

# Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges

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## **ABSTRACT:**

Law enforcement in the environmental sector has a broad dimension, not only related to aspects of material losses, aspects of state administration, but also aspects of criminal law. Enforcement in this sector even faces several challenges and obstacles, one of which concerns the various motives and perpetrators of environmental crimes that continue to grow. This study aims to analyze how progressive law should work and be applied in environmental law enforcement in Indonesia. This study highlighted that one of the ways to realize social justice for all Indonesian people as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia is to utilize existing natural resources for the welfare of society. Article 3 paragraph (3) of the 1945 Constitution of the Republic of Indonesia also mandates that the land, water and natural resources contained therein shall be controlled by the state and used as much as

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possible for the prosperity of the people. This study also confirms that according to many experts, progressive law is pro-justice and pro-people law. This means that in sentencing legal actors are required to prioritize honesty and sincerity in law enforcement. They must have empathy and concern for the suffering experienced by the people. Thus, the interests of the people, in this case welfare, must be the orientation and ultimate goal in administering law.

**KEYWORDS:** Progressive Law, Environmental Justice, Environmental Law, Law Enforcement



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## I. INTRODUCTION

Satjipto Rahardjo's progressive legal concept originated from his anxiety that after 60 years of the age of the state of law, it was proven that it would not have realized a better legal life, with his concern he said: *"I feel a sense of anxiety that sudaah reflects on more than sixty years of the age of the State of Law of the Republic of Indonesia. Various national plans have been made to develop laws in the country, but they have also not given satisfactory results, even the graph shows a downward trend. People*

*are not talking about a legal life that shines more and more, but rather, an increasingly bleak legal life".<sup>1</sup>*

Departing from the harsh reality of life and the role of the law which he constituted above, there arose a desire to return to the legal foundation of this country, even the deceased thought about the possibility of a fallacy and even a lack of accuracy in understanding the fundamentals of the law, so that the deceased asserted that the development of law could not be directed towards the right. Then in 2002 it became known as the Progressive Law Commission in Indonesia. The idea of progressive law enforcement was born out of dissatisfaction with the practice of positive legal science in Indonesia. The Progressive Law was initiated as a solution to the failure to implement positive law and a sense of concern for the quality of law enforcement in Indonesia, especially since the reform in mid-1998.<sup>2</sup>

Progressivism is contrary to the view of humanity which states that human beings are inherently good, have the qualities of affection and concern for others. However, the basis of Progressive Law is guided by the basic nature of "the law is for man". Law is not present for itself as initiated by the science of positive law, but rather for man in order to achieve human well-being and happiness. Progressivism teaches, that the law is not a king, but a tool for laying out the basis of humanity that serves to give grace to the world and man.

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<sup>1</sup> Romli Atmasasmita. *Teori Hukum Integratif*. (Yogyakarta, Genta Publishing, 2012), pp. 86-87

<sup>2</sup> Atmasasmita, 2012. *See also* Rahardjo, Satjipto. "Hukum Progresif: Hukum yang Membebaskan." *Jurnal Hukum Progresif* 1, No. 1 (2005): 1-24; Ansori, Lutfil. "Reformasi Penegakan Hukum Perspektif Hukum Progresif." *Jurnal Yuridis* 4, No. 2 (2018): 148-163.

Progressivism does not want to make law an unconstitutional technology, but rather an institution that is moral to humanity.<sup>3</sup>

The idea is clearly different from the positive law stream where truth lies in the body of a rule with priority to formal legality. The presence of progressive Law is closely related to human relations with society. If it is associated with the developmental legal model of Nonet and Selznick, Progressive Law has a responsive type, that is, the law is always associated with goals outside the textual text of the law. Progressive law sees the law not from the perspective of the law itself, but rather looks at the social goals it seeks to achieve as well as the consequences arising from the working of the law. Therefore, the presence of law is associated with its social purpose, so progressive law is also close to the Sociological Jurisprudence of Roscoe Pound, which rejects the study of law as the study of regulations.

