

## Conference Paper

# The Criminal Justice System in Environmental Crime by Corporations

Rais Torodji, Hartiwiningsih, I Gusti Ayu Ketut Rachmi Handayani\*

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

**ORCID**

I Gusti Ayu Ketut Rachmi Handayan: <https://orcid.org/0000-0001-5041-9262>

**Abstract.**

Environmental law has advanced quickly, not only in relation to the role of law as a means of development (a tool of social engineering) with the function of an agent of development or agent of change, but also more prominently about the function of law as protection, control, and legal certainty for society (social control) with the role of agent of stability. This legal research is normative legal research with a focus on positive legal norms (*ius constitutum*), that is, it focuses more on the application of positive legal norms and principles using a statutory approach (statutes approach), which is pertinent to the study of how legal issues are formulated in this legal research. Law Number 11 of 2020 Concerning Job Creation's environmental cluster setting, particularly the elimination of criminal penalties, is extremely inappropriate. Due to the repeal of criminal penalties in Law Number 11 of 2020 Concerning Job Creation, administrative sanctions are not subject to stringent regulation. Legislation that prioritizes environmental and health issues and establishes a legal framework for the environment is required. This legislation should be written utilizing the omnibus process once more.

**Keywords:** criminal system reconstruction, environmental law, Law Number 11 of 2020

Corresponding Author: Rais  
Torodji; email:  
[ayu\\_igk@staff.uns.ac.id](mailto:ayu_igk@staff.uns.ac.id)

Published 5 January 2024

Publishing services provided by  
Knowledge E

© Rais Torodji et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

## 1. INTRODUCTION

Environmental law has advanced quickly, not only in relation to the role of law as a means of development (a tool of social engineering) with the function of agent of development or agent of change, but also more prominently in relation to the function of law as protection, control, and legal certainty for society (social control) with the role of agent of stability.[1] The majority of the literature on environmental law, which is still a developing field of law, is found in administrative law (*administratief recht*). Through improved law enforcement, government inspections can have a substantial impact on how firms make environmental decisions.[2]

Existing policies, laws, and regulations are incapable of resolving numerous problems, particularly offenses in the environmental sector. Due to the accelerated advancements in environmental awareness and information exchange, the public is becoming more

**OPEN ACCESS**

aware of environmental issues.[3] Environmental catastrophe stories are becoming more prevalent.[3] Technological advancements were followed by an increase in the sophistication and quantity of white collar crimes in the environmental sector, such as illegal mining, illegal fishing, and illegal logging. These crimes, which can be classified as white collar crimes, are still ongoing.[4] Fighting illegal logging became a government priority as the issue of forests became highly *politicised*, fueled by popular pressure.[5]

In accordance with Law No. 32 of 2009 concerning Environmental Protection and Management, environmental disputes may be resolved in or outside of justice.[6] Court-based dispute resolution is intended for law enforcement in administrative law through state administrative courts and general (Civil and Criminal) courts.[7] In Indonesia, the enactment of Law Number 11 of 2020 on Job Creation (Job Creation Law) has ushered in a new era in the formulation of laws and regulations. The replacement of criminal punishments for environmental offenses with administrative punishments is one of the more intriguing aspects of Law No. 11 of 2020 concerning Job Creation.[8] In the practice of enforcing environmental offenses committed by corporations or business entities, the management of the company is frequently held criminally liable, while the company itself is rarely punished. As outlined in UUPPLH, criminal provisions are intended to protect the environment by imposing criminal threats in an effort to control pollution and environmental damage, which contains philosophically ideal objectives regarding environmental quality.[9]

According to Alfikri's research, Law Number 11 of 2020 concerning Job Creation aims to harmonize several laws and regulations that are considered to overlap. The replacement of criminal punishments for environmental offenses with administrative punishments is one of the more intriguing aspects of Law No. 11 of 2020 concerning Job Creation. The replacement of criminal sanctions for environmental offenses with administrative sanctions indicates a decline in environmental law enforcement.[10]

If this relates to the definition of corporate crime provided previously, it can be concluded that further research on the urgency of corporate criminal responsibility is required to realize the effectiveness of environmental criminal law enforcement. [11] In addition, it is necessary to analyze the appropriate criminal justice system to be applied to corporate criminal acts in the environmental field in order to create economic justice (the economic conception of justice), according to which the law can create efficiency that regulates and creates justice. [12]

