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INITIATING LAW REFORM IN INDONESIA (FROM THE DIGNIFIED JUSTICE PERSPECTIVE)

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Abstract

It is argued in this article that a study on the law reform of a country is the study which related to understanding of a scientific paradigm which made up of the basic idea of a country's legal system. The main argument in this article is that the basic idea ofma legalmrefom on a legal system must be build upon the enforcement of the juridical principles found and developed in the system. This is derived from a postulate of the Dignified Justice teory perspective.In this view legal virtues underpinning a legal system are examined together as one system of principles and rules or a legal system. Philosophically, or it is a theoretical and a paradigm that law is believed as inseparable from the legal science itself. This philosophy has been developed to make a correction to the sociological jurisprudence perspective, which mainly argued that each occurence of social changes in a legal system cannot be answered by regulation alone. The sociological jurisprudence point of view argues that law is confined to the status quo of a society. Many has argued that this sociological indicative has occurred in many civil law systems, in particular Indonesia, to be used as its best prototype. In the Indonesian legal system, law is positioned as rules and regulations made by the legislative branch of the government. In this perspective laws has been excluded from humanity almost altogether. This article argues that Pancasila as the Indonesia Legal System is the way to solve this problem. Since Pancasila is used as the basis of the State and the source of all legal sources. For this reason, it is interesting to examine how the Pancasila actually became a basis of values in initiating the project of law reform in Indonesia.

Keyword: law reform; dignified justice; pancasila legal system

A. Introduction

1. Background

To begin with, science, particularly legal science or jurisprudence or similar to the philosophy of law and legal theory is an open system. It is inseparable from the democratic values or any other values and virtues. Therefore the law is upholded as the truth above all things[3]. In this perspective law is no doubt must also be considered as science. Therefore if one would study about law he or she must be aware that he or she is entering a realm of science. The law has also carry its duty to unveil any ideology behind the rules, dogmas, teachings, and legal practices that have been indispensable within the law; the law is above ideology and governs the ideology.

Loking at the law from a pure sociological perspective, what has been stipulated would be different. The sociological perspective however, argues that clearly always within the law a discrepancy or tension between legal and regulatory concepts and any values outside the laws. It is belived in this dichotomy that the law is not merely exist to enforce regulations in the sense of mere status quo legislation.

In the sociological view, the law carries a mission to realise a vision to create a harmonious relationship between individual and society in order to bring a just social

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[3] Jujun S. Suriasumantri, *Ilmu Dalam Perspektif: Kumpulan Karangan Tentang Hakekat Ilmu* (Jakarta: Yayasan Obor Indonesia, 1991).

relationship. This is in no different from the concept of regulation which is more focused on the rule enforcement. In this idea, the law enforcement is conducted without seeing the impact of the imposition of these rules whether its outcome is fair or beneficial or not at all.

2. Formulation of the Problem

This means that the concept of regulation is aimed at merely pursue the supremacy of law which emphasizes that all human or societies behavior within the legal system in questions are controled by the laws as a value free social order system.

3. Methodology

The method used in order to acquire, investigate and analyse concepts pertaining to law reform is doctrinal and normative method.[4] Since this research is a legal research, although appear here and there sociological dimentions within this paper, those dimentions are merely concepts which were found in the Indonesian legal system. It shoud therefore also be stated here that in order to have those sociological aspects this research has also using a pure jurisprudential approach, with some support from empirical survey of the behaviour from several law enforcement agencies, mainly the police.

Within this pure jurisprudential method, article offering a new paradigm, the Dignified Justice[5] theory of legal paradigm, in which the study is conducted within the dialectics and contemplation of eradicating legal formalities, particularly ideologie(s) that dominate modern Indonesian law and legal system. In this new paradigm, the law *per se* is consisting of given more spacious to always accomodate values, i.e. legal values that contained in the Pancasila as the fundamental norm or the law, not an ideology. In the Pancasila there has been tenets that there are in the the legal system of Indonesia principles of laws such as: the believe in God Almighty, civilised humanity, the values of unity of Indonesia, the democratic values and the value of social justice.

