Jurnal Hukum UNISSULA

Volume 41 No. 2, June 2025
P-ISSN: 1412-2723

REINFORCING THE ULTIMUM REMEDIUM PRINCIPLE IN ENVIRONMENTAL LAW ENFORCEMENT: A THREE-LAYERED APPROACH UNDER LAW NO. 32 OF 2009

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ARTICLE INFO

Keywords:
Ultimum Remedium; Environmental Law Enforcement; Administrative Sanctions; Civil Liability; Law no. 32 of 2009.

DOI:
10.26532/jh.v41i2.43298

ABSTRACT

Environmental law enforcement in Indonesia, particularly under Law No. 32 of 2009 on Environmental Protection and Management, faces persistent challenges in applying the principle of ultimum remedium—treating criminal sanctions as a last resort. This study aims to evaluate the effectiveness of non-criminal sanctions, namely administrative and civil measures, as prerequisites to criminal enforcement in environmental cases. Using a normative juridical method and descriptive-analytical approach, the research analyzes statutory regulations, judicial decisions, and enforcement practices in pollution cases, including hazardous and toxic waste violations. The findings reveal that administrative and civil sanctions remain weak due to limited supervision, lengthy civil procedures, and inadequate compensation mechanisms. Additionally, poor institutional coordination and limited enforcement capacity hinder the transition to criminal sanctions. Community involvement is also underutilized in supporting legal accountability. The study concludes that a more structured three-layered enforcement approach—integrating administrative, civil, and criminal mechanisms—is needed to uphold environmental justice. Strengthening institutional capacity and aligning reparative and retributive principles are essential to ensure the ultimum remedium principle operates effectively. These findings contribute to legal reform efforts and the development of sustainable environmental governance in Indonesia.

1. Introduction

Environmental protection is an urgent need to maintain the sustainability of ecosystems and human life amidst increasingly complex threats of pollution and environmental damage. In Indonesia, the right to a good and healthy environment is recognized as a human right based on Article 28H of the 1945 Constitution, emphasizing the importance of preserving natural resources which are often referred to as the "lungs of the world". To realize this commitment, Law Number 32 of 2009 concerning Environmental Protection and Management (*Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup*, or UU PPLH) is the main legal basis that regulates integrated efforts in planning, utilization, control, maintenance, supervision, and law enforcement to prevent environmental pollution and damage.[1] However, rapid development, especially in urban areas, often ignores ecological and social impacts, causing problems such as deforestation, pollution of toxic and hazardous waste, and environmental degradation that has an impact on economic losses, public health, and even death.[2] This reality shows the urgency of effective environmental law enforcement to support sustainable development that balances economic needs and environmental preservation.

The UUPPLH introduces two main principles in environmental law enforcement, namely ultimum remedium and primum remedium. The ultimum remedium principle places criminal sanctions as a last resort, which are only applied when administrative or civil sanctions are unable to provide a deterrent effect or when violations are repeated without good faith.[3] In contrast, the primum remedium principle prioritizes criminal sanctions as the initial step for certain criminal acts outside Article 100 of the UUPPLH, which regulates violations of wastewater quality standards, emissions, and disturbances.[4] This approach marks a shift from previous regulations, such as Law No. 23/1997 which adheres to the ultimum remedium principle in its entirety and Law No. 4/1982 which does not explicitly regulate the subsidiarity of criminal sanctions.[5] However, the implementation of the ultimum remedium principle faces significant challenges. One of the main problems is the inconsistency in the enforcement of criminal sanctions, as seen in Decision Number 487/Pid.B/LH/2019/PN Smr, where the defendant was found not guilty because the judge did not consider the formal offense, thus weakening

[1] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.370.

[2] Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.374.

[3] Isya Anung Wicaksono and Fatma Ulfatun Najicha., Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup, *Pagaruyuang Law Journal*, Vol.5, no.1, 2021, page.51.

[4] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.210.

[5] Lidya Suryani Widayati., Ultimum Remedium dalam Bidang Lingkungan Hidup, *Jurnal Hukum Ius Quia Iustum*, Vol.22, no.1, 2015, page.12.

environmental law enforcement efforts.[6] In addition, the difficulty of proof is a major obstacle, as shown in the case of LP No. LP/170/I/2018/Jabar, where the case file was repeatedly returned by the prosecutor due to insufficient evidence.[7] Administrative and civil sanctions, which are prerequisites in the ultimum remedium approach, are often ineffective because the process takes a long time, is not commensurate with the scale of environmental damage, and fails to provide an adequate deterrent effect.[8] This raises doubts about the ability of non-criminal sanctions to support the achievement of sustainable environmental justice.

Although several studies have explored the application of primum remedium and ultimum remedium principles within the framework of Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH),[9] environmental law enforcement in Indonesia still faces significant structural and normative challenges. Research on alternative dispute resolution in marine pollution reveals a failure to achieve ecological justice due to inadequate compensation frameworks,[10] while studies on local wisdom in water resource management emphasize prevention over repressive enforcement.[11] Other works tend to isolate civil liability,[12] corporate criminal responsibility,[13] or administrative enforcement gaps,[14] without assessing the interrelation of all three enforcement tiers under the ultimum remedium principle. The deregulation of fly ash and bottom ash Fly Ash

[6] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.373.

[7] Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.375.

[8] Nina Herlina and Rima Duana., Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Ilmiah Galuh Justisi*, Vol.10, no.2, 2022, page.311.

[9] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.371. See too, Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.379.

[10] Nita Triana, Ade Tuti Turistiati, and Lincoln James Faikar Monk., Alternative Dispute Resolution in Marine Pollution: Advancing Ecological Justice through the Polluter Pays Principle, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, Vol.12, no.3, 2024, page.100.

[11] Annisa Weningtyas, and Endang Widuri., Pengelolaan sumber daya air berbasis kearifan lokal sebagai modal untuk pembangunan berkelanjutan, *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, Vol.5, no.3, 2022, page.142.

[12] Nurul Listiyani, and M. Yasir Said., Political law on the environment: the authority of the government and local government to file litigation in Law Number 32 Year 2009 on environmental protection and management, *Resources*, Vol.7, no.4, 2018, page.77.

[13] Nur Hidayah Febriyani, and Hartiwiningsih Hartiwiningsih., Corporate criminal liability post elimination of coal faba waste status from b3 waste category in Indonesia, *Jurnal Hukum*, Vol.38, no.1, 2022, page.27. See too, Mujiono Mujiono, and Fanny Tanuwijaya., Formulasi korporasi sebagai subjek hukum pidana dalam regulasi lingkungan hidup di Indonesia, *Lentera Hukum*, Vol.6, no.1, 2019, page.63.

[14] La Ode Angga, Rory Jeff Akyuwen, Adonia Ivone Laturette, Dyah RA Daties, Popi Tuhulele, Muchtar Anshary Hamid Labetubun, and Iqbal Taufik., Responsibilities of Industry Actors to Environmental Conservation in Coastal Areas, *International Journal of Sustainable Development & Planning*, Vol.16, no.4, 2021, page.21.

dan Bottom Ash (FABA) from toxic and hazardous waste status further illustrates legal ambiguities in criminal enforcement.[15] In addition, environmental harm in sectors like the leather tanning industry and insufficient responses to acid rain impacts[16] highlight weak integration of preventive and punitive mechanisms. Revisions to criminal sanctions have also weakened deterrence,[17] while the lack of coordination among enforcement mechanisms hampers progress toward SDGs.[18] These gaps underscore the need for a comprehensive evaluation of the ultimum remedium principle as part of a three-layered enforcement model that advances sustainable environmental justice in Indonesia.

