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Mainstreaming Social Justice in Environmental Law Enforcement in Indonesia: Theories and Practices

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Abstract

This paper critically examines the convergence of environmental law enforcement and social justice within the context of Indonesia. Despite the nation's abundant biodiversity and natural resources, it grapples with the intricate challenge of harmonizing environmental conservation efforts with socio-economic development imperatives. However, the effective enforcement of existing environmental legislation often proves deficient, exacerbating environmental degradation and exacerbating social inequalities. Through an interdisciplinary lens drawing from law, sociology, and environmental studies, this study systematically investigates both the theoretical foundations and practical strategies for integrating social justice considerations into environmental law enforcement mechanisms. Central to the analysis is an exploration of principles such as

equity, fairness, and inclusivity, elucidating pathways for their incorporation into the formulation and implementation of environmental regulations and enforcement protocols. Furthermore, the paper conducts a nuanced examination of the socio-political dynamics shaping the enforcement landscape in Indonesia, including power differentials, issues of corruption, and institutional capacities. Through a comprehensive review of pertinent literature and empirical case studies, the paper identifies promising approaches and best practices for enhancing social justice within environmental law enforcement. These encompass community-driven monitoring initiatives, robust stakeholder engagement mechanisms, and targeted capacity-building endeavors tailored to law enforcement agencies. Additionally, the paper underscores the transformative potential of technology and innovation in fostering greater transparency, accountability, and public participation in environmental governance processes. By synthesizing theoretical insights with empirical evidence, this paper contributes substantively to the nuanced understanding of the intricate interplay between environmental law enforcement and social justice within the Indonesian context.

KEYWORDS *Environmental Justice, Social Justice, Environmental Protection*

Introduction

Indonesia stands at a crossroads where the imperatives of environmental conservation intersect with the pursuit of social justice.[1] Endowed with remarkable biodiversity and extensive natural resources, the nation faces formidable challenges in navigating the delicate equilibrium

[1] Mohai, Paul, David Pellow, and J. Timmons Roberts. "Environmental justice." *Annual Review of Environment and Resources* 34 (2009): 405-430; Bedner, Adriaan. "Access to environmental justice in Indonesia." *Access to Environmental Justice: A Comparative Study*. Brill Nijhoff, 2007. 89-123; Aji, Adiguna Bagas Waskito, et al. "Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases." *The Indonesian Journal of International Clinical Legal Education* 2.1 (2020): 57-72.

between environmental sustainability and socio-economic advancement. Despite the promulgation of robust environmental laws, the effective enforcement thereof remains elusive, resulting in widespread environmental degradation and exacerbation of social disparities. In light of these pressing concerns, this paper embarks on a scholarly inquiry into the imperative of mainstreaming social justice within the realm of environmental law enforcement in Indonesia.[2]

Furthermore, the environment, bestowed upon the people and nation of Indonesia as a divine gift and mercy, serves as a sanctuary for life in its myriad forms, reflecting the unique essence of the archipelago. It encompasses the entirety of existence, providing sustenance and resources in harmony with the spirit of the nation. Aligned with the constitutional mandate of promoting the general welfare as enshrined in the 1945 Constitution, and in pursuit of the ideals of happiness as articulated in Pancasila, the prudent utilization of natural resources becomes imperative.[3]

The bedrock of Indonesia's environmental stewardship is rooted in the preamble of the 1945 Constitution, particularly in its fourth paragraph, which underscores the government's responsibility to harness

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[2] Zahroh, Ummi A'zizah, and Fatma Ulfatun Najicha. "Problems and challenges on environmental law enforcement in Indonesia: AMDAL in the context of administrative law." *Indonesian State Law Review (ISLRev)* 5.2 (2022): 53-66; Nugraheni, Prasasti Dyah, and Andrianantenaina Fanirintsoa Aime. "Environmental Law Enforcement in Indonesia Through Civil Law: Between Justice and Legal Certainty." *The Indonesian Journal of International Clinical Legal Education* 4.2 (2022); Hidjaz, Kamal. "Effectiveness of environmental policy enforcement and the impact by industrial mining, energy, mineral, and gas activities in Indonesia." *International Journal of Energy Economics and Policy* 9.6 (2019): 79-85.

[3] *See* Siregar, Hamdan Azhar, Mr Untoro, and Teuku Saiful Bahri. "Utilization of Natural Resources in the Mining Sector Related to the State Welfare." *2018 International Conference on Energy and Mining Law (ICEML 2018)*. Atlantis Press, 2018; Wibowo, Gatot Dwi Hendro. "Inconsistency of Pancasila Cita (Law) for Natural Resources Management." *International Journal of Religious and Cultural Studies* 1.2 (2019): 83-89; Wahanisa, Rofi, and Septhian Eka Adiyatma. "Konsepsi Asas Kelestarian dan Keberlanjutan dalam Perlindungan dan Pengelolaan Lingkungan Hidup dalam Nilai Pancasila." *Bina Hukum Lingkungan* 6.1 (2021): 93-118.

natural resources for the collective welfare of its citizens. This constitutional mandate finds further articulation in Article 33, affirming the state's role as custodian of the earth and its bounties, to be managed for the benefit of the populace—a testament to the state's commitment to serving public interests.[4]

Moreover, the 1945 Indonesian Constitution, in Article 28H, unequivocally declares a clean and healthy environment as an inalienable human right for every Indonesian citizen.[5] This legal recognition underscores the intrinsic value of environmental well-being in the nation's fabric.[6]

The global recognition of environmental issues gained momentum following the landmark United Nations Conference on the Human Environment, convened in Stockholm, Sweden, from June 5 to 16, 1972.

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[4] Wibowo, Suyanto Edi. "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perihal Penguasaan Oleh Negara Terhadap Sumber Daya Alam Comprehend The Meaning Of Article 33 Of The 1945 Constitution Of The Republic Of Indonesia On State Authority Over Natural Resources." *Jurnal Legislasi Indonesia* 12.4 (2018): 1-57.