Reforms and negative criticisms of Indonesia's system and law enforcement provide an opportunity for Indonesia to think of alternatives to get out of this bad situation. However, the downturn still provides an opportunity for Indonesia to think about its changes. In essence, law contains ideas or concepts that can be classified as something abstract including <sup>4</sup>ideas about justice, legal certainty, and

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<sup>3</sup> I Gede A.B. Wiranata, *Hukum Bangun Teori dan Telaah dalam Implementasinya*. (Yogyakarta, Genta Publishing, 2009), pp.53-55

<sup>4</sup> Wiranata, 2019. *See also* Al Arif, M. Yasin. "Penegakan Hukum dalam Perspektif Hukum Progresif." *Undang: Jurnal Hukum* 2, No. 1 (2019): 169-192; Nuryadi, H. Deni. "Teori Hukum Progresif dan Penerapannya di Indonesia." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, No. 2 (2016): 394-408; Ravena, Dey. "Wacana Konsep Hukum Progresif dalam Penegakan Hukum di Indonesia." *Jurnal Wawasan Yuridika* 23, No. 2 (2014): 155-166.

social expediency. The law that is still abstract needs to be realized or spelled out, in this order it is called law enforcement.

The reality of the application of existing laws, the order of legal settlement can no longer use ordinary and conventional means but requires extraordinary means. One of the ways offered by Satjipto Rahardjo in dealing with problems in the world of Indonesian law enforcement is a type of progressive law enforcement. Progressive law enforcement invites Indonesia to look at the law comprehensively and not wear horse glasses. Progressive law enforcement emphasizes two things: the law exists for humans and not humans exist for the law. The law cannot work alone, it needs institutions or humans to move it.

Progressive law enforcement is to carry out the law not just according to the black-and-white words of the regulations but according to the spirit and deeper meaning of the law or law. The discussion of progressive law enforcement above is the starting point for why progressive law enforcement is used as an alternative type of law enforcement. The takeable meaning that "*the truth of the law cannot be construed solely as the truth of the statute but must be understood as the truth of the principle of justice underlying the statute*".<sup>5</sup>

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<sup>5</sup> Satjipto Rahardjo. *Membedah Hukum Progresif*. (Jakarta, PT Kompas, 2006), pp. 6-10. See also Aulia, M. Zulfa. "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi." *Undang: Jurnal Hukum* 1, No. 1 (2018): 159-185; Rhiti, Hyronimus. "Landasan Filosofis Hukum Progresif." *Justitia Et Pax* 32, No. 1 (2016); Ansori, Lutfil. "Reformasi Penegakan Hukum Perspektif Hukum Progresif." *Jurnal Yuridis* 4, No. 2 (2018): 148-163; Setiaji, Mukhamad Luthfan, and Aminullah Ibrahim. "Kajian Hak Asasi Manusia dalam Negara the Rule of Law: Antara Hukum Progresif dan Hukum Positif." *Lex Scientia Law Review* 2, No. 2 (2018): 123-138.

## II. METHODS

In an effort to find data as material for research and writing this paper, this study used the literature review, namely by using books on environmental law such as Primary Legal Materials on binding subjects in accordance with the discussions raised starting from the 1945 Constitution which is high in terms of low laws and secondary law provides explanations of primary legal materials such as books, the work of legal circles.

## III. PROGRESSIVE LAW ENFORCEMENT: A DISCOURSE IN INDONESIA

Looking at the reality of the use of existing laws, then in the order of legal settlement can no longer use ordinary and conventional means but requires extraordinary legal means. One of the extraordinary ways offered by Prof. Satjipto Rahardjo to deal with the chaos in our law enforcement world is a progressive type of law enforcement. Hukum must be placed on its essential or philosophical dimension, so that the law can make itself a child who is not disobedient to the society that gave birth to and raised it. Progressive law enforcement invites us to look at the law comprehensively or fully and not wear horse or partial glasses.

Progressive law enforcement emphasizes two things: the law exists for humans and not humans exist for the law. The law cannot work alone, it needs institutions or humans to move it. Man is a unique, so the law no longer works like an automated machine that just presses a button. Law is not only a matter of regulation or law, but also about the role of humans or human behavior as part of the embodiment of the law. Involving the role of man is a punitive way to get out of the

blindly dominant stagnation of the text of the law. We do not have to be imprisoned in the law, if the law has a contradiction with the achievement of justice, then it becomes possible that the choice of overriding can be made in order to create legal justice in society. Since all written texts require interpretation, it becomes wrong to say the law or statute is clear. The law is flawed from birth, because the law has many weaknesses, especially the problem of language use, written language cannot accommodate all the ideas, ideas, pure legal minds in society, which are often referred to by Prof. Satjipto Rahardjo as scattered meanings.<sup>6</sup>

Progressive law enforcement is to carry out the law not just according to the black-and-white words of the regulation (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law or law. Law enforcement is not only intellectual intelligence, but rather with spiritual intelligence. In other words, law enforcement is done with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find another way than is usually done. The idea of progressive law enforcement was born out of considerable intellectual reflection.

