

# The Enforcement of Progressive Law: Optimizing Alternative Dispute Resolution as the Implementation of Pancasila Values

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## ABSTRACT

Progressive law is a holistic legal idea. Progressive law views law as a series of rules and behavior. In practice, progressive law also mandates the implementation of alternative dispute resolutions. Alternative dispute resolution is expected to strengthen the value of the dispute so that it is more substantive and able to reconcile the parties. This study aims to explore the nature of progressive law enforcement and provide prescriptions related to progressive law enforcement that prioritizes Pancasila values, one of which is through the application of alternative dispute resolution. This research is normative legal research. Normative legal research seeks to place the law as part of society's norms based on values. The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia, Law no. 48 of 2009 concerning Judicial Power, and Law no. 30 of 2009 concerning Arbitration and Alternative Dispute Resolution. Secondary legal materials include various research and studies on alternative dispute resolution and progressive law. The non-legal material in this research results from a study on the philosophy of Pancasila, especially those relevant to law enforcement practices. The approach in this study uses a conceptual approach and legislation. The study's results confirm that the essence of progressive law enforcement is that progressive law enforcement emphasizes the nature and character of the law that is constantly evolving, emphasizes humanitarian attitudes, dares to act out of the box, and always prioritizes spiritual in addition to philosophical considerations. Alternative dispute resolution as the implementation of progressive law and Pancasila values is needed to maintain community family values and strengthen the value of local wisdom in resolving disputes in the community.

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## 1. Introduction

Alternative dispute resolution is one of the steps and efforts in resolving disputes with the consensus approach (Mustikajati et al., 2021). The consensus approach emphasizes the suitability of the will between the parties so that the resulting decisions are comprehensively based on the parties wishes (Afrita, 2015). That is understood because, in conventional dispute resolution, the role of

third parties, in this case, law enforcement or judges, is the most significant. That impacts dispute decisions based more on aspects of formality and legal certainty, while the sense of "acceptance" from each party is often ignored. A dispute is generally understood as a discrepancy between the parties' will, which causes a dispute or a difference in perception of something that has been agreed upon. In a dispute, a will discrepancy can lead to a conflict that has implications for disrupting the interests of the parties (Sulaiman, 2021). In this case, the effort to arrange for disputes to occur regularly and somewhat is through dispute resolution. (Zuldin, 2019). In general, dispute resolution is carried out by litigation involving law enforcement agencies such as the police, prosecutors, and courts (Sri Lestari Rahayu, Mulyanto, 2016). However, there is an antinomy in the implementation of the litigation dispute resolution.

The antinomy can be in the form of non-optimal court decisions in resolving disputes between the parties. Dispute resolution in court sometimes requires a specific procedural law mechanism (Gladwin Lukman et al., 2020). Penyelesaian sengketa di pengadilan terkadang harus melalui mekanisme tertentu yang lazim. The antinomy can be in the form of non-optimal court decisions in resolving disputes between the parties. Dispute resolution in court sometimes requires a specific procedural law mechanism. Not to mention the substance of the decision, which is strongly influenced by the creed of "rules and order." As long as there is a written regulation (positive law), the law is considered to exist already. This phenomenon makes the law further away from the sense of justice (Swenson, 2018). That often leads to the phenomenon of "trial without justice." (Oltra Gras, 2021). That phenomenon occurs when the judicial process that has been running does not realize the aspect of justice as the main essence of implementing the law. Therefore, alternative dispute resolution is needed in law enforcement to strengthen progressive law enforcement in Indonesia.

The term progressive law enforcement is based on the idea of progressive law, which is the legal paradigm of the Indonesian nation by placing the value of Pancasila as the guiding value in law enforcement. That is an effort to emphasize the orientation of alternative dispute resolution as a progressive step in law enforcement. Therefore, this study aims to explore and, simultaneously, formulate the nature of progressive law and its implementation in alternative dispute resolution in law enforcement to embody the values of Pancasila.