[5] Article 28H of the 1945 Indonesian Constitution enshrines the principle of environmental protection as a fundamental human right for every citizen of Indonesia. This provision underscores the nation's commitment to safeguarding the environment and ensuring its citizens' right to live in a clean and healthy environment. By explicitly recognizing the right to a clean and healthy environment, the Constitution acknowledges the intrinsic value of environmental well-being in promoting the overall welfare and quality of life of Indonesian citizens. It underscores the importance of environmental conservation not only as a matter of national policy but also as a fundamental aspect of human rights. This constitutional guarantee empowers Indonesian citizens to advocate for environmental protection and hold the government accountable for ensuring the preservation of natural resources and ecosystems. It provides a legal basis for citizens to demand action against environmental degradation, pollution, and other threats to environmental health. Moreover, Article 28H serves as a foundation for environmental legislation and policies aimed at upholding this fundamental right. It requires the government to take proactive measures to prevent environmental harm, promote sustainable development, and ensure equitable access to clean air, water, and other essential resources for all citizens..

[6] Yusa, I. Gede, and Bagus Hermanto. "Implementasi green constitution di Indonesia: Jaminan hak konstitusional pembangunan lingkungan hidup berkelanjutan." *Jurnal Konstitusi* 15.2 (2018): 306-326.

This seminal event paved the way for international cooperation and the development of environmental law across national, regional, and global domains.[7]

One significant outcome of this conference was the affirmation of sovereign rights of coastal states over their continental shelves, granting exclusive authority for exploration and exploitation of natural resources therein. This pivotal agreement laid the foundation for subsequent international agreements aimed at addressing environmental challenges and fostering sustainable development on a global scale.

In the further, the degradation of biological habitats through anthropogenic activities not only poses a dire threat to biodiversity—such as mangrove forests, coral reefs, and marine life—but also significantly impacts the livelihoods of local communities. The proliferation of development projects along coastal zones, including port infrastructure, industrial facilities, urban expansion, tourism ventures, mining operations, and fisheries, engenders a host of challenges and conflicts stemming from resource utilization and competing interests.

For instance, between 1984 and 1997, Indonesia experienced an alarming annual deforestation rate of 16.57 million hectares, equivalent to approximately 2,586,500 hectares lost each year. Furthermore, forest fires during the 1997-1998 period engulfed roughly 10 million hectares of forest land. The establishment of factories or industrial facilities within fragile ecosystems exacerbates environmental degradation, leading to deforestation, soil erosion, and habitat destruction.[8]

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[7] *See* Handl, Günther. "Declaration of the United Nations conference on the human environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992." *United Nations Audiovisual Library of International Law* 11.6 (2012): 1-11.

[8] *See* Najicha, Fatma Ulfatun, and I. Gusti Ayu Ketut Rachmi Handayani. "Legal Protection "Substantive Rights for Environmental Quality" on Environmental Law Against Human Rights in the Constitution in Indonesia." *International Conference on Law, Economics and Health (ICLEH 2020)*. Atlantis Press, 2020; Setyaningati, Christina Nitha, et al. "The Responsibility of Indonesia for Deforestation Based on United Nations Convention on Biological Diversity." *Jurnal Hukum Novelty* 10.1 (2019): 74-84.

This widespread pollution and environmental degradation not only imperil ecological integrity but also jeopardize human well-being. The adverse effects of pollution and habitat destruction extend across various sectors, with companies operating in mining, forestry, and other industries being significant contributors to these environmental woes.[9]

At its core, this study seeks to unravel the intricate dynamics underpinning the relationship between environmental law enforcement and social justice in the Indonesian context. By delving into the theoretical underpinnings and practical manifestations of this relationship, the paper endeavors to shed light on viable strategies and best practices for fostering a more equitable and inclusive approach to environmental governance.[10]

Drawing upon an interdisciplinary framework that synthesizes insights from law, sociology, and environmental studies, this inquiry situates itself within a broader scholarly discourse on the intersectionality of environmental protection and social justice. Through a nuanced examination of the conceptual foundations of social justice in environmental governance, the paper aims to elucidate how principles of equity, fairness, and inclusivity can be woven into the fabric of environmental law enforcement mechanisms.

Furthermore, this study endeavors to unpack the socio-political dynamics that shape the enforcement landscape in Indonesia, including power differentials, systemic corruption, and institutional capacities. By analyzing these contextual factors, the paper seeks to discern the barriers and opportunities for mainstreaming social justice considerations within existing enforcement frameworks.

Through a comprehensive review of existing literature and empirical case studies, this paper identifies promising pathways and innovative

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[9] Gilbert, J. "Environmental degradation as a threat to life: a question of justice?." *Trinity College Law Review* 6 (2003): 81-97.

[10] Bridge, Gavin, and Tom Perreault. "Environmental governance." *A companion to environmental geography* (2009): 475-497; 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* 2.1 (2020): 43-56; Arsyiprameswari, Natasya, et al. "Environmental Law and Mining Law in the Framework of State Administration Law." *Unnes Law Journal* 7.2 (2021): 347-370.

initiatives for enhancing social justice within environmental law enforcement practices. From community-driven monitoring initiatives to stakeholder engagement mechanisms and capacity-building endeavors for law enforcement agencies, the study explores a spectrum of approaches aimed at fostering greater transparency, accountability, and public participation in environmental governance processes.

Ultimately, by synthesizing theoretical insights with empirical evidence, this paper endeavors to contribute meaningfully to the discourse on environmental governance in Indonesia. It advocates for a paradigm shift towards a more holistic and inclusive approach to environmental protection—one that not only safeguards the nation's natural heritage but also upholds the rights and interests of all its citizens, particularly the marginalized and vulnerable communities.

