

Learning Environmental Rights, Finding Green Future: The Road To Ecojustice⁷⁰

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Abstract

This paper sets a reconstruction of legal environmental paradigm and finds the alternative paradigm which considers 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 might causesome 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.

Key Words : environmental rights, anthropocentric, ecojustice, regulation

I. 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.

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)".⁷¹ 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).⁷² 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.

⁷⁰ This paper had been presented on International Convergence on Law, Business and Governance, 23-24 October 2013, Bandar Lampung University, Indonesia.

⁷¹ Arief Hidayat and Adji Samekto. 2007. *Kajian Kritis Penegakan Hukum Lingkungan di Era Otonomi Daerah*. Semarang: Diponegoro University Publisher, p. v.

⁷² Absori. 2007. “Advokasi Masyarakat dalam Penyelesaian Sengketa Lingkungan Hidup di Jateng, Kabupaten Karanganyar”, WARTA, Vol.10, No.1, Maret 2007, Surakarta: Universitas Muhammadiyah Surakarta, 2007. pp. 68 – 75

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? How is the proper Paradigm shift in environmental law enforcement?

II. METHODS

This paper applies the literature study methods, so that the obtained data are secondary data. It used related literatures, including the official report which is related to environmental law studies.

III. DISCUSSIONS

A. The Nature of Environmental Justice

Environmental law seeks to protect both natures for itself, and for the benefit of humankind on a local and global scale. It has broadly been confined for regulating inter-state relations and, recently, 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.⁷³ 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".⁷⁴ Thus, environmental law has two functions, namely the regulation of human behavior in managing the environment and provides protection to the environment itself.

B. Environmental Damage and Errors of Modern Science Paradigm

We had so many environmental laws and regulations issued and institutional environment has also been prepared from both central and regional government, but the environment cases still occur and its enforcement tended to get failed. From the perspective of the philosophy of failure is the result of the strong influence of paradigm of modern science that is "mechanistic - reductionist" 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.⁷⁵ Meanwhile, reductionist 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 - reductionist 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). Here, Descartes concluded that the essence of human nature lies in his mind, that all things which we can clearly capture are correct.⁷⁶ Cartesian credo is precisely what caused the man was standing face to face with nature,⁷⁷ not the other way friendly to nature.

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.⁷⁸ 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

⁷³Satipto Rahardjo. 1991. *Ilmu Hukum*, Bandung: Citra Aditya Bakti, Ltd., p.19.

⁷⁴Th. G. Drupsteen. 1978. *Nederlands Milieurecht in Kort Bestek*. Zwolle: W.E.J. Tjeenk Willink, p. 7.

⁷⁵A. Sonny Keraf, *Etika Lingkungan*, (Jakarta: Kompas Book Publisher, 2005), p.253.

⁷⁶Fritjof Capra, *The Turning Point (Turning Point Sain Civilization, Society, and the Cultural)*, Translator M. Thoyibi. Yogyakarta: Jejak Publishers, 2007, pp. 50-51.

⁷⁷Muhammad Akib, *Penegakan Hukum Lingkungan dalam Perspektif Holistik-Ekologi*, Bandar Lampung : University of Lampung Publisher, 2011), pp. 4-5.

⁷⁸Muhammad Akib, *Ibid*.

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 Law Number 41/2004 jo. Law Number 19/2004 on Forestry, Law Number 22/2001 on Oil and Gas, and the Law Number 7/2004 on Water Resources. The Forestry Act clearly provides a protection against mining with interests override the protection of forests. Through Law Number 19 of 2004 which seemed to annul the provision of Article 38 paragraph (4) of Law Number 41/1999, the pattern mining with open-pit mining in protected forest areas is not prohibited, which incidentally 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 Law Number 22/2001) and the privatization of water resources (Article 9 of Law Number 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.⁷⁹

C. Finding Green Future: Start from Precautionary Policy

What is needed is an environmental policy in which natural resources are protected and demands on them are made with care, political and commercial decisions that will have an environmental impact in any shape or form are only made after exhaustive checks to ensure that they will be in no way detrimental to the ecological balance now and in the foreseeable and sustainable future.

