

From Critical Diagnosis to Progressive Reconstruction: An Integrative Model of Future-Oriented Indonesian Legal Development

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Abstract

This article proposes an integrative model for future-oriented legal development in Indonesia by combining critical legal theory and progressive law within a unified analytical and prescriptive framework. Legal reform in Indonesia has predominantly focused on normative and procedural adjustments, yet persistent structural problems remain, including weak management of legal pluralism, the dominance of formalism, institutional bias, and unequal access to justice. This study employs normative legal research using conceptual, statutory, and historical-contextual approaches. Critical legal theory is applied as a diagnostic instrument to uncover power relations and structural injustices embedded in legal design and practice. Progressive law is subsequently positioned as a prescriptive framework to reconstruct law toward substantive justice through contextual interpretation and the protection of vulnerable groups. To ensure accountability and prevent subjectivism, the proposed model incorporates an accountability lock-in mechanism grounded in substantive rule of law, constitutional control, and reason-giving requirements. This study contributes both theoretical insight and a practical roadmap for developing a more just and accountable legal system in Indonesia.

Keywords: Legal Development, Critical Legal Theory, Progressive Law, Substantive Justice

Abstrak

Artikel ini mengajukan sebuah model integratif pembangunan hukum Indonesia yang berorientasi ke masa depan dengan menggabungkan teori hukum kritis dan hukum progresif dalam satu kerangka analitis sekaligus preskriptif, sebagai respons atas kecenderungan reformasi hukum yang selama ini lebih menekankan perbaikan normatif dan prosedural namun masih menyisakan persoalan struktural, seperti lemahnya pengelolaan pluralisme hukum, dominasi formalisme, bias kelembagaan, serta ketimpangan akses terhadap keadilan. Penelitian ini menggunakan metode hukum normatif dengan pendekatan konseptual, perundang-undangan, dan historis-kontekstual, di mana teori hukum kritis difungsikan sebagai instrumen diagnosis untuk membongkar relasi kuasa dan ketidakadilan struktural dalam desain maupun praktik hukum, sementara hukum progresif diposisikan sebagai kerangka preskriptif untuk merekonstruksi hukum menuju keadilan substantif melalui penafsiran kontekstual dan perlindungan terhadap kelompok rentan. Untuk menjamin akuntabilitas dan mencegah subjektivisme dalam penerapannya, model ini dilengkapi dengan mekanisme pengunci berbasis prinsip rule of law substantif, pengawasan konstitusional, serta kewajiban pemberian alasan, sehingga tidak hanya memberikan kontribusi teoretis, tetapi juga menawarkan peta jalan praktis bagi pengembangan hukum Indonesia yang adil dan akuntabel.

Kata Kunci: Pembangunan Hukum, Hukum Kritis, Hukum Progresif, Keadilan Substantif.

A. Introduction

Legal development in Indonesia faces increasingly complex structural challenges along with social, political, and economic dynamics. One of the main characteristics of the Indonesian legal system is legal pluralism, which is the coexistence of state law, customary law, and religious law in one normative space.¹ This pluralism, on the one hand, reflects socio-cultural wealth, but on the other hand, creates tensions in regulatory and law enforcement practices.² When state law is positioned dominantly and removes customary or religious norms from the policy-making space, there is a conflict of norms, social resistance, and low legal effectiveness.³ This condition can be seen in the issues of agrarian, family law, and natural resource management, where formal law is often not in line with the sense of justice of the community.⁴

The problem of pluralism is exacerbated by the dominance of legal-formal and procedural approaches in legal development. Law is often understood as limited to adherence to texts and procedures, while the dimensions of substantive justice and social context are less considered. As a result, many legislative products and court decisions are formally valid, but fail to address real inequality in society.⁵ This kind of legalistic approach also contributes to a crisis of legal legitimacy and a decline in public trust in law enforcement institutions.⁶ The perception of the law that favours the powerful and is inhospitable to the vulnerable shows the existence of structural biases and inequality of access to justice that cannot be explained solely through normative-dogmatic analysis.⁷

The literature of the past decade shows great attention to legal reform and strengthening *the rule of law* in Indonesia, especially through improving the quality of legislation, harmonising regulations, and strengthening institutions. However, the study of critical legal theory emphasises that law is not a neutral entity, but a product of certain power relations and ideologies. Critical perspectives help explain why legal reform often fails to touch the root of

¹ Kurnia Warman, Saldi Isra, and Hilaire Tegan, "Enhancing Legal Pluralism: The Role of Adat and Islamic Laws within the Indonesian Legal System," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018): 1–9.

² Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

³ Anggi Purnama Harahap et al., "Legal Pluralism and Customary Justice in Indonesia: Reconstructing Adat Law under State Legal Dominance," *Littera Legis: Journal of Law, Society, and Justice* 1, no. 1 (2025): 1–16.

⁴ Daniel Fitzpatrick, "Dispute and Pluralism in Modern Indonesian Land Law," *Yale Journal of International Law* 22, no. 1 (1997): 171–212.

⁵ Achmad Hariri, A Basuki Babussalam, and Muhammad Aunurrochim Mas'ad Saleh, "Between Legality and Justice : A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest," *Journal of Jurisprudence* 15, no. 2 (2025): 146–76, <https://doi.org/10.23917/jurisprudence.v15i2.11442>.

⁶ Martitah, "Why Legitimacy Matters in Times of Uncertainty: A Critical Study of the Success Story of the Constitutional Court of Indonesia," *Asia-Pacific Social Science Review* 19, no. 1 (2019): 233–39.

⁷ Tubagus Ahmad Ramadan and Subianta Mandala, "Deconstructing Intentionality: Legal Fallacies in The Indonesian Criminal Code's Approach to Mens Rea," *Asian Journal of Social and Humanities* 3, no. 9 (2025): 1637–48, <https://doi.org/10.59888/ajosh.v3i9.564>.

injustice, as its main problems are structural and systemic.⁸ On the other hand, progressive law offers a normative orientation that places law as a tool to serve human beings and realise substantive justice. This approach encourages breakthrough courage and contextual interpretation by judges and law enforcement, while retaining the risk of subjectivism if not bound by a clear institutional framework.⁹ The study of legal pluralism also emphasises the importance of regulatory design that is sensitive to the diversity of social norms and practices.

