

No. ISSN : 2339-1650



universitas
bandar lampung

THE FIRST
INTERNATIONAL CONFERENCE ON
**LAW, BUSINESS
& GOVERNANCE**

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
INDONESIA

ICON-LBG
2013

Hosted by :
Bandar Lampung University (UBL), Indonesia



in
corporation
with



Universitas Cilembu



Maastricht
University

PROCEEDINGS

Icon-LBG 2013

THE FIRST INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



Faculty of Law, Faculty of Economics and Faculty of Social Science
Bandar Lampung University (UBL)
Jl. Zainal Abidin Pagar Alam No.89 Labuhan Ratu, Bandar Lampung, Indonesia
Phone: +62 721 36 666 25, Fax: +62 721 701 467
website :www.ubl.ac.id

PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 22 October 2013

Mustofa Usman, Ph.D
Icon-LBG Chairman

PROCEEDINGS

Icon-LBG 2013

**The First International Conference
on Law, Business and Governance**

22, 23, 24 October 2013

INTERNATIONAL ADVISORY BOARD

M. Yusuf S. Barusman, Indonesia
Andala R.P. Barusman, Indonesia
Mustofa Usman, Indonesia
Hayyan Ul Haq, Netherland
Renee Speijcken, Netherland
Zulfi Diane Zaini, Indonesia
Agus Wahyudi, Indonesia
Harpain, Indonesia
Khomsahrial Romli, Indonesia
Ida Farida, Indonesia
Warsono, Indonesia
Andreas Budihardjo, Indonesia
Pawito, Indonesia
I Gusti Ayu Ketut Rahmi, Indonesia
Lintje Anna Marpaung Indonesia
Zainab, Indonesia
Nik Ahmad Kamal Nik Mahmood, Malaysia
Maliah Sulaiman, Malaysia
Mohanraj, India
Wahyu Sasongko, Indonesia
Ari Darmastuti, Indonesia

PROCEEDINGS

Icon-LBG 2013

**The First International Conference
on Law, Business and Governance**

22, 23, 24 October 2013

STEERING COMMITTEE

Executive Advisors

Dr. Ir. M Yusuf S. Barusman, MBA
Prof. Dr. Khomsahrial Romli, M.Si.
Dr. Lintje Anna Marpaun, SH., MH.
Drs. Thontowie, MS

Chairman

Drs. Harpain, MAT, MM

Co-Chairman

Helta Anggia, S.Pd., M.A

Secretary

Tissa Zadya, SE., MM.

Technical Committee of Law Division

Dr. I Gusti Ayu KRH, SH., MH
Dr. Erina Pane, SH., MH
Dr. Zulfi Diane Zaini, SH.,MH
Dr. Zainab Ompu Jainah, SH., MH
Erlina B, SH.,M.Hum

Business Division

Prof. Dr. Sudarsono
Dr. Lindrianasari, S.E., M.Si., Akt
Dr. Anggrita Denziana, SE., Akt.,MM
Dr. Alex Tribuana Sutanto, ST., MM.
Dra. Rosmiati Tarmizi, MM, Ak.
Dr. Drs. Fauzi Mihdar, MM
Andala Rama Putra, SE, M.A, Ec.
Afrizal Nilwan, SE,, M.Ec., Akt.
Tina Miniawati, SE., MBA.

Governance Division

Dr. Drs. Supriyanto, M.Si.
Dr. Ahmad Suharyo, M.Si.
Dr. Hasan Basri, M.Si.
Drs. Hassan Basrie, M.Psi.
Dr. Dra. Ida Farida, M.Si.
Dr. Wawan Hernawan, M.Pd.
Drs. Suwandi, MM.
Drs. Yadi Lustiadi, M.Si.
Dra. Agustuti Handayani, MM

Treasure

Samsul Bahri, SE
Dian Agustina, SE

PROCEEDINGS

Icon-LBG 2013

**The First International Conference
on Law, Business and Governance**

22, 23, 24 October 2013

ORGANIZING COMMITTEE

Chair Person

Tissa Zadya, S.E, M.M

Vice Chair Person

Dra. Yulfriwini, M.T

Administration

Proceedings and Certificate Distribution

Dr. Zainab Ompu Jainah, SH., MH.
R Nadia RP Dalimunthe, S.S., M.Hum.
Drs. Suwandi, MM
Dra. Agustuti Handayani, MM
Berry Salatar, S.Pd.
Kartini Adam, SE
Atin Inayatin
Agung Saputra
Jacinda
Purwanto

Special Events

Dr. Zulfi Diane Zaini, SH.,MH.
Siti Rahmawati, SE
Khairudin, SE., M.S.Ak
Olivia Tjioer, SE., MM.
Achmad Haris
Alvin Aritanando
Mochammad Fikri H.
Ayu Safitri
Pandu Kurniawan
Cecilia Ariani J.B

Sponsorship

Dr. Alex Tribuana Sutanto, ST., MM.
Agus Gunawan
Tari Ines Safitri
Winda Natasya
Dicky Wahyudi
Poppy Irawati
Toni Arifin
Hansen Adi Pangestu

Receptionist and Registration

Dra. Agustuti Handayani, M.M
Tami Ruli, S.H., M.Hum
Haninun, S.E., M.S.Ak
Nilawati
Refli Setiawan
Moh. Fileri H
Alvin Aritanando
Tia Agustina
Rina

Documentation

Noning Verawati, S.Sos
Hesti, S.H
Rifandi Ritonga, SH
Febtry Mariska
M Sabila Rasyad
Putu Riski Mandala
Rico Febrianto
Yahya Saiful
Luqman
Reno Art Simorang

