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The Role of Responsive and Progressive Law In Addressing Legal Issues From A Sociological Perspective

Daryoko[a], Elza Qorina Pangestika[b]
[ab]Fakultas Hukum Universitas Widya Mataram, E-mail elzaqorina20@gmail.com
[ab]Fakultas Hukum Universitas Widya Mataram

Abstract

As a State of law, the State of Indonesia as listed in article 1, paragraph 3, UUD 1945, whereas the law itself has three purposes: the certainty of law, the righteousness of law and the use of law, But of the three purposes of the law, justice is the primary purpose, rather than the use of law and the certainty of law. There are factors that have to be addressed in law enforcement in Indonesia, including weak substance of legislation, unprofessional law-enforcement machinery and moral deficits, as well as limited means and facilities. In dealing with the above legal problems, responsive legal theory and progressive law theory are expected to be able to provide the solution.
Keywords : Legal Problems; Progressive Law; Responsive Law; Rule of Law

A. Preview

As we know that Indonesia is a state of law as stipulated in article 1 paragraph 3 of UUD 1945, where the purpose of the law itself is three: the certainty of law, the justice of law and the usefulness of law. To realize the purpose of the law above, then the responsive law is a theory of law that offers something more than just procedural justice, but is capable of serving as a facilitator of responses to social needs and aspirations. The characteristic feature of responsive law is the search for the implicit values contained in rules and policies. So in this responsive law model, they expressed their disagreement with the existence of doctrines that they regarded as raw and non-flexible interpretations.

Further in the theory of progressive law is the thinking of the development of law, which was advocated by Prof. Satjipto Rahardjo, considering that the law was formed for man, not man for law. As a basis of his thinking that the current study of law has achieved ecology in that which is fundamental to the thought of anthroposentrism. As a human-centric understanding so that man is considered to have the capabilities of creation, taste, language, work, and reason only permitted by the Kholiq. So the law doesn't quit its own desire without learning from its environment.[1] The view of man as a holy spirit is the basis that God greatly

[1] Jaap C. Hage, 1997, *Resoning with Rules: An Essay on Legal Reasoning and Its Underlying Logic,* Kluwer Academic Publishers, Dordrecht, page 3.

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glorifies His creation with glory and respect. So the human-made law should not diminish the glory and respect of the limits of the law.

Progressive law understands the concept of justice as a law that truly takes into account the new sources of law for achieving justice. So it is no longer fundamental that women and children are the weakest legal subjects. His basic thought that the current study of law has achieved ecology is fundamental to the thought of anthroposentrism.

Currently, Indonesia is seeking to optimize the realization of a goal rather than the law that is justice by addressing the legal problems that exist at the moment in an effort to realize justice in the field of law, crisis conditions in various fields including the area of law. The law is expected to give justice to the people but what happens is the opposite. Some of the factors that are challenging law enforcement in Indonesia include weak substance of legislation, unprofessional law-enforcement machinery and moral deficits, as well as limited means and facilities. In dealing with the above legal problems, responsive legal theory and progressive law theory are expected to be able to provide the solution.

B. Metode Penelitian

The method of research is understood as a "path to", but the method is normally formulated with possibilities, that is: a type of thought used in research and judgment, or a technique common to science, or certain way of performing a procedure.[2] Research is the search for facts according to clear objective methods, to find the relationship of facts and produce evidence or law.[3] Legal research is an attempt to find and find true knowledge of law, that is, knowledge that can be agreed to answer or correctly solve a legal problem.[4]

The type of research carried out by the author is the type of jurisprudential normative research or Doctrinal Legal Research is the study that discusses a subject of a problem that is connected with the device of the rule of law and other sources of law after it is drawn conclusions between the complexity of the problem with the law that exists in the actualization or its application.[5]

[2] Soerjono Soekanto, 2016, *Pengantar Penelitian Hukum edisi revisi,* UI-Press, Jakarta, page 5.
[3] Moh. Nazir, 1998, *Metode Penelitian,* Ghalia, Jakarta, page 14.
[4] M. Syamsudin, 2007, *Operasionalisasi Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, page 21.
[5] Victor Imanuel W. Nalle, *The Relevance Of Socio-Legal Studies In Legal Science*, https://jurnal.ugm.ac.id/jmh/article/view/15905 on September 23, 2024.

