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The Basic Law Paradigm in The Sociological Spotlight: Between Ideality and Social Reality

Dinda Chamelia Sari [1*]

[1] Faculty of Law, Universitas Pasundan, Indonesia
[*] Corresponding email: dindasari210@gmail.com

Article

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Abstract

This research aims to understand how law works in people's lives by looking at it from a sociological perspective. So far, the law is often regarded as a rule that cannot be contested because it is written in the law. But in reality, the law does not always work as expected. Many cases of injustice occur, especially against weak groups. For this reason, a sociological approach is needed so that the law can be more humane and in accordance with the real conditions in society. This research was conducted with a qualitative method through literature study, namely reading and analyzing relevant books and scientific writings, including the thoughts of progressive legal experts. The results of this research show that the law should not only focus on rules, but should also pay attention to the values of social justice and the culture of the community. One approach that supports this is progressive law, which is law that dares to make breakthroughs for the common good. This research concludes that law in Indonesia needs to be built in a way that is more sensitive to social reality, so that it can truly bring justice, not just certainty. By combining normative and sociological legal approaches, the law will be more easily accepted and implemented by the community.

INTRODUCTION

Law is ideally designed as a public instrument to create order, protect rights, and distribute justice in ways that improve social welfare. Yet the everyday experience of law often reveals a gap between these ideals and the realities encountered by citizens. In many contexts, legal outcomes appear uneven, access to justice is stratified, and the promise of equal treatment before the law is weakened by social position, resources, and institutional discretion. This tension invites a foundational question: when law is

formally valid but socially ineffective or morally contested, what exactly is the "law" that governs society (Vandzhurak et al., 2025)?

This article departs from the assumption that legal problems cannot be fully understood if law is treated merely as a closed textual system. A dominant normative-positivistic orientation tends to prioritize written rules, doctrinal coherence, and formal validity as the main indicators of legal quality. While such an orientation is essential for certainty, it can also narrow the analytical lens when law operates within unequal social structures, contested moral orders, and shifting political-economic interests (Bea & Taylor Poppe, 2021). As a result, legal analysis may become overly confident about "what the law says" while remaining insufficiently attentive to "what the law does" in social life.

The title of this article—The Basic Law Paradigm in The Sociological Spotlight: Between Ideality and Social Reality—signals a focus on the "basic law paradigm" as the underlying framework that shapes how law is conceptualized, taught, enforced, and obeyed (Alexy, 2020). A paradigm, in this sense, is not merely a method but a way of seeing: it determines what counts as legal truth, what is considered relevant evidence, and which actors are recognized as legitimate interpreters of law. When the paradigm is predominantly doctrinal, law may be framed as final and authoritative; when it is sociological, law is viewed as a living institution embedded in power relations, cultural meanings, and social negotiation (Theil, 2025).

Placing the basic law paradigm under a sociological spotlight does not mean rejecting normative reasoning; rather, it means testing normative claims against social conditions (Hirsch, 2013). The sociological perspective highlights that legal norms gain practical force only when they are supported by institutions, accepted (or strategically complied with) by communities, and aligned with social expectations of fairness (Di Carlo, 2020). In this view, legality and legitimacy are related but not identical: a rule may be valid within the legal system yet contested, resisted, or selectively enforced in social practice. The gap between legality and legitimacy often becomes visible in issues such as unequal law enforcement, procedural barriers, and the criminalization of marginalized groups.

This article argues that the ideality of law—its aspiration to justice, certainty, and welfare—should be treated as a normative horizon, not an automatic achievement. In social reality, law frequently becomes a site of competition among interests, a mechanism of governance that may discipline rather than emancipate, and a resource that is unevenly available (Revina et al., 2017). Such conditions can produce a "dual face" of law: protective for some, burdensome for others. Understanding this duality requires a paradigm that can explain why the same legal system generates differentiated outcomes across classes, regions, and social identities.

The sociological approach offers analytical tools to examine law as an institution that operates through interactions, routines, and structures. It pays attention to how legal meaning is produced in practice—by police officers, prosecutors, judges, bureaucrats, lawyers, and citizens—often under constraints that are not captured by doctrinal texts. It also highlights how culture and social values shape compliance, how

public trust influences legal effectiveness, and how structural inequality can distort the operation of legal principles. Through this lens, the "basic law paradigm" is evaluated not only by its internal coherence but also by its social consequences.

By foregrounding the tension between ideality and social reality, this article contributes to ongoing debates about legal reform and the future direction of legal scholarship. It positions paradigm choice as a critical decision that affects the design of legal institutions, the priorities of law enforcement, and the orientation of legal education. If law is treated as a final text, reform may focus on drafting better rules; if law is treated as a social institution, reform must also address enforcement incentives, institutional accountability, access to legal aid, and social conditions that shape legal vulnerability (Davis, 2010). The sociological spotlight therefore expands the reform agenda beyond legislative improvement toward structural transformation.

