

Penal Culture and Judicial Responses to Environmental Crimes: Lessons from Indonesian Environmental Courts

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Abstract

Environmental crimes in Indonesia—such as illegal logging, land burning, and industrial pollution—continue to threaten ecological sustainability despite the existence of comprehensive environmental legislation. While much scholarship focuses on regulatory frameworks and enforcement mechanisms, limited attention has been paid to the *penal culture* shaping judicial responses to environmental offenses. Penal culture refers to the underlying norms, values, and institutional attitudes that influence how punishment is interpreted and applied within the criminal justice system.

This article examines how penal culture influences judicial decision-making in Indonesian environmental courts. Using a socio-legal approach, the study analyzes selected environmental crime cases decided by Indonesian courts, focusing on judicial reasoning, sentencing patterns, and the role of criminal sanctions in environmental protection. The research draws on case law analysis, statutory interpretation, and relevant doctrinal



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literature to identify how judges conceptualize environmental harm, corporate liability, and the objectives of punishment. The findings suggest that Indonesian courts demonstrate a mixed penal culture. On one hand, certain decisions reflect a deterrence-oriented approach through the imposition of fines, imprisonment, and corporate sanctions. On the other hand, many judgments reveal a cautious or moderate penal orientation, where environmental harm is treated within conventional criminal law frameworks rather than as a distinct ecological injustice. This tension affects the consistency and effectiveness of environmental crime enforcement. The article argues that strengthening environmental protection requires a transformation of penal culture toward a more ecologically responsive and sustainability-oriented judicial perspective. Such a shift would emphasize environmental harm, corporate accountability, and restorative principles aligned with sustainable development goals. By highlighting the role of judicial culture in environmental enforcement, this study contributes to broader debates on environmental criminal law and sustainable governance in Indonesia.

KEYWORDS *Penal Culture; Environmental Crime; Environmental Courts; Judicial Decision-Making; Sustainable Development*

Introduction

The persistent degradation of Indonesia's megadiverse ecosystems necessitates a rigorous examination of the legal frameworks intended to safeguard them. Despite the enactment of comprehensive environmental legislation, such as the Law on Environmental Management and Protection (UU PPLH), the archipelago continues to grapple with systemic challenges including illegal logging, peatland fires, and industrial pollution. These issues are not merely logistical or economic; they represent a fundamental crisis in sustainability governance that threatens both local livelihoods and global climate targets.¹ The Indonesian

¹ Laely Nurhidayah, Zada Lipman, and Shawkat Alam. "Regional Environmental Governance: An Evaluation of the ASEAN Legal

government has attempted to align its domestic policies with international environmental standards, yet the gap between statutory intent and ecological outcomes remains vast. This introductory section establishes the environmental landscape of Indonesia as a critical site for legal inquiry, emphasizing that the sheer scale of biodiversity loss demands a re-evaluation of how environmental crimes are conceptualized and prosecuted within a developing state context. As the nation pivots toward a “*Green Economy*,” the tension between extractive industries and conservation goals becomes the primary driver of legal friction.²

The role of criminal law in environmental protection is increasingly viewed as a tool of last resort, or *ultimum remedium*, yet its efficacy is frequently debated in legal circles. In theory, criminal sanctions serve a dual purpose: they provide a deterrent against corporate malfeasance and offer a retributive mechanism for irreparable ecological harm.³ However, the application of these laws in Indonesia often encounters significant hurdles, ranging from evidentiary complexities to the influence of powerful political-economic actors. Unlike administrative or civil remedies, criminal law carries a unique symbolic weight, signaling a society’s moral condemnation of acts that jeopardize the biosphere. Without a robust penal framework that is consistently applied, environmental regulations risk becoming “*paper tigers*” that fail to influence corporate behavior. The integration of ecocide concepts into the national discourse suggests a shifting paradigm, where the environment is no longer viewed merely as a resource to be managed, but as a legal subject requiring protection from criminal exploitation.⁴

A significant gap exists in current scholarly literature regarding the penal culture that informs environmental

Framework for Addressing Transboundary Haze Pollution.” *Australian Journal of Asian Law* 15, no. 1 (2014): 1-17.

² Sri Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*. (Surabaya: Airlangga University Press, 2020).

³ Helena Du Rées, “Can Criminal Law Protect the Environment? 1.” *Green Criminology*. (London: Routledge, 2017), pp. 409-426.

⁴ Michael Faure, and Andri Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*. (Cheltenham: Edward Elgar Publishing, 2013).

adjudication in Indonesia. While many studies focus on the technicalities of environmental statutes, few explore the underlying cultural and sociological factors that influence how judges and prosecutors perceive environmental harm.⁵ Penal culture refers to the collective mindset, traditions, and values that shape the sentencing and judicial reasoning processes. In Indonesia, this culture is often characterized by a formalistic adherence to statutory text at the expense of substantive ecological justice. This lack of focus on the human and cultural elements of the judiciary means that even the most progressive laws may be neutralized by a conservative or anthropocentric penal philosophy. By failing to account for how judicial actors internalize environmental values, existing research offers an incomplete picture of why enforcement remains inconsistent across different jurisdictions within the country.⁶

The concept of penal culture extends beyond the courtroom and into the broader socio-political fabric of the Indonesian legal system, operating as a distinct force separate from general “legal culture” or “judicial activism.” While legal culture encompasses the broad, foundational attitudes toward the rule of law and institutional procedures, penal culture isolates the specific, often unwritten norms that dictate *how, why, and whom* the state punishes. Furthermore, unlike judicial activism—where judges intentionally stretch or reinterpret legal boundaries to achieve progressive justice—penal culture represents an entrenched, often conservative ethos that binds judicial discretion to political and economic realities.

For instance, the historical preference for administrative fines over custodial sentences for corporate executives reflects a specific penal orientation that prioritizes economic continuity over ecological restoration⁷; this is not an act of progressive activism, but rather a compliance with systemic, pro-corporate pressures. This research seeks to bridge the gap by analyzing how

⁵ David Nelken, *Comparative Criminal Justice: Making Sense of Difference*. (London: SAGE Publications, 2010).

⁶ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*. (Oxford: Oxford University Press, 2001).

⁷ Budy P. Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.” In *Livelihood, the Economy and the Environment in Indonesia*. (Jakarta: Yayasan Pustaka Obor Indonesia, 2012), pp. 20-50.

these punitive dimensions interact with the formal requirements of the law. Understanding this interplay is essential for identifying why certain environmental crimes are prosecuted with vigor while others are dismissed or reduced to minor infractions. The discourse on penal culture provides a necessary lens through which we can observe the invisible barriers to environmental justice, moving the conversation from what the law says (*legal culture*) or how judges bend it (*judicial activism*) to how the law is lived, felt, and performed by legal practitioners.⁸

The dynamic of the struggle between a hegemonic penal culture and progressive impulses is clearly visible in several important Indonesian jurisprudence cases. In the PT Kallista Alam case concerning peatland fires in Aceh and the Balige Decision No. 28/Pid.Sus/2015/PN.Blg (PT Gorga Duma Sari), it is emphasized that there are concrete manifestations of judicial activism that broke the rigid boundaries of formal legal texts. By applying the principles of *in dubio pro natura* and polluter pays, the judges in both cases shifted from simply upholding conventional, repressive-economic criminal law to a restorative, eco-centric approach—even to the point of imposing environmental restoration measures beyond the prosecutor's demands. In contrast to the permissive mainstream corporate criminal culture, Decision No. 190/Pid.B/LH/2020/PN Plw underscores the complexity of determining legal subjects, where judges are forced to dismantle the “invisible wall” of corporate criminal liability to determine the boundaries of sanctions between directors, corporate entities, or both.

However, this shift in the culture of punishment is not merely about maximizing punishment, but also about strengthening the social protection function of the law. This is reflected in Decision No. 374/Pid.Sus/2024/PT SMG, which involved an environmental defender. Rather than blindly applying repressive maximum sanctions, the court adopted a proportional approach to punishment through the lens of anti-SLAPP and the double-track system. This case demonstrates that

⁸ Nicola Lacey, “The prisoners’ dilemma in England and Wales.” In *Tackling Prison Overcrowding*. (London: Policy Press, 2008), pp. 9-24; James Q. Whitman, “The Prisoners’ Dilemma: Political Economy and Punishment in Contemporary Democracies, by Nicola Lacey.” *New Criminal Law Review* 13, no. 3 (2010): 625-632.

the culture of punishment that lives in the minds of law enforcement officials is beginning to loosen the rigidity of formal legal culture in favor of substantive justice and the public interest. Collectively, these four dynamics of jurisprudence emphasize that the Indonesian courtroom is now a dynamic arena of contestation—a place where the culture of punishment is gradually being challenged by a new wave of judicial activism that favors ecological and humanitarian justice.⁹

Central to this inquiry are specific research questions that guide the analysis of Indonesia's judicial response to environmental degradation. First, how does the prevailing penal culture among Indonesian judges influence the sentencing outcomes in cases of large-scale environmental destruction? This question seeks to uncover the subjective biases and professional norms that may lead to lenient sentencing for corporate actors. Second, to what extent does the current legal framework facilitate or hinder the integration of sustainability principles into criminal proceedings? By addressing these questions, the study aims to provide a diagnostic overview of the structural and cultural impediments to effective environmental law enforcement. These inquiries are not merely academic; they are vital for policy reformers who seek to harmonize the Indonesian penal system with the global imperatives of the Sustainable Development Goals (SDGs), particularly Goal 16 regarding peace, justice, and strong institutions.¹⁰

Furthermore, the research explores the degree to which institutional corruption and resource scarcity within the judiciary contribute to a weakened penal culture. It is insufficient to analyze judicial decisions in a vacuum; one must consider the material conditions under which prosecutors and judges operate. In many regions of Indonesia, the technical expertise required to evaluate environmental evidence—such as soil toxicity or forest density metrics—is severely lacking, leading to a reliance on

⁹ For more broader context, *see also* Tasnia Jahan Anika, and Erin Daniels. “Environmental Justice and Human Rights: Protecting Communities in the Face of Climate Change: Justicia Ambiental y Derechos Humanos: Protegiendo a las Comunidades Ante el Cambio Climático”. *Revista De Derechos Humanos Contemporáneos* 1, no. 1 (2025): 101-144.

¹⁰ United Nations. *The Sustainable Development Goals Report*. (New York: UN Publishing, 2023).

simplified legal interpretations.¹¹ This technical deficit, combined with a cultural tendency toward mediation and consensus, often dilutes the punitive intent of the law. The research questions are designed to probe these vulnerabilities, asking whether the Indonesian legal system is equipped, both culturally and logistically, to handle the complexities of 21st-century environmental crime.

The importance of this study is amplified by Indonesia's role as a primary custodian of tropical rainforests and carbon sinks. As international pressure mounts for Indonesia to curb deforestation and transition away from fossil fuels, the domestic legal system serves as the ultimate arbiter of these commitments. If the penal culture remains disconnected from the urgency of the climate crisis, the national strategy for sustainability will likely falter. The "greening" of the judiciary is a prerequisite for any meaningful environmental progress. By examining the disconnect between high-level policy rhetoric and the daily realities of environmental litigation, this paper highlights the urgent need for judicial reform that transcends mere legislative updates. The goal is to foster a penal culture that recognizes environmental harm as a fundamental violation of human rights and a threat to national security, rather than a mere regulatory inconvenience.

This research provides a comprehensive framework for understanding the intersection of criminal law, penal culture, and environmental sustainability in Indonesia. The introduction has established that while the legislative foundation exists, the cultural and systemic execution of environmental law remains the primary bottleneck to achieving ecological justice. By focusing on the nuances of adjudication and the mindset of legal actors, the study moves beyond traditional legal analysis to offer a more holistic view of environmental governance. The subsequent sections will detail the methodology, empirical findings, and policy recommendations aimed at revitalizing Indonesia's legal response to the ongoing environmental crisis. In addition, the success of Indonesia's sustainability agenda depends on a judicial system that is not only empowered by law

¹¹ Simon Butt, and Tim Lindsey. *The Constitution of Indonesia: A Contextual Analysis*. (Oxford: Hart Publishing, 2012).

but also driven by a penal culture that values the intrinsic worth of the natural world.

This study adopts a socio-legal research approach to bridge the gap between abstract legal doctrine and the empirical reality of judicial practice in Indonesia. Unlike traditional doctrinal research that focuses exclusively on the “law in books,” a socio-legal framework allows for an examination of the “law in action,” specifically how social norms, institutional attitudes, and penal culture influence the application of environmental statutes.¹² By situating environmental crimes within their broader socio-political and cultural contexts, this methodology facilitates a deeper understanding of why legal outcomes often deviate from statutory intent. This approach is particularly suited for analyzing the Indonesian judiciary, where the transition toward a “Green Judiciary” involves not only legislative compliance but also a fundamental shift in the professional identity and values of judicial actors.¹³

The selection of cases for this research follows a purposive sampling strategy designed to capture a representative cross-section of environmental adjudication in Indonesia. The primary criteria for case selection include the scale of ecological harm (e.g., large-scale forest fires, significant industrial effluents), the involvement of corporate entities as defendants, and the presence of complex judicial reasoning regarding sustainability and restorative justice.¹⁴ Cases were sourced from the Indonesian

¹² See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

¹³ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

¹⁴ Aprila Niravita, “Intersectionality and Indigenous Women’s Land Rights in Indonesian Agrarian Conflicts.” *The Indonesian Journal of Feminist Legal Studies* 1, no. 1 (2026): 121-150. See also Sebastián Alejandro Morales, and Andrés Castillo. “The Case of Gender Violence in Mexico: Does the Judicial System Ensure Substantive Justice for Victims? El Caso de la Violencia de Género en México: ¿Garantiza el Sistema Judicial la Justicia Sustantiva para las Víctimas?”. *Crítica de la Justicia Sustantiva* 1, no. 2 (2025): 205-232; Mason Dupont, Jonas Becker, Marcus Leung, and Pau Garcia Ferrando. “Defying the Norm: Analyzing the Legitimacy of Civil Disobedience in a Globalized World: Desafiando la Normativa: Analizando la Legitimidad de la Desobediencia Civil en un Mundo Globalizado”. *Revista de Desobediencia Comunitaria* 1, no. 1 (2025): 1-54.