Transportation and Accommodation

Irawati, SE
Pandi
Edi

Consumption

Susilowati, S.T., M.T
Risti Dwi Ramasari, S.H., M.H
Dra. Azima Dimiyati, MM
Olivia Tjioener, S.E., M.M
Mei Endang Lestari
Nadia May Linda
Widiya Nanda

Publication and Public Relation

Ir. Indriati Agustina Gultom, MM.
Dina Ika Wahyuningsih, S.Kom
Noning Verawati, S.Sos., M.A
Siti Masitoh
Wahyu Pamungkas
Habib Mustofa
Andre Putra
Sandi Prayoga
Roni Semendawai
Syifaudin
Dharma Saputra
Yohanes Alex

Facility and Decoration

Siti Rahma Wati, SE
Dina Ika Wahyuningsih, S.Kom
Zainal Abidin, SE
Ahyar Saleh, SE
Eko Suhardiyanto
Wagino
Sugimin

Table Of Content

Preface.....	ii
International Advisory Board	iii
Steering Committee	iv
Organizing Committee.....	vi
Table of Content	ix

Keynote Speakers :

1. Leadership Style, Climate, Commitment and Corporate Performance – Andreas Budihardjo	I-1
2. The Great Paradox of Good Governance in Indonesia - Andrik Purwasito	I-8
3. Local Autonomy and Inter-Sector Performance-Based-Governance in Lampung Province – Ari Darmastuti	I-15
4. Urgency of Regulatory Priorities Watershed in Order To Conduct an Integrated Watershed Administrative Law In Indonesia – I Gusti Ayu Ketut Rachmi Handayani.....	I-22
5. The Strategic Development Model of Organizational Dynamic Capabilities at Private Higher Education Institutions Using Soft System Methodology – M Yusuf S Barusman.....	I-29
6. Governance, Business and The Environment - Maliah Sulaiman	I-39
7. Good Governance and The Rule Of Law - Nik Ahmad Kamal Nik Mahmud	I-45
8. The Legal Protection of Geographical Indications in Indonesia Towards The Asean Economic Community - Wahyu Sasongko.....	I-56
9. Bank Indonesia Law Relations With The Financial Services Authority (FSA) in Indonesian Banking Supervision - Zulfi Diane Zaini	I-63
10. Application of Factor Analysis to Public Sector Integrity in Indonesia - Warsono, Armen Yasir, Dian Kurniasari, Widiarti, Ridwan Saifuddin	I-69
11. Strengthening Creative Economic Resources Through Designing Appropriate Regulatory Model in Managing and Optimising Cultural Property- Hayyan ul Haq.....	I-76

Invited Speaker

12. The Direction Of Future Management Accounting Research In The Asia Pacific Region - Grahita Chandrarin	I-77
---	------

Paper Presenter :

Law :

1. Indonesian Marriage Legal System Construction In Order to Protect Children From Marriage Law That is Not Recorded - Amnawaty.....	II-1
2. Urgently of Harmonization of National Legislation on Juvenile Criminal Justice Towards International Standards: A Review of Rules of Deprivation of Liberty of Child Offender - Antonius Ps Wibowo.....	II-14

3. The Urgency of Total Economic Value Aspect in Food Security Regulation In Order to Engage Asia's Trade Area (Indonesia Case Study) - Anugrah Adiastruti	II-25
4. Strike as The Last Resort In Dispute Settlement Between Workers and Employers - Arinto Nugroho	II-30
5. Politics of Land Law For Indonesian Farmers (Towards the Bill of Land in Indonesia) - Elita Rahmi	II-35
6. State Role In Building People's Economy Amid Economic Globalization - Elly Nurlaili	II-40
7. Legal Protection of Traditional Crafts Tapis Lampung Based Local Wisdom in The Era of Globalization- Erlina B	II-45
8. Perda Progressive : an Alternative To Fulfillment of Poor People Rights of Health in Local Autonomy - H.S. Tisnanta, Agus Triono	II-52
9. The Comparison Between Indonesian Constitutional Court and Russian Constitutional Court - Lintje Anna Marpaung.....	II-58
10. The Politics of Islamic Criminal Law in Indonesia (A Critical Analysis) - Mohamad Rapik.....	II-67
11. Learning Environmental Rights, Finding Green Future: The Road to Ecojustice - Muhammad Akib, Fathoni	II-73
12. The CSR of Tobacco Industries: The Concept And Its Implementation – Nanik Trihastuti	II-80
13. The Comparison Of The Indonesian Ppatk Role With Other Countries Financial Intelligence Unit (FIU) - Nikmah Rosidah	II-86
14. Benefits Of Ratification Of The Madrid Protocol (Protocol Relating To The Madrid Agreement Concerning The International Registration Of Marks) For The Protection Of Intellectual Property Rights In Indonesia - Risti Dwi Ramasari.....	II-92
15. Equitable Law of Democracy Political Policy Against The Election of Incumbent - S. Endang Prasetyawati	II-99
16. Narcotics Crime as A Phenomenon of Transnational Organized Crime - Zainab Ompu Jainah	II-110
17. Safety Net of The Financial System in The Perspective of Indonesian Banking Law - Zulfi Diane Zaini	II-115
18. National Land Law Reform in Facing Globalization - Darwin Ginting	II-122
19. Land Dispute Settlements Insocial Philosophy Perspectives (A Case Study in PTPN VII of Bergen Unit Business in South Lampung Regency) - Herlina Ratna S.N.	II-130
20. Analysis of Regional Expansion as Implications of Regional Autonomy Implementation - Indah Satria	II-137
21. Normative Judicial Analysis of Dissolution of Political Parties Towards Democratic System in Indonesia - Rifandy Ritonga	II-141
22. Limitations Of Legal Ability In Dispute Resolution Of Consumer Protection - Tami Rusli.....	II-147