Although the literature is evolving, there are important gaps. Many legal reform studies stop at normative design improvements without a diagnosis of power relations and structural inequality. In contrast, progressive approaches often offer normative solutions without adequate risk maps and control mechanisms. Therefore, an integrative framework is needed that combines the diagnostic lens of critical legal theory to dismantle the dominance structure with the prescriptive lens of progressive law to design the direction of just and responsible legal change. This article aims to formulate a future model for Indonesian legal development that integrates structural criticism and substantive justice agendas, so that it can become an analytical framework as well as an operational policy roadmap for national legal reform.

B. Research Method

This research uses a normative legal (doctrinal) approach that aims to analyse and formulate the framework for the development of Indonesian law conceptually and prescriptively. The approach used includes a conceptual approach, by examining critical legal theory and progressive legal theory as the basis for analyzing structural problems and the direction of legal reform; the legislative approach, by examining the constitution, laws and regulations of the establishment of laws and regulations, and strategic sector regulations to identify formalism tendencies and their implications for substantive justice; and the historical-contextual approach, which places the dynamics of post-1998 legal reform within the framework of national social and political changes. As a reinforcement of the analysis, a socio-legal lens is used in a limited way to provide empirical context, such as data on inequality of access to justice or public perception, without making it a full empirical study. Data sources include primary legal materials in the form of the 1945 Constitution, related laws and regulations, and court decisions; secondary legal materials in the form of books and articles in reputable journals on critical legal theory, progressive law, legal pluralism, and Indonesian legal reform; and supporting non-legal materials in the form of institutional reports when relevant.

⁸ Muchamad Ali Safa'at and Milda Istiqomah, "Critical Legal Studies (Cls): An Alternative for Critical Legal Thinking in Indonesia," *Petita: Journal of Legal and Sharia Studies* 7, no. 1 (2022): 11–20, <https://doi.org/10.22373/petita.v7i1.122>.

⁹ Krismiyarsi Krismiyarsi, "The Paradox of Positivistic View and Progressive Law of Criminal Law Enforcement in Indonesia," *Journal of Legal Media* 20, no. 2 (2013), <https://journal.umy.ac.id/index.php/jmh/article/view/269>.

The data collection technique was carried out through a systematic literature study with a literature selection of the last ten years, while the analysis was carried out through content analysis, critical reading to reveal ideological assumptions and power relations, and normative synthesis to formulate a policy recommendation model. This research is limited to the development of theoretical frameworks and policy strategies, using one to two illustrative areas to keep the discussion focused and in-depth.

C. Results and Discussion

1. Map of Indonesian Legal Development Problems

The map of Indonesia's legal development problems shows that the main obstacle lies not only in the lack of norms or technical weaknesses in law enforcement, but in the structure of the legal system itself. Within the framework of normative-critical analysis, Indonesian law develops in the midst of a pluralistic social configuration, unequal power relations, and a strong legal-formal culture. As a result, law often exists as an administrative instrument that is at a distance from social reality, rather than as a means of substantive justice.¹⁰ To understand this problem in its entirety, it is necessary to map out four key dimensions, namely legal pluralism and norm fragmentation, dominance of procedural formalism, structural inequality of access to justice, and legislation problems characterised by hyper-regulation and interest orientation.¹¹ These four dimensions are interrelated and form a problematic circle that hinders the development of Indonesian law in a more fair, responsive, and sustainable direction.

a. Legal Pluralism and Norm Fragmentation

Legal pluralism is an inherent character of the Indonesian legal system, where state law, customary law, and religious law coexist in one normative space. Conceptually, this pluralism has the potential to enrich the legal system with local and religious values that are firmly rooted in society. However, in practice, legal pluralism is often not managed in harmony.¹² State law tends to be positioned as a superior norm that is formal and uniform, while customary and religious law is placed as a residual complement. This tension has a direct impact on legal certainty and uniformity, as the norms that live in society are not always accommodated in

¹⁰ Yogi Prasetyo, "Social Reality as Legal Authenticity (Criticism of Bad Positive Laws in Legislation)," *Fiat Justisia: A Journal of Legal Sciences* 15, no. 3 (2021): 255–68, <https://doi.org/10.25041/fiatjustisia.v15no3.2194>.

¹¹ Lukman Hakim, Qatrunnada Hampan Melati, and Purnawan Dwikora Negara, "Integrating Adat Law in Indonesia: Challenges and Opportunities in a Centralized Legal Framework," *Indonesian State Law Review* 8, no. 1 (2025): 58–82, <https://doi.org/10.15294/islrev.v8i1.19628>.

¹² Ramadhan Dwi Prasetyo et al., "Analysis of Justice Inequality in Indonesia: A Blurry Portrait of Law Favoring Power," *Pancasila: Indonesian Journal* 05, no. 1 (2025): 2797–3018, <https://doi.org/10.52738/pjk.v5i1.728>.

the design of national regulations.¹³ As a result, formal law often experiences social resistance and loss of acceptance, particularly in communities with strong normative traditions.

The fragmentation of norms born from unmanaged legal pluralism also gives rise to various practical consequences. Conflicts of authority between institutions and between legal regimes have become a plural phenomenon, for example, in agrarian regulation, family law, and natural resource management.¹⁴ The overlap of regulations between the central and regional governments, as well as between state laws and local norms, creates a space of uncertainty that is exploited by interested actors.¹⁵ In this situation, the practice of "forum shopping" emerges, which is the search for the most profitable legal forum, not the fairest.¹⁶ This phenomenon shows that legal pluralism without an integrative framework actually weakens the function of law as a guarantor of justice and certainty, as well as opening up space for the manipulation of norms by parties with greater resources.

b. Procedural Formalism vs. Substantive Justice

Another problem that stands out in the development of Indonesian law is the dominance of legal-formal and procedural approaches. Law is often understood as a set of rules that must be followed textually, while the ethical and social purposes of law tend to be sidelined. This symptom is seen in the practice of legislation that emphasises compliance with formal procedures, such as administrative completeness and regulatory formation stages, but ignores the quality of substance and meaningful public participation.¹⁷ In law enforcement, procedural formalism is reflected in juridically valid decisions, but fails to answer the sense of justice of the

¹³ Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 328–48, <https://doi.org/10.1080/27706869.2024.2377447>.