B. Discussion

1. Moral Decadences of Enforcement Agencies

Old construct, based on the false assumtions of the sociological jurisprudence has brought about false believes such as distrust to the judiciary of the Indonesia legal system. It has been particularly considered that the law enforcement agencies has been deviated from its main goal. This could have caused false accusations for the Indonesian enforcement agencies in the legal system. It has been generally argued, for instance that there has been

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[4] Teguh Prasetyo, *Penelitian Hukum Dalam Perspektif Teori Keadilan Bermartabat*, Cetakan Pe (Bandung: Nusa Media, 2019).

[5] Several publication in an international journal with regard to this theory, see, Tri Astuti Handayani, *Criminal Justice System* (CJS) *in Accordance with the Perspektive of The Dignified Justice Theory*. *Int. J. Adv. Res. 5(10), 883-888*; Anwar Sodik, Teguh Prasetyo, and Sri Endah Wahyuningsih, *Reconstruction on the Legal Policy for Handeling Eradicating Deforestration Based on the Dignified Justice Perspective*, *Int. J. Adv. Res. 5(11), 277-283*; Agung Wisnu Barata, Teguh Prasetyo and Jawade Hafidz, *The Recruitment to Fill the Possition of the Indonesian Civil Service Apparatus* (*A Dignified Justice Theory Perspective*); *Int. J. Adv. Res. 5(12), 136-141*; Dharmendra Kumar Singh and Amit Singh, *Appointment of Judges and Overview of Collegium System In India: A Need to Reform*, Int. J. Adv. Res. 5(6), 900-906; Wandi Subroto, Teguh Prasetyo and DJawade Hafidz, *Reconstruction of the Laws and Regulations Governing Authority or Power of Legislators to Prevent or Eradicate Corruption:* (*A Dignified Justice Perspective*), *Int. J. Adv. Res. 5(6), 1240-1247*; Rendra Kurniawan Prasetya, Teguh Prasetyo and Slamet Suhartono, *Diversion as a Method of Dispute Settlement for the Offence of Road Trafic Transportation Accident (The Dignified Justice Perspective)*, *Int. J. Adv. Res. 5(12), XX-XX.*

existed moral decadence in the system. These decadences has been manifested in several forms.

There has been misused or abused of authority and power within the criminal justice system. Many has argued that there prevailing abuse of authority by the police. There has been use of violence instead of the proper authority based on the rules of law. This accusation has been based in some cases of police brutalism. Including in this brutalism is an act of extortion by the police. It has been generally understood that violence is seldom used during police investigation of a suspected criminal. Based on this fact, it has been argued that this brutal practice of the police has been influenced by the system itself.

One of the the related factor is the using of the principle of inquisitoir in the investigation procedueres. In this legal principle, the suspects are treated as the object in the police examination. Many in Indonesia argues that this principle is the main factor which hampered the fulfillment of the rights of suspects and defendants in the criminal investigation process. This practice is contradict to the principle in the Criminal Procedural Acts which dictates that the suspect must be treated as a subject in the criminal justice system. According to the Dignified Justice Theory postulate, the latter principle of law has been existing in order to promote human dignity in the Indonesian criminal justice system based on Pancasila. It upholds the fundamental rights of men or human rights.

There has also accusation concerning jucidicial corruption or judicial mafia. From the old paradigm, as William Chambliss said, corruption is part of the system itself. Therefore, it is not new that to combat judicial corruption using law enforcement is facing a dilematic situation[6]. Corruption by the law enforcement agencies has been seen as ramphant since there has been too many vested individual interests of actors running the law enforcement agencies. The individual interest has colored every decision they made. The process of law enforcement is not a value-free formula. The law enforcement can not be separated from the intention to implement certain values, including corruptive behaviour upheld in a society. It is therefore there is a necesary need for the role of the integrity of law enforcers as well as the demands of community justice are important to be synergized within the framework of achieving substantial justice.

Judicial corruption such as police corruption occurs in the form of using coercion by the police force upon justice seekers. Generally it has been saied that justice seekers must pay a sum of money in order to be successful in handeling their case to be resolved. Within this fenemona there are always negotiations between law enforcement agencies and justice seekers with regards to the price paid. This is a manifestation of what has been generally understood as a judicial mafia. The mafia is related to the judiciary, since this branch of state power is also involved in the negotiation to formulate the amount of money to be paid for a successful law enforcement.