Finally, this study is important to publish because it offers a framework to re-balance legal thinking: maintaining the value of certainty while strengthening the pursuit of justice and humanity through sociological sensitivity. The central claim is that law becomes more credible and effective when it is understood as both normative and social—both a set of rules and a lived reality. By clarifying the limitations of a purely normative-positivistic approach and articulating the relevance of sociological reasoning, this article aims to enrich legal scholarship and provide a conceptual foundation for policies that move closer to the ideals of justice in real social contexts.

METHOD

This research uses a normative juridical approach, which focuses on the study of legal norms written in legislation and applicable legal doctrine. The main focus of this approach is to understand the concept of ideal law based on positive legal rules and basic values contained in the Indonesian legal system, such as Pancasila and the 1945 Constitution. In addition, the library research method is used to collect data and information sourced from scientific literature, such as books, legal journals, academic works, and relevant official documents. The main literature analyzed in this research is the book Sociology of Law by Manotar Tampubolon, as well as writings from progressive legal thinkers such as Satjipto Rahardjo and Teguh Prasetyo. This method does not involve human participants or subjects, so it does not pose a research ethics risk. The research is qualitative-descriptive, in which the data obtained is analyzed in depth to understand the relationship between normative legal concepts and social reality in society. The analysis process is carried out by examining the content of legal texts and existing theories, then compiled in the form of systematic and critical descriptions. This research can be replicated by accessing the same legal sources and literature, as all references are used openly and legally.

RESULTS AND DISCUSSION

A review of the primary literature shows that the normative-positivistic legal approach dominant in the Indonesian legal system has not been able to effectively address the complexity of social problems. The ideal law contained in laws and

regulations is often not in line with the social realities that occur in the field. This imbalance can be seen from the many cases where the law is unable to protect vulnerable groups, is not responsive to changes in society, and even strengthens the dominance of power. This condition shows a gap between law as a value system and law as an instrument of formal power.

In this context, the progressive legal approach comes as an alternative solution. As described in the book Sociology of Law by Manotar Tampubolon as well as the scientific studies of Dahlia Haliah Ma'u and Muliadi Nur, progressive law rejects the view that law is closed and absolute. Instead, law is seen as a tool of social engineering that must favor justice and humanity. This approach allows for breakthroughs by law enforcers - such as judges or prosecutors - if the prevailing rules actually injure people's sense of justice. In Satjipto Rahardjo's view, the law must be "animate", live with society, and must not ignore social suffering just for the sake of maintaining formal legal certainty alone (Wijayanti dkk., 2025).

From a sociological standpoint, the dominance of normative-positivism tends to reduce legal reasoning to the verification of formal elements—articles, procedures, and institutional competence—while sidelining the lived consequences of legal decisions (Kaufman, 2023). This orientation can produce what may be called formal justice without social justice: a situation where a decision is legally correct within the internal logic of statutes, yet substantively fails to resolve inequality, restore dignity, or protect those most at risk. In practice, this gap is reinforced by structural factors such as unequal access to legal assistance, information asymmetry, bureaucratic discretion, and the influence of political-economic networks that shape how law is applied (Partogi Sihombing et al., 2024). Consequently, law may function less as a normative system of shared values and more as an instrument that stabilizes existing hierarchies, especially when vulnerable groups lack the bargaining power to translate their rights into enforceable claims.

Progressive law, therefore, should be understood not merely as a rhetorical call for "humanity," but as a methodological commitment to place justice outcomes at the center of legal interpretation and enforcement. Its relevance becomes more apparent when law faces "hard cases" where strict textualism risks legitimizing harm, exclusion, or systemic unfairness (Lisma, 2019). In such situations, progressive law encourages law enforcers to mobilize constitutional values, principles of human rights, and the ethical purposes of legal institutions as interpretive foundations—so that legal certainty does not become an alibi for social suffering. At the same time, a progressive orientation demands accountability: breakthroughs must be reasoned, transparent, and anchored in public rationality, so they do not collapse into arbitrariness. This is precisely where the sociological spotlight becomes essential—ensuring that progressive legal action remains responsive to social reality while still maintaining legitimacy through principled argumentation (Meldrum et al., 2021).