## **2. Research Method**

This research is normative legal research. Normative legal research seeks to place the law as part of society's norms based on values (Eka N.A.M. Sihombing, 2022). In this study, the law must be value-oriented so that dissecting the values in society (especially the value of national consensus, namely Pancasila) becomes the main study in this research (Suteki, 2018). The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia, Law no. 48 of 2009 concerning Judicial Power, and Law no. 30 of 2009 concerning Arbitration and Alternative Dispute Resolution. Secondary legal materials include various research and studies on alternative dispute resolution and progressive law. The non-legal material in this research results from a study on the philosophy of Pancasila, especially those relevant to law enforcement practices. The approach in this study uses a conceptual approach and legislation.

## **3. Results and Discussion**

### **The Essence of Progressive Law Enforcement: Quo Vadis?**

The law enforcement is a series of activities oriented to concretizing legal values in concrete legal cases or societal problems (M. Nggilu, 2019). In this case, the key word in understanding law enforcement is the application of values in society. That means that an understanding is needed regarding law enforcement and implementation. In ordinary people, law enforcement and implementation are identified with one conception: the implementation of favorable legal rules in people's live (Aidi, 2020). The application of law can be interpreted narrowly, namely the implementation of favorable legal provisions in society. In this case, understanding the

implementation or application of the law departs from the provisions of positive law to be practiced in the reality of social life (Ramadhan, 2018). That confirms that applying the law is consistently identical to applying positive law (laws and regulations). In applying the law, it does not matter whether favorable legal rules are good or not, violating legal principles because the focus is on the application of favorable legal rules. Law enforcement is undoubtedly different from law enforcement. Law enforcement is oriented to the "value" of the law, which is not just judging the law (Junius Fernando, 2020).

However, first, explore the existing legal values and then apply them to the realities of life in society. Law enforcement that begins with an understanding of values requires high reasoning and the soul and nature of humanity (Rahardjo, 2010). Understanding and applying values is a human task and effort. Beings outside of humans certainly cannot understand values, let alone apply them. Therefore, law enforcement that focuses on its actual value is a humane legal orientation. That also emphasizes that law enforcement is an act and struggle of humanity that humans usually carry out. While the proper application of the law does not require a value orientation, the focus is on the rules that can be applied. That also emphasizes that in certain conditions and situations, the application of the law can be carried out with the help of robots and other tools by observing the development of technology and information (Prasetio et al., 2021). The development of technology and information does have a significant role in the practice of law. That, as emphasized by Richard Susskind, is that the digitalization era causes a paradigm shift in legal practice (Susskind, 2015). The law which was initially "waiting" must turn into an active one. In the era of digitalization, the law has become active so that it prioritizes the preventive legal character compared to the repressive nature of the law.

The legal character in the digital era that puts forward the anticipatory aspect is also relevant to law enforcement practices. Law enforcement must be identical with anticipatory efforts to avoid disputes, so specific steps and efforts are needed (Sari, 2012). The practice of law enforcement that has undergone a paradigm shift along with the development of technology and information, certainly does not release the nature of value-oriented law enforcement (Qamar & Salle, 2019). Even if there are developments in technology and information, the nature of the value remains the same. Values always direct people to behave properly and appropriately. Values never deny their essence to make humans human. Law enforcement, which is oriented towards reviving the human spirit, is actually relevant to the idea of progressive law as stated by Satjipto Rahardjo. Satjipto Rahardjo is a legal thinker who sees social-society reality as a field that must be cultivated and integrated with theoretical and practical aspects of Law (Harun, 2019). In this case, Satjipto Rahardjo can be categorized as a legal thinker with a sociological perspective. In the language of philosophy in Law, legal thought by prioritizing sociological aspects is identified with the term sociological jurisprudence. That, of course, must be distinguished from the idea of social thought that studies law or the sociology of Law. There are three main differences between sociological jurisprudence and sociology of Law (Mohamad & Wayan, 2021).