Addressing Environmental Crimes: Challenges and Solutions in Law Enforcement in Indonesia

When discussing environmental crimes, the principle of *ultimum remedium* as outlined in Law Number 32 of 2009 concerning Environmental Protection and Management (hereafter referred to as UUPPLH) becomes central. However, the application of this principle solely to standards such as wastewater, emissions, and disturbances warrants scrutiny, especially considering that formal offenses, typically administrative violations of specified conditions or permits, dominate environmental law enforcement.[11]

Despite this, there's a notable inclination towards employing criminal law as the *ultimum remedium*, despite administrative violations being more prevalent than substantive offenses. The UUPPLH underscores imprisonment as a punitive measure for administrative law

[11] *See* Usman, Adamu Kyuka. *Environmental Protection Law and Practice*. Malthouse Press, 2017; Ahmed, Arif, and Jahid Mustofa. "Role of soft law in environmental protection: an overview." *Global Journal of Politics and Law Research* 4.2 (2016): 1-18; Fahruddin, Muhammad. "Penegakan Hukum Lingkungan di Indonesia dalam Perspektif Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup." *Veritas* 5.2 (2019): 81-98.

violators, irrespective of whether environmental pollution or destruction occurred.

Moreover, the Attorney General's Office, a key law enforcement body, has issued guidelines (Letter No: B-60/E/EJP/01/2002, dated January 29, 2002) addressed to all Chief Prosecutors in Indonesia, outlining procedures for handling special environmental cases with regards to the principle of subsidiarity. These guidelines serve as a prerequisite for initiating criminal law enforcement against environmental crimes, stipulating that legal actions other than criminal proceedings must be exhausted beforehand.

1. The authorities authorized to impose administrative sanctions have taken action against violators by imposing an administrative sanction that has been unable to stop the violations that occur; or
2. Between companies that commit violations and communities that are victims due to violations, dispute resolution has been sought through alternative mechanisms outside the court in the form of deliberation or peace, negotiation, or mediation, but the efforts made have reached an impasse; and/or
3. Litigation through the courts, but these efforts are also ineffective, then activities can be started/environmental criminal law enforcement instruments can be used.[12]

The exemption from the three foundational prerequisites for legal action hinges upon meeting the following criteria: the perpetrator's culpability is notably severe, the ramifications of their actions are significant in scale, and their conduct incites public disturbance.[13]

In the guideline letter, the prosecutor's office emphasizes that legal action is an alternative approach, indicating that fulfillment of one condition suffices. However, the distinction between these stages for formal offenses or material offenses is not explicitly delineated. Nonetheless, the letter implies that these stages primarily pertain to formal

[12] Efendi, A. "Asas-asas Umum Kebijaksanaan Lingkungan dalam Undang-undang No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH)." *Jurnal Yustika* 14.1 (2011).

[13] Fahmi, Sudi. "Asas Tanggung Jawab Negara Sebagai Dasar Pelaksanaan Perlindungan dan Pengelolaan Lingkungan Hidup." *Jurnal Hukum Ius Quia Iustum* 18.2 (2011): 212-228.

offenses, as evidenced by the severity of the perpetrator's guilt, the substantial consequences of their actions, and the disturbance caused to public order, which may warrant bypassing certain procedural steps.[14]

This flexible approach to legal action allows for a nuanced consideration of the circumstances surrounding environmental crimes. It acknowledges that certain situations may warrant expedited or alternative measures to address severe offenses or significant threats to public welfare.

By providing guidance on when legal action may be pursued, the prosecutor's office seeks to ensure that enforcement efforts are effective, proportionate, and aligned with the overarching goals of environmental protection and public safety. Moreover, it underscores the importance of considering the broader societal implications of environmental crimes beyond mere regulatory violations.[15]

Environmental crimes persist when they are perceived as a final recourse, as alternative legal remedies often fail to hold wrongdoers accountable. In Indonesia, instances of environmental pollution and degradation are on the rise, evident from media reports and firsthand observations. Addressing these challenges necessitates a multifaceted approach, encompassing both preventive and punitive measures within the framework of law enforcement.

The application of administrative sanctions, such as written reprimands and government coercion, as well as civil dispute resolution mechanisms, play crucial roles in curbing environmental offenses. Additionally, criminal law enforcement serves as a vital deterrent against egregious violations. Central to the enforcement of environmental

[14] Prameswari, Anindytha Arsa, Gerhard Mangara, and Rifdah Rudi. "Deferred Prosecution Agreement: Mekanisme Pertanggungjawaban Tindak Pidana Korporasi Terhadap Perusakan Lingkungan Melalui Paradigma Restorative Justice." *Jurnal Hukum Lex Generalis* 2.12 (2021): 1200-1222.

[15] Muthmainnah, Wahyu Rasyid, and Iin Lestari. "Penegakan Hukum Lingkungan Terhadap Kerusakan Lingkungan Hidup." *Madani Legal Review* 4.2 (2020): 96-107; Sawitri, Handri Wirastuti, and Rahadi Wasi Bintoro. "Sengketa Lingkungan dan Penyelesaiannya." *Jurnal Dinamika Hukum* 10.2 (2010): 163-174.

administrative law are Environmental Supervisory Officials, who play a pivotal role in monitoring and regulating compliance.[16]

The root causes of environmental problems in Indonesia are manifold, encompassing population dynamics, unsustainable resource utilization, inadequate management practices, limited utilization of advanced science and technology, and the clash of spatial interests. These factors contribute to a complex web of environmental challenges, underscoring the need for comprehensive and coordinated strategies to address them effectively.