There has also a poor judicial service and inadequate legal assistance. The poor service of law enforcement officers are reflected in, among other things, complaints from the public about the handling of cases that have dragged on for years, which have not been resolved by the police, without clarity, handling cases that require years of legal force. Poor

[6] Zakiyah and Wasingatu, *Menyingkap Tabir Mafia Peradilan* (Jakarta: ICW, 2002).

judicial services have a dimension of uprooting rights for marginalized communities to gain access to good services. Poor judicial services also reflects their bargaining with the people seeking justice for aware that they are the subject of legal equal rights with other community groups and is able to exercise control over the legal bureaucracy that had bad service.

Discrimination, is also the indicator of the decadence in the law enforcement agencies. In this case law enforcement treats justice to justice seekers because considerations that are actually inappropriate and inappropriate. This discriminatory treatment has been assessed beyond the reasonable limits. For example, in the work of the police in handling a full criminal case various interests which are often in fulfillment of these interests create a conflict of interest. It can be quoted the opinion of Donald Black and Maureen Mileski from the findings of Mayhew and Reiss that in relation to law and social stratification, the legal process is geared to serve the needs of the upper strata. AS Blumberg states that the system of justice by negotiation tends to serve better the interest and requirement of guilty[7]. The thought of critical legal studies views the concept of legal neutrality as a myth, therefore law per se is never neutral, immune and autonomic against factors tor interests outside the law[8].

Protection of victims has not yet fully materialized. Protection of victims in the Criminal Code and the Criminal Procedure Code was limitted. Protection law and the victims still leaves the problem, given that the Agency (witness and victim protection agencies) only at the national level in Jakarta to obtain. The need to accommodate the value of recognized human rights in the world community. In the Seventh United Nations Congress on Prevention of Crime and Treatment of Offenders issued Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in the provisions of letter A concerning the Victims of Crime which is titled Access To Justice and Fair Treatment item 4, and, 6, contains: victims must be treated with compassion and respect for their dignity. They have the right to access the judicial mechanism against it. The responsibility of the judicial process for the needs of victims must facilitate several things. Inform victims about the roles and opportunities, time and process of resolving their cases, especially for serious crimes and where victims get information. Give attention to victims to be presented and considered/heard appropriately in the judicial process which affects the interests of victims, without suspicion towards the defendants and is consistent with national criminal justice.

2. Law Reform Model

To understand the direction of the reform of the justice system which is a reform of the law itself, it is necessary to underline the opinion of Notohamidjojo who stated that the law has a very strong moral content. Law cannot be separated from morality[9]. This is in line with the legal objectives stated by Notohamidjojo before, namely that the purpose of the law is to carry out justice and order and peace in society[10]. In the Dignified Justice Theory, this aspect has been postulated as pursuing Dignified Justice as the purpose of the legal system. In this, the law is in itself justice which contain of justice itself, utilities and legal certainty.

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[7] Abraham S. Blumberg, *Criminal Justice* (Toronto: Burns and Mac Eachern Ltd, 1967).

[8] Roberto Mangabeira Unger, *Gerakan Studi Hukum Kritis* (Lembaga Studi dan Advokasi Masyarakat, 1999).

[9] O. Notohamidjojo, *Demi Keadilan Dan Kemanusiaan* (Jakarta Pusat: BPK Gunung Mulia, 1975). Morality is all the norms conserning good things, it differentiate good from the bad to govern human behaviour and the right to life of human being in the society.

[10] Notohamidjojo, p. 31.

Some has argued in this line, such as the emergence of *The Revival of Natural Law* in the XX century and continued in thought in XXI century foster a philosophy of life arbitrate efforts through the realization of values-moral values, values of justice and truth in the law.

Bureaucratic rational rules and procedures in the characteristics of modern law that are not in harmony with human nature, will only dehumanize humans through legal justification. Starting from the design of construction renewal of the justice system, it is necessary to have reaction against the positivism paradigm, secretive law enforcement culture, and the paradigm of justice seekers who experience the rhetoric of freedom. A design for the construction model of a responsible justice system was adopted as adopted by the paradigm of conscience.

