



## Ideal Arrangements of Additional Criminal Sanctions for the Recovery of Environmental Functions for Corporations in Guarantee of Legal Certainty in Indonesia

Haris Widi Asmoro Atmojo<sup>1</sup>; Rehnalemken Ginting<sup>2</sup>

<sup>1</sup> Master of Law Student, Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

<sup>2</sup> Lecture in Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i3.3642>

---

### **Abstract**

This study aims to describe the ideal conception of criminal sanctions for recovery due to environmental crimes for corporations, where the author seeks to describe the efforts and steps as well as the conception of the regulation of additional sanctions in Law Number 32 of 2009 concerning Environmental Protection and Management. (hereinafter referred to as UU PPLH). In particular, this research thoroughly examines the Yogyakarta District Court Decision No. 129/PID.B/2004/PN.YK related to the crime of environmental pollution by the Yogyakarta Locomotive Depot. This research is a normative legal research with a case approach, a statutory approach and a conceptual approach. The results of the study show that the regulation of sanctions for environmental restoration in the future can be carried out in several ways, namely: a. criminal sanctions for environmental restoration must contain measures of the success of repairs and types of repairs, b. Additional criminal sanctions for environmental restoration are the main criminal sanctions by considering legal certainty.

**Keywords:** *Corporate Crime; Environmental Function Recovery*

### **A. Introduction**

Environmental issues have become increasingly popular in the last decade. Globalization in various fields in recent times has not escaped and is related to the development of environmental problems. Pollution and environmental destruction often occur in a development or production process, both individuals and corporations. The environment as an ecosystem has a mechanism that is able to maintain its balance. Every time there is an imbalance in the ecosystem, it will gradually recover by itself because nature does have the ability to repair itself with the biological cycles that occur in it. But the fact that exists today is that there is so much damage to the environment that it cannot heal on its own. The damage is caused, among others, by waste that contaminates soil, water, and air.

Environmental problems can actually be prevented and handled within the framework of a democratic constitutional democracy, through the preparation of legal norms that take into account aspects of environmental sustainability in addition to social, political and economic aspects. With its imperative nature, law can be a tool to change the orientation of environmental and natural resource management which has so far been too dependent on destructive exploitation. Indonesia has constitutional guarantees which are the source of all legal sources for the preparation of laws and regulations, including the environment. In the constitution of the 1945 Constitution of the Republic of Indonesia (UUD 1945), the environment is regulated in 2 (two) aspects, namely:

1. As part of human rights, it is regulated in Article 28 H paragraph (1);
2. As a principle of implementing an environmentally sound national economy, it is regulated in Article 33 paragraph (4).

According to Jimly Asshiddiqie, this arrangement is a feature of the Indonesian constitution which not only recognizes the sovereignty of the people and understands the rule of law, but also recognizes the existence of environmental sovereignty. The two articles are also concrete evidence of the acceptance of the principles of sustainable development in the 1945 Constitution. The implication of the provisions in the 1945 Constitution is that all laws related to development that are exploitative and do not pay attention to environmental sustainability and sustainability can be declared unconstitutional. by the Constitutional Court of the Republic of Indonesia (MK RI) in accordance with Law Number 24 of 2003 concerning the Constitutional Court. Meanwhile, policies in the form of statutory regulations under the Act can be reviewed by the Supreme Court of the Republic of Indonesia (MA RI) in accordance with Law Number 14 of 1985 as last amended by Law Number 3 of 2009 concerning the Supreme Court of the Republic of Indonesia. and Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2011 concerning the Right to Material Test.

In the period from September 1997 to March 1998 at the Yogyakarta Locomotive Depot, PT Kereta Api Indonesia (Persero) located at Jalan Suryonegaran No. 20 Bumijo Jetis Sub-district, Yogyakarta City, there are incidents of diesel oil loss reaching approximately 300 (three hundred) liters every day. After inspection and tracing, the loss of the oil was the result of a leaking diesel oil tank and the diesel oil flowing into the ground and contaminating the water wells of residents around the diesel oil tank at the Yogyakarta Locomotive Dipo. The Yogyakarta Environmental Health Technical Center followed up on this incident by examining samples of well water belonging to the affected residents with the result that the well water that was positively affected contained fat due to being contaminated with diesel oil as stated in the inspection result letter number: PM.07.04.7.849 dated May 24, 2003.

