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Restorative Environmental Law Enforcement: Ensuring Environmental Restoration and Compliance Through Multiple Legal Instruments

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ABTRACT
Indonesia faces massive pressure from environmental crimes. The environmental sector has fraud risk from money laundering and corruption. Traditional practices of law enforcement are not enough to create compliance. Innovative instruments are required; one of them is environmental restorative justice. The restorative justice approach in Indonesia has been formalized by several agencies since 2012, but there are no specific regulations on restorative justice in the environmental sector. This study intends to seek the conception of law enforcement built upon environmental restorative justice and how to implement environmental restorative justice in Indonesia. The study applies normative legal research methods by analyzing descriptively the legal instruments in Law Number 32 of 2009. The study shows that environmental law enforcement using environmental restorative justice is not a case termination, but rather a process of restoring the environment as the victim of environmental crime and broadening the liability of the main perpetrators. Restorative environmental justice in Indonesia can be implemented through the application of multiple legal instruments in the form of administrative sanctions, environmental dispute resolution, and criminal enforcement.

Keywords: Compliance, Environmental Crime, Environmental Restoration, Environmental Restorative Justice.

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1. INTRODUCTION

Indonesia's unique landscapes, biodiversity, and tropical forests face tremendous pressure from environmental crimes such as environmental pollution and environmental destruction, forest and land fires, and crimes related to waste and hazardous and toxic materials. A concrete example of a serious environmental threat is the devastating forest and land fires in Indonesia in 2015, which international circles called the biggest environmental crime of the 21st century (Meijaard, 2018). The World Bank (2016) calculates that the 2015 fires burned 2.6 million hectares of forest and land in Indonesia and caused Rp221 trillion in losses, equivalent to 1.9 percent of Indonesia's gross domestic product in 2015.

Environmental crimes must be tackled seriously, because they have an impact on state losses, environmental carrying capacity and productivity, as well as ecological disasters. Law enforcement that creates a compliance culture and victim restoration is urgently needed. Indonesia has a comprehensive regulatory framework for environmental protection, namely Law Number 32 of 2009 on Environmental Protection and Management (Law 32/2009). In its development, Law 32/2009 was revised in part through Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation in conjunction with Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as Job Creation Law).

Law 32/2009 is designed holistically and comprehensively to address environmental problems because it consists of six systemic frameworks, starting from planning, utilization, control, maintenance, inspection, to law enforcement. Within the law enforcement framework, there are two approaches to creating a culture of compliance in society, namely the compliance approach and the deterrence approach (Prastiti, 2021). Law 32/2009 offers various instruments for law enforcement officials to create compliance culture. Hamzah (2016) reveals that there are three main instruments in enforcing environmental law, i.e. administrative, civil, and criminal law.

However, the deterrent effect and compliance culture in the environmental sector have yet to be realized. The Head of the Supreme Court of the Republic of Indonesia for 2012-2020, M. Hatta Ali, stated that the deterrent effect of environmental crimes is still very low (Nugraha, 2015). Data from the Ministry of Environment and Forestry (MoEF) also exposes the low compliance of corporations. In 2019, only 22 percent of forestry permit holders fulfilled the obligation to provide reports on forest and land fire control (MoEF 2019). The natural resources sector is one of the largest sources of state revenue, but tax compliance is low. In the plantation sector, the compliance rate for individual taxpayers is only 6.3 percent, and for corporate taxpayers is 46.3 percent (Corruption Eradication Commission/ CEC, 2018).

The environmental sector has serious fraud risks. Referring to data from the Financial Transaction Reports and Analysis Center (FINTRAC, 2021), criminal acts in the environmental sector have significant risks related to money laundering. The environmental sector is also intertwined with corruption. CEC evaluates that licensing in the natural resources sector is prone to corruption that leads to environmental degradation (Hariyanto, 2020). CEC noted that during the period 2003 to 2014, the potential state losses from illegal timber production ranged from IDR598-799 trillion, so that state losses due to illegal logging reached IDR35 trillion per year (CEC, 2015). In the mining sector, there is an underpayment of mining tax in forest areas of IDR15,9 trillion per year in the plantation sector, there is IDR18,13 trillion in uncollected tax potential (CEC, 2018).