In harmony with the achievement of the values within the law, then the effort of construction of justice reform in Indonesia being accountable, it should be reflected in the reality of a society that law is dynamic. If the opinion of Satjipto Rahardjo restated, then the law in Indonesia also experienced legal dynamism and always tried to remove obstacles in law. As Scholten said that people are not just talking about the application of the law (*rechtstoepassing*) mechanistic but legal discovery more creative[11]. The law is continually processed and determined by the whole social context[12]. Natural law/natural law is the basis or basis of law that can be considered. The purpose of law is justice according to natural law is not the formal aspect of the law is the legal procedure, the agency established the law, nor the law that *de facto* have been set but were always strive towards the realization of justice.

A religious, humanist, democratic justice perspective is the basis/basis for the need to reform the justice system to demand public accountability. This perspective is elaborated to reflect the positivism paradigm, so that the development of legal science in Indonesia can really lead to the development of legal science as a genuine science. Pancasila right to become a model for constructing the frame of law in the Indonesian law reform. The emergence of modern law and rational or positivistic view -dogmatis very prominent. Modern law absolutely changes a social order that is more sociological, anthropological and natural to be an artificial and distinct institution. Social order, which is the nature of society that is confronted with modern laws that are just passed from the west, still shows that the "soul" of the nation cannot just disappear.

Savigny argues that human society is divided into national society, which has a *Volkgeist* (soul of the nation) that is different according to place and time. *The Volkgeist is* expressed in language, customs, and social organization of the people which certainly varies according to place and age. *Volkgeist* is the philosophy of life of a nation or a cultural pattern or personality that grows due to past experiences and traditions.[13] Von Savigny argues that law is not made, but grows and develops with society. Therefore it does not make sense if there are universal laws for all time.[14] Pancasila is *Volkgeist* Indonesia, which

[11] Paul Scholten, *Struktur Ilmu Hukum*, ed. by alih bahasa B. Arief Sidharta (Alumni, Bandung.: terj. De Structuur Der Rechtswetenschap, 2005).
[12] A. Gunawan Setiardja, *Dasar Dari Hukum, Kapita Selekta Hukum* (FH-UNDIP, 2007).
[13] Sunarjati Hartono, *Kapita Selekta Perbandingan Hukum* (Bandung: Alumni, 1968).
[14] Lili Rasjidi, *Dasar-Dasar Filsafat Hukum* (Bandung: Alumni, 1982).

reforms introducing shades of Indonesian law states as desired and appropriate Indonesian character.

Arief Sidharta stated that:

> "The legal order that operates in a society is basically an embodiment of the legal ideals adopted in the community concerned into various instruments of positive legal rules, legal institutions and processes (behavior of government bureaucracies and citizens). Legal ideals are ideas, intentions, inventions, and thoughts regarding the law or perceptions of the meaning of law which in essence consists of three elements, namely justice, usability, and legal certainty. The legal ideal is formed in the mind and human heart as a product of the conformity of life views, beliefs, religion, and social reality projected in the process of rule making behavior of citizens who realize the three elements of the ideals of the law. In the dynamics of social life, the ideals of the law will influence and function as a legal principle that is guided, the norms of criticism (rules of evaluation), and motivating factors in the administration of law (formation, discovery and application of law). Thus, the legal system should be a copy of the remission of legal ideals in various principles and rules arranged in a system. The ideals of Indonesian law are rooted in Pancasila.[15]"

The creation of the new Principle Law reform agency was proposed by Sackville, who defined this legal reform in 5 functional characteristics, namely 1. Permanence: which is an expectation of continuity of establishment; 2. Democratic legitimacy; This is a matter of continuing relationship with government, such as appointment, reference, and implementation; 3. The consultative function, which is an obligation or extensive community consultation on reform ideas, either through the holding of seminars or public meetings and/or the dissemination of discussion papers; The public function; by which the agency operates and recommends in the public domain; 5. A measure of independence; which is meant a freedom from the constrains of government policy.[16]

Thus, the legal reforms address and criticize existing laws to respond more to existing social needs, accommodate juridical, philosophical, and sociological legitimacy. Law is also an integral part of the life of human society. For this reason, it is necessary to frame the existing legal construction in a legal purpose as stated by Gustav Radbruch, namely:[17] Justice (*Gerechtigkeit*) which is supported by philosophical validity (*Philosophische Geltung*); Benefits (*Zigwek-massigkeit*) are supported by sociological applicability (*Soziologische Geltung*); Legal certainty (*Rechssic herheit*), which is supported by juridical enforcement (*Geltung juristische*).