*First*, sociological jurisprudence is rooted in the science of Law but by looking at social-societal realities that affect Law. In this case, sociological jurisprudence is the realm of Law. That is certainly different from the sociology of Law, which is rooted in social science study. *Second*, sociological jurisprudence views Law as a value-based norm for social-societal reality. The social-societal reality as a place for the Law to develop gets more attention, even though it still places Law as a value-based norm. That is certainly different from the sociology of Law, which views Law as a written rule by the state (positive Law). That can be understood because the sociology of Law narrowly views Law as a social "product." *Third*, even though sociological jurisprudence uses the perspectives of other sciences, especially social sciences, in completing legal studies, it still maintains the identity and character of legal science as a science that offers legal solutions to a problem commonly called prescription. This prescription is maintained in sociological jurisprudence (Pinto, 2017). That is different is that the sociology of Law, whose roots are social science, still offers a description of social reality because of Law. Based on the differences between sociological jurisprudence and the sociology of Law above, Satjipto Rahardjo is still classified as a thinker of

sociological jurisprudence (Banakar & Travers, 2005). Satjipto Rahardjo, who offers the idea of progressive Law, is an "intellectual anxiety" related to the reality of law enforcement practices which are "tattered" with no clear direction. In Satjipto Rahardjo's view, the reality of post-reform law enforcement shows that the Law seems to have "lost its master." The Law and its apparatus are there, but in which direction the Law will work is still a question. Law is like a lost traveler and does not have a "compass" to guide his way.

The reality of law enforcement then made Satjipto Rahardjo offer progressive legal ideas. According to Satjipto Rahardjo's view, Progressive Law is a legal paradigm that needs to be used as an alternative to seeing the legal reality of the Indonesian nation, which is in an unstable (chaotic) condition (Rifai, 2020). Progressive Law is likened to a compass guiding Indonesian Law so that it can serve humans and humanity. Therefore, progressive Law has a jargon that the Law exists, is present, and is oriented towards humans and not vice versa; humans are forced to follow the ripples of the Law, which at that time were running erratically (Rahardjo, 2008). Progressive Law has several characters (Susanto, 2019). *First*, Law as an Institution that Never Stops Serving Humans. Progressive law assumes that law is a process to continue (law as a process, law in the making). This confirms that the law is not absolute, let alone anti-criticism. As something that continues to be, progressive law invites us to see and view the law as part of a social reality that can change at any time. The law that can change at any time emphasizes the nature of the law to continue to improve and continuously change. The law should not be rigid and frozen in viewing social-societal reality. Law in this context has the character of constantly moving and changing, following the ripples of human dynamics. In this case, progressive law does not negate legal certainty because one of the fundamental values of law is legal certainty. However, the character continues to be in law, and it must be understood that progressive law also agrees with legal certainty. However, legal certainty can be revised if it is not following developments and existing humanitarian realities.

*Second*, Law as Teaching of Humanity and Justice (Robert Pranata, Erlyn Indarti, 2016). Progressive law sees itself as a teaching of humanity and justice which means that progressive law is full of values. Progressive law emphasizes that law is not just a rule made by the state. Progressive law always looks at the value and philosophical dimensions of the law. In this case, dissection and breaking values are essential in understanding the law. In addition, as the teaching of humanity, the law also humanely emphasizes human character. The human aspect is understood that humans cannot be placed at the center of progressive law but becomes part of the overall legal system in which there are humans, living things, and the universe in general. In this context, progressive law views humans as regulators/controllers/preservers, usually called caliphs. This human character as caliph requires humans to be fair to fellow humans and living creatures and the environment and the universe. In addition, in the context of justice, progressive law seeks to view the law as a reflection of the value of justice in society. That means that progressive law must concretize the idea of justice that develops in society (Disantara et al., 2022). *Third*, Law Has Dual Aspects: Behavior and Rules (Weruin, 2017). Progressive law emphasizes law as a duality between rules and behavior (rule and behavior). In this case, the law is understood as the complexity between rules and behavior. The idea of progressive law, which emphasizes the understanding of law as a rule and behavior, is a form of criticism of legal positivism. Legal positivism views law only as a rule. Even lancing, H.L.A. Hart asserts that law is a system of rules (rule-oriented) (Hartati, 2021).