Moreover, the effectiveness of the ultimum remedium principle specifically is still limited in previous studies. These studies tend to focus on procedural and evidentiary challenges in criminal law enforcement, but do not explore the factors that hinder the application of ultimum remedium, such as law enforcement capacity, inter-agency coordination, and the weakness of non-criminal sanctions as an initial step.[19]

In addition, although the role of the community in environmental management is recognized as important,[20] its contribution in supporting the ultimum remedium approach to strengthen accountability and law enforcement outcomes has not been widely discussed. The core problem addressed in this study is the ineffective implementation of the ultimum remedium principle in Indonesia's environmental law enforcement system, due to weak application of administrative and civil sanctions, limited institutional capacity, and lack of inter-agency coordination. Therefore, this study aims to examine the application of the ultimum remedium principle in environmental law enforcement based on Law No. 32/2009, with a focus on legal and practical challenges, especially in cases of environmental crimes such as toxic and hazardous waste management. This study also aims to evaluate the effectiveness of non-criminal sanctions, namely administrative and civil

[15] Nur Hidayah Febriyani, and Hartiwiningsih Hartiwiningsih., Corporate criminal liability post elimination of coal faba waste status from b3 waste category in Indonesia, *Jurnal Hukum*, Vol.38, no.1, 2022, page.23.

[16] Ardiansyah Ramadhan, Helni Murtiarsih Jumhur, and Fathan Ananta Nur., Policy formulation for anticipating the impact of acid rain on paddy plants using normative juridical analysis, *Indonesian journal of urban and environmental technology*, Vol.13, no.4, 2024, page.18.

[17] Danang Johar Arimurti and Fatma Ulfatun Najicha., Analysis of Changes in Criminal Threats in Regulations on Environmental Protection and Management, *Indonesian Journal of Environmental Law and Sustainable Development*, Vol.2, no.2, 2023, page.35.

[18] Agus Salim and Liberthin Palullungan., The challenges of environmental law enforcement to implement SDGs in Indonesia, *International Journal of Criminology and Sociology*, Vol.10, no.3, 2021, page.521.

[19] Nurul Listiyani, and M. Yasir Said., Political law on the environment: the authority of the government and local government to file litigation in Law Number 32 Year 2009 on environmental protection and management, *Resources*, Vol.7, no.4, 2018, page.73. See too, La Ode Angga, Rory Jeff Akyuwen, Adonia Ivone Laturette, Dyah RA Daties, Popi Tuhulele, Muchtar Anshary Hamid Labetubun, and Iqbal Taufik., Responsibilities of Industry Actors to Environmental Conservation in Coastal Areas, *International Journal of Sustainable Development & Planning*, Vol.16, no.4, 2021, page.19. See too, Nur Hidayah Febriyani, and Hartiwiningsih Hartiwiningsih., Corporate criminal liability post elimination of coal faba waste status from b3 waste category in Indonesia, *Jurnal Hukum*, Vol.38, no.1, 2022, page.24.

[20] Lalu Sabardi., Peran serta masyarakat dalam pengelolaan lingkungan hidup menurut Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan pengelolaan lingkungan hidup, *Yustisia Jurnal Hukum*, Vol.3, no.1, 2014, page.71.

sanctions, as a prerequisite for the application of criminal sanctions, as well as their impact on achieving sustainable environmental justice. Thus, this study is expected to contribute to optimizing environmental law enforcement in Indonesia, ensuring that the principle of ultimum remedium can function as an effective tool to prevent environmental violations and support environmentally sound development.

2. Method

This study uses a normative legal approach to evaluate the effectiveness of non-criminal sanctions, namely administrative and civil sanctions, as a prerequisite for the application of criminal sanctions in environmental law enforcement based on Law No. 32/2009 concerning Environmental Protection and Management, and its impact on achieving sustainable environmental justice. The doctrinal approach is applied by examining norms, rules, and principles of positive law, especially the principle of ultimum remedium, through an analysis of the relationship between norms and vertical-horizontal synchronization between laws and regulations. This study is descriptive analytical, aiming to provide a systematic overview of the effectiveness of non-criminal sanctions and their relationship to criminal law enforcement in the context of environmental justice. The objects of the study include Law No. 32/2009 as primary legal material, files of environmental crime cases such as toxic and hazardous waste cases, and provisions related to administrative and civil sanctions. Secondary data were collected through literature studies, including legal literature, doctrines, and court decisions, with tertiary legal materials as supporting materials. Data were analyzed qualitatively descriptively to describe the relationship between non-criminal and criminal sanctions, evaluating weaknesses such as the length of the administrative process or the imbalance of civil compensation with environmental damage. Conclusions were drawn deductively based on the analysis of the synchronization of regulations and legal phenomena, providing insight into how non-criminal sanctions affect the effectiveness of environmental law enforcement and sustainable justice.

3. Results

3.1. Administrative Sanctions in Environmental Law Enforcement

Administrative sanctions are a key element in environmental law enforcement, aiming to prevent violations, stop harmful actions, and restore the environment polluted or damaged by the perpetrator's activities. Experts state that these sanctions focus on protecting and mitigating environmental damage, making them an important tool for maintaining the sustainability of ecosystems.[21] Thus, the main purpose of administrative sanctions is to ensure that the environment is protected from the negative impacts of human activities.

However, Faure and Visser[22] argue that the implementation of administrative sanctions faces several significant challenges. One major limitation is that administrative law generally lacks provisions for non-monetary sanctions, which reduces its ability to deter serious environmental violations effectively. As a result,

[21] Mas Achmad Santosa, Amanda Cornwall, Sulaiman N. Sembiring, and Boedhi Wijardjo., *Pedoman Penggunaan Gugatan Perwakilan ('Class Actions')*, Jakarta, ICEL, PIAC, YLBHI, 1999, page.113.

[22] Michael G. Faure and Maartje Visser., *Law and economics of environmental crime*, New perspectives on economic crime, 2004, page.71.

the involvement of criminal law is often necessary to support enforcement efforts. Additionally, administrative law typically emphasizes persuasive and compliance-oriented strategies rather than strict preventive measures. While this approach may encourage voluntary adherence to regulations, it can also create perverse incentives for potential violators to disregard the rules, knowing that enforcement may be lenient or delayed.