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There are some approaches that the author has taken in compiling this research : (a) Approach by using the method of regulation of legislation associated with the formulation of the issues discussed in it; (b) Next, the author will use a method of approach using a legislative approach. There are some approaches that the author has taken in compiling this research : (a) Approach by using the method of regulation of legislation associated with the formulation of the issues discussed in it; (b)Next, the author will use a method of approach using a legislative approach. Research uses data analysis in a qualitative descriptive way, i.e. by examining the data obtained from the library and selecting other sources that correspond to the object studied, after which it can be concluded and drawn the baseline objectively and systematically in the form of narrative. Based on the research that has been done.

C. Results and Discourse

On 17 August 1945 the Republic of Indonesia was born as a new State in the midst of the society of the nations of the world. Apart from the proclamation of the form of the State, namely the Republic, Indonesia also declares itself a State of law. (Negara Hukum). More than half a century later, the State of the Republic of Indonesia still has to struggle with the various fundamental problems that arise as a result. The existence of the Republic of Indonesia as a unified State remains to be built and upheld. Besides, the construction of the rule of law is not yet well completed, even the opposite. This is due to a state with a legal system that has not yet achieved justice. What is meant by the unfinished construction is how to make the rule of law an organization that essentially does not become a pleasant, prosperous and happy home for the Indonesian people. Becoming a true rule of law is a long process as it involves changing social and cultural behavior.

Law in a modern state of law requires a certain social and cultural predisposition to work well. It explores the theories of the law of positivism and develops critical criticism specifically related to law enforcement cases in Indonesia. This is because both legal practitioners and theorists in Indonesia seem to be trapped in a single paradigm of positivism that is no longer functional as an analysis and control that runs with a living table of dynamic human characteristics and multi-interest both processes and legal events.

As we know that the law cannot be separated from human history, then it is very clear that the development and change of the law is not free from the social dynamics with all the real interests behind the law. The law is inevitable, always evolving, but its development can

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not be sure to develop in a certain direction, but that obviously in the end also brings change after the struggle of the interests that are behind it itself. If we emphasize how Indonesia rules, then no one can dictate how a nation should rule, but how the characteristics of the Indonesian people themselves determine the law and its change.

In his view, Nonet and Selznick say that our understanding of social change will not be complete if we look for ways of adaptation that give rise to new historical alternatives and that are able to sustain, for example, the change from status to contract of the Gemeinschaft and Gesellsschaft from strict law to justice.[6]

As a very fundamental change, we must emphasize that in the way we legislate it is no longer time to maintain a standard of 18th-19th-century positivism or a single paradigm that has been centuries old, but must consider the legal methods accepted by community. (masyarakat). Professor Soetandyio Wiqnyosoebroto affirms the influence of the Galilean thought model, also known as the positive thinking model, embedded in the legal thinking to organize human life which in the 18th-19th century entered a new scale and format along with the need to build new laws as a means of controlling orderly life of society on a national scale.[7]

A Galilean thought can be immediately applied to the foundations of the modern national law-making paradigm. The development of the law is necessary to control the life of the state, the modern nation that seeks the realization of guarantees of certainty in the enforcement of law as a means of the order of law.

Furthermore, in the very fundamental endeavour of enforcing the rule of law, it is necessary to improve the structure of the legal apparatus, whereas the regulation of the laws can be done on the way but the judicial apparatus is very urgent: the improvement of the morality and commitment as a law enforcer so that he can be morally responsible, and not rather the legal enforcement office as an empty land, to accumulate his own wealth. As for what has been happening all this time, the law enforcement forces in Indonesia have been impressed that they are just legal instruments like a spider nest that can only trap small people, poor poor people, small class thieves, stupid people and the crimes generally committed by lower-class societies. But when faced with state leaders or high-ranking criminals or corruptors, the law is not meant as a tool for enforcing justice, and there is clearly no moral commitment

[6] Veriena. J.B. Rehatta, Penerapan Hukum Responsif di Indonesia, accessed from https://fh.unpatti.ac.id/penerapan-hukum-responsif-di-indonesia/ on September 23, 2024.
[7] Philippe Nonet & Philip Selsnik, *Law and society in transition toward responsiv law*, Nusa Media, Bandung, page 76.

