



ECOLOGICAL JUSTICE AS THE BASIS FOR THE CRIMINAL PUNISHMENT OF CORPORATIONS IN ENVIRONMENTAL CRIME

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ABSTRACT

Corporate criminal liability for environmental crime still carries an unresolved conceptual problem. Criminal law tends to build fault from the acts of individual persons, while ecological damage often forms through institutional decisions, patterns of control, and corporate risk management. This study examines whether ecological justice can serve as the basis for the criminal punishment of corporations in environmental crime in Indonesia. The study focuses on the weakness of an overly formalistic approach to corporate punishment and on formulating a theoretical model that places environmental restoration at its center. The research uses the normative legal method, drawing on statutory, conceptual, limited case, and systematic library approaches to the literature on ecological justice, green criminology, corporate criminal liability, strict liability, and corporate culture. The study finds that punishing environmental corporations is inadequate when it rests only on fines and general deterrence. Ecological harm is collective, cumulative, transboundary, and intergenerational, so the measure of criminal justice must account for the distribution of ecological burdens, the participation of affected residents, the correction of damage, proof of organizational fault, and governance oversight after the verdict. Ecological justice and organizational fault can reshape corporate environmental punishment through five integrated pillars.

A. INTRODUCTION

Environmental crime committed through corporate activity poses a hard test for criminal law. Ecological damage rarely stands as a single event that can be traced to one individual perpetrator.¹ In many situations it forms out of investment decisions, production pressure, cost efficiency, the neglect of

¹ Fachrizal Afandi, Daru Adiando, Prisca Listiningrum, and Monnachu Wemonicha Lovina, "Penggunaan Bukti Ilmiah dan Penerapan Prinsip Kehati-hatian dalam Putusan Perkara Pidana Materiil Lingkungan Hidup di Indonesia Tahun 2009-2020," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 79. See too, Muhar Junef, and Moh Husain, "Pembentukan Pengadilan Khusus Lingkungan Sebagai Wujud Tanggung Jawab Negara pada Upaya Keadilan Ekologis," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 62.

permit obligations, weak supervision, and a tolerance for risk that operates inside the organization. For that reason, the criminal question cannot stop at who operated the equipment, dumped the waste, signed the documents, or gave the technical instructions. The more important question is how the company profits from ecological risk, how its decision-making system opens room for violations, and how punishment can be directed toward repairing the environment while preventing repetition. On this basis, the criminal punishment of environmental corporations belongs to legal theory, not merely to the technique of proving the elements of an offense.²

In Indonesian law, the possibility of holding a business entity criminally liable for environmental crime already has a normative footing in the Environmental Protection and Management Law (*Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup*/UU PPLH).³ Supreme Court Regulation Number 13 of 2016 (*Peraturan Mahkamah Agung*/PERMA 13/2016) also supplies procedural guidance for corporate criminal cases, including measures of benefit, acquiescence, and a corporation's failure to prevent. After the national Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP) was enacted, the standing of the corporation as a subject of general criminal law became firmer.⁴ This development matters because it marks a shift from a criminal law centered on the natural person toward one able to reach organizational entities. Even so, formal recognition has not answered the deeper normative question: what basis of justice should guide punishment when corporate crime produces ecological damage that is layered, long-lasting, and not always fully recoverable.⁵

The core problem arises because corporate punishment is still imagined as an extension of the punishment of individuals. The corporation is treated as if it held intent and fault identical to a human being, while proof of its fault

² Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup [Law Number 32 of 2009 on Environmental Protection and Management], Lembaran Negara Republik Indonesia Tahun 2009 Nomor 140, Tambahan Lembaran Negara Nomor 5059, terutama Pasal 1, Pasal 88, dan Pasal 97-120. See too, Dila Nurul Maghfira Arrahman, Gia Anggiani, Allisya Destari Pratami, and Hani Sri Handayani, "Pertanggungjawaban Hukum Korporasi: Penegakan Hukum terhadap Pencemaran dan Kerusakan Lingkungan Hidup di Indonesia," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 199.

³ Tazkia Nafs Azzahra, and Oktapianus Oktapianus, "Menilik Peluang Penerapan Label Karbon (Carbon Labelling) Pada Kemasan Produk Makanan di Indonesia Sebagai Instrumen Pemulihan Lingkungan," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 312.

⁴ Harkristuti Harkrisnowo, "Redefinisi Pidana dan Pemidanaan Korporasi dalam Perspektif Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana," *Jurnal Legislasi Indonesia* 16, no. 4 (2019): 409.

⁵ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana [Law Number 1 of 2023 on the Criminal Code], Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, terutama Pasal 45-50 tentang tindak pidana dan pertanggungjawaban pidana korporasi; Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi [Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations], Berita Negara Republik Indonesia Tahun 2016 Nomor 2058, Pasal 3 dan Pasal 4.

is sought through the acts of directors, employees, or those who gave orders.⁶ That view is not entirely wrong, since every corporate crime is still carried out through human action. Once corporate fault is attached wholly to the fault of a particular individual, however, criminal law can no longer capture the collective character of organizational crime. In environmental crime, damage frequently originates in corporate culture, incentive systems, weak compliance, ineffective internal supervision, and the relations of power among the company, the state, and surrounding residents. Corporate punishment therefore needs to address organizational fault rather than the mechanical attribution of an officer's act to the business entity.⁷

The next tendency places the fine as the main answer to the corporation. A fine remains relevant because a corporation cannot be imprisoned and because economic gain often forms the central motive in environmental crime.⁸ A fine alone cannot be the only instrument. If a fine is seen as a price that can be paid for a violation, the corporation can fold criminal risk into its business cost calculation. In that situation, the moral and ecological function of criminal law weakens. Punishment must ensure that the gain from the violation is removed, the damage is repaired, affected residents obtain proper procedural space, and corporate governance changes.⁹ The punishment of an environmental corporation must work as an institutional intervention, not as a mere payment transaction with the state. A similar criticism appears in the corporate criminal law literature, which judges corporate sanctions ineffective when they do not reach the structure of decisions and the culture of compliance.¹⁰

A third tendency appears in the still weak orientation toward ecological restoration within punishment. Environmental law instruments do recognize

⁶ Ikka Puspitasari, and Erdiana Devintawati, "Urgensi Pengaturan Kejahatan Korporasi dalam Pertanggungjawaban Tindak Pidana Korporasi Menurut RKUHP," *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 238.

⁷ Samuel W. Buell, "The Responsibility Gap in Corporate Crime," *Criminal Law and Philosophy* 12, no. 3 (2018): 475. See too, Andri G. Wibisana, "Kejahatan Lingkungan oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi dan Pemimpin/Pengurus Korporasi untuk Kejahatan Lingkungan di Indonesia?" *Jurnal Hukum & Pembangunan* 46, no. 2 (2016): 149; Asep Suherman, "Esensi asas legalitas dalam penegakan hukum pidana lingkungan," *Bina Hukum Lingkungan* 5, no. 1 (2020): 136.

⁸ Zuhda Mila Fitriana, Dhea Veranica Isabella, and Lupita Sari, "Legislasi Hijau Regional: Kebijakan Lingkungan dalam Rencana Umum Energi Nasional dan Daerah Menuju Target Energi Baru Terbarukan 2030," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 434.

⁹ Muhar Junef, and Moh Husain, "Pembentukan Pengadilan Khusus Lingkungan Sebagai Wujud Tanggung Jawab Negara pada Upaya Keadilan Ekologis," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 66.