The existence of criminal sanctions is very necessary to increase the effectiveness of administrative law, especially in strengthening law enforcement negotiations. Despite its limitations, the administrative sanctions regulated in Articles 76 to 83 of Law No. 32/2009 (UUPPLH) are reparatory in nature, namely oriented towards restoring environmental functions and conditions, in contrast to criminal sanctions which are condemnatory in nature, such as imprisonment or fines, which emphasize the suffering of the perpetrator.[23]

Article 78 of the Environmental Protection and Management Law (UUPPLH) stipulates that individuals or entities responsible for a business or activity are obligated to undertake environmental restoration following the imposition of administrative sanctions. This provision underscores the crucial function of administrative sanctions as a legal tool for addressing environmental harm, despite their relatively limited coercive power compared to criminal sanctions. Furthermore, Article 100 of the UUPPLH, in conjunction with Article 76 paragraph (2), outlines the types of administrative sanctions available to enforcement authorities. These include a written warning, the imposition of government coercive measures, suspension of the environmental permit, and the revocation of the environmental permit. These measures reflect a tiered enforcement approach intended to encourage compliance and mitigate environmental damage before the application of more severe criminal penalties.

This sanction is imposed based on Article 76 paragraph (1) of the UUPPLH when supervision finds violations of environmental permits by those responsible for a business or activity. With a reparatory character, administrative sanctions are the initial step in the ultimum remedium principle, but their effectiveness depends on synergy with criminal sanctions to ensure compliance and sustainable environmental protection.

The application of administrative sanctions as a prerequisite for criminal sanctions in environmental law enforcement based on Law No. 32/2009 (UUPPLH) often faces obstacles that reduce its effectiveness. In accordance with Articles 76-83 of the UUPPLH, administrative sanctions such as written warnings, government coercion, freezing, or revocation of environmental permits aim to prevent violations and restore the environment.[24] However, in practice, the process of investigating environmental crimes is often hampered, especially when the case file is rejected by the prosecutor due to insufficient evidence, as regulated in Article

[23] Boby Bimantarau, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.378.

[24] Mas Achmad Santosa, Amanda Cornwall, Sulaiman N. Sembiring, and Boedhi Wijardjo., *Pedoman Penggunaan Gugatan Perwakilan ('Class Actions')*, Jakarta, ICEL, PIAC, YLBHI, 1999, page.134.

110 of the Criminal Procedure Code.[25]

A specific example is a case where environmental case files are repeatedly returned by prosecutors due to lack of evidence, such as adequate monitoring reports (Article 71 of the Law on Environmental Impact Management). This back and forth process, which is not explicitly regulated in the Criminal Procedure Code, causes inefficiency in investigations and delays criminal law enforcement (Article 14 letter b of the Criminal Procedure Code). Article 100 paragraph (2) of the Law on Environmental Impact Management requires that administrative sanctions be complied with or that violations are repeated before criminal sanctions are applied. However, if administrative sanctions based on Law No. 23/1997 (Law on Environmental Impact Management) are not in accordance with the Law on Environmental Impact Management, the application of Article 100 of the Law on Environmental Impact Management becomes invalid because it is contrary to the principle of legality (Article 125 of the Law on Environmental Impact Management).

The weakness of administrative sanctions is also seen from their persuasive nature, not preventive, so that perpetrators tend to ignore regulations.[26] For example, written warnings are often ineffective in stopping violations of wastewater quality standards, due to the lack of coercive power compared to criminal sanctions (Article 78 of the UUPPLH). According to Santosa et al.,[27] administrative sanctions have a reparatory function, such as environmental restoration, but without the support of criminal sanctions, their effectiveness is limited. Non-compliance by perpetrators with administrative sanctions, such as in cases of repeated violations, should trigger criminal sanctions, but poor coordination between investigators and prosecutors hampers this process.

Article 109 paragraph (2) of the Criminal Procedure Code allows for the termination of an investigation if the evidence is insufficient or the act is not an environmental crime, but the lack of a monitoring report (Article 71 of the UUPPLH) is often the main cause. This shows that administrative sanctions not only fail as an initial step, but also hinder sustainable environmental justice, because perpetrators escape criminal responsibility. Better coordination between investigators and prosecutors, such as early notification of investigations (Article 110 paragraph (3) of the Criminal Procedure Code), can reduce the back and forth of files and accelerate the transition to criminal sanctions, ensuring environmental protection in accordance with Article 28H of the 1945 Constitution.

Environmental law enforcement based on Law No. 32/2009 (UUPPLH) relies on administrative sanctions as the initial step in the ultimum remedium principle, but

[25] Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.377.

[26] Michael G. Faure and Maartje Visser., *Law and economics of environmental crime*, New perspectives on economic crime, 2004, page.77. See to, Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.375.

[27] Mas Achmad Santosa, Amanda Cornwall, Sulaiman N. Sembiring, and Boedhi Wijardjo., *Pedoman Penggunaan Gugatan Perwakilan ('Class Actions')*, Jakarta, ICEL, PIAC, YLBHI, 1999, page.132.

its effectiveness is hampered by various factors. According to Soekanto,[28] factors that influence law enforcement include the quality of law, the integrity of law enforcers, infrastructure, public awareness, and legal culture. In the context of administrative sanctions, such as written warnings, government coercion, freezing, or revocation of environmental permits (Article 76 of UUPPLH), the main weakness is the lack of clear parameters to determine the success or failure of sanctions, making it difficult to transition to criminal sanctions.[29]

The legal factor itself plays a crucial role. Article 100 paragraph (2) of the UUPPLH requires administrative sanctions to be complied with or violations to be repeated before criminal sanctions are applied, but the lack of a definition of the "success" of administrative sanctions creates ambiguity. For example, in cases of violations of wastewater quality standards, written warnings often fail to stop the perpetrators because of their vague nature, as is the case with companies that repeatedly violate without serious consequences.[30] This shows that the weak quality of regulations hinders law enforcement.

Law enforcement factors are also an obstacle. Officials such as the police and prosecutors require a deep understanding of the UUPPLH, but are often poorly trained or inconsistent in applying the ultimum remedium principle. For example, in the case of toxic and hazardous waste, investigators failed to apply criminal sanctions due to subjectivity in assessing administrative compliance, so that the perpetrators escaped responsibility.[31] The integrity and training of law enforcers are key to ensuring effective administrative sanctions as a prerequisite.

Limited facilities and infrastructure, such as minimal budget allocation for environmental monitoring, also hamper law enforcement. Article 71 of the UUPPLH mandates supervisory officials to monitor compliance, but the lack of resources in the regions makes it difficult to implement administrative sanctions quickly and effectively. Community factors play an important role, as low legal awareness reduces participation in reporting violations. For example, communities around industrial areas often do not report pollution because they do not understand their rights under Article 28H of the 1945 Constitution.[32]

The low legal culture of Indonesian society also exacerbates the challenges. Many business actors ignore administrative sanctions because there is no social or cultural pressure to comply with environmental laws. Administrative sanctions are reparatory in nature, such as environmental restoration (Article 78 of the UUPPLH),

[28] Soerjono Soekanto., *Faktor-faktor yang memengaruhi penegakan hukum*, Jakarta, Rajawali Pers, 2005, page.54.

[29] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.210.

[30] Ifahda Pratama Hapsari., Tindakan Afirmatif Sebagai Bentuk Keadilan Dalam Pemberian Asas Ultimatum Remedium Dalam Upaya Penegakan Lingkungan Akibat Adanya Kebakaran Hutan, *Jurnal Justiciabelen*, Vol.2, no.2, 2020, page.72.

