

# Environmental Criminal Law as a Tool for Ecological Protection: Interpreting the Constitution in the Context of Environmental Crimes

## *Hukum Pidana Lingkungan Hidup sebagai Alat Perlindungan Ekologis: Menafsir Konstitusi dalam Konteks Kejahatan Lingkungan*

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### ABSTRACT

This article comprehensively analyzes the Indonesian Constitution as a crucial foundation and solid bulwark for strengthening Environmental Criminal Law. Given the alarming global ecological crisis, characterized by massive deforestation, uncontrolled pollution, biodiversity loss, and excessive resource exploitation, reforming the criminal law framework to be adaptive, responsive, and progressive is urgent. This research firmly argues that the Constitution isn't just a general, declarative legal umbrella, it intrinsically embodies fundamental constitutional values and principles. These include every citizen's right to a good and healthy environment and the state's obligation to protect it. Using a normative-juridical approach



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focused on analyzing legal texts, doctrines, and court decisions, this article systematically examines how in-depth constitutional interpretation and creative elaboration of principles can catalyze stronger, more comprehensive, and ecologically just environmental criminal regulations. The discussion identifies and critically analyzes structural and substantive weaknesses in current environmental criminal law enforcement, such as evidentiary challenges, weak sanctions, and limited scope of legal subjects. This article explores the Constitution's potential to legitimize overcoming these obstacles. This includes strengthening criminal sanctions for proportional deterrence, expanding the definition of environmental crimes to encompass new and complex ecological offenses, and enhancing more effective corporate accountability mechanisms. This article affirms that reforming and developing Environmental Criminal Law, firmly rooted in constitutional values and principles, is an absolute prerequisite for building a holistic and sustainable environmental protection system. This step is essential in preventing further ecological degradation, restoring the balance of nature, and effectively guaranteeing environmental rights for current and future generations.

**KEYWORDS:** *Constitution; Criminal Law Reform; Ecological Protection; Environmental Criminal Law.*

Artikel ini secara komprehensif menganalisis Undang-Undang Dasar Indonesia sebagai fondasi penting dan benteng kuat untuk memperkuat Hukum Pidana Lingkungan. Mengingat krisis ekologis global yang semakin mengkhawatirkan, ditandai dengan deforestasi besar-besaran, pencemaran tak terkendali, hilangnya keanekaragaman hayati, serta eksploitasi sumber daya alam yang berlebihan, sangat mendesak untuk mereformasi kerangka hukum pidana agar lebih adaptif, responsif, dan progresif. Penelitian ini menegaskan bahwa UUD bukan hanya sekadar payung hukum yang bersifat umum dan deklaratif, tetapi justru mengandung nilai-nilai dan prinsip dasar konstitusi yang inheren. Di antaranya adalah hak setiap warga negara atas lingkungan hidup yang baik dan sehat, serta

kewajiban negara untuk melindunginya. Dengan pendekatan normatif-juridis yang berfokus pada analisis teks hukum, doktrin, dan putusan pengadilan, artikel ini secara sistematis mengkaji bagaimana interpretasi konstitusi yang mendalam dan pengembangan kreatif prinsip-prinsip hukum dapat menjadi pendorong lahirnya regulasi pidana lingkungan yang lebih kuat, menyeluruh, dan adil secara ekologis. Pembahasan ini mengidentifikasi serta menganalisis secara kritis kelemahan struktural maupun substantif dalam penegakan hukum pidana lingkungan saat ini, seperti kesulitan dalam pembuktian, sanksi yang lemah, serta cakupan subjek hukum yang terbatas. Artikel ini juga menjelaskan potensi konstitusi untuk melegitimasi upaya pemecahan masalah tersebut, termasuk memperkuat sanksi pidana demi efek pencegahan yang proporsional, memperluas definisi tindak pidana lingkungan agar mencakup pelanggaran ekologis baru dan kompleks, serta meningkatkan mekanisme pertanggungjawaban korporasi yang lebih efektif. Artikel ini menegaskan bahwa reformasi dan pengembangan Hukum Pidana Lingkungan yang berlandaskan nilai-nilai dan prinsip konstitusi merupakan syarat mutlak dalam membangun sistem perlindungan lingkungan yang utuh dan berkelanjutan. Langkah ini penting untuk mencegah kerusakan ekologi lebih lanjut, memulihkan keseimbangan alam, serta menjamin hak atas lingkungan hidup yang layak bagi generasi kini dan mendatang.

**KATA KUNCI:** *Constitution; Criminal Law Reform; Ecological Protection; Environmental Criminal Law.*

## Introduction

In general, the state and the constitution are two inseparable institutions. The constitution is a manifestation of the law that must be obeyed by all parties, be it the government, the holders of power, or the people. The constitution is the basic law of a state. The foundations of state administration are based on the constitution as the basic law<sup>1</sup>. A state based

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<sup>1</sup> Jimly Asshiddiqie. *Konstitusi dan Konstitusionalisme Indonesia*. Cetakan ke-6. Jakarta: Sinar Grafika, 2020.

on a constitution is called a constitutional state. However, to be considered ideally a constitutional state, the state's constitution must fulfill the characteristics and traits of constitutionalism.

A state must fundamentally embrace the idea of constitutionalism. Constitutionalism itself is an idea, concept, or doctrine. The constitution is no longer merely a term for a legal document, but also a moral text about the basic principles of state governance based on the rights of the people/citizens (constitutionalism), and therefore, as Ronald Dworkin said , must be read morally as well ( moral reading ). The position of the constitution is very important for a state, this is because the constitution has a very important role or function, namely to regulate and limit power within a state. And the following is the definition of the constitution and its importance in a state.

The necessity of "value guidance" for human behavior in dealing with the environment is not something to be sought after. Because the largest part of environmental damage breeds from human actions themselves. History records that Homo Sapiens is the only creature with the first "geophysical" power to damage the Earth's climate. It was also they who early on destroyed the environment and the lives of other creatures—when a 10-kilometer-wide meteor fell near Yacutan—which ended the "era" of Reptiles that had existed for 65 million years (Edward O. Wilson<sup>2</sup>

As humans master science and technology, they increasingly develop the ability to transform their environment—requiring new knowledge to survive. Caught in the dialectical process of technology—whose consequences are always unpredictable—the natural environment continues to shrink. To meet the needs of a growing population, humans use technology to boost productivity by exploiting nature. Undeniably, through excessive exploitation of nature, humans have achieved a per capita income by draining natural energy. Meanwhile, nature receives less in return than it contributes. This is achieved by depleting natural resources, damaging the world's atmosphere and climate—lowering and polluting

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<sup>2</sup> Edward O. Wilson Consilience, The Unity of Knowledge, Environmental Policy, Ethics, Social Science, Biology , 1998

groundwater levels, reducing forests and expanding deserts, and destroying biological diversity. As a result, Homo sapiens is approaching the limits of its food and water supplies.

Such a spirit of mastery over nature is, of course, linked to the environmental ethics that have been embraced to date, namely "human-oriented ethics ." Based on this "anthropocentric" ethic—which glorifies and justifies the exploitation of natural resources and social institutions for the sake of "greed," modern humans are lulled into adhering to the technological advances they create. Believing in the superiority of science and technology, Francis Bacon's credo of modernization<sup>3</sup>: Human Knowledge is Human Power —has been distorted into a pillar of technocracy, particularly in the use of science and technology. It is therefore not surprising that the issue debated in environmental discourse is how humans can confront and utilize the nakedness of nature. This discourse arises from two self-images of humans as "masters" of nature ("Dominium Terrae").