## 2. METHODOLOGY/ MATERIALS

This legal research is normative legal research with a focus on positive legal norms (*ius constitutum*), that is, it focuses more on the application of positive legal norms and principles through the use of a statutory approach (statutes approach), which is pertinent to the study of how legal issues are formulated in this legal research. This inquiry begins by finding the legal concepts that have been developed in specific laws, which are specific areas of the (written) legal system. In this study, the writers used descriptive methods to conduct research on legal principles, which are norms for unacceptable behaviour or behaviour. As a result, the subject of a qualitative analysis is a research technique that refers to legal standards found in laws and regulations.[13]

## 3. RESULTS AND DISCUSSIONS

Legal development entails the arrangement of matter (substance), institutions (structure), and culture (culture), essentially.[14] Regarding the imposition of sanctions in policy domains, particularly in the environmental cluster, Law No. 11 of 2020 pertaining to the Creation of Jobs has significant flaws. Article 82B of Law No. 11 of 2020 pertaining to Job Creation outlines the policy of removing criminal penalties for environmental offenses and replacing them with administrative penalties. [15] Regarding paragraphs (2) and (3) of Article 82 B of Law No. 11 of 2020 on Job Creation.

The environmental cluster arrangement in Law No. 11 of 2020 regarding Job Creation, particularly the abolition of criminal sanctions, is extremely inappropriate. This is because, in the provisions regarding the abolition of criminal sanctions, there is no option for administrative sanctions to take effect if administrative sanctions are not complied with. Despite the fact that the authority to impose administrative sanctions is primarily discretionary, the power to do so.[16] In the absence of criminal sanctions, administrative sanctions are less stringently supervised. Meanwhile, environmental issues are growing in size, scope, and severity. Not only is the issue local or translocal, but it is also regional, national, transnational, and global.[17] In this instance, the state must act and respond to lawbreakers by imposing sanctions based on the nature of the offense and the criminals involved.

Importantly, the Job Creation Law emphasizes the transition from “environmental permits” to “environmental approval” when referring to the PPLH Law amendment.[18] The application of sanctions for freezing and revocation of permits is immediate under the PPLH Law if the business owner does not engage in government coercion, whereas

the changes in PP No. 22/2021 as a derivative rule from the Job Creation Law regulates the application of these sanctions in stages and adds new elements or categories to the application. There are separate regulations and a different emphasis in the application of these sanctions.[19] Nonetheless, it must be emphasized that in addition to further action on permit suspension, the implementation of license revocation must also satisfy the element that the business owner has committed irreversible and difficult-to-recover environmental pollution.

In terms of environmental law enforcement, the existence of a criminal justice system is crucial for achieving aspects of legal certainty that will contribute to justice, including ecological (environmental) justice.[20] At the level of law/regulation formation, the provisions of Law No. 11 of 2020 regarding Job Creation (Job Creation Law) have changed, allowing corporations more opportunities to commission environmental pollution crimes. From the evidence contained in Article 88, the concept of unconditional accountability is explained. The concept of “Strict Liability” is also recognized as a Criminal Law principle.[21]

The ramifications of the enactment of the Job Creation Law, which is considered to have been enacted in a hasty manner, will pose a threat to the environment. Due to the ease of obtaining permission to establish a legal entity/corporation and the difficulty of proving a corporate crime, a law should be enacted that is binding and capable of ensnaring corporations so that they are better able to protect the environment when conducting production.[22]

#### 4. CONCLUSION AND RECOMMENDATION

The abolition of criminal sanctions in Law No. 11 of 2020 regarding Job Creation means administrative sanctions are not subject to stringent oversight. The Elimination of Criminal Sanctions for Environmental Crimes provision of Job Creation Law 11 of 2020 should be unnecessary. The application of criminal sanctions remains a component. If administrative sanctions are ineffective against the perpetrators of environmental crimes, then it is necessary to apply criminal sanctions as a *primum remedium* measure to combat environmental crimes; acts of pollution and environmental damage must be addressed firmly through the application of criminal sanctions. In order for the punishment administered to deter others from committing similar offenses. The implication of the enactment of Law No. 11 of 2020 regarding Job Creation against environmental crimes by corporations is that the Job Creation Law’s provisions have been altered to provide corporations with more opportunities to commission environmental crimes.

There must be reintroduction of omnibus legislation that prioritizes environmental and health concerns and serves as a legal umbrella for the environment, operating not only as an administration but also as a conservation effort.