¹⁴ Gary F. Bell, "Conflicts of Laws and Jurisdictions in Indonesia- Related Arbitrations Seated in Singapore – Perspectives From the Tribunal," *Indonesia Law Review* 12, no. 1 (2022): 33–55, <https://doi.org/10.15742/ilrev.v12n1.3>.

¹⁵ Arfiansyah and Adriaan Bedner, "Forum-Shopping in Criminal Law: Power and Pragmatism in Gayo, Aceh, Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 479–96, <https://doi.org/10.1080/27706869.2024.2385233>.

¹⁶ Fitria Wildasari and Cekli Setya Pratiwi, "Forum Shopping in Environmental Permit Disputes: Socio-Legal Approach to Legal Work in Indonesia," *Ekasakti Legal Science Journal* 2, no. 3 (2025): 200–208, <https://doi.org/10.60034/1rt99q43>.

¹⁷ Mirza Satria Buana, "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court," *Constitutional Review* 6, no. 1 (2020): 36–66, <https://doi.org/10.31078/consrev612>.

community.¹⁸ The law becomes "just according to the text", but it is not just according to the social context.

This dominance of procedural formalism has serious implications for the legitimacy of law enforcement. When the public witnesses that the law only works at the formal level without paying attention to the real conditions of the parties, trust in legal institutions decreases.¹⁹ Rigid rulings that are insensitive to social inequality reinforce the perception that law serves administrative certainty rather than substantive justice.²⁰ From the perspective of critical legal theory, this kind of formalism is not neutral but rather serves to perpetuate the status quo and existing power relations.²¹ Therefore, future legal development demands a paradigm shift from mere procedural compliance to a contextual and social impact-oriented orientation of substantive justice.

c. Inequality of Access to Justice and Structural Bias

Inequality of access to justice is a structural problem that greatly affects the effectiveness of the Indonesian legal system. Ideally, the law is positioned as a neutral mechanism that applies equally to all citizens. However, in practice, access to the law is greatly influenced by social class factors, economic capital, political networks, and the level of legal literacy. Community groups with adequate resources are better able to access quality legal aid, take advantage of procedural loopholes, and influence the legal process.²² In contrast, poor groups, people in remote areas, and social minorities often face serious barriers to obtaining equal legal protection.

This structural bias suggests that justice is never present in a vacuum. The legal system operates in an unequal social context, so without affirmative policy

¹⁸ Achmad Muchtarom and Megawati Barthos, "Strategy for Strengthening the Implementation of Progressive Law in the Republic of Indonesia National Police," *International Journal of Social Service and Research* 5, no. 6 (2025): 588–95, <https://doi.org/10.46799/ijssr.v5i6.1246>.

¹⁹ Muhammad Fathi et al., "From Guardians to Threats? Abusive Judicial Review and Public Distrust," *IUS QUIA IUSTUM LEGAL JOURNAL* 32, no. September (2025): 505–27, <https://doi.org/10.20885/iustum.vol32.iss2.art10>.

²⁰ Basuki Rahmat and Asep Nurjaman, "The Intersections of Politics, Law and Social Stratification in Indonesia," *International Journal of Humanities, Social Sciences and Education* 11, no. 10 (2024): 36–44, <https://doi.org/10.20431/2349-0381.1110004>.

²¹ Itok Dwi Kurniawan, "Rethinking Law and Justice: The Core Principles of Critical Legal Studies against Legal Formalism Vincentius," *Nusantara: Journal of Law Studies* 3, no. 2 (2025): 74–85, <https://doi.org/10.5281/zenodo.17332128>.

²² Arnaud Deseau, Adam Levai, and Michèle Schmiegelow, "Access to Justice and Economic Development: Evidence from an International Panel Dataset," *European Economic Review* 172 (2025): 104947, <https://doi.org/10.1016/j.euroecorev.2024.104947>; Valeria Huarcaya and Rafael Quispe, "Socioeconomic Inequality and Access To Justice: A Comparative Analysis Of Legal Aid Systems," *International Journal of Sociology and Law* 1, no. 1 (2024): 25–29, <https://international.appihi.or.id/index.php/IJSL/article/view/268>.

intervention, the law has the potential to deepen injustice.²³ The phenomenon of criminalisation of vulnerable groups, inequality in economic law enforcement, and low access to free legal aid are clear examples of this problem.²⁴ In a progressive legal framework, this condition requires courage to make policy breakthroughs and legal interpretations that favour vulnerable groups.²⁵ However, such breakthroughs must be designed within a clear institutional framework so that they do not shift into unaccountable subjective practices.

d. Legislation Problems: Hyper-Regulation, Dis-harmony, and Interest Orientation

Another aspect that hinders the development of Indonesian law is the problem of legislation, characterised by hyper-regulation and disharmony of norms. The number of regulations issued, both at the central and regional levels, is not always directly proportional to the effectiveness of the law.²⁶ Instead, regulatory heaps often create confusion, inconsistencies, and a high compliance burden for the public and businesses.²⁷ Vertical disharmony between central and regional regulations, as well as horizontal disharmony between sectors, weakens legal certainty and opens up unnecessary space for disputes.