First , the progressive rationalist view. The assumption is that humans possess unlimited intellectual potential despite their biological limitations. Humans are essentially high-class animals. With their intellect, humans are capable of engineering nature and even creating their own biospheres , independent of Earth's natural environment. This artificial environment was tested in the 1990s with the construction of Biosphere-2 —a 3.15- acre enclosed ecosystem built in the Oracle Desert in Arizona. It is encased in glass walls and supplied with soil, water, air, plants, and animals.

As a "mini-Earth" independent of the original Earth, its designers created artificial forests, grasslands, scrublands, deserts, ponds, coral reefs ( marsh ), and oceans to simulate a natural habitat. However, eight volunteers who attempted to isolate themselves for five months experienced life-threatening

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<sup>3</sup> Madeline M. Muntersbjorn Francis Bacon's Philosophy of Science: *Machina intellectus* and *Forma indita* Philosophy of Science [Vol. 70, No. 5, Proceedings of the 2002 Biennial Meeting of The Philosophy of Science Association Part I: Contributed Papers](#) Edited by Sandra D. Mitchell (December 2003), pp. 1137-1148 (12 pages) Published By: Cambridge University Press

oxygen levels.

Second, there is a neutralistic self-image—which assumes that humans are confined to a very narrow biosphere—within which a thousand possible "hells" exist. The human body and mind are adapted to such a physical and biotic environment, complete with its various trials and dangers. In this regard, humans are bound by the basic principle of organic evolution called habitat selection. Humans will not be able to find any other place on this planet, except Earth, to cultivate.

As a result, *Homo Sapiens* became a new creature with the title *Homo Proteus* (shape-shifting human). The credo adopted is: "With great energy and driven by information, humans can explore everywhere, can adapt to any environment/atmosphere." The decline of nature and the disappearance of other creatures, is the price that must be paid for progress, and its connection to the future is not too worrying. Therefore, it is not an exaggeration to say that humans today have created a big problem for themselves and their generations<sup>4</sup>. So the "Faustian" struggle is before us, namely whether to accept this eroding and dangerous behavior, or restrain ourselves and seek a new environmental ethic.

Edward Wilson noted that the current state of the world's environment can be summarized as follows: The world population is very large, and will become even larger after 2025. In 1997, the world population reached 5.8 billion, which means it is growing at a rate of 90 million people per year. In 1600 there were only half a billion people, and in 1940 there were two billion.

The global population growth rate has peaked since the 1960s. In 1996, for example, each woman gave birth to an average of 4.1 children. If birth control programs were implemented, the figure would be 2.1, and it is estimated that by 2050 there would be 7.7 billion people—a very real possibility—by 2150. Experts disagree on how many people the world can support over a given period. However, most believe the most optimistic estimate is between 4 and 16 billion.

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<sup>4</sup> Brasier AT, McIlroy D, McLoughlin N. 2017. *Earth System Evolution and Early Life: A Celebration of the Work of Martin Brasier*. London: Geological Society. p 448.

The exact figure will be determined by the quality of life desired by future generations. If everyone agreed to become vegetarian, the area of arable land today would be 1.4 billion hectares—which would support 10 billion people. If humans consumed only the energy captured by plant photosynthesis (about 40 trillion watts), the Earth would be able to support 16 billion people. This consumption, however, would require the exclusion of all other forms of life.

Trend in thinking about the integrity of creation has given rise to a new ethic known as “life-oriented ethics .” Unlike “human-oriented ethics ,” “life-oriented ethics” emphasizes eco-philosophical values such as comprehensiveness, pursuing wisdom, being environmentally conscious, related to the economics of the quality of life, being vocal about responsibility, and being life-oriented . In this ethic, people not only talk about human rights but also about the rights of creation. People are increasingly aware that water and air, for example, are no longer free commodities—which can be used as much as they like without limits and without payment. This “ mandala of eco-philosophy ” requires an integral understanding of the relationship between humans and their environment.

Thus, it can be argued that this ethic has implications for the axiology of science and technology. While science and technology seem to be the final “prosthesis” of this century, they remain a choice. The level of dependence on each community varies greatly. The loss of electricity from the pristine Kubu tribe would have little, if any, catastrophic consequences. But if it were removed from the residents of Jakarta, millions of people would die instantly.

At this point, what will be revealed is that, to a certain degree, science and technology have indeed enabled humans to determine their own will. But it is not everything. Although science and technology can answer many questions, it is not able to answer all questions. This awareness is reflected, for example, in the statement of Beng Gustafsson—a scientist in Theoretical Astrophysics at Uppsala University—when he said: “Don't take science too seriously. Consequently, it is too serious if we do. Sometimes, even often, you can believe scientific statements about the world. But don't believe science itself.”

Gustafsson further advises against relying on science as a solution to societal, relational, or existential problems. It's fine to use it, but don't rely on it. A scientific worldview is impressive, even important, but it's not enough. There are other solutions (in the form of values) beyond mere technical-scientific ones (see Eka Darmaputera, 1992).

Evidence of the destructive penetration of science and technology into ideas, behavior, environmental quality, and the social structure of global society are a number of things that require us not to trust ourselves completely in science and technology. In addition, experiments to change emotions and epigenetic structures, experiments to change genes in any desired direction by inserting and replacing DNA "snippets", the possibility of cloning that reduces character and emotional elements—which degrades human dignity—are the latest threats to humanity now and in the future. These are the issues that are currently becoming the concern of the new life-oriented ethics which must be grappled with towards the formation of "environmentally friendly" humans, including in the use of science and technology.

The environmental challenges facing the world today have reached alarming levels. From massive deforestation, chronic water and air pollution, to the global climate crisis, ecological degradation has become a serious threat to the sustainability of life on earth. This situation demands a stronger, more adaptive, and progressive legal response, particularly in the realm of Environmental Criminal Law . As a legal instrument that functions as an *ultimum remedium* (last resort), criminal law plays a crucial role in preventing and prosecuting environmental crimes that cause irreparable damage. However, the effectiveness of its enforcement often runs up against various obstacles, both in terms of the substance of the norms, the capacity of law enforcement, and its philosophical legitimacy.

Amidst the complexity of these issues, the Constitution of the Republic of Indonesia stands as a fundamental pillar that not only provides legitimacy for the formation and enforcement of laws, but also radiates noble values regarding human rights and environmental sustainability. Article 28H paragraph (1) of the 1945 Constitution explicitly affirms the right of every person

to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment<sup>5</sup>. This constitutional principle serves as an unshakable moral and legal foundation for environmental protection efforts.

This article seeks to explore in depth how the Constitution serves as a solid "fortress" for Environmental Criminal Law in realizing optimal ecological protection. We will analyze how constitutional principles can be interpreted and internalized to address weaknesses in the existing environmental criminal law framework, encourage substantial reform, and strengthen its enforcement. Thus, it is hoped that Environmental Criminal Law will not be merely a repressive tool, but also a transformative instrument capable of preventing further environmental damage, restoring the balance of nature, and guaranteeing environmental rights for current and future generations.

## Method

This article uses a normative *legal* research method. This approach was chosen because the primary focus of the research is to analyze and examine legal norms, legal principles, and legal theories relevant to the Constitution and environmental criminal law. Specifically, this method uses

### 1. Research Approach

This research will use a statutory *approach* and a conceptual *approach*.

**Legislative Approach:** This approach will examine all laws and regulations related to constitutional issues, environmental rights, and environmental criminal law. This includes the 1945 Constitution of the Republic of Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management, and other relevant implementing regulations.

**Conceptual Approach:** This approach involves the study of the doctrines and views of legal scholars on fundamental concepts such as constitutionalism, human rights, criminal law theory, principles of environmental protection, and ecological

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<sup>5</sup> Fitriani, Nina. "Peran Hukum Pidana Lingkungan dalam Pencegahan Kejahatan Sumber Daya Alam yang Terorganisir." *Jurnal Legislasi Indonesia*, Vol. 18, No. 4 (2021): 401-415.

justice<sup>6</sup>.

