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# **An Examination of the Implementation of Criminal Sanctions in Environmental Protection and Management Legislation**

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## **ABSTRACT**

This research analyzes the regulation and application of criminal sanctions in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) as an instrument of environmental law enforcement in Indonesia. By using the normative juridical research method, this research examines the regulation of criminal sanctions in the PPLH Law, its application in environmental cases, and its effectiveness in realizing environmental protection and management. The results show that the PPLH Law has provided a strong legal basis for the application of criminal sanctions. However, in practice it still faces various obstacles, such as the complexity of proof, the limited capacity of law enforcement, and conflicts of interest. The effectiveness of the application of criminal sanctions is also not optimal because various factors, such as the quality of investigations, inter-agency coordination, and resource support, influence it. This research recommends the improvement of criminal sanction arrangements in the PPLH Law, strengthening law enforcement institutions and resources, increasing community participation, and applying the principle of restorative justice in the settlement of environmental criminal cases. These efforts are expected to strengthen environmental law enforcement and realize sustainable development in Indonesia.

## **KEYWORDS**

Criminal Sanctions;  
Effectiveness;  
Enforcement; Law;  
Environmental  
Protection and  
Management



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## INTRODUCTION

The environment is a precious resource that must be conserved and nurtured to ensure its continued role as a life-sustaining force for both humans and other living beings.<sup>1</sup> With the progress of technology and industry, the state of the environment has been deteriorating as a result of numerous actions that disregard the principles of environmental sustainability. According to Wicaksono and Najicha, environmental destruction and pollution pose a serious threat to both human and ecosystem survival.<sup>2</sup>

In order to safeguard the environment, Indonesia has implemented Law Number 32 of 2009, which focuses on Environmental Protection and Management (UU PPLH). The PPLH Law covers a wide range of environmental protection measures, including the imposition of criminal penalties for those who commit environmental crimes.<sup>3</sup> Nevertheless, the implementation of environmental criminal sanctions encounters numerous obstacles. These challenges encompass issues such as the lack of clarity in defining criminal offences, ineffective law enforcement, and inconsistencies in court rulings.<sup>4</sup>

This research is unique in its use of a normative juridical approach to thoroughly analyze the application of criminal sanctions in the PPLH Law. This research thoroughly analyzes the normative aspects and their connection to the development of recent environmental cases and the dynamics of environmental criminal law enforcement in the field. The research findings are anticipated to make a valuable academic contribution to the advancement of environmental criminal law in Indonesia. Additionally, they will serve as valuable input for policymakers and legal practitioners, aiding in the enhancement of environmental protection and management through the utilization of criminal law instruments.

Based on the information provided, it is important to consider a few key points carefully: Our initial concern revolves around the regulatory elements of criminal sanctions in the PPLH Law. We will examine this issue through a normative-legal approach. The focus of the analysis will be on examining the various types of environmental crimes and the corresponding criminal sanctions outlined in the law. Examining the application of criminal sanctions in environmental cases after the enactment of the PPLH Law is the focus of the second problem formulation. In this section, we will delve into court decisions pertaining to environmental crimes and examine the challenges that arise when applying criminal sanctions in this domain. One aspect that needs to be examined is the extent to which criminal sanctions in the PPLH Law effectively contribute to environmental protection. An examination will be carried out on empirical data concerning the effects of implementing criminal sanctions on mitigating environmental pollution and destruction. This section will also offer suggestions for enhancing arrangements and measures to bolster environmental criminal law enforcement.

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<sup>1</sup> Marsudin Nainggolan, "Penegakan Hukum Lingkungan Hidup melalui Sistem Peradilan Pidana" (2021) 5:2 J Ilmu Huk Juris 326–341.

<sup>2</sup> Isya Anung Wicaksono & Fatma Ulfatun Najicha, "Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup" (2021) 5:1 Pagaruyuang Law J 47–56.

<sup>3</sup> Andri G Wibisana, *Penegakan Hukum Lingkungan melalui Pertanggungjawaban Perdata* (Depok: BP-FHUI, 2017).

<sup>4</sup> Takdir Rahmadi, *Hukum Lingkungan di Indonesia* (Jakarta: RajaGrafindo Persada, 2019).