As a follow-up to the pollution, PT Kereta Api Indonesia (Persero) has held deliberations with affected residents to resolve compensation and control environmental pollution as the responsibility and good faith of PT Kereta Api Indonesia (Persero) for the leak of diesel oil tank at the Locomotive Depot. Yogyakarta. However, the affected residents were dissatisfied with the results of the deliberation and took legal action through the Yogyakarta District Court. In 2004, by reporting criminally Bambang Trisilo, who at that time served as Head of the Yogyakarta Locomotive Depot at PT Kereta Api Indonesia (Persero).

In the decision on the Environmental Pollution Criminal Case at the Yogyakarta Locomotive Depot which has permanent legal force Number 129/PID.B/2004/PN.YK dated June 22, 2005, the Panel of Judges tried to order PT Kereta Api Indonesia (Persero) to carry out environmental restoration polluted life so that it can be used as before according to its designation. In implementing the Court's Decision, PT Kereta Api Indonesia (Persero) has made various efforts to recover from diesel pollution from the Yogyakarta Locomotive Depot by draining the affected residents' wells every weekend, collaborating with relevant agencies to take steps to restore environmental pollution, as well as payment of compensation. losses on the need for clean water for residents whose wells are contaminated with diesel oil which is still being carried out today.

The forms of these efforts include draining wells and water sources owned by affected residents, constructing new wells to installing Mineral Water Company (PAM) facilities for affected residents as well as reimbursement of usage costs. This is done in an effort to comply with the court's decision as well as a way for PT Kereta Api Indonesia (Persero) to be responsible for its negligence. there are many more efforts made by PT Kereta Api Indonesia (Persero) which are intended to carry out court orders in the form of the Yogyakarta District Court Decision Number: 129/Pid.B/2004/PN.YK, and until now efforts have been made to This process continues to be carried out either alone or in collaboration with external parties, for example, collaborating with the Department of Geological Engineering, Gajah Mada University to routinely check the level of diesel waste in the soil on a regular basis, even though it has not given maximum and satisfactory results to date.

In the context of this research, there are actually several things that are still a question, related to additional criminal sanctions in the PPLH Law related to the restoration of environmental functions, where there is no explanation as to what is meant by "obligation to repair due to criminal acts committed", where in In this context, the question arises, what are the parameters or measurements of the end of the sanction? This author's view has also been questioned by several groups, one of which is Subaidah Ratna Juita, in her article entitled "Optimizing Legal Protection Against Victims of Environmental Crime Through the Concept of Sustainable Development", it is said that:

“The PPLH Law only stipulates additional criminal sanctions for corporations as contained in Article 119 letter (c) regarding the obligation to repair the consequences of a criminal act committed. There is no explanation as to what is meant by "obligation to repair as a result of the crime committed". The explanation of the law only says "quite clear", even though there should be an explanation for such a provision, for example, who is the obligation to repair, the type of repair, and other provisions.”.

So the problem in this research is, to describe the ideal conception of criminal sanctions for recovery due to environmental crimes for corporations, where the author seeks to describe the efforts and steps as well as the conception of the regulation of additional sanctions in Law Number 32 of 2009 concerning Protection and Environmental Management (hereinafter referred to as UU PPLH) in the future, especially related to sanctions related to the restoration of environmental functions for corporations.

## ***B. Research Methods***

The type of research in this research is normative juridical, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. With regard to the normative legal research method, the technique of collecting legal materials used is document study or literature study. The approach used in this research is a statutory approach, a conceptual approach and a case approach. Namely by studying the doctrines in the development of environmental law and the PPLH Law.