## *2. Types and Sources of Legal Materials*

The types of legal materials that will be used are primary, secondary and tertiary legal materials .

Primary Legal Material: This is legal material that is binding and directly becomes the object of research. include: The 1945 Constitution of the Republic of Indonesia. Law Number 32 of 2009 concerning Environmental Protection and Management. Relevant Constitutional Court or Supreme Court decisions regarding environmental rights or environmental criminal cases. Criminal Code (KUHP).

Secondary Legal Material: Legal material that provides explanations regarding primary legal material include: Legal textbooks related to the constitution, criminal law, and environmental law. Scientific journals and legal articles that discuss similar issues. Relevant research or dissertation results<sup>7</sup>.

Tertiary Legal Materials: Materials that provide guidance or additional information for understanding primary and secondary legal materials include: Legal dictionary. Encyclopedia of law.

## *3. Legal Material Collection Techniques*

The legal material collection technique that will be used is library research . This involves:

Identification and collection of legal documents such as laws and regulations, court decisions, books, scientific journals, and articles from legal databases and libraries.

Reading and recording relevant information from each source.

## *4. Analysis of Legal Materials*

Analysis of legal materials will be carried out descriptively-analytically .

Descriptive: Providing presentations and explanations regarding legal norms, concepts and theories found in legal materials. Analytical: Interpreting, synthesizing, and evaluating

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<sup>6</sup> Marzuki, Peter Mahmud. *Penelitian Hukum*. Cetakan ke-14. Jakarta: Kencana Prenada Media Group, 2021.

<sup>7</sup> Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Cetakan ke-15. Jakarta: RajaGrafindo Persada, 2022.

the legal materials collected to address the research problem. This analysis will outline how the Constitution serves as a foundation and bulwark for the development and enforcement of environmental criminal law within the framework of ecological protection.

With this method, the article is expected to present a comprehensive and in-depth analysis of the role of the Constitution in strengthening environmental criminal law for ecological protection.

## Result & Discussion

### A. Constitutional Rights to a Good and Healthy Environment as *a Grundnorm* for Environmental Criminal Law

This sub-section begins by confirming the position of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia as *the grundnorm* or basic norm that provides constitutional legitimacy for the entire environmental criminal law framework in Indonesia.

#### *1. Analysis of Article 28H paragraph (1) of the 1945 Constitution: Environmental Rights as the Foundation of Criminal Law*

Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia is one of the constitutional pearls that serves as a philosophical and legal basis for environmental protection in Indonesia<sup>8</sup>. This article explicitly states, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services." The phrase "having a good and healthy living environment" is not just an empty promise, but a fundamental constitutional right that demands

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<sup>8</sup> Dahlan, Moh. Shauki. *Hukum Lingkungan dan Ekologi Pembangunan*. Cetakan ke-3. Bandung: Mandar Maju, 2021.

active protection from the state.

This right is called fundamental because it is a basic prerequisite for the fulfillment of other human rights. Without a good and healthy environment, the right to a prosperous life, the right to health, and even the right to human dignity will be threatened<sup>9</sup>. A polluted environment, severely damaged natural resources, or a fundamentally disturbed ecosystem will rob individuals of their ability to enjoy a decent quality of life. Therefore, the state has a very strong constitutional obligation to protect, respect, and fulfill this right to the environment.

The active protection from the state required by Article 28H paragraph (1) of the 1945 Constitution is not limited to preventive measures or administrative regulations alone<sup>10</sup>. In fact, this constitutional mandate is an urgent need for the existence and strengthening of Environmental Criminal Law. Why is this?

a. Deterrence and Prevention: When the environment is damaged, especially due to deliberate unlawful acts or gross negligence, criminal law mechanisms are necessary to provide a deterrent effect<sup>11</sup>. The threat of strict criminal sanctions—whether imprisonment, fines, or corporate sanctions—serves as a stern warning to individuals and corporations not to damage the environment<sup>12</sup>. This is a form of active protection *ex ante* (before serious damage occurs).

b. Repression and Accountability: When environmental

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<sup>9</sup> Barda. Nawawi. Arief, Pembaharuan Hukum Pidana Umum di Indonesia: Perspektif Kajian Teoritis dan Praktis. Edisi Revisi. Semarang: Pustaka Magister, 2018.

<sup>10</sup> Lubis, Faisal. "Perlindungan Lingkungan Hidup dalam Perspektif Hukum Konstitusi dan Implementasinya di Indonesia." *Jurnal Hukum & Pembangunan*, Vol. 53, No. 2 (2023): 187-205.

<sup>11</sup> Muladi dan Dwidja Priyatno. Pertanggungjawaban Korporasi dalam Hukum Pidana. Jakarta: Kencana, 2019.

<sup>12</sup> Harahap, M. Yahya. "Tantangan Penegakan Hukum Pidana Lingkungan dalam Era Disrupsi Digital." *Jurnal Hukum & Pembangunan*, Vol. 52, No. 1 (2022): 1-18.

damage has occurred, resulting in massive ecological losses and threatening the community's constitutional rights, environmental criminal law serves as a repressive tool. It ensures that perpetrators of environmental crimes, both individuals and corporations, are held accountable for their actions. Without criminal sanctions, serious environmental violations may be considered trivial or result in only minor administrative sanctions disproportionate to the damage caused.

- c. Restoration and Restitution of Rights: Environmental criminal law is no longer solely oriented toward retribution, but is increasingly shifting toward reparation<sup>13</sup>. Through criminal decisions, judges can order the restoration of damaged environments, the payment of ecological compensation, or the closure of destructive operations. This is a concrete manifestation of the state's active protection to restore a "good and healthy environment" as mandated by the Constitution.
- d. Affirmation of Social Values: Criminalizing acts that damage the environment affirms that society, through the Constitution, considers the environment a fundamental value that must be protected. Criminal law serves as a tool to instill awareness of the importance of environmental sustainability and condemn actions that damage it<sup>14</sup>.

Thus, Article 28H paragraph (1) of the 1945 Constitution is not only a source of legitimacy, but also a constitutional mandate for the state to proactively develop and enforce Environmental Criminal Law<sup>15</sup>. The existence of environmental

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<sup>13</sup>, Satjipto. Rahardjo Hukum Progresif: Sebuah Sintesa Hukum Indonesia. Cetakan ke-6. Yogyakarta: Genta Publishing, 2018.

<sup>14</sup> Syahrul, Muhammad. Penegakan Hukum Lingkungan di Indonesia. Edisi Revisi. Jakarta: RajaGrafindo Persada, 2020.

<sup>15</sup> Putra, Gede Sri. "Peran Peradilan Konstitusi dalam Mendorong Perlindungan Lingkungan Hidup di Indonesia." *Jurnal Konstitusi*, Vol. 20, No. 1 (2023): 1-20.

criminal law is not merely a policy choice, but rather a necessity to ensure that citizens' fundamental rights to a good and healthy environment are truly realized and protected from the threat of environmental crime.

## *2. Constitutional Implications for the Objectives of Environmental Criminal Law*

The mandate of Article 28H paragraph (1) of the 1945 Constitution, which guarantees the right of every person to a good and healthy environment, has profound implications for the fundamental objectives of Environmental Criminal Law. This constitutional right not only legitimizes the existence of criminal law in protecting the environment, but also progressively shifts its paradigm from merely focusing on retributive *justice* to being more oriented towards restorative *justice* and prevention (*preventive justice*). Ecological protection, thus, is no longer just a policy choice, but has become a constitutional obligation that must be fulfilled by the state<sup>16</sup>.