Business

1. Accountability And Financial Performance of Local Government in Indonesia – Aminah, Lindrianasari	III-1
--	-------

2. Competitive Advantage; The Affecting Factors and Its Impact on Selling-In Performance (Studies on Patronage Outlets PT. Indosat Semarang) - Ana Kadarningsih	III-7
3. Bankruptcy Analysis of Banking Companies in Indonesia Period 2001-2012 (Using the Altman Z-Score Model)- Andi Sanjaya, Lindrianasari, Aminah.....	III-20
4. The Influence of Audit Committee Quality and Internal Auditor Objectivity Toward The Prevention of Fraudulent Financial Reporting(A Survey in BUMN of Indonesia) - Angrita Denziana	III-26
5. Performance Measurement of Management Study-Program Based on Balanced Scorecard from Students' Perception – Ardansyah, Ayu Ichda Mardatila.....	III-32
6. E-Business : At A Glance Indonesia Online Shop Agent - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	III-37
7. Brand Awareness Strategy: Role of Blackberry Messenger (Case in Sumber Tiket Murah Travel: PIN 2144C41F) - Dian Pane, Baroroh Lestari.....	III-40
8. Analysis of Corporate Social Responsibility Implementation And Social Audit at PT Semen Padang - Elvira Luthan, Sri Dewi Edmawati	III-50
9. Tourism Investment, Supply and Demand in Indonesia: Impact and Factor Analysis -Faurani Santi, Rina Oktaviani, Dedi Budiman Hakim, Reni Kustiari.....	III-61
10. The Effect of Job Satisfaction and Organizational Justice on Organizational Citizenship Behavior with Organization Commitment as The Moderator - Fauzi Mihdar.....	III-75
11. The Economic of Umar Bin Khatt b Policy in Modern Economic Policy - Hendri Hermawan Adinugraha	III-83
12. The Influence of Corporate Governance Implementation toward Bank Performance (Empirical Study on Banks Listed in Indonesia Stock Exchange) - Heriyanni Mashitoh, Irma.....	III-90
13. The Factors That Influence The Firm Performance In The Furniture Industry Jepara - Mahmud,Guruh Taufan H, Ida Farida.....	III-102
14. The Implication of Opportunistic Behavior Towards a Financial Report Conservatism : A Study of Banking Company Go-Public at BEI - Novi Darmayanti, Nur Suci Mei.....	III-110
15. Innovation Strategy With Environment Variable Antesenden Internal, External And Environmental Partnership Strategy For Their Impact On The Sustainable Competitive Advantage (Survey on Small Business in Pangkalpinang city) - Reniati and Dian Prihardini Wibawa	III-118
16. The Infuence of Cash Flow Information Toward Stock Return - Reza Kurniawan	III-126
17. The Influence of Internal Control toward Production Cost Control Efectivity - Sarjito Surya.....	III-132
18. The Influence of Management Information System to Management Control System - Sihar Tambun, Vienda A. Kuntjoro.....	III-138
19. Identifying Indonesia-Uruguay Bilateral Trade Opportunities:A Revealed Comparative Advantage Approach - Sulthon Sjahril Sabaruddin, Riris Rotua Sitorus	III-145
20. Redesign the Competence Business Strategy of SME's in Dealing with ASEAN Economic Community (AEC) Trade Liberalization 2015 Case Studies: SME's Creative Industry Sector in Bandung - Teddy Fauzi	III-153

21. Service Innovation: In Highly Competitive of Hotel Industry - Widjaja Hartono	III-157
22. The Impact of Liquidity, Profitability And Activity Ratio To The Probability Of Default For Banking Companies Listed in Indonesia Stock Exchanges For The Period 2006 To 2012 - William Tjong, Herlina Lusmeida	III-164
23. Using Altman Z-Score Model and Current Status Of Financial Ratio to Asses Of Consumer Goods Company Listed in Indonesia Stock Exchange (IDX) - Yoppy Palupi Purbaningsih,	III-169
24. Analysis of Factors Affecting Foreign Direct Investment Mineral Mining Sector in Indonesia Period 2009-2012 - Zeflin Anggal, Purwanto	III-176
25. Implement of M-Government to Improve Public Services - Ahmad Cucus, Yuthsi Aprilinda	III-181
26. The Development of Productivity Performance Models: Based on Self-efficacy, Trust, Systems Quality, and Information Quality. Study on Information Systems of PT Pindo Deli Paper Products - Indah Kartika Sandhi.....	III-187

Governance

1. Controlling for Agricultural Land Conversion District in West Java Province Tasikmalaya - Ade Iskandar	IV-1
2. Local Handicraft Development Policy Implementation - Ani Heryani	IV-5
3. Designing IT Governance Approach Standard ISO 38500 for Indonesia Higher Education - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	IV-9
4. Potential Thematic Campaign for Lampung Tourism - Hasan Basri	IV-12
5. Globalization and Its Effect on Democracy - Ida Farida	IV-17
6. Bureaucracy Communication and Government Organizational Culture - Khomsahrial Romli	IV-23
7. Creative Economic Development Mode Through Business Learning Group For The Purpose of Ending The Poverty - Soewito, Suwandi	IV-29
8. Child Protection Strategies at Agrarian Conflict Area (A Case Study at Moro-Moro Village, Register 45, Mesuji Regency) - Wijatnika	IV-36

LEARNING ENVIRONMENTAL RIGHTS, FINDING GREEN FUTURE: THE ROAD TO ECOJUSTICE

A) Muhammad Akib^{1*} B) Fathoni²

¹Faculty of Law, University of Lampung, Indonesia

²Researcher at PKK-PHAM Faculty of Law, University of Lampung, Indonesia

*Corresponding email: akib97@yahoo.co.id

Abstract

This paper will make a reconstruction of legal environmental paradigm and find the alternative paradigm which sees the environment as a unity with human being. The debates of environmental rights offer new perspective on rights and environmental issues. The carelessness of sustainable environment often occur when the state apply the environmental regulations or policies.