## METHOD

This study utilizes normative juridical research techniques, specifically the examination of secondary data or library materials for legal research.<sup>5</sup> Normative juridical research involves conducting library research to analyze law from an internal perspective, focusing on legal norms.<sup>6</sup> In this research, two approaches are utilized: the statute approach and the case approach. When examining legal issues, it is important to consider all relevant laws and regulations. In this instance, we must concentrate on the PPLH Law's regulation of criminal sanctions.<sup>7</sup> Examining environmental cases that have resulted in court rulings with binding legal effect is an essential aspect of the case approach.<sup>8</sup> The legal materials utilized in this research encompass primary legal materials, secondary legal materials, and tertiary legal materials.<sup>9</sup> Primary legal materials encompass the laws and regulations pertaining to environmental protection and management, with a particular emphasis on the PPLH Law. Secondary legal materials encompass a wide range of resources, such as books, legal journals, and research findings that pertain to the realm of environmental criminal law. Tertiary legal materials encompass legal dictionaries and encyclopedias, which offer additional elucidation on primary and secondary legal materials. Collecting legal materials involves conducting thorough research in libraries to locate relevant legal resources.<sup>10</sup> The legal materials were processed and analyzed using the descriptive-analytical method. This method is utilized to explain and examine the regulation of criminal sanctions in the PPLH Law, its implementation in environmental cases, and its efficacy in environmental protection and management.<sup>11</sup>

## RESULT & DISCUSSION

### **I. Criminal Sanction Arrangement in Law Number 32 Year 2009, on Environmental Protection and Management (UU PPLH)**

One crucial aspect of enforcing environmental law in Indonesia is regulating criminal sanctions outlined in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). According to Rahmadi, the PPLH Law emphasizes the use of criminal penalties as a final option for addressing environmental law violations only after exhausting administrative penalties.<sup>12</sup> The regulation of criminal sanctions in the PPLH Law is grounded in established criminal law principles. These include the principle of legality, which ensures that individuals are only punished for actions that are explicitly defined as crimes. Additionally, the principle of no crime without guilt ensures that individuals cannot be held responsible for crimes they did not commit. Lastly, the principle of proportionality

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<sup>5</sup> Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2010).

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Soekanto & Mamudji, *supra* note 5.

<sup>10</sup> Marzuki, *supra* note 6.

<sup>11</sup> *Ibid.*

<sup>12</sup> Rahmadi, *supra* note 4.



ensures that the severity of the punishment is commensurate with the gravity of the offence.<sup>13</sup> The PPLH Law provides clear regulations on environmental crimes, including the necessary elements for criminal acts, criminal liability, and the specific types and amounts of criminal sanctions that can be imposed on offenders.<sup>14</sup>

The application of criminal sanctions in the PPLH Law serves to deter individuals who violate environmental laws and safeguard the environment and affected communities.<sup>15</sup> When imposing criminal sanctions, it is important to consider the delicate balance between environmental protection, economic interests, and social justice.<sup>16</sup> An analysis of the criminal sanction arrangements in the PPLH Law is conducted by examining the legal norms within the law and connecting them to theories of criminal law and principles of environmental protection. It is imperative to conduct a normative legal analysis to determine whether the criminal punishments outlined in the PPLH Law align with its objectives of safeguarding and regulating the environment. This analysis will also help identify any potential shortcomings or concerns regarding its implementation.

Chapter XV, which deals with criminal provisions, specifically outlines the different environmental criminal offences under Law No. 32/2009 on Environmental Protection and Management (PPLH Law). According to Rahmadi, the PPLH Law categorizes environmental crimes into different groups, including environmental pollution, environmental destruction, and violations of administrative provisions.<sup>17</sup> The regulation of environmental pollution can be found in Article 98 of the PPLH Law. This article stipulates that individuals who engage in activities that lead to the violation of ambient air quality standards, water quality standards, seawater quality standards, or criteria for environmental damage may face penalties, including imprisonment and fines. Environmental pollution encompasses various forms such as water, air, and soil pollution, which have detrimental effects on the environment and pose risks to human health.<sup>18</sup>

Article 99 of the Environment Law regulates environmental destruction. According to the law, individuals who engage in actions that harm the environment may face imprisonment and fines. Actions that lead to changes in the physical, chemical, and/or biological properties of the environment beyond the accepted criteria for environmental damage are considered environmental destruction.<sup>19</sup> The PPLH Law also encompasses criminal offences for non-compliance with administrative regulations. As stated in Article 109, engaging in business or activities that have an impact on the environment without possessing the necessary environmental permit is strictly prohibited. According to Article 110, it is a requirement to possess an AMDAL preparer's certificate of competence in order to

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<sup>13</sup> Muladi & Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*, ed. revisi ed (Bandung: Alumni, 2018).

<sup>14</sup> Muhammad Andri Gunawan Wibisana, "Kejahatan Lingkungan oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi dan Pemimpin/Pengurus Korporasi Untuk Kejahatan Lingkungan Di Indonesia?" (2023) 46:2 J Huk dan Pembang 149–195.

<sup>15</sup> Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, edisi kede ed (Yogyakarta: Gajah Mada University Press, 2017).

