Judges must also carry out legal reconstruction. The task of the judge here is to harmonize the law with the actual situation of society (*sociale werkelijkheid*) (Badriyah, 2011)

In Indonesia, the practice of legal discovery (*Rechtsvinding*) has received a legal umbrella. This is reflected in the Law on Judicial Powers of 1970, 2004, and 2009. Article 5 of Law no. 48 of 2009 states that “Judges and Constitutional Justices are obliged to explore, follow, and understand the legal values and sense of justice that live in society. Law No. 14 of 1970 regulates this in article 27, and Law No. 4 of 2004 mentions the same thing in chapter 28.

Apart from having to get out of regulatory formalism, Satjipto also emphasizes the behavior and standards of morality of legal actors. To realize a law that is just, prosperous and happy, the behavior or morality of humans who

carry out the law must first be good. Human behavior that is not good, especially for those who are given the power and authority to punish, will not encourage the citizens to become prosperous and happy. Satjipto said that out of the thousands of judges, there were many kinds of judges' behavior. It is the behavior that distinguishes one judge from another. In this way, judges are not only a scheme, but also behavior (Rahardjo, 2009a, p. 54).

In several of his works, Satjipto gives examples of judges who, according to him, dared to judge progressively. Namely, judges who make legal breakthroughs, break out of conventional habits to protect human and humanitarian interests, care about social life, as well as pro-people and justice. For example, Constitutional judges allow the use of identity card (KTP) as a condition for voting in elections. The judges of the Constitutional Court were considered brave to break out of formalistic legal habits for the sake of justice (Rahardjo, 2010, pp. 82–83).

INDONESIA'S LEGAL REFORM FROM THE DEVELOPMENT LEGAL THEORY AND PROGRESSIVE LEGAL THEORY PERSPECTIVE

Every idea does not arise from a vacuum. Every theory and thought must be influenced by the sociocultural conditions of the originator. The development legal theory and progressive legal theory have different backgrounds of emergence. Therefore, it is natural that both have distinct areas of criticism, purpose and hopes, and exemplary ideas about the law. Mochtar Kusumaja works in an environment where the ideology of development promoted by the relatively authoritarian New Order is the primary and only reference in running the government. Mochtar is also a technocrat who is in the circle of power. So it was natural that his ideas and ideas were in line with the spirit and interests of the government at that time, namely development. It is different from Satjipto Rahardjo whose intellectual ideas emerged after the reformation, where openness, freedom of opinion, and the spirit of change dominated the public sphere. His legal ideas and thoughts are more nuanced in criticism of the Indonesian legal system, both regarding laws and regulations, institutions or law enforcement officers as well as the developing legal culture.

Apart from that, it is undeniable that both of them have contributed greatly to law and legal science in Indonesia. And both have relevance to the current condition of Indonesia. The theory of development law, for example, has the core idea of law as a means of community renewal. Ahmad M. Ramli, Professor of the Faculty of Law, UNPAD, in a webinar on development law, said that the theory of development law is still very relevant. Because currently, the world is in a period of massive transformation, the industrial era 5.0. Society needs dynamic laws, which encourage community renewal as a driver of transformation. Because of that, the Center for Cyber Law Studies UNPAD introduced a theory that is a derivative of the legal theory of development, namely the legal theory of transformation infrastructure (Fachri, 2022).

The legal theory of development focuses more on legal empowerment so that community and nation development can run optimally, or even accelerate. In this context, the law functions as a "law as a tool of social engineering". Thus the law is pragmatically positioned to support the national plan or the government's agenda.

In the current context, the regulatory reforms carried out by the government to support economic development can be seen from the perspective of this development law theory. The current government has declared economic development a priority. In his inauguration speech as president of the Republic of Indonesia for 2019-2024, Joko Widodo indicated that the main orientation of

his government was economic development (Kompas, 2019). Therefore, legal reform is also directed to support economic development. The government issued various regulations that were considered to be able to increase investment and economic growth. One of them is by simplifying business licensing with Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation and Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (PP 24/2018). Of course, this includes the regulations that have caught the public's attention the most so far, Law Number 11 of 2020 concerning Job Creation.