Traditionally, criminal law has often been understood as an instrument for imposing sanctions for crimes, with the primary goal of retribution. In the context of environmental crimes, this means punishing polluters or environmental destroyers commensurate with their actions<sup>17</sup>. However, the constitutional right to a healthy environment brings a new perspective:

### *a. Shift Towards Restorative Goals*

Since the Constitution guarantees the right to a good and healthy environment, logically, any violation of that right must be followed by efforts to restore or restore the environment to its original condition. This is the essence of restorative justice. The implications are:

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<sup>16</sup> Ali, Mahrus. *Hukum Pidana Lingkungan: Teori dan Aplikasi dalam Penegakan Hukum*. Jakarta: Sinar Grafika, 2020.

<sup>17</sup> Ridho kurniawan siti nurul intan sarid pertanggungjawaban pidana korporasi berdasarkan asas strict liability(studi pembaharuan hukum pidana lingkungan hidup Jurnal Yuridis Vol.1 No.2, Desember 2014: 153 –168

- a) **Environmental Restoration Obligation:** Criminal sanctions are no longer limited to imprisonment or fines that go to the state treasury<sup>18</sup>. Judges must have the authority and constitutional obligation to order perpetrators of environmental crimes (both individuals and corporations) to actively remediate the environmental damage they caused. This could include land rehabilitation, pollutant cleanup, reforestation, or other forms of ecological restoration.
  - b) **Ecological Compensation:** In addition to the financial losses suffered by individuals, environmental damage also causes massive ecological losses, often intangible in conventional economic terms. The Constitution mandates the development of mechanisms that allow for compensation for damage to the ecosystem itself, not just for human losses.
  - c) **Focus on Environmental Victims:** A restorative approach recognizes that the environment itself, and the communities that depend on it, are victims. Therefore, criminal justice resolution must also consider how these victims can be restored.
- b. **Emphasis on Preventive Goals**
- Preventative measures to prevent future environmental damage. Criminal law, in this regard, acts as a preemptive instrument: Constitutional Deterrent Effect:
- a) The threat of severe criminal sanctions, imbued with the spirit of constitutional rights protection, aims to create a strong deterrent effect. Potential perpetrators must understand that environmental crimes are crimes against fundamental citizen rights, and the sanctions will be very serious.
  - b) **Criminalization of Risky Behavior:** Constitutional

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<sup>18</sup> siahaan, n.h.t. hukum lingkungan dan ekologi pembangunan. cetakan ke-8. jakarta: erlangga, 2022.

mandates could encourage the formulation of broader criminal offenses, targeting not only the consequences (damage) but also high-risk behaviors that inherently threaten the environment, even before significant damage occurs. Examples include strict regulation of hazardous waste, the management of toxic materials, or violations of environmental safety procedures.

- c) Enhanced Compliance Standards: With strong criminal penalties based on constitutional rights, corporations and individuals are encouraged to enhance their environmental compliance standards, conduct internal audits, and adopt sustainable practices to avoid criminal risks.

Ecological Protection as a Constitutional Obligation in this context, the interpretation of Article 28H paragraph (1) of the 1945 Constitution makes ecological protection a binding obligation on the state. This means:

- a. No Other Choice: States can no longer choose to ignore or delay environmental protection for purely economic reasons. Prioritizing the protection of constitutional rights must underpin every policy, including law enforcement.
- b. The Legitimacy of State Intervention: When environmental crimes threaten constitutional rights, the state has strong legitimacy, even a mandate, to intervene through criminal channels. This gives law enforcement greater power.
- c. Cross-Sectoral Responsibility: This obligation also implies that all branches of state power – executive (government and law enforcement), legislative (lawmakers), and judiciary (judges) – have a shared responsibility to ensure that the right to a good and healthy environment is protected through effective environmental criminal law.

Thus, this constitutional mandate transforms Environmental Criminal Law from a mere tool of retribution into an essential multifunctional instrument, oriented towards crime

prevention, damage remediation, and enforcement of accountability in order to maintain environmental sustainability as a fundamental right of all citizens.

### *3. Constitutional State Obligation: Protecting Environmental Rights through Criminal Law*

From every human right guaranteed by the Constitution, including the individual right to a good and healthy environment as stipulated in Article 28H paragraph (1) of the 1945 Constitution, a positive state obligation *inherently* arises. This obligation is not merely a moral recommendation, but rather a legal responsibility that binds the state to act to ensure that these rights can be enjoyed by all its citizens. This state obligation can be described in three main dimensions: to protect, to respect, and *to fulfill* rights, and all three require the active role of criminal law instruments.

#### *a. Obligation to Respect*

The obligation to respect requires that states and their state apparatus refrain from interfering with or violating individual rights. In the environmental context, this means: States must not directly harm the environment through exploitative and unsustainable policies or actions. For example, infrastructure development projects that destroy vital habitats without adequate mitigation, or the issuance of substandard environmental permits, constitute violations of this obligation<sup>19</sup>.

States must ensure that their own actions do not hinder the public from enjoying a healthy environment. This includes ensuring that government agencies do not become sources of environmental pollution or degradation<sup>20</sup>. Although the obligation to respect is more

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<sup>19</sup> Dahlan, Moh. Shauki. *Hukum Lingkungan dan Ekologi Pembangunan*. Cetakan ke-3. Bandung: Mandar Maju, 2021.

<sup>20</sup> Lestari, Komala Sridewi, dan Devi Siti Hamzah Marpaung. "Penyelesaian Sengketa Lingkungan Hidup Diluar Pengadilan (Non Litigasi) Melalui Jalur Negosiasi (Studi Kasus Tumpah Nya Minyak DI Laut Karawang)." *Jurnal Justitia Ilmu Hukum Dan Humaniora* 9, no.2 (2022): 51-60. <https://doi.org/10.31604/justitia.v9i2.51-60>.

passive (doing nothing), its obligations can lead to legal liability, and in severe cases, criminal action may be taken against individuals or state institutions that exceed their authority and intentionally damage the environment.

b. *Obligation to Protect*

The obligation to protect requires the state to take positive steps to prevent third parties (individuals, corporations, or other groups) from violating individual rights. This is the most crucial dimension of obligation in the context of environmental criminal law.

a) *Establishment of a Legal and Regulatory Framework:*

The state is obligated to formulate and enact strict laws and regulations to control activities that have the potential to damage the environment. Law No. 32 of 2009 concerning Environmental Protection and Management (UU PPLH) is a direct manifestation of this obligation, which contains various criminal provisions<sup>21</sup>.

b) *Effective Law Enforcement:* Simply having laws is not enough; states must ensure that they are effectively enforced. This is the vital role of environmental criminal law. Through criminal mechanisms, states can: *Criminalizing Acts of Environmental Destruction:* Establishes that certain acts that damage the environment (e.g., illegal pollution, unauthorized forest destruction, indiscriminate dumping of B3 waste) are criminal offenses subject to sanctions.

c) *Providing a Deterrent Effect:* The threat of serious criminal penalties serves as a disincentive for potential perpetrators of environmental crimes. Its primary goal is to prevent environmental damage by instilling fear of legal consequences.

d) *Holding Perpetrators Accountable:* When environmental crimes occur, the state is obligated to investigate, prosecute, and prosecute the perpetrators. This ensures accountability for violations of

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<sup>21</sup> Fauzi, Akhmad, dkk. *Ekonomi Lingkungan: Teori, Konsep, dan Aplikasi Kebijakan*. Jakarta: Rajawali Pers, 2021

constitutional environmental rights. Without criminal law instruments, the obligation to protect third parties is severely weakened.