The discussion of progressive law enforcement above is one of the track records of intellectual reflection that is the starting point for why progressive law enforcement is used as an alternative type of law

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<sup>6</sup> Sukananda, Satria. "Pendekatan Teori Hukum Progresif dalam Menjawab Permasalahan Kesejangan Hukum (Legal Gaps) di Indonesia." *Jurnal Hukum Ekonomi Syariah* 1, No. 2 (2018): 135-158; Suyatno, Suyatno. "Progressive Law Implementation in the Southeast Asian Country Environment." *First International Conference on Progressive Civil Society (ICONPROCS 2019)*. Atlantis Press, 2019.

enforcement. It should be highlighted that "*the truth of the law cannot be construed solely as the truth of the statute but must be understood as the truth of the principle of justice underlying the statute*". Progressive Law means law of a forward nature. The term progressive law, introduced by Satjipto Rahardjo, is based on the basic assumption that law is for humans. This is due to the low contribution of legal science in enlightening the Indonesian nation, in overcoming crises, including crises in the field of law itself. As for the definition of progressive law, it is to change rapidly, carry out fundamental reversals in legal theory and praxis, and make various breakthroughs.

The definition as stated by Satjipto Rahardjo means that progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and well-being. More simply a progressive law is a law that makes a release, both in the way of thinking and acting in the law, to allow the law to flow alone to complete its duty of service to man and humanity. So, there is no engineering or partiality in enforcing the law. Because the law aims to create justice and welfare for all people. The liberation is based on the principle that the law is for man and not the other way around and the principle that the law is for man and not the other way around and the law does not exist for himself, but rather for something broader which is for human self-esteem, happiness, well-being, and human glory. Progressive law is not merely dogmatic.<sup>78</sup> Specifically, progressive law can be called a pro-people law and a fair law. Therefore, progressive law abandoned

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<sup>7</sup> Satjipto Rahardjo. *Membongkar Hukum Progresif*. (Jakarta, Penerbit Kompas, 2008), pp. 126-129.

<sup>8</sup> Rahardjo, 2008.



the tradition of jurisprudence or *rechtsdogmatiek*. Legal *progressiveism* teaches that law is not a king, but a tool to lay out the basis of humanity that serves to give grace to the world and man. The assumption underlying legal progressiveism is that first the law exists for man and not for himself, the second law is always at the status of law in the making and is not final, the third law is the moral institution of humanity.

Based on the assumptions above, the progressive legal criteria are:<sup>9</sup>

1. Have a great goal in the form of human well-being and happiness.
2. Contains a very strong moral content of humanity.
3. Progressive law is a law that liberates a very broad dimension that moves not only in the realm of practice but also theory.
4. Critical and functional.

The concept of progressive law proposed by Prof. Satjipto Rahardjo, when interpreted simply can be interpreted as "*how*" to let the law flow to complete its task of serving humans and humanity. The points of thought of this progressive legal model can be described as follows:

1. Progressive law is aimed at protecting the people enju to the ideal of the law.
2. The law rejects the status quo and does not want to make the law a conscienceless technology, but rather a moral institution.
3. Law is an institution that aims to lead people to a just life, sejahtera, and make people happy.
4. The progressive law is "*pro people and pro justice law*"

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<sup>9</sup> Rahardjo, 2008., pp. 253-254.

5. The basic assumption of progressive law is for man, not the other way around. In this regard, then the law does not exist for itself, but rather for something greater.
6. The law is always in the process of continuing to be (law as a process, law in the making).

As mentioned above, to test the quality of the law, the benchmarks that can be used as guidelines include justice, welfare and partiality to the people are getting farther and farther from reality, considering the many legal issues that are not resolved properly. The number of corruption cases that unfolded but did not get a satisfactory solution became the main trigger for the birth of progressive legal thinking. People's trust in the law has faded so that the law is no longer considered as a commander in solving problems. It is very ironic for a State that bases itself on the law but cannot enforce the law because the trust of the people does not exist. Along with the development of *za manand* and the ever-changing conditions of society, giving rise to a stagnation, the current law is not able to provide a solution in the age of modern. Implication is that when man in every process of development is always changing according to the needs of his life, the law must follow these changes. This is the fundamental difference between progressive law and positivist law that has been applied in Indonesia. If so, far the law has always lagged far behind the development of people's needs, then progressive law is more open and response to change and *tidak* is bound by written law. In this case, the law must be placed in the whole humanitarian issue. Thus, the role of law is more to ensure the fulfillment of the needs of the community in terms of justice and welfare.