The current international environmental discourse offers a new approach, namely, environmental restorative

justice. Forsyth et al. (2021) introduce the concept of environmental restorative justice to show how an environmental sensibility can contribute to restorative justice–particularly by acknowledging the interconnectedness of human and ecological relationships–and how restorative justice can be applied in the context of environmental restoration. This creates opportunities to better refine and improve legal practices and prevent future environmental degradation. There are many other terms for restorative justice, including "communitarian justice", "making amends", "positive justice", "relational justice", "reparative justice", and "community justice" (Miers, 2001).

2. LITERATURE REVIEW AND HYPOTHESIS

Restorative justice, as a practice and social movement, began in the 1970s as a response to an overly harsh criminal justice system that was ineffective at reducing crime and rehabilitating offenders. Modern restorative justice stems from a rejection of the failed retributive and rehabilitative models of criminal law and punishment. In its most ideal form, there are four R's of restorative justice: repair, restore, reconcile, and reintegrate perpetrators and victims into the community (Menkel-Meadow, 2007). Restorative justice processes benefit both victims and offenders by emphasizing victim recovery through restitution, restoration of reputation, and healing by encouraging compensation from offenders to victims (Van Ness & Strong, 1997).

In Indonesia, restorative justice initiatives have at least started in 2012 through a Memorandum of Understanding between the Chief Justice of the Supreme Court (Number 131/KMA/SKB/X/2012), the Minister of Law and Human Rights (Number M.HH-07.HM.03. .02 Year 2012), the Attorney General (Number KEP-06/E/EJP/10/2012), and the Chief of National Police (Number B/39/X/2012) dated October 17, 2012 on the Implementation of the Adjustment of the Limitation of Minor Crimes and the Amount of Fines, Rapid Examination Procedures and the Application of Restorative Justice (hereinafter referred to as MoU on Restorative Justice). Then, several law enforcement agencies made separate arrangements regarding restorative justice. At the investigation stage, the Police issued Police Regulation Number 8 of 2021 on Handling Crimes Based on Restorative Justice (Police Regulation 8/2021). At the prosecution level, the Public Prosecutor's Office issued Prosecutor's Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice (Prosecutor's Regulation 15/2020). At the court examination level, the Supreme Court has Supreme Court Regulation Number 1 of 2024 on Guidelines for Criminal Cases Trial Based on Restorative Justice (Supreme Court Regulation 1/2024).

The study of environmental restorative justice has been reviewed by Pardede & Santoso (2022). The study explores the relevance of the concept of restorative justice when implemented on environmental issues as regulated in Law 32/2009. The results show that there are various features of restorative justice in Law 32/2009 because the conceptual construction of restorative justice is inclusive. Restorative justice offers a dynamic space in accordance with environmental law that evolves rapidly following the development of technology, science, and development. The study, however, prematurely and contradictorily states that Law 32/2009 does not embrace the concept of restorative justice because a number of its provisions tend to limit the opportunities for the use of restorative efforts in tackling environmental crimes. The argument arises because the study has not been able to explore holistically all legal instruments in Law 32/2009 that can be endorsed to restore victims of environmental pollution and/or destruction.

The next literature that examines environmental restorative justice in Indonesia is presented by Kurniawan & Supanto

(2023). Kurniawan & Supanto (2023) emphasize the problems in the criminal law enforcement process of environmental cases, which usually require a long time and high costs, so an alternative solution is proposed in the form of mediation. The proposed restorative model is through efforts to discontinue prosecution by the public prosecutor. After the prosecution is discontinued, the public prosecutor organizes mediation to reach an agreement between the perpetrator and the victim. The next interesting study to be discussed was written by Anggraini & Amrullah (2023). Their research found that the application of criminal mechanisms to environmental cases raises various problems, including the practice of corruption, collusion, and nepotism. Thus, law enforcement officials need to understand and apply restorative justice in environmental crimes, which prioritizes the ultimum remedium principle through civic engagement education.

Research by Pardede & Santoso (2022), Kurniawan & Supanto (2023), and Anggraini & Amrullah (2023) is still oriented towards the restorative justice approach, which is aimed at terminating criminal cases and replacing them with other settlement processes to restore the environment and victims' losses. Until now, there has been no study that explores other legal instruments offered by Law 32/2009 in exploring the principle of restorative justice. In fact, Hamzah (2016) states that there are three main instruments in environmental law, namely administrative, civil, and criminal law. Until now, no literature examines restorative tools for restoring losses in these three environmental law instruments. In addition, there is no study that dissects the conception of environmental restorative justice in Law 32/2009 after the enactment of the Job Creation Law. This study is important because the development of environmental law in society is very dynamic due to the emergence of new regulations.