- e) Monitoring and Control: Countries must establish robust monitoring systems to monitor compliance with environmental standards and identify potential threats.

c. *Obligation to Fulfill*

The obligation to fulfill requires states to take positive steps to ensure the fulfillment of individual rights. This includes providing the services or conditions necessary for the full enjoyment of rights. In the environmental context:

- a) Provision of a Decent Living Environment: The state is obliged to invest in infrastructure and policies that proactively improve the quality of the living environment, such as good waste management, provision of clean water, development of renewable energy, and rehabilitation of damaged land.
- b) Education and Information: Fulfilling the right to the environment also means providing transparent information about environmental conditions and educating the public about the importance of conservation.
- c) Access to Justice: The state is obliged to ensure that every individual has easy and effective access to justice mechanisms, including in cases related to environmental damage. This also includes ensuring that victims of environmental crimes can seek compensation or redress. Although the obligation to fulfill is more often associated with non-criminal policies (such as sustainable development), its effectiveness depends crucially on the existence of the obligation to protect. If the state is unable to protect its environment from damage by third parties through strong criminal law, compliance efforts (for example, rehabilitation programs) will be futile because the damage will continue to recur. Thus, from the individual right to a good and healthy environment as enshrined in the Constitution, a three-dimensional state

obligation emerges. Within this triad of obligations, criminal law instruments play an irreplaceable role in the "protect" dimension.

Environmental criminal law is a concrete manifestation of the state's commitment to using its most powerful authority—the threat of punishment—to safeguard its citizens' fundamental right to a healthy environment, affirming that crimes against nature are crimes against human rights themselves.

## B. Interpretation of the Constitution in the Formulation of Environmental Crimes and Criminal Sanctions

This section will focus on how Constitutional interpretation can guide the formulation of more effective criminal norms and sanctions in the PPLH Law and its derivative regulations.

### *1. Expansion of Constitutionally Based Environmental Crime Objects: Towards Comprehensive Criminalization*

The broad interpretation of the phrase "a good and healthy environment" in Article 28H paragraph (1) of the 1945 Constitution has great potential to encourage the expansion of the objects of environmental crimes, which means the criminalization of actions that may not be explicitly covered in existing environmental criminal laws, but which substantially and seriously damage the ecosystem. This is a crucial step to ensure that Environmental Criminal Law does not lag behind the increasingly sophisticated and massive modus operandi of environmental destruction.

Traditionally, criminal law has tended to be based on *lex stricta* (narrow interpretation) and *lex certa* (definite). However, in the context of environmental crimes, this static approach is often inadequate. Environmental crimes have unique characteristics: their impacts are indirect, often cumulative, cross administrative boundaries, and can affect future generations. Therefore, a progressive and dynamic

interpretation of the Constitution is vital for adapting environmental criminal law.

Here is how a broad interpretation of the constitutional right to a good and healthy environment can encourage the expansion of the objects of environmental crimes:

a. Criminalization of Actions that Threaten Ecosystem Integrity (Proactive Approach)

The right to a good and healthy environment not only means freedom from pollution, but also demands the integrity and sustainability of the ecosystem as a whole. This interpretation allows for the criminalization of acts that:

- a) Not Yet Causing Obvious Damage but Possessing Catastrophic Potential: If an activity, while not yet causing visible environmental damage, has been scientifically proven to have a very high potential to cause future ecological disaster, the Constitution may provide grounds for criminalizing preparatory or attempted actions for that activity. This shifts the focus from *ex post facto* (after the damage has occurred) to *ex ante* (early prevention).
  - b) Damaging Essential Ecological Functions: The Constitution can be the basis for criminalizing actions that damage vital ecosystem functions (for example, the carbon absorption function of peat forests, the water filter function of wetlands, or the climate regulation function of the deep sea) even though the impact is not directly felt by humans at that time.
- b. Promoting Recognition of the Concept of *Ecocide*

One of the most significant implications of a broad interpretation of environmental rights is the potential to criminalize ecocide. Although not yet a universally recognized international crime (like genocide or war crimes), the concept of ecocide refers to illegal or reckless acts committed with the knowledge that they are

likely to cause serious, widespread, or long-term harm to the environment.

- a) **Constitutional Basis for Ecocide:** The constitutional right to a good and healthy environment can provide a strong domestic basis for introducing the crime of ecocide. If the state is obligated to protect this right, then acts that systematically and massively destroy the environment to the point of collective and long-term threat to this right deserve to be categorized as a serious crime.
- b) **Focus on the Scale and Severity of Impact:** Ecocide demands a focus on the scale of harm that goes far beyond simple pollution. A robust interpretation of the Constitution could require states to create criminal offenses that reflect this extreme level of harm, targeting powerful actors (often corporations or even states) responsible for widespread destruction.
- c. **Reaching Transnational Environmental Crime**

Many modern environmental crimes no longer recognize national borders, such as the illegal wildlife trade, the transboundary dumping of toxic waste, or the destruction of forests linked to global supply chains. A progressive interpretation of the Constitution could encourage:

  - a) **Extraterritorial Jurisdiction:** The Constitution may provide a basis for national courts to try environmental crimes committed outside Indonesian territory but that have a significant impact on citizens' environmental rights (for example, transboundary haze from land burning in another country that impacts air quality in Indonesia).
  - b) **Stronger International Cooperation:** The constitutional mandate to protect the environment can encourage states to be proactive in international cooperation, such as extradition treaties, information exchange, and joint operations to combat transnational environmental

crimes that threaten environmental rights.

- c) Implementation of International Conventions: Constitutional interpretation can encourage further adoption and implementation of international conventions related to environmental protection and their enforcement at the domestic level.

Ultimately, the broad interpretation of "a good and healthy environment" in Article 28H paragraph (1) of the 1945 Constitution provides a strong constitutional basis for the expansion of the objects of environmental crimes. This allows environmental criminal law to evolve, not only to prosecute acts that are clearly prohibited, but also to anticipate and criminalize new destructive acts that fundamentally threaten constitutional rights to the environment. Thus, environmental criminal law can become a more relevant and effective instrument in dealing with the complexity of modern environmental crimes, including the potential recognition of ecocide and handling transnational crimes, in order to realize comprehensive ecological protection.

## *2. Progressive and Restorative Sanctions: Realizing Environmental Justice Through Constitutional Mandates*

The constitutional right to a good and healthy environment as stipulated in Article 28H paragraph (1) of the 1945 Constitution has fundamental implications for the formulation of sanctions in Environmental Criminal Law. This mandate encourages the birth of a progressive and restorative sanction approach, going beyond the framework of conventional criminal sanctions which often only focus on fines or imprisonment. Constitutional values demand that environmental criminal sanctions must effectively prevent damage, punish perpetrators, and most importantly, restore ecological damage and ensure justice for the environment itself and the affected communities. This is the essence of the principle of environmental justice.

Traditionally, the goals of criminal sanctions are retribution, deterrence, and rehabilitation. However, in the

context of environmental crimes, these goals alone are often insufficient. Environmental damage has unique characteristics: it can be cumulative, long-term, even permanent, and has widespread impacts on ecosystems and future generations. Therefore, sanctions must be designed not only to punish the perpetrator but also to restore the environment and prevent similar crimes from recurring.

a. Paradigm Shift of Constitution-Based Sanctions-- Constitutional values regarding the right to a healthy environment shift the paradigm of sanctions by demanding:

a) Focus on Restoration: If the Constitution guarantees the right to a healthy environment, then any violation of this right must be met with active efforts to restore it. This means that criminal sanctions must be able to force perpetrators to be directly responsible for repairing the damaged environment. This concept aligns with restorative justice, which prioritizes repair and reconciliation.

b) Relevant (Progressive) Deterrent Effect: Fines and imprisonment, if disproportionate to the financial benefits of environmental crimes, often do not provide a meaningful deterrent effect. The Constitution calls for harsher and more diverse sanctions that target the root motivations of environmental crimes (often economic gain) and prevent recurrence.

b. Forms of Progressive and Restorative Sanctions Supported by the Constitution

A strong constitutional interpretation allows for the formulation of innovative and effective criminal sanctions, including:

a) Restoration Obligation: This is the heart of restorative sanctions. Perpetrators of environmental crimes are

not only fined or imprisoned but are also required to take concrete steps to restore the environment damaged by their actions. Examples include peatland rehabilitation, reforestation of burned forests, cleanup of toxic waste, or restoration of coastal ecosystems. This obligation must be enforceable and periodically evaluated by the courts.