Furthermore, the legislative process is also vulnerable to certain interest orientations or regulatory capture. When the formation of the law is predominantly influenced by interested actors, the law loses its public character and turns into an instrument of profit distribution.²⁸ The impact is not only in the form of normative injustice, but also increased compliance costs, opportunities for corruption, and long-term legal uncertainty.²⁹ In this context, the future development of Indonesian law requires legislative reform that emphasises the quality of substance, harmonisation of norms, and transparency of process, while ensuring that the law

²³ Rifqi Anugrah Tama et al., "The Role of Legal Empowerment Based Advocacy for Rural Communities on Structural Social Inequality," *Indonesian Journal of Advocacy and Legal Services* 5, no. 1 (2023): 161–80, <https://doi.org/10.15294/ijals.v5i2.68240>.

²⁴ Prasetyo, "Social Reality as Legal Authenticity (Criticism of Bad Positive Laws in Legislation)."

²⁵ Krismiarsi, "The Paradox of Positivistic View and Progressive Law of Criminal Law Enforcement in Indonesia."

²⁶ Rasji Sidin, "Legal Solution Testing Policy Regulations in Indonesia," *Journal of Law and Sustainable Development* 11, no. 8 (2023): e1437, <https://doi.org/10.55908/sdgs.v11i8.1437>; Ardy Gunawan Tomagola et al., "The Effectiveness of Indonesia's Anti-Corruption Law on Legal Reform and Implementation," *West Science Law and Human Rights* 2, no. 03 (2024): 251–58, <https://doi.org/10.58812/wslhr.v2i03.1129>.

²⁷ Raif Maulana Lukman and Fitri Kartiasih, "Estimating the Shadow Economy at the Provincial Level in Indonesia: A MIMIC Model Approach," *Indonesian Economic Journal* 14, no. 1 (2025): 54–68, <https://doi.org/10.52813/jei.v14i1.561>.

²⁸ Iman Prihandono and Ekawestri Prajwalita Widiati, "Regulatory Capture in Energy Sector: Evidence from Indonesia," *Theory and Practice of Legislation* 11, no. 3 (2023): 207–31, <https://doi.org/10.1080/20508840.2023.2248837>.

²⁹ Riyani Al Fajri, "Facing Legal Uncertainty : Challenges of Corporate Law and Environmental Regulation for Sustainable Business Practices in Indonesia," *Journal of Social Research* 4 (2025): 726–34.

truly functions as a means of social justice, not just a product of compromise of interests.

2. Critical Legal Theory Framework as a "Diagnosis"

The critical legal theoretical framework is used in this study as a diagnostic instrument, not as a final normative goal. Its main function is to uncover the hidden layers behind positive laws that have been perceived as neutral, objective, and autonomous.³⁰ In the context of the development of Indonesian law, critical legal theory allows for an analysis that transcends the normative surface towards the power structures, ideologies, and interests that shape the law from the legislative stage to its enforcement.³¹ Thus, law is no longer understood merely as a collection of rules that must be obeyed, but rather as a socio-political arena where interests negotiate, and inequality is reproduced. This approach is crucial to explain why various legal reform agendas often fail to produce substantive justice despite meeting procedural standards.

a. The Main Premise of Critical Legal Theory

The most fundamental premise in critical legal theory is the rejection of the notion that law is neutral and value-free. Law is understood as a product of power relations, which are formed in certain social, political, and economic contexts. Each legal norm carries a trace of the dominant interests and ideology at the time the norm is formulated.³² Legal language that appears to be technical and objective often serves to mask structural injustices by framing them as juridical inevitability.³³ In this perspective, law not only reflects social reality but also actively shapes and maintains unequal social structures.

Legal language plays a central role in the process. Concepts such as legal certainty, legality, and procedure are often presented as indisputable universal values.³⁴ In fact, in practice, legal language can function as a tool of depoliticisation, namely, obscuring conflicts of interest and power imbalances that are actually political in nature.³⁵ When a policy or decision is declared "procedural," criticism

³⁰ M. R. Kafara, "Criticism of Pure Legal Theory Thought Critical Legal Studies (CLS) and Its Relevance to the Indonesian Legal System," *BIRCI-Journal*, 2022, 27786–97.

³¹ Ali Safa'at and Istiqomah, "Critical Legal Studies (Cls): An Alternative for Critical Legal Thinking in Indonesia."

³² Samuel Moyn, "Reconstructing Critical Legal Studies," *Yale Law Journal* 134, no. 1 (2024): 77–122, <https://doi.org/10.2139/ssrn.4531492>.

³³ Kebene Wodajo, "Mapping (in)Visibility and Structural Injustice in the Digital Space," *Journal of Responsible Technology* 9, no. August 2021 (2022): 100024, <https://doi.org/10.1016/j.jrt.2022.100024>.

³⁴ Virat Kumar, Aditya Khilari, and Law Student, "Natural Law and Positive Law: Bridging Morality and Legal Certainty," *Birla Global University* Volume 11, no. 12 (2024): 869–74.

³⁵ Päivi Johanna Neuvonen, "A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?," *European Law Open* 1, no. 1 (2022): 60–88, <https://doi.org/10.1017/elo.2022.7>.

of the impact of its injustice is often considered irrelevant. This is what critical legal theory calls a symbolic mechanism that legitimises inequality through legal formalism.

b. Reading Indonesian Legal Development with a Critical Lens

Using the lens of critical legal theory, Indonesia's legal development can be read through *the process of power mapping*, which is the mapping of parties who benefit and are disadvantaged from regulatory design and law enforcement practices.³⁶ Regulation never stands in a vacuum; it always produces the distribution of profits and burdens. In many cases, legal design tends to favour groups that have access to the political process and economic resources, while vulnerable groups bear the brunt of regulation without having adequate bargaining power.³⁷ This mapping is important to reveal that legal problems are often not the failures of individual authorities, but rather the result of biased systemic design from the start.

Another aspect highlighted by critical legal theory is legal-formal ideology, which is the tendency to make procedural compliance the main legitimacy of legal outcomes.³⁸ In the Indonesian context, procedural legality is often used to justify policies or decisions that are substantively detrimental to certain groups.³⁹ When the law is reduced to a question of "according to the rules or not", then questions of social justice, inequality, and the real impact of policies are set aside.⁴⁰ This ideology makes the law appear rational and objective, when in fact it is reproducing an unequal power relation behind the veil of formality.