Until present, Indonesia does not have special regulations regarding restorative justice in the environmental sector. Environmental restorative justice policy arrangements in Indonesia have yet to find concrete forms and patterns. Hadi Jatmiko, Head of the National Walhi Campaign Division, also expressed that the idea of restorative justice in the environmental sector is unclear, whether it provides justice to victims or simply provides fines or sanctions to corporations (Sahputra, 2022). Can the concept of environmental restorative justice refer to the MoU on Restorative Justice, Police Regulation 8/2021, Prosecutor's Regulation 15/2020, or Supreme Court Regulation 1/2024, or is it completely different?

Environmental law enforcement by the government has also been considered suboptimal. This is indicated by the low level of compliance of business and law enforcement, which has not been able to fully realize environmental recovery. For example, the government actually succeeded in winning a civil lawsuit against several corporations worth IDR20.29 trillion, but the execution efforts were hampered so that environmental recovery was not implemented (Wijaya, 2024).

According to Paddock et al. (2011), law enforcement is a key element in realizing compliance. Therefore, conventional law enforcement must be abandoned, and innovative legal instruments are needed. The emergence of a restorative justice approach in the environmental sector opens up opportunities for innovative law enforcement efforts that prioritize environmental restoration. Therefore, a comprehensive study is needed to examine environmental law enforcement based on restorative justice. Thus, this study aims to answer three questions, namely 1) what is the latest content related to restorative law enforcement in Law 32/2009 after the enactment of Job Creation Law; 2) what is the conception of environmental law enforcement based on environmental

restorative justice in Indonesia; and 3) how is the application of the environmental restorative justice approach based on the legislative framework in Indonesia?

Based on the description above, the hypothesis of this research is: the restorative environmental justice approach in Law 32/2009 cannot only be done through terminating criminal cases and replacing them with other settlements. The author argues that the principle of restorative justice is not narrowly oriented. This research hypothesizes that the environmental restorative justice approach in Law 32/2009 can be carried out through other instruments, including the criminal law instrument itself. Environmental restorative justice is not the termination of a criminal case. Even through the criminal route, restorative efforts can also be made to claim state losses, community losses, and environmental restoration.

3. METHOD

This study is descriptive in nature by applying normative legal research methods, namely, analyzing Law 32/2009 and comparing it with the concept of environmental restorative justice contained in various scientific literature. The study also analyzes the concept of restorative justice in MoU on Restorative Justice, Perpol 8/2021, Perjak 15/2020, and Perma 1/2024. The study examines legal provisions, principles, and concepts to design a conceptual framework regarding the environmental restorative justice approach. The author analyzes secondary data sources composed of primary legal materials and secondary legal materials. Primary legal materials are laws and regulations. Then, secondary legal materials are scientific studies and legal literature. Primary and secondary legal materials were collected online. As the data is qualitative, this research is qualitative. the The observation method was also used in this research. The author participated directly in various meetings and field activities regarding environmental law enforcement during the author's work at the Directorate General of Environmental and Forestry Law Enforcement, MoEF, since 2016. All data were processed and analyzed descriptively through a literature study.

4. RESULTS AND DISCUSSION

RESULTS

Indonesia has regulations for environmental protection, namely Law 32/2009. In Law 32/2009, there are 54 articles out of a total of 120 articles (45 percent) that take into consideration law enforcement, those are 2 articles on complaints, 1 article on anti-Strategic Lawsuit against Public Participation (SLAPP), 1 article on prohibition, 5 articles on environmental inspection, 11 articles on administrative sanction, 9 articles on environmental dispute resolution, and 25 articles on criminal law enforcement.

Law 32/2009 offers the concept of multi-legal instruments, namely administrative sanctions, environmental dispute resolution, and criminal law enforcement carried out by central and local government agencies. The application of administrative sanctions can be carried out by the licensor based on the principle of contrarius actus. For environmental dispute resolution, it can be pursued through court (civil lawsuit) or out of court (alternative dispute resolution). For criminal law enforcement, investigations are carried out by environmental civil servant investigators and police investigators, prosecution by public prosecutors, and sentencing by judges.