- b) **Revocation of Business Licenses:** For corporations found guilty of serious environmental crimes, constitutional values may support the sanction of revoking their business or operating licenses. This is a highly progressive form of sanction and provides maximum deterrent effect, as it directly affects the corporation's ability to operate and profit from illegal practices. It also emphasizes that the right to do business must not override the constitutional right to the environment.
- c) **Dissolution of Corporations:** In cases of extreme, systematic, and repeated environmental crimes committed by corporations inherently established to commit environmental crimes, the Constitution may legitimize the sanction of dissolution of the corporation. This is the ultimate sanction, affirming that legal entities that fundamentally undermine human rights through environmental destruction are unfit to continue to exist.
- d) **Compensation for Substantial Ecological Harm:** In addition to material compensation to direct victims, criminal sanctions must be able to require compensation for substantial ecological harm, that is, damage to the values and functions of the ecosystem itself. This includes the loss of biodiversity, the degradation of ecosystem services (e.g., clean water provision, carbon sequestration), or the destruction of natural habitats. Valuing these ecological harms

requires specialized methodologies and must yield values capable of financing long-term restoration efforts.

- e) **Progressive Fines and Forfeiture of Profits:** Criminal fines should be able to dismantle the illegal profits derived from environmental crimes, and even more. Progressive fines, with increasing amounts based on the severity of the damage or duration of the violation, as well as forfeiture of the proceeds of crime, would be highly effective in eliminating the perpetrator's economic motive.

c. **In line with the Principles of Environmental Justice**

All of these progressive and restorative sanctions are closely aligned with the principles of environmental justice. Environmental justice demands not only the equitable distribution of environmental burdens and benefits, but also the restoration of damaged environments and full accountability for those damages. By prioritizing restoration and ensuring that perpetrators fully pay for the harm caused, these sanctions contribute to:

- a) **Fulfillment of Environmental Rights of Affected Communities:** Communities whose rights to a healthy environment have been violated will see concrete efforts for recovery and justice.
- b) **Full Liability:** Criminals, especially large corporations, can no longer simply pay small fines as the "cost of doing business." They are forced to bear the full costs of the negative externalities they create.
- c) **Preventing Environmental Disparities:** Strong sanctions help prevent the accumulation of damage in vulnerable areas and ensure that environmental rights are not enjoyed only by certain groups.---Thus, constitutional

values become a catalyst for transforming environmental criminal sanctions from mere retaliation to a multifaceted, progressive and restorative instrument. This ensures that environmental criminal law is not merely punitive but also actively contributes to environmental restoration and the upholding of ecological justice, as a concrete manifestation of the protection of citizens' constitutional rights.

d. Constitutional Corporate Accountability: Binding Business Entities to Environmental Mandates

The principle of the right to a good and healthy environment guaranteed by Article 28H paragraph (1) of the 1945 Constitution has crucial implications for the mechanism of corporate criminal liability in environmental crimes. Given that the impact of massive and systematic environmental damage is often caused by corporate activities, the Constitution provides a fundamental basis for the state to take firm action against business entities that violate environmental rights, making it no longer just a policy choice, but a constitutional obligation.

3. *The Urgency of Corporate Accountability in Environmental Crimes*

Historically, criminal law has focused more on individual liability (*natural persons*). However, in environmental crimes, this approach is often ineffective. Corporations are entities with the resources, structures, and profit motives that allow them to commit environmental damage on a scale unattainable by individuals. The damage caused by corporations can be:

- a. Massive and Widespread: Industrial-scale pollution, large-scale deforestation, or toxic waste dumping can contaminate vast areas and impact millions of people and entire ecosystems.
- b. Systematic and Premeditated: Corporate environmental crimes are often the result of internal policies,

management decisions, or the pursuit of profits without considering environmental impacts.

- c. **Difficult to Trace Individuals:** In complex corporate structures, it is often difficult to determine which individuals are most criminally responsible.

Without robust corporate criminal accountability mechanisms, large-scale environmental crimes will continue to recur, undermining the constitutional right to a healthy environment. The Constitution requires the state to protect not only individual rights from individual threats, but also from collective entities with greater destructive power.

- a. **Constitutional Basis for Corporate Accountability**

The connection to the Constitution is very clear:

- a) **Constitutional Rights Demand Universal Protection:** If everyone has the right to a good and healthy environment, then this protection must be provided universally, regardless of the perpetrators who threaten that right. Corporate entities, as legal entities operating within the state and affecting the lives of its citizens, should not be exempt from criminal liability for violations of this constitutional right.
- b) **The State's Obligation to Protect:** As previously outlined, the state has a positive obligation to protect the environmental rights of third parties, including corporations. Criminalization and enforcement of criminal penalties against corporations are concrete manifestations of this obligation to protect. The state must use criminal law instruments to prevent, prosecute, and punish corporations that damage the environment and ignore the constitutional rights of the community.
- c) **Social and Ecological Justice:** The Indonesian Constitution also contains the principle of social justice (Article 33 of the 1945 Constitution). In the environmental context, social justice is closely related

to ecological justice, namely the equitable distribution of environmental burdens and benefits. When corporations profit from practices that damage the environment and violate the constitutional rights of the community, criminal enforcement of corporate law becomes a form of upholding social and ecological justice, ensuring that profits are not obtained at the expense of fundamental rights.

- d) The Mandate of Popular Sovereignty: The vast power of corporations must not exceed the sovereignty of the people. The Constitution, as a representation of popular sovereignty, legitimizes the state to control and take action against corporations that abuse their power to the detriment of the people's fundamental rights, including the right to the environment.
- b. Constitution-Based Mechanism for Strengthening Corporate Criminal Liability

With this constitutional basis, the state is encouraged to strengthen corporate criminal accountability mechanisms through:

- a) Expansion of the Concept of Corporate Culpability: No longer solely focused on individual faults within a corporation, but also recognizing the faults of corporations as legal entities (for example, through *corporate culture*, *policy*, or *lack of due diligence*). The Constitution demands that the criminal system be able to reach the "mind" and "will" of corporations.
- b) Strengthening Corporate Criminal Sanctions: Going beyond nominal fines. Criminal sanctions should include:
  - 1) Proportional Fines: Proportional to the illegal profits obtained and the environmental damage caused, even larger to provide a deterrent effect.
  - 2) Forfeiture of Corporate Profits/Assets: Proceeds of crime must be forfeited to prevent profiting from the offense.

- 3) Environmental Restoration Obligation: Corporations should be legally required to restore the damage caused.
- 4) Freezing or Revocation of Business Licenses: As a strict administrative and criminal sanction to stop the operations of corporations that cause damage<sup>22</sup>.
- 5) Dissolution of Corporation: For very serious and systematic crimes, especially if the corporation was formed solely for the purpose of the crime. Simplification of Proof: The Constitution may encourage a shift in the burden of proof or the application of the precautionary principle *in* certain cases, given the difficulties of proof in complex environmental crimes.
- 6) Law Enforcement Capacity Building: The need to prosecute corporations demands law enforcers with capacity, integrity, and a deep understanding of corporate structures and environmental crimes. In short, the Constitution not only permits but essentially requires the state to establish and implement robust corporate criminal liability mechanisms. This is imperative to protect the constitutional right to a healthy and good environment and ensure that even the most powerful entities can be held fully accountable for the ecological damage they cause.