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to it. So everything can be relatively resolved if the moral commitment as a law enforcement or government apparatus can be well realized.

Indeed, the enforcement of the law should come from the people and aim at achieving peace and tranquility within the people themselves. Therefore, society can not only influence, but very much determine the enforcement of the rule of law. So it's not appropriate for the law makers and law enforcement agencies to just get into a stream of legism or legal posirivism. Responsive law as a model or theory argued by Nonet and Selznick amidst spicy Neo-Marxist criticism of liberal legalism. Liberal legalism embodies the law as an independent institution with a system of rules and procedures that are objective, non-partisan and completely autonomous. The icon of liberal legalism is the autonomy of the law, the most real being of that autonomy is the rule of law regime.[8]

As we know, a society is a resource that gives a great constitution in moving a law. Besides that, the society is able to revive the law with values, ideas, concepts, and besides that the society also revives the law by contributing to the society to execute the law. In social change the law depends heavily on its enforcement apparatus, the law enforced, and also the masses regarded as the subject of its implementation. As for the component of the law-enforcing apparatus that is expected to move social change is the apparatus of the enforcer that is integrated, authoritative, and honest.[9] So by its autonomous character it is believed that the law can control repression and preserve the integrity of the law itself. Seeing from the internal interests of the legal system itself, the reason for integrity is understandable. But the law is not an end of itself. Law is a tool for man, it is an isolation of the legal system from the side of human life itself.

In the midst of a series of criticisms or realities of the crisis of the legal authority, Nonet and Selznick put forward a model of responsive law. Here, nonet and selznick pay particular attention to variables related to law, namely the role of coercion in law, the relationship between law and state politics, moral order, place of discretion, role of purpose in legal decisions, participation, legitimacy and compliance with the law.

Thus, the potential for responsiveness in any advanced law, the fulfilment of the promise of such responsivity depends on the political context that supports the law itself.

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[8] *Ibid.*

[9] Muhammad Zulfadli, *et.all*, Penegakan Hukum Yang Responsif dan Berkadilan Sebagai Instrument Perubahan Sosial dan Membentuk Kharakter Bangsa, Prosiding Seminar Nasional Himpunan Sarjana Pendidikan Ilmu-Ilmu Sosial Indonesia, Volume 2, accessed from https://ojs.unm.ac.id/PSN-HSIS/article/view/2751 on September 23, 2024.

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Responsive law implies a society that has the political capacity to solve its problems, set priorities and make the required commitments. Because responsive laws are not miracles in the world of justice. Its achievement depends on the will and resources in political commodities.

As a characteristic contribution, it facilitates public goals and builds the spirit of self-correction into the governance process. To define the law as a tool of regulation that governs the society, means to be supported by a system of sanctions that is firm and clear so that it is just. Justice is underlying justice, not absolute justice which imposes a sentence on the basis of legal procedures and clear and substantial reasons, in the sense that it is not based on sentiments, loyalty, compromise, or any other reason that is far from the sense of justice.

This is in line with the spirit and spirit of article 27 of the 1945 UUD. The process of achieving a sense of justice is an inseparable chain of points, at least from the creation of legislation, the occurrence of a case or legal event, to the verbal process in the police as well as the prosecution of the prosecutor or the lawsuit in civil matters and then ended with the judgment of a judge who has acquired permanent legal force (inkracht vangeweisde) so the quality of the process is actually the quality guarantee of the culmination point of the outcome or the benefit of a set of legislative regulations made.

The Indonesian people are making reforms aimed at eradicating corruption and other crimes such as drugs, sexual harassment, other human rights abuses such as trafficking that are increasingly spreading through the enforcement of the rule of law, but we are witnessing ourselves that the reform movement is not capable of doing much. Corruption continues to grow more and more fruitful while the rule of law is like the enforcement of a wet thread.