¹⁰ Mihailis E. Diamantis and William S. Laufer, "Prosecution and Punishment of Corporate Criminality," *Annual Review of Law and Social Science* 15 (2019): 456. See too, Mihailis E. Diamantis, "Clockwork Corporations: A Character Theory of Corporate Punishment," *Iowa Law Review* 103, no. 2 (2018): 508.

restoration, compensation, and certain measures.¹¹ Within the criminal construction, however, restoration is often placed as an added consequence after fault is proven, rather than as the core of the theory of punishment. Yet environmental damage produces layered victims: people who lose their health, livelihood, land, water, clean air, and living space; communities that undergo socio-economic upheaval; ecosystems that lose their function; and future generations that inherit the risk. A punishment that sees the violation only as a formal breach of the norm cannot answer those layers of victimhood. The theory of ecological justice offers a basis for placing restoration, participation, recognition, and sustainability as measures of criminal justice.¹²

Ecological justice is not the same as environmental justice limited to the distribution of risk among humans. Environmental justice remains important because pollution and damage often burden particular social groups in disproportionate ways.¹³ Ecological justice widens the scope of the question: not only whether a particular human group bears an environmental burden unfairly, but also whether the law respects the integrity of ecosystems and the sustainability of nonhuman life. Within this frame, the environment is not only an object protected for the instrumental interest of humans, but part of a moral and legal community that must be reckoned with in a verdict. That widening is relevant to environmental criminal law because ecological damage cannot always be closed off with monetary compensation to humans. Punishment must attend to ecosystem function, carrying capacity, assimilative capacity, and intergenerational interests.¹⁴

Green criminology helps show why a strongly legalistic reading of environmental crime needs to be complemented by a harm-based approach.¹⁵

¹¹ Hasanul Mulkan, and Serlika Aprita, "Sistem penegakan hukum lingkungan pidana di Indonesia," *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 99.

¹² Andri G. Wibisana, "Keadilan dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan," *Mimbar Hukum* 29, no. 2 (2017): 297. See too, David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: Oxford University Press, 2007), 6; David Schlosberg, "Theorising Environmental Justice: The Expanding Sphere of a Discourse," *Environmental Politics* 22, no. 1 (2013): 39; Asep Suherman, "Esensi asas legalitas dalam penegakan hukum pidana lingkungan," *Bina Hukum Lingkungan* 5, no. 1 (2020): 138.

¹³ Tantimin, "Pertanggungjawaban Korporasi terhadap Pencemaran Lingkungan Hidup: Studi pada PT Horizon Bandar Bahru di Batam," *Journal of Judicial Review* 19, no. 2 (2018): 192. See too, Nazia Tatyana, and Achmad Ramadhandhy Y. Putra, "Pemenuhan Hak atas Akses Informasi Lingkungan Hidup dan Partisipasi Publik terhadap Pencemaran Udara DKI Jakarta," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 375.

¹⁴ Martin Crook, Damien Short, and Nigel South, "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Global Ecosystems Environments," *Theoretical Criminology* 22, no. 3 (2018): 298. See too, Louis J. Kotze and Duncan French, "The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene," *Global Journal of Comparative Law* 7, no. 1 (2018): 15.

¹⁵ Lynch, Michael J., Michael A. Long, and Paul B. Stretesky, *Green Criminology and Green Theories of Justice: An Introduction to a Political Economic View of Eco-Justice* (London:

Many corporate acts that look formally like administrative or civil matters can cause more serious ecological harm than conventional crime. Part of environmental damage occurs through activities that hold a permit, yet their execution shifts the risk onto surrounding communities. In the perspective of green criminology, attention falls not only on conduct that has been criminalized, but also on the production of harm, relations of power, and the ecological injustice that accompanies economic activity. This approach does not set aside the principle of legality. It provides a critical basis so that lawmakers, law enforcers, and judges read environmental offenses according to the real harm they cause, rather than the narrow satisfaction of administrative elements.¹⁶

Indonesian scholarship on corporate criminal liability has touched extensively on the identification theory, vicarious liability, strict liability, reactive corporate fault, and corporate culture.¹⁷ On the other side, environmental law literature has developed through discussions of pollution, licensing, administrative sanctions, civil suits, strict liability, the right to a good and healthy environment, and restoration. These two streams have not always met within a complete conceptual frame. Discussion of corporate punishment often stops at who can be punished and how the relationship between the officer and the corporation is proven. The study of environmental justice, meanwhile, addresses rights, participation, and risk distribution at length, yet it has not always been translated into a theory of corporate punishment. This study sits at that meeting point: ecological justice is connected with corporate criminal liability so that punishment is not only legally valid but also ecologically adequate.¹⁸

This study frames two problems. First, why the criminal punishment of environmental corporations, resting on individual attribution and the criminal fine, falls short of realizing ecological justice. Second, how a theoretical model of corporate environmental punishment can be formulated on the basis of ecological justice within the context of Indonesian law. Both problems sit

Palgrave Macmillan, 2019), 23. See too, Amulya J. Shetty, and Mukul Saxena, "Harm Principle in Green Criminology: Environmental Harm and Human Risk Matrix," *Frontiers in Climate* 7 (2025): 16227.

¹⁶ Ragnhild Sollund, "Green Criminology: Its Foundation in Critical Criminology and the Way Forward," *Howard Journal of Crime and Justice* 60, no. 3 (2021): 308. See too, Avi Brisman and Nigel South, "Green Criminology and Environmental Crimes and Harms," *Sociology Compass* 13, no. 1 (2019): e12650.

¹⁷ Sapto Hermawan, and Athariq Wibawa, "Audit Lingkungan di Indonesia dan Pembelajaran dari Amerika Serikat dan Malaysia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 404.

¹⁸ Andri G. Wibisana, "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation," *Review of European, Comparative and International Environmental Law* 28, no. 2 (2019): 232. See too, Jennifer H. Arlen, "Corporate Criminal Liability: Theory and Evidence," in *Research Handbook on the Economics of Criminal Law*, ed. Alon Harel and Keith N. Hylton (Cheltenham: Edward Elgar, 2012), 147.

deliberately at the level of legal theory. The study does not set out to resolve every problem of proof in environmental criminal cases, nor to assess the empirical effectiveness of law enforcement against particular companies. Its focus is to build a normative basis that can be used to read, assess, and formulate the criminal punishment of environmental corporations more consistently with the character of ecological damage.¹⁹

The novelty of this study lies in placing ecological justice as the basis for corporate punishment, not merely as a general value in environmental protection. Within the proposed frame, ecological justice does not remain a moral reason to punish; it is translated into five operational pillars: distributive justice, procedural justice, corrective-restorative justice, proof of organizational fault, and post-verdict ecological governance.²⁰ These five pillars connect theory and practice. Judges can use them to assess the weight of corporate fault and determine the form of the sanction; policymakers can use them to refine sentencing guidance; and academics can develop them as a critique of punishment that still treats the environment as a passive object.

The aim of this study is to build a theoretical argument that the criminal punishment of an environmental corporation should not be understood only as the infliction of suffering or a fine on a business entity. Punishment should be read as a corrective and transformative mechanism that forces the corporation to internalize ecological costs, repair the damage, reform its governance, and open space for the participation of affected communities. With that orientation, criminal law does not work only after damage occurs; it also serves to change the risk structure that allows damage to recur. Within that limit, ecological justice is placed as the basis for the criminal punishment of environmental corporations.

Based on this preliminary focus, particularly on the gap between corporate criminal liability and ecological justice and the need to develop a model for environmental corporate punishment, this study will answer two concise and relevant research questions:

1. How can ecological justice inform the criminal punishment of environmental corporations?

What theoretical model can integrate ecological justice and organizational fault in corporate environmental punishment?

¹⁹ Rini Retnowinarni, "Pertanggungjawaban Pidana terhadap Korporasi di Indonesia," *Perspektif Hukum* 19, no. 1 (2019): 86.

²⁰ Syaifullah Noor, Kamil Ismail Banapon, and Tamboa Ketum Levis, "Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia: Distorsi Praktik Restorative Justice Dalam Penegakan Hukum Pidana Di Indonesia," *Peradaban Hukum Nusantara* 2 (2025): 10.

B. RESEARCH METHODS

This research is normative legal research. That choice of method fits because the issue under study concerns the construction of norms, principles, theories, and a model of corporate environmental punishment, not the empirical behavior of law enforcement officers or particular companies. Normative research serves to assess the consistency among the regulation of corporate criminal liability, the theory of punishment, and the demands of ecological justice. Through this approach, legal materials are treated not only as positive text but as a normative structure carrying philosophical assumptions about the legal subject, fault, victims, and the aims of punishment.