According to Article 76 paragraph (1) of Law 32/2009 in conjunction with Job Creation Law, the central government or regional government imposes administrative sanctions on those responsible for businesses and/or activities if, during supervision, violations of business permits or approvals from the central government or regional government are found. There are three types of administrative sanctions. The first is reparatory, namely, sanctions are given to restore conditions due to violations of

norms. The second is punitive, namely, sanctions are given for punishment. The third is regressive, namely, sanctions are applied as a reaction to non-compliance. Based on Article 82C paragraph (1) of Law 32/2009 in conjunction with the Job Creation Law, there are five types of administrative sanctions, namely written warnings, government coercion, administrative fines, freezing of business permits, and/or revocation of business permits. Job Creation Law adds a new variant of legal instruments in the administrative realm, namely, administrative fines (monetary penalties). Specifically for government coercion, Article 80 paragraph (1) of Law 32/2009 provides various forms, including: temporary suspension of production activities; relocation of production facilities; closing of wastewater or emission drainage channels; dismantling: confiscation of goods or equipment that have the potential to cause violations; temporary cessation of all activities; or other actions to stop violations and actions to restore environmental functions.

Environmental disputes arise when there is a dispute between two or more parties due to environmental pollution and/or damage and losses (both environmental losses and community losses). Dispute resolution should begin with out-of-court dispute resolution. If out-of-court dispute resolution does not reach an agreement, the parties can choose to resolve the dispute through the courts. However, the plaintiff is also permitted to directly file a civil lawsuit through the court without having to first resolve the dispute outside the court. Civil lawsuits are based on the existence of unlawful acts by the defendant. The plaintiff is required to prove a causal relationship between the plaintiff's losses and the defendant's activities.

The third instrument, criminal law, is one of the harsh approaches in Law 32/2009. The subjects of criminal law in Law 32/2009 include individuals, business entities, both incorporated and unincorporated, and officials. In Article 119 of Law 32/2009, business entities may be subject to additional punishment in the form of confiscation of profits from criminal acts, closure of all or part of the place of business, repair of the consequences of criminal acts, obligation to do what is neglected without rights, or placement of the company under guardianship for a maximum of three years. The punishment of imprisonment and fine shall be increased by one-third for the orderer or leader of the criminal offense.

DISCUSSION

Restorative Law Enforcement in Law 32/2009 after the Enactment of the Job Creation Law

Some of the content of Law 32/2009 has been amended through the Job Creation Law. The latest content in the field of environmental law enforcement introduced by the Job Creation Law includes decriminalization for administrative violations in the form of not having permits in the environmental sector. Three criminal offenses have been decriminalized, namely in table 1.

The decriminalization of those three criminal offenses can also be interpreted as a form of restorative efforts. As long as a business and/or activity is carried out without a permit, it is not necessarily criminalized as long as it has not caused negative impacts on human health, injuries, casualties, and/or environmental pollution and/or destruction. This is in accordance with the spirit of the Job Creation Law to improve the investment ecosystem and ease of doing business for the sake of employment. As a substitute, businesses and/or activities without a license or preparation of an Environmental Impact Assessment without a certificate of competence are subject to other sanctions in the form of administrative sanctions.

What is the Conception of Environmental Law Enforcement Based on Environmental Restorative Justice in Indonesia?

To analyze the concept of environmental restorative justice, it is first necessary to examine the concept of restorative justice in several regulations in Indonesia. Referring

to MoU on Restorative Justice, restorative justice is formulated as: "*Restorative Justice is the settlement of minor criminal cases carried out by investigators at the investigation stage or judges from the beginning of the trial by involving the perpetrator, the victim, the families of perpetrators/victims, and related community leaders to jointly seek a just settlement by emphasizing restoration to the original state*" (Article 1 point 2).

At the investigation level, the Police issued Police Regulation 8/2021, and restorative justice is formulated as: "*Restorative Justice is the resolution of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to the original state*" (Article 1 point 3).

At the prosecution level, the Prosecutor's Office issued Prosecutor's Regulation 15/2020, in which restorative justice is formulated as: "*Restorative Justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation*" (Article 1 point 1).