#### *4. The Constitution as a Fortress in the Enforcement of Environmental Criminal Law*

This subsection will discuss the role of the Constitution in providing power and direction to law enforcement officials and the judiciary

##### *a. Legitimacy of Progressive Actions by Law Enforcement Officers*

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<sup>22</sup> Angga, La Ode. "Alternatif Penyelesaian Sengketa Lingkungan Hidup Di Luar Pengadilan (Non Litigasi)." *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no.2 (2018): 264. <http://dx.doi.org/10.29303/ius.v6i2.548>.

The mandate of Article 28H paragraph (1) of the 1945 Constitution which guarantees the right to a good and healthy environment is not only a guideline for lawmakers, but also a strong source of legitimacy for law enforcement officers (prosecutors and judges) to interpret environmental criminal law progressively. This means that they are not fixated on literal interpretation alone, but can interpret legal norms by taking into account the spirit and constitutional objectives, namely optimal environmental protection.

In this context, this legitimacy enables law enforcement officials to:

- a) Addressing Legal Gaps: When new forms of environmental harm emerge that have not been explicitly regulated, judges can use this constitutional rights principle to interpret existing criminal offenses broadly or apply general legal principles on environmental harm.
- b) Applying Restorative-Oriented Sanctions: Armed with constitutional mandates, prosecutors can prosecute and judges can impose sanctions that go beyond fines or imprisonment, such as environmental restoration obligations or permit revocation, which are in line with restorative goals.
- c) Protecting Environmental Activists: Environmental activists often face criminalization while fighting for their constitutional right to a healthy environment. The Constitution mandates prosecutors to refrain from prosecuting or judges to acquit activists whose actions are solely in defense of these constitutional rights, as long as they are conducted within the law. This aligns with the principle of *necessity* or *justification* in criminal law.

Thus, the Constitution serves as a moral and legal compass that guides prosecutors and judges to apply the law not only formally, but also substantively for the

sake of realizing environmental justice and protecting the most basic human rights.

b. The Role of the Constitutional Court in Strengthening Environmental Criminal Law

The Constitutional Court (MK), as the guardian of the constitution and sole interpreter of the 1945 Constitution, plays a crucial role in strengthening Environmental Criminal Law. Its role is not always directly in criminalizing an act, but rather in affirming and expanding the interpretation of the constitutional right to a good and healthy environment (Article 28H paragraph (1) of the 1945 Constitution), which in turn will influence the validity and interpretation of environmental criminal norms.

If there is a Constitutional Court ruling that is directly relevant:

- a) In the Judicial Review of Environmental Criminal Laws or Articles: The Constitutional Court can issue a ruling that annuls (revokes) or provides a constitutional interpretation of an article in the Environmental Protection and Management Law (UU PPLH) that is deemed to be in conflict with environmental rights. For example, if an article is too lenient in imposing sanctions or restricts the community's right to sue, the Constitutional Court can declare the article unconstitutional, conditionally or not. Such a ruling will directly strengthen or change existing criminal norms.
- b) Regarding the Review of Norms Outside the Environmental Management Law: The Constitutional Court can also review other laws that, although not the Environmental Management Law, have an impact on the environment and their associated criminal mechanisms. If the Constitutional Court finds that such norms are detrimental to environmental rights, its ruling could compel lawmakers to revise them or provide a more pro-environmental interpretation,

ultimately impacting the enforcement of environmental criminal laws.

In the absence of a specific direct ruling on environmental criminal norms, the potential role of the Constitutional Court remains very significant as a guardian of these constitutional rights:

- 1) **Progressive Interpretation of Environmental Rights:** Through decisions on other human rights, the Constitutional Court can indirectly enrich the interpretation of environmental rights. For example, decisions affirming the protection of the right to clean water or the right to health can be analogized and used as a basis for expanding the scope of the right to a healthy environment. This interpretation will serve as a guide for judges in general courts to be more courageous in deciding environmental criminal cases.
- 2) **Encouraging Pro-Environmental Legislation:** The Constitutional Court's frequent affirmation of the importance of environmental rights in various contexts will encourage the House of Representatives (DPR) and the government to formulate stronger and more comprehensive environmental laws, including criminal ones. The Constitutional Court's rulings serve as a kind of "green light" or even "pressure" for lawmakers.
- 3) **Constitutional Principles as Testing Parameters:** The Constitutional Court ensures that every law, including those governing environmental crimes, must not conflict with constitutional principles, such as justice, legal certainty, and the protection of human rights. If an environmental criminal norm is deemed discriminatory or disproportionate, the Constitutional Court has the potential to annul it or provide a constitutional interpretation.
- 4) **Encouraging State Accountability:** By strengthening

constitutional rights to the environment, the Constitutional Court indirectly forces the state and its apparatus to be more accountable in carrying out its environmental protection obligations, including in enforcing criminal law.

In short, the Constitutional Court acts as a constitutional "bulwark," ensuring that environmental protection through criminal law instruments is firmly grounded and aligned with citizens' fundamental rights. While not always directly criminalizing, its rulings and interpretations provide direction and strength for the entire environmental criminal law system to work more effectively for ecological protection.

c. Challenges of Implementation and the Role of the Constitution

Environmental criminal law enforcement in Indonesia often faces complex challenges that hinder its effectiveness. Some of the main obstacles include:

- a) Corruption: Corrupt practices within the law enforcement chain can undermine the integrity of the judicial process, from investigation to verdict. Bribery or gratuities can lead to environmental crime cases not being taken seriously, perpetrators escaping prosecution, or sanctions being imposed with extreme leniency
- b) Lack of Capacity: Law enforcement officials (investigators, prosecutors, judges) may not yet have adequate capacity, both in terms of specific knowledge about environmental crimes (e.g., environmental impact analysis, scientific evidence), limited human resources, and supporting facilities (environmental forensic laboratories, surveillance technology).
- c) Political and Economic Interference: Environmental crime cases often involve powerful actors from the corporate sector or those with political connections.

This type of interference can compromise the independence of law enforcement officials, resulting in selective criminalization or the termination of investigations.

- d) Weaknesses of Technical Regulations: Although the Environmental Management Law is quite comprehensive, its implementation can be hampered by the lack of detailed implementing regulations or clear standard operating procedures, especially in measuring environmental losses or executing remedial sanctions.
  - e) Difficulties of Proof: The complex nature of environmental crimes, often involving long chains of causality, cumulative impacts, and the difficulty of identifying corporate *mens rea* (evil intent), adds to the complexity of the evidentiary process in court.
- d. The Constitution as a Fortress and Moral Compass

Despite these real challenges, the Constitution of the Republic of Indonesia, particularly Article 28H paragraph (1) of the 1945 Constitution, which guarantees the right to a good and healthy environment, remains an irreplaceable "fortress" and moral compass. This constitutional mandate provides a fundamental basis for overcoming these obstacles in several ways:

- a) Source of Legitimacy and Moral Strength: The constitutional right to the environment not only provides legal legitimacy for state action but also moral strength for law enforcement officials. They can and must adhere to the Constitution as a basis for resisting pressure or intervention, carrying out their duties professionally and with integrity for the benefit of the public and future generations.
- b) Promoting Accountability: The Constitution demands accountability from every element of the state, including those responsible for law enforcement. Violations of environmental rights, if allowed to persist

due to corruption or negligence, constitute a betrayal of the constitutional mandate. The Constitution provides a basis for holding officials accountable for failing to fulfill their duties.