One approach to this is the 'Precautionary Principle' was first developed in Germany in the 1970s, and perhaps best be defined by the group of scientists, government officials, lawyers, and environmental representatives that met at Wingspread in Racine, Wisconsin in 1998. The group came up with the Wingspread Statement:

"The release and use of toxic substances, resource exploitation, and physical alterations of the environment have had substantial unintended consequences on human health and the environment. Some of these concerns are high rates of learning deficiencies, asthma, cancer, birth defects and species extinctions; along with global climate change, stratospheric ozone depletion; and worldwide contamination with toxic substances and nuclear materials. We believe existing environmental regulations and other decisions, particularly those based on risk assessment, have failed to adequately protect human health and the environment, as well as the larger system of which humans are but a part. While we realize that human activities may involve hazards, people must proceed more carefully than has been the case in recent history."⁸⁰

The key elements of the Precautionary Principle are:

- People have a duty to take anticipatory action to prevent harm.
- The burden of proof of harmlessness of a new technology, process, activity, or chemical lies with the proponents.
- Before using a new technology, process, or chemical, or starting a new activity, people have an obligation to examine 'a full range of alternatives' including that of doing nothing.
- Decisions applying the precautionary principle must be 'open, informed, and democratic' and 'must include affected parties'.

Opponents of the Precautionary Principle stress that it is impossible to scientifically anticipate of whole potential effects of a new technology or discovery. Particularly, the pressures of the market economy, which rewards speed and market dominance, pose an important barrier. Nevertheless, the themes of the Precautionary

⁷⁹Maruar Siahaan. 2007. "Relevancy of State Possession on Strategic Production Branch According to UUD 1945 in Global Transformation (Relevansi Penguasaan Negara atas Cabang Produksi Strategis Menurut UUD 1945 dalam Transformasi Global)". *Jurnal Konstitusi*, Volume 4, Nomor 3, September 2007, p. 10.

⁸⁰Geoffrey Murray and Ian G. Cook, 2002, *Green China: Seeking ecological alternative*, London: RoutledgeCurzon, p.12

Principle have been incorporated into many environmental plans and international treaties, including: the Rio Declaration (Principle 15, 1992), the Helsinki Convention (1992), and the Framework Convention on Climate Change (1992).⁸¹

D. From Deep Ecology to Social Justice

Holistic-ecology paradigm has close meaning with deep ecology theory. The theorists discussed that Deep Ecology platform as the common ground for Deep Ecology as a philosophical and social activist movement. Thomas Berry, provides an overview of the contemporary environmental situation. In Berry's view, a major religious/philosophical paradigm shift in society is required—from an anthropocentric to a biocentric [or ecocentric] sense of reality and value—to deal effectively with the environmental crisis. Berry's ecocentrism is expressed in the claim that "the community of all living species is the greater reality and the greater value."⁸² He stated:

“to be viable, the human community must move from its present anthropocentric norm to a geocentric norm of reality and value. Within the solar system, the earth is the immediate context of human existence. And we recognize the sun as the primary source of earth's energies. Beyond the sun, however, is our own galaxy, and beyond that is the universal galactic system that emerged some fifteen billion years ago through some ineffable mystery.”⁸³

The theory of “Deep ecology” emerged from the aware of the weaknesses in the failure of mechanistic paradigm. It drives to shift into a new paradigm that is more comprehensive and prioritize values rather than the values of justice legalistic procedural aspect - formal. 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).

Capra said that the current fundamental change of worldview in science and society, a change of paradigms that amounts to a profound cultural transformation. The paradigm that is now receding has dominated our culture for several hundred years, during which it has shaped our modern Western society and has significantly influenced the rest of the world. This paradigm consists of a number of ideas and values, among them the view of the universe as a mechanical system composed of elementary building blocks, the view of the human body as a machine, the view of life in society as a competitive struggle.