The approaches used include the statutory, conceptual, limited case, and systematic library approaches. The statutory approach is directed at UU PPLH, PERMA 13/2016, the national Criminal Code, and instruments related to the right to the environment. The conceptual approach serves to read the theory of ecological justice, green criminology, corporate culture, organizational fault, strict liability, restorative justice, and responsive regulation. The case approach is used not to judge whether a single ruling is right or wrong, but to understand general problems in proving and formulating sanctions against environmental corporations.²¹

The primary legal materials in this research consist of statutory regulations together with rulings or guidelines for handling corporate cases. The secondary legal materials include books, journal articles, and academic studies on corporate criminal law, environmental law, ecological justice, and green criminology. The literature was selected with a preference for journal articles within the last ten years, especially those published between 2016 and 2026, without setting aside the classic works that form the foundation of the theory. The search used the keywords corporate criminal liability, corporate punishment, ecological justice, environmental justice, green criminology, strict liability, environmental crime, corporate culture.

The analysis is prescriptive-qualitative. First, the research maps the positive norms on the corporation as a subject of criminal law and on environmental crime. Second, it identifies the conceptual weakness of a model that leans too heavily on individual fault and the fine. Third, it synthesizes the theory of ecological justice with the theory of corporate punishment. Fourth, it formulates the five-pillar model as a theoretical recommendation. The success of the analysis is measured not through statistical proof but through

²¹ Andri G. Wibisana, "Tentang Ekor yang Tak Lagi Beracun: Kritik Konseptual atas Sanksi Administratif dalam Hukum Lingkungan di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 43. See too, Helmi Hafrida, and Bunga Permatasari, "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020), 33.

the coherence of the argument, its consistency with the prevailing norms, and its capacity to answer the particular character of ecological damage.

C. DISCUSSION

1. Ecological Justice as an Alternative to the Formalistic Approach in Corporate Environmental Punishment

Ecological justice requires criminal law to widen the horizon of its punishment. The classical theory of punishment generally moves among retribution, deterrence, rehabilitation, and the protection of society. In corporate environmental cases, that orientation remains important but is not enough. Retribution becomes difficult when the punished subject is an artificial legal entity; imprisonment cannot be imposed on a corporation; general deterrence weakens when the fine is smaller than the gain from the violation; and rehabilitation means little if the organizational culture is left untouched. Ecological justice adds the orientation that punishment must repair the damaged relationship among the corporation, society, and the ecosystem. That relationship may not always heal completely, yet the criminal sanction must be directed toward restoring ecological function and preventing recurring damage.²²

The distributive pillar of ecological justice requires punishment to see who bears the environmental burden.²³ In many cases the economic gain is enjoyed by the corporation, its shareholders, and its business network, while the pollution of air, water, and soil, the floods, the fires, or the loss of livelihood is borne by surrounding residents. Such inequality of distribution is not resolved merely by proving the elements of the offense. The judge needs to assess whether the corporation's activity has shifted ecological costs onto a weaker group. If so, the sanction must be designed to correct that shifting of burden through compensation, environmental restoration, health financing, the restoration of livelihoods, and the obligation to repair the production system that creates the risk.²⁴ Distributive justice drives a calculation of

²² Daffa Prangsi Rakisa Wijaya Kusuma, Fajar Sugianto Yanuari, and Rijal Irvan Firdaus Pratama, "Urgensi Integrasi Biaya Pemulihan Lingkungan dalam Tindak Pidana Lingkungan Hidup melalui Sanksi Pidana Denda," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 288. See too, Josua Navirio Pardede, and Wahyu Yun Santoso, "Refleksi Kritis terhadap Konsep Keadilan Restoratif dalam Penanganan Tindak Pidana Lingkungan Hidup di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 264.

²³ Dila Nurul Maghfira Arrahman, Gia Anggiani, Allisya Destari Pratami, and Hani Sri Handayani, "Pertanggungjawaban Hukum Korporasi: Penegakan Hukum terhadap Pencemaran dan Kerusakan Lingkungan Hidup di Indonesia," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 199.

²⁴ Hariman Satria, "Penerapan pidana tambahan dalam pertanggungjawaban pidana korporasi pada tindak pidana lingkungan hidup," *Jurnal Yudisial* 10, no. 2 (2017): 157. See too, Dani Amran Hakim, "Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 2 (2015): 434.

punishment that does not simply follow the maximum limit of the fine, but weighs the scale of the ecological and social loss.

The procedural pillar refuses to place affected communities as passive objects in the criminal process. In environmental cases, residents often become a source of knowledge about changes in water, air, and soil, illness, declining harvests, or disrupted living space. The criminal process nonetheless tends to push that experience to the margins because proof centers on the public prosecutor, experts, the defendant, and the judge. Procedural justice demands access to information, participation, and recognition of the victims' experience. That participation is not meant to replace criminal procedure, but to ensure the verdict understands the damage in full. Without the perspective of victims and affected communities, punishment risks restoring only the state's loss or penalizing a formal violation, without answering the socio-ecological damage the community suffers.²⁵

The corrective-restorative pillar places restoration at the center of punishment. In conventional crime, punishment is often understood as suffering imposed after fault is proven. In environmental crime, the suffering imposed on the corporation must not ignore the need to restore the environment. Restoration is not an administrative addition but a substantive measure of the success of punishment. If a river is polluted, restoring the river, its biota, access to water, and residents' livelihoods must be the main orientation. If a land fire occurs, restoring the peat, preventing recurring fires, and overseeing the hydrology must enter the sentence. Punishment therefore does not stop at a finding of guilt; it continues into corrective obligations until ecological function recovers as far as possible.²⁶

Ecological justice also demands recognition of the interests of future generations. Environmental damage does not always end when the verdict is read. The contamination of hazardous materials, the degradation of land, the loss of forest cover, the destruction of coastal areas, and climate change can produce long-term consequences. Future generations are not present in the courtroom, yet their interest is real. The criminal punishment of an environmental corporation therefore needs to account for long-term risk and scientific uncertainty. Within this frame, the principles of precaution and

²⁵ Zaid Afif Sembiring, "Hak Generasi Masa Depan dalam Hukum Perubahan Iklim: Sebuah Penelusuran Awal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 26. See too, Sayyidatihiyaa Afra Geubrina Raseukiy, "Kebijakan Hukum dalam Pemenuhan Hak atas Lingkungan yang Bersih, Sehat, dan Berkelanjutan sebagai Hak Asasi Manusia Universal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 14.

²⁶ United Nations General Assembly, Resolution 76/300, The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, July 28, 2022. See too, Gabriella Mangara, Michelle Nathan, and Vanessa Katlea, "Peluang dan Tantangan Replikasi Gugatan Iklim kepada Korporasi dengan Argumen HAM di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 55.

sustainability are not only environmental principles but a basis for criminal assessment. A corporation that ignores serious risk to the environment's carrying capacity harms not only present victims but also narrows the life choices of the next generation.²⁷

The further question is how ecological justice works within the theory of corporate punishment. The answer lies in a shift from punishment as payment toward punishment as transformation. If punishment is seen as payment, the fine becomes central. If punishment is understood as transformation, the fine is only one tool for changing behavior and organizational structure. Punishment must push the corporation to dismantle the roots of the violation, such as incentive systems, weak supervision, formalistic environmental audits, production targets that ignore carrying capacity, and lopsided relations with the community. This orientation toward transformation aligns with responsive regulation, which views sanctions as part of a ladder of responses to risk rather than mere punishment after a violation occurs.²⁸

Within that frame, the additional penalty gains an important position. The announcement of the verdict, the confiscation of gains, the repair of the effects of the offense, payment of restoration costs, the closure of part of the activity, the overhaul of the compliance system, an independent audit, and periodic oversight can have more effect than a fine standing alone. Through additional penalties, the judge can tailor the sanction to the character of the damage. For a corporation, reputation, permits, market access, and financing are often as important as cash. Ecological punishment therefore needs to combine financial, structural, reputational, and restorative sanctions so that the corporation does not treat criminal law as a component of business cost.²⁹

Ecological justice does not abolish the principle of legality, the principle of fault, or due process. It gives them content more suited to the corporation and the environment.³⁰ The principle of legality still requires a clear basis for

²⁷ Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, 2nd ed (London: Routledge, 2017), 24. See too, Zaid Afif Sembiring, "Hak Generasi Masa Depan dalam Hukum Perubahan Iklim: Sebuah Penelusuran Awal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 28.

²⁸ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), 23. See too, Andri G. Wibisana, "Instrumen Ekonomi, Command and Control, dan Instrumen Lainnya: Kawan atau Lawan? Suatu Tinjauan Berdasarkan Smart Regulation," *Bina Hukum Lingkungan* 4, no. 1 (2019): 176.