Nowadays, the thought of “*ecojustice*”—environmental justice—has been rapidly developed. Otto Sumarwoto said about “Our Common Future” (Otto, 1991), Jimly Asshiddiqie said about “Green Constitution” (Jimly, 2009), and Fritjof Capra could say the same in “Green Politics: The Global Promise” (Capra, 1984). They make a sense that environmental protection is insufficient if it does not include the consideration of whole life, including present and future, that Environmental Rights is a road to Intergenerational Justice.

In developing country such as Indonesia, the development activities cause environmental damages. These conditions became worse in the autonomy era (since 2001) until present day, which environmental institution become weak in environmental law enforcement. As examples are Buyat Bay Case by Newmont Minahasa Raya, Ltd. (2004); and illegal logging by Adelin Lis (2007). These problems should be solved by beginning with an examination of the notion of rights to the environment and to the identification of such rights in formulation of regulations and policies.

Keywords: Environmental Rights, *anthropocentric*, *ecojustice*, regulation, policy.

1. INTRODUCTION

In recent times, environmental right issues have globally captured the attention of people and states. Protecting the environment has taken on increasing importance in the face of global environmental damages. While these issues have garnered the attention of world political leaders, there should be done using constitutional environmental right to ensure a healthy environment for us and our future generations to get green future.

This paper begins by debating recent efforts to include the environmental right as fundamental right as have been done in Indonesian Constitution, The 1945 Constitution of the Republic of Indonesia (UUDN RI 1945). The debates of environmental rights often offer new perspective on rights and environmental issues. One of the groups still holds “mechanistic-reductionist” which treats the environment as objects of development.

2. THE NATURE OF ENVIRONMENTAL JUSTICE

Environmental law seeks to protect both nature for itself, and for the benefit of humankind on a local and global scale. It has broadly been confined to regulating inter-state relations and, of late, the behavior of some economic actors. Human rights have centered on fundamental aspirations of human beings with much more developed compliance mechanisms allowing individuals and groups to claim their rights. The inclusion of an environmental dimension in the human rights debate has become necessary in view of the recognition of the pervasive influence of local and global environmental conditions upon the realization of human rights. In legal terms, the new linkages will come to enhance the protection in both fields as the protection of the environment will benefit from the

established machinery whereas the human rights system will be enhanced by the inclusion of new interpretative elements until recently ignored.

In essence, the law contains ideas or abstract concepts are made to regulate human life. In the abstract, there are ideas or concept of fairness, certainty, and social benefits. Gustav Radbruch explained that the law must meet three basic values, i.e: justice, usefulness, and certainty.¹ As one branch of law is relatively young, the environmental law includes ideas, concepts and principles of law that aims to regulate human actions related to the environment. The goal is to provide environmental protection, as Drupsteen stated that "*milieurechts juridisch Instrumentarium dat het staat van dit DIENSTE ten milieubeheer*".² Thus, environmental law has two functions, namely the regulation of human behavior in managing the environment and provides protection to the environment itself.

Judging from the dimensions of the development of human civilization, the idea of environmental law actually is corrective to the many mistakes that have been made by people in both the developed and developing countries, mainly due to the industrialization of the original practice as if it is almost without equal (restriction) ".³ During its development, although legal environment both globally and nationally has been growing rapidly since the last three decades, but in fact cases of environment still occurs. take just a few examples of cases that are still relatively new, and his case came to trial, the case Buyat pollution by PT. Newmont Minahasa Raya (2005-2006), the case of PT. Freeport (2005-2006), Sidoarjo mudflow case (PT Lapindo Brantas) that occurred since 2006, and the latter is the case of illegal logging (illegal logging) the defendant Adelin Lis (2007). Ironically all these cases "stranded "in the court of first instance and subsequent settlement is unclear. Ironically, according to the records of NGOs from 2006-2007 was 11 cases which perpetrators logging declared free (not guilty).⁴ In the fact, we has more than 25 years have the Environment Act, but has not been able to prevent damage / environmental pollution, even law enforcement is likely to fail in court.

Based on the above facts, the fundamental question is why the environmental damage continues to occur and how the implications of the application of mechanistic - reductionist paradigm in the enforcement of environmental law? Paradigm shift in how is the proper enforcement of environmental law?

3. PARADIGM ENVIRONMENTAL DAMAGE AND ERRORS OF MODERN SCIENCE

Until now had so many environmental laws and regulations issued and institutional environment has also been prepared starting from the center to the regions, but cases still occur and environmental enforcement tended to fail. From the perspective of the philosophy of failure is the result of the strong influence of paradigm of modern science that is " mechanistic - reductionistic " in view of the universe. Mechanistic means of looking at the entire universe (including man) was seen as a kind of machine that works mechanistically, and can be analyzed separately and predictable apart from the overall shape.⁵ Meanwhile, reductionistic approach means in looking reality in the universe, including human beings, reduced to merely one aspect of the relationship without seeing a more comprehensive and holistic in between various aspects. Thus the mechanistic - reductionistic paradigm was more looking at the relationship between humans and the natural environment separately. Humans are on top of everything, so free to do anything against the universe. Such a view is derived from the Western perspective rests on Cartesian logic. This puts human logic separate from the universe, even the domination of man over nature. Cartesian credo is what is known as "Cogito ergo sum " (I think, therefore I am). Of this creed Descartes concluded that the essence of human nature lies in his mind, that all things which we can clearly capture is correct.⁶ Cartesian credo is precisely what caused the man was standing face to face with nature,⁷ not the other way friendly to nature.