<sup>16</sup> Mas Achmad Santosa, *Alam pun Butuh Hukum dan Keadilan* (Jakarta: Asprima Pustaka, 2016).

<sup>17</sup> Rahmadi, *supra* note 4.

<sup>18</sup> Wibisana, *supra* note 14.

<sup>19</sup> Santosa, *supra* note 16.



proceed with the preparation of an AMDAL. In addition, according to Article 113, it is prohibited to apply for an environmental permit if the information provided is false, misleading, omitted, damaging, or incorrect.<sup>20</sup>

The Environmental Law also covers criminal offences concerning the handling of hazardous and toxic waste (B3) without the necessary permit (Article 103), as well as violations of emission quality standards, wastewater quality standards, or nuisance quality standards (Article 100). The regulation of environmental crimes in the PPLH Law highlights the government's commitment to safeguarding the environment against pollution and destruction while also emphasizing the importance of adhering to administrative provisions in environmental management.<sup>21</sup>

The PPLH Law specifically addresses criminal sanctions for environmental offences in Chapter XV, focusing on the enforcement of legal consequences. The PPLH Law addresses the imposition of criminal penalties on those who commit environmental crimes, whether they are individuals or businesses. Its purpose is to discourage such behaviour and safeguard the environment.<sup>22</sup>

The PPLH Law includes criminal sanctions such as imprisonment and fines, which have varying minimum and maximum provisions depending on the specific criminal offence. As stated in Article 98, paragraph (1), individuals who engage in environmental pollution can face severe consequences. This includes imprisonment for a minimum of 3 years and a maximum of 10 years, as well as a fine ranging from at least Rp3,000,000,000.00 to a maximum of Rp10,000,000,000.00.<sup>23</sup>

Article 119 of the PPLH Law lists other penalties in addition to jail time and fines. Various measures can be implemented to address the consequences of engaging in criminal activities. These measures may involve confiscating any illicit profits, shutting down specific business operations, rectifying the issues caused by criminal activities, ensuring compliance with neglected obligations, or placing the company under supervision for a maximum period of three years.<sup>24</sup> Criminal sanctions can be imposed on business entities and the individuals responsible for ordering or leading criminal activities. This is outlined in Article 116 of the Environmental Law. According to Muladi and Arief, environmental law upholds the idea of corporate criminal liability.<sup>25</sup>

The *ultimum remedium* principle guides the imposition of criminal sanctions under the PPLH Law. This means that criminal law enforcement is seen as a last resort only after administrative sanctions have been deemed ineffective. According to the PPLH Law, specifically Article 100(2), violations related to wastewater quality standards, emissions, and disturbances can only be deemed illegal if administrative sanctions are not adhered to or if the violations occur repeatedly.<sup>26</sup>

The Law No. 32/2009 on Environmental Protection and Management (UU PPLH) imposes strict regulations on criminal liability for both individuals and

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<sup>20</sup> Hardjasoemantri, *supra* note 15.

<sup>21</sup> Muladi & Arief, *supra* note 13.

<sup>22</sup> Rahmadi, *supra* note 4.

<sup>23</sup> Wibisana, *supra* note 14.

<sup>24</sup> Santosa, *supra* note 16.

<sup>25</sup> Muladi & Arief, *supra* note 13.

<sup>26</sup> Hardjasoemantri, *supra* note 15.



business entities. According to Rahmadi, the PPLH Law follows the principles of liability based on fault and strict liability.<sup>27</sup> In order for someone to be held criminally liable, they must meet the requirements for environmental crimes. These requirements include engaging in prohibited acts, causing resulting consequences, and demonstrating fault. In this context, fault encompasses both intent (*dolus*) and negligence (*culpa*).<sup>28</sup>

Furthermore, the Environmental Law specifically addresses the criminal liability of business entities or corporations in Articles 116 to 120. Corporate criminal liability is a key principle in environmental law. It holds corporations accountable for environmental crimes committed by their management or employees, potentially leading to criminal prosecution.<sup>29</sup> According to Article 116 paragraph (1) of the Environmental Law, in cases where a business entity is involved in an environmental criminal offence, both the business entity and the individuals responsible for giving the order or leading the activity will be subject to criminal charges and sanctions.