In light of these considerations, the implementation of an Environmental Impact Assessment (EIA), known as AMDAL (*Analisis Mengenai Dampak Lingkungan*), becomes imperative. AMDAL serves as a comprehensive evaluation of potential environmental impacts, conducted during the planning phase to inform decision-making processes. This assessment encompasses a broad spectrum of considerations, including physical-chemical, ecological, socio-economic, socio-cultural, and public health aspects, serving as a vital complement to the feasibility study of proposed business plans or activities.[17]

Environmental impact analysis serves a dual purpose: it forms an integral component of the feasibility study for business plans or activities, while also serving as a prerequisite for obtaining permits to proceed with said endeavors. By conducting this analysis, stakeholders gain deeper insights into the significant environmental effects—both adverse and beneficial—that may result from proposed ventures. Armed with this

[16] Ali, Mahrus, and M. Arif Setiawan. "Penal proportionality in environmental legislation of Indonesia." *Cogent Social Sciences* 8.1 (2022): 2009167; Nicholson, David. "Environmental Litigation in Indonesia." *Asia Pacific Journal of Environmental Law* 6.1 (2001): 47-78. *See also* Arsyiprameswari, et al. "Environmental Law and Mining Law in the Framework of State Administration Law."

[17] Yakin, Sumadi Kamarol. "Analisis Mengenai Dampak Lingkungan (AMDAL) Sebagai Instrumen Pencegahan Pencemaran dan Perusakan Lingkungan." *Badamai Law Journal* 2.1 (2017): 113-132.

understanding, proactive measures can be devised to mitigate negative impacts and capitalize on positive outcomes.[18]

In essence, AMDAL facilitates informed decision-making by providing a nuanced understanding of the potential environmental ramifications of proposed actions. By identifying and addressing potential challenges upfront, it paves the way for sustainable development practices and fosters a harmonious relationship between economic growth and environmental stewardship.[19]

Ensuring Accountability: Legal Measures for Perpetrators of Environmental Destruction

1. Administrative Aspects

Administrative sanctions serve as the initial legal recourse against companies engaging in environmental pollution and harm. They fulfill pivotal roles, primarily focused on the prevention and containment of prohibited activities, thereby safeguarding the interests outlined in breached legal statutes.

Environmental law enforcement operates through both preventive and punitive measures. Preventive enforcement entails proactive oversight of regulatory adherence, independent of specific incidents triggering allegations of legal violations. This proactive approach involves continuous monitoring and the utilization of supervisory powers as outlined in Article 71 (1), (2), and (3), Article 72, Article 73, Article 74 (1), (2), and (3), and Article 75 of Law No. 32 of 2009 concerning Environmental Protection and Management.

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[18] Sukananda, Satria, and Danang Adi Nugraha. "Urgensi Penerapan Analisis Dampak Lingkungan (AMDAL) Sebagai Kontrol Dampak Terhadap Lingkungan di Indonesia." *Jurnal Penegakan Hukum dan Keadilan* 1.2 (2020): 119-137; Herlina, Nina, and Ukilah Supriyatin. "AMDAL Sebagai Instrumen Pengendalian Dampak Lingkungan dalam Pembangunan Berkelanjutan dan Berwawasan Lingkungan." *Jurnal Ilmiah Galuh Justisi* 9.2 (2021): 204-218.

[19] Hernanda, Trias. "Legal Analysis on AMDAL as an Environmental Protection Document." *Legal Standing: Jurnal Ilmu Hukum* 4.2 (2020): 108-115; Rahman, Nabila Aulia, et al. "Legal Politics of Environmental Licensing Governance After Job Creation Law." *Hang Tuah Law Journal* (2022): 123-134.

Repressive law enforcement represents a decisive response to illegal activities, aiming to swiftly halt the perpetration of prohibited acts. When such transgressions occur, the responsibility for intervention typically falls upon the Governor or the Regional Executive. This authority can be further delegated by the Governor to the Regent or Mayor, ensuring localized responsiveness to environmental infringements. By empowering regional leaders with enforcement capabilities, the legal system enhances its capacity to address violations effectively and expediently.[20]

Moreover, the enforcement of repressive measures is triggered by concrete instances of misconduct, particularly those that directly endanger public health or degrade the environment. For example, if residents suffer adverse health effects due to pollution or environmental destruction, swift action becomes imperative. In such cases, the Regional Head or other concerned parties retain the prerogative to propose the revocation of business licenses held by offending entities. This mechanism not only safeguards public health and environmental integrity but also underscores the accountability of businesses operating within the jurisdiction.[21]

The process of proposing license revocation serves as a critical avenue for recourse, allowing affected parties to seek redress for grievances stemming from environmental harm. By initiating this formal procedure, stakeholders signal their commitment to upholding regulatory standards and safeguarding community well-being. Additionally, the involvement of authorized officials in reviewing such proposals ensures a judicious and impartial assessment of the circumstances surrounding alleged violations, thereby reinforcing the integrity of the enforcement process.

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[20] Salim, Agus, and Liberthin Palullungan. "The challenges of environmental law enforcement to implement SDGs in Indonesia." *International Journal of Criminology and Sociology* 10 (2021): 517-524; Lambila, Roberth Jimmy, Muhamad Mahrus Setia Wijaksana, and Fatma Ulfatun Najicha. "Environmental law enforcement efforts in Indonesia." *AIP Conference Proceedings*. Vol. 3048. No. 1. AIP Publishing, 2024.

[21] Abdurrachman, Hamidah, Achmad Irwan Hamzani, and Joko Mariyono. "Environmental Crime and Law Enforcement in Indonesia: Some Reflections on Counterproductive Approaches." *Environmental Policy and Law* 51.6 (2021): 409-416; Iswantoro, Iswantoro. "Juridical Analysis of Environmental Law Enforcement in Forestry Crimes Regulation in the Regional Autonomy." *Journal of Morality and Legal Culture* 1.1 (2020): 45-49.

According to the provisions outlined in Law No. 32 of 2009 concerning Environmental Protection and Management, administrative sanctions encompass a spectrum of measures aimed at ensuring compliance with environmental regulations and upholding ecological integrity. These sanctions, as delineated in Article 76 paragraph (2), include written reprimands, government coercion, suspension, and revocation of environmental permits.[22]

Written reprimands serve as formal notices issued to entities found in contravention of environmental statutes, alerting them to their non-compliance and urging corrective action. Government coercion, on the other hand, involves the imposition of obligatory measures by regulatory authorities to compel adherence to environmental mandates.