## ***C. Discussion***

At the beginning of writing, most of the authors have mentioned the position of sanctions for restoring environmental functions to environmental crimes committed by corporations as an additional criminal sanction regime. Before discussing the criminal provisions in a law, it is necessary to mention in this paper about the meaning of criminal in order to make it easier to understand the meaning of the crime itself and from this meaning it can be drawn further understanding whether a law must always include criminal sanctions for enforce the law itself or do not need to be included, both of which are criminal policies or policies for determining criminal penalties by legislators.

According to Simon, a crime or straf is an affliction which according to the criminal law has been linked to a violation of a norm, which by a judge's decision has been handed down for someone who is guilty. Van Hamel defines punishment as a suffering of a special nature, which has been imposed by the competent authority to impose a crime on behalf of the state as the person responsible for the involvement of general law for an violator, namely simply because the person has violated a legal regulation that must be enforced. by state.

The meaning of criminal is often synonymous with the term punishment, although there are slight differences in its use. The term punishment can be used by people outside of criminal law. Punishment is a general name for all legal consequences for violating a legal norm. If a disciplinary law is violated, the penalty is disciplinary punishment, for a civil law violation, the penalty is a civil penalty, as well as for administrative law violations, an administrative penalty is given. Sometimes people say that punishment is also interpreted as a sanction, although the meaning is slightly different because the term sanction is interpreted as a threat or risk. In the KBBI (Big Indonesian Dictionary) it is stated that sanctions have several meanings, including negative meanings and positive meanings. The negative meaning is a reward in the form of a burden or suffering, while the positive meaning is a reward in the form of a gift or gift specified in law. In everyday life, the meaning of sanctions is often interpreted as a negative reward.

In law, the term sanction is sometimes used to classify parts of punishment to enforce the law itself, namely in the form of administrative sanctions, civil sanctions, and criminal sanctions in one chapter or section. The term "criminal sanction" is somewhat difficult to understand if the term sanction is defined as "punishment" because it will mean "criminal punishment", and it will be even more complicated if the term criminal is interpreted as punishment so that it becomes "punishment". Sanctions in English law are defined as "the penalty or punishment provided as a

means of enforcing obedience to law". Sanctie in Dutch means "agreement" and "a tool of coercion as a punishment if you don't obey the agreement".

The meaning of criminal cannot be separated from the term criminal law itself because crime is the main force of criminal law. Criminal law, according to Moeljatno, is part of the overall law that applies in a country, which provides the basics and rules for:

1. determine which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for anyone violating the prohibition;
2. determine when and in what cases those who have violated the prohibitions can be imposed or sentenced to a criminal sentence as has been threatened;
3. determine in what way the imposition of the punishment can be carried out if there are people who are suspected of having violated the prohibition.

Jan Remmelink stated that criminal law was firstly used to refer to the overall provisions that stipulate what conditions are binding on the state, if the state wishes to enact criminal laws, as well as the rules that define what kinds of crimes are permitted. Criminal law in this sense is the applicable criminal law or positive criminal law, which is also often called *jus poenale*. Such criminal law includes:

1. orders and prohibitions for violations against them by organs declared competent by law are associated with (threats of) crime; norms that everyone must adhere to;
2. provisions that stipulate what means can be utilized as a reaction to violations of those norms; penitent law or more broadly, the law on sanctions;
3. determine how the imposition of the punishment can be carried out if there are people who are suspected of having violated the prohibition.

Herbert L Packer stated that criminal law, rationally, rests on three concepts, namely offense, guilt, and crime. These three concepts are symbols of the three basic substances of criminal law, namely: (1) what actions must be determined as criminal acts (crimes); (2) what provisions a person must determine can be known (allegedly) related to a criminal act; (3) what to do with someone who is known to be related to a crime. To complete the meanings above, the meaning of "criminal acts" also needs to be stated because in the following discussion – in addition to the meaning of crime, punishment, sanctions, and the law described above – the meaning of "criminal act" is often mentioned.

The problem of overcoming criminal acts by using the means of criminal sanctions has been widely discussed by criminal law experts because it is very interesting, related to the nature of the criminal sanctions which are *ultimum remedium*. The determination of the crime determined by the legislators is a policy in which it is related to criminalizing or penalizing an act that was not previously a crime (crime). Another problem is related to the subject of criminal law which is threatened with a fine which is currently developing or changing not only for individuals (individuals), but also for corporations.