²⁹ Moranda Pardomuan Jawak, and Muhammad Ilham Hermawan. "Efektivitas Penerapan Restorative Justice Dalam Penegakan Hukum Terhadap Tindak Pidana Lingkungan Yang Menimbulkan Kerugian Keuangan Negara Di Indonesia," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 12, no. 12 (2025): 4562. See too, Andang Binawan, and Maria Grasia Sari Soetopo, "Implementasi hak atas lingkungan hidup yang bersih, sehat, dan berkelanjutan dalam konteks hukum Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 125.

³⁰ Hasanul Mulkan, and Serlika Aprita, "Sistem penegakan hukum lingkungan pidana di Indonesia," *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 100.

the offense, while the principle of fault still requires liability that can be proven. Corporate fault, however, need not be equated with the inner state of a particular individual. Fault can be read from the organization's failure to prevent a risk it knew or should have known, its acquiescence in unlawful practice, the gain it obtained from the violation, and its failure to build a proper compliance system. In this way, ecological justice avoids two extremes: punishing the corporation without a basis of fault, or acquitting the corporation because no single person can be found whose entire intent is taken to represent the organization.³¹

The formalistic approach shows itself when a corporate environmental case is directed only at proving the administrative link between the act and the business entity. The law then needs only to show that the act was committed by an employee or officer, for the benefit of the corporation, or within the scope of the work. This construction is necessary but insufficient. It does not yet answer how corporate decisions shape risk. In a complex organization, the order to violate is not always recorded in writing. Risk can be produced through unrealistic production targets, savings on waste management costs, tolerance of small violations, or a reporting system that conceals bad information. If the law searches only for an explicit order, the fault dispersed through the organizational structure can escape proof.

Formality also shows in how the victim is assessed. Environmental damage is often reduced to state loss or material loss, while its social, cultural, health, and ecological dimensions are not yet adequately counted. Indigenous peoples, farmers, fishers, women, children, and the poor can lose their relationship with land, water, forests, and their living space. Such loss is not always reflected in the figure of the fine. Ecological justice demands that the victim be read as human beings, communities, ecosystems, and generations. If the victim is narrowed, the sanction narrows with it. The criminal punishment of an environmental corporation therefore needs to be connected with the right to a clean, healthy, and sustainable environment.³²

The next weakness is the tendency to make strict liability a shortcut. In Indonesian environmental law, strict liability is known mainly in the civil sphere for claiming compensation and restoration in high-risk activities or the use of hazardous materials. Applying the idea of strict liability in criminal law must be done with care, because criminal law still requires a basis of fault or at least a

³¹ Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability* (Cambridge: Cambridge University Press, 1993). See too, Samuel W. Buell, "The Responsibility Gap in Corporate Crime," *Criminal Law and Philosophy* 12, no. 3 (2018): 478.

³² United Nations General Assembly, Resolution 76/300, The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, July 28, 2022. See too, Sayyidatihiyaa Afra Geubrina Raseukiy, "Kebijakan Hukum dalam Pemenuhan Hak atas Lingkungan yang Bersih, Sehat, dan Berkelanjutan sebagai Hak Asasi Manusia Universal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 15.

defensible normative basis of liability. This study does not propose abolishing fault. What it proposes is a reconstruction of fault at the organizational level. Organizational fault can be proven through systemic failure to prevent, detect, halt, and restore ecological risk. Proof then does not get trapped in individual *mens rea*, yet neither does it fall into punishment without fault.³³

The criminal fine is also problematic when it is not linked to gain, loss, and restoration. A maximum fine that looks large can still be lower than the cost of restoration or the gain obtained from the violation. A fine that goes to the state, moreover, does not necessarily return to the affected community or the damaged ecosystem. The fine therefore needs to be designed together with the confiscation of gains, restoration costs, restitution, compensation, and an obligation to repair. The literature on integrating restoration costs into environmental criminal sanctions shows that the fine must be tied to the rationale of restoration, not only to abstract retribution or deterrence.³⁴

Another weakness appears when the verdict contains no oversight mechanism after it is handed down. A corporation can be declared guilty and sentenced, yet a change of behavior requires oversight. Ecological restoration needs time, indicators, experts, financing, and reporting. If the verdict only imposes a fine and orders restoration in general terms, its execution easily becomes vague. Ecological justice demands that the verdict contain obligations that can be examined, such as a restoration plan, a work schedule, an independent audit, periodic reports, community involvement, and consequences for noncompliance. Without oversight, punishment loses its transformative power.

A corporation can also fragment its responsibility through group structures, contractors, subcontractors, subsidiaries, or outsourcing. Ecological damage can occur at the operational level, while the gain is consolidated in the parent company or the beneficial owner. A formalistic approach that looks only at the legal entity carrying out the risky activity is not always adequate. Ecological punishment needs to read the chain of control and the chain of benefit. This does not mean every entity in the group is automatically guilty. The law must assess, however, whether the parent company, the beneficial owner, or the actual controller holds effective control, obtains a benefit, or tolerates the risk structure. Without such a reading, the fragmentation of legal entities can become a means of avoiding responsibility.

³³ Helmi Hafrida, and Bunga Permatasari, "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020), 33. See too, Andri G. Wibisana, "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation," *Review of European, Comparative and International Environmental Law* 28, no. 2 (2019): 22.

³⁴ Daffa Prangsi Rakisa Wijaya Kusuma, Fajar Sugianto Yanuari, and Rijal Irvan Firdaus Pratama, "Urgensi Integrasi Biaya Pemulihan Lingkungan dalam Tindak Pidana Lingkungan Hidup melalui Sanksi Pidana Denda," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 288.

Another aspect that is often missed is the relationship between criminal sanctions and administrative instruments. Environmental law works through permits, quality standards, supervision, administrative sanctions, civil suits, and criminal law. Criminal law should be placed as *ultimum remedium* in the sense of being selective and proportionate, but this does not mean criminal law must always wait until every other instrument fails. In cases that pose serious threats, large damage, or systemic acquiescence, criminal law can be the necessary response. The problem is not choosing between criminal and administrative instruments in a dichotomy, but orchestrating the legal instruments. Here smart regulation is relevant: punishment must sit within a series of responses able to compel compliance, restoration, and a change of governance.³⁵

The weaknesses of the formalistic approach in the criminal punishment of environmental corporations can be summarized in five aspects: the reduction of corporate fault to individual fault; the narrowing of the victim to easily quantified loss; an excessive reliance on the fine; weak post-verdict oversight; and a failure to read the structure of control and the chain of benefit. These five aspects show that reform is not achieved merely by raising the criminal threat. Reform needs to reach the theoretical foundation. Ecological justice is needed because it connects fault, victims, sanctions, and restoration within one frame consistent with the character of environmental damage.

2. How can ecological justice and organizational fault be integrated into a corporate environmental punishment model

The model proposed in this study consists of five pillars. The first pillar is distributive justice. At the punishment stage, the judge and the public prosecutor need to map the distribution of benefit and burden. The central questions are who enjoys the gain from the violation, who bears the risk, and who loses access to the environment. The answers to those questions determine the weight of the punishment. A corporation that gains greatly from neglecting waste management, clearing risky land, or breaching permits should not face only a standard fine. That gain must be counted as the basis for confiscating the benefit and financing restoration. The community that bears the ecological burden must also obtain real restoration, not merely appear as the backdrop of the case.

³⁵ Andri G. Wibisana, "Pengelolaan Lingkungan Melalui Izin Terintegrasi dan Berantai: Sebuah Perbandingan atas Perizinan Lingkungan di Berbagai Negara," *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 226. See too, Andri G. Wibisana, "Instrumen Ekonomi, Command and Control, dan Instrumen Lainnya: Kawan atau Lawan? Suatu Tinjauan Berdasarkan Smart Regulation," *Bina Hukum Lingkungan* 4, no. 1 (2019): 176.