Supreme Court's Directory of Decisions (*Direktori Putusan Mahkamah Agung*), focusing on landmark rulings from specialized environmental courts and general courts with certified green judges. This selection ensures that the analysis reflects high-stakes litigation where the tension between economic interests and environmental protection is most acute, providing fertile ground for observing the underlying penal culture.¹⁵

TABLE 1. Comparison Between Statutory Maximum Penalties Under UU PPLH and Sentences Imposed in Selected Environmental Cases

Case	Applicable Provision	Statutory Maximum Penalty	Sentence Actually Imposed	Percentage of Maximum Penalty
PT Kallista Alam (criminal case)	Article 98 UU PPLH	10 years imprisonment and IDR 10 billion fine	IDR 3 billion fine (no imprisonment because corporate defendant)	30% of maximum fine
PT Adei Plantation & Industry	Article 99 UU PPLH (negligence)	3 years imprisonment and IDR 3 billion fine	IDR 1 billion fine plus environmental restoration order of approximately IDR 2.99 billion	33.3% of maximum fine
PT Gorga Duma Sari	Environmental crime provisions under UU PPLH	Up to statutory maximum depending on charge	Restoration order imposed in addition to criminal sanction	Below statutory maximum punitive sanction
Environmental Defender Case (No. 374/Pid.Sus/2024/PT SMG)	General criminal provisions considered alongside environmental context	Formal criminal liability established	More proportional sentencing approach due to environmental advocacy context	Significantly below available maximum penalty

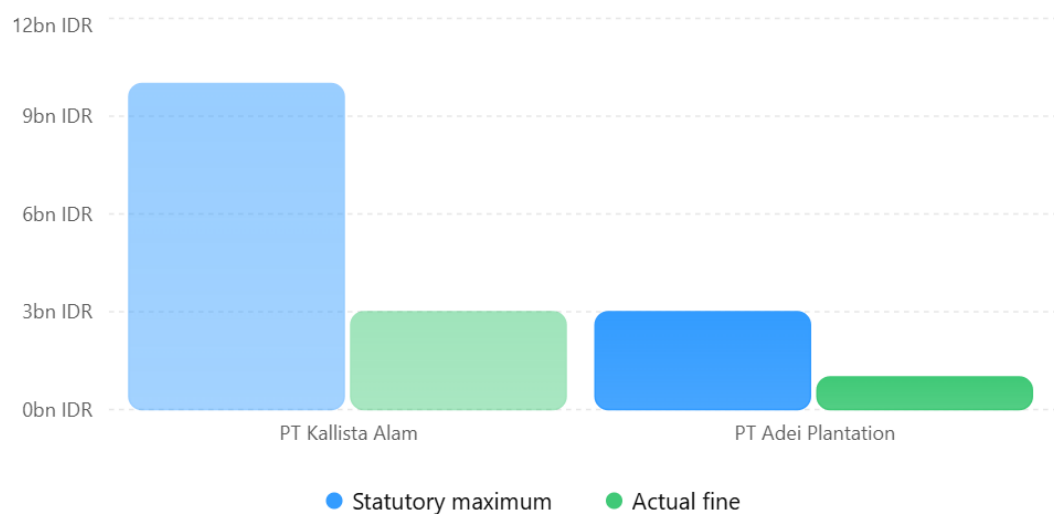
¹⁵ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

TABLE 2. Average (selected cases involving corporate environmental harm)

Indicator	Statutory Maximum	Average Actual Outcome
Fine	IDR 3–10 billion	Approximately IDR 1–3 billion
Imprisonment	3–10 years	Frequently not imposed on corporate defendants or imposed substantially below maximum levels
Additional Measures	Not always mandatory	Increasingly used (environmental restoration, remediation orders, ecological recovery)

FIGURE 1. Statutory Maximum Fine vs Actual Fine in Major Environmental Cases**Statutory maximum fines versus actual fines in major environmental cases**

Comparison of maximum fines available under UU PPLH and fines imposed in selected cases.



Source: Compiled from judicial decisions and environmental law scholarship. PT Adei Plantation & Industry was fined IDR 1 billion and ordered to fund environmental restoration of approximately IDR 2.99 billion. PT Kallista Alam was subjected to environmental restoration and compensation measures reaching hundreds of billions of rupiah, while the criminal proceeding resulted in a fine of IDR 3 billion.

The tables (Table 1 and Table 2) and chart reveal a recurring pattern in Indonesian environmental adjudication. Although

Articles 98 and 99 UU PPLH authorize severe penalties—up to 10 years' imprisonment and fines of IDR 10 billion for intentional environmental harm, and up to 3 years' imprisonment and fines of IDR 3 billion for negligent environmental harm—the sanctions imposed in major cases tend to cluster at the lower end of the statutory range.

This discrepancy suggests that judicial reasoning in environmental cases is increasingly influenced by a restorative rather than purely punitive rationale. Rather than maximizing imprisonment or fines, courts frequently supplement lower monetary penalties with environmental restoration orders, remediation obligations, and corrective measures. The PT Adei and PT Kallista Alam cases are illustrative because the courts emphasized ecological recovery alongside punishment.

From a *Penal Culture* perspective (Garland)¹⁶, this pattern can be interpreted as evidence of a transition from a traditional punitive model toward an ecological-restorative penal culture, where the legitimacy of punishment derives not solely from retribution but from its capacity to restore damaged ecosystems and prevent future environmental harm. The paradox, however, is that while restorative measures have become more prominent, the relatively low level of custodial and financial sanctions may weaken deterrence, particularly in cases involving large corporate actors whose economic gains from environmentally harmful activities may substantially exceed the penalties imposed. This tension between restoration and deterrence constitutes one of the central challenges of contemporary environmental criminal justice in Indonesia.

The analytical phase utilizes a combination of qualitative content analysis and judicial reasoning deconstruction to identify patterns in sentencing and legal interpretation. The study scrutinizes the *ratio decidendi* of selected judgments to uncover how judges conceptualize corporate liability, the polluter pays principle, and the *ultimum remedium* doctrine in practice.¹⁷ By categorizing judicial arguments—ranging from strictly formalistic to substantively ecocentric—the research

¹⁶ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

¹⁷ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

maps the prevailing penal orientation of the Indonesian courts. Furthermore, the analysis integrates statutory interpretation with relevant doctrinal literature to evaluate the consistency of these rulings with Indonesia's commitments to the Sustainable Development Goals (SDGs). This rigorous qualitative method allows for the identification of specific cultural bottlenecks within the judiciary that hinder the effective enforcement of environmental criminal law.¹⁸

Result & Discussion

A. Conceptual Framework: Penal Culture and Environmental Criminal Law

1. *Definition and Evolution of Penal Culture*

The concept of penal culture is foundational to understanding why legal systems vary in their treatment of identical crimes. It is defined as the set of meanings, beliefs, and shared values through which a society and its legal actors interpret the practice of punishment.¹⁹ Unlike formal legal doctrine, which is found in statutes, penal culture operates as an "internal legal consciousness" that dictates how judges and prosecutors actually apply those rules in practice.²⁰ This culture is not static; it is a dynamic construct shaped by historical precedents, political shifts, and the evolving moral standards of a society. In the context of criminal law, it bridges the gap between the "law in books" and the "law in action," explaining why two different jurisdictions with identical statutes can produce vastly different sentencing outcomes for the same environmental offense.

Historically, penal culture in Southeast Asia has evolved from traditional communal norms toward a centralized, state-driven punitive model largely inherited from colonial legal

¹⁸ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

¹⁹ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

²⁰ See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

structures. In the Indonesian context, this evolution is marked by a persistent tension between the *Pancasila* philosophy, which emphasizes harmony and deliberation, and the rigid, retributive structures of the inherited Dutch Penal Code.²¹ For decades, the penal orientation was primarily focused on “street crimes” and threats to state security, leaving white-collar and environmental offenses in a secondary, regulatory category. This legacy has created a judicial habitus where environmental destruction is often viewed through the lens of administrative non-compliance rather than as a severe criminal violation against the collective well-being of the nation.

As societal awareness of global ecological degradation grows, the definition of penal culture has expanded to include green dimensions. This involves evaluating whether the judiciary views ecological harm as a peripheral regulatory issue or a core violation of social order. A “green” penal culture is one that recognizes the intrinsic value of the environment and the irreparable nature of biodiversity loss. In Indonesia, the emergence of this culture is evidenced by the growing number of judges seeking environmental certification.²² However, the transition is slow, as the older generation of legal practitioners may still hold anthropocentric views that prioritize short-term economic utility over long-term ecological health.

Institutional barriers further complicate the evolution of this culture. One major hurdle is the “siloe” nature of legal education and practice, which often separates criminal law from environmental science, leaving judges ill-equipped to evaluate the long-term impacts of pollution or deforestation.²³ Furthermore, the pressure for economic development often creates a pro-investment judicial atmosphere, where harsh sentences for corporate entities are viewed as detrimental to the national economy. This economic-centric penal culture creates a

²¹ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

²² Baginda Khalid Hidayat Jati, et al. “Legal Culture, Environmental Non-Compliance, and the Persistence of Illegal Mining in Paningkaban.” *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 149-178.

²³ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

paradox where the law is used to protect the very extractive industries that threaten ecological stability.²⁴ Without addressing these underlying institutional and psychological factors, the move toward a sustainability-oriented judiciary will remain incomplete.

Furthermore, the role of public opinion and media cannot be ignored in the shaping of penal culture. In the digital age, high-profile environmental cases in Indonesia—such as forest fires in Sumatra or Kalimantan—are subject to intense public scrutiny. This external pressure can force a shift in penal culture, pushing the judiciary toward more punitive responses to satisfy public demand for justice.²⁵ However, such populist punitiveness can be a double-edged sword, leading to inconsistent sentencing that lacks a solid theoretical foundation in ecological justice. A truly evolved penal culture must be rooted in consistent legal principles rather than reactive responses to social media trends.

The globalization of legal norms has introduced international concepts of justice into the domestic Indonesian sphere. International treaties and the global discourse on “ecocide” have begun to permeate the local penal culture, challenging traditional notions of sovereignty and jurisdiction.²⁶ As Indonesian judges participate in international forums and environmental law networks, they bring back new perspectives on the role of the judiciary in protecting the global commons.²⁷ This cross-pollination of ideas is essential for modernizing the national penal culture, ensuring it is robust enough to handle the complexities of transnational environmental crimes.

2. *Theoretical Perspectives on Punishment*

In the realm of environmental adjudication, the theoretical justification for punishment serves as a primary driver of judicial

²⁴ See Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.”

²⁵ See Lacey, “The prisoners’ dilemma in England and Wales.” In *Tackling Prison Overcrowding*.

²⁶ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

²⁷ Riki Julianto, and Ridwan Arifin. “Intersection between Administrative Law and Private Law on Environmental Law Litigation in Indonesia Legal System.” *Indonesian Journal of Environmental Law and Sustainable Development* 2, no. 1 (2023): 69-104.

reasoning. The deterrence perspective, rooted in utilitarian philosophy, posits that the primary goal of criminal law is to prevent future offenses by ensuring that the costs of non-compliance—such as heavy fines or imprisonment—outweigh the economic benefits of environmental exploitation.²⁸ This is particularly relevant in cases of industrial pollution, where companies may view administrative fines merely as a “*cost of doing business*.” Deterrence relies on the certainty, severity, and celerity of punishment, yet in many environmental cases, the “certainty” of being caught and prosecuted remains low, undermining the theory’s effectiveness in practice.

Conversely, the retributive perspective argues that punishment is a moral necessity regardless of its deterrent effect; it seeks to impose a penalty that is proportionate to the “*moral wrong*” of destroying natural heritage.²⁹ Retribution focuses on the past act rather than future prevention, asserting that an offender “deserves” to suffer a loss equivalent to the harm they caused. In Indonesia, judges often struggle to balance these two ideals. While statutes allow for severe penalties, a cautious penal culture frequently leads to the imposition of moderate sentences that satisfy the formal requirements of retribution but fail to achieve the significant economic sting required for effective deterrence in corporate settings.³⁰

A transformative shift in modern penal culture is the move toward restorative justice, which prioritizes the repair of harm over the mere punishment of the offender. In environmental law, this manifests as a focus on ecological restoration and compensation for affected communities rather than simple incarceration.³¹ Restorative justice challenges the traditional anthropocentric view of crime by acknowledging that the “victim” is the ecosystem itself, along with the future generations who depend upon it. This approach requires a radical change in

²⁸ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

²⁹ See Du Rées, “Can Criminal Law Protect the Environment? 1.”

³⁰ Purniawati Purniawati, Nikmatul Kasana, and Rodiyah Rodiyah. “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).” *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020): 43-56.

³¹ Sands, and Peel. *Principles of International Environmental Law*.

judicial mindset—from asking “which law was broken?” to “what harm was done and how can it be fixed?”³² Within the Indonesian legal framework, restorative principles are increasingly being discussed as a means to resolve land-burning and forest encroachment cases.

The application of restorative justice, however, requires a high degree of technical expertise to determine the extent of ecological damage and the feasibility of restoration.³³ In Indonesia, where forensic environmental resources are often limited, judges may hesitate to order restoration as a primary sanction, fearing it cannot be effectively monitored. This leads to a fallback on traditional fines, which are easier to administer but do little to heal the scarred landscape. Therefore, the theory of restorative justice remains largely aspirational in the Indonesian context until the infrastructure for ecological monitoring is significantly strengthened.