Table 1. **Decriminalization of Environmental Crimes After the Enactment of the Job Creation Law**

No.	Law 32/2009		Arrangement after the Enactment of the Job Creation Law
	Article	Provisions	
1	Article 102	Every person who undertakes the management of hazardous and toxic waste without a permit, as cited in Article 59 paragraph (4), shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least 1,000,000,000 (one billion rupiah) and at most Rp3,000,000,000 (three billion rupiah).	This article has been deleted and is no longer applicable. This act is no longer punishable, but is subject to administrative sanctions.
2	Article 109	Every person who conducts the undertaking and/or activities without an environmental permit as cited in Article 36 paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least 1,000,000,000 (one billion rupiah) and at most Rp3,000,000,000 (three billion rupiah).	After the Job Creation Law, businesses and/or activities that do not have a business license, central government approval, or regional government approval can only be subject to criminal penalties if they result in victims/damage to health, safety, and/or the environment.
3	Article 110	Every person who prepares an Environmental Impact Assessment without having a certificate of competency in Environmental Impact Assessment preparation as cited in Article 69 paragraph (1) letter i, shall be punished with imprisonment for a maximum of 3 (three) years and a fine of at most Rp3,000,000,000 (three billion rupiah).	This article has been deleted and is no longer applicable. This act is no longer punishable, but is subject to administrative sanctions.

Source: Author's Processing from Law 32/2009 and Job Creation Law

At the trial level, the Supreme Court issued Supreme Court Regulation 1/2024 and restorative justice is defined as: "*Restorative Justice is an approach in handling criminal cases that is carried out by involving the parties, including victims, victims' families, defendants/children, families of defendants/ children, and/or other related parties, with processes and objectives that seek recovery, and not just retaliation*" (Article 1 point 1).

Based on the definitions in the MoU on Restorative Justice, Police Regulation 8/2021, and Prosecutor's Regulation 15/2021, it is explicitly stated that restorative justice is manifested by resolving cases, and the perpetrators are not prosecuted further. In fact, it is not certain that the victims of criminal acts have their rights fully restored. The restorative justice policy should be based on the principles of balance, restoration, and compensation from the perpetrators of criminal acts to the victims. Law enforcement so far has prioritized retaliation for perpetrators of criminal acts in the form of prison sentences, while the damaged or polluted/damaged environment and the communities that are victims do not receive recovery and compensation. Prison sentences are not enough to encourage a deterrent effect.

The author argues that the conception of law enforcement based on environmental restorative justice in Indonesia is not the termination of criminal cases, but rather expanding the responsibility of the perpetrator to restore the environment and compensation to the state and society to restore it to its original state. Law enforcement, through the corridor of environmental restorative justice, allows case resolution outside the conviction-based scheme. Alosi and Hamilton (2021: 487) state that law enforcement must also be able to restore the losses suffered by victims. The essence of restorative justice is the empowerment, participation, and healing of the victims. Environmental crimes can have a wide range of victims, including individuals, current and future generations, and the environment, such as plants, animals, and ecosystems.

Environmental crimes entail serious impacts, so the case cannot be terminated. This is aligned with the provisions of Article 5 paragraph (8) of Prosecutor's Regulation 15/2021, which states that there are five categories of cases that are excluded from termination of prosecution based on restorative justice, those are: crimes against state security, the dignity of the president and vice president, friendly countries, friendly heads of state and their deputies, public order, and morality; crimes that are threatened with a minimum criminal penalty; narcotics; environmental crime; and corporate crime.

This study highlights restorative justice from the victim's perspective. The author argues that the victims of environmental crimes are not only the community and the state, but also the environment. The environment has been considered as a human legal subject that has certain rights. Some countries, such as Bolivia and Colombia, acknowledge environmental rights as human legal subjects. The Bolivian government guaranteed environmental rights in the Law on the Rights of Mother Earth in 2010, including the right to life and the right to be free from pollution. In Colombia in 2016, the Constitutional Court, in decision number T-622, recognized the Atrato River as a legal subject. In 2018, the Supreme Court of Colombia, in decision number STC4360-2018, admitted that the Colombian Amazon has the right to be categorized as a legal subject (Vargas-Chaves, 2020). Building on the work of Ufran & Amaral (2019), crime victims include even broader entities. Ufran & Amaral (2019) refer to them as unconventional victims, namely species of living beings other than humans, the environment, and future generations.

How to Implement the Environmental Restorative Justice Approach?

Law enforcement based on environmental restorative justice can be actualized through the application of multiple legal instruments of environmental law. The utilization of administrative sanctions, civil

lawsuits through the courts, and criminal sanctions can be carried out partially or simultaneously (in parallel). The use of these three instruments needs to be carried out appropriately, carefully, fairly, and transparently with the aim of achieving optimal compliance and accountability.