Furthermore, critical legal theory highlights the role of institutions and institutional structures in reproducing injustice. The legal bureaucracy, law enforcement officials, and institutional design are not neutral, but are shaped by organisational culture, structural incentives, and power relations.⁴¹ In situations

³⁶ Indah Pangestu Amarasari et al., "Legal Politics of Indonesian National Legal Development in the Perspective of Legal Theory and Legal Philosophy," *SCIENTISTS: International Conference on Scientific Studies*, 2023, 36–44.

³⁷ Todd Aagaard, "Compensating Regulatory Losers," *University of Illinois Law Review* 2025, no. 2 (2025): 555–608.

³⁸ Frank Munger and Carroll Seron, "Critical Legal Studies versus Critical Legal Theory: A Comment on Method," *Law & Policy* 6, no. 3 (1984): 257–97, <https://doi.org/10.1111/j.1467-9930.1984.tb00326.x>.

³⁹ Yuvita Tri Mardiana et al., "Reconstructing Prosecutorial Epistemology for Substantive Justice in Contract Law: A Comparative Philosophical and International Legal Analysis of Indonesia and Kazakhstan," *PATTIMURA Legal Journal* 4, no. 3 (2025): 234–53, <https://doi.org/10.47268/pela.v4i3.22780>.

⁴⁰ Axcelia Deandra Surya, "Balancing Formalism and Justice An Analysis of Indonesian Supreme Court's Obscure Label Case Law in Light of ECtHR Standards," *Jurist-Diction* 8, no. 2 (2025): 193–204, <https://doi.org/10.20473/jd.v8i2.71240>.

⁴¹ Ali Safa'at and Istiqomah, "Critical Legal Studies (Cls): An Alternative for Critical Legal Thinking in Indonesia."

where the integrity, accountability, and independence of institutions are weak, the law tends to be applied selectively. Inconsistent law enforcement practices are often not anomalies but logical consequences of institutional structures that allow discrimination and abuse of authority.

c. Layers of Structural Injustice in Legal Architecture

A critical reading of Indonesia's legal development shows that the main problem does not stop at the lack of rules or weak law enforcement alone, but is rooted in a number of layers of structural injustice embedded in the legal architecture itself.⁴² *The first layer* is seen in the design of legislation and the political process of its formation. When the formation of laws takes place with limited public participation and is influenced more by the interests of political and economic elites, the law slowly loses its public character.⁴³ In this situation, the law is no longer perceived as the result of a common will, but as a product of a compromise of power that is far from the real needs of society.

The second layer relates to the institutional structure of law enforcement. In daily practice, law enforcement agencies are often not fully able to guarantee independence, integrity, and equality before the law. Weak supervision, institutional incentive problems, and proximity to power centres make law enforcement inconsistent. As a result, the law appears firm in one case, but loose in another.⁴⁴ Without serious and sustained institutional reform, changes in the rule of law risk becoming merely symbolic, without bringing about real change in practice.

The third layer lies in legal culture, namely the perspective and ethos of legal actors in understanding and implementing the law. Legal-formal culture that places too much emphasis on procedure often distracts attention from the law's primary goal, which is substantive justice. In this culture, compliance with procedures is considered sufficient to justify a decision, even if it causes injustice to society.⁴⁵ The law has also become rigid, technocratic, and less sensitive to the social realities it faces.

The fourth layer concerns access and legal literacy, which ultimately determines who can actually use the law as a tool to protect rights. Inequality in

⁴² Hariri, Babussalam, and Saleh, "Between Legality and Justice : A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest."

⁴³ Buana, "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court."

⁴⁴ Sulistyowati Irianto, "Legal Education for the Future of Indonesia: A Critical Assessment," *Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021), <https://doi.org/10.54828/ijsls.2021v1n1.1>.

⁴⁵ Hariri, Babussalam, and Saleh, "Between Legality and Justice : A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest."

access to legal aid and low legal understanding among the public make the legal system work exclusively. Vulnerable groups, such as the poor, minorities, and those living in remote areas, are often the most disadvantaged.⁴⁶ Without affirmative policies to expand access and improve legal literacy, the law will continue to reproduce the same inequality. Therefore, this critical diagnosis presents a clear and connected map of structural problems, as well as a conceptual foothold for the formulation of prescriptive solutions through progressive legal frameworks.

3. Progressive Legal Theory as a "Prescription"

If critical legal theory serves as a diagnostic tool to dismantle the structure of injustice in the legal system, then progressive legal theory serves as a prescriptive framework that offers directions for improvement and strategies for legal reform. In the context of the future development of Indonesian law, progressive law is not intended as a denial of positive law, but as a normative approach that puts the law back on its ethical purpose, which is to serve human beings and realise substantive justice.⁴⁷ This approach becomes relevant after a critical diagnosis shows that Indonesia's legal problems are structural and cannot be solved by simply adding norms or improving formal procedures.⁴⁸ Progressive law exists to answer the question of how the law should be implemented and developed in order to be able to respond to real social inequality.

a. Key Premise of Progressive Law

The most fundamental premise of progressive law is the view that law exists for human beings, not humans for law. Law is understood as a dynamic means that must be subject to the goals of justice and humanity, not as a rigid and autonomous normative system.⁴⁹ Therefore, the measure of legal success is not solely determined by procedural compliance, but by the extent to which the law can bring substantive justice in real life.⁵⁰ In this framework, justice is not understood in the

⁴⁶ Marsha Maharani et al., *The Role of Legal Empowerment by the Community in Strengthening Access to Justice for Women in Conflict with the Law in Indonesia*, ed. Yvonna Kezia D. Nafi and Translator., 1st ed. (Jakarta: Indonesia Judicial Research Society, International Development Research Centre (IDRC), Alternative Law Groups (ALG), 2023).