The problem is not only in its application, but also in the issue of criminal liability and the consequences if the corporation is sentenced to a relatively heavy fine or is subject to additional punishment in the form of revocation of license. The weighting against him is reasonable because the consequences caused by corporations that commit criminal acts are generally very detrimental to the community. The size and pattern as well as the formulation of the criminal fines specified in the Draft Criminal Code and those specified in laws outside the Criminal Code will create its own difficulties related to reforming criminal provisions that have been or have been implemented under laws outside the Criminal Code.

Jan Rummelink stated that why the state acts when crime occurs and why the state acts by bringing suffering. This is intended as an appropriate means because it encourages the state to act fairly and avoid injustice. Criminal law here functions as a mechanism for social and psychological threats. Consequentialists argue that the existence of a crime is justified if it brings good, the crime prevents a worse event, and there is no other alternative that can provide an equally good (or bad) result. In the philosophy of punishment, people always look for justification of criminal punishment. In the theoretical discussion about punishment itself, Herbert L. Packer tries to involve himself in two conceptual views, each of which has different moral implications.

The first is the retributive view which presupposes that crime is a negative reward for any deviant behavior committed by citizens. The second is the utilitarian view, which sees the crime more in terms of its benefits or uses. The first view assumes that each person is responsible for his own moral choices. If the choice is correct, then he gets positive rewards such as praise, flattery, awards, and others. But if he is wrong, he must be held responsible by being punished (negative rewards). So, the rational reason for the punishment lies in the basic assumption that the punishment is a negative reward for the responsibility for wrongdoing. This view only sees the crime as punishment and punishment as retaliation for mistakes made on the basis of each person's moral responsibility. This first view is said to be backward-looking, namely looking back at the mistakes made so that the punishment was imposed and because of its backward orientation, punishment in this view also tends to be corrective and repressive.

The second (utilitarian) view, which is seen is the situation or condition that wants to be produced by the imposition of a criminal and the imposition of the criminal must be seen in terms of its purpose, benefit, or use for improvement and prevention. So, on the one hand, punishment is intended to improve the attitude or behavior of the convict so that in the future he will not repeat the same act again. On the other hand, punishment is intended to prevent others from the possibility of committing similar acts. This second view is forward-looking and at the same time has a preventive nature.

In general, the second view is actually considered more ideal in the context of implementing the idea of punishment. The view that is preventive in nature and fostering is now considered more modern and because of this it has influenced many criminal policies in various countries in the world. Packer argues that today there is also a third view called the behavioral view which is just a variation of the classical utilitarian view. In this third view, the concepts of moral responsibility and free will are considered merely an illusion or wishful thinking because human behavior is basically determined by forces that are beyond the power of each individual in a causal relationship.

In addition, the function of the law itself according to the third view, as Packer said, is simply expected to cause a change in the personality of the person concerned. Basically, this behavior is also forward-looking, meaning that punishment is not seen as retaliation to criminals, but is seen as a means to improve the behavior of the convict. However, in contrast to the utilitarian view, the behaviorist view is based on an extreme determinism. Individual humans are considered to have absolutely no free will and therefore it is impossible to be held accountable for strict morals. Every anti-social act committed is caused by many factors that are beyond the control of the individual himself.

The concept of punishment in Indonesia, until now, is still oriented towards preventive and coaching views, which are currently considered more modern and therefore have a lot to do with criminal political policies in Indonesia, including the determination of criminal penalties in a law. However, this view changes when there is a tendency for legislators to always convict someone with a high sentence and apply a special minimum sentence for those who violate the provisions of the law. Punishment is not enough for violators, but also for policy makers (government) in the context of carrying out government duties. Such conditions make policy makers afraid to carry out their duties. Whereas in European countries, in general, they prefer to apply criminal fines or administrative sanctions or compensation in order to be effective and achieve the purpose of the punishment itself.