This means that the existence of the law should reflect the standard standards of what is good and bad, fair and what is unjust. This

matter in the context of Indonesianness must not be separated from the identity of the nation which is reflected in Pancasila. Pancasila values are national values that are accepted by all levels of society, all generations and even all cultures so that they are very worthy of being the main standard in the legal life of the nation and state.

#### IV. ENVIRONMENTAL LAW ENFORCEMENT

Law enforcement is the center of all "*life activities*" starting from law planning, law formation, law enforcement and law evaluation. Law enforcement is essentially an interaction between various human behaviors that represent different interests within the framework of mutually agreed rules. Therefore, law enforcement cannot be regarded solely as a process of applying the law as legalistic as legalists think. However, the law enforcement process has a broader dimension than this opinion because law enforcement will involve a dimension of human behavior. With this understanding, we can know that the legal problems that will always stand out are the problems of "*law in action*" not "*law in the books*".

The purpose of environmental law enforcement according to Santoso is to regulate (compliance) the values of protecting the carrying capacity of ecosystems and environmental functions which are generally formalized into laws and regulations, including provisions governing waste or emission quality standards. The values of protecting the carrying capacity of the ecosystem environment and the functioning of the environment are not always manifested in the form of laws and regulations as binding principles or binding norms. Not a few of these values are only in the form of nonbinding principles contained in an international declaration (*soft law*) as well

as the precautionary principles contained in the Rio Declaration (15th principle).<sup>10</sup>

The effective implementation of nonbinding principles should ideally be preceded by their translation into binding operational norms. But efforts to translate these non-binding principles are not always easy. Therefore, control is expected to be able to proactively translate or interpret these principles into court decisions.

Currently, environmental law enforcement in Indonesia is so bleak. How much environmental damage is happening with the increasingly rampant number of environmental criminals but legal action against them is not taken. Actually, this does not have to happen if environmental laws are actually enforced. Realizing the rule of law through law enforcement efforts and consistency will provide a strong foundation for the implementation of development, both in the economic, political, socio-cultural, and security defense fields. But realizing the rule of law still requires a process and time for the rule of law to truly have overarching implications for

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<sup>10</sup> Handl, Günther. "Declaration of the United Nations conference on the human environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992." *United Nations Audiovisual Library of International Law* 11, No. 6 (2012); ten Have, Henk. "Rio Declaration on Environment and Development." In *Dictionary of Global Bioethics*. (Springer, Cham, 2021), pp. 51-51; Wiersema, Annecoos. "The precautionary principle in environmental governance." In *Research Handbook on Fundamental Concepts of Environmental law*. (London, Edward Elgar Publishing, 2022), pp. 361-380; Knox, John H. "The Global Pact for the Environment: At the crossroads of human rights and the environment." *Review of European, Comparative & International Environmental Law* 28, No. 1 (2019): 40-47.

improving developmen.<sup>11</sup> In relation to Law No. 23 of 1997 concerning Environmental Management, law enforcement in the environmental sector can be classified into 3 (three) categories, namely:

1. Enforcement of environmental laws in relation to Administrative Law.
2. Enforcement of environmental laws in relation to the Civil Law.
3. Law enforcement in relation to Criminal Law.

The law is of a basic nature, so it is known as a legal provision that overshadows other legal provisions that regulate environmental issues. Thus, the law becomes the basis for assessing and adjusting other legal provisions governing existing or future environmental issues.

Enforcement of environmental law can be carried out through the instruments of state administrative law, civil law and criminal law. Resolution of environmental problems through administrative legal instruments aims to make acts or neglects that violate the law or do not meet the requirements, stop, or return to their original state (before there was a violation). Therefore, the focus of administrative sanctions is the act, while the sanction of the criminal law is the person (*dader, offender*). In addition, criminal law sanctions are aimed not only at makers, but also at those who have the potential to become makers (violators).<sup>12</sup>

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<sup>11</sup> Nurs-Al Umar, Santoso Budi. "Penegakan Hukum Lingkungan di Indonesia." *Jurnal Wacana Hukum* 10, No. 2, (2011): 21-38. DOI: 10.33061/1.jwh.2011.10.2.253.

<sup>12</sup> Lestari, Berlian Putri Haryu. "Environment and Law, What Is the Indonesian Context? A Review Book 'Hukum Lingkungan Sebuah Pengantar untuk

There are at least 4 (four) laws and regulations that can be used as the basis for administrative law enforcement, namely:

1. Hinder Ordonantie (S. 1926-226)
2. Law No. 23 of 1997 concerning Environmental Management.
3. PP Number 20 of 1990 concerning Water Pollution Control Jo. PP No. 82 of 2001 concerning Water Quality Management and Water Pollution Control.
4. PP No. 19 of 1994 jo. PP No.12 of 1995 concerning B-3 waste management, as amended by PP No. 18 of 1999 and PP No. 85 of 1999.