¹Satijpto Rahardjo. 1991. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, hlm. 19.

²Th. G. Drupsteen.1978. *Nederlands Milieurecht in Kort Bestek*. Zwolle: W.E.J. Tjeenk Willink, hlm. 7.

³Arief Hidayat dan Adji Samekto. 2007. *Kajian Kritis Penegakan Hukum Lingkungan di Era Otonomi Daerah*. Semarang: Badan Penerbit Undip, hlm. v.

⁴Absori, "Hukum Lingkungan dan Pemberdayaan Masyarakat", *Makalah Seminar Legal Hermeneutics Sebagai Alternatif Kajian Hukum*, Semarang: Fakultas Hukum Undip, 24 November 2007, hlm. 1.

⁵A. Sonny Keraf. *Etika Lingkungan* (Jakarta: Penerbit Buku Kompas, 2005), 253.

⁶Fritjof Capra, *The Turning Point: Titik Balik Peradaban Sain, Masyarakat, dan Kebudayaan*, Penerjemah M. Thoyibi (Yogyakarta: Penerbit Jejak, 2007), hlm. 50-51.

⁷Satijpto Rahardjo. "Metode Holistik, Suatu Revolusi Epistemologis". *Jurnal Hukum Progresif*, Vol 2/ No. 2/Oktober 2006, (Semarang: PDIH Undip, 2006), hlm. 1; Muhammad Akib, *Penegakan Hukum Lingkungan Dalam Perspektif Holistik-Ekologi*, (Bandar Lampung: Penerbit Universitas Lampung, 2011), hlm. 4-5.

As a result of mechanistic - reductionist paradigm, that is so then human beings with all ability to think rationally about to take control of the universe. Humans are not placed parallel or as a part of nature, but rather a separate and above nature. Placed man as the subject, while the natural environment as an object placed freely exploited by humans. Implications of the approach have led to exploitative attitudes and behavior towards the environment, which in turn cause environmental damage.⁸ According to Capra, the paradigm as such is one of the main reasons why we can not build a sustainable community, environmentally friendly community. This mechanistic way of thinking that has made us disconnected from nature and from other human beings. We live as though the separate parts of a whole.

The paradigm has given rise to exploitative attitudes and behavior towards nature. As a result, people and interests at the center of everything or understand that in view of environmental ethics called *anthropocentrism*. Humans are considered the most decisive in the order of the ecosystem, so that he could do anything for the environment, although in ways that damage the environment. Thus men are not regarded as part of the ecosystem, but are considered to be outside and above and apart from nature. Therefore, do not be surprised if many environmental policies are still exploitative and has a hidden agenda for the benefit of the owners of capital. TRIPS for example, do not explicitly prohibit patents on the parts of the animals and plants or animals and plants that have been altered, so that patent protection encourages the commercialization of the products of genetic engineering that adversely impact the security and biodiversity.

Other examples are the Act 41/ 2004 jo. Act 19/2004 on Forestry, Act 22/2001 on Oil and Gas, and the Act 7/2004 on Water Resources. The Forestry Act clearly provides protection against mining magnate with interests override the protection of forests. Through Law no. 19 of 2004 which seemed to annul the provision of Article 38 paragraph (4) of Act 41/1999, the pattern mining with open-pit mining in protected forest areas is not prohibited, which incidentally, is controlled by foreign companies. Furthermore Act 22/2001 on Oil and Gas and the Act 7/2004 on Water Resources, both contain provisions that the liberal nuanced about fuel pricing mechanism based on competition (Art. 28 Par. 2 of Act 22/ 2001) and the privatization of water resources (Article 9 of Act 7/2004). The third law clearly characterizes the liberal nature and implications pressure is developed in the era of globalization. According to William K. Tabb, they have used debt to impose liberalization, privatization and deregulation in countries that are economically weak and politically for the benefit of transnational capital and international finance.⁹

4. IMPLICATION OF MECHANISTIC - REDUCTIONIST PARADIGM IN LAW ENFORCEMENT ENVIRONMENT

Paradigm of modern science is mechanistic-reductionistic, also has implications for the ways in which legalistic - positivistic arbitrate. Law is understood as a machine that works mechanically separated from its constituent elements and overall reduced as rules (laws). According Soetandyo Wignjosoebroto, legal positivism in understanding conceptualized as a positive norm in the legal systems of national law. Types of studies are the study of pure legal doctrine of "law as it is written in the books".¹⁰ Legal concepts and types of such studies, in line with the teachings of Hans Kelsen with his *Rechtslehre Reine*, which is constructing the law as the law or positive law. In view of positivism Kelsen, law formulating laws pertaining to "what should be", "behoren", "das sollen", a matter of necessity. He does not deal with "das sein" (what is).¹¹ As the doctrine of positive law, jurisprudence merely describe (explain) the existing positive law, analyze its structure, establish definitions of concepts used in the positive law. Incorporate other elements into the theory or doctrine of pure law (*Reine Rechtslehre*) is wrong.

Thus the enforcement of environmental law in the positivist understanding not talking about good and bad or fair and unfair, but what legal speak, what is the liability, what is forbidden, what sanctions, and how the mechanism or enforcement procedures. Enforcement of environmental law is black and white enforce existing provisions in environmental legislation, although that provision has many weaknesses. The weaknesses are related to the licensing authority and supervision, administrative sanctions, as well as the difficulty of proving cases in court environment.

⁸Muhammad Akib, *Ibid*.