[31] Dian Adriawan Dg Tawang., Penerapan Asas Ultimum Remedium Dalam Ketentuan Hukum Pidana Lingkungan Di Indonesia, *Supremasi Hukum*, Vol.16, no.01, 2020, page.60.

[32] Suwari Akhmaddhian., Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015), *UNIFIKASI: Jurnal Ilmu Hukum*, Vol.3, no.1, 2016, page.54.

but without a strong deterrent effect, perpetrators tend to repeat violations. Reksodiputro[33] and Subyakto[34] emphasized that criminal sanctions are only effective for deliberate violations of quality standards that endanger the community, indicating that administrative sanctions require criminal support for environmental justice.

Overall, the weaknesses of administrative sanctions, such as the lack of success parameters and infrastructure support, hinder the achievement of sustainable environmental justice. Increasing the capacity of law enforcement, revising the parameters of administrative sanctions, and educating the public are needed to ensure that administrative sanctions are effective as a prerequisite for criminal sanctions, as mandated by the UUPPLH. These findings are in line with existing research that confirms the challenges in applying administrative sanctions as the initial step in the ultimum remedium framework. For example, Angga et al.[35] emphasize that industry actors often fail to uphold environmental responsibilities in coastal zones due to weak administrative enforcement. Febriyani and Hartiwiningsih[36] also note that legal uncertainty—such as the removal of Fly Ash dan Bottom Ash (FABA) from the toxic and hazardous waste category—further complicates criminal accountability, making the preparatory role of administrative sanctions even more critical. Hasyim and Aprita[37] argue that while international commitments support environmental enforcement, Indonesia's national mechanisms still struggle with coordination and effective implementation. This is supported by Listiyani and Said,[38] who highlight gaps in government authority to initiate environmental litigation, particularly when administrative responses are insufficient. Meanwhile, Arimurti and Najicha[39] demonstrate that revisions to environmental criminal provisions often dilute punitive power, reinforcing the need for effective prior sanctions. Salim and Palullungan[40] stress that while

[33] Mardjono Reksodiputro., *Tinjauan Terhadap Perkembangan Delik-Delik Khusus dalam Masyarakat yang Mengalami Modernisasi,* Bandung, Bina Cipta, 1982, page.78.

[34] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.211.

[35] La Ode Angga, Rory Jeff Akyuwen, Adonia Ivone Laturette, Dyah RA Daties, Popi Tuhulele, Muchtar Anshary Hamid Labetubun, and Iqbal Taufik., Responsibilities of Industry Actors to Environmental Conservation in Coastal Areas, *International Journal of Sustainable Development & Planning*, Vol.16, no.4, 2021, page.20.

[36] Nur Hidayah Febriyani and Hartiwiningsih Hartiwiningsih., Corporate criminal liability post elimination of coal faba waste status from b3 waste category in Indonesia, *Jurnal Hukum*, Vol.38, no.1, 2022, page.25.

[37] Yonani Hasyim and Serlika Aprita., The aspects of environmental law enforcement in Indonesia and the implementation of international agreements in the environmental field in Indonesia, *Nurani: jurnal kajian syari'ah dan masyarakat*, Vol.21, no.2, 2021, page.215.

[38] Nurul Listiyani and M. Yasir Said., Political law on the environment: the authority of the government and local government to file litigation in Law Number 32 Year 2009 on environmental protection and management, *Resources*, Vol.7, no.4, 2018, page.76.

[39] Danang Johar Arimurti and Fatma Ulfatun Najicha., Analysis of Changes in Criminal Threats in Regulations on Environmental Protection and Management, *Indonesian Journal of Environmental Law and Sustainable Development*, Vol.2, no.2, 2023, page.32.

[40] Agus Salim and Liberthin Palullungan., The challenges of environmental law enforcement to implement SDGs in Indonesia, *International Journal of Criminology and Sociology*, Vol.10, no.3, 2021, page.521.

administrative, civil, and criminal tools exist within Law No. 32/2009, their integration remains weak, thereby undermining SDG implementation. These studies support the conclusion that without stronger administrative enforcement—backed by legal clarity, institutional coordination, and community participation—the transition to criminal law fails to ensure environmental justice effectively.

3.2. The Role of Civil Sanctions in Supporting Environmental Justice

According to Herlina and Duana,[41] environmental law enforcement through civil sanctions plays an important role in supporting environmental justice, as regulated in Law No. 32/2009 concerning Environmental Protection and Management (UUPPLH). Civil sanctions, together with administrative sanctions, are part of a non-criminal approach that aims to restore environmental damage before applying criminal sanctions as an ultimum remedium. This study evaluates the effectiveness of civil sanctions as a prerequisite for criminal law enforcement and their impact on sustainable environmental justice, with a focus on victim protection and environmental restoration.

Civil sanctions in the UUPPLH, especially regulated in Article 87, allow for compensation claims for environmental damage based on Article 1365 of the Civil Code (KUHPerdata), which regulates unlawful acts. According to Lotulung,[42] civil law has three main functions: (1) enforcing compliance with environmental legal norms, such as a judge's order to stop violations of permits; (2) establishing norms through judge's decisions that reflect community standards of behavior; and (3) providing compensation to victims of environmental pollution or destruction. This function makes civil sanctions a reparatory instrument that is oriented towards recovery, in contrast to criminal sanctions which are retributive in nature (Articles 98-99 of the UUPPLH).

Civil sanctions provide legal protection for victims who suffer economic, health, or immaterial losses due to pollution, such as the loss of fishermen's livelihoods due to oil spills.[43] For example, in the case of pollution of Buyat Bay by PT Newmont Minahasa Raya, the community filed a civil lawsuit for compensation for damage to the ecosystem and health, although the results were not entirely adequate.[44] Civil sanctions also allow for class action lawsuits (Article 91 of the UUPPLH) or by environmental organizations (Article 92), expanding access to justice for affected communities.

The effectiveness of civil sanctions in supporting environmental justice depends on the ability to repair damage and provide proportional compensation. Article 87 paragraph (1) of the UUPPLH emphasizes that every unlawful act that causes

[41] Nina Herlina and Rima Duana., Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Ilmiah Galuh Justisi*, Vol.10, no.2, 2022, page.317.

[42] Paulus Effendie Lotulung., *Hukum Tata Usaha Negara dan Kekuasaan*, Jakarta, Salemba Humanika, 2013, page.42.

[43] Syahrul Machmud., *Penegakan hukum lingkungan Indonesia: penegakan hukum administrasi, hukum perdata, dan hukum pidana menurut Undang-Undang no. 32 tahun 2009*, Yogyakarta, Graha Ilmu, 2012, page.54.