The PPLH Law also addresses the criminal liability of officials who issue environmental permits without the necessary AMDAL or UKL-UPL (Article 111) and officials who grant business licenses without the required environmental permits (Article 112).<sup>30</sup> According to Hardjasoemantri, the PPLH Law aims to hold not only the direct perpetrators of environmental crimes accountable but also those who have the authority and responsibility to issue permits.<sup>31</sup>

Environmental criminal law enforcement plays a crucial role in safeguarding and managing the environment in Indonesia. Law No. 32/2009 on Environmental Protection and Management (PPLH Law) regulates the mechanism of environmental criminal law enforcement from the investigation stage to examination in court.<sup>32</sup> According to Article 94, paragraph (1) of the PPLH Law, investigators from the Indonesian State Police Officers and particular Civil Servant Investigators (PPNS) who work for governmental organizations in charge of environmental management and protection look into environmental crimes. PPNS has been granted the authority to investigate environmental criminal acts in accordance with the provisions of laws and regulations.<sup>33</sup>

Once the investigation process is concluded, the case is forwarded to the prosecutor's office for prosecution. According to Article 95 of the PPLH Law, the public prosecutor must collaborate with the relevant environmental protection and management agency to secure expert testimony to substantiate environmental criminal cases. According to Wibisana's research, experts are essential in helping law enforcement agencies identify the necessary components of environmental crimes.<sup>34</sup>

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<sup>27</sup> Rahmadi, *supra* note 4.

<sup>28</sup> Santosa, *supra* note 16.

<sup>29</sup> Wibisana, *supra* note 14.

<sup>30</sup> *Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, 2009.*

<sup>31</sup> Hardjasoemantri, *supra* note 15.

<sup>32</sup> Rahmadi, *supra* note 4.

<sup>33</sup> Santosa, *supra* note 16.

<sup>34</sup> Wibisana, *supra* note 14.





The examination of environmental criminal cases in court follows the provisions of the relevant criminal procedure law, as stated in Article 96 of the PPLH Law. According to the PPLH Law, judges have the authority to impose imprisonment, fines, and other forms of punishment.<sup>35</sup> Furthermore, judges have the authority to calculate the monetary penalties for each day of delay in executing orders to address violations and restore environmental functions, as stipulated in Article 120 of the PPLH Law.

The Environmental Law includes provisions for holding authorized officials accountable if they neglect to oversee the compliance of individuals responsible for businesses and activities with environmental laws, regulations, and permits. This negligence can lead to environmental pollution or damage and is considered a criminal offence (Article 112).<sup>36</sup> According to Hardjosoemantri, the PPLH Law aims to hold not only direct perpetrators of environmental crimes accountable but also officials who fail to supervise properly.<sup>37</sup>

One of the crucial principles in the enforcement of environmental criminal sanctions, as stated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), is the *ultimum remedium* principle. According to Rahmadi, the *ultimum remedium* principle highlights the importance of using environmental criminal sanctions only when all other options, such as administrative sanctions, have been exhausted.<sup>38</sup>

The PPLH Law incorporates the *ultimum remedium* principle through various articles, which include:

1. According to Article 100 paragraph (2) of the PPLH Law, the criminalization of violations related to wastewater quality standards, emissions, and disturbances is only possible if the administrative sanctions have not been followed or if the violations occur repeatedly.
2. As mentioned in the General Explanation of the PPLH Law, the enforcement of environmental criminal law continues to adhere to the principle of "*ultimum remedium*." Criminal law enforcement should be considered a final option after exhausting all possibilities for administrative law enforcement.

In environmental criminal law enforcement, the *ultimum remedium* principle is applied to ensure the most effective use of administrative law instruments in addressing violations of environmental law. According to Santosa, administrative sanctions, such as written warnings, government coercion, license suspension, or license revocation, are believed to be more effective in modifying the behaviour of violators and restoring environmental functions.<sup>39</sup>

Nevertheless, it is important to note that the *ultimum remedium* principle in the PPLH Law does not imply that criminal sanctions can only be enforced once administrative sanctions have been imposed. There are situations where the environment or human health and safety are at serious risk. In those cases, law

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<sup>35</sup> Muladi & Arief, *supra* note 13.

<sup>36</sup> *Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, *supra* note 30.

<sup>37</sup> Hardjosoemantri, *supra* note 15.

<sup>38</sup> Rahmadi, *supra* note 4.

<sup>39</sup> Santosa, *supra* note 16.



enforcement has the authority to immediately impose criminal sanctions without having to wait for administrative sanctions to be applied.<sup>40</sup>

Furthermore, the Environmental Law also governs the resolution of environmental disputes outside of the courtroom by utilizing alternative methods such as negotiation, mediation, and arbitration (as stated in Article 84 of the Environmental Law).<sup>41</sup> Settling disagreements outside of court is in accordance with the *ultimum remedium* principle, which emphasizes the importance of resolving conflicts through peaceful and persuasive methods before resorting to criminal court.<sup>42</sup>

## **II. Implementation of Criminal Sanctions in Environmental Cases in Indonesia After the Enactment of the PPLH Law**

Significant developments have occurred in the application of criminal sanctions in environmental cases in Indonesia since the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). The PPLH Law establishes a robust legal framework that empowers law enforcement to effectively address environmental crimes committed by both individuals and corporations.<sup>43</sup>