Distributive justice also demands attention to social inequality. Not every community has the same ability to refuse pollution, reach experts, or pursue legal process. Corporations often hold economic resources, technical information, and political access far stronger than those of surrounding residents. If this inequality is ignored, the criminal process can repeat the injustice it sets out to repair. The assessment of punishment therefore needs to include the vulnerability of victims and the inequality of bargaining position. The greater the inequality a corporation exploits, the stronger the basis for imposing intensive corrective and restorative sanctions.³⁶

The second pillar is procedural justice, which requires affected communities to meaningfully participate in environmental criminal proceedings through witness or expert testimony, *amicus curiae*, environmental organizations, or other lawful mechanisms. Such participation enables communities to communicate their experiences, understand the environmental damage and restoration plans, and contribute to restoration oversight. Procedural justice also strengthens the legitimacy of judgments, as legally valid decisions may be perceived as unjust when communities are excluded or inadequately informed. Meaningful participation can therefore enhance compliance, accountability, conflict prevention, and sustainable restoration, particularly because communities often experience environmental impacts long after law enforcement concludes.³⁷

The third pillar is corrective-restorative justice.³⁸ In this model, punishment is directed toward repairing the broken relationship. Ecological restoration covers the recovery of soil, water, air, biodiversity, and ecosystem function. Social restoration includes the recovery of health, livelihood, economic access, and the community's sense of safety. Institutional restoration demands a change in the system of supervision and corporate compliance. The three must be seen as one whole. If only the physical environment is repaired while the community is not restored, justice is not yet achieved. If the community is given compensation while the source of pollution

³⁶ Syaifullah Noor, Kamil Ismail Banapon, and Tamboa Ketum Levis, "Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia: Distorsi Praktik Restorative Justice Dalam Penegakan Hukum Pidana Di Indonesia," *Peradaban Hukum Nusantara* 2 (2025): 12.

³⁷ Dila Nurul Maghfira Arrahman, Gia Anggiani, Allisya Destari Pratami, and Hani Sri Handayani, "Pertanggungjawaban Hukum Korporasi: Penegakan Hukum terhadap Pencemaran dan Kerusakan Lingkungan Hidup di Indonesia," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 200.

³⁸ Risma Elvariani, and Sidik Sunaryo, "Refleksi moralitas dalam keadilan restoratif sebagai alternatif penyelesaian tindak pidana," *Akademik: Jurnal Mahasiswa Humanis* 5, no. 3 (2025): 1278. See too, Moranda Pardomuan Jawak, and Muhammad Ilham Hermawan. "Efektivitas Penerapan Restorative Justice Dalam Penegakan Hukum Terhadap Tindak Pidana Lingkungan Yang Menyebabkan Kerugian Keuangan Negara Di Indonesia," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 12, no. 12 (2025): 4562.

keeps running, restoration also fails. Corrective-restorative justice therefore demands a combination of obligations that target every layer of the damage.³⁹

Restorative justice in environmental cases must be distinguished from a simple settlement.⁴⁰ Restorative justice must not become a means of halting serious cases through minimal compensation or an agreement born of unequal power. In corporate environmental crime, restoration must instead strengthen criminal accountability. The corporation still needs to be held responsible once the elements of the offense are proven, while the obligation of restoration is placed as part of the sanction. Restorative justice therefore does not abolish punishment; it turns punishment into a measurable instrument of restoration.⁴¹

The fourth pillar is proof of organizational fault, demonstrated through indicators such as organizational benefit from violations, policies encouraging excessive risk-taking, failure to comply with permits or standards, repeated violations, inadequate compliance systems, weak responses to known damage, or concealment of information. Such indicators establish corporate responsibility without reducing fault to an individual's conduct. However, criminal liability should remain limited to serious, dangerous, intentional, grossly negligent, or systemic violations rather than ordinary administrative shortcomings. This approach ensures that ecological justice supports selective and proportionate punishment where corporate conduct creates unacceptable risks or causes significant environmental harm.⁴²

The fifth pillar is post-verdict ecological governance, which treats the criminal judgment as the beginning of organizational transformation rather than the conclusion of the case. Courts may require restoration plans, independent environmental audits, compliance improvements, periodic

³⁹ Daffa Prangsi Rakisa Wijaya Kusuma, Fajar Sugianto Yanuari, and Rijal Irvan Firdaus Pratama, "Urgensi Integrasi Biaya Pemulihan Lingkungan dalam Tindak Pidana Lingkungan Hidup melalui Sanksi Pidana Denda," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 289. See too, Josua Navirio Pardede, and Wahyu Yun Santoso, "Refleksi Kritis terhadap Konsep Keadilan Restoratif dalam Penanganan Tindak Pidana Lingkungan Hidup di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 266.

⁴⁰ Budi Handayani, "Pertanggungjawaban Pidana Korporasi pada Kejahatan Lingkungan Hidup Berbasis Nilai Keadilan Restoratif," *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA* 2, no. 1 (2024): 331. See too, Hanifa Fathia Hani, "Perlindungan Hukum Terhadap Korban Pencemaran Lingkungan Berdasarkan Undang-Undang Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Perspektif Keadilan Restoratif," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 14, no. 1 (2025): 6.

⁴¹ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), 23. See too, Josua Navirio Pardede, and Wahyu Yun Santoso, "Refleksi Kritis terhadap Konsep Keadilan Restoratif dalam Penanganan Tindak Pidana Lingkungan Hidup di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 267.

⁴² Samuel W. Buell, "The Responsibility Gap in Corporate Crime," *Criminal Law and Philosophy* 12, no. 3 (2018): 479. See too, Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi, Berita Negara Republik Indonesia Tahun 2016 Nomor 2058, Pasal 3 dan Pasal 4.

reporting, community access to information, and continued oversight. Where necessary, restrictions on activities, technological improvements, or publication of the judgment may also be imposed. Such measures prevent corporations from simply paying fines and resuming harmful practices. By strengthening oversight, restoration obligations, reputational consequences, and sanctions for noncompliance, post-verdict governance reduces moral hazard and creates stronger incentives for substantive compliance and long-term environmental responsibility.

These five pillars are cumulative. Distributive justice determines who must be restored and who bears the cost. Procedural justice determines how the voice of victims and the community enters the process. Corrective-restorative justice determines the kind of sanction that restores. Organizational fault gives the basis for corporate liability. Post-verdict governance ensures the change takes place. If one pillar is missing, punishment becomes lopsided. Restoration without fault can turn into a purely administrative affair; fault without restoration becomes empty retribution; participation without oversight becomes symbolic; and a fine without distribution becomes a business cost.

The first implication for Indonesian law is the need for a progressive reading of Articles 116 to 118 of UU PPLH, PERMA 13/2016, and the corporate provisions in the national Criminal Code.⁴³ These norms can be read as a basis for building organizational fault. When a corporation obtains a benefit from the offense, tolerates a violation, or fails to take preventive steps, that condition is not merely an additional fact but part of corporate fault. With such a reading, law enforcement officers do not always have to search for a direct order from the board of directors. They can prove the organizational pattern, the compliance system, the record of violations, the allocation of the environmental budget, audit reports, the incentive structure, and the corporation's response after the risk became known.

The second implication is the need for guidelines on the punishment of environmental corporations.⁴⁴ Such guidelines can contain aggravating and mitigating factors aligned with ecological justice. Aggravating factors include extensive damage, impact on vulnerable groups, large gains, the repetition of violations, acquiescence by management, the manipulation of environmental data, the obstruction of oversight, and the failure to carry out prompt restoration. Mitigating factors can include self-reporting, the swift halting of the source of harm, cooperation with law enforcement, genuine early restoration, and the repair of the compliance system before the verdict.

⁴³ Budi Suhariyanto, "Urgensi Pemidanaan Korporasi Pelaku Tindak Pidana Perikanan Menggunakan Peraturan Mahkamah Agung Nomor 13 Tahun 2016," *Jurnal Kebijakan Perikanan Indonesia* 10, no. 1 (2018): 28.

⁴⁴ Hariman Satria, "Penerapan pidana tambahan dalam pertanggungjawaban pidana korporasi pada tindak pidana lingkungan hidup," *Jurnal Yudisial* 10, no. 2 (2017): 159.

Guidelines of this kind can reduce disparity and ensure that punishment does not simply follow the maximum figure of the statute.