[44] Nina Herlina and Rima Duana., Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Ilmiah Galuh Justisi*, Vol.10, no.2, 2022, page.316.

pollution must pay compensation and/or take certain actions, such as cleaning up waste. However, the main challenge is the long-consuming civil process. Perpetrators, especially corporations, often buy time through appeals or cassation, while pollution continues, as in the case of toxic and hazardous waste in Batam.[45] This reduces the effectiveness of civil sanctions in preventing further damage. Another weakness is the imbalance between compensation and actual damage. In the case of the 2015 forest fires, a civil lawsuit against the company only resulted in compensation that was not commensurate with the losses to the ecosystem and public health.[46] Immaterial losses, such as psychological trauma or loss of cultural values, are often not adequately calculated, indicating the limitations of the civil approach in achieving restorative justice. In addition, proving unlawful acts requires scientific evidence, such as laboratory analysis, which is difficult and expensive, especially for small communities.[47]

However, civil sanctions have the advantage of harmonizing interests. Unlike administrative sanctions that can lead to business closures and unemployment (Article 79 of the UUPPLH), civil lawsuits allow for out-of-court settlement negotiations (Article 85), such as mediation to achieve environmental recovery without stopping company operations. For example, the settlement of a dispute between the community and PT Freeport regarding tailings waste through mediation resulted in a commitment to restore the ecosystem.[48] This approach supports sustainable environmental justice by balancing the economy, society, and ecology.

UUPPLH adopts the principle of ultimum remedium, where criminal sanctions are only applied if administrative and civil sanctions are ineffective (General Explanation number 6). Civil sanctions act as an initial step to resolve environmental damage before escalating to criminal law. Article 100 paragraph (2) of UUPPLH requires repeated violations or non-compliance with administrative sanctions before criminal sanctions are applied, placing civil sanctions as a bridge between prevention and stricter law enforcement. However, the lack of parameters for the success of non-criminal sanctions makes this transition difficult.[49]

For example, in the case of Citarum River pollution by the textile industry, a civil lawsuit by the community forced the company to pay compensation and clean up

[45] Edy Lisdiyono and Rumbadi Rumbadi., Penerapan Azas Premium Remedium Dalam Perkara Pencemaran Lingkungan Hidup Akibat Limbah B3 di Batam, *Bina Hukum Lingkungan*, Vol.3, no.1, 2018, page.12.

[46] Suwari Akhmaddhian., Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015), *UNIFIKASI: Jurnal Ilmu Hukum*, Vol.3, no.1, 2016, page.55.

[47] Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.373.

[48] Lalu Sabardi., Peran serta masyarakat dalam pengelolaan lingkungan hidup menurut Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan pengelolaan lingkungan hidup, *Yustisia Jurnal Hukum*, Vol.3, no.1, 2014, page.77.

[49] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.211.

the waste, but repeated violations triggered the imposition of criminal sanctions under Article 98 of the UUPPLH.[50] The civil sanctions in this case succeeded in recovering some of the damage, but did not provide a deterrent effect, indicating the need for coordination with criminal sanctions for more comprehensive justice.

Civil sanctions support sustainable environmental justice by prioritizing environmental restoration and victim compensation, in line with Article 28H of the 1945 Constitution on the right to a healthy environment. This approach reflects the prevention principle in environmental law, which emphasizes maintaining ecosystems for future generations.[51] However, weaknesses such as long processes and minimal deterrent effects can weaken its impact. Without a deterrent effect, perpetrators have the potential to repeat violations, such as in the case of chemical waste disposal in the Brantas River, where compensation did not stop repeated violations.[52]

Civil sanctions also face challenges in addressing transnational damages, such as forest fires affecting neighboring countries. Civil lawsuits have difficulty reaching transnational perpetrators, requiring the support of international criminal law.[53] In addition, economic disparities between victims and perpetrators, especially large corporations, often hinder access to justice, highlighting the need for civil law reform to speed up the process and improve compensation.

In addition, according to Sabardi,[54] the community has the right to file a civil lawsuit, either individually, in groups (Article 91 of the UUPPLH), or through environmental organizations (Article 92), as guaranteed by Article 28H of the 1945 Constitution. This role includes social supervision, providing advice, objections, and complaints (Article 70 of the UUPPLH). For example, in the case of Citarum River pollution, a civil lawsuit by the community forced a textile company to pay compensation and clean up waste.[55] Environmental organizations, such as NGOs, can also file lawsuits for environmental restoration without claims for compensation, except for real costs, expanding access to justice. Community participation is consultative or partnership. In a consultative approach, the community provides input, but the decision remains in the hands of the initiator. In a partnership, the community has an equal position with decision makers, such as in the mediation of the PT Freeport tailings waste dispute which resulted in a

[50] Isya Anung Wicaksono and Fatma Ulfatun Najicha., Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup, *Pagaruyuang Law Journal*, Vol.5, no.1, 2021, page.53.

[51] Syahrul Machmud., *Penegakan hukum lingkungan Indonesia: penegakan hukum administrasi, hukum perdata, dan hukum pidana menurut Undang-Undang no. 32 tahun 2009*, Yogyakarta, Graha Ilmu, 2012, page.76.

[52] Ifahda Pratama Hapsari., Tindakan Afirmatif Sebagai Bentuk Keadilan Dalam Pemberian Asas Ultimatum Remedium Dalam Upaya Penegakan Lingkungan Akibat Adanya Kebakaran Hutan, *Jurnal Justiciabelen*, Vol.2, no.2, 2020, page.78.

[53] Andi Hamzah., *Penegakan Hukum Lingkungan*, Jakarta, Sinar Grafika, 2008, page.65.

[54] Lalu Sabardi., Peran serta masyarakat dalam pengelolaan lingkungan hidup menurut Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan pengelolaan lingkungan hidup, *Yustisia Jurnal Hukum*, Vol.3, no.1, 2014, page.75.

[55] Isya Anung Wicaksono and Fatma Ulfatun Najicha., Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup, *Pagaruyuang Law Journal*, Vol.5, no.1, 2021, page.52.

commitment to restore the ecosystem.[56] Koesnadi Hardjasoemantri[57] emphasized that effective participation requires transparent, timely, and easy-to-understand information, such as announcements of activity plans before implementation (Article 26 of the UUPPLH). The role of the community needs to be strengthened through environmental education, access to information, and NGO support to improve social supervision and civil lawsuits. Local cultures that are in harmony with nature, such as the prohibition of destroying forests, can be the basis for community participation.

Civil sanctions play an important role in supporting environmental justice by facilitating environmental restoration and victim compensation, as stipulated in the Environmental Protection and Management Law (UUPPLH). However, their effectiveness is hindered by slow legal proceedings, complicated evidentiary requirements, and minimal deterrent effects. Although civil sanctions are intended to support the *ultimum remedium* principle as an initial step before the imposition of criminal sanctions, they still require significant reform to function effectively within the framework of sustainable environmental justice.[58] Strengthening procedural mechanisms, enhancing the role of scientific evidence, and improving coordination between legal instruments are essential to making civil sanctions a foundational pillar in environmental and human rights protection.[59]

Despite their potential, civil sanctions face serious challenges. Legal processes often proceed slowly, while scientific evidence to support claims remains difficult to obtain or verify—especially in complex sectors such as mining, energy, and industrial pollution.[60] Compensation awarded to victims tends to be imbalanced and may not reflect the full extent of the harm, particularly immaterial losses. Furthermore, civil sanctions often fail to create sufficient deterrence for potential violators. Addressing these issues requires several improvements. The lawsuit process should be accelerated through the establishment of special environmental courts, as mandated by Article 84 of the UUPPLH. An independent institution dedicated to environmental analysis would help ensure stronger and more reliable

[56] Lalu Sabardi., Peran serta masyarakat dalam pengelolaan lingkungan hidup menurut Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan pengelolaan lingkungan hidup, *Yustisia Jurnal Hukum*, Vol.3, no.1, 2014, page.73.