Furthermore, the theory of “*incapacitation*” plays a role in environmental criminal law, particularly regarding corporate offenders. Incapacitation involves removing the offender’s ability to commit further crimes, which in a corporate context might mean the revocation of a business license or the permanent closure of a facility.³⁴ This is a severe form of punishment that Indonesian courts have been historically reluctant to use, fearing the economic repercussions of job losses and reduced tax revenue. This reluctance highlights a pro-business penal orientation where the survival of the firm is often prioritized over the prevention of further ecological harm.

The rehabilitative ideal suggests that the goal of the legal system should be to change the offender’s behavior through education and reform. In environmental law, this might involve mandatory environmental audits or the implementation of green management systems within a company (Higgins, 2020). While

³² John Braithwaite, *Restorative Justice & Responsive Regulation*. (Oxford: Oxford University Press, 2002).

³³ See Muhammad Agus Subandi, “Economic Efficiency and Legal Certainty in Indonesia’s Downstream Mining Policy.” *The Indonesian Journal of Economic Analysis of Law* 1, no. 1 (2026): 1-30.

³⁴ Pierre-Marie Dupuy, and Jorge E. Viñuales. *International Environmental Law*. (Cambridge, MA: Cambridge University Press, 2018).

rehabilitation is a noble goal, its success in the environmental sector is often hindered by the systemic nature of corporate greed. Without a strong punitive “stick” to accompany the rehabilitative “carrot,” many companies may treat environmental reform as a public relations exercise rather than a fundamental change in operations.

3. *Penal Culture within Environmental Criminal Law*

The intersection of penal culture and environmental law reveals a unique green criminology that examines how legal systems treat crimes against nature. Unlike traditional street crimes, environmental offenses often involve complex corporate structures and scientific data, which can intimidate or confuse a judiciary that lacks specialized training. A weak environmental penal culture is characterized by a tendency to view ecological damage as a technical violation rather than a criminal act, leading to the frequent use of administrative settlements over criminal prosecution.³⁵ Conversely, a robust environmental penal culture recognizes the intrinsic value of biodiversity and applies criminal sanctions with the intent to protect the biosphere as a global public good.³⁶

In Indonesia, the development of a specialized Green Judiciary certification program is a direct attempt to cultivate this robust culture. By sensitizing judges to the irreversible nature of species extinction and habitat loss, the state seeks to align judicial responses with the gravity of the ecological crises currently facing the archipelago.³⁷ This initiative recognizes that the mere existence of law is insufficient if the judges applying it

³⁵ See Arka Zeidan Mahardika Putranto, “Maqāṣid al-Sharī‘ah and Environmental Protection in Indonesian Islamic Legal Discourse.” *The Indonesian Journal of Islamic Legal Modernism* 1, no. 1 (2026): 91-120; Muhammad Fadhil, Siti Nur Aisyah, Chong Wei Jin, Hassan Ali, and Raudhah Ariffin. “The Green Economy vs. Indigenous Rights: A Study of the Indonesian Investment Law and Its Impact on Climate Justice”. *Indonesian Climate Justice Review* 2, no. 4 (2025): 1-47.

³⁶ Dupuy, and Viñuales. *International Environmental Law*.

³⁷ See Rangkuti, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*.

do not possess a “green heart.” However, the program's impact is often diluted by the high turnover of judges and the persistent influence of traditional, non-environmental legal doctrines that prioritize property rights over ecological integrity.

A defining feature of a modern environmental penal culture is its approach to corporate criminal liability. Traditionally, criminal law focused on individual *mens rea* (guilty intent), a standard that is difficult to satisfy within complex corporate hierarchies. A progressive penal culture, however, embraces the concept of corporate organizational fault, where a company's failure to implement adequate environmental safeguards is sufficient for criminal conviction.³⁸ In Indonesia, holding corporations accountable for forest fires represents a significant cultural milestone.

However, a critical disconnect exists between formal statutory power and actual judicial enforcement. Although the Indonesian legal framework explicitly permits the imposition of corporate “death penalties”—such as forced dissolution or permanent closure under asset forfeiture provisions—the prevailing penal culture routinely treats large corporations as “too big to fail.” This hesitation is driven by macroeconomic concerns, specifically the fear that corporate dissolution will trigger mass layoffs, disrupt local supply chains, and deter foreign direct investment. Consequently, the judiciary operates under a risk-averse penal orientation that prioritizes economic continuity and corporate legal personhood over ecological restoration.³⁹ The statutory mechanism for corporate dissolution is thus rendered functionally obsolete, as the penal culture reframes systemic environmental degradation as an acceptable trade-off for economic stability.

Furthermore, the social-legal reality of environmental prosecution often reveals a culture of negotiation. Because environmental cases are expensive and time-consuming to litigate, there is a cultural tendency among prosecutors to settle for lesser charges or administrative fines.⁴⁰ This pragmatic penal

³⁸ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

³⁹ Dupuy, and Viñuales. *International Environmental Law*.

⁴⁰ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

culture may increase the number of closed cases, but it fails to deliver the symbolic and deterrent impact that a full criminal trial provides. This culture of compromise can inadvertently signal to potential offenders that environmental laws are negotiable, further weakening the overall enforcement regime.

The penal culture also dictates how environmental victims are perceived and integrated into the criminal process. In many Indonesian courts, the focus remains strictly on the relationship between the state and the offender, often ignoring the communities that have lost their water sources or livelihoods to industrial pollution.⁴¹ A more inclusive penal culture would grant these communities a voice in the courtroom, allowing for a more comprehensive understanding of the harm caused. Moving toward a victim-centered environmental penal culture is essential for achieving social justice alongside ecological protection.

In addition, the role of the expert witness is a critical component of the penal culture in environmental law. Judges often rely heavily on the testimony of scientists and environmental engineers to establish the facts of a case. However, a culture of *scientific skepticism* or a lack of technical literacy within the judiciary can lead to the dismissal of crucial evidence.⁴² Strengthening the relationship between the scientific community and the judiciary is necessary to foster a penal culture that is evidence-based and ecologically accurate. Without this integration, environmental criminal law remains disconnected from the physical realities of the natural world.

4. *Relevance to Sustainable Development*

The prevailing penal culture within a nation's judiciary is a critical, yet often overlooked, indicator of its commitment to sustainable development. Sustainable development, particularly

⁴¹ Adi Wijayanto, Hatta Acarya Wiraraja, and Siti Aminah Idris. "Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement." *Unnes Law Journal* 8, no. 1 (2022): 105-132; Chloe Alexandra, and Zaidan Al-Khair. "Corruption in Indonesia's Natural Resources Sector: The Case of Illegal Mining Permits". *Indonesian Anti Corruption Studies* 2, no. 2 (2025).

⁴² See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

under the framework of the 2030 Agenda, requires institutions that are not only effective but also accountable and inclusive.⁴³ A penal culture that consistently permits lenient sentencing for environmental offenders undermines the rule of law and creates a climate of impunity that encourages unsustainable resource extraction. This directly conflicts with Sustainable Development Goal (SDG) 16, which emphasizes the need for strong judicial institutions to ensure justice for all (Higgins, 2020).

Furthermore, because environmental crimes often disproportionately affect marginalized and indigenous populations, a dismissive penal culture exacerbates social inequality. When the legal system fails to punish those who pollute communal lands or destroy traditional forests, it sends a message that the rights of the poor are subservient to industrial interests. By fostering a judiciary that views environmental protection as a prerequisite for long-term economic and social stability, Indonesia can better integrate its legal system with the pillars of sustainability—balancing social equity, economic growth, and environmental health.⁴⁴

The concept of intergenerational equity is another pillar of sustainable development that must be reflected in penal culture. Criminal law traditionally focuses on harm done in the present, but environmental crimes often have delayed effects that will be felt by future generations.⁴⁵ A sustainability-oriented penal culture would take into account the “long-term ecological debt” created by activities like illegal mining or hazardous waste dumping. This requires judges to look beyond the immediate damage and consider the cumulative impact of crimes on the planetary boundaries that sustain life.

Moreover, a strong environmental penal culture supports the “*polluter pays principle*,” which is central to sustainable economic models. When the judiciary enforces strict liability and high fines, it forces companies to internalize the environmental costs of their production, rather than externalizing them onto

⁴³ See United Nations. *The Sustainable Development Goals Report*.

⁴⁴ Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*. (London: Routledge, 2016).

⁴⁵ Sands, and Peel. *Principles of International Environmental Law*.

society.⁴⁶ This creates a market incentive for green innovation and sustainable practices. If the penal culture is weak, these costs remain externalized, and the economic playing field remains tilted in favor of unsustainable, high-pollution industries.

The integration of sustainable development into penal culture also requires a shift from a reactive to a proactive judicial stance. Instead of merely punishing harm after it occurs, a sustainability-oriented judiciary should use the law to prevent irreversible damage.⁴⁷ This involves the rigorous application of the precautionary principle, where the court intervenes even in the absence of absolute scientific certainty if there is a threat of serious or permanent harm. Cultivating this proactive culture is essential for navigating the uncertainties of climate change and environmental volatility.

The global nature of sustainability means that the domestic penal culture of one country has international implications. As a major holder of tropical forests, Indonesia's failure to prosecute environmental crimes effectively contributes to global carbon emissions and biodiversity loss.⁴⁸ Therefore, reforming the national penal culture is not just a domestic necessity but a global responsibility. A judiciary that is aligned with the SDGs can act as a powerful vanguard in the global fight for a sustainable future, ensuring that the law serves as a shield for the planet rather than a tool for its exploitation.

B. Environmental Criminal Law and Courts in Indonesia

1. *Overview of Indonesian Environmental Law Framework*

The evolution of environmental law in Indonesia is characterized by a transition from fragmented sectoral regulations toward a more integrated and holistic legislative

⁴⁶ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁴⁷ See Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*.

⁴⁸ See Resosudarmo, et al. "Forest Land Use Dynamics in Indonesia."

framework. The primary pillar of this system is Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH), which replaced earlier, less comprehensive statutes. This law established the fundamental principle that the environment is a legal interest requiring protection not only for its economic utility but for its intrinsic value and its necessity for human survival.⁴⁹ The framework is designed to address a wide spectrum of ecological threats, including pollution, habitat destruction, and the illegal exploitation of natural resources. It introduces sophisticated legal instruments such as Environmental Impact Assessments (AMDAL), strategic environmental assessments, and various licensing requirements aimed at preventing harm before it occurs.

However, the framework has recently undergone significant structural changes following the enactment of Law No. 11 of 2020 on Job Creation, often referred to as the Omnibus Law. This legislation was intended to streamline business licensing and attract foreign investment, but it has sparked intense debate regarding its impact on environmental safeguards.⁵⁰ Critics argue that by simplifying the licensing process and centralizing authority, the law potentially weakens the precautionary principle that was central to the 2009 Act. This legislative shift reflects the ongoing tension within the Indonesian legal framework between the imperatives of rapid economic growth and the necessity of ecological preservation. Consequently, the current framework is a complex amalgam of progressive environmental principles and pro-investment administrative reforms.

Furthermore, the Indonesian framework is unique in its attempt to harmonize national statutory law with international environmental obligations. Indonesia is a signatory to numerous global conventions, including the Paris Agreement and the Convention on Biological Diversity, which necessitate the translation of international standards into domestic enforcement

⁴⁹ Sekarae Wiyanta Sasmita, Niskala Prabawa, and Putri Kusuma Hartanto. "Sustainable Tourism and Justice: Balancing Economic Development With Environmental and Social Justice in Indonesia's Tourism Policies". *Indonesian Tourism Justice Review* 2, no. 4 (2025).

⁵⁰ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

mechanisms.⁵¹ This creates a layered legal environment where local regulations must theoretically align with global climate and biodiversity targets. Despite these robust theoretical foundations, the implementation of the law is often hindered by overlapping jurisdictions between central and regional governments. The decentralization of power has sometimes led to conflicting interpretations of environmental mandates, creating loopholes that are exploited by entities engaged in illegal logging or mining activities.⁵²

The framework also explicitly recognizes the rights of indigenous and local communities to a healthy environment, acknowledging their role as traditional stewards of the land. Under UU PPLH, these communities have the legal standing to challenge activities that threaten their customary territories.⁵³ However, the practical application of these rights remains a site of significant legal contestation. The evidentiary burden required to prove environmental harm often exceeds the resources available to marginalized groups, leading to a gap between the rights-based rhetoric of the law and the reality of environmental litigation. Thus, while the framework is conceptually advanced, its efficacy is deeply tied to the procedural accessibility of the justice system for all citizens.

The Indonesian environmental law framework is increasingly incorporating technological and scientific standards into its regulatory fabric. The law mandates the use of scientific evidence in determining environmental degradation, such as soil toxicity levels or air quality indices.⁵⁴ This integration of science and law is essential for addressing modern ecological crises, but it places a significant burden on the administrative agencies responsible for monitoring compliance. The robustness of the entire framework ultimately rests on the capacity of these agencies to provide accurate, transparent, and timely data to

⁵¹ Philippe Sands, and Jacqueline Peel. *Principles of International Environmental Law*. (Cambridge, UK: Cambridge University Press, 2012).

⁵² See Resosudarmo, et al. "Forest Land Use Dynamics in Indonesia."

⁵³ See Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*.

⁵⁴ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

support legal actions. Without strong administrative oversight, the criminal and civil provisions of the law lack the necessary empirical foundation to withstand judicial scrutiny.