Criminal issues are related to policies regarding the determination of sanctions and views on the purpose of punishment. The policy of determining sanctions is also inseparable from the problem of the objectives to be achieved by the criminal policy as a whole. In connection with additional criminal sanctions in the form of restoration of environmental functions for perpetrators of environmental crimes, which in fact cause confusion in its application, in this case several things the author recommends in order to streamline the application of additional criminal sanctions to restore environmental functions to perpetrators of corporate crimes. , which the author will describe below.

### **1. Environmental Recovery Criminal Sanctions That Include Measures of the Success of Repairs and Types of Repairs**

Reflecting on the Decision of the Yogyakarta District Court Number: 129/Pid.B/2004/PN. YK, which in its additional criminal sanction ordered PT Kereta Api Indonesia (Persero) to carry out environmental restoration until it can be used properly, in this case there is no measure to what point the benchmark for the success of environmental restoration is. The author compares it with criminal acts of environmental damage in the form of forest and land fires by corporations, in that case if the benchmark is the restoration of environmental functions until they can be used properly, the practice of reforestation (reforestation) cannot be used as a measure, the lost flora and fauna must be calculated. as a result of the crime, then how to restore the function of the environment?

So up to this point it is worth questioning the legal certainty of the additional criminal sanctions in the PPLH Law. As it is known that it has become a characteristic of modern law that requires legal certainty as the basic material for its development, which in its development is identical with the terms Legism and Positivism. Although in its development there have been

many criticisms of this, it cannot be denied that the facts show that legal positivism is still the *prima donna* in the development of global law.

Legal positivism tries to get rid of speculation about the metaphysical aspects and nature of law. The background is none other than the effort to limit the legal world from everything that is behind the law and affects the law. The generally accepted normative system is manifested in the power of the state to enforce the law with its complete means, namely sanctions. Legal positivism recognizes the relationship between law and morals, that these two things have a very important relationship in people's lives, even though the relationship is not directly visible.

There are those who argue that law and morals must be related to each other, because law and morals command the actual content of the law of human assistance (positive law). Moral law and positive law are not related to each other, because each has its own area of application, although as a higher law, the moral law determines the validity of the application of positive law. If positive law regulates all outward actions, what regulates inner actions is another rule, namely the moral law or moral code. And if positive law organizes peace and tranquility in human life in society, then moral law actually plays a role in perfecting human life.

In the context of this research, what is most relevant in examining sanctions for restoring environmental functions that are not accompanied by parameters or measures of success is related to legal certainty, as the author explained at the beginning of the discussion that one of the characteristics of modern law is legal certainty. Where in this case the law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a feature that cannot be separated from law, especially for written legal noma. According to Fence M. Wantu, "law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone.

Legal certainty is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation. The definition of certainty can be interpreted that there is clarity and firmness towards the enactment of law in society. This is so as not to cause a lot of misinterpretation. According to Van Apeldoorn, "legal certainty can also mean things that can be determined by law in concrete matters". Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions which means that someone will be able to get something that is expected under certain circumstances.

Grammatically, certainty comes from the word definite which means it is fixed, must and of course. In the Big Indonesian Dictionary, the definition of certainty is a definite (fixed) condition, provision, provision, while the notion of law is a legal instrument of a country that is able to guarantee the rights and obligations of every citizen, so legal certainty is a provision or stipulation made by the government. a legal instrument of a country that is able to provide guarantees for the rights and obligations of every citizen. Legal certainty refers to the application of a clear, permanent and consistent law where its implementation cannot be influenced by subjective conditions. Quoting the opinion of Lawrence M. Wriedman, a Professor at Stanford University, he is of the opinion that to realize "legal certainty" it must at least be supported by the following elements, namely: legal substance, legal apparatus, and legal culture.



Sudikno Mertokusumo stated that legal certainty is one of the conditions that must be met in law enforcement, namely being justifiable against arbitrary actions, which means that a person will be able to obtain something that is expected under certain circumstances. According to Maria S.W. Sumardjono that regarding the concept of legal certainty is that "normatively, legal certainty requires the availability of a set of laws and regulations that are operational and support their implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consistently by the supporting human resources.

A regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and is logical so that it becomes a norm system with other norms that do not conflict or cause norm conflicts. Norm conflicts arising from uncertainty in rules can take the form of norm contention, norm reduction or norm distortion. Real legal certainty is when the laws and regulations can be implemented in accordance with legal principles and norms. According to Bisdan sigalingging:

“between certainty of legal substance and certainty of law enforcement should be in line, it should not only depend on law in the books, but real legal certainty is if the certainty in law in the books can be carried out properly in accordance with the principles and norms. law in upholding legal justice”.

So, reflecting on modern legal doctrine, one of the instruments in which is legal certainty, it is relevant and logical that additional criminal sanctions in the form of restoration of environmental functions can be used until they can be re-corrected by considering legal certainty and adding parameters and measures of success in implementing these sanctions.

## **2. Additional Criminal Sanctions Environmental Recovery Becomes the Main Criminal Sanctions By Considering Legal Certainty**

Criminal law in its efforts to achieve its goals does not only impose punishment, but also sometimes uses actions. Action is a sanction too, but there is no retaliation to it. The purpose of the action is to maintain public safety against people who are considered dangerous, or who are feared to commit criminal acts.

Action sanctions start from the basic idea of "what is the punishment for" so that action sanctions are more anticipatory towards the perpetrators of the act. The focus of action sanctions is more focused on efforts to help the perpetrator so that he changes. Action is different from punishment, because the purpose of action is social, while punishment is focused on the punishment applied to the crime committed. In addition, action sanctions originate from the basic idea of protecting the community and fostering or caring for the maker. So, action sanctions are more educational in nature.

In addition, if you look at the concept of criminal penalties that are oriented towards environmental conservation, it has implications for inappropriately placing "deprivation of profits obtained from criminal acts", "closure of all or part of business premises and/or activities", "remediation due to criminal acts", "obligation to do what is neglected without rights", and/or "placement of company under guardianship" contained in the PPLH Law as additional penalties. Because seen from the quality, these forms of sanctions are heavier than

imprisonment, confinement and fines. For example, when a person is sanctioned in the form of an obligation to repair all the consequences of a criminal act because it is proven to have caused severe damage to the environment, the costs that must be incurred are far greater than being sentenced to a fine of 5 billion. So, it can be concluded that action sanctions regulated in laws and regulations in the environmental field should not be regulated as additional penalties, but stand alone as action sanctions so that their application/imposition of sanctions does not have to be cumulative with the main criminal, in this case a fine.

The discourse on an additional criminal sanction in the form of restoring environmental functions to become the main criminal sanction has long been the subject of discussion. As it is known that in environmental crimes for corporations, the PPLH Law regulates the following matters:

- 1) If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on: (a) the business entity; and/or; (b) the person who gave the order to commit the crime or the person acting as the leader of the activities in the crime.
- 2) If an environmental crime is committed by a person, based on an employment relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions are imposed on the giver of the order or the leader in the crime without regard to the crime being committed individually or jointly.
- 3) If a criminal charge is submitted to the giver of the order or the leader of the crime, the criminal threat imposed is in the form of imprisonment and the fine is increased by one third.
- 4) Against criminal acts of legal entities, criminal sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with statutory regulations as functional actors.
- 5) Business entities may be subject to additional criminal or disciplinary actions in the form of: (a) confiscation of profits obtained from criminal acts; (b) closure of all or part of the place of business and/or activity; (c) correction of the consequences of a criminal act; (d) the obligation to do what is neglected without rights; and/or (e) placing the company under supervision for a maximum of 3 (three) years.

Sanctions for environmental crimes are clearly regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. Things that make the difference with ordinary criminal sanctions for environmental crimes are additional penalties and further studies, including: First, the confiscation of profits derived from criminal acts has not yet been established with stricter regulations regarding the benefits and allotment of the confiscation of profits in question. Second, the closure of all or part of the place of business and/or actual activity can also be imposed through administrative sanctions, namely revocation of business licenses through the State Administrative Court.