## V. CASE OF SOUTH KALIMANTAN FOREST

Currently in South Kalimantan there are 510 mining power plants, and 23 PKP2B the area of all permits reaches 1.2 million hectares, there are 700 thousand ha of oil palm plantation permits from the realization of 1.1 million plantations, HPH of 261,966.67 hectares, HTI concession permits covering an area of 383,683.46 ha. Total licensing of 2.5 million Ha (land area of South Kalimantan 3.7 million Ha, coal mine production in 2010 was recorded at 86 million tons or a decrease of 10 million tons compared to 2009 production which reached 96 million tons., But in general, throughout the last 10 years South Kalimantan coal production has continued to increase quite

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Konteks Indonesia', Prof. Dr. HM Hadin Muhjad, SH., M. Hum., PT Genta Publishing, Yogyakarta, 2015, 232 pages, ISBN: 978-602-1500-25-5." *Indonesian Journal of Advocacy and Legal Services* 3, No. 1 (2021): 129-136; Fahrudin, Muhammad. "Penegakan hukum lingkungan di indonesia dalam perspektif Undang-Undang Nomor 32 Tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup." *Veritas* 5, No. 2 (2019): 81-98.

significantly, even in five years it was recorded that 444 million tons of coal were dredged from South Kalimantan.<sup>13</sup>

During the old order period the National policy closed foreign companies including coal in South Kalimantan. Until the end of the regim period of the Old Order government in 1965/1966. However, during the New Order period, the exploitation of natural resources in Indonesia was largely reduced starting with the rule of Suharto. It was preceded by the issuance of MPRS Decree No. XXIII / MPRS of 1966, Renewal of the Economic, Financial and Development Foundation. Changes in economic policy in 1966. The issuance of Law No. 1 of 1967 concerning Foreign Investment which opened the door to the state exploiting Indonesia's natural resources. Then the law was supported by Law No. 5 of 1967 concerning the Subject of Forestry which caused the forest to be handed over by the government to entrepreneurs.

The mining sector in South Kalimantan began with the issuance of Presidential Decree No. 49/1981 concerning Generation I Coal Concession Contracts or better known as the Coal Mining Concession Work Agreement (PKP2B). In South Kalimantan there are 3 companies, namely PT. Arutmin, PT. Adaro and PT. Chong Hua OMD (which was later revoked its license). The three contractors were given reserve acreage of about 230,000 acres. Arutmin's mine location is in Kota Baru Regency, while Adaro is in Hulu Sungai Utara and Tabalong Regencies, while Chung Hua OMD is in Banjar Regency. In 1993, the number of mining companies using PKP2B increased with the issuance of the Second-Generation Coal

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<sup>13</sup> Soedarso, Bambang Prabowo. "Potret Hukum Pertambangan di Indonesia dalam Era UU No. 4 Tahun 2009." *Indonesian Journal of International Law* 6, No. 3 (2009).

Concession Contract through Presidential Decree No. 21/1993 consisting of 5 companies, namely PT. BCS, Bantala CM, Antang Gunung Meratus, Jorong Barutama, Borneo Indobara. The Generation III Coal Concession Contract was issued with Presidential Decree No. 75/1996 consisting of 11 companies, namely PT. Mantimin Coal Mining, Bara Pramulya Abadi, PT. Generalindo Prima Coal, Wahana barata Mining, Ekasatya Yanatama, Lianganggang Cemerlang, Sinarindo Barakarya, Adibara Bansatra, Bukit Kalimantan Indah, PT. Senamas Energindo Mulai, PT. Kalimantan Energy Lestari.<sup>14</sup>

Until now South Kalimantan Forest has been exploited specifically for coal mining, previously the exploitation of South Kalimantan Forest timber forest on a large scale, both legally and illegally. These last 8 Sections are often referred to as Wild Mining (PETI). According to the Chairman of ASPERA (People's Miners Association) South Kalimantan for 2004 the production of coal produced by PETI reached 10 million metric tons. <sup>15</sup>While the law only touches on illegal mining. Ironically the case of detention of the suspects never existed in this area. Some people who were made suspects were not known to be processed all the way to court.

Some conflagrations of customary lands and communities around mining often occur. In fact, when efforts to empower Industrial Plantation Forests (in accordance with the Forestry Law No. 41 of 1999) have not been completed, there are already mining concession

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<sup>14</sup> Supriadi Supriadi. *Hukum Lingkungan di Indonesia*. (Jakarta, Sinar Grafika, 2008), pp. 48-50.