2. Role of Criminal Sanctions in Environmental Governance

In the hierarchy of environmental enforcement in Indonesia, criminal sanctions occupy a critical yet contentious position, often governed by the principle of *ultimum remedium*. This principle suggests that criminal law should only be applied when administrative and civil remedies have proven insufficient to address the harm.⁵⁵ However, for specific serious offenses—such as the deliberate burning of forests or the dumping of hazardous waste—the law allows for *primum remedium*, where criminal prosecution can be initiated immediately. This dualistic approach reflects the state's recognition that certain environmental acts are so egregious that they constitute a fundamental breach of social and ecological order, demanding the full weight of the state's punitive power.⁵⁶

Criminal sanctions in this context serve three primary functions: deterrence, retribution, and restoration. By imposing custodial sentences on individuals and substantial fines on corporate entities, the law seeks to create a “chilling effect” that discourages potential offenders from prioritizing profit over planetary health.⁵⁷ The symbolic power of a criminal conviction is unparalleled; it labels the offender as a criminal rather than a mere violator of regulations, thereby impacting their social and commercial standing. In a country like Indonesia, where corporate influence is pervasive, the threat of criminal liability for executives is seen as a necessary tool to penetrate the corporate veil and ensure individual accountability for organizational negligence.⁵⁸

⁵⁵ See Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

⁵⁶ See Du Rées, “Can Criminal Law Protect the Environment? 1.”

⁵⁷ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁵⁸ Dupuy, and Viñuales. *International Environmental Law*.

Despite this, the actual application of criminal sanctions often falls short of its deterrent potential. Many environmental cases result in suspended sentences or fines that represent only a fraction of the illicit profit gained from the crime. This “leniency” is often a reflection of a penal culture that still views environmental harm through an anthropocentric lens, where economic damage to the state is prioritized over ecological damage to the biosphere.⁵⁹ Furthermore, the complexity of proving *mens rea* (guilty mind) in environmental cases—where harm may be the result of a long chain of corporate decisions—remains a formidable obstacle for prosecutors. As a result, criminal law is frequently perceived as being more effective against small-scale individual actors than against large-scale industrial polluters.⁶⁰

The integration of corporate criminal liability into the environmental law framework represents a significant evolution in Indonesian governance. Under the 2009 Act, corporations can be prosecuted as legal persons, with sanctions ranging from fines to the “corporate death penalty”—the permanent closure of the company.⁶¹ This shift acknowledges that modern environmental crimes are rarely the work of a single individual but are often systemic outcomes of corporate policy. However, the judicial appetite for imposing such severe sanctions remains low. The fear of economic disruption, job losses, and the potential for reduced tax revenue often leads judges to opt for more moderate punishments, which can inadvertently signal that the environment is a negotiable commodity.⁶²

Moreover, criminal law is increasingly being used as a mechanism for ecological restoration through additional sanctions. These can include orders for the defendant to repair

⁵⁹ See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

⁶⁰ Zulfikar Zulfikar, and Harrison Wood. “Climate Change and Environmental Law: The Indonesian Court’s Role in Enforcing Sustainable Development”. *Indonesian Court and Justice Review* 2, no. 2 (2025).

⁶¹ Tengku Ismail Rohmat, and Sascia Adelia Putri Wardhani. “Critical Legal Analysis of Criminalization Against Environmental Activists in Indonesia.” *The Indonesian Journal of Critical Legal Studies* 1, no. 1 (2026): 61-90.

⁶² See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

the damage caused, such as replanting a deforested area or cleaning a contaminated river.⁶³ This move toward restorative criminal justice aligns with the goals of sustainable development, as it focuses on the future health of the ecosystem rather than just the past behavior of the offender. However, the lack of standardized metrics for successful restoration makes these sanctions difficult to enforce and monitor. For criminal law to truly serve environmental governance, there must be a closer alignment between punitive outcomes and the physical reality of ecological recovery.

3. *Institutional Role of Indonesian Environmental Courts and Judiciary*

The Indonesian judiciary plays a pivotal role as the ultimate arbiter of environmental justice, a responsibility that led to the establishment of a specialized "Green Judiciary" certification program. Unlike some nations that have separate environmental tribunals, Indonesia utilizes a system of certified judges within the general court system. These judges undergo rigorous training in environmental science, ecology, and specialized legal doctrines to ensure they are equipped to handle the complexities of ecological litigation.⁶⁴ This institutional innovation is designed to overcome the technical illiteracy that often plagues generalist courts, where judges may fail to grasp the long-term implications of soil degradation or the loss of keystone species.

The role of these certified judges is not merely to interpret the law but to act as guardians of the environment. In environmental cases, the judge often has the authority to take a more active role in the proceedings, particularly in assessing scientific evidence and determining the extent of restoration required.⁶⁵ This active judicial stance is crucial in Indonesia, where there is often a significant power imbalance between the state or corporate defendants and the affected communities or environmental NGOs. By applying principles like strict liability

⁶³ Sands, and Peel. *Principles of International Environmental Law*.

⁶⁴ See Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*.

⁶⁵ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

for hazardous activities, the judiciary can shift the burden of proof to the polluter, thereby facilitating a more equitable path to justice.⁶⁶

However, the institutional effectiveness of the environmental judiciary is hampered by various structural challenges. One significant issue is the geographic distribution of certified judges; many reside in major urban centers, while the majority of environmental crimes occur in remote, resource-rich provinces. This “justice gap” means that many critical cases are still heard by generalist judges who may lack the necessary “green” orientation.⁶⁷ Furthermore, the judiciary operates within a broader political-economic environment where the pressure to facilitate investment can create an informal penal culture of leniency toward corporate actors. The independence of the judiciary is therefore under constant pressure from both state interests and private capital.⁶⁸

The judiciary also serves as the gatekeeper for legal standing in environmental disputes. The Indonesian Supreme Court has been progressively liberal in its interpretation of who can bring a case to court, allowing NGOs and even individual citizens to sue on behalf of the environment.⁶⁹ This public interest litigation is essential for holding both private entities and the state itself accountable for environmental failures. However, the costs associated with prolonged legal battles often deter all but the largest organizations from pursuing justice. The institutional role of the court, therefore, must expand beyond the courtroom to include procedural reforms that lower the barriers to entry for environmental defenders.

At this context, Indonesian judiciary is increasingly influential in shaping the national discourse on “*ecocentric*” justice. Through landmark decisions that recognize the inherent

⁶⁶ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁶⁷ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

⁶⁸ See Lacey, “The prisoners’ dilemma in England and Wales.” In *Tackling Prison Overcrowding*.

⁶⁹ Zulfikar Ahmad Fikri, and Prisca Agustinus Putri. “Legal Pluralism and Indigenous Land Rights Conflicts in Eastern Indonesia.” *The Indonesian Journal of Sociolegal Development* 1, no. 1 (2026): 1-30.

rights of nature or the “climate rights” of future generations, the courts are moving beyond a strictly anthropocentric application of the law.⁷⁰ These rulings serve as a powerful educational tool, signaling to the executive and legislative branches—as well as the general public—that environmental protection is a non-negotiable legal imperative. As Indonesia faces the escalating threats of climate change and habitat loss, the institutional resilience and ecological integrity of its judiciary will be the determining factor in the nation’s ability to achieve sustainable development goals.⁷¹

C. Judicial Responses to Environmental Crimes in Indonesia

1. *Patterns of Sentencing in Environmental Crime Cases*

The empirical landscape of environmental sentencing in Indonesia reveals a significant disparity between the theoretical severity of the Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH) and the actual penalties handed down by the judiciary. While Article 98 and Article 99 of UU PPLH provide for substantial custodial sentences and multi-billion rupiah fines for intentional and negligent pollution, an analysis of recent case law indicates a clustering of sentences at the lower end of the legal spectrum.⁷² In many instances, judges opt for the minimum allowable punishment, particularly in cases involving individual defendants or small-scale local operators. This pattern suggests a penal culture that is still tethered to traditional criminal law concepts, where environmental harm is

⁷⁰ See Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*.

⁷¹ See United Nations. *The Sustainable Development Goals Report*.

⁷² Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

often treated as a victimless or regulatory offense rather than a grave threat to the state's ecological security.⁷³

The prevalence of suspended sentences further complicates the deterrent function of environmental criminal law. Under the Indonesian Criminal Code (KUHP), specifically Article 14a, a suspended sentence effectively signals to the offender and the public that the transgression, while legally recognized, does not warrant the deprivation of liberty.⁷⁴ This leniency is often justified by judges through a narrow interpretation of the defendant's social contribution or a lack of prior criminal records, yet it fails to account for the irreversible nature of ecological damage. When a forest is burned or a river system is chemically compromised, the harm persists long after the legal proceedings have concluded, a reality that current sentencing patterns—often prioritizing the defendant's immediate welfare over ecological restitution—largely fail to reflect.

Moreover, the inconsistency in sentencing across different regions of the Indonesian archipelago points to a fragmented penal culture. Judges in regions heavily impacted by extractive industries sometimes display a developmentalist bias, where the economic output of a corporate entity is weighed against its environmental violations, often exacerbated by the relaxation of standards in the Law No. 11 of 2020 on Job Creation (Omnibus Law).⁷⁵ This results in a “geography of justice” where the likelihood and severity of punishment depend more on local political-economic pressures than on a uniform application of national environmental standards. This inconsistency undermines the rule of law and creates “pollution havens” within the country where enforcement is perceived to be weaker.

Legal analysis of these sentencing patterns reveals a persistent struggle with the principle of proportionality. In traditional criminal law, proportionality is measured against the harm to a human victim; however, in environmental law, the victim is often the biosphere or future generations.⁷⁶ Indonesian

⁷³ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁷⁴ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

⁷⁵ See Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.”

⁷⁶ Sands, and Peel. *Principles of International Environmental Law*.

judges frequently lack a standardized metric to calculate the “ecological debt” owed by an offender, leading to fines that are purely symbolic. Without a clear judicial guideline—perhaps modeled after the Supreme Court Regulation (PERMA) No. 13 of 2016 on Procedures for Handling Criminal Cases by Corporations—that equates ecological destruction with a specific level of criminal gravity, sentencing remains an exercise in subjective discretion rather than a rigorous application of environmental justice.

Furthermore, the influence of the *ultimum remedium* principle often leads to a downgrading of criminal charges during the judicial process. This principle, which dictates that criminal law should be a last resort, is frequently misinterpreted as an excuse to favor administrative settlements under Government Regulation (PP) No. 22 of 2021, even when the criteria for *primum remedium* (immediate criminal action) are met.⁷⁷ This cultural inclination toward administrative leniency reflects a broader judicial hesitation to criminalize corporate behavior, fearing that the “stigma” of a criminal conviction might deter foreign investment or destabilize local economies.

The role of the Supreme Court (*Mahkamah Agung*) in correcting these lower-court inconsistencies remains limited. While the Court has issued Supreme Court Decree (KMA) No. 134/KMA/SK/IX/2011 regarding the certification of environmental judges to guide adjudication, their implementation at the District Court level is sporadic. The lack of a centralized database that tracks environmental sentencing outcomes prevents a systematic naming and shaming of lenient judges, allowing a culture of moderate punishment to persist without high-level accountability.⁷⁸ Strengthening the penal culture thus requires a top-down mandate for stricter adherence to the punitive intent of UU PPLH.

The lack of cumulative sentencing for repeat offenders suggests a failure in the system’s ability to handle recidivism. Many corporate entities in the plantation sector have been implicated in multiple cases of land burning over several years,

⁷⁷ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

⁷⁸ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

yet they are often treated as first-time offenders in each new trial. A robust penal culture would recognize the “persistent offender” status of such entities, triggering escalated sanctions.⁷⁹ The current judicial response, however, remains largely transactional and isolated, failing to address the systemic nature of environmental non-compliance in the corporate sector despite the clear mandates for corporate accountability found in Article 116 to Article 119 of UU PPLH.

2. *Judicial Reasoning Regarding Environmental Harm*

Judicial reasoning in Indonesian environmental courts often reflects a struggle to translate complex ecological damage into quantifiable legal harm. Many judges continue to rely on a strictly anthropocentric interpretation, where harm is only recognized if it results in direct economic loss to the state or physical injury to humans, often citing Article 1365 of the Indonesian Civil Code (*Burgerlijk Wetboek*) as a secondary reference for liability.⁸⁰ This approach frequently overlooks the intrinsic value of ecosystems and the concept of uncompensable loss associated with biodiversity extinction. When the *ratio decidendi* ignores the ecological functions of a destroyed peatland—such as carbon sequestration or water regulation—it fundamentally misrepresents the nature of the crime committed.

A significant hurdle in judicial reasoning is the causality requirement. To secure a conviction, the prosecution must prove a direct link between the defendant's action and the resulting environmental degradation. In the context of “slow violence” crimes like industrial pollution, where the effects may manifest

⁷⁹ Aprila Niravita, and Suhadi Suhadi. “Indigenous Land Rights and Environmental Justice in Indonesia: Balancing Development and Minority Protections”. *Indonesian Minority Justice Review* 2, no. 4 (2025).

⁸⁰ See Hermawan Putra Bagaskara, “Sustainable Development in Indonesia’s Resource-Rich Regions: Balancing Economic Growth and Environmental Conservation”. *Indonesian Economics and Regional Development* 1, no. 1 (2026); Rachana Somsak, Amelia Johnson, and Nadia Putri. “Eco-Justice in Indonesia’s Mining Law: The Indonesian Mining Law and Its Conflict With Climate Justice in Indigenous Territories”. *Indonesian Climate Justice Review* 2, no. 4 (2025).

years later, the traditional legal standard of proximate cause is often insufficient.⁸¹ Indonesian judges often apply a classical causality test that favors the defendant, ignoring modern theories of probabilistic causality that are more appropriate for environmental science. This mismatch between legal standards and scientific reality often leads to the dismissal of cases where the harm is undeniable but the “smoking gun” is obscured by complex ecological variables.