The view that the law is a system of rules reduces the meaning of the law, especially for the people of Indonesia. In Indonesia, the law is written or unwritten; even legal values are sometimes manifested in people's behavior and habits (Disantara, 2021b). In this case, progressive law is oriented towards an effort to view law holistically as a rule and behavior. In this case, progressive law seeks to see the law as not just black-and-white words from regulations (according to the letter) but according to the spirit and more profound meaning (to very meaning) of the law or law (Markus Marselinus Soge, 2022). In Ronald Dworkin's discussion, the idea of exploring legal values is an orientation to explore the "moral context" in law (Mahfud, 2019). This moral aspect is the "heart" of the law. *Fourth*, Law as a Means of Liberation (Nur Hidayat, 2021) As a means of liberation,

progressive law seeks various methods, approaches, and studies of law both theoretically and practically in bringing justice to society. Progressive law rejects the understanding that the law is fast and structured and even rejects specific characteristics in analyzing the law. Progressive law presents the view that the law must be freed from various elements that can hinder the development of the law, one of which is a single view of the law. The law in which values radiate must always be explored based on the values that develop in society. Based on the four characteristics of progressive law, the author is of the view that progressive law seeks to present a legal paradigm that is holistic, comprehensive, and responsive. This is so that the law is always reactive to the times. In the context of law enforcement, progressive law enforcement implies that law enforcement does not only rely on intellectual intelligence but spiritual intelligence.

In other words, law enforcement is carried out with determination, empathy, dedication, commitment to the nation's suffering, and the courage to find other ways than what is usually done (Sayuti, 2018). Furthermore, in Mahfud MD's view, progressive law enforcement requires law enforcement officers to carry out "Caesar" operations in law enforcement if formal legal aspects cause substantive aspects of the law to be held hostage (Mahfud MD, 2017). In this case, progressive law enforcement is expected to become a "spirit" for law enforcers in Indonesia. In this case, one aspect of progressive law enforcement is the resolution of disputes through alternative dispute resolution. Progressive law enforcement also believes that justice is not only in formal legal spaces but also in social-societal reality (justice in many rooms) (Gunatilleke, 2021). That makes progressive law prioritizes dispute resolution through alternative dispute resolution and not always through formal courtrooms. In this case, progressive law emphasizes substance rather than formal procedure. Based on the description above, it can be concluded that the essence of progressive law enforcement includes several aspects, namely: progressive law enforcement emphasizes the nature and character of the law that is constantly evolving, emphasizes humanitarian attitudes, dares to act out of the box, and always prioritize spiritual considerations in addition to intellectual considerations.

### **3.2 Alternative Dispute Resolution on the Implementation of Progressive Law and Pancasila Values**

Alternative dispute resolution must be understood integrally with law enforcement (Rosita, 2017). That is to emphasize the concept that law enforcement cannot be interpreted only in a formal-procedural manner through the gates of state law. There are still other ways and ways to enforce the law, one of which is through alternative dispute resolution (Bennett, 2015). The idea of alternative dispute resolution must be understood holistically, including by looking at the constitutional legitimacy of dispute resolution. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as the "fruit" of reform has mandated Indonesia as a state of law without any *rechtsstaat* or the rule of law (Aswandi & Roisah, 2019). That aims to explore the values of local wisdom of the community as the main idea in the rule of law. The Indonesian legal state based on Pancasila has its characteristics to enforce the law. In this case, the state of Pancasila law, on the one hand, sees legal developments in other countries and revitalizes the essence of law enforcement and legal practice in society (Erwin, 2018). Indonesian people believe that disputes are not just legal competition (law games) but are an aspect of values that have not been fulfilled (Tjiptabudy & Angga, 2020). In this case, instead of seeing the dispute as a competition between the parties refereed by a judge or arbitrator, the Indonesian people see that the dispute should be resolved amicably. That makes Indonesia not only view the dispute as a problem of the parties but as a common problem that also requires a joint resolution (Syam et al., 2021).