<sup>15</sup> Sarmadi, Akhmad Sukris. "Penerapan hukum berbasis hukum progresif pada pertambangan batu bara di Kalimantan Selatan." *Masalah-Masalah Hukum* 41, No. 1 (2012): 8-19.



blocks in forest areas. According to data from the forestry service in 2006, the mining area that overlaps with the forest concession area, both HPH and HTI, there are at least 18,101 ha. As a result, the Forest in Kal Sel is in crisis. Based on Repprot map data from 1985 – 1997 forests in South Kalimantan shrank by 44.4% for twelve years or an area of 769,713 Ha in other words 3.7% per year. According to Santoso, the South Kalimantan Forestry Office of the HPH land area in South Kalimantan was recorded at 868 thousand ha and what is still a good forest was only 150 thousand ha in 1997. Meanwhile, in 2004 deforestation amounted to 90,752 thousand ha per year.

Law No. 4 of 2009 on Minerals and Coal continues to legalize the dredging of coal mines. This law, when read in terms of legal science, must not stand alone because it is still included in the realm of environmental law which means it is very closely related to the Forestry and Environment Law or umbrella provisions for other laws and regulations. For example, Law No. 24 of 1992 concerning Spatial Planning was replaced by Law N0. 26 of 2007. similarly, Law No. 5 of 1990 on the Conservation of Biological Natural Resources and Their Ecosystems and Law No. 41 of 1999 on Forestry in addition to other regulations related to efforts to create an environment that supports a prosperous life for every citizen. Only the problem for entrepreneurs and local governments may be in its own implementation. Considering what is contained in Article 2 of Law No. 4 of 2009, the principle and purpose section states that mineral and/or coal mining is managed based on:

1. benefit, fairness, and balance
2. partiality to the interests of the nation
3. participatory, transparency, and accountability
4. sustainable and environmentally sound.

In fact, until now with the issuance of Law NO. 4 In 2009, it was still felt that coal dredging did not meet the environmental interests of forest destruction and failed reclamation. Forestry Minister Zulkifli Hasan reminded mining to pay attention to the environment in South Kalimantan. For this reason, do not be overexploited, because it will harm the environment in the future. The minister's warning was well-founded due to the reality of very severe environmental conditions while the minister himself was powerless to stem the threat of environmental damage.

This is because Mineral and Coal Law has granted extensive permits according to what procedures it regulates. Regulation so far generally supports the occurrence of dredging even though in its regulatory purpose it calls pro on benefits, fairness, balance, national interests and environmental insight. But still mining is felt now very supportive of the destruction as happened in South Kalimantan and other forest areas in Indonesia. South Kalimantan's wealth is now completely drained. Regulations in the new order era have consumed the South Kalimantan Forest area and have now dredged parts of the earth with the rise of new stone mining in addition to other earth bowels such as iron ore or iron stone, manganese, gold, kaolin, quartz sand, limestone, phosphate, granite rock, nickel, chromite and others.

The Regional Government claims that compared with the area of South Kalimantan Province, the area of land that has been opened for mining business activities is 0.23%. This means that licensing for coal is still considered small. But a valid comparison is to look at the South Kalimantan Forest area because coal land is generally located in a forest area. Some valid data on the environmental reality in South Kalimantan every year shows that environmental conditions are increasingly damaged. Data from Landsat Deput Image of the area of

forested areas of 987,041.14 Ha (2001) and 935,900.00 (2002) of South Kalimantan Forest has decreased by 51,141 Ha or every day lost 140 ha of forest area or 141 times the area of a football field. The same figure also occurred in 2003, so the estimated area of remaining forest in 2007 was 884,758.86 ha.

Based on the analysis and decree of the Minister of Forestry 453 the area of South Kalimantan protected forest in 2008 only reached 433,677 hectares and even then, 142 523 hectares have been encroached by mining. If based on the data above where mining permits were issued as much as 228,556.25 Ha, South Kalimantan now means that it has lost its forest as a life protector. It is proven that the destruction of forests has an impact on reducing the quality of human resources, damage to infrastructure, loss of customary rights and plantations, as follows:

1. Human Resources Declining, the South Kalimantan Human Development Index dropped from 24th in the previous year to 26th out of 33 provinces. The very dominant factors in determining the Human Development index are health and education. In other words, local revenues are no better or are ineffective for health and education improvements. Meanwhile, other regions that do not prioritize coal are actually ranked higher.
2. Infrastructure problems, the use of state roads resulting in new problems in work traffic and the stability of the community of other road users or the public interest. Even the increase in road accidents and prolonged shortness of breath while the Government cannot do anything to overcome it. Although now the Head of South Kalimantan Region has currently enacted Perda No. 3 of 2008 which prohibits coal transportation across

public roads. There is still damage to roads, namely village areas become damaged to the mining area.