After the PPLH Law was passed, the Buyat Bay pollution case by PT Newmont Minahasa Raya became a focal point of public interest. PT Newmont faced charges of environmental pollution for disposing of tailings into the seabed of Buyat Bay. Despite the eventual acquittal of PT Newmont by the court, this case highlights the diligent efforts of law enforcement to enforce criminal sanctions under the PPLH Law.<sup>44</sup>

One case that has garnered significant attention is the issue of forest and land fires involving plantation companies. Under the provisions of Article 108 of the Environmental Law, individuals who engage in land burning may face severe criminal penalties. These penalties include a minimum prison sentence of three years and a maximum of ten years, along with a fine ranging from at least Rp3,000,000,000.00 to a maximum of Rp10,000,000,000.00. Multiple plantation companies have faced charges under this article for their involvement in forest and land fires that occurred in different regions of Indonesia.<sup>45</sup>

The PPLH Law is also applicable in cases of air pollution, such as the incident in Sukoharjo involving PT Rayon Utama Makmur. In accordance with Article 98 paragraph (1) of the PPLH Law, individuals who engage in activities that lead to the violation of ambient air quality standards may face severe criminal penalties. These penalties include a minimum prison sentence of 3 (three) years and a maximum of 10 (ten) years, as well as a fine ranging from at least IDR 3,000,000,000.00 (three billion rupiahs) to a maximum of IDR 10,000,000,000.00 (ten billion rupiahs). PT

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<sup>40</sup> Wibisana, *supra* note 14.

<sup>41</sup> *Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, *supra* note 30.

<sup>42</sup> Hardjasoemantri, *supra* note 15.

<sup>43</sup> Rahmadi, *supra* note 4.

<sup>44</sup> Santosa, *supra* note 16.

<sup>45</sup> Rahmadi, *supra* note 4.





Rayon Utama Makmur was accused of violating the article above due to the detrimental air pollution caused by its industrial activities in the surrounding area.<sup>46</sup>

Since the implementation of the Environmental Law, there has been a growing concern surrounding cases of illegal logging and illegal mining. Article 98, paragraph (2), and Article 99 of the Environmental Law address the imposition of criminal penalties for activities that result in harm to the environment, such as unauthorized logging and mining. Several instances of illegal logging and illegal mining have been brought to court, utilizing the provisions outlined in the PPLH Law.<sup>47</sup>

Despite the robust legal foundation provided by the PPLH Law for imposing criminal penalties in environmental cases, law enforcement encounters numerous challenges in its implementation. These include the intricate nature of evidence, varying interpretations of the law, conflicting interests, and the constraints of limited resources.

The complexity of the evidence involved often hinders the application of environmental criminal sanctions. Environmental crimes frequently encompass intricate technical and scientific elements, necessitating the establishment of pollution, examination of environmental consequences, and identification of the link between actions and impacts. Special expertise and sufficient infrastructure support are necessary for the investigation and proof process during the trial. The lack of human resources and infrastructure in environmental criminal law enforcement can pose a significant challenge in the evidentiary process.<sup>48</sup>

Legal interpretation variances can hinder the enforcement of environmental criminal penalties. The interpretation of provisions in the PPLH Law, particularly those pertaining to criminal offenses and corporate criminal liability, can vary among law enforcers and judges. Court decisions in similar cases can sometimes vary, which can create legal uncertainty and potentially undermine the effectiveness of criminal sanctions.<sup>49</sup>

Conflicts of interest between environmental law enforcement and economic and political interests can pose a significant challenge. External forces with significant economic or political influence frequently exert pressure on the law enforcement process. Experts have highlighted interference with law enforcement's independence and objectivity in handling environmental cases.<sup>50</sup>

One of the challenges faced in implementing environmental criminal sanctions is the limited availability of resources, including workforce, funding, and infrastructure. There are still a limited number of investigators, prosecutors, and judges who possess the necessary expertise to handle environmental cases. The budget allocated for environmental law enforcement needs to be revised to adequately support the investigation, prosecution, and trial processes.<sup>51</sup>

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<sup>46</sup> Santosa, *supra* note 16.

<sup>47</sup> Wibisana, *supra* note 14; Muladi & Arief, *supra* note 13.

<sup>48</sup> Wibisana, *supra* note 14; Santosa, *supra* note 16.

<sup>49</sup> Muladi & Arief, *supra* note 13; Wibisana, *supra* note 14.

<sup>50</sup> Hardjosoemantri, *supra* note 15; Santosa, *supra* note 16.

<sup>51</sup> Rahmadi, *supra* note 4; Santosa, *supra* note 16.