However, a nascent shift is observable in rulings from “Green Certified” judges. These jurists are increasingly utilizing the Precautionary Principle, as mandated by Article 2 letter f of UU PPLH, to justify sanctions even when scientific certainty regarding the long-term impact is still evolving.⁸² This represents a move toward an ecocentric judicial philosophy, where the burden of proof is effectively shifted to the defendant to show that their actions did *not* cause the harm. While this is a hallmark of progressive environmental law, its application in Indonesia remains legally contested, as many defense attorneys argue it violates the presumption of innocence inherent in the Law No. 8 of 1981 on Criminal Procedure (KUHAP).

The reliance on expert testimony within judicial reasoning often creates a “battle of the experts” that the judiciary is ill-equipped to mediate. When a government scientist from the Ministry of Environment and Forestry (KLHK) and a corporate-funded expert present conflicting data on soil toxicity, a judge without specialized training often defaults to the most conservative interpretation.⁸³ This reliance on external expertise can lead to a delegation of justice, where the scientific expert effectively becomes the judge. To combat this, the “Green Judiciary” certification aims to provide judges with enough

⁸¹ See Du Rées, “Can Criminal Law Protect the Environment? 1.”

⁸² See Rangkuti, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*.

⁸³ See Rosyidi Hamzah, and Fadhel Arjuna Adinda. “Indigenous Rights and Economic Justice in the Palm Oil Industry: Legal and Ethical Considerations in Indonesia”. *Indonesian Economic Justice Review* 2, no. 4 (2025); Aqriel Thane Zafiroth, and Nyssa Aurelith. “Environmental Health Justice and Extractive Industries: Legal Protection of Indigenous Communities in Indonesia’s Mining Regions”. *Indonesian Health Justice Review* 2, no. 4 (2025).

scientific literacy to critically evaluate competing data, ensuring that the legal reasoning remains grounded in physical reality.

Furthermore, judicial reasoning regarding rehabilitation often lacks a clear ecological framework. In some cases, judges order the restoration of a site under Article 82 of UU PPLH without specifying what restoration means in biological terms. Does it mean returning the land to its original state, or simply making it usable again for commercial purposes? This ambiguity in reasoning allows defendants to fulfill their legal obligations through superficial measures—such as planting fast-growing monocultures—that do not actually restore the original ecosystem’s health or biodiversity.⁸⁴

The concept of intergenerational equity is also beginning to appear in judicial discourse, albeit slowly. Some landmark decisions have referenced the rights of future generations to a clean environment—as enshrined in Article 28H of the 1945 Constitution of the Republic of Indonesia—as a basis for higher sanctions.⁸⁵ This suggests that the judicial reasoning is expanding its temporal scope, moving away from a purely present-day focus. However, such reasoning is often criticized as being activist or non-textual, and it frequently faces challenges in appellate courts where a more traditional, statute-bound penal culture prevails.

In this context, the case of PT Kallista Alam is one of the important points in the development of judicial reasoning of environmental cases in Indonesia because the court no longer views environmental losses solely as economic losses that can be calculated based on market value, but as ecological damage that eliminates the function of the environment at large. This case began with the clearing of oil palm plantations in the Rawa Tripa Ecosystem Area, Aceh, which resulted in large-scale peatland fires. In its consideration, the court considered that the

⁸⁴ See Febrian Chandra, et al. “Reconstructing Industrial Forest Spatial Planning Policy for Ecological Mitigation and Global Environmental Justice.” *Journal of Law and Legal Reform* 7, no. 2 (2026): 799-832; Muh Yunus, et al. “Mining Permits for Religion Organizations in Indonesia: Public Interest vs Islamic Ethics.” *Indonesian Journal of Legal Community Engagement* 8, no. 2 (2025): 617-646.

⁸⁵ See Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*.

company's activities had caused damage to the ecological function of peat as a carbon store, control of water systems, and biodiversity habitats. These considerations show that judges not only assess the direct impact on humans, but also the impact on the ecosystem itself.

This approach has a strong normative basis in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). Article 87 paragraph (1) basically stipulates that every person in charge of a business and/or activity that commits an unlawful act in the form of pollution or destruction of the environment that causes harm to others or the environment is obliged to pay compensation and/or take certain actions. In the explanation of the article, it is emphasized that the provision is a manifestation of the *polluter pays principle*, and certain actions that can be ordered by the judge include the restoration of environmental functions, the repair of waste treatment plants, or the elimination of the cause of pollution. By basing the verdict on the provision, the judge not only imposed financial consequences on the company, but also laid down the obligation of recovery as an integral part of legal liability. From the perspective of *ecological justice* theory, the judge's consideration shows the recognition that environmental damage is a form of ecological injustice that must be restored for the benefit of the current society and future generations. Meanwhile, from the perspective of David Garland's penal culture theory⁸⁶, this decision shows a shift from a retaliation-oriented criminal model to a restorative *environmental justice model*.

A similar shift can be seen in Decision Number 28/Pid.Sus/2015/PN.Blg involving PT Gorga Duma Sari. In this case, the judge imposed an additional penalty in the form of an obligation to repair environmental damage even though the public prosecutor did not explicitly demand such an action. From the perspective of judicial reasoning, the most interesting aspect is not the type of crime, but the courage of the judge to interpret the law progressively in order to achieve the goal of environmental protection. These considerations can be related to Article 119 of the PPLH Law which provides space for judges to

⁸⁶ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

impose disciplinary actions against corporations, including the obligation to correct the consequences of criminal acts caused, placing the company under supervision, and the closure of all or part of the place of business. By using these provisions, judges expand the function of criminal law from simply punishing perpetrators to a means of environmental restoration.

From the perspective of progressive legal theorist Satjipto Rahardjo, this ruling shows that judges are not trapped in narrow formal legalism. The law is seen as an instrument that must be used to achieve a greater social goal, namely environmental protection. Therefore, the judicial reasoning built in this decision does not only rely on legal *certainty*, but also on *utility* and substantive justice. This approach also shows the development of *the restorative environmental justice* paradigm in Indonesian environmental justice practice.

A more complex issue arises in Decision Number 190/Pid.B/LH/2020/PN Plw related to corporate criminal liability. In this case, the judge must determine whether criminal liability is imposed on the corporation, the company's management, or both at once. This problem is directly related to Article 116 of the PPLH Law which basically stipulates that if an environmental crime is committed by, for, or on behalf of a business entity, then criminal charges and sanctions can be imposed on the business entity and/or the person who gives the order or acts as the leader of the activity. This provision is the main legal basis for the recognition of corporations as the subject of criminal law in environmental cases.

In his consideration, the judge not only assesses the actions of individual field implementers, but also traces the decision-making process at the company's management level. This approach shows that mistakes are no longer understood individually, but rather as organizational *faults*. Theoretically, this reasoning pattern is in line with *the theory of corporate criminal liability* which recognizes that corporations can have legal will through the actions of their managers. In addition, the approach also reflects the application of *the identification doctrine*, which is a doctrine that identifies the actions and intentions of senior officials of the company as the actions and intentions of the corporation itself. Thus, the court seeks to penetrate the protection provided by the corporate

structure (*corporate veil*) so that responsibility for environmental damage does not stop with field workers, but also reaches pihak yang memperoleh keuntungan dari aktivitas tersebut.

The development of different judicial reasoning can be seen in Decision Number 374/Pid.Sus/2024/PT SMG involving an environmental *defender*. In this case, the court did recognize the fulfillment of the elements of the criminal act formally, but the judge also considered that the defendant's actions were carried out in the context of environmental advocacy and the protection of the public interest. These considerations have a strong normative basis in Article 66 of the PPLH Law which substantially affirms that everyone who fights for the right to a good and healthy environment cannot be criminally prosecuted or sued civilly. This provision is a form of legislator's recognition of the principle of Anti-SLAPP (*Strategic Lawsuit Against Public Participation*), which is legal protection for individuals or groups who participate in fighting for the public interest.

In the perspective of human rights theory, the judicial reasoning used by judges shows recognition of the right to public participation as part of democratic environmental governance. The judge not only looks at the formal aspects of the violation of the law, but also assesses the social function of the defendant's actions. This approach shows that environmental criminal law is starting to move from a *law enforcement oriented* paradigm to a *rights-based environmental governance* paradigm, which is a paradigm that places the protection of people's rights as an integral part of environmental protection.

Although these decisions show progressive developments, the application of the principle of *strict liability* is still a major challenge in Indonesian judicial practice. Article 88 of the PPLH Law basically determines that every person whose activities use B3, produce or manage B3 waste, and/or pose a serious threat to the environment are absolutely responsible for the losses that occur without the need to prove elements of fault. This provision is a deliberate deviation from the general principles of criminal law and civil law which requires the existence of fault as the basis for accountability.

However, in practice, many judges still require proof of elements of guilt before imposing responsibility on the

perpetrators of pollution or environmental destruction. This condition shows a clash between the classical criminal law paradigm that is oriented towards *fault liability* and the modern environmental law paradigm that is oriented towards preventive environmental protection. If analyzed using Lawrence M. Friedman's legal system theory, the problem does not lie in the substance of the law because the norms regarding *strict liability* have been clearly available in the PPLH Law, but in the aspect of the *legal culture* of law enforcers who are still influenced by the conventional criminal law way of thinking. As a result, the application of principles such as *strict liability*, *polluter pays principle*, and *in dubio pro natura* still shows inconsistencies between decisions. This condition shows that judicial reasoning in environmental cases in Indonesia is in a transition phase from the traditional criminal paradigm to an ecological justice paradigm that emphasizes environmental restoration, damage prevention, and protection of the interests of future generations.

When analyzed comparatively, the four decisions show a judicial reasoning pattern that is relatively different from the characterization of judges in conventional criminal cases. In the case of PT Kallista Alam, PT Gorga Duma Sari, PT Adei Plantation and Industry, and the Environmental Defender case in Decision Number 374/Pid.Sus/2024/PT SMG, the judge not only interpreted the elements of delicacy textually, but also considered the purpose of environmental protection as a value to be realized by law. Such a reasoning pattern shows that judges are beginning to move from a legalistic approach to a teleological and purposive approach.

In the perspective of Neil MacCormick's theory of judicial reasoning, a decision is considered to have legitimacy if the judge's argument is built through a rational, coherent, and consistent justification process with applicable legal principles. In the case of PT Kallista Alam, for example, the judge not only proved the damage to peatland due to the company's activities, but also linked the fact to the purpose of environmental protection as formulated in the PPLH Law. Therefore, the ratio decidendi of the verdict does not stop at the question of whether there has been a violation of the law, but develops on a more substantive question, namely how the law can restore ecological functions that have been damaged. Thus, the judicial reasoning

built by the judge is not solely oriented to the imposition of sanctions, but also to the achievement of environmental law goals in the form of ecosystem restoration.

A similar pattern can be seen in Decision Number 28/Pid.Sus/2015/PN.Blg. In the case, the judge imposed an additional penalty in the form of an obligation to repair environmental damage even though it was not explicitly requested by the public prosecutor. Based on the study of the verdict, the judge's actions are often seen as a form of *ultra petita* in the context of environmental criminal law. However, when analyzed using Satjipto Rahardjo's progressive legal theory, this step actually reflects the judge's courage to put substantive justice above procedural formalities. Judges understand that environmental damage has different characteristics from ordinary criminal acts because its impact is cumulative, cross-generational, and often irreversible. Therefore, the application of additional penalties in the form of environmental restoration obligations is seen as more in accordance with the purpose of environmental protection than just imprisonment or fines. A review of this ruling shows that judges are actively using their interpretive authority to ensure that the judicial process results in real ecological restoration.

A more interesting development can be seen in Decision Number 190/Pid.B/LH/2020/PN Plw involving PT Adei Plantation and Industry. In the case, the court stated that the corporation was proven guilty because its negligence resulted in exceeding the standard criteria for environmental damage due to land fires and imposed a fine of IDR 1 billion and an additional penalty in the form of an obligation to restore burned land covering an area of 4.16 hectares with a value of nearly IDR 3 billion.

What is interesting about this case is not only the type of crime imposed, but the way the judge builds the construction of corporate criminal liability. The judge did not stop at the identification of physical perpetrators in the field, but assessed that corporations as legal entities have an obligation to prevent fires and environmental damage. This approach shows the application of the concept of *organizational fault* that has developed in the theory of *corporate criminal liability*. Based on Article 116 of the PPLH Law, if environmental crimes are

committed by, for, or on behalf of a business entity, criminal charges and sanctions can be imposed on the business entity and/or the party that gives the order or leads the activity. This provision expands the concept of error from individual error to corporate error.

In the perspective of Ronald Dworkin's theory, the judicial reasoning used by judges can be understood through the concept of *law as integrity*. According to Dworkin, judges are not only obliged to apply the rule of law, but must also ensure that the resulting verdicts are consistent with the moral principles underlying the legal system as a whole. In environmental matters, these principles are reflected in the principle of sustainable development, the *precautionary principle*, the *polluter pays principle*, and the protection of people's rights to a good and healthy environment as guaranteed by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, when a judge orders environmental restoration or expands corporate liability, it is not a form of arbitrary judicial activism, but rather an attempt to maintain the integrity of the environmental legal system as a whole.

Analysis of Decision Number 374/Pid.Sus/2024/PT SMG also shows an interesting pattern of judicial reasoning. Although the elements of the criminal act were formally considered met, the judge considered the context of the environmental advocacy carried out by the defendant. This approach shows that judges do not apply the law mechanically, but rather pay attention to the social purpose of the actions taken. These considerations are in line with Article 66 of the PPLH Law which provides protection to everyone who fights for the right to a good and healthy environment. Thus, judges not only act as interpreters of norms, but also as guardians of *environmental democracy* values and public participation in environmental management.