Disputes by the Indonesian people are seen as something that must be prevented, like a 'disease'. In this case, treating the disease is allowed, but it would be better to prevent it. In the context of dispute resolution, disputes by the Indonesian people are seen as diseases in which it is better to avoid or mitigate the settlement of disputes than to be resolved amicably (face to face/*vis a vis*). This noble and moral view of the Indonesian people can be understood because it departs from

the culture of the Indonesian people, which emphasizes peace as the highest essence in social relations (Kurniawan, 2020). In the culture of Indonesian society, peace does not mean that there are no disputes but that the people sincerely and voluntarily resolve the disputes they face in humane ways. Humane ways are here seen as ways that put forward socio-cultural values that mandate the balance (proportionality) of interests as essential in a dispute. That is briefly described as a family value (*nilai kekeluargaan*), the "distinctive value" of the Indonesian nation. The value of kinship as the "distinctive value" of the Indonesian nation must be realized in various practices in social-societal reality. Family values are also required to be a guide as well as a guide in resolving disputes. In practice, the value of kinship must be distinguished from the practice of confiscation (*perkoncoan*) (*konco* = friend), which is identical to the manipulation of disputes. Dispute manipulation is a systematic and structured effort to win a party in a dispute on the pretext that the party is still a relative, relative, or colleague of one of the parties. Dispute manipulation often puts forward the jargon of "family" pejoratively. It is understood that in the manipulation of disputes, the term kinship is used as an effort to make dispute resolution unfair. Thus, dispute manipulation is identical to using the name of family values for personal gain.

The value of kinship, which is essentially reduced by the practice of manipulation of the dispute, should be emphasized, and it has universal values and character. That means that family values do not mean siding with friends or relatives. The value of kinship can be understood as partiality as long as it sided with the weak party based on power relations or social strata. That is what is necessary to distinguish between family values and things that are only "in the name of" family values. If the value of family means positive, sound, and puts on morals, it is inversely proportional to "in the name" of kinship, which is used to manipulate disputes. In the name of kinship, it is used to manipulate disputes so that dispute resolution is discriminatory and full of engineering. Family values also emphasize honesty (fairness), openness, and independence. That means exploring family values is essential to prevent abuse of family values. The value of kinship in law enforcement must also be understood as a value, and kinship has room for interpretation in its application. The space of interpretation, in this case, means that there may be differences in the application of family values in one case. This does not mean that family values are applied discriminatory or at will, but are applied according to the situation and conditions of a case (Kurniawan, 2022a). In this case, the value of kinship is also related to the proportionality of the position and substance of the parties. Position proportionality relates to the position of the parties in the social-society structure. In law enforcement practice, parties who are socially structurally "higher" undeniably have the potential to oppress and even manipulate the settlement of a dispute. Based on this, the value of kinship must also be able to be positioned proportionally. That is so that the parties can sit down and settle the case on an equal basis without any tendency of who is higher in rank.

Furthermore, related to the proportionality of substance, it must also be understood that in a dispute, a party is substantively guilty but still holds firmly to the position that he is innocent. Family values, in this case, must be able to explain politely, directed, and systematically to the party. With proper and clear direction, it is hoped that the disputing parties can find out their mistakes, apologize to each other, and then design concrete solutions to problems. That is the essence of family values. Family values should also be applied in law enforcement practice. Family values (*nilai kekeluargaan*) in Indonesian law are reflected in Pancasila (Shidarta, 2020). Sukarno, in a speech on June 1, 1945 asserted that Pancasila as a *filosofische grondslag* was based on the family value, namely *gotong royong* (Soekarno, 2017). *Gotong royong* cannot be understood as a static understanding but is interpreted as a dynamic understanding in which the dynamics and social reality are based on family value (*nilai kekeluargaan*) (Unayah, 2017). Family values also encourage various state activities to be carried out in a family manner; in this case, law enforcement is no exception. The familial approach in law enforcement cannot be interpreted as an effort to forgive crimes or law violations but rather to make social reparations for violent crimes (Laga Sugiarto, 2018). Article 5, paragraph (1) of the Law on Judicial Power, for example, confirms law enforcement practices that law enforcement officers (in this case, judges and constitutional judges) are obliged to

explore the values of justice in society. The value of justice in society certainly cannot be seen as written law but as a value that is lived, internalized, and implemented by the community. In this case, law enforcement activities must be full of values, which means also exploring the values that live in society. Furthermore, Article 6, paragraph (1) of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution emphasizes that the essence of alternative dispute resolution is a reasonable faith effort to override the litigation process (Serena Ghean Niagara, 2020).