In the perspective of development law, laws or regulations must be able to support development, or the national agenda. To achieve this condition, Mochtar suggested a legal reform, by changing the regulations that were deemed urgent to be developed to help smooth development. Thus the legal reforms carried out by the current government can be seen as "legal reforms" as Mochtar wanted. To be able to support the government's agenda and means of change, the substance of the law or legislation must be effective, harmonious, and not overlapping. And more than that, legal certainty must be guaranteed.

This is because various studies have shown that one of the obstacles to economic development in post-reform Indonesia is the weak legal system in supporting the business world. Overlapping regulations and many regulations that are not harmonious, especially in the central and regional regulations (hyper-regulation), have resulted in slow and inflated business licensing costs. The failure of the government to eradicate corruption and the Indonesian judicial system which is considered not to reflect legal certainty has failed in the role of law as a tool of economic development (Kusumadara, 2010). Therefore, in the perspective of development law, to function the law as a means of engineering society towards a better life, in this case, is economic development, it is necessary to provide adequate regulations. More than that, it is also necessary to guarantee good law enforcement.

The framework for legal reform or legal reform, which was initiated by Mochtar, seems to place more emphasis on reform in the legislative framework or legislation (Gesetzgebung Lehre). So, whatever reforms are carried out, they must remain within the corridor of the law and the legal principles themselves, not on principles outside the law such as the principles of sociology and others.

By using Mochtar's perspective, it can be concluded that the current law must be able to play a more role in supporting societal change and assisting the government in realizing the economic development, as national agenda. But is the law capable of being a means of social change, or is economic development oriented towards justice, or is it successful in realizing the happiness and welfare of the people? Mochtar Kusumaja did not mention this. On the other hand, this is Satjipto Rahardjo's primary concern.

Satjipto Rahardjo did emphasize how to implement the law substantively. Prioritizing justice over the text of the law. The question of how the law can achieve justice is relevant to the current conditions. Many parties consider the current legal system in Indonesia to be poor (PSHKI, 2021). Following Lawrence M. Friedman's classification of the legal system, the current legal crisis in Indonesia occurs in all legal subsystems. Both in legal substance, legal structure, and legal culture (Friedman, 2001, pp. 6-8).

In this regard, the development of corruption eradication in Indonesia is the most relevant example to describe the crisis in the legal system in Indonesia. In the legal substance subsystem related to legislation, it can be seen how the

existing legal material contributes to weakening the KPK. The enactment of Law Number 19 of 2019 concerning Amendments to the KPK Law, which is better known as the revision of the KPK Law, is considered to be the main factor in weakening the KPK.

Some of the material contents that weaken the KPK include the loss of the status of investigators and prosecutors under the leadership of the KPK, misinterpretations of supervision and prevention, the granting of excess authority to the Supervisory Board (Dewas), and the issuance of a Notification of Termination of Investigation (SP3) which was previously unknown in corruption cases (Ramadhana & Oktaryal, 2020). One of the shreds of evidence of the flawed content of the legislation is the escape case of Harun Masiku, a member of the PDI-P faction of the DPR who was caught in the bribery case of KPU commissioner Wahyu Setiawan. Masiku fled after allegedly receiving leaked information related to the KPK's plan to take action against the KPK. Many have accused the KPK Supervisory Board (Dewas) of being involved in the failure to arrest Masiku. Because in the revision of the KPK Law, there are regulations that require that every wiretapping, search, and confiscation must obtain written permission from the Council. It means that only investigators or Dewas know about Nasiku's arrest plan (Yuntho, 2020). In general, the weakening of the KPK can be seen in the number of KPK prosecutions after the revision of the KPK Law which has decreased. The decline does not mean that the KPK has succeeded in preventing it, but thanks to the loss of the KPK's spurs in taking action, especially in the Hand Capture Operation (OTT) (Ramadhana & Oktaryal, 2020).

The bribery scandal involving law enforcement institutions is an example of a crisis in eradicating corruption in terms of the legal structure. In 2020, the name of Prosecutor Pinangki Malasari emerged. He is suspected of having met the fugitive from the corruption case Djoko Tjandra in Malaysia. When the case was investigated, the Attorney General's Office suddenly issued Guidelines Number 7 of 2020 which requires that searches and summons of prosecutors suspected of being involved in corruption must obtain the Attorney General's permission. It is hard not to suspect that the Attorney General's Office is protecting Pinangki (Nuralam, 2020).