If all of these decisions are analyzed using Lawrence M. Friedman's theory of the legal system, it can be seen that changes in judicial reasoning in environmental cases are not only influenced by changes in the substance of the law, but also by changes in the *legal culture* of judges. The PPLH Law has actually provided various progressive instruments such as strict liability, polluter pays principle, corporate criminal liability, and anti-SLAPP. However, the effectiveness of these norms depends

heavily on the way judges understand and implement them in judicial practice. Therefore, the variation in rulings that emerge in environmental cases basically reflects the differences in legal culture and value orientation possessed by each judge.

From the perspective of David Garland's penal culture theory⁸⁷, the development of judicial reasoning in environmental cases shows a transformation of the criminal culture in Indonesia. In the traditional penal paradigm, crime is understood as a violation against the state so the main response given is the punishment of the perpetrator. On the other hand, in environmental matters, the losses incurred are not only experienced by the state, but also by the community, ecosystem, and future generations. As a result, the purpose of punishment shifts from *retribution* to *restoration*, prevention, and ecological *protection*. This shift can be seen from the increasing use of additional penalties in the form of environmental restoration, recognition of the polluter pays principle, expansion of corporate criminal liability, and protection of environmental defenders. Thus, these various decisions can be understood as indicators of the emergence of an ecological penal culture in the Indonesian justice system, namely a criminal culture that places environmental sustainability as the main goal of law enforcement.

3. *Treatment of Corporate Environmental Crime*

The adjudication of corporate environmental crime in Indonesia serves as a litmus test for the strength of the national penal culture. Under Article 116 of UU PPLH, corporations are recognized as legal subjects capable of committing crimes, yet the "corporate veil" remains a formidable barrier. Patterns in case law show that while companies are frequently fined for administrative failures, they are rarely held criminally liable for the substantive environmental destruction caused by their

⁸⁷ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

operational policies.⁸⁸ The judiciary often struggles to identify the “directing mind” of the corporation, leading to the prosecution of low-level field managers while the high-level executives who authorized the destructive policies remain untouched.

When corporate liability is established, the sanctions are often limited to financial penalties that fail to match the scale of the illicit profit. For many large-scale palm oil or mining firms, a multi-billion rupiah fine is essentially an “operational tax” rather than a deterrent.⁸⁹ A truly robust penal culture would utilize “corporate death penalties,” such as the permanent revocation of business licenses or the forced dissolution of the company under Article 119 of UU PPLH. However, the Indonesian judiciary has shown a profound reluctance to use these “nuclear options,” citing concerns over local employment and the “investment climate”.⁹⁰

The legal analysis of “identification doctrine” *vs.* “vicarious liability” is central to this discussion. Indonesian law tends to lean toward vicarious liability, where the company is responsible for the acts of its employees. While this makes it easier to secure a conviction, it often results in lower penalties because the “moral blameworthiness” is attributed to an individual rather than a systemic corporate failure.⁹¹ A shift toward the Organizational Fault model—as encouraged by PERMA No. 13 of 2016—where the company is punished for its lack of oversight or its culture of non-compliance, would represent a significant advancement in penal culture, yet this remains a theoretical rather than practical reality in most Indonesian courts.

⁸⁸ See Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.”

⁸⁹ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁹⁰ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

⁹¹ Akwila Agustinus, and Ridwan Arifin. “Corporations and Environmental Crimes: A Legal Analysis of Criminal Liability in Indonesia.” *Semarang State University Undergraduate Law and Society Review* 5, no. 2 (2025): 1405-1433; Anis Widyawati, et al. “Legal Challenges in Criminal Execution of The Environmental Crime Cases in Indonesia: Efforts Toward Criminal Law Reform.” *Jambe Law Journal* 9, no. 1 (2026): 53-88.

Moreover, the enforcement of “additional sanctions” against corporations is notoriously weak. Even when a court orders a company to conduct ecological restoration, the lack of a specialized “*Environmental Marshal*” or enforcement agency means these orders often go ignored.⁹² The corporate defendants rely on the exhaustion of remedies through endless appeals, during which time the degraded land remains unaddressed. This judicial delay serves as a tactical advantage for corporations, allowing them to continue operations or liquidate assets before the final restoration order under Article 82 of UU PPLH can be enforced.

The role of “Parent Company Liability” is another area where the Indonesian penal culture is tested. In many cases of forest fires, the local company found liable is a subsidiary of a larger multinational corporation. However, Indonesian courts have been hesitant to extend liability to the parent company, even when it is clear the subsidiary was acting under direct orders.⁹³ This allows international firms to reap the profits of Indonesian resources while insulating themselves from the legal consequences of environmental destruction. Reforming this aspect of the penal culture, possibly through stricter application of the Law No. 40 of 2007 on Limited Liability Companies, is essential for Indonesia to exert its sovereignty over its natural resources.

Furthermore, the use of Asset Recovery mechanisms in corporate environmental cases remains underutilized. While Article 18 of Law No. 31 of 1999 on the Eradication of Corruption (often used as a proxy for environmental crimes involving state losses) allows for the seizure of assets, the process is technically demanding and requires a level of forensic accounting that most environmental investigators lack.⁹⁴ As a result, even convicted corporations often manage to hide their illicit gains, further

⁹² Kenanga Larasati Cahyani, and Ratih Maheswari. ““Palm Oil Taxation and Environmental Justice: Fiscal Policy Challenges in Indonesia”. *Indonesian Tax Justice Review* 2, no. 1 (2025). See also Erick Alvaro, “Community-Based Approaches to Solving Environmental and Land Disputes”. *Lentera Masyarakat Hukum* 1, no. 4 (2024).

⁹³ Sands, and Peel. *Principles of International Environmental Law*.

⁹⁴ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

undermining the deterrent effect of the law. A penal culture that integrates “financial intelligence” with environmental enforcement is necessary to make environmental crime truly “unprofitable.”

The “symbolic” treatment of corporate crime often leads to “deferred prosecution agreements” or mediation, which are not transparent. This “privatization of justice” avoids the public condemnation that a criminal trial provides.⁹⁵ When corporate environmental crimes are settled behind closed doors, it reinforces the perception that the law is a tool for the elite and that the environment is merely a bargaining chip. A transparent and public-facing penal culture is required to restore faith in the judicial system’s ability to hold the powerful accountable.

4. *Analysis of Deterrence vs. Moderation in Punishment*

There is a profound tension in the Indonesian courts between a deterrence-oriented approach and a moderate penal orientation. Deterrence theory, particularly in environmental law, necessitates that the punishment is unbearable to ensure compliance.⁹⁶ However, many Indonesian judgments reveal a culture of moderation, where judges seek a middle path that balances the need for punishment with the defendant’s socio-economic circumstances, a principle often referred to as restorative justice in local discourse.⁹⁷ This moderation often results in fines that are easily absorbed as operational costs, thereby failing the test of specific deterrence.

This culture of moderation is often rooted in the traditional Indonesian legal concept of *perdamaian* (peace/reconciliation). While appropriate for minor community disputes, applying this “peace-seeking” mindset to large-scale industrial crimes—ignoring the criminal mandates of Article 108 of UU PPLH—is problematic. It results in a negotiated justice where the state accepts a partial restoration or a smaller fine in exchange for a

⁹⁵ See Lacey, “The prisoners’ dilemma in England and Wales.” In *Tackling Prison Overcrowding*.

⁹⁶ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

⁹⁷ See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

quick resolution.⁹⁸ While this satisfies the goal of judicial efficiency, it fails to provide the general deterrence needed to signal to other potential polluters that the state takes environmental crime seriously.

The analysis of “Sentencing Guidelines” reveals a lack of consistency that encourages moderation. Without a strictly mandated “floor” for environmental fines—unlike the rigid minimums found in Law No. 35 of 2009 on Narcotics—judges are free to exercise extreme leniency.⁹⁹ This “judicial lottery” means that two companies responsible for the same amount of pollution might receive vastly different sentences depending on the judge's personal philosophy. To achieve true deterrence, the penal culture must move away from this hyper-discretionary model toward a more predictable and rigorous sentencing regime that aligns with the Polluter Pays Principle found in Article 2 letter j of UU PPLH.

Furthermore, the moderation approach often ignores the pre-meditated nature of many corporate environmental crimes. Corporate decisions to bypass waste treatment systems or to clear land by fire are rarely accidents; they are calculated economic choices aimed at cutting costs in violation of Government Regulation (PP) No. 22 of 2021.¹⁰⁰ Treating these calculated acts with moderation is an analytical failure that ignores the specific mens rea of corporate greed. A deterrence-based penal culture would recognize the economic rationality of the offender and respond with an economic irrationality—a punishment so high that the original crime no longer makes financial sense.

However, a shift toward extreme punitiveness also carries risks. If sentences are perceived as being disproportionately harsh or anti-business, they may face political backlash or be systematically overturned on appeal.¹⁰¹ Therefore, the challenge for the Indonesian judiciary is to find a calibrated deterrence—a

⁹⁸ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).”

⁹⁹ See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

¹⁰⁰ See Du Rées, “Can Criminal Law Protect the Environment? 1.”

¹⁰¹ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

level of punishment that is high enough to change behavior but grounded firmly in legal principles that can withstand the scrutiny of a democratic legal system. This requires a sophisticated penal culture that can distinguish between negligent harm under Article 99 and “predatory” ecological destruction under Article 98 of UU PPLH.

The role of restorative justice as a third way between deterrence and moderation is gaining traction, supported by Attorney General Regulation No. 15 of 2020 on Termination of Prosecution based on Restorative Justice. By focusing on repair rather than just pain, the judiciary can achieve a more sustainable outcome.¹⁰² However, in a weak penal culture, restorative justice is often used as a soft option to avoid criminal sanctions entirely. For restorative justice to be effective in Indonesia, it must be used as a *supplement* to, rather than a *replacement* for, deterrent punishment. The offender must restore the environment *and* face a punitive fine that reflects their criminal culpability.

The relevance of this analysis to Sustainable Development cannot be overstated. A penal culture of moderation effectively subsidizes environmental destruction, as the costs are borne by the public and the ecosystem rather than the offender.¹⁰³ To achieve the SDGs, Indonesia must cultivate a penal culture of Ecological Accountability, where the judiciary acts as a firm barrier against the exploitation of nature. This requires a fundamental shift in the judicial mindset from being a referee in a commercial dispute to being a “protector” of the nation’s natural heritage.¹⁰⁴

D. Penal Culture in Practice

1. *Identifying Characteristics of Indonesian Penal Culture in Environmental Cases*

¹⁰² See Braithwaite, *Restorative Justice & Responsive Regulation*.

¹⁰³ See United Nations. *The Sustainable Development Goals Report*.

¹⁰⁴ See Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*.

The practical manifestation of penal culture within Indonesian environmental adjudication is characterized by a persistent "legal formalist" orientation that prioritizes procedural correctness over substantive ecological justice. In practice, this culture is identified by a cautious approach to criminal liability, where judges frequently default to the minimum sentencing standards. For instance, in cases of intentional environmental pollution under Article 98 Paragraph (1) of Law No. 32/2009 (UU PPLH), which stipulates a minimum imprisonment of 3 years and a minimum fine of Rp3,000,000,000, judges often hand down the bare minimum rather than exercising the upper limit of 10 years and Rp10,000,000,000.¹⁰⁵ This moderate penal orientation is rooted in what David Garland (2021)¹⁰⁶ describes as a culture of "professional caution," where judicial actors view environmental degradation as an unavoidable byproduct of national development.

This normalization of risk often leads to a "burden of proof" threshold that is nearly impossible for prosecutors to meet in complex ecological cases. While the law exists to protect the biosphere, the judicial mindset often requires a level of "absolute scientific certainty" that is incompatible with the fluid nature of environmental degradation. Consequently, the identifying mark of this culture is the "normalization" of environmental risk, where corporate defendants are often granted the benefit of the doubt regarding the causal link between industrial activities and specific ecological collapses. As noted in the Asian Journal of Criminology, this creates a judicial environment where only the most obvious and catastrophic damages are punished, while chronic, low-level pollution—which may be equally destructive over time—is systematically overlooked.¹⁰⁷

¹⁰⁵ Purniawati, Kasana, and Rodiyah, "Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)."

¹⁰⁶ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

¹⁰⁷ See Auliya Rochman, Ekapala Suryana, and Ethan Michael Robertson. "Human Rights and Environmental Justice: The Struggle for Indigenous Rights Against Environmental Degradation in Indonesia". *Contemporary Issues on Indonesian Human Rights Law and Policy* 1, no. 3 (2024).

Furthermore, the Indonesian penal culture demonstrates a strong preference for “individualized fault” over “systemic corporate culpability.” Despite the clear provisions for corporate liability in Article 116 UU PPLH, which states that “*If an environmental crime is committed by, for, or on behalf of a business entity, the criminal charges and criminal sanctions shall be imposed on the business entity and/or the person who gave the order,*” judicial practice reveals a habit of pursuing the physical actor while shielding the intellectual actor.¹⁰⁸ This reflects a traditionalist penal culture that Nicola Lacey (2021)¹⁰⁹ argues struggles to conceptualize intent within a complex organizational hierarchy.

By focusing on the immediate, tangible act of pollution—such as the person holding the torch in a forest fire—rather than the underlying corporate policy or profit motive that mandated it, the judiciary maintains a penal environment where the structural drivers of environmental crime remain largely unaddressed. Other research indicates that this “fragmented” view of liability ensures that the corporate entity, which possesses the capital and resources for restoration, often escapes the most severe criminal consequences.¹¹⁰ It also perpetuates a culture of “sacrificial lambs,” where low-level employees bear the criminal record while the corporate structure remains intact and unchanged.

The symbolic weight of these sentences also plays a role in defining the culture. When a court issues a fine that is significantly lower than the profit gained from the illegal activity, it performs what David Nelken (2020) calls “symbolic regulation.”¹¹¹ The law is seen to be active, a verdict is reached, and a “punishment” is recorded, but the actual impact on the offender’s behavior is negligible. This creates a veneer of enforcement that satisfies international observers and domestic

¹⁰⁸ Aprila Niravita, Bayangsari Wedhatami, Julien Lemoine, and Giulia Rossi. “Justice in Environmental Disputes: Evaluating the Performance of the Administrative Court”. *Indonesian Court and Justice Review* 1, no. 2 (2024).