⁴⁷ Muhammad Ridwan Hidayat, Suteki Suteki, and Jean Claude Geoffrey Mahoro, "Legal Wisdom in Indonesian Legal System: Toward Progressive Law Enforcement," *Justice* 10, no. 3 (2024): 518–34, <https://doi.org/10.33506/js.v10i3.3198>.

⁴⁸ Hasim Sukanto, Hulman Panjaitan, and Paltiada Saragi, "Legal Protection for Foreign Investors at Normative and Implementation Levels in Indonesia," *International Journal of Law, Crime and Justice* 2, no. 2 (2025): 46–53.

⁴⁹ Daryoko and Elza Qorina Pangestika, "The Role of Responsive and Progressive Law In Addressing Legal Issues From A Sociological Perspective," *The Law of Attraction* 6, no. 2 (2024): 190–202; Rufaidah Rufaidah and Nanik Prasetyoningsih, "Human Rights Law Enforcement in a Progressive Legal Framework Based on the Paniai Case in Papua," *Media of Law and Sharia* 4, no. 2 (2023): 171–83, <https://doi.org/10.18196/mls.v4i2.16>.

⁵⁰ Itok Dwi Kurniawan and Suyatno, "Realizing Substantive Justice Enforcement Through the Implementation of Progressive Law," *Arus International: Interdisciplinary Journal of Education, Humanities, Law, and Social Entrepreneurship* 1, no. 1 (2025): 8–15; Septi Nur Wijayanti, Tanto Lailam, and Kelik Iswandi,

abstract, but is associated with the social context, the position of the parties, and the real impact of the application of the law.

Progressive law also emphasises the importance of boldness, innovation and breakthrough in legal practice. This breakthrough can be made through contextual legal interpretation, responsible use of discretion, and the development of legal policies that are adaptive to social change.⁵¹ Judges and administrative officials are not positioned as mere "mouthpieces of the law", but rather as ethical subjects who have a moral responsibility to interpret the law fairly.⁵² However, this courage does not stand alone, but must be accompanied by strong professional ethics.⁵³ Professional ethics function as a normative compass that guides the use of judicial and administrative creativity in order to remain on the side of justice and the public interest.

b. The Limits of Progressivity to Avoid Being Wild

Although it offers promising normative solutions, progressive law is not free from criticism. One of the main dangers of unmanaged progressivism is subjectivism, in which legal decisions are too dependent on the personal preferences of law enforcers. This subjectivism has the potential to give birth to inconsistencies in decisions and legal uncertainty, which, in the end, is detrimental to justice seekers.⁵⁴ In addition, broad discretion without adequate oversight opens up opportunities for abuse of authority, so that progressive law risks shifting from a means of justice to an arbitrary tool.⁵⁵

Therefore, legal progressivity must be bound by clear normative and institutional boundaries. *The first limit* is the principle of human rights and

"Progressive Legal Approaches of the Constitutional Justice Reasoning on Judicial Review Cases: Challenges or Opportunities?," *Law Reform: Journal of Law Reform* 21, no. 2 (2025): 219–40, <https://doi.org/10.14710/lr.v21i2.66334>.

⁵¹ Syinta Amelia, "Progressive Legal Approach to Modern Community Law Enforcement in Indonesia," *Pancasila and Law Review* 4, no. 1 (2023): 1–14, <https://doi.org/10.25041/plr.v4i1.2729>.

⁵² M. Syamsudin, "Formulating the Concept of Progressive Judge in Handling Corruption Cases in Indonesia," *Prophetic Law Review* 3, no. 1 (2021): 40–58, <https://doi.org/10.20885/PLR.vol3.iss1.art3>.

⁵³ Achmad Muchtarom and Azis Budiarto, "Progressive Legal Reform as an Effort to Address Inequality in Law Enforcement and Strengthen Social Cohesion in Indonesia," *JGSP: Journal of Social and Political Greenation* 3, no. 4 (2026): 866–74, <https://doi.org/10.38035/jgsp.v3i4>; et al., "Moral Values and Progressive Judges Position in Law Enforcement in the Indonesian Judicial System," *International Journal of Social Science and Human Research* 7, no. 05 (2024): 2984–89, <https://doi.org/10.47191/ijsshr/v7-i05-54>.

⁵⁴ Joko Susanto et al., "Analysis of Journalist Criminal Case Settlement from the Perspective of Progressive Legal Theory," *Journal of Progressive Law and Legal Studies* 3, no. 01 (2025): 1–17, <https://doi.org/10.59653/jplls.v3i01.1215>.

⁵⁵ Mohammad Ilham Maulana, Mohammad Alauddin, and Alex Umein, "Possible Abuse of Authority By State Administrative Officers In The Development and Implementation of Public Policies," *A Long Law Review* 4, no. 1 (2021): 110–17; Abdul Latif and Arivan Halim, "Judicial Control over Government's Abuse of Authority through Administrative and Corruption Law," *Indonesian Journal of Multidisciplinary Science* 3, no. 2 (2023): 125–31, <https://doi.org/10.55324/ijoms.v3i2.732>.

constitutionality, which serves as a minimum standard that must not be violated. Any legal breakthrough must be constitutionally accountable and in line with the protection of citizens' basic rights.⁵⁶ *The second limit* is the principle of minimum legal certainty (*predictability*). Although progressive law rejects rigid formalism, it still recognises the importance of certainty so that the law can be predicted and trusted by society.⁵⁷ This minimum certainty is the foundation of the stability of the legal system.