Third, repairs resulting from criminal acts cannot be clearly defined, considering that repairs resulting from criminal acts, especially for environmental damage, are immeasurable and may overlap with the obligation to restore the environment in civil law enforcement; Fourth, the obligation to do what is neglected without rights is quite difficult to define, because in heavy pollution or environmental destruction it tends to be difficult to restore environmental functions to their original state. Fifth, Placement of the company under the supervision of a maximum of 3 (three) years in its implementation requires an environmental manager in charge of restoring the function of corporate environmental management as before pollution or destruction occurred, basically this additional sanction is intended to maintain the sustainability of corporate activities, but the form and arrangement not yet expressly and regulated in laws and regulations.

In this case the authors tend to suggest that additional criminal sanctions in the form of repairs (recovery) due to criminal acts, in this case the restoration of environmental functions as a result of the existence of a criminal act is used as one of the main sanctions, not only limited to additional sanctions with a note must first the size and parameters of the reparation due to the crime are explained, so that the sanctions can be applied and have legal certainty as the author described at the beginning of the discussion. As it is known that the sanction "remediation due to criminal acts" in environmental crimes is one of the sanctions regulated in environmental crimes, namely repairs due to criminal acts. Related to this, in several environmental laws, judges can impose direct action on the convicted polluter, such as the obligation to repair the damage that has been done, for example in the form of repairing the consequences of a criminal act, with the aim that the perpetrators of criminal acts are aware of their mistakes and can improve themselves so that they become law-abiding citizens. The perpetrator of a crime who is sentenced to repair an environment that has been polluted and/or damaged as a result of his actions can know firsthand the difficulty of restoring the environment to its original condition before the occurrence of the crime and the negative impact of his actions so that the perpetrator is expected to realize his mistake and try to improve himself so that he does not repeating the same mistakes.

Action sanctions in the form of repairs due to the crime (recovery of environmental conditions) in UUUPPLH are facultative. These facultative sanctions can hinder the implementation of environmental conservation. This is because sanctions for reparation due to criminal acts are not always imposed on perpetrators of environmental crimes, while sanctions for reparation due to criminal acts include sanctions that should be prioritized to be applied because they are in the form of actions aimed directly at repairing and/or restoring the environment to its original state. before the occurrence of a crime so as to realize environmental conservation. Therefore, the imposition of remedial sanctions due to these criminal acts should be imperative in order to realize a pattern of punishment based on environmental conservation against corporations that commit environmental crimes.

## **Conclusion**

The regulation of remedial sanctions due to criminal acts carried out for corporations in the future in the context of legal reform, among others, can be carried out in several ways, namely: a. criminal sanctions for environmental restoration that contain measures of the success of repairs and types of repairs, b. additional criminal sanctions for environmental restoration become the main criminal sanctions by considering legal certainty. This is important to do in an

effort to realize a pattern of punishment based on environmental conservation against corporations that commit environmental crimes that are also oriented towards legal certainty.