That means that the good faith aspect is superior to the litigation dispute resolution process. Good faith in this context must be understood as the good will of the parties. That emphasizes the internal morality of each party in resolving disputes. That means, alternative dispute resolution emphasizes the moral attitude of the parties (Disantara, 2021a). The parties must have good goals and orientation so that the results of alternative dispute resolutions are as expected. In this case, good faith emphasizes the moral attitude of the parties that must be maintained consistently in the practice of dispute resolution. Furthermore, the application of good faith must also be seen from the initial actions or actions of the parties. That means that parties who consider themselves to have made good faith are obliged to take initial actions as the implementation of good faith. Initial actions include inviting other parties to negotiate, apologizing, and other parties to sit down together to solve problems. That must be done so that good faith does not become the subject of "claims" without evidence (Kurniawan, 2022b). In alternative dispute resolution, good faith must be proven by various actions that initially melt the atmosphere and invite other parties to maintain harmony and conduciveness. The aspect of good faith is an effort to explore local values in society (Halberda, 2020). This confirms that although alternative dispute resolution has been emphasized in Law no. 30 of 1999, the practice in the community is open, which means that the community may develop various alternative dispute resolutions.

In the context of Pancasila values, the use of alternative dispute resolution has emphasized the nature of Pancasila values in the legal practice of the Indonesian nation (Ismayawati, 2017). Pancasila emphasizes the comprehensive implementation of its values in legal practice. The values of Pancasila require that the values of divinity, humanity, unity, democracy and social justice be carried out simultaneously (Dyah Ochterina Susanti, 2021). That confirms that alternative dispute resolution is one of the efforts to implement Pancasila values in Indonesian law. In addition, in the context of progressive law, the idea of progressive law that seeks to seek justice outside the court is also one of the paradigmatic foundations for implementing alternative dispute resolution as the primary step in law enforcement (Budiono & Izziyana, 2018). Alternative dispute resolution practices have been available in various fields of law, although the culture is still not optimal. Some of the practices include the idea of restorative justice in the field of criminal law (Leonard, 2022), mediation, and negotiation in civil law/contract law (Erviana, 2020), as well as administrative efforts in state administrative law (Ibad, 2021). The existence and availability of alternative spaces for dispute resolution also require an emphasis on community behavior and culture. That is in line with the progressive legal view, which asserts that the law consists of behavior and regulations. In the context of alternative dispute resolution, even though there are rules regarding alternative dispute resolution in each legal field, these must be empowered with behavioral approaches and civilizing in the community. Based on this description, alternative dispute resolution as the implementation of progressive law and Pancasila values is needed to maintain community family values and strengthen the value of local wisdom in resolving disputes in the community. At the same time, that requires civilizing and habituation in the community to optimize alternative dispute resolution.

#### **4. Conclusion**

The essence of progressive law enforcement includes several aspects, namely: progressive law enforcement emphasizes the nature and character of the law that is constantly evolving, emphasizes humanitarian attitudes, dares to act out of the box, and always prioritizes spiritual considerations in addition to philosophical considerations. That confirms that progressive law does not stop at the regulatory aspect but also concerns the progressive legal behavior aspect based on the

values that develop in society. Alternative dispute resolution as the implementation of progressive law and Pancasila values is needed to maintain community family values and strengthen the value of local wisdom in resolving disputes in the community. At the same time, that requires civilizing and habituation in the community to optimize alternative dispute resolution. That also requires a behavioral approach in the community, including the example of law enforcement officers.

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