### **III. Effectiveness of Criminal Sanctions in the Environmental Law as an Instrument for Environmental Protection and Management**

Assessing the success of environmental law enforcement in Indonesia involves considering the effectiveness of the application of criminal sanctions in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). The PPLH Law has established a robust legal foundation for the implementation of criminal penalties as a means of safeguarding and regulating the environment.<sup>52</sup>

The application of criminal sanctions in the PPLH Law serves to deter individuals and corporations from committing environmental crimes, thereby preventing future violations of environmental law. Furthermore, the implementation of criminal penalties is anticipated to promote the restoration of the environment following criminal offenses while also safeguarding the public against the hazards of environmental pollution and destruction.<sup>53</sup>

Several factors can be used to assess the effectiveness of PPLH Law's use of criminal sanctions. These include the volume of legal cases handled, the success rate of prosecutions, the severity of punishments imposed, and the impact of criminal sanctions on the behavior of business actors and the environment's quality.<sup>54</sup>

Nevertheless, several additional factors play a crucial role in determining the effectiveness of applying criminal sanctions under the PPLH Law. These factors include the quality of investigations, the level of cooperation among law enforcement agencies, the judges' knowledge of environmental law provisions, and the availability of sufficient human resources and budgetary support.<sup>55</sup>

In order to properly evaluate the effectiveness of applying criminal sanctions in the PPLH Law, a thorough analysis must be conducted, considering the multitude of legal, institutional, social, and economic factors that are involved. It is crucial to analyze the strengths, weaknesses, opportunities, and challenges in environmental criminal law enforcement. Additionally, it is essential to develop strategies that can enhance the effectiveness of applying criminal sanctions to safeguard and manage the environment in Indonesia.

One of the primary goals of implementing criminal sanctions under the PPLH Law is to deter potential offenders. Criminal acts as the law defines them are crimes, according to Article 97 of the PPLH Law. Severe criminal sanctions, such as imprisonment and fines, are anticipated to serve as a deterrent against individuals or businesses engaging in environmental crimes.

One provision in the PPLH Law, specifically Article 98 paragraph (1), outlines the penalties for individuals who cause the violation of various environmental standards. Those found guilty may face imprisonment ranging from 3 to 10 years, as well as fines ranging from Rp3,000,000,000.00 to Rp10,000,000,000.00. The imposition of a significant criminal penalty is intended to discourage individuals who commit or may commit environmental pollution crimes.

Furthermore, the PPLH Law also governs the imposition of supplementary penalties on individuals who commit environmental offenses, as outlined in Article 119. Additional punishments may be imposed in cases of criminal acts, such as

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<sup>52</sup> Rahmadi, *supra* note 4.

<sup>53</sup> Santosa, *supra* note 16.

<sup>54</sup> Wibisana, *supra* note 14.

<sup>55</sup> Muladi & Arief, *supra* note 13.



confiscation of profits, closure of the place of business, repair of damages, fulfillment of neglected obligations, or placing the company under guardianship for up to three years. Having an additional criminal threat can significantly enhance the deterrent effect on the perpetrators. They not only have to face the primary criminal sanctions but also bear the economic and reputational consequences that can be detrimental to them.

It is crucial to ensure that criminal sanctions are consistently and proportionally applied in order to achieve a deterrent effect. According to Article 102 of the PPLH Law, individuals who engage in criminal activities outlined in Article 100, such as unauthorized waste disposal and emissions, will face more severe penalties if their actions cause harm to people or pose a threat to human health. In cases where a criminal offense leads to severe injury or loss of life, criminal aggravation is also applied (as stated in Article 102, paragraphs 2 and 3). It is evident from the inclusion of this criminal aggravation provision that the PPLH Law places great importance on maintaining consistency and proportionality when imposing criminal sanctions.

Environmental restoration is a crucial goal when it comes to implementing criminal sanctions under the PPLH Law. According to Article 54, paragraph (1), individuals who cause pollution or damage to the environment are legally obligated to restore their natural functions. It is important to consider integrating environmental restoration with criminal sanctions. This ensures that the perpetrator not only faces punishment but also takes responsibility for repairing the damage caused to the environment.

According to Article 119, letter C, of the PPLH Law, one of the possible additional penalties is the obligation to repair the consequences of criminal acts. Judges can legally compel offenders to restore the environment they harmed as a result of their criminal actions. According to Rahmadi (2018), the implementation of criminal sanctions aims not only to deter potential offenders but also to restore the quality of the polluted or damaged environment.