The third implication is the strengthening of scientific proof and organizational proof at the same time. An environmental case needs experts to explain the causal link, the level of pollution, ecosystem damage, restoration costs, and long-term risk. Scientific proof alone, however, is not enough to prove corporate fault. Organizational proof is also needed in the form of internal documents, the audit system, the chain of command, budget policy, work contracts, the division of responsibility, and evidence of gain. Ecological justice demands both kinds of proof. Without environmental science, the damage is hard to read. Without organizational evidence, the corporation can shift the fault onto field operators.

The fourth implication is the need to formulate sanctions in layers. The principal penalty of a fine needs to be linked with the confiscation of gains and restoration costs. Additional penalties can include the obligation to repair the effects of the offense, environmental restoration, the announcement of the verdict, the proportionate revocation or suspension of certain permits, the oversight of activity, an independent audit, and the repair of the compliance system. Where positive law does not yet regulate every such form in detail, the judge can use the room for additional penalties and measures so long as a legal basis exists. Lawmakers in the future need to clarify the instruments of criminal restoration so that execution does not depend solely on the creativity of the verdict.⁴⁵

The fifth implication is the integration of ecological restoration with the rights of the community. Environmental restoration must not be narrowed into the technical repair of the site. A community that loses clean water, health, food sources, or livelihood must be part of the restoration design. The court can order that the restoration plan contain public consultation, a complaint mechanism, accessible reports, and periodic evaluation. This matters so that restoration does not turn into a technocratic activity controlled entirely by the corporation and its consultants.

The sixth implication is corporate punishment should be linked to substantive compliance and ecological transition. A compliance program should not automatically shield a corporation from liability; it should influence assessment only when genuinely effective, adequately funded, authorized, audited, and demonstrably implemented. Conversely, superficial programs may indicate merely cosmetic compliance. Where effective compliance, prompt

⁴⁵ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Pasal 45-50 dan Pasal 118-123. See too, Harkristuti Harkrisnowo, "Redefinisi Pidana dan Pemidanaan Korporasi dalam Perspektif Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana," *Jurnal Legislasi Indonesia* 16, no. 4 (2019): 410.

response, and early restoration are demonstrated, liability may be assessed differently. The seventh implication is environmental sanctions should require forward-looking measures, including clean technology, safer supply chains, stronger audits, and community monitoring, ensuring that punishment addresses both past wrongdoing and the conditions enabling future environmental harm.

In the end, this model contributes to the theory of criminal law. It shows that the principle of fault can still be maintained in corporate cases as long as fault is not reduced to individual psychology. It also shows that the aim of punishing a corporation need not imitate individual suffering. For a corporation, the most meaningful punishment targets assets, reputation, permits, the compliance system, organizational culture, and the obligation of restoration. Ecological justice therefore does not shift criminal law into administrative or civil law; it enriches criminal law so that it can answer crime that is organizational and ecological in character.

The five-pillar model should be translated into clear operational parameters to ensure that it functions as a practical framework rather than remaining merely normative. In practice, investigators, prosecutors, and judges require measurable criteria that can be applied throughout the process, from investigation to the execution of judicial decisions. These parameters may be structured into three principal dimensions: risk assessment, damage assessment, and restoration assessment. The assessment of risk asks whether the corporation knew or should have known the potential harm of its business activity. The assessment of damage gauges the extent to which ecological and social impact has occurred or is highly likely to occur. The assessment of restoration determines the measures needed so that environmental function and community rights recover as far as possible. These three layers help criminal law work concretely without losing its normative character.

At the layer of risk assessment, law enforcement officers need to trace the documents and behavior of the organization. Relevant evidence includes the environmental permit, environmental impact assessment documents, audit reports, records of water or air quality monitoring, internal correspondence, contracts with third parties, the environmental management budget, and management's response to warnings from experts or the community. From this material one can assess whether the violation was incidental or born of organizational policy. Ecological justice does not allow a corporation to hide behind the complexity of its structure. That complexity is instead a reason to demand a stronger system of prevention, because the corporation holds the economic and technical capacity to control the risk.⁴⁶

⁴⁶ Andri G. Wibisana, "Kejahatan Lingkungan oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi dan Pemimpin/Pengurus Korporasi untuk Kejahatan Lingkungan

At the layer of damage assessment, proof must not be limited to impact that is immediately visible. The environment works through interdependent ecological relationships. Water pollution can affect health, food, fisheries, soil, household economies, and social relations. A land fire can affect air, peat, biodiversity, education, and vulnerable groups. The assessment of damage must therefore attend to the extent of the area, the duration of the impact, the capacity for natural recovery, the vulnerability of victims, cumulative risk, and scientific uncertainty. Uncertainty must not always be read in the corporation's favor, especially when it arises from weak monitoring or the corporation's negligence in providing accurate data.⁴⁷

At the layer of restoration assessment, the judge needs to distinguish the payment of a fine from the restoration of damage. The fine is punishment, while restoration is a corrective obligation for the damage caused. The two can complement each other but must not substitute for each other. If a fine is imposed without a restoration plan, the community still bears the damage. If restoration is ordered without adequate punishment, the corporation can treat the violation as ordinary managerial risk. The order of restoration therefore needs to contain the activities, the location, indicators of success, the time frame, the financing mechanism, reporting, and independent verification. In complex cases, a restoration guarantee fund or a dedicated account can be considered so that the execution of the verdict does not depend on the corporation's will after the case ends.⁴⁸

The next parameter is the relationship between gain and punishment. Ecological justice rejects a situation where the corporation still enjoys the gain from the violation after the fine is paid. The confiscation of gains, the calculation of the cost saved by noncompliance, and the adjustment of the fine to the corporation's economic capacity need to be taken into account. This approach must remain proportionate, however. The aim is not to destroy lawful economic activity but to ensure that economic activity is not built by

di Indonesia?" *Jurnal Hukum & Pembangunan* 46, no. 2 (2016): 153. See too, Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi, Berita Negara Republik Indonesia Tahun 2016 Nomor 2058, Pasal 3 dan Pasal 4.

⁴⁷ Zaid Afif Sembiring, "Hak Generasi Masa Depan dalam Hukum Perubahan Iklim: Sebuah Penelusuran Awal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 28. See too, Andri G. Wibisana, "Keadilan dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan," *Mimbar Hukum* 29, no. 2 (2017): 298; Destara Sati, "Refleksi Keuangan Hijau di Indonesia dan Proyeksi Taksonomi Hijau sebagai Kebijakan Pintar," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 341.

⁴⁸ Gabriella Mangara, Michelle Nathan, and Vanessa Katlea, "Peluang dan Tantangan Replikasi Gugatan Iklim kepada Korporasi dengan Argumen HAM di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 56. See too, Daffa Prangsi Rakisa Wijaya Kusuma, Fajar Sugianto Yanuari, and Rijal Irvan Firdaus Pratama, "Urgensi Integrasi Biaya Pemulihan Lingkungan dalam Tindak Pidana Lingkungan Hidup melalui Sanksi Pidana Denda," *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 289.

shifting ecological costs onto the community and future generations. Punishment must be strong enough to remove the incentive for violation and targeted enough to force a change in the production system and compliance.

Community participation also needs to be made operational. Participation is not enough as a principle; it must appear in the mapping of damage, the drafting of the restoration plan, monitoring, and evaluation. Affected communities need to obtain understandable information, a chance to raise objections, access to reports on the execution of the verdict, and a channel for complaints when restoration fails. In the ecological context, victims often learn of environmental change faster than the state or the corporation. That local knowledge must be treated as part of the social evidence, tested through legal and scientific methods. The criminal process then does not only speak on behalf of the victims but gives the victims room to shape the form of restoration.⁴⁹

Corporate compliance after the verdict becomes the final parameter. An effective compliance program must be testable through its institutional design, the independence of the environmental unit, budget allocation, training, internal reporting, whistleblower protection, periodic audits, and internal sanctions for violations. If a compliance program is only a formality, it does not deserve to be a mitigating reason. If the program is real and proven to reduce risk, by contrast, it can serve as a basis for formulating more precise oversight. In this model, the criminal verdict can order the renewal of the compliance program, the appointment of an independent monitor, and periodic reports to the authority. The aim is to ensure the corporation learns institutionally from the offense that occurred.⁵⁰

The principle of ecological proportionality also needs to be affirmed. In corporate environmental cases, proportionality is not measured only by the correspondence between fault and criminal suffering. It must connect organizational fault, the level of harm, the gain obtained, the capacity for restoration, and the position of the victim. A large corporation that reaped significant gain from neglecting its environmental obligations cannot be treated the same as an actor that swiftly halted the source of harm and restored the impact.⁵¹ Ecological proportionality demands a sanction heavy

⁴⁹ United Nations General Assembly, Resolution 76/300, The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, July 28, 2022. See too, Sayyidatihiyaa Afra Geubrina Raseukiy, "Kebijakan Hukum dalam Pemenuhan Hak atas Lingkungan yang Bersih, Sehat, dan Berkelanjutan sebagai Hak Asasi Manusia Universal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 17.