In addition, the High Court Institution also does not show siding with the eradication of corruption. The High Court often issues leniency decisions for corruptors. In the case of Prosecutor Pinangki, his sentence was commuted from 10 years to 4 years. The consideration is that Prosecutor Pinangki is a mother who still has a toddler. This overrides the logic that as law enforcers; the verdict handed down on Pinangki should have been heavier (Taher, 2021). The absurd logic can also be seen from the reason for the panel of judges who granted leniency to the defendant in the COVID-19 social assistance corruption case, former Minister of Social Affairs Juliari Batubara. The reason for this waiver is that Juliari has been insulted and scorned by the public, especially netizens (BBC Indonesia, 2021). This misdirected logic and empathy shows that judges as law enforcers fail to show a sense of justice, so they misunderstand to whom empathy and partiality should be addressed.

Meanwhile, in terms of legal culture concerning the behavior (law) of the community, it is widely known that corruption has become a kind of normality among the people. Corruption occurs at almost all levels and aspects of people's lives. Without realizing it, it becomes a habit that is considered normal, such as giving gifts to officials/employees as a reward for service.

The crisis of law enforcement in dealing with corruption as described above in the perspective of development law and progressive law is certainly not an

ideal condition. The ideal of law is something that can manipulate the public so that the public can move in a better direction as the idealized Mochtar didn't do it. The law cannot bring about change in society to get out of corruption.

From Satjipto Rahardjo's perspective, the root of the legal crisis in Indonesia is the human factor. Progressive law emphasizes the good behavior of the actor. Humanity's morality is an important factor, if human ethics or morals have faded, then law enforcement will not be achieved. Laws that have lost confidence in realizing the value of justice cannot act as controllers of economic, political, and so on processes, but only function as tools to fulfill the interests of power. So it is very likely that there will be an "era of people's law", where people carry out their settlement actions, including vigilante actions (Rahardjo, 2000). Therefore, to realize a just law, reforms are needed, both from legal institutions and individual law enforcers. The ideal institutional reform must refer to three main orientations, namely the principles of democracy, the rule of law, and human rights (Ansori, 2018). So, to get out of the law enforcement crisis related to eradicating corruption, good law enforcers are needed, with integrity, and high moral standards.

In addition, in a legal crisis like the current one, extraordinary legal solutions are needed. That is carrying out the law by seeking and revealing the meaning of the law while remaining oriented to the values of justice, even though it must be contrary to the conventional way. This is important when considering that most existing legal texts rely on regulations made by and for colonial purposes. Moreover, it is not uncommon for regulations that appear in the current era to be born from unhealthy political-cultural conditions. Even WALHI stated that from the end of 2019 until now the legal policies carried out by the government and parliament (DPR) are more in favor of the interests of the oligarchs. As a result, many legislative products are problematic, more inclined to benefit some groups, and bring injustice and misery to minority groups (WALHI, 2020). Thus, to support the eradication of corruption, judges and other law enforcers are expected to be able to carry out laws progressively. Dare to judge substantively, out of fairness or the status quo, and by remaining committed and oriented to justice.

CONCLUSION

The development legal theory and progressive legal theory are two legal theories that are developing and widely known in Indonesia. Both have their own historical and developmental roots. The development legal theory and progressive legal theory are still relevant to current legal developments in Indonesia. The development legal theory is needed to encourage the development of the nation and the transformation of society. In a society that continues to change, the law is needed as an instrument to direct and change the nation and society towards a better state. Meanwhile, progressive legal theory can be an alternative to get out of the current legal crisis in Indonesia. Indonesia needs reform in all legal subsystems To resolve the legal crisis that occurs in all legal subsystems, especially the eradication of corruption. The most important are reforms in legal institutions and individual law enforcers. Indonesia needs good law enforcers, with integrity, and high moral standards. In addition, law enforcers who have substantive laws are also needed. Dare to take legal settlement methods that are out of the ordinary while remaining oriented and committed to the values of justice and humanity.

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