Restoring the environment is a matter that is also addressed within the framework of corporate criminal liability. According to Article 117 of the PPLH Law, in cases where criminal charges are brought against the individual in charge or the leader of a business entity, the prescribed penalties of imprisonment and fines are augmented by one-third. Furthermore, Article 119, letter C, also stipulates that business entities may face further penalties in the form of remedying the repercussions of criminal actions. Businesses that violate environmental laws are subject to both criminal penalties and the responsibility of restoring the environment they have harmed.

The court plays a crucial role in ensuring that environmental restoration is effectively combined with the enforcement of criminal sanctions. According to Article 120 of the PPLH Law, in cases where there are violations of wastewater quality standards, emissions, or disturbances, the court has the authority to impose fines for each day of delay in complying with orders to rectify the situation and restore environmental functions. This provision empowers the court to actively promote environmental restoration by imposing criminal sanctions.

Public protection is a crucial goal when implementing criminal sanctions under the PPLH Law. According to Article 3 letter g of the PPLH Law, the objective of



environmental protection and management is to safeguard and uphold the right to a healthy environment, which is considered a fundamental human right. In this realm, the implementation of criminal sanctions serves the purpose of safeguarding individuals' rights to a clean and healthy environment.

The PPLH Law imposes significant criminal penalties, including imprisonment and fines, in order to deter environmental crimes that may have detrimental effects on the community. Under Article 98, paragraph (3) of the PPLH Law, if an act leads to the violation of air, water, or seawater quality standards or causes significant environmental damage resulting in injury or death, the offender can face imprisonment for a minimum of 4 years and a maximum of 12 years. Additionally, they may be fined at least Rp4,000,000,000.00 and up to Rp12,000,000,000.00. It is evident from the presence of this criminal offense that the PPLH Law offers robust safeguards for public health and safety against the perils of environmental pollution and harm.

Furthermore, the PPLH Law grants the public the opportunity to actively participate in the preservation and administration of the environment. According to Article 70, paragraph (1) of the PPLH Law, the community is granted equal and extensive rights and opportunities to participate actively in environmental protection and management. This role can be fulfilled in different ways, such as by monitoring social activities, offering suggestions, opinions, proposals, objections, complaints, and providing information (as stated in Article 70, paragraph 2 of the Environmental Law). It is evident from the presence of this provision that the PPLH Law strongly promotes community involvement in the enforcement of environmental laws, particularly when it comes to imposing criminal penalties.

Article 66 of the Environmental Law offers legal protection to individuals who advocate for environmental rights. Individuals advocating for a clean and sustainable environment must be protected from criminal prosecution and civil lawsuits. This provision ensures the protection of individuals who actively monitor and report environmental crimes, with the aim of promoting public involvement in the enforcement of environmental criminal law.

Business actors' behavior changes play a crucial role in evaluating the effectiveness of criminal sanctions applied under the PPLH Law. Strict and consistent criminal sanctions are believed to serve as a powerful incentive for business actors to take greater responsibility in environmental management and adhere to the regulations set forth in environmental law. One of the provisions in the PPLH Law focuses on promoting changes in the behavior of business actors by mandating the acquisition of an environmental permit. According to Article 36, paragraph (1) of the PPLH Law, businesses and activities that are obligated to obtain an Amdal or UKL-UPL must also possess an environmental permit. Failure to fulfill this obligation carries severe consequences under Article 109. Offenders may face imprisonment for a minimum of one year and a maximum of three years, along with a fine ranging from at least Rp1,000,000,000.00 to a maximum of Rp3,000,000,000.00. Business actors are expected to comply with the obligation to have an environmental permit and carry out environmental management in accordance with the requirements of the permit. The threat of criminal sanctions serves as a strong incentive for them to do so.



One important provision to consider is the responsibility of managing hazardous and toxic waste (B3). According to Article 103 of the PPLH Law, individuals who fail to manage hazardous and toxic waste properly can face serious consequences. This includes imprisonment for a minimum of one year and a maximum of three years, as well as a fine ranging from at least one billion rupiah to a maximum of three billion rupiah. Business actors are strongly encouraged to adhere to established standards and procedures for B3 waste management in order to effectively reduce the risk of environmental pollution.

The application of criminal sanctions can also shift the focus of business actors from solely pursuing economic profit to taking into account various aspects of environmental protection. Perpetrators of environmental pollution face serious consequences under Article 98, paragraph (1) of the PPLH Law. They may be sentenced to a minimum of 3 (three) years and a maximum of 10 (ten) years in prison, along with a fine ranging from at least Rp3,000,000,000.00 (three billion rupiah) to a maximum of Rp10,000,000,000.00 (ten billion rupiah). Severe criminal penalties serve as a strong incentive for business actors to prioritize the management of environmental risks and allocate sufficient resources to prevent pollution.