So it is a very ironic thing during the reform process that they, as reform fighters, have been given extensive opportunities to play an active role in ensuring that the rule of law can be enforced. May the new government build a better Indonesia by advancing the existing four pillars of Pancasila, UUD 1945, NKRI and Bhineka Tunggal Ika not only as a discourse for the proclamator of the Indonesian people, but truly as a foundation for building an Indonesia with character and clean from corruption, transparent and professional. The law society as a resource that exists to give a great contribution in moving a law. Beyond that, the society is also able to keep the law with values, ideas, concepts, and execute the law itself. In the social change that exists in a society, then the law depends heavily on the apparatus of its enforcement, the law enforced, and the society as the subject of the law-enforcement.

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In this case, the existence of components of the law enforcement apparatus expected to be able to move social change is the integrity, authority, and honesty of the enforcing apparatus. Therefore, the law-enforcement that has integrity is an instrument of social change can only be realized on the condition that the law is an integrity apparatus, law is progressive, as well as the support of the community that becomes the subject of law. Similarly, the laws that exist in a society can change according to the needs of the legal society to realize the social order of a society that is supported by the law that corresponds to the need of the society, the environmental conditions that support the quality of the justice apparatus that possesses integrity and professionalism.

The law is also a means for society and its members, the social groups within it, to always interact with their neighbors that can lead to sustainable social change. The law can be used to make social changes in a society by removing habits that are no longer considered appropriate, directing the society to the desired ends and regulating the lives of the people.

An interesting thing to study philosophically is that the law is always in its condition behind the objects it regulates. In order for the objective of the law to be justice, the effectiveness of law, legal certainty can be achieved, changes need to be made to realize a better social order and more social justice. In the constellation of a modern state, the law can function as a means of social engineering (law as a tool of social engineering).[10]

In the opinion of Roscoe Pound emphasized that the importance of the law as a means of social engineering, mainly through the mechanism of settlement of cases by the courts that would then produce jurisprudence. The social context of this theory is society and the judiciary in the United States. In the context of Indonesia, the function of such law, by Mochtar Kusumaatmadja is understood as a means of driving the reform of society.[11] As a means of encouraging reform in society, the emphasis lies on the formulation of legislative regulations by the legislative bodies, which are intended to promote the construction of new societies that will be realized in the future through the enforcement of such legislative rules.

Law in the context of the State of the Union of the Republic of Indonesia which adopts a democratic system that upholds the values of justice in it that are in principle social justice for the entire people of Indonesia. As a positive law in a state of law, enforcement of

[10] Roscoe Pound, 1978, *Filsafat Hukum*, Bhratara, Jakarta. *Vide* Lili Rasjidi, 1992, *Dasar-dasar Filsafat Hukum*, Alumni, Bandung, page 43.
[11] Mochtar Kusumaatmadja, 1978, *Fungsi Hukum Dalam Masyarakat Yang Sedang Membangun*, BPHN-Binacipta, Jakarta, page 11.

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law is required to be done professionally, proportionate, good, fair, and wise so as to conform to the principles of utility, goodness and equality in the law itself. As a democratic state and applying the concept of justice of law in creating a rule of law that gives justice to every citizen of its country with rules that are orderly in its implementation, thus producing good law and quality in order to the goal of justice and well-being for the people of Indonesia as a whole as the holders of power and sovereignty of the state.[12]

Law enforcement, as has been formulated simply by Satjipto Rahardjo, is a process to realize the desire of the law that is expected to become a reality.[13] The wishes of the law referred to herein are the thoughts of the legislative body formulated in the rules of law. The formulation of the thinking of the legislator presented in the regulations of law also determines how the enforcement of law can be realized. Senada opinion submitted by Jimly Asshiddiqie,[14] Law enforcement is the process of making an effort to establish or function the norms of law expressly as guidelines of conduct in legal action or legal relations in the life of society and the state.

Thus, in the end, the law enforcement process is restricted to its implementation by the law-enforcement officials themselves. From this circumstance, in an extreme tone, it can be said that the success or failure of law - enforcing officials in carrying out their duties has indeed begun since the rule of law to be implemented is the result of the thinking of the legislators, planned, made, approved, enacted and subsequently implemented to obey and enforce its existence.