[57] Rineke Sara and Bastoni Purnama., Environmental Issues and Environmental Law Enforcement in Indonesia in the Perspective of Law Number 32 of 2009, *Jurnal Indonesia Sosial Sains,* Vol.5, no.1, 2024, page.10.

[58] Nina Herlina and Rima Duana., Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Ilmiah Galuh Justisi*, Vol.10, no.2, 2022, page.314.

Arief Ryadi and Ali Masyhar., Forest fires and law enforcement: The capture of Indonesian contemporary condition, *Journal of Law and Legal Reform*, Vol.2, no.1, 2021, page.51.

[59] Hamidah Abdurrachman, Achmad Irwan Hamzani, and Joko Mariyono., Environmental crime and law enforcement in Indonesia: some reflections on counterproductive approaches, *Environmental Policy and Law*, Vol.51, no.6, 2021, page.415.

Muhammad Natsir, Zaki Ulya, Andi Rachmad, and Liza Agnesta Krisna., Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law, *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.8, no.2, 2024, page.662.

[60] Kamal Hidjaz., Effectiveness of environmental policy enforcement and the impact by industrial mining, energy, mineral, and gas activities in Indonesia, *International Journal of Energy Economics and Policy*, Vol.9, no.6, 2019, page.81.

scientific evidence. Compensation mechanisms should be revised to include minimum standards that reflect both material and immaterial damages, in accordance with the *polluter pays* principle. Moreover, Candrawati and Kurniawan[61] emphasize the need to enforce strict liability principles to enhance corporate accountability in environmental pollution cases.

Additionally, clearer parameters are needed to define the success of civil sanctions as a prerequisite for triggering criminal sanctions, thus reinforcing their role within the *ultimum remedium* framework. This shows that civil sanctions support environmental justice by facilitating redress and compensation, supported by active community involvement through lawsuits and monitoring. However, challenges such as slow processes and low deterrent effects require legal reform and strengthened community participation. With transparency and partnerships, civil sanctions can become a key pillar of sustainable environmental justice.

The findings of this study on the challenges and functions of civil sanctions in environmental law enforcement are consistent with previous research. For instance, Nugraheni and Aime[62] emphasize the tension between legal certainty and justice in applying civil law in environmental cases, particularly due to protracted procedures and evidentiary burdens. Similarly, Widodo et al.[63] highlight the limitations of civil sanctions in deterring corporate violations, pointing out the frequent imbalance between the scale of environmental harm and the penalties imposed. Zaid et al.[64] argue that although civil mechanisms theoretically promote environmental performance, in practice they often lack enforceability and fail to produce substantial restoration outcomes. Moreover, Ryadi and Masyhar[65] underline how civil approaches, when not supported by criminal law, tend to let corporate perpetrators escape meaningful accountability. This study also aligns with Prasetyaningsih et al.,[66] who call for integrated legal frameworks to improve the compliance and enforcement of environmental law, especially in corporate-dominated sectors. Furthermore, previous studies confirm the potential of class actions and citizen lawsuits as accessible mechanisms for communities to seek compensation, although they too face procedural and structural limitations.[67]

[61] Ni Komang Ayu Candrawati and I. Gede Agus Kurniawan., Strict Liability Principles Regulation on Corporate Crimes in Environmental Pollution & Strengthening Criminal Penalties in Indonesia, *Jurnal Daulat Hukum*, Vol.8, no.1, 2025, page.81.

[62] Prasasti Dyah Nugraheni and Andrianantenaina Fanirintsoa Aime., Environmental Law Enforcement in Indonesia Through Civil Law: Between Justice and Legal Certainty, *The Indonesian Journal of International Clinical Legal Education*, Vol.4, no.2, 2022, page.152.

[63] Ismu Gunadi Widodo, J. Andy Hartanto, Eddy Pranjoto W, and Jonaedi Efendi., Constraints on enforcement of environmental law against corporate defendants, *Environmental Policy and Law*, Vol.49, no.1, 2019, page.81.

[64] M. Zaid, M. Musa, Fadhel Arjuna Adinda, and Lamberton Cait., The Sanctions on Environmental Performances: An Assessment of Indonesia and Brazilia Practice, *Journal of Human Rights, Culture and Legal System*, Vol.3, no.2, 2023, page.262.

[65] Arief Ryadi and Ali Masyhar., Forest fires and law enforcement: The capture of Indonesian contemporary condition, *Journal of Law and Legal Reform*, Vol.2, no.1, 2021, page.46.

[66] Dyah Mustika Prasetyaningsih, Eko Hendarto, Nurul Anwar, and Khalid Eltayeb Elfaki., Effectiveness of Environmental Law Implementation: Compliance and Enforcement, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, Vol.14, no.4, 2022, page.221.

[67] Abdul Fatah., Citizen lawsuit in environmental cases, *Lentera Hukum*, Vol.6, no.5, 2019, page.289. See too, Marulak Pardede, Mosgan Situmorang, Syprianus Aristeus, Ismail Rumadan, Henry Donald Lumban Toruan, Diogenes, Djamilus, and Ellen Lutya Putri Nugrahani.,

Therefore, this study not only affirms the insights of existing scholarship but also extends the discussion by emphasizing the urgent need for clearer parameters, faster procedures, and coordinated enforcement to ensure that civil sanctions can serve as a truly effective tool for sustainable environmental justice in Indonesia.

3.3. The Application of Ultimum Remedium in Environmental Law Enforcement

Environmental law enforcement based on Law No. 32/2009 concerning Environmental Protection and Management (UUPPLH) adopts the principles of ultimum remedium and primum remedium.[68] The ultimum remedium principle places criminal sanctions as a last resort after administrative sanctions, such as written warnings or permit revocation, fail to provide a deterrent effect.[69] In contrast, primum remedium prioritizes criminal sanctions for certain environmental crimes, such as the management of toxic and hazardous waste without a permit (Article 102 of the UUPPLH), to prevent severe environmental damage.[70] However, the implementation of these principles presents significant challenges in achieving sustainable environmental justice.

Case example Decision Number 404K/Pid.Sus-LH/2016 illustrates the application of ultimum remedium. PT Indo Hasasi Tekstil, which violated wastewater quality standards (Article 100 of the UUPPLH), received five written warnings before being subject to criminal sanctions in the form of seven months' imprisonment and a fine of IDR 150 million.[71] This administrative sanction was initially applied, but due to repeated violations, criminal law enforcement was carried out. However, this process shows inefficiency, because the delay in criminal sanctions allows environmental damage to continue, weakening environmental justice.[72] In contrast, Decision Number 487/Pid.B/LH/2019/PN Smr shows the failure of the

Perspectives of sustainable development vs. law enforcement on damage, pollution and environmental conservation management in Indonesia, *Journal of Water and Climate Change*, Vol.14, no.10, 2023, page.3784. See too, Arie Afriansyah, Anbar Jayadi, and Angela Vania., Fighting the Giants: Efforts in Holding Corporation Responsible for Environmental Damages in Indonesia, *Hasanuddin Law Review*, Vol.4, no.3, 2019, page.337. See too, Maryana Lestari and Septhian Eka Adiyatma., Class Action Lawsuit on Civil Issues in Indonesia as Common Law Adoption, *Indonesian Journal of Advocacy and Legal Services*, Vol.2, no.2, 2020, page.257.