The newly emerging paradigm can be described in various ways. It may be called a holistic worldview, emphasizing the whole rather than the parts. It may also be called an ecological worldview, using the term "ecological" in the sense of deep ecology. The distinction between “shallow” and “deep ecology” was made in the early seventies by the philosopher, Arne Naess, and has now been widely accepted as a very useful terminology to refer to the major division within contemporary environmental thought. Shallow ecology is anthropocentric. It views humans as above or outside of nature, as the source of all value, and ascribes only instrumental, or use value to nature. Deep ecology does not separate humans from the natural environment nor does it separate anything else from it. It does not see the world as a collection of isolated objects but rather as a network of phenomena that are fundamentally interconnected and interdependent. Deep ecology recognizes the intrinsic values of all living beings, and humans as just one particular strand in the web of life.⁸⁴

The debate between ecocentrism and anthropocentrism emerged from the different perspective in looking of the environment. One side consider environment just as an object of development without take attention on its sustainable. Ecocentrism views humankind as part of a global ecosystem, and subject to ecological laws. These, and the demands of an ecologically-based morality, constrain human action, particularly through imposing limits to economic and population growth. There is also a strong sense of respect for nature in its own right, as well as for pragmatic ‘systems’ reasons.⁸⁵

E. Practices in Indonesia

In the Indonesian law, there are 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

⁸¹ *Ibid*, p.13.

⁸² Thomas Berry, 1995, “The Viable Human” in *Deep ecology for the twenty-first century*/edited by George Sessions, 1st edition, Boston: Shambhala Publications Inc, p.8

⁸³ *Ibid*

⁸⁴ Fritjof Capra, 1995, *Deep Ecology: A New Paradigm*, in *Ibid*, pp.19-21

⁸⁵ David Pepper, 1993, *Eco-Socialism From deep ecology to social justice*, London: Routledge, p.23

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.⁸⁶ 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 Rahardjo⁸⁷ 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 is 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.

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). 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, 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 procedure, 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

⁸⁶See Article 76 (2) UUPPLH-2009.

⁸⁷See Satjipto Rahardjo. 2006. *Studi Hukum Progresif (Membedah Hukum Progresif)*, (editor: Joni Emirzon, I. Gede A.B. Wiranata, Firman Muntako), Jakarta: Kompas Book Publisher, pp. 140-144.

prosecuting a case not just apply sound environmental regulations are "letterlijk", but look, explore and apply the meanings behind these rules. This is according to Ronald Dworkin calls the moral reading of these regulations.

Progressive environmental law enforcement must also consider the environmental values of local wisdom in the community, such as systems like: "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 laws (national statutes) within the value of local knowledge—local genius—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, Tamanaha offered '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.⁸⁸

F. Environmental Cases in Indonesia

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.⁸⁹ 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 –Adji Samekto 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.

⁸⁸Philippe Nonet & Philip Selznick. 1978. *Law and Society Transition: Toward Responsive Law*, New York: Harper & Row, hlm. 5.

⁸⁹J.B.J.M. ten Berge had a notion that monitoring and administrative sanction are the instrument on administrative law enforcement. See J.B.J.M. ten Berge. 1994. *Recent Development in General Administrative law in the Netherlands*. Netherlands: Utrecht, p. 21.

Many examples of environmental cases brought to court but failed due to hit on formal evidentiary difficulties. Recently Examples are the cases 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 Honorede Balzac quoted Philippe Sands: "Les lois sont des toiles d'araignées a charming! Lesquelles passent Mouches et les grosses restent où les petites" (law, such as cobwebs, catch small insects and let the big ones get away).⁹⁰ Law violations are only able to ensnare small, while large environmental crimes such as exemplified in the above case he is helpless.

IV. CONCLUSIONS

From the above description and discussion, some conclusions can be drawn as 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.

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⁹⁰Satjipto Rahardjo. 2009. *The Layers on Legal Study (Lapisan-Lapisan Dalam Studi Hukum)*. Malang: Bayu Media, p. 111.

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