As we know at the moment, the Indonesian nation is experiencing a multi-crisis, one of which is a crisis in law enforcement.[15] As for the indication when in law enforcement only prioritize the aspects of legal certainty (*rechtssicherheit*) by ignoring the aspect of justice (*gerechtigkeit*) and the use of the law (*zweckmassigheit*) bagi masyarakat. Alongside the law enforcement crisis, there is also a tendency to neglect the law, disrespect and lack of public confidence in the law. For example, the emergence of a number of perceptions of public distrust of the law include: (1) There is a legal system, both legislative and executive, which

[12] Yustinus Suhardi Ruman, Keadilan Hukum dan Penerapannya dalam Pengadilan, *Jurnal Humaniora,* Volume 3, Number 2, accessed from https://research.binus.ac.id/publication/4881DC96-F06D-4DAA-961A-D98EE7910552/keadilan-hukum-dan-penerapannya-dalam-pengadilan/ on September 23, 2024.
[13] Satjipto Rahardjo, 1983, Masalah Penegakan Hukum, Sinar Baru Bandung, page 24.
[14] Hikmahanto Juwana, *Penegakan Hukum dalam Kajian Law and Development: Problem dan Fundamen bagi Solusi di Indonesia dan Fundamen bagi Solusi di Indonesia*, Indonesian Journal of International Law, Volume 3 Number 2, accessed from https://scholarhub.ui.ac.id/ijil/vol3/iss2/5/ on September 23, 2024.
[15] Soerjono Soekanto, 1991, *Fungsi Hukum dan Perubahan Sosial*, Citra Aditya Bakti, Bandung, page 18

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is considered not to reflect social justice, (2) a judicial system that does not reflect an independent and impartial condensation, (3) a law enforcement that is still inconsistent and discriminatory, (4) Legal protection to societies that have not yet reached a satisfactory point.[16]

As for the legislative product that is positioned as one of the most representative objects of the law is a normative work. At the end, everything normative opens up to the occurrence of some occurrence some deviation. Normative law is closely related to human law, because only a worthy human being is called a normative being.[17] So the potential for deviation in the law gives rise to what is called a legal gap. (legal gap). The gap or gap that occurs actually processes through simple patterns. The process begins with the availability of a positive law waiting to be activated through the existence of contact with concrete events. At the time of this contact, there would be a possibility that the positive law would not be adequately able to respond to the needs of the specific legal event.

There is a situation where there is a legal gap above, mainly because of the positive law as a legal product, always perceived to photograph society in the context of a certain time excavation. (sinkronis). As stated earlier, this portrait shows the legal system as a momentary work. (momentary legal system). Whereas on the other hand, consciously or unconsciously, in society there is unknown turmoil. Societies are constantly processing, while positive laws tend to crystallize as a product.

According to Robert B. Seidman, "The law of the non-transferability of law" In principle, this theory states that "not all the rules that apply to a particular society can be transferred and apply well to another society due to differences in the system of values adhered to by society.[18] Looking at the situation in Indonesia, which has a variety of cultures and customs and is rich in customary laws or customs laws of the respective regions and religions and beliefs, the view of Robert B. Seidman can be used, because the positive legal system of Indonesia can not be enforced in some areas and conditions above in Indonesia.

Thus, the above theory is reinforced by Eugen Ehrlich's view in his book Fundamental Principles of The Law Sociology of Law, 1975, which states that Law is always society as well as society is always in the law, that the law of a known state also applies as a law of positive

[16] Sultan Hamengku Buwono X, 2007, *Merajut Kembali Keindonesiaan Kita,* Gramedia Pustaka Utama, Jakarta page 275.
[17] Sidharta, 2009, *Pendekatan Hukum Progresif dalam Mencairkan Kebekuan Produk Legislasi dalam buku Dekontruksi dan Gerakan Pemikiran Hukum* Progresif, Thafa Media, Semarang, page 47-48.
[18] Hamzah, Guntur, 2017, *Teori Hukum Magister Ilmu Hukum*, Fakultas Hukum UniversitasIslam Indonesia, Depok.

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national laws it does not originate from the people who live in society.