[68] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.372.

[69] Fahriza Havinanda., Politik Hukum Dalam Pembaharuan Sistem Hukum Pidana Lingkungan Dan Dampaknya Terhadap Penegakan Hukum Tindak Pidana Lingkungan Hidup, *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, Vol.1, no.1, 2020, page.112.

[70] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.212.

[71] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.374.

Ibul Gunawan and Anis Mashdurohatun., Implications of the Ultimum Remidium and Primum Remidium Principles for Environmental Law Enforcement After the Issuance of Law Number 1 of 2023 concerning the Criminal Code, *Ratio Legis Journal*, Vol.2, no.4, 2013, page.1568.

[72] Boby Bimantara, Somawijaya Somawijaya, and Imamulhadi Imamulhadi., Penyidikan Tindak Pidana Lingkungan Hidup Melalui Penerapan Asas Ultimum Remedium Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Poros Hukum Padjadjaran*, Vol.2, no.2, 2021, page.372.

application of primum remedium. The defendant, the Director of PT Sumber Agung Srimarti, was charged with violating Article 102 of the UUPPLH due to the management of toxic and hazardous waste, but was acquitted because he had an official permit. The judge did not consider formal offenses, which only require proof of administrative violations without causing damage.[73] This decision illustrates the weakness of non-criminal sanctions as a prerequisite, because reliance on administrative permits can override criminal sanctions, even though toxic and hazardous activities have the potential to harm the environment.[74]

Administrative sanctions, as stipulated in Articles 76-79 of the UUPPLH, are often disproportionate to the impact of environmental damage. The slow process and lack of deterrent effect hamper the transition to criminal sanctions, so that environmental damage continues.[75] For example, in the case of toxic and hazardous waste, written warnings or administrative fines are not enough to stop corporate actors who repeatedly violate. This exacerbates ecosystem damage and violates the community's right to a healthy environment, as guaranteed by Article 28H of the 1945 Constitution. The application of primum remedium, which should immediately impose criminal sanctions for serious violations (Articles 98-115 of the UUPPLH), is often hampered by judges' limited understanding of formal crimes, such as violations of quality standards without evidence of damage (Article 100 of the UUPPLH).

Failure to optimize primum remedium has an impact on sustainable environmental justice. Reliance on administrative sanctions without strict supervision causes perpetrators to escape criminal responsibility, such as in the Samarinda case, where only one decision applied primum remedium since the UUPPLH came into effect.[76] This shows the need for an evaluation of the capacity of judges and synergy between law enforcers to ensure that non-criminal sanctions are effective as an initial step, while primum remedium is applied in serious cases to prevent further damage. Thus, environmental justice can only be achieved if administrative sanctions support, not hinder, criminal law enforcement.[77]

The application of the principles of ultimum remedium and primum remedium in environmental law enforcement shows significant differences between Law No. 4/1982 (UULH), Law No. 23/1997 (UUPLH), and Law No. 32/2009 (UUPPLH). UULH and UUPLH emphasize ultimum remedium, where administrative and civil sanctions are prioritized before criminal sanctions, making criminal law a last

[73] Edy Lisdiyono, and Rumbadi Rumbadi., Penerapan Azas Premium Remedium Dalam Perkara Pencemaran Lingkungan Hidup Akibat Limbah B3 di Batam, *Bina Hukum Lingkungan*, Vol.3, no.1, 2018, page.9.

[74] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.373.

[75] Lidya Suryani Widayati., Ultimum Remedium dalam Bidang Lingkungan Hidup, *Jurnal Hukum Ius Quia Iustum*, Vol.22, no.1, 2015, page.14.

[76] Edy Lisdiyono, and Rumbadi Rumbadi., Penerapan Azas Premium Remedium Dalam Perkara Pencemaran Lingkungan Hidup Akibat Limbah B3 di Batam, *Bina Hukum Lingkungan*, Vol.3, no.1, 2018, page.11.

[77] Takdir Rahmadi., *Hukum Lingkungan di Indonesia*, Jakarta, Raja Grafindo Persada, 2014, page.141.

resort.[78] In contrast, UUPPLH is more inclined towards primum remedium for certain violations, prioritizing criminal sanctions to provide a deterrent effect, although ultimum remedium still applies to formal crimes such as violations of wastewater quality standards, emissions, or disturbances (General Explanation number 6 of UUPPLH).[79]

The principle of ultimum remedium, as explained by Van Bemmelen,[80] positions criminal sanctions as the last solution to improve the behavior of the perpetrator and prevent crime, only applied if administrative sanctions fail. Articles 76-83 of the UUPPLH regulate administrative sanctions such as written warnings or revocation of permits, which are reparatory in nature to restore the environment. However, its weakness is the lack of success parameters, such as in the case of companies that repeatedly violate waste quality standards without criminal sanctions because warnings are ineffective.[81] This hinders environmental justice, because the damage continues.

In contrast, primum remedium, prioritizes criminal sanctions as an initial step for serious violations, such as the management of toxic and hazardous waste without a permit (Article 102 of the UUPPLH). For example, the case of toxic and hazardous waste pollution in Batam shows the application of primum remedium, where the perpetrator is immediately punished with a criminal penalty to prevent further damage.[82] However, the UUPPLH limits ultimum remedium to certain formal crimes (Article 100 paragraph (2)), while other crimes, such as land burning (Article 108), directly apply primum remedium, showing a firmer approach.

Civil sanctions, such as compensation (Article 87 of the UUPPLH), also play a role, but are often disproportionate to environmental damage, for example in cases of forest fires that harm communities without adequate recovery.[83] Reliance on non-criminal sanctions in ultimum remedium can weaken environmental justice if not supported by rapid criminal enforcement. The application of primum remedium in the UUPPLH reflects the need for a deterrent effect, but the subjectivity of law enforcers and poor coordination often hinder the transition from administrative to criminal sanctions, reducing the positive impact on sustainable environmental

[78] Syahrul Machmud., *Penegakan hukum lingkungan Indonesia: penegakan hukum administrasi, hukum perdata, dan hukum pidana menurut Undang-Undang no. 32 tahun 2009*, Yogyakarta, Graha Ilmu, 2012, page.65.

[79] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.213.

[80] R. W. Van Bemmelen., *Undation theory,* Berlin, Springer, 1987, page,86.

[81] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.212.

[82] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani., Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup, *Sasi*, Vol.27, no.3, 2021, page.370.