¹⁰⁹ See Lacey, “The prisoners’ dilemma in England and Wales.” In *Tackling Prison Overcrowding*.

¹¹⁰ See Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.”

¹¹¹ See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

pressure groups without actually disrupting the economic interests of powerful extractive industries. Over time, this reinforces a cynical view of environmental law among practitioners, who may see the court as a site of negotiation rather than a site of justice.

2. *Institutional and Cultural Factors Influencing Judicial Decisions*

Beyond sentencing patterns, several institutional factors reinforce this conservative penal culture, most notably the "bureaucratic pressure" for judicial efficiency and the fear of appellate reversal. Judges within the Indonesian system are often evaluated on the speed of their case disposal under the SIPP (Case Tracking Information System), a metric that discourages the lengthy and technically demanding trials required for complex environmental litigation.¹¹² This institutional constraint pushes judges toward "safe" decisions—often involving plea bargains or administrative settlements—that avoid the scientific complexities of proving ecological damage.

The pressure of SIPP creates a "proceduralist" bias, where the quality of the ecological inquiry is sacrificed for the sake of administrative "throughput." In such an environment, the scientific nuances of soil toxicity or biodiversity loss are viewed as complications that delay the final verdict. This institutional logic aligns with what David Nelken (2020)¹¹³ observes as the internal legal culture of a judiciary being dictated by its administrative incentives. For a judge, a simple conviction with a minimum fine is cleaner and less likely to be scrutinized for administrative delays than a landmark ruling that requires months of expert testimony and complex forensic analysis.

Cultural factors, such as the Indonesian legal tradition of *musyawarah* (deliberation), also play a significant role in softening the punitive edge of law. While these values are foundational to the Pancasila legal system, their application in criminal proceedings often leads to a culture of compromise. In

¹¹² See Butt, and Lindsey. *The Constitution of Indonesia: A Contextual Analysis*.

¹¹³ See Nelken, *Comparative Criminal Justice: Making Sense of Difference*.

cases of land conflict involving environmental crimes, judges may lean toward mediation-style outcomes. This cultural inclination toward peace-seeking often results in the dilution of criminal sanctions, where the offender is encouraged to provide a small community benefit under Article 82 Paragraph (1) UU PPLH, which allows for *certain actions* as additional sanctions.

These additional sanctions include: *a. restoration of environment functions; b. placement of the company under monitoring; and/or c. placement of the company under curatorship*. However, without a strong punitive base—such as a significant custodial sentence or a massive fine—these actions become a soft option that undermines the deterrent intent of the Law No. 8 of 1981 (KUHAP) regarding the imposition of criminal justice. When a judge prioritizes social harmony over ecological retribution, they may inadvertently validate the offender's presence in the territory, allowing the environmental crime to be resolved as a private dispute rather than a public offense against the state.

The “career path” of judges also serves as an institutional factor. Many judges rotate between different jurisdictions, moving from urban centers to remote resource-rich regions. In these remote areas, the court may be the only institutional check on powerful mining or logging firms that dominate the local economy. A judge who issues a particularly harsh sentence against a major local employer may face social ostracization or political pressure. This creates a subconscious moderation in judicial decisions, where the judge seeks to protect their professional reputation and personal safety by aligning their verdicts with local socio-political expectations rather than abstract ecological principles.

Therefore, the lack of a specialized “Environmental Prosecutor” corps within the Attorney General’s Office means that cases are often handled by generalist prosecutors who lack the resources to counter the high-paid legal teams of corporate defendants. This imbalance of power in the courtroom influences the judge's perception of the case. When the prosecution’s argument is technically weak or based on flawed data, a formalist judge is culturally and professionally inclined to favor the more “polished” and “technically sound” defense presented by the corporation. As highlighted in the Indonesian Law Journal, this

technical gap reinforces the penal culture of moderation, as judges are hesitant to convict based on what they perceive as incomplete or amateurish scientific evidence.¹¹⁴

3. *Implications for Environmental Law Enforcement*

The implications of this prevailing penal culture for environmental law enforcement are profound, as it creates a deterrence gap that sophisticated corporate actors can easily exploit. When the judiciary consistently applies moderate sanctions that do not exceed the illicit profits gained from environmental non-compliance, the law ceases to function as a preventative tool. Faure & Wibisana¹¹⁵ argue that this turns the law into a manageable cost of doing business. This signals to the industrial sector that the risk of criminal prosecution is low and the financial consequences are survivable.

This culture effectively subsidizes environmental destruction, as the long-term costs—such as climate vulnerability, loss of ecosystem services, and public health crises—are externalized to the public and future generations. In a globalized economy, this creates a “race to the bottom” where companies may choose to operate in Indonesia specifically because the penal cost of environmental degradation is lower than in jurisdictions with a more robust green penal culture. The law, intended to be a shield for the environment, becomes a predictable variable in a corporate profit-and-loss statement.

Moreover, the current penal culture hampers the integration of sustainability-oriented legal principles, such as the *In Dubio Pro Natura* principle (when in doubt, rule in favor of nature). Because the institutional culture remains anchored in anthropocentric legal traditions, the environment is rarely

¹¹⁴ See Ahmad Subkhi, and Agus Christmasco. “Human Rights and Climate Change in Indonesia: Legal Gaps in Protecting Climate-Vulnerable Communities”. *Contemporary Issues on Indonesian Human Rights Law and Policy* 2, no. (2025).

¹¹⁵ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

treated as a victim with its own standing.¹¹⁶ This limits the enforcement of restorative sanctions, as judges often lack the cultural drive to ensure that restoration actually occurs. In many cases, a restoration order is issued without any mechanism for monitoring or verification, leading to “paper restoration” where the offender simply waits for the public's attention to shift elsewhere.

The disconnect between the high-level environmental rhetoric of the government and the ground-level reality of the courts also leads to a crisis of legitimacy. If the public perceives that the courts are unable or unwilling to punish large-scale environmental offenders, they may lose faith in the legal system as a whole. This can lead to increased social conflict, as communities take the law into their own hands to protect their forests and water sources. A weak penal culture thus contributes to social instability, as the lack of legal justice forces victims to seek extra-judicial justice through protests, blockades, or direct action against corporate sites.

Furthermore, the moderation of punishment in criminal courts places an undue burden on civil litigation to achieve environmental justice. Because criminal sentences are weak, environmental NGOs and the Ministry of Environment and Forestry (KLHK) are forced to pursue massive civil lawsuits to recover damages. However, civil litigation is notoriously slow and expensive, and it does not carry the same “moral stigma” or threat of imprisonment as criminal law. This over-reliance on civil remedies is a symptom of a failing criminal penal culture; it suggests that the state has abandoned the idea of environmental harm as a crime and rebranded it as a civil debt.

At this point, the implications extend to the global stage. As Indonesia seeks to position itself as a leader in climate action and tropical forest conservation, its domestic judicial record is under increasing scrutiny. International trade agreements and green

¹¹⁶ See Ridwan Arifin, and Siti Hafsyah Idris. “In Dubio Pro Natura: In Doubt, Should the Environment Be a Priority? A Discourse of Environmental Justice in Indonesia.” *Jambe Law Journal* 6, no. 2 (2023): 143-184; Asmarani Ramli, et al. “Applying In Dubio Pro Natura in Environmental Crime Cases: Legal Perspectives in Indonesia.” *The Indonesian Journal of International Clinical Legal Education* 5, no. 4 (2023): 409-444.

financing mechanisms are increasingly tied to the rule of law and the effectiveness of environmental enforcement. A penal culture that consistently fails to punish major offenders can be seen as a violation of international commitments, potentially leading to trade sanctions or the withdrawal of climate funds. Thus, the reform of penal culture is not just a judicial necessity; it is a prerequisite for Indonesia's continued economic and diplomatic integration into a sustainability-focused world.

4. *Judicial Discretion and the “Omnibus Law” Effect*

The enactment of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (the Job Creation Law) significantly alters the parameters of judicial discretion through a centralized mechanism for oversight and sanctioning. Based on Article 82A of the Job Creation Law and its derivative regulations in Government Regulation (PP) No. 22 of 2021, environmental law enforcement authority has shifted exclusively from regional governments to the central government through the Ministry of Environment and Forestry (KLHK). This centralization has specifically changed the penal culture: courts no longer view criminal sanctions as a primary, independent instrument, but rather as subsidiary to state administrative decisions issued by the central executive.

This cultural shift occurs because centralization creates a new hierarchy of legal compliance for judges. When the central government issues an administrative settlement letter—such as the payment of an administrative fine or the fulfillment of a government coercive commitment—the decision is a product of state administrative law with institutional validity. In a positivistic criminal justice culture, criminal judges have a strong tendency to respect the principle of *praesumptio iustae causa* (government policy must be presumed correct until proven otherwise). Consequently, there is considerable judicial hesitation to override administrative sanctions already enacted by the Central Government. Judges hesitate to impose prison sentences because such action could be seen as invalidating or negating the legal products of the central executive branch, which

could institutionally trigger the overturning of decisions at the cassation level due to perceived misapplication of formal law.

This situation institutionalizes a moderate and administrative-centric criminal justice culture. Public prosecutors face obstacles in proving purely criminal sanctions because Article 82A explicitly emphasizes a tightened principle of *ultimum remedium*. The legal doctrine developing in the courtroom has now shifted: environmental violations are no longer assessed based on the degree of ecological damage (substantial unlawfulness), but rather on the status of the corporation's administrative compliance with the Central Government (formal unlawfulness). Following David Garland's (2021)¹¹⁷ analysis of the role of sanctions in defining societal moral boundaries, the shift from open criminal justice to closed administrative resolution at the ministerial level eliminates the general deterrence function of the law itself.

When corporate environmental cases proceed to criminal court, the defendant's legal counsel will technically use compliance with central administrative sanctions as an absolute defense to eliminate the criminal element. Conservative judges, seeking to avoid disparities in decisions and the need for examination resulting from overstepping central administrative authority, will choose to rule on cases by declaring criminal charges inadmissible (*niet ontvankelijk verklaard*). This pattern systematically decriminalizes large-scale environmental violations, as criminal jurisdiction is reserved only for cases that fail to be resolved at the central ministerial level.

Furthermore, this centralization of authority limits the scope for judges to impose additional penalties in the form of reparations for criminal acts, which were previously extensively regulated in Law No. 32 of 2009 (the Environmental Management and Environmental Management Law). Because the new law links the sustainability of corporate operations to National Strategic Projects (PSN) directly controlled by the Central Government, the judiciary faces structural pressure to align its decisions with national economic stability. The result is a dual-track justice system: rigid and repressive criminal law

¹¹⁷ See Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*.

enforcement remains in place for local individual perpetrators, while corporate business actors are granted flexibility in administrative resolution through the discretion of central ministries. This imbalance in law enforcement is a direct consequence of the culture of criminalization that has been restructured by the economic legal logic of the Job Creation Law.

5. *The Role of “Green Certification” in Reshaping Practice*

Despite these significant challenges, the *Green Judiciary* certification program established by Supreme Court Decree (KMA) No. 134/2011 serves as a vital counter-culture within the judiciary. Certified judges are trained to apply the Precautionary Principle and to recognize scientific evidence as a primary basis for liability.¹¹⁸ In practice, this has led to several landmark rulings where multi-trillion rupiah fines were imposed on companies responsible for forest fires. These judges represent a new “penal vanguard” that is attempting to shift the culture from formalist-anthropocentric to substantive-ecocentric.

The Green Judiciary program provides a “shield” for judges against local political pressure. By being part of a specialized, Supreme Court-sanctioned elite, these judges are often more confident in issuing harsh sentences against powerful actors. They are taught to view the environment not just as a resource to be managed, but as a legal subject with inherent rights to exist and thrive. This is a radical shift in the legal habitus of the Indonesian judge, and it is the most promising avenue for a long-term cultural transformation within the courts.

However, these “pockets of excellence” are often isolated and under-resourced. A certified judge may be the only one in their district, meaning they are frequently outvoted by two non-certified judges in a three-judge panel. This institutional dilution means that even the most progressive green reasoning can be neutralized by a conservative majority. The primary implication for enforcement is that environmental justice in Indonesia remains person-dependent rather than system-dependent. You

¹¹⁸ See Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*.

are more likely to get justice if your case happens to land on the desk of a certified judge, but there is no systemic guarantee of this outcome.

To truly reshape the penal culture, the green values must move from the specialized certification program into the general curriculum of the Judicial Training Center. Every judge, regardless of their specialization, should understand the basic tenets of environmental criminal law and the urgency of the climate crisis. Furthermore, the Supreme Court needs to create a “Green Bench” at the appellate and cassation levels to ensure that progressive lower-court rulings are not systematically dismantled by conservative senior justices who lack “green” training.

Finally, the success of the Green Judiciary depends on a synergy of enforcement. A green judge cannot issue a strong verdict if the prosecutor brings a weak case, and a prosecutor cannot build a strong case if the police investigators are corrupt or incompetent. Therefore, the green certification model must be expanded to include all actors in the criminal justice chain. As discussed in Environment, Development and Sustainability, only when there is a shared green penal culture across the police, the prosecution, and the judiciary can Indonesia hope to align its legal system with the global imperatives of sustainable development and ecological survival.¹¹⁹

E. Toward an Ecologically Responsive Penal Culture

1. *Reformulating Judicial Perspectives on Environmental Harm*

The transition toward an ecologically responsive penal culture requires a fundamental ontological shift in how the Indonesian judiciary perceives environmental harm—moving from a fragmented, anthropocentric view to one that recognizes the systemic integrity of the biosphere. Current judicial perspectives often struggle with the “invisibilization” of

¹¹⁹ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

ecological damage that does not result in immediate human or economic loss. To rectify this, scholars suggest adopting the “Ecological Proportionality” principle, where the gravity of a crime is measured against the disruption of ecosystem services rather than mere statutory minimums.¹²⁰ This reformulation must be grounded in Article 2 letter f of Law No. 32/2009 (UU PPLH), which enshrines the *precautionary principle*.