The suspension of environmental permits represents a temporary constraint imposed on offending entities, limiting their capacity to engage in activities that pose environmental risks until compliance is achieved. Conversely, the revocation of environmental permits constitutes the most severe sanction, permanently withdrawing these privileges from non-compliant entities.[23]

These administrative sanctions play a pivotal role in environmental governance, serving as mechanisms to enforce regulatory compliance and deter actions detrimental to environmental well-being. By imposing consequences for violations, these measures underscore the importance of environmental stewardship and contribute to the maintenance of sustainable practices within the regulatory framework.

Article 80, paragraph (1) of the legislation provides for the utilization of Government Coercion, as stipulated in Article 76, paragraph (2), subparagraph b. This coercion can take various forms, including temporary suspension of production activities, transfer of means of production, closure of wastewater or emission sewerage systems, disassembly orders, confiscation of goods or equipment posing potential

[22] Dewi, Dahlia Kusuma. "Izin Lingkungan dalam Kaitannya dengan Penegakan Administrasi Lingkungan dan Pidana Lingkungan Berdasarkan Undang-undang No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH)." *Jurnal Mutiara Hukum* 1.1 (2018): 1-14.

[23] Zulkifli, Akhmad. "Pengaturan Sanksi Administratif Terhadap Pelanggaran Izin Lingkungan." *Wasaka Hukum* 7.1 (2019): 85-102.

violations, temporary suspension of all operations, and the implementation of additional measures aimed at halting violations and restoring environmental functionality. These measures serve as regulatory interventions designed to enforce compliance with environmental regulations and mitigate risks to environmental integrity.[24]

Alongside administrative oversight, entrepreneurs are encouraged to adopt the principle of Pollution Prevention Pays (PPP). This principle underscores proactive measures to prevent pollution and environmental degradation during the production process by employing cleaner technologies.[25] By prioritizing pollution prevention, companies can enhance production efficiency and effectiveness, thereby bolstering profitability while simultaneously safeguarding the environment. This approach aligns economic interests with environmental responsibility, fostering a sustainable business model that prioritizes both financial gains and environmental conservation.[26]

2. *Criminal Aspect*

Criminal sanctions represent the final recourse in legal proceedings against companies found guilty of environmental pollution and damage. These sanctions serve multiple purposes: firstly, to educate companies regarding the consequences of their actions, particularly concerning the protection of public interests as outlined in violated legal statutes. Additionally, they aim to deter future instances of irresponsible behavior towards the environment.

In order to levy penalties for environmental offenses committed by companies, the legal framework follows established principles such as the

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[24] *See* Mina, Risno. "Desentralisasi Perlindungan dan Pengelolaan Lingkungan Hidup Sebagai Alternatif Menyelesaikan Permasalahan Lingkungan Hidup." *Arena Hukum* 9.2 (2016): 149-165.

[25] Royston, Michael G. "Making pollution prevention pay." *Making Pollution Prevention Pay*. Pergamon, 1982. 1-16. *See also* Maruf, Arifin. "Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution." *Journal of Human Rights, Culture and Legal System* 1.1 (2021).

[26] Diyani, Arshinta Fitri, Arief Hidayat, and Retno Saraswati. "Application of Strict Liability Concept to Companies that Commit Crimes of Environmental Destruction." *International Journal of Pharmaceutical Research* 13.1 (2021).

principle of legality.[27] This principle dictates that penalties must be based on existing laws at the time of the offense and require proof of guilt. The provisions for criminal sanctions in environmental cases are delineated in Chapter XV of Law No. 32 of 2009 concerning Environmental Protection and Management, spanning from Article 97 to Article 120. These provisions establish a legal framework for holding companies accountable for environmental transgressions and ensure that justice is served in cases of environmental harm.

Article 98 of Law No. 32 of 2009 concerning Environmental Protection and Management states:

> 1) *Any person who intentionally commits an act that results in exceeding air quality standards, ambient quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).*
> 2) *If the act as referred to in paragraph (1) results in injury and/or danger to human health, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000.00 (four billion rupiah) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah).*
> 3) *If the act as referred to in paragraph (1) results in serious injury or death, it shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen)*

[27] Tatariyanto, Firman. "Controlling Environmental Harm: Assessing Criminal Law Enforcement on Haze Pollution Using Content Analysis of Court Decisions in Indonesia." *Journal of Environmental Information Science* 2018.1 (2018): 32-43; Malik, Abdul Haris, Fajar Ari Sudewo Sanusi, and Fajar Ari Sudewo. "Corporate Strict Liability in Environmental Crimes in Indonesia and the Netherlands." *MALAPY 2022: Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, MALAPY 2022, 28 May 2022, Tegal, Indonesia*. European Alliance for Innovation, 2022.

> *years and a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).*

In cases where environmental crimes are committed on behalf of a business entity or company, criminal charges and subsequent sanctions are levied against several parties involved. Specifically, these include the business entity itself, as well as the individual who issued the directive to commit the offense, or alternatively, the person who acted as the orchestrator of the unlawful activities. This allocation of responsibility is outlined in Article 116, paragraphs (1) and (2) of Law No. 32 of 2009 concerning Environmental Protection and Management. Such provisions ensure that accountability is appropriately assigned within the organizational hierarchy, holding both the entity and the individuals responsible for their roles in environmental transgressions.

As delineated in Law No. 32 of 2009 concerning Environmental Protection and Management, criminal sanctions for environmental offenses primarily entail imprisonment and fines. Furthermore, Article 119 of the same legislation outlines supplementary criminal or disciplinary actions applicable to business entities. These include the deprivation of profits obtained from criminal acts, temporary or permanent closure of business premises, the imposition of reparations for damages caused, the fulfillment of neglected obligations, and the placement of the company under supervision for up to three years. These additional measures serve to enhance corporate accountability and deter future environmental transgressions by imposing further repercussions beyond traditional penalties.[28]

[28] Situmeang, Sahat Maruli Tua. "Hukum Lingkungan Effektivitas Sanksi Pidana dalam Penegakan Hukum Lingkungan." *Res Nullius Law Journal* 1.2 (2019): 139-148.