## References

- [1] Peng J, Xie R, Ma C, Fu Y. Market-based environmental regulation and total factor productivity: Evidence from Chinese enterprises. *Econ Model*. 2021 Feb;95:394–407.
- [2] Qian X, Ding H, Ding Z. Governmental inspection and firm environmental protection expenditure: Evidence from China. *Econ Model*. 2023 Jun;123:106284.
- [3] Vasile M, Iordăchescu G. Forest crisis narratives: Illegal logging, datafication and the conservation frontier in the Romanian Carpathian Mountains. *Polit Geogr*. 2022 Jun;96:102600.
- [4] Yuliantiningsih A, Hartiwingsih H, Suherman AM, Latifah EL. From illegal, unreported and unregulated fishing to transnational organised crime in fishery from an Indonesian Perspective. *J East Asia Int Law*. 2022 Nov;11(2):335–6.
- [5] Davidescu S, Buzogány A. Cutting deals: Transnational advocacy networks and the European union timber regulation at the Eastern Border. *Int Spect*. 2021 Jul;56(3):105–18.
- [6] Iqbal I, Rayhannafi H. Legal politics toward natural energy: Natural gas utilization in Indonesia. *J Sustain Dev Regul. Issues*. 2023 Jun;1(1):25–30.
- [7] Nugroho W. Relationship between environmental management policy and the local wisdom of indigenous peoples in the handling of Covid-19 in Indonesia. *Oñati Socio-Legal Ser*. 2021 Jun;11(3): <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1193>.
- [8] Maruf A. “Legal aspects of environment in Indonesia: An efforts to prevent environmental damage and pollution.” *J Hum Rights Cult Leg Syst*. 2021 Mar;1(1). <https://doi.org/10.53955/jhcls.v1i1.4>.
- [9] Naibaho N. Rethinking the ultimatum principle to support justice and strong law enforcement institutions in environmental crimes. *IOP Conf Ser Earth Environ Sci*. 2021 Mar;716(1):012068.
- [10] Lubis AL; A. L. LUBIS. KEBIJAKAN PENGHAPUSAN SANKSI PIDANA TERHADAP TINDAK PIDANA LINGKUNGAN HIDUP DALAM UNDANG-UNDANG NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA. *EKSEKUSI*. 2021 Jun;3(1):1.
- [11] Maharani M, Akbar NA. Utilization of Petroleum and Natural Gas on the Sustainable Development of Indonesian Economy. *J. Sustain. Dev. Regul. Issues*. 2023 Jun;1(1):1–8.

- [12] Said MY, Nurhayati Y. "A review on rawls theory of justice." *Int J Law Environ Nat Resour.* 2021 Apr;1(1):29–36.
- [13] Silaswaty Faried F, Mahmud H, Suparwi S. "Mainstreaming restorative justice in termination of prosecution in Indonesia." *J Hum Rights Cult Leg Syst.* 2022;2(1):66–77.
- [14] Alshible M, Abu Issa H, Al-Billeh T. The extent of considering environmental crimes as a manifestation of economic crimes". *J Environ Manag Tour.* 2023 Mar;14(1):23.
- [15] Widjaja G. Indonesia's omnibus law in the international context. *Linguist Cult Rev* 2021 Dec;6:64–76.
- [16] Arifin S. Illiberal tendencies in Indonesian legislation: The case of the omnibus law on job creation. *Theory Pract Legis.* 2021 Sep;9(3):386–403.
- [17] Hanum WN, Handayani IG, Tegnan H. "The geothermal development policy on environmental in Indonesia and the USA." *J Hum Rights Cult Leg Syst.* 2023 May;3(2):160–84.
- [18] Aidonojie PA. "Environmental hazard: The legal issues concerning environmental justice in Nigeria." *J Hum Rights Cult Leg Syst.* 2023 Feb;3(1):17–32.
- [19] Jamin M, Jaelani AK, Mulyanto M, Kusumaningtyas RO, Ly DQ. The impact of Indonesia's mining industry regulation on the protection of indigenous peoples. *Hasanuddin Law Rev.* 2023 Feb;9(1):88.
- [20] Kadir Jaelani A, Octavia Kusumaningtyas R, Orsantinutsakul A. The model of mining environment restoration regulation based on Sustainable Development Goals. *Leg J Ilm Huk.* 2022 Apr;30(1):131–46.
- [21] Irawan AB, Riawan DA. Executing upstream oil and natural gas business activities: Legal status and authority of the oil and gas special working unit (SKK). *J Sustain Dev Regul. Issues.* 2023 Jun;1(1):9–17.
- [22] Putri Faizal Z. Strict liability in environmental dispute responsibility before and after the enabling of omnibus law. *Adm Environ Law Rev.* 2021 May;2(1):53–60.