⁵⁰ Mihailis E. Diamantis and William S. Laufer, "Prosecution and Punishment of Corporate Criminality," *Annual Review of Law and Social Science* 15 (2019): 458. See too, Mihailis E. Diamantis, "Clockwork Corporations: A Character Theory of Corporate Punishment," *Iowa Law Review* 103, no. 2 (2018): 509.

⁵¹ Dila Nurul Maghfira Arrahman, Gia Anggiani, Allisya Destari Pratami, and Hani Sri Handayani, "Pertanggungjawaban Hukum Korporasi: Penegakan Hukum terhadap Pencemaran dan

enough to remove the incentive for violation, specific enough to repair the damage, and measurable enough for its execution to be overseen.⁵²

Coordination among legal regimes becomes an important condition so that punishment does not run alone. The criminal verdict needs to relate to the environmental permit, administrative supervision, civil suits, and restoration policy. Without coordination, a criminal verdict can impose a fine while the permit keeps running without change; or a civil suit can order restoration while the criminal process fails to read organizational fault. The model of ecological justice drives a unity of direction. Each legal instrument keeps its own function, yet all are directed toward preventing recurring damage, restoring the ecosystem, and protecting the community.

The measure of success of ecological punishment therefore needs to be seen after the verdict is carried out. Success is not measured by the size of the fine or the number of cases decided. The more relevant measure is whether the source of pollution stops, environmental quality improves, victims obtain access to restoration, the corporation changes its system of risk control, and the violation does not recur. With those indicators, criminal law gains an evaluative orientation. A verdict is not regarded as finished when it becomes final and binding, but when the corrective and restorative obligations are carried out in fact and can be verified.⁵³ This evaluative frame also matters for legal education, since the criminal punishment of environmental corporations cannot be taught only as an issue of the subject of criminal law, but must be understood as the meeting point of the theory of fault, the theory of justice, environmental science, and corporate governance.

In the end, these operational parameters keep the boundary among criminal law, administrative law, and civil law. Ecological justice does not make criminal law the first tool for every environmental violation.⁵⁴ Criminal law is still used when a violation shows serious fault, grave risk, significant impact, repetition, acquiescence, gain from the violation, or the failure of administrative instruments. Yet when criminal law is used, it must not be ecologically impoverished. Punishment must carry a corrective function that administrative sanctions or civil suits cannot always achieve. The principle of

Kerusakan Lingkungan Hidup di Indonesia," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 201.

⁵² Budi Suhariyanto, "Urgensi Pemidanaan Korporasi Pelaku Tindak Pidana Perikanan Menggunakan Peraturan Mahkamah Agung Nomor 13 Tahun 2016," *Jurnal Kebijakan Perikanan Indonesia* 10, no. 1 (2018): 29.

⁵³ Budi Handayani, "Pertanggungjawaban Pidana Korporasi pada Kejahatan Lingkungan Hidup Berbasis Nilai Keadilan Restoratif," *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA* 2, no. 1 (2024): 331. See too, Risma Elvariani, and Sidik Sunaryo, "Refleksi moralitas dalam keadilan restoratif sebagai alternatif penyelesaian tindak pidana," *Akademik: Jurnal Mahasiswa Humanis* 5, no. 3 (2025): 1278

⁵⁴ Hariman Satria, "Penerapan pidana tambahan dalam pertanggungjawaban pidana korporasi pada tindak pidana lingkungan hidup," *Jurnal Yudisial* 10, no. 2 (2017): 159.

ultimum remedium in certain contexts therefore does not mean a weak criminal law, but a criminal law placed selectively, proportionately, and effectively to protect the environment.

D. Conclusion

The criminal punishment of an environmental corporation is inadequate when understood only as the attribution of an officer's act to the business entity and the imposition of a fine. Environmental damage that is collective, cumulative, cross-spatial, and intergenerational needs a more comprehensive basis of punishment. Ecological justice can be that basis because it connects the distribution of ecological burdens, community participation, the restoration of damage, the proof of organizational fault, and the change of corporate governance. By reading UU PPLH, PERMA 13/2016, and the national Criminal Code through this perspective, corporate fault can be formulated as the organization's failure to prevent, control, and restore an ecological risk it knew or should have known.

This study proposes a five-pillar model for the punishment of corporations grounded in ecological justice: distributive justice, procedural justice, corrective-restorative justice, the proof of organizational fault, and post-verdict ecological governance. The model places corporate punishment as a corrective, restorative, and transformative instrument rather than a mere financial penalty. This research has limitations because it conducts no interviews, observation, or quantitative measurement of the effectiveness of criminal rulings against environmental corporations. The recommendations it offers therefore sit at the level of a normative model and conceptual guidance. Further research needs to test this model against criminal rulings on environmental corporations, prosecutorial practice, the calculation of restoration costs, and the execution of verdicts, so that this theoretical idea can be developed into more operational sentencing guidelines.

BIBLIOGRAPHY

Journals:

- Afandi, Fachrizal, Daru Adianto, Prisca Listiningrum, and Monnachu Wemonicha Lovina. "Penggunaan Bukti Ilmiah dan Penerapan Prinsip Kehati-hatian dalam Putusan Perkara Pidana Materiil Lingkungan Hidup di Indonesia Tahun 2009-2020." *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 77-120.
- Arrahman, Dila Nurul Maghfira, Gia Anggiani, Allisya Destari Pratami, and Hani Sri Handayani. "Pertanggungjawaban Hukum Korporasi: Penegakan Hukum terhadap Pencemaran dan Kerusakan Lingkungan Hidup di

- Indonesia." *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 195-203.
- Azzahra, Tazkia Nafs, and Oktapianus Oktapianus. "Menilik Peluang Penerapan Label Karbon (Carbon Labelling) Pada Kemasan Produk Makanan di Indonesia Sebagai Instrumen Pemulihan Lingkungan." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 310-338.
- Binawan, Andang, and Maria Grasia Sari Soetopo. "Implementasi hak atas lingkungan hidup yang bersih, sehat, dan berkelanjutan dalam konteks hukum Indonesia." *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 121-156.
- Brisman, Avi, and Nigel South. "Green Criminology and Environmental Crimes and Harms." *Sociology Compass* 13, no. 1 (2019): e12650.
- Buell, Samuel W. "The Responsibility Gap in Corporate Crime." *Criminal Law and Philosophy* 12, no. 3 (2018): 471-491.
- Crook, Martin, Damien Short, and Nigel South. "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Glocal Ecosystems Environments." *Theoretical Criminology* 22, no. 3 (2018): 298-317.
- Diamantis, Mihailis E. "Clockwork Corporations: A Character Theory of Corporate Punishment." *Iowa Law Review* 103, no. 2 (2018): 507-576.
- Diamantis, Mihailis E., and William S. Laufer. "Prosecution and Punishment of Corporate Criminality." *Annual Review of Law and Social Science* 15 (2019): 453-472.
- Elvariani, Risma, and Sidik Sunaryo. "Refleksi moralitas dalam keadilan restoratif sebagai alternatif penyelesaian tindak pidana." *AKADEMIK: Jurnal Mahasiswa Humanis* 5, no. 3 (2025): 1275-1286.
- Fitriana, Zuhda Mila, Dhea Veranica Isabella, and Lupita Sari. "Legislasi Hijau Regional: Kebijakan Lingkungan dalam Rencana Umum Energi Nasional dan Daerah Menuju Target Energi Baru Terbarukan 2030." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 431-454.
- Hafrida, Helmi, and Bunga Permatasari. "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning." *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020).
- Hakim, Dani Amran. "Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup." *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 2 (2015).
- Handayani, Budi. "Pertanggungjawaban Pidana Korporasi pada Kejahatan Lingkungan Hidup Berbasis Nilai Keadilan Restoratif." *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA* 2, no. 1 (2024): 329-337.