Richard Quinney said that the legal system is not taken for granted, and research is how to operate the system. It operates with studies on how laws are formulated, enforced, and administered[18]. Meanwhile, Scholten included a scheme to describe *eschaton* (goal/*doel*, goal) from the law, placed God[19] at the top. The law that departs from humans, to God, is all

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[15] B. Arief Sidharta, 'Struktur Ilmu Hukum Indonesia', *Refleksi Hukum, Jurnal Ilmu Hukum Fakultas Hukum UKSW*, 2008, 134.

[16] Andrew J. Goldsmith, *Complains Against the Police: The Trend to External Review* (Oxford, New York: Clarendon Press, 1991).

[17] Sidharta.

[18] Richard Quinney, *Criminology: Analysis and Critique of Crime in America* (Boston: Little Brown and Company, 1975).

[19] T God is a copy of the name of the God of Israel, Tomy M Saragih, 'Korelasi Tuhan Dan Demokrasi Di Indonesia Setelah Pemerintahan Orde Baru', *Lex Jurnalica*, 10.2 (2013).

directed.[20] Law enforcers have a contribution to strengthen moral regulation including being involved in a potential force for social political change.[21] Ronald Dworkin asserted that reading written rules is needed moral reading.[22]. In the renewal of criminal law in particular, Barda Nawawi Arief stated that: The renewal of criminal law essentially implies, an effort to reorient and reform criminal law in accordance with the socio-political, socio-philosophical, and socio-cultural values of the Indonesian people which underlie social policy, criminal policy and law enforcement policies in Indonesia. The reform of the Indonesian criminal law in essence must be taken with a policy-oriented approach (policy oriented approach), and at the same time a value-oriented approach[23].

In line with the above, legal reform, especially in criminal law, cannot be separated from the study of criminal law politics. Soedarto saw legal politics as first: efforts to realize good regulations in accordance with the situation and situation at a time[24], and the two policies of the state through authorized bodies to determine the desired regulations that are expected to be used to express what is contained in the community and to achieve what is intended.[25]

3. Legal Reform Objectives

The law itself is essentially a norm[26]. which govern every reform. In this view, the law reform is by nature is must not be buit in the ideology. Disagree with Brian Z. Thamanaha who writes that there are a number of "legal ideology" which govern society. These include the elite production called doctrine and understanding about law[27]. Law is in a complex system, called the legal system. The legal system itself according to Lawrence Friedman consists of[28] 1. The Legal Structure. The structure of the system is its skeletal frame work; it is the permanent shape, the institute body of the system. 2. The Legal substance.

A good law is that civilize law which humanizes human. At the level of desperations legality, it should be noted as as criticism of the legality placed as a truth that must be upheld. Need to do a re-examination of the basic philosophical (ontological foundation and axiological) legality principle. Deconstruction towards the principle of legality is done by factoring external point (external point of view) is as crimes against humanity, gross violation of human rights, balance between perpetrators and victims, contrary to the laws that live in the community and not by the general principles of law recognized by the

[20] Scholten.
[21] Reed Michael, *The Sociology of Organization Themes, Perspectives an Prospects* (New York: Harvester Wheatsheaf, 1992).
[22] Ronald Dworkin, *Freedom's Law; The Moral Reading of the American Constitution* (Harvard University Press, 1996).
[23] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana Prenada madia Group, 2008).
[24] Sudarto, *Hukum Pidana I*, Cetakan II (Semarang: FH-UNDIP, 1990).
[25] Sudarto, *Hukum Pidana Dan Perkembangan Masyarakat* (Bandung: Sinar Baru, 1983).
[26] Norm is a concretisation of a value. Norm directs human behaviour, and also predisposition of the behaviour is a etiket, B. Arief Shidarta, *Moralitas Profesi Hukum, Suatu Tawaran Kerangka Berpikir* (Bandung: Refika Aditama, 2006).
[27] Brian Z Tamanaha, *Realistic Socio Legal Theory* (New York: Oxford University Press, 1997).
[28] Lawrence M. Friedman, *The Legal System, a Social Science Perspective* (New York: Russell Sage Foundation, 1975).

civilized nations or the community of nations (the principles of common law recognized by civilized nations or peoples of nations)[29].