The fundamental difference between the normative-positivistic legal approach and progressive law lies not only in the perspective of the law itself, but also in the ultimate goal of applying the law in society (Institute of State and Law, Russian Academy of Sciences & Varlamova, 2022). By understanding this difference, it can be seen how progressive law offers a solution that is more adaptive to complex and

changing social realities. To clarify the difference between normative law and progressive law approaches, the following comparison table is presented:

Table 1. The difference between normative law and progressive law approaches

Aspects	Normative-Positivistic Law	Progressive Law
Main focus	Legal certainty and formal legality	Substantive justice and human values
Sources of legal truth	Statutory text and doctrine	Social realities and societal needs
Law enforcers' role	Interpreting the law strictly and formally	Making breakthroughs for justice
the function of law	Maintain order and stability	Tools of social change and protection for the weak
Response to inequality	Unresponsive or tends to be passive	Adaptive, participatory and solutive
Relationship with society	Detached, elitist	Connected, listening and dynamic

The progressive legal paradigm also reflects the principle of responsive law as developed by Nonet and Selznick, namely laws that do not only serve power, but also listen to the aspirations of society. Progressive law places humans at the center of the law, not the other way around (Fikriawan et al., 2021). Therefore, the presence of law must be a solution to social problems, not just a tool of state administration. In other words, this approach opens up space for legal reform to be more adaptive to social dynamics and address issues of structural injustice.

Despite offering relevant solutions, the implementation of progressive law in Indonesia still faces major challenges. The bureaucratic legal structure, legalistic mindset among law enforcement officials, and lack of training based on substantive justice values are serious obstacles (Dewantara & Larasati, 2022). Therefore, the renewal of the legal paradigm requires not only individual courage, but also systemic support, including reform of the legal education curriculum and the formulation of policies that encourage public involvement in the legislative process and law enforcement (Wardana et al., 2023).

In a responsive-law framework, legal validity is not treated as the endpoint of analysis, but as a starting point for evaluating whether legal arrangements achieve their social purposes. This means that statutes, regulations, and judicial decisions should be assessed through their capacity to reduce harm, protect the vulnerable, and provide fair opportunities for citizens to claim rights (Sudarmanto et al., 2025). Progressive law aligns with this orientation by treating legal interpretation as a public responsibility: law enforcers are expected to translate abstract norms into outcomes that can be justified morally and socially, not merely procedurally. As a result, the quality of law is measured not only by doctrinal consistency, but also by whether it promotes substantive justice and strengthens public trust in legal institutions.

This human-centered orientation also has methodological implications for how legal reasoning is constructed. Progressive law requires a shift from narrow rule-

application toward principled reasoning that integrates constitutional values, human rights standards, and social realities into the interpretive process (Ramadhan & Muslimin, 2022). In practice, this approach encourages decision-makers to ask: whose interests are protected, whose burdens are increased, and what structural conditions shape the parties' positions. Such questions reveal that many legal conflicts are not merely individual disputes, but manifestations of broader inequality—poverty, gendered vulnerability, unequal access to resources, or discrimination—that law must confront rather than conceal behind formal neutrality (Hunt, 2024). Therefore, progressive law can function as a corrective lens that exposes structural injustice and redirects legal practice toward social protection and emancipation.

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At the institutional level, the most persistent barrier is the dominance of compliance-oriented governance, where performance is often measured by administrative indicators rather than justice outcomes. When legal institutions prioritize procedural completion—files processed, cases closed, forms fulfilled—substantive considerations tend to be treated as secondary or even disruptive. This environment discourages interpretive innovation because law enforcers may fear disciplinary consequences, accusations of "deviating from the text," or political backlash. In such conditions, progressive law is easily misunderstood as subjective activism rather than principled and accountable reasoning grounded in constitutional commitments and public rationality (Aulia et al., 2023).

Accordingly, the agenda of progressive legal reform must include systemic capacity-building and institutional redesign. Legal education needs to reorient training toward analytical competencies that combine doctrinal mastery with socio-legal methods: case-based instruction, clinical legal education, ethical reasoning, and structured argumentation that tests legality against legitimacy. Parallel to this, continuing professional development for judges, prosecutors, and investigators should institutionalize the language of substantive justice—proportionality, vulnerability, non-discrimination, due process, and restorative considerations—so that progressive reasoning becomes a shared professional standard rather than an individual exception. The broader governance ecosystem must also strengthen meaningful public participation, ensuring that communities—especially vulnerable groups—can influence lawmaking and oversight, thereby aligning legal reform with lived realities and democratic legitimacy. Thus, progressive law becomes a very important approach in bridging the gap between ideal law and social reality. Law must not only be a symbol of state order, but must truly be present as a tool to fight for justice that lives in the collective consciousness of society.

CONCLUSION

This research concludes that the progressive legal approach is a relevant and urgent solution in answering the gap between the normative ideal law and the complex social reality in Indonesia. When normative-positivistic law tends to be rigid and unresponsive to the dynamics of society, progressive law offers an approach that is more adaptive, participatory, and in favor of substantive justice. By placing humans at the center of law and making law a tool for social change, this paradigm is able to bridge the gap between legal texts and real needs in the field. Therefore, it is important for the Indonesian legal system to adopt the values of the progressive legal approach, both in the process of legislation, law enforcement, and legal education. Systemic support and transformation of the mindset of legal actors are needed so that this reform can be realized in a comprehensive and sustainable manner.

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