The third limit is **accountability and reason-giving transparency**. Any progressive decision must be accompanied by legal arguments that are open, rational, and publicly testable.⁵⁸ The obligation to give reasons is not only a matter of juridical techniques, but is a democratic mechanism to prevent arbitrariness.⁵⁹ Thus, progressive law does not run wild, but rather operates within the framework of a substantive rule of law that combines justice, certainty, and accountability.

c. Progressive Prescription Output: Operational Principles

As a prescriptive result, progressive legal theory produces a number of operational principles that can be used as a guideline in the development of Indonesian law in the future. *The first principle* is *responsiveness*, which is the ability of the law to respond quickly and appropriately to social needs and changes.⁶⁰ *The second principle* is *inclusivity*, which requires that the law open up meaningful participation spaces for all community groups, especially vulnerable groups who have been marginalised.⁶¹ *The third principle* is *anti-domination*, which is the legal orientation to dismantle and prevent the concentration of power that is detrimental to justice.⁶²

⁵⁶ Robin L. West, "Is Progressive Constitutionalism Possible?," *Widener Law Symposium Journal* 4, no. 1 (1999): 1–18.

⁵⁷ Ferdinand Sembiring and Yasmirah Mandasari Saragih, "Legal Certainty In Financial Disputes Case Resolution Progressive Legal Perspective," *Journal of Progressive Law and Legal Studies* 2, no. 02 (2024): 152–62, <https://doi.org/10.59653/jplls.v2i02.845>; Herliana Herliana, "Ensuring Certainty through Legal Reasoning: What Can Indonesia Learn from the United Kingdom and the Unites States?," *Journal of Jurisprudence* 13, no. 2 (2024): 318–38, <https://doi.org/10.23917/jurisprudence.v13i2.3057>.

⁵⁸ Jarrod Wong and Jason Yackee, "Transparency, Accountability, and Influence in the International Investment Law System," *Michigan Journal of International Law* 46, no. 46.1 (2025): 121, <https://doi.org/10.36642/mjil.46.1.transparency>.

⁵⁹ Wijayanti, Lailam, and Iswandi, "Progressive Legal Approaches of the Constitutional Justice Reasoning on Judicial Review Cases: Challenges or Opportunities?"

⁶⁰ Teja Sukmana, "Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo," *Civilization Journal of Law and Society* 2, no. 1 (2023): 92–105, <https://doi.org/10.59001/pjls.v2i1.82>.

⁶¹ Jaka Mahisya Ramadani et al., "Progressive Legal Perspective on Legal Certainty over Land Ownership in Genteng Village," *Indonesian Journal of Multidisciplinary Science* 3, no. 12 (2024), <https://doi.org/10.55324/ijoms.v3i12.913>.

⁶² Muchtarom and Budianto, "Progressive Legal Reform as an Effort to Address Inequality in Law Enforcement and Strengthen Social Cohesion in Indonesia."

The fourth principle is proportionality, which emphasises the balance between the purpose of the law, the means used, and its impact on individual rights.⁶³ This principle is important to ensure that legal intervention is not excessive and remains fair. *The fifth principle is participatory*, which places society as a subject, not an object, in the process of law formation and enforcement.⁶⁴ Meaningful participation strengthens the legitimacy of the law and ensures that the law truly reflects social needs. Overall, these principles make progressive law a realistic and responsible prescriptive framework, while also providing a conceptual foundation for further integration between critical diagnosis and transformative legal policy design.

4. Critical-Progressive Integrative Model: Critical to Dismantle, Progressive to Build

The critical-progressive integrative *model* offered in this article departs from the empirical awareness that the problem of Indonesian legal development cannot be solved by a single approach. The experience of post-1998 legal reform shows that critical diagnosis without a solution often stops at the deconstruction of discourse, while progressive prescriptions without structural readings risk falling into normative ideals that are fragile and difficult to implement.⁶⁵ Therefore, an integrative model is needed that combines the sharpness of critical legal theory analysis with the solutive orientation of progressive legal theory. This model is built on the principle that the law must first demystify the structure of injustice before being able to reconstruct a just, contextual, and sustainable legal order, as demonstrated by various legal practices in Indonesia.

a. Integrative Model Architecture

The first stage in this model is critical diagnosis, which identifies power structures and institutional biases in the legal system. A real example can be seen in agrarian conflicts between indigenous peoples and large corporations. In many cases, the design of land regulations and natural resource licensing is more beneficial to large investors than to local communities.⁶⁶ Court rulings in favour of formal corporate permits often ignore the customary rights of indigenous peoples,

⁶³ Wijayanti, Lailam, and Iswandi, "Progressive Legal Approaches of the Constitutional Justice Reasoning on Judicial Review Cases: Challenges or Opportunities?"

⁶⁴ Ramadani et al., "Progressive Legal Perspective on Legal Certainty over Land Ownership in Genteng Village."

⁶⁵ Hannah McGuire, "Indonesian Law Reform and the Promotion of Justice: An Analysis of Law Reform in the Post-Soeharto Period," *Brawijaya Law Journal* 3, no. 1 (2016): 60–78, <https://doi.org/10.21776/ub.blj.2016.00301.04>; Aloysius Uwiyono, "Indonesian Labor Reform Since 1998," *Indonesian Journal of International Law* 5, no. 4 (2008), <https://doi.org/10.17304/ijil.vol5.4.182>.

⁶⁶ Mohammed Abubakari, Kwaku Owusu Twum, and Gertrude Amissah Asokwah, "From Conflict to Cooperation: The Trajectories of Large Scale Land Investments on Land Conflict Reversal in Ghana," *Land Use Policy* 94 (2020), <https://doi.org/10.1016/j.landusepol.2020.104543>.

even though they have socially and historically controlled the territory.⁶⁷ Critical diagnosis shows that the main problem is not just individual law violations, but biased legal and policy structures from the legislation and licensing stages. Without this kind of diagnosis, agrarian law reform risks only changing administrative procedures without touching structural inequalities.

The second stage is progressive design, which is the formulation of substantive justice-based solutions that are oriented towards people and social contexts. Progressive practices can be found, for example, in a number of court rulings that interpret the law contextually to protect vulnerable groups, such as those that delay or invalidate the eviction of the urban poor by considering the right to housing and survival.⁶⁸ In these cases, the judge does not stop at the formal legality of the eviction permit, but considers the social impact and humanitarian principles.⁶⁹ This example shows how progressive law works as a means of reconstructing substantive justice, rather than simply a technical correction to existing norms.