⁹Maruar Siahaan. 2007. "Relevansi Penguasaan Negara atas Cabang Produksi Strategis Menurut UUD 1945 dalam Transformasi Global". *Jurnal Konstitusi*, Volume 4, Nomor 3, September 2007, hlm. 10.

¹¹Soetandyo Wignjosoebroto. 2002. *Hukum; Paradigma, Metode dan Dinamika Masalahnya*. Jakarta: ELSM-HUMA, hlm. 87-88.

In terms of administrative law, supervision is the main duty of the authorities to give permission. While the types and licensing procedures are still diverse and authority are not on the agency, so that can not be dealt with quickly.¹² Oversight by the Ministry of Environment (KLH/MOE) in addition to the all too common, it is difficult to do because it's legally authorized administration also attached to the local government and individual ministries related sectors. Economic instruments, such as taxes and environmental levies and other voluntary instruments, such as environmental auditing and implementation of environmental standards (eg ISO 14000) is not strictly regulated, and detailed operational by UUPPLH - 2009. Economic instruments as a form of the polluter pays principle, and is more oriented to the levy as such rather than to the prevention of environmental pollution. Administrative sanctions provided for in Article 76 paragraph (2) UUPPLH - 2009 does not stipulate sanctions forced money as an alternative if government coercion tough sanctions applied. In fact, both types of sanctions are theoretically very effective way to stop environmental violations.

The other drawback is related to the difficulty of proving the element of unlawful act in environmental lawsuit (civil) as stipulated in Article 87 UUPPLH- 2009 and the presentation of evidence and the determination of a causal relationship between the acts with the result of the actions (cause and effect) in the case of environmental crime. Because the cases likely meets fails in the environmental court. Failure is compounded, because law enforcement is handling environmental cases fed by positivistic understanding. Understood the law as it is written in the law and law enforcement is bound to sound legislation. Law enforcement is no more a "funnel" the law and the state apparatus without considering the growing sense of justice in society. With such understanding, then the case proving the environment will depend on the formal proofs required by law. Law enforcement also often collide presenting facts and evidences that often are scientific (scientific proof) and about the secrets of the company.

Substantial and procedural weaknesses in the rule of law are increasing with the positivistic. Positivistic paradigm implication, that the examining judge, hearing and deciding cases never make a breakthrough environmental law to find justice environment (environmental justice). Judge just put formal procedures and requirements prescribed by law. Declared righteous judge's ruling if it complies with all the formal procedures, although contrary to the interests of public justice and the environment. Thus identical to the enforcement of environmental law enforcement UUPPLH - 2009 and said to be fair if UUPPLH - 2009 has been enforced - even if it is contrary to the sense of justice and the environment. The search for real justice, namely that favor the interests of society and the environment, tend to fail simply because it was blocked by the walls of the procedural rules set out in the environment. What is fitting in - Samekto Adji said, that quest for justice (searching for justice) can be failed only due to hit on offense procedure. All handling of the case shall be in accordance with legal procedures. Conversely, any other attempt to seek the truth in an effort to uphold justice, beyond the applicable law, can not be accepted and considered as out of legal thought, even illegal.

Many examples of environmental cases brought to court but failed due to hit on formal evidentiary difficulties. Examples are still warm is the release of Adelin Lis in illegal logging and corruption by Medan PN (2007) by reason of error procedure. Parties freely accused of PT Newmont Minahasa Raya in Buyat pollution case which terminated Minahasa PN (2006) and the rejection of a civil suit case Sidoarjo mud volcano (PT Lapindo Brantas) by the Central Jakarta District Court (2007), is an application of the law is no evidence in favor of the substantial justice. Meanwhile, some environmental cases as small as a two- tailed capture wild animals or cutting down several trees in the forests of the state defendants were found guilty and subject to criminal penalties.

Thus the positivist law enforcement is like "cobwebs ", as stated Honore de Balzac quoted Philippe Sands : "Les lois sont des toiles d' araignées a charming! Lesquelles passent Mouches et les grosses restent ou les petites " (law, such as cobwebs, catch small insects and let the big ones get away).¹³ Law violations are only able to ensnare small, while large environmental crimes such as exemplified in the above case he is helpless.

5. HOLISTIC PARADIGM IN - LAW ENFORCEMENT ENVIRONMENT ECOLOGY

Aware of the weaknesses in the paradigm, it is time to shift to a new paradigm that is more comprehensive and prioritize values rather than the values of justice legalistic procedural aspect - formal.

¹²Menurut J.B.J.M. ten Berge, pengawasan dan sanksi administrasi merupakan instrumen dalam penegakan hukum administrasi Lihat J.B.J.M. ten Berge. 1994. *Recent Development in General Administrative law in the Netherlands*. Netherlands: Utrecht, hlm. 21.

¹³Satjipto Rahardjo. 2009. *Lapisan-Lapisan Dalam Studi Hukum*. Malang: Bayu Media, hlm. 111.

Enforcement of environmental laws in the holistic paradigm is not founded on three basic principles. First, using all the instruments of law, especially administrative law, criminal and civil comprehensively (not fragmented or fragmented).

Means of administrative law in the form of surveillance should be integrated and coordinated. Supervision authority alignment can be done if certain license types combined in a very close one government authority, such as KLH or local government. While the coordination of monitoring can be done well if there is a clear relationship system authorized agencies. In - ecological holistic view should no integrated environmental permitting and KLH (in the center) and the Agency / Office of Environment (in the area) to act as the coordinator.

Regarding administrative sanctions, UUPPLH - 2009 was only set up four types of administrative sanctions, the written warning, government coercion, environmental license suspension, and revocation of environmental permits.¹⁴ This is the fourth type of sanctions can not be applied at once, but which sanctions should be imposed through a holistic consideration, which in addition is also non- judicial juridical aspects. Regarding the non- judicial aspects of the environment and the public interest considerations should take precedence over the interests of employers and the state.