In practice, this means judges should not require absolute scientific certainty to impose significant sanctions when there is a risk of irreversible damage.¹²¹ The current “wait-and-see” approach in many district courts often allows environmental degradation to reach a tipping point before legal intervention occurs. By the time “tangible” damage is proven, the ecosystem may have lost its regenerative capacity. An ecologically responsive culture treats the environment as a living system whose protection is a prerequisite for all other human rights, shifting the judicial role from a mere arbiter of disputes to a proactive guardian of natural heritage.

Furthermore, the judiciary must move beyond classical causality” which often fails in cases of “slow violence”—crimes where the impact is cumulative and delayed, such as groundwater contamination or peatland degradation.¹²²

¹²⁰ See Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*. For further context and cases, see also Andry Wikra Wardhana Mamonto, and Yosia Hetharie. “Beyond Symbolic Recognition: Constitutional Reform for Indigenous Peoples’ Rights in Indonesia’s Plural Democracy”. *Indonesian Constitutional Studies* 1, no. 1 (2025): 1-26; Lukas Müller, Marta Sánchez, Sofia Conti, Nabilah Ismail, and Leila Ben Mansour. “Climate Justice and the Law: Legal Mechanisms for Protecting Climate Refugees in the Global South”. *Journal of Transformative Legal and Social Studies* 1, no. 1 (2025): 25-44; Mikael Saerang, Beni Rumaropen, Mia Wilkins, and Felipe Rodrigues. “Papuan Traditional Ecological Knowledge: Integrating Indigenous Approaches into Environmental Education for Sustainable Futures”. *Journal of Indigenous Knowledge and Education in Indonesia* 1, no. 1 (2026).

¹²¹ Markus Leiwakabessy, “The Role of Art in Promoting Environmental Justice: Artivism in Indonesia’s Fight Against Environmental Degradation”. *Indonesian Art and Justice Review* 1, no. 1 (2024).

¹²² See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*. See also Rob Nixon, *Slow Violence and the Environmentalism of the Poor*. (Cambridge, MA: Harvard University Press, 2011).

Traditional criminal law requires a direct, linear link between act A and harm B. However, ecological harm is often non-linear and synergistic. An ecologically responsive culture would adopt a risk-based liability model, where the creation of an unacceptable ecological risk through the violation of environmental standards is itself a punishable offense, regardless of whether a catastrophic event has yet occurred.

This shift requires judges to utilize Supreme Court Decree (KMA) No. 134/2011 not just as a certification tool, but as a mandate to interpret harm as a breach of the state's constitutional obligation to provide a healthy environment under Article 28H of the 1945 Constitution. The judiciary must begin to recognize ecological loss as a distinct category of legal injury, separate from state financial loss. As argued in the *Journal of Environmental Law*, if the judiciary continues to prioritize economic metrics over biological ones, the law will remain a tool for managing environmental decline rather than preventing it.¹²³

Moreover, the integration of scientific evidence must be streamlined. Judges often feel overwhelmed by conflicting expert testimonies in cases involving complex soil chemistry or hydrogeology. A reformed penal culture would see the establishment of "Independent Judicial Experts" who are not beholden to either the prosecution or the defense. This would allow judges to ground their rulings in objective ecological reality, reducing the "technical paralysis" that often leads to lenient sentencing in high-stakes industrial pollution cases.

The reformulation of judicial perspectives must include an understanding of "climate justice." In a nation as vulnerable to climate change as Indonesia, environmental crimes like illegal logging or peatland drainage are not just local issues; they are contributors to a global crisis. Judges must begin to view these acts through the lens of their contribution to carbon emissions and regional climate instability. This "scaling up" of judicial perspective is essential for the law to remain relevant in the Anthropocene, where local environmental management has global security implications.

¹²³ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

2. *Strengthening Corporate Liability and Sanctions*

The effectiveness of environmental criminal law in Indonesia is contingent upon the judiciary's ability to pierce the corporate veil and impose sanctions that are truly deterrent. Strengthening corporate liability requires a move away from the identification doctrine—which seeks a specific guilty mind among executives—toward an Organizational Fault model.¹²⁴ This model, supported by Supreme Court Regulation (PERMA) No. 13 of 2016, posits that a corporation is liable if its internal culture, policies, or lack of oversight permitted the environmental crime to occur.

As highlighted that the current reliance on vicarious liability often results in corporations treating fines as “licensing fees” for pollution.¹²⁵ When a company factors a potential fine into its profit-and-loss statement, the criminal nature of the act is effectively erased. To counter this, the penal culture must embrace the Economic Reality of sanctions. This means fines should be calculated based on the total illicit gain plus the cost of total ecosystem restoration, effectively making the crime unprofitable.¹²⁶

Furthermore, the judiciary should more frequently invoke Article 119 UU PPLH, which allows for additional sanctions such as the *revocation of business licenses* or the *permanent closure of company premises*. Research in *Forest Policy and Economics* suggests that only the threat of “corporate death” can effectively compel large-scale extractive industries to internalize

¹²⁴ See Lacey, ‘The prisoners’ dilemma in England and Wales.’ In *Tackling Prison Overcrowding*.

¹²⁵ Aurelia Putri Ramadhani, “From Activism to Policy Change: The Role of Civil Society in Shaping Indonesia’s Environmental Political Movements”. *Indonesian Discourse on Communication, Democracy, and Political Movements* 2, no. 2 (2025); Siti Hafsyah Idris, et al. “Indonesia Paradox on Plastic Waste Import in International Policy and Social Movement Perspective.” *Indonesian Journal of Advocacy and Legal Services* 6, no. 1 (2024): 169-204

¹²⁶ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

environmental costs.¹²⁷ Currently, these sanctions are viewed as extreme and are rarely applied, but an ecologically responsive culture would view them as proportionate to the destruction of irreplaceable natural resources.

The implementation of “Corporate Probation” is another underutilized tool. Under such a system, a convicted company would be placed under the supervision of a court-appointed environmental auditor for a specified period. Failure to meet strict restoration targets would trigger more severe penalties, including dissolution. This shifts the judicial role from a one-time punisher to a long-term monitor of corporate environmental behavior. Such a responsive approach ensures that a guilty verdict actually leads to a change in the company’s operational ethos.

Additionally, the *Naming and Shaming* of corporate offenders must be institutionalized. Under Article 119 letter c UU PPLH, the court can order the publication of the verdict in national media. In a world where corporate reputation is a significant asset, the public exposure of environmental crimes can be a powerful deterrent. However, this is currently done inconsistently. A reformed penal culture would treat public disclosure as a mandatory component of corporate sentencing, ensuring that shareholders and consumers are made aware of the company's ecological track record.

The judiciary must address the issue of “Asset Recovery.” In many environmental cases, the profits from illegal logging or mining are laundered through complex financial networks. Strengthening corporate sanctions involves a synergy between environmental law and anti-money laundering statutes (Law No. 8 of 2010). By seizing the “proceeds of crime,” the judiciary can ensure that environmental offenders do not benefit from their destructive acts even after serving their sentences. This “financial strangulation” of environmental crime is a necessary component of a robust penal culture.

3. *Integrating Sustainability and Restorative Environmental Justice*

¹²⁷ See Resosudarmo, et al. “Forest Land Use Dynamics in Indonesia.”

The final pillar of an ecologically responsive culture is the integration of restorative justice (RJ) as a mechanism for genuine ecological recovery. Unlike traditional retributive justice, which focuses solely on punishing the offender, restorative environmental justice seeks to repair the rift between the offender, the affected community, and the damaged ecosystem.¹²⁸ In the Indonesian context, this can be operationalized through Article 82 UU PPLH, which mandates remedial actions to restore environmental functions.

However, for RJ to be more than a soft option, it must be integrated into the criminal sentence as a mandatory, monitored requirement. Scholars argue that RJ provides a more sustainability-aligned outcome because it prioritizes the physical healing of the land over the mere payment of a fine to the state treasury.¹²⁹ The goal is to move from “punishing the past” to “securing the future.” When a company is forced to spend years replanting a forest it destroyed, the lesson of the law is felt more deeply than through a simple wire transfer to a government account.

Integrating RJ also empowers local and indigenous communities who are often the primary victims of environmental crimes. By involving these stakeholders in the “restoration plan,” the judiciary acknowledges the *intergenerational equity* principle. This participatory approach ensures that restoration meets the actual needs of the people who depend on the ecosystem, rather than just meeting a technical regulatory standard. It also helps to rebuild the social trust that is often shattered when a major corporation violates a community’s environment.¹³⁰ However, this integration must be guarded

¹²⁸ See Braithwaite, *Restorative Justice & Responsive Regulation*.

¹²⁹ Purniawati, Kasana, and Rodiyah, “Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management).” See also Sands, and Peel. *Principles of International Environmental Law*.

¹³⁰ Khairunnisa Amalia Putri, Phumin Ratchanon, and Zhang Hao Ming. “Theological Perspectives on Environmental Justice: The Role of Religion in Addressing Climate Change in Indonesia”. *Indonesian Theological Justice Review* 1, no. 2 (2024); Prasetyo Bagus, “The Future of Indonesian Education Policy: Integrating Sustainability and Climate Change into School Curricula”. *Indonesian Education Policy and Justice Review* 1, no. 4 (2024); Erick Alvaro, “Community-Based Approaches to

against “corporate capture,” where companies use minor CSR-style projects to bypass criminal responsibility. As noted in *Environment, Development and Sustainability*, restorative justice in Indonesia must be paired with “Responsive Regulation”—where the threat of severe criminal punishment remains a “big gun” in the background to ensure the offender's cooperation in the restorative process.¹³¹ RJ should not be a way out of punishment, but a more meaningful *form* of punishment that includes mandatory labor and resource commitment toward healing nature.

The “Restorative Bench” would also require a new type of judicial expertise. Judges would need to be able to evaluate “Restoration Agreements” and monitor long-term ecological benchmarks. This might involve periodic “Restoration Hearings” where the offender provides evidence of the ecosystem's recovery. Such a process transforms the courtroom into a site of active environmental management. While this is more resource-intensive than traditional sentencing, it is the only way to ensure that the justice delivered by the court has a physical reality on the ground.

Therefore, a penal culture toward sustainability is one where the law acts as a bridge between punitive deterrence and the long-term resilience of the Indonesian archipelago. It requires a judiciary that is brave enough to challenge the economic status quo in favor of ecological survival. By integrating restorative principles with strict corporate accountability and a modernized understanding of ecological harm, the Indonesian legal system can finally fulfill its role as a green institution, protecting the nation's natural wealth for generations to come.

Conclusion

The synthesis of this research confirms that the Indonesian judiciary currently operates within a moderate penal culture that often prioritizes formalist-procedural consistency and developmental interests over substantive ecological justice.

Solving Environmental and Land Disputes”. *Lentera Masyarakat Hukum* 1, no. 4 (2024).

¹³¹ See Faure, and Wibisana, eds. *Regulating Disasters, Climate Change and Environmental Harm*.

Despite the robust punitive framework of Law No. 32 of 2009 (UU PPLH), sentencing patterns remain clustered at statutory minimums, and corporate liability is frequently bypassed in favor of individual prosecutions of low-level actors. This study identifies significant “cultural bottlenecks”—including the misuse of the *ultimum remedium* principle, an anthropocentric interpretation of harm, and institutional pressures for judicial efficiency—which collectively create a deterrence gap. By analyzing these phenomena through the lens of socio-legal theory and the “Green Judiciary” certification, the research demonstrates that legal enforcement is currently “person-dependent” rather than “system-dependent,” leaving Indonesia’s critical biodiversity vulnerable to calculated corporate non-compliance.

This systemic failure within the judiciary directly compromises Indonesia’s commitment to Sustainable Development Goal 16 (Peace, Justice, and Strong Institutions). By allowing a “dual-track” enforcement system where powerful corporate actors exploit centralized administrative settlements while individuals face the full weight of criminal law, the current penal culture undermines the core tenets of SDG 16: equal access to justice, institutional accountability, and the rule of law. Furthermore, because Indonesia hosts critical global carbon sinks like the Tripa peat swamps and vast tropical rainforests, this judicial deterrence gap has severe international ramifications for Sustainable Development Goal 13 (Climate Action). When the penal culture fails to deter systemic ecocide and corporate-driven deforestation, it directly weakens the nation's capacity to mitigate greenhouse gas emissions, turning judicial leniency into a driver of global climate vulnerability.

Consequently, this study contributes to environmental law scholarship by providing a nuanced deconstruction of “penal culture” within a Global South context, offering a replicable framework for analyzing judicial behavior in resource-rich nations where economic ambitions collide with sustainability mandates. To move toward an ecologically responsive system that honors both SDG 13 and SDG 16, it is recommended that the Supreme Court (*Mahkamah Agung*) institutionalize “Ecological Proportionality” guidelines that equate fines with the total cost of ecosystem service loss and illicit profit. Policy reforms must also

include the expansion of green certification to all court levels, the mandatory application of PERMA No. 13 of 2016 for corporate organizational fault, and the integration of restorative justice as a supplement to—not a replacement for—deterrent criminal sanctions. Ultimately, aligning the Indonesian judiciary with the Sustainable Development Goals requires a fundamental shift from a “reactive” penal culture to a “proactive” guardianship of the environment, ensuring that strong judicial institutions serve as a foundational barrier against climate destruction.

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