In the criminal justice system a, legal renewal is directed at integrated criminal justice system model, which having the characteristics to harmonize the relationship between sub-systems in the sub-criminal justice, including the environtment inputs are sourced from material criminal law or the penal procedure law, uphold the rule of law by ensuring due process of law and treatment reasonable to suspect, defendant or convict, uphold human rights in the whole process Justice. Crucial issue in the law reform important law is reorganize the system of judicial power, the system of national legislation, and the system of administration of justice or the management of law enforcement having human rights insights global humanitarian, and who carry out justice and truth.

On the substance of the law, often found their weaknesses (vulnerabilities), and provides opportunities for abuse of authority by officers of the law enforcement, bleak his lack of harmonization between law rules, criminal laws that are rubber or "omnibus law", legislation that rubber allows for conflict of interest and "invisible hand" as a conflict of interest in the formulation and application of these rules.

Legal culture is a legal soul that has a very important position in the operation of the legal system. This legal culture underlies as a legal sprit the direction of reforming existing laws. "The spirit of law" to justice and will examine a justifiable as legal regulations are in place or not, and as the foundation of the basic ideas for the direction change of substance and the law structure. On behavior, then the legal awareness of culture, the culture of the integrity of the law enforcement officers important point to reform. In line with Gregory Leyh's hermeneutic thinking, legal decisions are a fruit of a kind of humanistic considerations that step out of the methodical application of legal rules. To quote Ronald Beiner, declared by Gregory Leyh, that "judgment is a form of mental activity which is not bound by the rules, are not subject to the specifications of procedure (unlike rationality methodical), and took place outside the boundaries of thought outlined by rules. This type of mental activity is needed by legal persons who must balance the value contained in a case[30]. The philosophical foundation of "legal spirit" the achievement of justice reform towards substantial justice refers to the Pancasila in the 1945 Constitution.

Reform/Reformation of the legal culture based on mental spiritual development from the ranks of all lines in the justice system by building spiritual intelligence, as well as public awareness of the law to demand accountability in the justice system.

Cultural reform that should eliminate individual behavior of law enforcers that does not reflect reflexivity of conscience. Promoting the *esprits de corps* which makes law enforcement bureaucracies tend to close themselves to accountability towards strengthening the values of God, the value of Humanity, the value of democracy in the acquisition of substantive justice. Institutionalization of public participation is also needed for the accountabilityof the judiciary in the public. Building a community legal culture that is able to encourage accountability in law enforcement, with legal awareness of the principles of the balance of interests of Pancasila which are the moral axes.

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[29] Deni Setyo Bagus Yuherawan, *Dekonstruksi Asas Legalitas Hukum Pidana, Sejarah Asas Legalitas Dan Gagasan Pembaharuan Filosofis Hukum Pidana* (Malang: Setara Press, 2014).

[30] Gregory Leyh, *Hermeneutika Hukum, Sejarah, Teori Dan Praktik*, ed. by terj. M. Khosim terj . Legal Hermeneutics (Bandung: Nusa Media, 2008).

The quality of legislation, structural reforms, supporting facilities and infrastructure, institutionalization of community participation, and professionalism in law enforcement are inspired by legal culture reform so as to foster public trust in the judiciary. The weakness of the law does not mean the loss of the meaning of the search for justice, but as Yahya Harahap quoted Taverne as said that:

> When I went recharge, *goede rechter commissarissen, goede officieren van justitie en goe politie ambtenaren i met met een slecht wetboek van staff goede bruken het process* (not the formulation of a law that guarantees the good implementation of criminal law, but a bad criminal procedure law can be good if the implementation is handled by good law enforcement officers)[31].

In constructing judicial accountability in Indonesia, progressive theory provide answers to how to humanize the law. Progressive Law thinks dynamically, holistically, intuitively, alternatively, and emphatically. Progressive law rejects the legal way which causes the loss of legal/legal dynamics to become stagnant. The law becomes dynamic when legal obstacles are removed. One of the things that will be hampered is not the emergence of forces that are actually inherent in the law. The stored power does not arise because of the law enforcement of law enforcers who only spell the text of the law. Human law enforcers who have a way of law secluded and breaking away from holistic concepts, will cause the legal life network to have no virtue. Virtuous law is a law that takes into account the legal consequences of human virtue. In the end this idea encouraged legal discourse oriented to virtue, namely the value of spirituality in law.