Dispute resolution in civil (tort and or specific actions) can be done by way litigants in court or out of court settlement, known by alternative Disputes resolution (ADR). Settlement given by way litigants in the courts have tended to fail, then the ADR settlement should preferably without the use of a voluntary choice to leave nature both lines. Even, if it needs to be done simultaneously, without waiting for the failure process of the ADR. Criminal law enforcement is done through the application of criminal sanctions, both are set in UUPPLH Act of 2009 and related sectors, such as the Law on Forestry, Water Resources, Fisheries, Mining, and others.

In a holistic view, the three lines of the law (administrative, civil, and criminal) is not an alternative, it can be applied simultaneously, so that any sanctions are cumulative. Because it requires a synergistic cooperation between law - enforcement co. Investigators, prosecutors, judges and administrative officials require synergistic cooperation in dealing with environmental cases, although authorities differ from each other. This is the core of the basic principles of the first holistic, which requires law enforcement as a whole, which is to use all legal means in a comprehensive and synergistic cooperation of law enforcement. In this context, Satjipto Rahardjo¹⁵ by taking the example of corruption, floated the idea "collective enforcement", that law enforcement does not "fight" each other, but united against crime.

The second basic principle is the ecosystem approach. Ecosystem approach should take precedence over other interests, especially the interests of the political, economic, legal or technical considerations alone. This is important, because not infrequently the case of failure of the environment due to hit the procedures that are technically legal, beneficial and even seeks to protect the economic interests of a political or business specific individuals or groups. Through holistic - ecological paradigm, if any provision is procedurally cause difficulty law enforcement, then law enforcement should be progressive to make a breakthrough law for the protection of ecosystems. Technical considerations juridical dominance as positivistic traits of law enforcement should be shifted into greater consideration, the consideration of ecosystem protection.

Third, uphold the values of truth and justice. Enforcement of environmental law holistically not just to enforce rules or laws, but most importantly is to uphold truth and justice for society and the environment. In view of legal positivism considered fairly enforced if rules have been enforced in accordance with the formal procedures set out. Thus the rule of law be the main thing. While the holistic view of the preferred is not the rule of law, but truth and justice. Construction of a holistic way of thinking is in line with the concept of progressive law enforcement offered by Satjipto Rahardjo.¹⁶

According to Satjipto Rahardjo opinion, progressive laws on the opposite principle of the two components of the legal basis, namely regulation and behavior (rules and behavior).¹⁷ This progressive law departs from the basic assumption that the law is for man, not man for the law. For that he refused to maintain the status quo in the lawless, because such a lawless manner consistent with the way positivistic,

¹⁴Lihat Pasal 76 ayat (2) UUPPLH-2009.

¹⁵Lihat Satjipto Rahardjo. 2006. *Membedah Hukum Progresif*, (editor: Joni Emirzon, I. Gede A.B. Wiranata, Firman Muntako), Jakarta: Penerbit Buku Kompas, hlm. 140-144.

¹⁶Dari studi kepustakaan dapat dikatakan bahwa gagasan tentang hukum dan penegakan hukum progresif dipublikasi oleh Satjipto Rahardjo sekitar pertengahan tahun 2002, yaitu melalui tulisannya di Kompas, 5 Juli 2002 dengan judul "Indonesia Membutuhkan Penegakan Hukum Progresif".

¹⁷Satjipto Rahardjo. 2004. "Menuju Produk Hukum Progresif", Makalah Diskusi Terbatas Fakultas Hukum Undip, Semarang, 24 Juni 2004.

normative and legalistic, and progressive law gives great attention to human behavior in the law - it is diametrically opposed to the understanding, that the law was only regulatory affairs. Thus the simple fact that progressive laws, which it acquires, either in the way of thinking and acting within the law, so as to let it flow law alone to finish his serve mankind and humanity".

Based on the concept of progressive law, then the environmental law enforcement progressively been done for progressive purposes, in ways progressive and implemented by progressive law enforcement. Progressive goals for environmental protection are a priority to the welfare and happiness of the people rather than the implementation of the regulations. Progressive ways are the ways that, in principle, are not "bound" by a rigid formal procedures, so that if the process is constrained by the formal procedure progressively sought legal breakthrough. Therefore we need progressive law enforcement, namely that dare to break the law, among others, through what is known in legal studies with a legal interpretation or legal discovery. Judge for example, in prosecuting a case not just apply sound environmental regulations are "letterlijke", but look, explore and apply the meanings behind these rules. This is according to Ronald Dworkin calls the moral reading (the moral reading) of these regulations.

Progressive environmental law enforcement must also consider the environmental values of local wisdom in the community, such as system Sasi in Maluku, Subak in Bali, and Repong Damar in Lampung. Progressive view of law enforcement in a broad optical, that the law is for human - to - human well-being and happiness of both national and local. But if there is disharmony between the positive law (national) with the value of local knowledge, the local wisdom should come first, not the other way around. Good law is a law that reflects the values that exist in the community and aims to achieve the rule of law in accordance with the wishes and expectations of the community. In this connection it is proper Tamanaha's 'mirror thesis', that: "... law is a mirror society, roommates functions to maintain social order". Furthermore he said: "... positive law Represents power and authority; Conformity to its degree of custom / consent and morality / reason is what confers legitimacy". Hence since the 1970s Nonet & Selznick offers perspectives and methods of social science to be applied in analyzing legal institutions. This kind of approach is also a holistic approach in the enforcement of environmental law.¹⁸

6. CONCLUSIONS

From the above description and discussion of some conclusions can be drawn following:

1. Discharge regulations on environmental issues do not create environmental damage stalled, because the strength of the paradigm of modern science that is "mechanistic - reductionist" which spawned the exploitative attitudes and behaviors towards the environment.
2. Mechanistic - reductionist paradigm negative implications for environmental law enforcement. Enforcement of environmental laws becomes fragmented because of weak regulation, both institutional and procedural aspects. As a result, law enforcement tends to fail and environmental justice (*Ecojustice*) farther away from expectations.
3. It is time now to shift to a new paradigm that is more comprehensive and prioritizes the values of environmental justice, which is called the holistic - ecological paradigm. Enforcement of environmental laws in the holistic paradigm is not founded on three basic principles. First, using all the instruments of law, especially administrative law, criminal and civil comprehensively (not fragmented). Second, prioritize ecological sustainability than other interests. Third, it is not only to enforce the rules of the law, but to uphold the values of truth and justice.

REFERENCES

- [1] Absori. 2007. "Environmental Law and Community Empowerment", Legal Hermeneutics Seminar Papers For Alternative Legal Studies, Semarang: Diponegoro University School of Law, 24 November 2007.
- [2] Akib, Muhammad 2011. Environmental Law Enforcement In - Ecology Holistic Perspective, Bandar Lampung : University of Lampung Publisher.
- [3] -----, 2008. Environmental Law, Policy and Regulation of Global and National Law. Bandar Lampung : University of Lampung Publication Lemlit.
- [4] Capra, Frijtjop. 2007. The Turning Point (Turning Point Sain Civilization, Society, and the Cultural), Translator M. Thoyibi. London: Publishers Imprint.
- [5] Dhewanti, Laksmi and Aristia Tri Apriani. tt. "Environmental Tax : Findings Against Regional Tax Bill and Retribution", Journal of Environmental Economics, Nineteenth Edition, New York: Office of the Minister of Environment.

¹⁸Philippe Nonet & Philip Selznick. 1978. *Law and Society Transition: Toward Responsive Law*, New York: Harper & Row, hlm. 5.

- [6] Dimiyati, Khudzaifah., 2004. *Theorising Law : Study on the Development of Legal Thought in Indonesia 1945-1990*, Surakarta Muhammadiyah University Press.
- [7] Drupsteen, Th. G., 1978. *Nederlands Milieurecht in Kort bestek*, Zwolle : WEJ Tjeenk Willink.
- [8] Dworkin., 1996. *Freedom 's Law, The Moral Reading of the American Constitution*. Cambridge, Massachusetts : Harvard University Press.
- [9] Fiedmann, W. 1960. *Legal Theory*. London : Stevens & Sons Limited.
- [10] Hadi, Sudharto P and Adji Samekto. 2007. *Environmental dimension in Business, Corporate Social Responsibility Study the Environment*, Semarang : Board Publisher Undip.
- [11] Hidayat, Arief and Adji Samekto. 2007. *Critical Studies in Environmental Law Enforcement regional autonomy*, Semarang : Board Publisher Undip.
- [12] Kelsen, Hans. 2006. *Law and Logic* (translated as : Arief Sidhartha), Bandung : Alumni.
- [13] Keraf, A. Sonny., 2005. *Environmental Ethics*. Jakarta : Kompas Book Publishers.
- [14] Khor, Martin. 2001. *Globalization and the Crisis of Sustainable Development*, Penang : Third World Network.
- [15] Nonet, Philippe and Philip Selznick. 1978. *Law and Society Transition : Toward Responsive Law*, New York : Harper & Row.
- [16] Rahardjo, Satipto., 1991. *Legal Studies*, Bandung : PT. Citra Aditya Bakti.
- [17]-----., 2004. " Towards a Progressive Legal Products ". Discussion Papers Limited. Semarang : Diponegoro University School of Law, June 24, 2004.
- [18]-----., 2006. " Holistic Methods, An Epistemological Revolution ", *Journal of Progressive Law*, Vol 2 / No. 2/Oktober 2006. Semarang : PDIH Undip.
- [19]-----., 2006. *Dissecting Progresif*. Jakarta Law : Book Publishers Compass.
- [20]-----., 2007. *Let Flowing Law : Critical Notes on the Struggle of Human and Legal*. Jakarta : Kompas Book Publishers.
- [21]-----., 2009. *Layer - layer in Legal Studies*. Malang : Bayu Media, p. 111.
- [22] Samekto, Adji., 2005. *Critical Legal Studies, Critique of the Modern Law*. Bandung : Citra Aditya Bakti.
- [23] Siahaan, Maruar. 2007. " Relevance State Control over Production Branch Strategic According to the 1945 Global Transformation ", *Journal of the Constitution*, Vol. No. 4. 3, September.
- [24] Santosa, Mas Ahmad., 2001. *Good Governance and Environmental Law*, New York: ICEL.
- [25] Tamanaha, Brian Z. 2006. *A General Jurisprudence of Law and Society*. New York : Oxford University Press.
- [26] Ten Berge, J.B.J.M., 1994. *Recent Development in General Administrative law in the Netherlands*. Netherlands : Utrecht
- [27] Widianarko, Budi, et al (editors)., 2004. *Capra Tracing Traces : Discovering Integration Science, Philosophy, Religion*, Yogyakarta - Semarang : Canisius and Unika Soegijapranata.
- [28] Wignyosoebroto, Soetandyo., 2002. *Law ; Paradigms, Methods and Dynamics problem*. Jakarta : ELSM - Huma.



**universitas
bandar lampung**

Jl. Z.A. Pagar Alam No.26 Labuhan Ratu
Bandar Lampung 35142 Phone: +62 721 701463
www.ubl.ac.id
Lampung - Indonesia

copyright@2013