Consistent and firm enforcement of criminal law can play a crucial role in encouraging changes in the behavior of business actors. According to Article 114 of the PPLH Law, in cases where an environmental criminal offense is committed by or on behalf of a business entity, both the business entity and the person responsible for giving the order to commit the offense may face criminal charges and sanctions. Corporate criminal liability can play a crucial role in driving positive changes in corporate culture in a more environmentally friendly direction. It goes beyond holding individuals accountable and extends the responsibility to the business entity itself.

Applying criminal sanctions in environmental law is a crucial step towards bolstering the enforcement of environmental regulations in Indonesia. The PPLH Law incorporates various approaches to environmental law enforcement, including administrative, civil, and criminal sanctions. By utilizing criminal sanctions, the existing law enforcement mechanisms can be enhanced and reinforced.

Article 76, paragraph (1) of the PPLH Law outlines the administrative sanctions that may be imposed for violations of environmental permits. These sanctions include written warnings, government coercion, suspension of environmental permits, or revocation of environmental permits. If administrative sanctions are considered ineffective, law enforcement officials have the option to utilize the criminal law enforcement mechanisms outlined in Articles 97 through 120 of the PPLH Law. This criminal sanction provision provides law enforcement officials with additional options when addressing serious environmental law violations.

Furthermore, the PPLH Law enhances investigators' power to uphold environmental criminal law. According to Article 94, paragraph (1) of the PPLH Law, individuals who work as civil servants in government agencies and are responsible for environmental protection and management are granted the authority to act as investigators alongside the officers of the Indonesian National Police. Having





investigation authority in PNNS greatly enhances the effectiveness of environmental criminal law enforcement as it goes beyond relying solely on Polri investigators.

There are specific provisions in criminal procedural law that also back up the implementation of criminal sanctions in the PPLH Law. In accordance with Article 95 of the PPLH Law, public prosecutors must initiate criminal charges and impose sanctions on individuals who commit environmental crimes. Furthermore, according to Article 96 of the PPLH Law, evidence used in the prosecution of environmental crimes can take various forms, including evidence from the Criminal Procedure Code and other sources like electronic information or documents. The provisions outlined in Wibisana's study offer a more robust legal foundation for public prosecutors to effectively enforce environmental criminal law.

Applying criminal sanctions to the PPLH Law can enhance public trust in the enforcement of environmental legislation. According to Article 66 of the PPLH Law, individuals who advocate for a clean and sustainable environment are granted legal protection. This provision aims to promote public involvement in the detection and reporting of environmental offenses. Public support and trust play a crucial role in bolstering the legitimacy of environmental law enforcement, which includes the implementation of criminal sanctions.

## CONCLUSION

Based on the discussion of the three problem formulations in this study, the following conclusions can be drawn: First, the regulation of criminal sanctions in Law Number 32 Year 2009 on Environmental Protection and Management (PPLH Law) has provided a strong legal basis for environmental criminal law enforcement in Indonesia. The PPLH Law comprehensively regulates the types of environmental criminal offenses, criminal sanctions that can be imposed, corporate criminal liability, and environmental criminal law enforcement mechanisms. When the PPLH Law sets criminal penalties, it follows the "ultimum remedium" principle, which says that criminal penalties should only be used as a last resort when administrative penalties have failed. Second, the application of criminal sanctions in environmental cases in Indonesia after the enactment of the PPLH Law shows a positive development in environmental law enforcement. Several cases of environmental pollution and destruction involving corporations have been successfully prosecuted and sentenced to criminal sanctions. However, the application of criminal sanctions also still faces various obstacles, such as the complexity of proof, the limited number and capacity of law enforcers, the inconsistency of court decisions, and conflicts of interest in the law enforcement process. Third, the PPLH Law's use of criminal penalties as a tool for protecting and managing the environment can be judged by a number of factors, such as the fact that offenders are less likely to do wrong, the environment is fixed after it has been damaged, the community is safe from the threat of pollution and damage to the environment, businesses change their ways to be more eco-friendly, and environmental law enforcement is strengthened overall. However, a number of other factors, such as the caliber of investigations, cooperation between law enforcement agencies, and adequate resource support, also have an impact on the effectiveness of the application of criminal sanctions.

Based on the conclusion of the discussion of the three problem formulations in this study, here are some suggestions that can be considered to improve the





effectiveness of the application of criminal sanctions in environmental protection and management in Indonesia: First, improving the regulation of criminal sanctions in the PPLH Law; and second, strengthening the institutions and resources of environmental criminal law enforcement. Third, community participation in environmental criminal law enforcement should be increased. Fourth, the application of the principle of restorative justice in the settlement of environmental criminal cases.

### **DECLARATION OF CONFLICTING INTERESTS**

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

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