Environmental Criminal Law Enforcement under Law No. 32 of 2009 on Environmental Protection and Management: A Case Study of PT Indonesia Power

The drafter of the Law on Environmental Protection and Management endeavored to articulate a precise and encompassing definition of the environment within the context of their legislative framework: *The living environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the survival and well-being of humans and other living things*.[29]

The terms *environment* and *living environment* serve as translations of the English term *environment* and *living environment*, often interchangeably employed to convey similar connotations. However, authors may delineate distinct boundaries for each concept based on their individual perspectives. When analyzing the stipulations governing the prosecution of environmental offenses, it becomes imperative to initially grasp the essence of crime and punishment, followed by an exploration of the underlying philosophical principles embedded within the relevant penal statutes (*ius constitutum*). According to Sudarto, crime signifies the deliberate infliction of harm upon individuals engaging in actions meeting specific criteria.[30]

The characterization of criminality entails several defining features. Firstly, at its core, a crime involves the imposition of suffering or the induction of adverse consequences. This suffering or detriment may manifest in various forms, ranging from physical harm to psychological distress or socio-economic burdens.

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[29] Republic of Indonesia. *Law Number 32 of 2009 concerning Environmental Protection and Management. See* Article 1 paragraph (1).

[30] Sudarto, Sudarto. *Hukum dan Hukum Pidana.* Bandung: PT Alumni, 2007. *See also* Wijaya, Hendra, Budi Santoso, and Muhamad Azhar. "Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup." *Notarius* 14.1 (2021): 206-220.

Secondly, a distinguishing aspect of criminal acts is their deliberate commission by individuals or entities endowed with authority, typically sanctioned by competent legal bodies. This intentional perpetration underscores a conscious decision to engage in behavior contrary to established norms or legal statutes.

Thirdly, crimes target individuals who have violated the law by committing criminal offenses. The imposition of harm or adverse consequences is directed towards those deemed culpable according to legal standards. This aspect underscores the punitive nature of criminal justice systems, wherein transgressors are held accountable for their actions through the application of sanctions.

The definition and purpose of punishment within the realm of criminal law present a complex and multifaceted dilemma. Central to this discourse is the question of whether punishment primarily serves a retributive function, seeking to exact recompense for criminal deeds, or if it primarily functions as a means of deterrence, aimed at preventing future antisocial behavior. This divergence of perspectives necessitates a nuanced examination of the underlying objectives and principles guiding punitive measures within legal frameworks.

Various theories concerning the purpose of punishment offer insights into this discourse, each rooted in distinct conceptualizations of the nature and function of punitive measures. These theories reflect differing perspectives on the fundamental goals of punishment and provide frameworks for understanding its role within the broader context of criminal justice systems.

Furthermore, the existence of environmental law is intended to protect and secure the interests of nature from deterioration and damage in order to maintain its sustainability.[31] The procedural law used in environmental criminal justice is no different from criminal justice in general, but what distinguishes it is the essence that must be understood by law enforcers which until now has not been understood by

[31] Gatot P Soemartono. *Hukum Lingkungan Indonesia.* Jakarta: Sinar Grafika, 1996., pp. 25-27. *See also* Sood, Muhammad. *Hukum Lingkungan Indonesia.* Sinar Grafika, 2021; Siahaan, Nommy Horas Thombang. *Hukum Lingkungan dan Ekologi Pembangunan.* Erlangga, 2004.

environmental law enforcers in Indonesia. Law Number 32 of 2009 concerning Environmental Protection and Management as the main formal source of environmental law in Indonesia in addition to containing legal provisions and legal instruments as contained in previous laws, namely the Environmental Law of 1982 and the Environmental Law of 1997 has also contained new legal norms and instruments. Some important new legal norms are about the legal protection of everyone who fights for the right to the environment, the authority of the Civil Service Investigating Officer (PPNS) and the creation of new material offenses. In this paper some new legal norms will be outlined.[32]Law Number 32 of 2009 concerning Environmental Protection and Management has expressly adopted the principles contained in the Rio Declaration of 1992, namely the principles of state responsibility, integration, prudence, justice, polluters, participatory and local wisdom. This adoption is an important legal policy because it can strengthen the interests of environmental management when faced with short-term economic interests. Judges in adjudicating a case can use these principles to pay attention to the interests of environmental management that may not be considered by business actors or authorized government officials.

Law Number 32 of 2009 concerning Environmental Protection and Management, especially with Article 66, is very advanced in providing legal protection to people fighting for the right to the environment from possible criminal and civil charges. This legal protection is very important because in the past there have been cases where environmental activists who reported allegations of environmental pollution and destruction have been sued civilly or criminally prosecuted for defamation of companies that are alleged to have caused environmental pollution or destruction. In the legal systems of the United States and the Philippines, such legal protection guarantees are called Anti SLAPP (*Strategic Legal Action Against Public Participation*), which is a lawsuit made by a company that is alleged

[32] Johar, Olivia Anggie. "Realitas Permasalahan Penegakan Hukum Lingkungan di Indonesia." *Jurnal Ilmu Lingkungan* 15.1 (2021): 54-65; Nurdin, Muhammad. "Peranan Penyidik dalam Penegakan Hukum Terhadap Pelanggaran Tindak Pidana Lingkungan Hidup." *Jurnal Hukum Samudra Keadilan* 12.2 (2017): 172-185; Tarigan, Edi Kristianta. "Penegakan Hukum Tindak Pidana Lingkungan Hidup." *Jurnal Lex Justitia* 1.1 (2019): 28-41.

to have polluted or damaged the environment and then sued the whistleblower or whistle blower for alleged environmental problems with the aim of causing fear and material harm to the whistleblower or informer as well as to other parties in the future.[33]