3. PLN Steam, a large part of coal production is not enjoyed by residents. Only five percent is used in South Kalimantan for power generation, the rest supplies steam power plants on the island of Java and is exported abroad. Even though electricity is a serious problem here. PLN cannot serve new electricity needs, even now there have been rotating outages that are increasingly frequent.
4. Floods, there at the beginning of each year recorded floods in almost all regencies / cities in South Kalimantan, such as Banjar, Tabalong, Tanah Bumbu, Hulu Sungai Tengah, Hulu Sungai Utara, Hulu Sungai Selatan, Barito Kuala, Tanah Laut and Kotabaru regencies. The three worst areas are Banjar Regency, Hulu Sungai Utara Regency, Tanah Bumbu Regency. According to data from the Provincial Social Service to date, 22,853 households or 66,667 people have been displaced. Hundreds of hectares of rice fields were submerged and resulted in material losses of 2.410 billion rupiah. And in early 2009 the Flood Area became more widespread. The cause is forest destruction, loss of catchment areas in the upstream area due to damage to existing forests and causing water resistance to almost non-existent. In addition, because of the watershed, it can no longer be an effective buffer zone to prevent flood disasters. severe damage in the antanya is the Tabalong Sub-Watershed, Tapin, Riam Kiwa, Maluka, Kintap, Tabonto, Satui, Kusan and Sebamban.
5. Destruction of People's Plantations, which is a tremendous damage to the environment and surrounding residents. It is proven that water infiltration in mining areas is zero even though it is in the dry season. This means that if there is rain, all the

rainwater will enter water bodies, the pits of the former mines that number in the thousands. If the former mining pits are full and the water overflows, it will pollute the river area, plantations and community farms. The plant will die. Loss of Customary Rights. With so many HPH and mining area partitions, for legalistic reasons of the Mining Power of Attorney (KP) or the Agreement of Work on Coal Mining (Coal Mining Concession Work Agreement = PKP2B), customary rights can no longer be valuable. Lack of Regional Revenue. At the 2008 Local Government Meeting, it was revealed that the total revenue of the South Kalimantan area was Rp. 1,616,748,000,000. Regional spending is estimated at Rp 1,606,450,000,000. Meanwhile, regional financing of Rp 14,500,000,000.22 of the 2009 Regional Revenue and Expenditure Budget Plan (RAPBD) remains highly pegged. Compared to 2008, South Kalimantan's 2009 budget increased by Rp 400 billion. Previously, the South Kalimantan regional budget of Rp 1.2 trillion in 2009 reached Rp 1.6 trillion. The excess of IdR 400 billion will not be able to change the damaged infrastructure, penance for the destruction of forests and the repair of all human resources and the consequences of continuous damage and the ideal of improving economic development. And it is proven that the 2010 budget of 2.1 trillion also cannot repair South Kalimantan's natural damage.

6. Poverty, the impact of the environment will lead to increased poverty. There is a close relationship between the environment and poverty. Damaged neighborhoods give birth to new poverty for the people.

The reclamation that has been voiced in legal regulation is inadequate to improve the environment. The destruction of forest resources and

the consequences of dredging in South Kalimantan coal mining cannot be avoided and felt directly by most communities. At this time, one sees from the top of the mining area like a black desert accompanied by huge holes that are immeasurable in depth. There is no possibility of being able to be reclaimed because the pit is so big and so deep.

In essence, it is not only a matter of legal structure but also in the area of its legal substance which is still felt to be poorly understood by officials and law enforcement. For example, many of the weaknesses that exist in Law No. 4 of 2009 concerning Mineral and Coal are not burdened with progressive thinking. One of them is that the sanctions in it can only be entangled against mining companies only administratively. Meanwhile, people who without permission to dredge land even with only simple tools can be charged with a criminal sanction of confinement for up to 10 years. In other words, it seems that the Law favors strong men who have all relied on large companies to dredge up mining.