## References

- Raynaldo Sembiring, Yustisia Rahman, Elizabeth Napitupilu, Margaretha Quina, 2014, *Anotasi Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup*, Indonesia Center for Environmental Law (ICEL)
- Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta, Rajawali Press, 2009,
- Subaidah Ratna Juita, Optimalisasi Perlindungan Hukum Terhadap Korban Tindak Pidana Lingkungan Hidup Melalui Konsep Sustainable Development. *Jurnal Paradigma Hukum Pembangunan* Vol 02 Issue 01 Tahun 2018.
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group. 2016,
- H. Setiyono, “*Kejahatan Korporasi Analisis Viktimologi dan Pertanggungjawaban Korporasi Dalam Hukum Pidana*”, Edisi kedua, Cetakan Pertama, (Malang: Banyumedia Publishing, 2003),
- P.A.F. Lamintang, *Hukum Penitensier Indonesia*, Bandung: Armico, 1984,
- Suhariyono AR, Penentuan Sanksi Pidana Dalam Suatu Undang-Undang. *Jurnal Legislasi Indonesia* Vol. 6 No. 4 - Desember 2009.
- Osborn’s Concise Law Dictionary*, Edited by Leslie Rutherford and Sheila Bone, Eighth Edition, Sweet & Maxwell, London, 1993
- Wojowasito, *Kamus Umum Belanda – Indonesia*, Jakarta: Ichtar Baru-Van Hoeve, 1978.
- Moeljatno, *Asas-asas Hukum Pidana, Cetakan Kelima*, Jakarta: Rineka Cipta, 1993,
- Jan Remmelink, *Hukum Pidana Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Pidananya dalam KUHP Indonesia*, Jakarta: PT Gramedia Pustaka Utama., 2003,
- Herbert L Packer, *The Limits of The Criminal Sanction*, California: Stanford University Press, 1968,
- Antony Duff and David Garland, *A Reader on Punishment*, New York: Oxford University Press, 1994,
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bakti, 2002,
- HM Ali Masyur, *Pranata Hukum dan Penegakkannya di Indonesia*, Semarang: Unnisula Press. 2010,
- Mukhidin, Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat. *Jurnal Pembaharuan Hukum* Volume I No. 3 September – Desember 2014.
- Fence M. Wantu, Antinomi Dalam Penegakan Hukum Oleh Hakim, *Jurnal Berkala Mimbar Hukum*, Vol. 19 No.3 Oktober 2007,
- Rian Saputra. Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications. *Jurnal Bestuur*. Vol. 8, Issue 2, December, 2020.
- Tata Wijayanta, Asas Kepastian Hukum, Keadilan dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga, *Jurnal Dinamika Hukum* Vol. 14 No. 2 Mei 2014,
- Van Apeldoorn, *Pengantar Ilmu Hukum*, Cetakan Kedua Puluh Empat, Jakarta: Pradnya Paramita, 1990
- Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 1997,
- Rian Saputra, Adi Sulistiyono & Emmy Latifah. Pendaftaran Internasional Sebagai Upaya Perlindungan Indikasi Geografis Indonesia Dalam Perdagangan Global (Studi Peraturan

- Pemerintah Nomor 22 Tahun 2018), *Jurnal IuS Kajian Hukum dan Keadilan*, Vol 7 Nomor 2 Agustus 2019.
- Rian Saputra, Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif. *Wacana Hukum*. Vol. 25, No.1 Juni 2019
- Maria S.W. Sumardjono, “Kepastian Hukum dalam Pendaftaran Tanah dan Manfaatnya Bagi Bisnis Perbankan dan Properti”, “Makalah disampaikan dalam seminar kebijaksanaan baru di bidang pertanahan, dampak dan peluang bagi bisnis properti dan perbankan”, Jakarta, 6 Agustus 1997,
- R. Tony Prayogo, Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang. *Jurnal Legislasi Indonesia*. Vol. 13 N0. 02 - Juni 2016.
- Rian Saputra, Muhammad Khalif Ardi, Pujiyono Pujiyono, Sunny Ummul Firdaus. Reform Regulation of Novum in Criminal Judges In An Effort To Provide Legal Certainty. *Journal of Indonesian Legal Studies*. Volume 6 Issue 2, November 2021,
- Roeslan Saleh, *Stelsel Pidana di Indonesia, Cetakan Kelima* (Jakarta: Aksara Baru, 1987),
- M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana, Edisi Pertama*, (Jakarta: Rajagrafindo Persada, 2004)
- J.E Jonkers, *Buku Pedoman Hukum Pidana Hindia Belanda, Cetakan Pertama* (Jakarta: Bina Aksara, 2009)
- Tonny Samuel, Penerapan Tindak Pidana Lingkungan Bagi Korporasi Dalam Penegakan Hukum Lingkungan. *Jurnal Socioscientia*. Volume 8 Nomor 1 Maret 2016
- Rian Saputra dan Resti Dian Luthviati, Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts. *Journal of Morality and Legal Culture*. Vol. 1, No.2, December 2020
- Michael Faure dan Göran Skogh, *The Economic Analysis Of Environmental Policy And Law An Introduction*, United Kingdom: Edward Elgar Publishing Limited, 2003

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).