SLAPP lawsuits can kill the courage of community members to be critical and submit reports or information about alleged or existing environmental problems by business sectors so that in the end it can thwart environmental management that involves the active role of civil society. Judges in Indonesia are very important to understand the presence and usefulness of Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management.[34]

Law Number 32 of 2009 concerning Environmental Protection and Management has caused changes in the field of investigative authority in environmental cases. Based on Article 6 paragraph (1) of the Code of Criminal Procedure (KUHAP), investigators are officials of the National Police of the Republic of Indonesia (Polri) and certain Civil Servant officials (hereinafter as PPNS) who are given special authority by law. Law Number 32 of 2009 concerning Environmental Protection and Management is one of the laws referred to in Article 6 paragraph (1) which is the basis for the existence of PPNS as formulated in the Article of Police

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[33] Hurley, Terrance M., and Jason F. Shogren. "Environmental conflicts and the SLAPP." *Journal of Environmental Economics and Management* 33.3 (1997): 253-273; Shapiro, Pamela. "SLAPPs: Intent or Content? Anti-SLAPP Legislation Goes International." *Review of European Community & International Environmental Law* 19.1 (2010): 14-27.

[34] Aulia, Nadya Zahra, Alya Zafira, and Regina Margarettha. "Anti-Slapp: Meninjau Kembali Mekanisme Perlindungan Pejuang Lingkungan Hidup." *Legislatif* (2021): 1-15; Banulita, Mia, and Titik Utami. "Legal Construction of Anti-Eco-Slapp Reinforcement In Indonesia." *Yuridika* 36.3 (2021): 721; Medhika, Nyoman Gede Aditya Jay, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani. "Konsep Anti Eco-Slapp dalam Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup." *Jurnal Interpretasi Hukum* 3.1 (2022): 220-224; Putrijanti, Aju, and Sekar Anggun Gading Pinilih. "Strengthening Anti-Eco-SLAPP Regulations in Indonesia." *IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics and Governance, IWLEG 2022, 27 July 2022, Semarang, Indonesia*. European Alliance for Innovation, 2023.

Authority in addition to as mentioned in Article 7 paragraph (1) of the Criminal Procedure Code, among others, making arrests, detentions, searches, and seizures, checking and confiscating letters and coordinating authority over the implementation of PPNS duties (Article 7 paragraph (2), The National Police as an institution authorized to submit case files to the public prosecutor (Article 8 paragraph (2).

Thus, based on the Criminal Procedure Code system, PPNS is not authorized to submit the investigation results directly to the public prosecutor, but must pass through the National Police. Law Number 32 of 2009 concerning Environmental Protection and Management has amended the provisions that have so far authorized the National Police as the only institution that can submit files of investigation results to the public prosecutor as stated in Article l8 paragraph (2) of the Criminal Procedure Code. With the promulgation of Law Number 32 of 2009 concerning Environmental Protection and Management, it has caused changes. This change occurred through Article 94 paragraph (6) of Law Number 32 of 2009 concerning Environmental Protection and Management which states: "*the results of investigations that have been carried out by civil servant investigators are submitted to the public prosecutor*." Thus, the environmental Civil Service Investigator (PPNS) can and is authorized to submit the investigation results directly to the public prosecutor without going through the National Police again. The granting of this authority remains to be empirically proven in the future whether it will bring positive developments to criminal environmental law enforcement efforts or not bring any changes.

This if applied to the case that occurred at PT Indonesia Power which resulted in the leakage of oil pipelines and this leak had an impact on severe environmental pollution, because it had polluted seawater and mangrove plants in the Benoa Port area, Denpasar City and Indonesia Power was not serious about tackling environmental pollution, because environmental pollution was a form of violation of environmental laws. The Indonesia Power party seems to be only ceremonial and just cleaning the remaining oil from leaking pipes as alleged by the Wisnu Bali Foundation, then based on Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management provides legal protection to the Wisnu Bali Foundation which has fought for the right to the environment from

possible criminal and civil lawsuits for defamation from PT Indonesia Power. So that the Wisnu Bali Foundation can complain to PPNS, because PPNS has the authority over this, this is based on Article 6 paragraph (1) which is the basis for the existence of PPNS. The basic idea of implementing criminal sanctions and actions in Law Number 23 of 2009 concerning environmental protection and management because the environment as a place for living things, especially humans who have more interests with the environment, needs to be regulated regarding the use of the environment so that the environment is not overexploited so that it can damage the environment and will later harm humans themselves.[35]

Based on Article 116 and Article 118 of Law Number 32 of 2009 concerning Environmental Protection and Management, it can be seen that there are three parties that can be subject to prosecution and punishment, there are three parties, namely:

a. the body of the effort itself;
b. the person who gives orders or who acts as a leader in a criminal act;
c. manager.

Given Article 118 of Law Number 32 of 2009 concerning Environmental Protection and Management which states "sanctions are imposed on business entities represented by administrators who are authorized to represent inside and outside the court in accordance with laws and regulations as functional actors", permanent administrators can also be held liable on the basis of the criteria "persons who give orders or persons who act as leaders in criminal acts" as formulated in Article 116 paragraph (1) letter b. The difference is that the formulation of Article 116 paragraph (1) point b does require investigators and public prosecutors to prove that it is the administrator who has acted as the person who gave the order or who acted as a leader in the criminal act, so it requires the hard work of investigators and public prosecutors to prove the role of the administrators in environmental crimes.