The fact that the worsening of environmental damage has alarmed the Director General of Coal and Geothermal Minerals (Minerpabum) of the Ministry of Energy and Mineral Resources so that it issued letter Number 03.E / 31 DJB / 2009 dated January 30, 2009, regarding the prohibition of regional heads (Regents and Mayors) from issuing KP permits. But the goodwill of the Director General of Minerpabum was hampered by the lawsuit of the Regent of East Kalimantan who won it. The Supreme Court's decision to win the lawsuit against the Director General's letter occurred because it was contrary to Law Number 4 of 2009 which allowed mining dredging. Formalistically, the law of the judgment is correct but the legal idea desired by the

Director General of Minerpabum is actually progressive because it is pro-people and the environment.

The issue of minerals and coal is not only a community problem but also an environmental problem that in the future will also have an impact on the community. The breadth of licensing in the Mineral and Coal Law is very dependent on the conscience of the regional head. This reality has also been in South Kalimantan making the negative and critical impact of South Kalimantan's forests and earth. There is no significant solution to the mining problem so far except for the worsening environmental damage. For this reason, it is necessary to understand and revise the substance of the law, especially Law No. 4 of 2009 concerning Mineral and Coal as well as the way of thinking of authorized officials as well as mining business actors. A progressive way that is pro-people as well as regional policies that should also be pro-people.

According to Lili Rasjid, positive national laws that are used as a means of renewal in society still require renewal and guidance. In David M. Trubek's terms the law is dead, and he has always insisted that "*is law dead.*" According to Satjipto Raharjo, the law is only seen as a procedural regulation that is closely related to power. Whereas behind the law is also loaded with values, ideas so that it becomes. His view suggests that the content of the law must be broad in the scope of morality. Formal procedures are not necessarily able to deliver the administration of the law properly to its purpose. In fact, he may encourage actions that are not entirely based on the law. Therefore, the law must also be understood in substance so that the territory of humanity is not disturbed. The measure of the substance of the law is not only in the intent of lawmakers but also broadly enters pro-people justice.

## VI. CONCLUSION

This study finally highlighted and concluded that the purpose of progressive law-based environmental law actually provides two legal offers, one side wants to clarify the substantive law on environmental law and the other side so that there is a progressive application according to the basic principles of the constitution of the 1945 Constitution in Article 28H paragraph (1). Environmental Law based on progressive law teaches awareness that maintaining the environment is the main issue of all formal legalities that have a negative impact on the environment and society. Oleh therefore should in the implementation of Law No. 4 of 2009 continue to prioritize environmental law as an umbrella provision for other laws and regulations. Progressivism is contrary to the view of humanity which states that human beings are inherently good, have the qualities of affection and concern for others. However, the basis of Progressive Law is guided by the basic nature of "the law is for man". Law is not present for itself as initiated by the science of positive law, but rather for man in order to achieve human well-being and happiness. Progressivism teaches, that the law is not a king, but a tool for laying out the basis of humanity that serves to give grace to the world and man. Progressivism does not want to make law an unconscionable technology, but rather an institution of morality. Progressivism is contrary to the view of humanity which states that human beings are inherently good, have the qualities of affection and concern for others. However, the basis of Progressive Law is guided by the basic nature of "the law is for man". Law is not present for itself as initiated by the science of positive law, but rather for man in order to achieve human well-being and happiness. Progressivism teaches, that the law is not a king, but a tool for laying out the basis of



humanity that serves to give grace to the world and man. Progressivism does not want to make law an unconstitutional technology, but rather an institution that is moral to humanity.

The discussion of progressive law enforcement above is the starting point for why progressive law enforcement is used as an alternative type of law enforcement. The meaning that can be taken that the truth of the law cannot be construed solely as the truth of the statute but must be understood as the truth of the principle of justice underlying the statute. The term progressive law, introduced by Satjipto Rahardjo, is based on the basic assumption that law is for man. This is due to the low contribution of legal science in enlightening the Indonesian nation, in overcoming crises, including crises in the field of law itself. As for the definition of progressive law, it is to change rapidly, carry out fundamental reversals in legal theory and praxis, and make various breakthroughs. The definition as stated by Satjipto Rahardjo means that progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and well-being. More simply a progressive law is a law that makes a release, both in the way of thinking and acting in the law, so as to allow the law to flow alone to complete its duty of service to man and humanity. So, there is no engineering or partiality in enforcing the law. Meanwhile, specifically progressive law can be called a pro-people law and a fair law. Therefore, progressive law is different from positive law. Legal progressiveism teaches that law is not a king, but a tool to lay out the basis of humanity that serves to give grace to the world and man. The assumption underlying the progressiveism of law is that first the law exists for man and not for himself, the second law is always at the

status of law in the making and is not final, the third law is the moral institution of humanity.

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## COMPETING INTERESTS

The Authors declared that they have no competing interests.

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