The third stage is accountability lock-in, which aims to ensure that progressive innovation remains within the substantive *rule of law* corridor. A clear example can be seen in the practice of judicial review in the Constitutional Court, where progressive rulings remain bound by rigorous constitutional arguments and open to public scrutiny.⁷⁰ The *reason-giving obligation* in the Constitutional Court's decision serves as a control mechanism so that judicial creativity does not turn into subjectivism.⁷¹ Thus, legal innovations can still be accounted for normatively and institutionally, while maintaining minimal legal certainty.

b. Model Success Indicators

The success of this integrative model is measured through *normative*, *institutional*, and *social indicators*. At the level of *normative indicators*, constitutional consistency and human rights protection can be seen from decisions

⁶⁷ Safrin Salam et al., "An Analysis of Legal Considerations of Judicial Decisions on Customary Land Disputes: A Comparison of Indonesia and Africa," *Case law* 15, no. 1 (2025): 22–42, <https://doi.org/10.23917/jurisprudence.v15i1.7082>.

⁶⁸ Housing Rights Legislation, "Housing Rights Legislation: Review of International and National Legal Instruments," *Geneva: United Nations Housing Rights Programme*. (Nairobi: UN-HABITAT, 2002).

⁶⁹ Housing Rights Legislation.

⁷⁰ James E Fleming et al., "Scholarly Commons at Boston University School of Law Constitutionalism, Judicial Review, and Progressive Change Book Review Essay Constitutionalism, Judicial Review, and Progressive Change," 2005; Wijayanti, Lailam, and Iswandi, "Progressive Legal Approaches of the Constitutional Justice Reasoning on Judicial Review Cases: Challenges or Opportunities?"

⁷¹ Juneidi D Coloay, "The Constitutional Court's Role in the Protection of Citizen's Constitutional Rights: A Review of Monumental Decisions," *Barelang Journal of Legal Studies* 1, no. 2 (2023): 151–67.

that invalidate discriminatory norms or policies that are contrary to the principle of equality. An example is the repeal of regulations that disproportionately restrict the rights of citizens, which shows that legal reform remains based on constitutional values and non-discrimination.⁷²

Institutional indicators are reflected in efforts to strengthen the independence and integrity of law enforcement agencies, such as reform of the recruitment system and internal supervision in judicial and law enforcement institutions. When institutions can improve the transparency and quality of justice services, for example, through the obligation to publish judgments and access to case information, public trust in the law tends to increase.⁷³ This shows that changing norms is only effective if it is accompanied by institutional improvement.

Social indicators assess the real impact of legal reforms on society, especially in terms of access to justice and reducing inequality. Legal aid programs for the poor and the expansion of legal services in remote areas are concrete examples of how the law can become more inclusive. As vulnerable groups begin to feel real legal protection, public trust in the legal system increases.⁷⁴ Thus, the success of the law is not measured by the number of regulations or rulings, but by the extent to which the law can improve social conditions and strengthen the sense of collective justice.

⁷² Sari Amalia Dewi, Aloysius Uwiyono, and Rosdiana Saleh, "A Juridical Study of Constitutional Court Decision No . 58 / PUU- VIII / 2010 on the Right to Education and Non-Discrimination in Indonesia," *The Easta Journal Law and Human Rights* 4, no. 01 (2025): 43–51, <https://doi.org/10.58812/eslhr.v4i01>; Muhammad Anugerah Perdana, Muhammad Hamzah Al Faruq, and Garuda Era Ruhpinesthi, "A Prophetic Law Perspective on Judicial Independence of the Indonesian Constitutional Court: Looking Back on 20 Years," *Prophetic Law Review* 6, no. 1 (2024): 71–97, <https://doi.org/10.20885/PLR.vol6.iss1.art4>; M. Riza Damanik, "An Analysis of the Constitutional Court Ruling On the Annulment of the Provisions on Coastal Water Concessions (HP-3)," *Indonesia Law Review* 3, no. 2 (2013), <https://doi.org/10.15742/ilrev.v3n2.35>.

⁷³ Aisyah Azzahra et al., "Implementation of Good Governance in the Perspective of State Institutions of the Constitutional Court," *Judge : Legal Journal* 06, no. 1 (2025): 179, <https://journal.cattleyadf.org/index.php/Judge/index>.

⁷⁴ Ikbal and Gabriella Almasari Datuan, "Legal Assistance for Underprivileged Communities to Access Justice within the Human Rights Perspective," *Lampung Journal of International Law* 5, no. 2 (2023): 93–102, <https://doi.org/10.25041/lajil.v5i2.3258>; B. T. Bawono, "State Responsibility in Providing Free Legal Aid for the Poor in Indonesia," *International Journal of Law* 11, no. 1 (2025): 107–112; Elisabeth Sundari, "Legal Aid Scheme in Indonesia: Between the Policy and the Implementation," *Ius Quia Iustum Legal Journal* 20, no. 4 (2014): 545–62, <https://doi.org/10.20885/iustum.vol20.iss4.art3>.

Figure 1. *Process Visualization*

D. Conclusion

This article concludes that the problem of Indonesian legal development is structural and cannot be solved through a single normative-formal approach. Through the integration of critical legal theory and progressive legal theory, this study shows that sustainable legal reform requires three main stages: critical diagnosis to dismantle power structures and institutional biases, progressive design to formulate substantive justice-based solutions, and accountability locking in to ensure that legal innovation remains within the substantive rule of law corridor. This integrative model emphasises that criticism of the law should not stop at deconstruction, while legal progressivity should be guarded by the principles of constitutionality, minimum legal certainty, and transparency of reason.

The theoretical contribution of this article lies in the formulation of an operational model of legal development that unifies the functions of diagnosis and prescription in one complete evaluative framework. This model enriches the treasures of contemporary legal theory by offering a conceptual bridge between structural criticism and applicable legal policy design, making it relevant to the development of legal theory methodologies, research methodologies, and legal reform practices in Indonesia.

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