- c) Strengthening Integrity: By adhering to Constitutional principles, law enforcement officers are reminded that their primary goal is to protect human rights and environmental sustainability, not personal or group interests. This serves as the foundation for building a culture of law enforcement with integrity.
- d) Basis for Legal Reform: If a law or policy is deemed ineffective in protecting environmental rights or even facilitating environmental crimes, the Constitution provides a basis for demanding legal reform. This includes revising the law, strengthening sanctions, or developing better enforcement procedures.
- e) Encouraging Public Participation: The constitutional right to the environment also encourages public participation in monitoring and reporting environmental crimes. The public can exercise their constitutional rights to urge law enforcement to take decisive action.

Thus, the Constitution serves as the highest standard and absolute guide in every step of environmental law enforcement. It is not merely a set of rules, but the spirit that must inspire the actions of every law enforcement official, ensuring that implementation challenges are overcome and the state's commitment to ecological protection remains steadfast.

#### e. The Constitution as a Basis for Reforming Environmental Criminal Law

Criminal law reform, including environmental criminal law, must always be based on the mandate of the Constitution. The Constitution provides a framework of values that allows for the development of criminal norms that are more adaptive to contemporary environmental

crimes. A progressive interpretation of the right to a good and healthy environment can encourage:

- a) Formulation of New Environmental Crimes: Criminalization of Serious Ecological Impacts---The progressive interpretation of the constitutional right to a good and healthy environment (Article 28H paragraph (1) of the 1945 Constitution) paves the way for the formulation of new environmental crimes. This is important to criminalize actions that, although previously not considered serious crimes or not yet covered by criminal law, in fact have a negative and substantial impact on the ecosystem.
- b) Some examples of actions that need to be considered for this criminalization include:
  - 1) Hidden or Long-Term Pollution: Actions whose impacts only become apparent after many years, such as the accumulation of microplastics, the release of chemicals that *bioaccumulate* in the food chain, or massive greenhouse gas emissions that contribute to extreme climate change.
  - 2) Destruction of Critical Habitat without Direct Human Impact: Crimes that specifically target the integrity of an ecosystem, such as the destruction of coral reefs or mangrove forests for non-conservation purposes, even if there are no direct human casualties.
  - 3) Genetic Manipulation that Endangers Biodiversity: Activities that have the potential to genetically damage biodiversity or threaten native species.

Thus, the Constitution provides a strong foundation for the state to expand the reach of environmental criminal law, ensuring that any action that seriously threatens the sustainability of the ecosystem can be prosecuted, not just those that directly impact humans. This is a step forward in maintaining the bulwark of ecological protection.

a. Strengthening Environmental Criminal Sanctions

The constitutional mandate regarding the right to a good and healthy environment provides strong legitimacy for the formulation of environmental criminal sanctions

that are not only severe but also diverse and innovative. This is a response to the frequent ineffectiveness of conventional sanctions (fines and imprisonment) in providing a deterrent effect or reversing ecological damage. These sanctions strengthening include:

- a) Progressive Fines: Fines whose value is adjusted to the scale of the perpetrator's illegal profits or the extent of the environmental damage caused, and can even exceed those profits. The goal is to remove the perpetrator's economic motive.
  - b) Environmental Restoration Obligation: This sanction forces perpetrators of environmental crimes to directly undertake repair or rehabilitation efforts to repair or rehabilitate the ecosystems they have damaged. This could include cleanup, reforestation, or habitat restoration.
  - Revocation of Business Licenses: For corporations, this sanction can take the form of permanent or temporary revocation of operational licenses, which directly impacts their ability to conduct business and profit from illegal practices.
  - c) Dissolution of a Corporation: As the ultimate sanction for very serious, systematic and repeated cases of environmental crimes, especially if the corporation was deliberately formed for the purpose of environmental crimes.
- With these heavier and more varied sanctions, the Constitution ensures that the Environmental Criminal Law is able to provide a real deterrent effect and encourage environmental restoration, not simply a "cost of doing business" for environmental destroyers.
- b. Law Enforcement Capacity Building

The mandate of the Constitution, particularly Article 28H paragraph (1) of the 1945 Constitution, which guarantees the right to a good and healthy environment, inherently encourages the state to strengthen its capacity to enforce environmental law. This constitutional right demands the establishment of robust institutions and mechanisms so that ecological protection does not remain merely on paper. This capacity increase includes:

- a) Human Resource Development: Training investigators,

prosecutors, and judges to have specialized expertise in environmental crimes, including a scientific and technical understanding of environmental impacts.

- b) Provision of Facilities and Technology: Equipping officers with environmental forensic laboratories, satellite surveillance technology, and other equipment that supports the proof of complex environmental crimes.--Institutional Strengthening: Ensuring effective coordination between law enforcement agencies (Police, Prosecutor's Office, Ministry of Environment and Forestry, Courts) as well as synergy with research institutions and civil society.

The Constitution, therefore, becomes the main driver for the state to have not only good laws, but also a competent, responsive enforcement system capable of concretely protecting environmental rights.

Based on this description, Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) is an example of legislation that attempts to implement this constitutional mandate, with more comprehensive criminal provisions. However, implementation challenges remain, making ongoing constitutional interpretation crucial to ensuring the effectiveness of environmental criminal law.

The Constitution is not merely a static text, but rather a dynamic foundation that supports and guides the development of Environmental Criminal Law . By understanding the close relationship between constitutional principles, criminal law theory, and the goals of ecological protection, we can identify how the Constitution serves as a strong bulwark. Further exploration in this article will explore this potential to strengthen the enforcement of environmental criminal law for the sake of environmental sustainability.

## Conclusion

This article has reviewed in depth the fundamental role of the Constitution of the Republic of Indonesia , particularly Article 28H paragraph (1) of the 1945 Constitution which guarantees the right to a good and healthy environment, as a

bulwark and the main foundation for Environmental Criminal Law in ecological protection efforts . We conclude that this constitutional right is not merely a declaration, but rather a mandate that positions environmental protection as a non-negotiable constitutional obligation of the state.

A progressive and dynamic interpretation of the Constitution has significant implications:

First, it shifts the paradigm of environmental criminal law's objectives from merely retributive to a more restorative and preventive approach . This requires sanctions that not only punish but also actively repair the damage and deter future crimes.

Second, the Constitution provides legitimacy for the expansion of the objects of environmental crimes , allowing the criminalization of acts that substantially damage the ecosystem, even for concepts such as ecocide and transnational environmental crimes.

Third, it forms the basis for the formulation of progressive and restorative sanctions that go beyond fines or imprisonment, including environmental restoration obligations, revocation of permits, dissolution of corporations, and compensation for substantial ecological losses.

Fourth, the Constitution is a strong foundation for corporate criminal liability , ensuring that business entities with massive impacts do not escape the law, in line with the principles of environmental justice.

Finally, the Constitutional mandate empowers law enforcement officials (prosecutors and judges) to interpret the law progressively, and serves as a vital moral compass in addressing implementation challenges such as corruption, lack of capacity, and political intervention, while also promoting accountability and integrity.

Thus, an Environmental Criminal Law firmly grounded in the Constitution is an essential, transformative instrument, not only for prosecuting perpetrators but also for maintaining ecological sustainability, upholding environmental justice, and ensuring the constitutional rights of current and future generations to a good and healthy environment are fulfilled. Consistent and progressive implementation of the

Constitution's mandate is key to a more sustainable environmental future.

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## DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

## FUNDING INFORMATION

None

## ACKNOWLEDGMENT

None

## HISTORY OF ARTICLE

Submitted : March 18, 2025

Revised : April 20, 2025

Accepted : June 13, 2025

Published : July 15, 2025

## *Notification*

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