[83] Ifahda Pratama Hapsari., Tindakan Afirmatif Sebagai Bentuk Keadilan Dalam Pemberian Asas Ultimatum Remedium Dalam Upaya Penegakan Lingkungan Akibat Adanya Kebakaran Hutan, *Jurnal Justiciabelen*, Vol.2, no.2, 2020, page.75.

justice. According to Subyakto,[84] the UUPPLH adopts a combination of ultimum and primum remedium, but the success of environmental justice depends on the effectiveness of non-criminal sanctions as a first step. Strengthening the parameters of administrative sanctions, training law enforcers, and synchronizing civil and criminal law are needed to ensure environmental protection in accordance with Article 28H of the 1945 Constitution.

According to Widayati,[85] environmental problems, such as pollution and destruction, have a significant impact on sustainable environmental justice. Law No. 32/2009 (UUPPLH) defines pollution as the entry of substances or energy into the environment that exceeds quality standards, and destruction as an action that changes the physical, chemical, or biological properties of the environment (Article 1). According to Stewart and Krier, environmental problems also include land abuse and depletion of natural resources, which cause health, aesthetic, economic losses, and disruption of natural systems.[86] Environmental law enforcement through administrative and civil sanctions as a prerequisite for criminal sanctions (ultimum remedium principle) is often not effective enough to deal with serious damage, thus questioning the relevance of this approach compared to the primum remedium principle.

Administrative sanctions, such as written warnings or revocation of permits (Article 76 of the UUPPLH), are reparatory in nature to restore the environment, but have little deterrent effect, especially for corporations with large capital. For example, illegal logging cases in Indonesia have caused massive deforestation, harmed ecosystems and triggered disasters such as floods, but administrative sanctions are often disproportionate to the damage.[87] Article 100 paragraph (2) of the UUPPLH limits ultimum remedium to violations of wastewater quality standards, emissions, or disturbances, while other violations, such as land burning (Article 108), directly apply primum remedium for a stronger deterrent effect.[88]

Civil sanctions, such as compensation (Article 87 of the UUPPLH), also have limitations. In the case of the 2015 forest fires, victims suffered economic and health losses, but compensation was inadequate for environmental or community recovery.[89] Reliance on non-criminal sanctions in ultimum remedium can hinder environmental justice, as delaying criminal sanctions allows damage to continue. In contrast, primum remedium, which prioritizes criminal sanctions, is more

[84] Kukuh Subyakto., Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol.2, no.2, 2015, page.211.

[85] Lidya Suryani Widayati., Ultimum Remedium dalam Bidang Lingkungan Hidup, *Jurnal Hukum Ius Quia Iustum*, Vol.22, no.1, 2015, page.16.

[86] Takdir Rahmadi., *Hukum Lingkungan di Indonesia,* Jakarta, RajaGrafindo Persada, 2014, page.51.

[87] Bambang Tri Bawono and Anis Mashdurohatun., Penegakan Hukum Pidana Di Bidang Illegal Logging Bagi Kelestarian Lingkungan Hidup Dan Upaya Penanggulangannya, *Jurnal Hukum Unissula*, Vol.26, no.2, 2011, page.12290.

[88] Lidya Suryani Widayati., Ultimum Remedium dalam Bidang Lingkungan Hidup, *Jurnal Hukum Ius Quia Iustum*, Vol.22, no.1, 2015, page.13.

[89] Suwari Akhmaddhian., Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015), *UNIFIKASI: Jurnal Ilmu Hukum*, Vol.3, no.1, 2016, page.54.

effective for transnational violations such as hazardous waste disposal, as discussed in the 1994 Naples Conference.[90]

The right to a healthy environment, guaranteed by Article 28H of the 1945 Constitution and international declarations such as Stockholm 1972, emphasizes the urgency of strict law enforcement. The 1995 UN Resolution suggested the formulation of environmental criminal provisions in the penal code and the application of administrative financial sanctions for business actors. However, the UUPPLH still faces challenges, such as limited investigator capacity and ambiguity in assessing the success of administrative sanctions.[91]

The ultimum remedium approach is often disproportionate to serious cases, such as marine oil pollution, which requires primum remedium to prevent further damage.[92] Packer[93] asserts that criminal sanctions are needed for major threats that cannot be effectively addressed by other sanctions. In the environmental context, damage is often abstract and long-term, so primum remedium is more relevant to protect the interests of society and ecosystems. Strengthening non-criminal sanctions through clear parameters, coordination between law enforcers, and revision of related laws, such as Law No. 4/2009 concerning Mining, is needed to support sustainable environmental justice.[94]

4. Conclusion

This study reveals that the application of the ultimum remedium principle in environmental law enforcement based on Law No. 32/2009 on Environmental Protection and Management (UUPPLH) has significant weaknesses. Administrative sanctions, such as written warnings or permit revocations, are often ineffective due to their persuasive nature, lack of success parameters, and limited monitoring resources. Civil sanctions, although facilitating environmental restoration and compensation, are hampered by slow legal processes, difficulties in scientific evidence, and disproportionate compensation. The role of the community through class action lawsuits and social monitoring is crucial, but is limited by low legal awareness and economic inequality. The primum remedium principle, which prioritizes criminal sanctions for serious violations, shows the potential for a greater deterrent effect, but its implementation is hampered by the subjectivity of law enforcers and weak inter-agency coordination. Overall, reliance on non-criminal sanctions in ultimum remedium often delays criminal law enforcement, allowing environmental damage to continue, thereby reducing the effectiveness of sustainable environmental justice.

This study contributes to the study of environmental law in Indonesia by highlighting the weaknesses in the implementation of the ultimum remedium principle and offering insights for strengthening law enforcement. Theoretically,

[90] Andi Hamzah., *Penegakan Hukum Lingkungan*, Jakarta, Sinar Grafika, 2008, page.60.
[91] Siti Sundari Rangkuti., *Kebijakan Lingkungan Nasional*, Surabaya: Airlangga University, 2000, page.89.
[92] Muladi., *Demokratisasi, hak asasi manusia, dan reformasi hukum di Indonesia*, Jakarta, Habibie Center, 2002, page.91.
[93] Herbert L. Packer., *The Limit of The Criminal Sanction,* California, Stanford University Press, 1968, page.59.
[94] Lidya Suryani Widayati., Ultimum Remedium dalam Bidang Lingkungan Hidup, *Jurnal Hukum Ius Quia Iustum*, Vol.22, no.1, 2015, page.12.

these findings enrich the discourse on the balance between reparatory (non-criminal sanctions) and retributive (criminal sanctions) approaches, emphasizing the need for a more integrated combination of ultimum and primum remedium. Practically, this study emphasizes the urgency of legal reform, such as simplifying civil procedures, establishing an independent institution for scientific evidence, and establishing compensation standards based on the polluter pays principle. Strengthening the capacity of law enforcement through training and coordination between agencies can accelerate the transition from non-criminal to criminal sanctions, ensuring more effective environmental protection. The role of the community, supported by education and access to information, is key to increasing accountability and participation in environmental management. By addressing these obstacles, the UUPPLH can become a more robust instrument to support sustainable development, protect the right to a healthy environment as guaranteed by Article 28H of the 1945 Constitution, and preserve the ecosystem for future generations. This research is also globally relevant, in line with the precautionary principle and international declarations such as Stockholm 1972, offering a model for developing countries in optimizing environmental law enforcement.

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