Conversely, according to the provisions of Article 116 paragraph (1) point b associated with Article 118, administrators because of their

[35] Wiharyangti, Dwi. "Implementasi Sanksi Pidana dan Sanksi Tindakan dalam Kebijakan Hukum Pidana di Indonesia." *Pandecta Research Law Journal* 6.1 (2011).

position immediately or automatically bear criminal responsibility, making it easier to prosecute because it does not require proving the role of administrators specifically in an environmental criminal event. The explanation of Article 118 of Law Number 32 of 2009 concerning Environmental Protection and Management reinforces the interpretation that if a business entity commits an environmental criminal violation, charges and penalties "*are imposed against the head of the business entity on the basis of the head of the company having authority over the physical perpetrator and accepting the act*". The definition of "*accepting the act*" is "*consenting, allowing or not sufficiently supervising the actions of the physical offender, or having policies that allow the crime to occur.*"[36] Thus, company administrators who know and let company employees release waste disposal without going through processing are considered to be committing criminal acts on behalf of business entities, so they must be responsible.

Illegal Logging Cases in Pontianak

In this instance, the defendants, namely Mr. Tian Hartono, also known as Buntia, in his capacity as the Director of PT. Rimba Kapuas Lestari, along with Mr. Ir. H. Gusti Sofyan Afsier, MM, serving as the Head of the District Forestry and Plantation Service in Sintang, and Drs. Elyakim Simon Djalil, MM, the Regent of Sintang in West Kalimantan Province, stand accused of criminal wrongdoing and are implicated in the following alleged violations:

The charges brought forth by the public prosecutor against the defendants encompass a series of alleged transgressions, each indicative of purported violations of forestry regulations and environmental protection laws. Firstly, it is asserted that the defendants engaged in the creation and

[36] *See* Santoso, Muhari Agus. "Pertanggungjawaban Pidana Pencemaran Lingkungan Hidup yang Dilakukan oleh Korporasi." *Jurnal Cakrawala Hukum* 7.2 (2016): 216-228; Zai, Aca Surya Putra, Muhammad Hamdan Alvi Syahrin, and Muhammad Ekaputra. "Pertanggungjawaban Pidana Direktur Perseroan Terbatas (PT) atas Tindak Pidana Perusakan Lingkungan Hidup." *USU Law Journal* 6.3 (2018); Amir, Latifah. "Analisis Yuridis Hak Gugat Pemerintah Terhadap Pelaku Pencemaran/Perusakan Lingkungan Hidup Berdasarkan UU No. 32 Tahun 2009." *Jurnal Penelitian Universitas Jambi: Seri Humaniora* 15.2 (2013).

manipulation of CTR (Forest Inventory and Land Use Planning) maps, failing to register these alterations with the appropriate regulatory authorities. Consequently, this allowed their timber exploitation activities to encroach upon designated Production Forest areas, and in some instances, even extend into protected forest zones. Such actions not only contravene established forestry protocols but also jeopardize the ecological integrity of these forested regions.[37]

Secondly, the defendants are accused of conducting logging operations within Protected Forest areas without the requisite authorization. By utilizing local laborers from surrounding communities and remunerating them on a wholesale basis, the defendants purportedly circumvented formal approval processes, thereby perpetuating illicit logging practices. This exploitation of community labor not only violates legal statutes but also inflicts economic and environmental harm upon the state, undermining efforts to sustainably manage forest resources.

Thirdly, the defendants are alleged to have unlawfully introduced heavy machinery into State Forest areas without obtaining the necessary permits. Additionally, they stand accused of controlling and transporting logs without possessing valid certification, indicative of non-compliance with regulatory requirements governing timber harvesting and transportation. Such unauthorized activities, particularly in the context of Meranti wood logging within the Lubuk Lintang State Forest area of Sintang Regency, West Kalimantan Province, serve to undermine forest conservation efforts and compromise the ecological balance of these vital ecosystems.

In examining precedent cases, parallels can be drawn with similar legal proceedings adjudicated in the Padang District Court, West Sumatra. Notably, the Pontianak District Court's decision, rendered in a comparable case, underscores the gravity of offenses related to unauthorized entry and operations within State Forest areas. While acquitting the defendants of certain charges, the court nevertheless found them guilty of specific infractions, such as the unauthorized introduction of heavy equipment. Consequently, punitive measures were imposed,

[37] *See* Soedarsono, Teguh. "Penegakan Hukum dan Putusan Peradilan Kasus-kasus Illegal Logging." *Jurnal Hukum Ius Quia Iustum* 17.1 (2010): 61-84.

including imprisonment, fines, and the reimbursement of case-related expenses, highlighting the judiciary's commitment to upholding forestry regulations and environmental preservation mandates.[38]

Conclusion

In conclusion, Indonesia's commitment to environmental development and protection is deeply rooted in its constitutional framework, as articulated in the preamble and Article 33 of the 1945 Constitution. These foundational principles mandate the responsible utilization of natural resources for the welfare of the populace and underscore the state's role as a steward of public interests. Environmental law serves as a crucial mechanism for safeguarding nature from degradation and ensuring its long-term sustainability. Within this legal framework, criminal sanctions represent a vital deterrent against environmental harm, aimed at both educating companies on their responsibilities and preventing future transgressions. However, the effective enforcement of environmental law in Indonesia faces challenges, particularly in ensuring understanding and adherence to its principles among law enforcers. To address these challenges, it is imperative for legal authorities to grasp the essence of environmental law and apply it judiciously, adhering to the principles of legality and due process. Only through diligent enforcement and adherence to legal standards can Indonesia effectively protect its environment and uphold the public interest for present and future generations.

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[38] *See* Rahmadanti, Ade Tria Surya, and Sri Endah Wahyuningsih. "Penerapan Sanksi Pidana terhadap Pelaku Tindak Pidana Pembakaran Hutan dan Lahan di Provinsi Kalimantan Barat (Studi atas Perkara Nomor 332/Pid. LH/2017/PN. Ptk di Pengadilan Negeri Pontianak)." *Prosiding Konstelasi Ilmiah Mahasiswa Unissula (KIMU) Klaster Hukum* (2019); Firdiansyah, Risal. "Pertanggungjawaban Hukum Pidana Tehadap Pelaku Kejahatan Pembalakan Hutan." *Dinamika* 25.9 (2019).

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