- Hani, Hanifa Fathia. "Perlindungan Hukum Terhadap Korban Pencemaran Lingkungan Berdasarkan Undang-Undang Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Perspektif Keadilan Restoratif." *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 14, no. 1 (2025): 1-9.
- Harkrisnowo, Harkristuti. "Redefinisi Pidana dan Pemidanaan Korporasi dalam Perspektif Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana." *Jurnal Legislasi Indonesia* 16, no. 4 (2019): 408-418.
- Hermawan, Sapto, and Athariq Wibawa. "Audit Lingkungan di Indonesia dan Pembelajaran dari Amerika Serikat dan Malaysia." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 402-430.
- Jawak, Moranda Pardomuan, and Muhammad Ilham Hermawan. "Efektivitas Penerapan Restorative Justice Dalam Penegakan Hukum Terhadap Tindak Pidana Lingkungan Yang Menyebabkan Kerugian Keuangan Negara Di Indonesia." *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 12, no. 12 (2025): 4562-4571.
- Junef, Muhar, and Moh Husain. "Pembentukan Pengadilan Khusus Lingkungan Sebagai Wujud Tanggung Jawab Negara pada Upaya Keadilan Ekologis." *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 59-74.
- Kotze, Louis J., and Duncan French. "The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene." *Global Journal of Comparative Law* 7, no. 1 (2018): 5-36.
- Kusuma, Daffa Prangsi Rakisa Wijaya, Fajar Sugianto Yanuari, and Rijal Irvan Firdaus Pratama. "Urgensi Integrasi Biaya Pemulihan Lingkungan dalam Tindak Pidana Lingkungan Hidup melalui Sanksi Pidana Denda." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 287-309.
- Mangara, Gabriella, Michelle Nathan, and Vanessa Katlea. "Peluang dan Tantangan Replikasi Gugatan Iklim kepada Korporasi dengan Argumen HAM di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 53-76.
- Mulkan, Hasanah, and Serlika Aprita. "Sistem penegakan hukum lingkungan pidana di Indonesia." *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 97-112.
- Noor, Syaifullah, Kamil Ismail Banapon, and Tamboa Ketum Levis. "Distorted Practice of Restorative Justice in the Enforcement of Criminal Law in Indonesia: Distorsi Praktik Restorative Justice Dalam Penegakan Hukum Pidana Di Indonesia." *Peradaban Hukum Nusantara* 2 (2025): 1-30.
- Pardede, Josua Navirio, and Wahyu Yun Santoso. "Refleksi Kritis terhadap Konsep Keadilan Restoratif dalam Penanganan Tindak Pidana Lingkungan Hidup di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 263-286.

- Puspitasari, Ikka, and Erdiana Devintawati. "Urgensi Pengaturan Kejahatan Korporasi dalam Pertanggungjawaban Tindak Pidana Korporasi Menurut RKUHP." *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 237-254.
- Raseukiy, Sayyidatihiyaa Afra Geubrina. "Kebijakan Hukum dalam Pemenuhan Hak atas Lingkungan yang Bersih, Sehat, dan Berkelanjutan sebagai Hak Asasi Manusia Universal." *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 1-24.
- Retnowinarni, Rini. "Pertanggungjawaban Pidana terhadap Korporasi di Indonesia." *Perspektif Hukum* 19, no. 1 (2019): 82-104.
- Sati, Destara. "Refleksi Keuangan Hijau di Indonesia dan Proyeksi Taksonomi Hijau sebagai Kebijakan Pintar." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 339-371.
- Satria, Hariman. "Penerapan pidana tambahan dalam pertanggungjawaban pidana korporasi pada tindak pidana lingkungan hidup." *Jurnal Yudisial* 10, no. 2 (2017): 155-171.
- Schlosberg, David. "Theorising Environmental Justice: The Expanding Sphere of a Discourse." *Environmental Politics* 22, no. 1 (2013): 37-55.
- Sembiring, Zaid Afif. "Hak Generasi Masa Depan dalam Hukum Perubahan Iklim: Sebuah Penelusuran Awal." *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 25-52.
- Shetty, Amulya J., and Mukul Saxena. "Harm Principle in Green Criminology: Environmental Harm and Human Risk Matrix." *Frontiers in Climate* 7 (2025): 1602227.
- Sollund, Ragnhild. "Green Criminology: Its Foundation in Critical Criminology and the Way Forward." *Howard Journal of Crime and Justice* 60, no. 3 (2021): 304-322.
- Suhariyanto, Budi. "Urgensi Pemidanaan Korporasi Pelaku Tindak Pidana Perikanan Menggunakan Peraturan Mahkamah Agung Nomor 13 Tahun 2016." *Jurnal Kebijakan Perikanan Indonesia* 10, no. 1 (2018): 25-32.
- Suherman, Asep. "Esensi asas legalitas dalam penegakan hukum pidana lingkungan." *Bina Hukum Lingkungan* 5, no. 1 (2020): 133-152.
- Tantimin, Tantimin. "Pertanggungjawaban Korporasi terhadap Pencemaran Lingkungan Hidup: Studi pada PT Horizon Bandar Bahru di Batam." *Journal of Judicial Review* 19, no. 2 (2018): 190-206.
- Tatyana, Nazia, and Achmad Ramadhandhy Y. Putra. "Pemenuhan Hak atas Akses Informasi Lingkungan Hidup dan Partisipasi Publik terhadap Pencemaran Udara DKI Jakarta." *Jurnal Hukum Lingkungan Indonesia* 8, no. 2 (2022): 372-401.
- Wibisana, Andri G. "Campur Tangan Pemerintah dalam Pengelolaan Lingkungan: Sebuah Penelusuran Teoretis Berdasarkan Analisis Ekonomi atas Hukum." *Jurnal Hukum & Pembangunan* 47, no. 2 (2017): 151-182.

- Wibisana, Andri G. "Instrumen Ekonomi, Command and Control, dan Instrumen Lainnya: Kawan atau Lawan? Suatu Tinjauan Berdasarkan Smart Regulation." *Bina Hukum Lingkungan* 4, no. 1 (2019): 172-197.
- Wibisana, Andri G. "Keadilan dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan." *Mimbar Hukum* 29, no. 2 (2017): 292-307.
- Wibisana, Andri G. "Kejahatan Lingkungan oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi dan Pemimpin/Pengurus Korporasi untuk Kejahatan Lingkungan di Indonesia?" *Jurnal Hukum & Pembangunan* 46, no. 2 (2016): 149-195.
- Wibisana, Andri G. "Pembangunan Berkelanjutan: Status Hukum dan Pemaknaannya." *Jurnal Hukum & Pembangunan* 43, no. 1 (2017): 54.
- Wibisana, Andri G. "Pengelolaan Lingkungan Melalui Izin Terintegrasi dan Berantai: Sebuah Perbandingan atas Perizinan Lingkungan di Berbagai Negara." *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 222-255.
- Wibisana, Andri G. "Tentang Ekor yang Tak Lagi Beracun: Kritik Konseptual atas Sanksi Administratif dalam Hukum Lingkungan di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 41-71.
- Wibisana, Andri G. "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation." *Review of European, Comparative and International Environmental Law* 28, no. 2 (2019).
- Wijaya, Muhammad Aditya, and Alif Imam Dzaki. "Corporate Criminal Liability on Environmental Law: Indonesia and Australia." *Mulawarman Law Review* 8, no. 2 (2023): 16-28.

Books:

- Bosselmann, Klaus. *The Principle of Sustainability: Transforming Law and Governance*. 2nd ed. London: Routledge, 2017.
- Lynch, Michael J., Michael A. Long, and Paul B. Stretesky. *Green Criminology and Green Theories of Justice: An Introduction to a Political Economic View of Eco-Justice*. London: Palgrave Macmillan, 2019.
- Schlosberg, David. *Defining Environmental Justice: Theories, Movements, and Nature*. Oxford: Oxford University Press, 2007.

Regulation:

- Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi.
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
- Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

United Nations General Assembly. Resolution 76/300, The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, July 28, 2022.