Realization of law reform in proceedings aimed at the creation of a judicial accountability moral validation and validation obtain substantial justice for upholding justice. Convergence is achieved so that the construction of judicial reform in Indonesia is on convergence of legal and policy analysis in the form of selectivity to pragmatic interests that disrupt the achievement of substantial justice in law enforcement, legal and moral reintegration, reintegration of openness to the input of justice seekers in legal integrity. Objective values that are substantial justice. For this reason the purpose of substantial justice must be a guide to justice reform, rather than procedural justice. This objective is to be a guideline to reduce rigidity, secretiveness, opportunism, positivism, while also reducing the risk of failure in law enforcement directed at the values of justice. The manifestation of the purpose of the judiciary that is able to fulfill the value of substantive justice towards the reform of the justice system, encompasses the arrangement of several matters. Legislative arrangements and substance of the legislation should be oriented solely to obtaining benefit application of legislation for the creation of better system of court, to fulfill human rights justice, not on the basis of practical political interests. For example, national legislation that

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[31] M.Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan*, Edisi II (Sinar Grafika, 2002). See also, Soegeng Hardiyanto, *Hukum Moral dalam Sanubariku, Sebuah Tuturan Ulang Etika Kewajiban Kategoris, dalam buku Merenung Pembangunan, Punjung Tulis 70 Tahun Liek Wilardjo,* Fakultas Teknik Elektro dan Program Pascasarjana Studi Pembangunan, Universitas Kristen Satya Wacana Salatiga, 2009, p. 107. That human is not merely a creature of knowledge (*erkennendes wesen*), which used his or her knowledge to create a theory, but also at the same time a creature of doing (*handelndes wesen*) that using his or her knowledge to do a practical thing. It has been coined in a very wise statement as Handle Moralisch! *Behave morally wise*!

caused political upheaval, for example, passed the KPK or Corruption Erradication Commision Law. Since it was felt to be very castrated on the power of the KPK to fight corruption.

The Indonesian court system must be mended towards an integrated criminal justice system. Using the approach of a more acuntable, transparant, humanist as the manifestation of the due process of law concept on every stages of the criminal process, from the pre adjudication, adjudication to the post adjudication. In connection with this aproach, it is also important to examine all principles of laws such as the principle of speedy trial, the law of speede, simple and cheap court procedures.

In the process it must provide rooms to seek for a peaceful deliberation possibilities, relaxing the procedures to fulfill the demand of the justice seekers whether it is in the criminal, civil and the administrative process. With those aspect fulfilled to be assumed, the ideas of the law moving towards orientation of values as intrinsic in the principles of law, all we dismantle the ideological coverage in the legal system and there will be a rational and genuine system of the Indonesian law.

There must be a reform for the social acces to justice as a whole. This will open the pursue of real or dignified justice, including in it the protection to the society and particularly protection to the victims, witnesses, wistle blower of the cases and the third parties. All of the legal protection are aiming at the providing justice to the marginalised individuals in the society and also the disadvantages group of people. In other words, there must be a facilities in the legal system for the individuals and also marginalised and disadvantages and poor group in the society to be given access to the legal aid program. This legal aid program must be based on the idea of structural legal aid philosophy. Therefore, there must also been a prorgam of awareness building for the lawyers who representing their clients in and outside the court regarding these legal, constitutional and basic rights aspects of justice.

C. Closing

The orientation of the Indonesian Law Reform should be expected to be based on the new paradigm of legal science or legal philosophy based on the Pancasila. This is due to the fact the Pancasila is the state fundamental norm, the source of the Indonesian Law and Legal System. In the Pancasila one could found all the values and virtues of an ideal and perfect legal system.

Therefore in order to initiate a proper law reform, these writers recommeding for the government and the society that they should work together to return to Pancasila as the fundamental or basic law. Particularly the Pancasila must be the paradigm of the Indonesian Law Reform Program. Within the Pancasila one could found all the necessary requirements of the virtues and valueas to improve the system in order to achieve the aim of the law, i.e. justice. With this system in mind, the law reform must improve the quality of legal personel in the field of the law enforcement agencies.

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