Further realizing that national laws enforced through the process of transplantation to certain socially-cultural different communities are not always readily acceptable to the local population and acquire meaning, resulting in what is called legal gaps. So there is a gap between what is described by the law and what is in the world of citizens' consciousness between which is lawful and which is not. The application of law from the West to its colonial territories in the past has led to legal gaps manifested in the fact that law is not a society, and will ultimately create chaos in the colonial legal order.[19]

There are two legal sociologists, Prof. Dr. Satjipto Raharjo, S.H., and Prof. Soetandyo Wignjosoebroto, MPA, who also put forward the same thing, that there will be legal gaps or failure of transplantation of the law when positive law is imposed into the law of the customary society so that there is a legal gap in the Indonesian legal system. But after the departure of these two legal sociologists we are faced with a heavy frustration because there is no more place to complain, no more clear leaders to irrigate the chaos of this torrential world of law. The tired complaints that strike the world of law are coloured by mega-corruption scandals, power scandal, anger and anger, etc.

The legal situation in Indonesia at this time has lost its coolness the words of those magicians have no longer we get in the streets of the public space. The writings of the wise men are as if they were swallowed down by the earth. But everybody always kneels on the shoulder of the young man who still holds the idolasme, they do not leave without a remnant, even their souls unite with our hearts, a precious capital to wander through the ocean of Indonesian law life that is full of storms as is happening at the moment.

As one of the events that showed the occurrence of legal discrepancy between positive law and customary law of society was On November 19, 2009, the 55-year-old Minah was sentenced by the Purwokerto State Court (PN) to 1 month 15 days imprisonment with a trial period of 3 months. Grandma Minah has been found guilty of harvesting three cocoa trees at a plantation owned by PT Rumpun Sari Antan (RSA), Ajibarang, Banyumas. During the hearing with the agenda, the verdict went on with a lot of enthusiasm. Even the judge chief who led the trial at the time, Muslih Bambang Luqmono SH, was seen crying while reading the

[19] Marzuki, Peter Mahmud, 2008, *Pengantar Ilmu Hukum,* Kencana Prenada Media Group, Jakarta., page 85.

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verdict.[20]

The above events show evidence of a discrepancy between positive law and customary law because in the customary laws of the local people taking the branches and the fruits that have fallen to the ground is a logical thing in the perspective of local law, but instead according to the positive law it clearly violates the provisions of section 362 of the Code of Criminal Law (CCHR) which regulates the hole of theft.[21]

Regarding the case with the view above, responsive theory and the theory of progressive law are the right views in studying law, not only in terms of positivism but also in view of law as a social reality, viewing law not merely as a law of the product of power, but also a social product, considering law is not in the vacuum, but in the reality of real life, if normative law tends to the Quid Juris (Normative, Sollen), but theoretical law responsive and theorical law progressive tend to Quid Facti or natural, empirical or an actual event in society, Sein or reality or social fact.[22]

The above exposure is very important to study how responsive law theory and progressive theory of law to enhance the capacity of the positive law to solve the real questions of the solution of cases and legal problems in Indonesia, so that hopefully responsive theories and the progressive legal theory will be able to combine the interests of legal certainty, justice and utility as a legal goal that is a trust of article 1 paragraph 3 UUD 1945.

D. Conclusion

Based on the above description, it can be concluded that the Indonesian nation is experiencing multiple crises, one of which is a crisis in law enforcement with indication when in law enforcement only prioritize aspects of legal certainty (*rechtssicherheit*) by ignoring the aspect of justice (*gerechtigkeit*) and the use of the law (*zweckmassigheit*) for the community. The above conditions raise a number of legal problems, such as the perception of public mistrust of the law: (1) There are legal instruments, both legislative and executive, which are considered not to reflect social justice. (*social justice*), (2) The judiciary has not yet reflected an independent and impartial agreement, (3) the law enforcement is still inconsistent and discriminatory, (4)

[20] Satria Sukananda, Pendekatan Teori Hukum Progresif Dalam Menjawab Permasalahan Kesenjangan Hukum (Legal Gap) di Indonesia, accessed from https://jurnalnasional.ump.ac.id/index.php/JHES/article/view/3924/2340 on September 23, 2024.
[21] Marzuki, Peter. Mahmud, *Op. Cit.*
[22] *Ibid.*

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Legal protection to societies that have not yet reached a satisfactory point. So the existence of responsive and progressive legal theory can help solve the above legal problems.

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