It should be emphasized that the application of a combination of legal instruments is not *ne bis in idem* as stipulated in Article 76 paragraph (1) of the Criminal Code. Administrative sanctions, civil law, and criminal sanctions have different objectives. Administrative law is aimed at prevention and/or mitigation; criminal law to generate suffering and deterrent effects; and civil law to pursue compensation and restoration of rights. Each instrument is complementary, meaning that the advantages of one instrument can cover up the weaknesses of the other.

The use of administrative sanctions is often compared to criminal instruments. The capacity to present a deterrent effect is one of the excellences of criminal sanctions compared to administrative sanctions, which are considered only to prioritize the termination of violations. Administrative sanctions can function effectively if there is support from criminal sanctions, so as to strengthen negotiations in administrative law enforcement (Nagara, 2017).

Administrative sanctions function as instruments of control, prevention, and countermeasures for acts prohibited by positive law. The application of administrative law is prioritized for violations that are formal in nature and are aimed at stopping violations and immediate environmental restoration. Administrative sanctions are aimed at actions, while criminal sanctions are aimed at people who commit actions. Criminal sanctions are expected not only to deter, but also other people from committing the same act (*generale preventive*) (Hamzah, 2016). If comparing which is more severe between administrative sanctions or criminal sanctions, then the answer is relative. Criminal sanctions are not necessarily more severe than administrative sanctions. For example, administrative sanctions for business entities in the form of revocation of business licenses may be more severe than criminal sanctions. Therefore, the use of administrative sanctions or criminal sanctions must be chosen carefully and accurately.

The application of administrative sanctions in the form of administrative fines has the potential to be ineffective when imposed on businesses and/or activities that reap large profits from violations. Those businesses and/or activities will simply pay administrative fines that could be far smaller than the profits from illegal activities. In this condition, criminal sanctions can be applied to ensure a deterrent effect and compliance, especially criminal penalties for corporations and the management, as well as additional sentences for profits confiscation.

Another possible strategy is the combination of criminal/administrative and civil law. Hamzah (2016) recommends a civil process attached to the criminal proceeding to mutually strengthen legal instruments. Basically, the criminal sanctions imposed do not eliminate the civil relationship between individuals/corporations and victims of environmental pollution and/or destruction. Civil liability is still alive despite criminal or administrative sanctions. Civil liability can appear from violations of administrative obligations or criminal obligations.

In environmental dispute resolution, there are also out-of-court resolution instruments to claim environmental/community compensation and environmental restoration. In out-of-court dispute resolution, the government can be a neutral mediator or facilitator when there are community groups that become the victims of environmental pollution and/or environmental destruction. This situation dismisses the doubts of Pardede & Santoso (2022) who state that weak communities that become victims are vulnerable to being influenced by the power relations of business actors and/or activities that usually have a higher bargaining power. The

author also cites the opinion of Kurniawan and Supanto (2023) that out-of-court dispute resolution has three advantages. First, the aspect that is restored is not only the polluted or damaged environment, but also the restoration of the relationship between the perpetrator of environmental pollution/damage and the victim through the provision of compensation. Second, the decent name and reputation of the corporation is restored. Third, out-of-court mechanisms can prevent the accumulation of cases in the courts.

However, Pardede & Santoso (2022) emphasize that the provisions of Law 32/2009 do not allow for the transfer of criminal cases to the environmental dispute resolution path outside the court. This is stated in the formulation of Article 85 paragraph (2) of Law 32/2009 that: "*Dispute resolution outside the court does not apply to environmental crimes as regulated in this Law*." This postulation confirms that all acts that fulfill criminal elements cannot be resolved through out-of-court schemes.

The actualization of multiple legal instruments of environmental law is effective in claiming environmental restoration and pursuing the accountability of the intellectual actors. Environmental recovery can be endorsed by implementing administrative sanctions in the form of government coercion, civil lawsuits, and/or out-of-court dispute resolution to request certain actions in the form of environmental restoration, and criminal conviction in the form of additional sentence. It should be underlined that from these three instruments for demanding environmental recovery, only one instrument can be chosen and cannot be imposed twice. For example, when a corporation is subject to administrative sanctions of government coercion in the form of an order to carry out environmental restoration, then the corporation at the same time cannot be charged with additional criminal sentence for environmental restoration.

The choice of alternative instruments does not mean eliminating criminal sanctions or providing lighter sanctions. This idea is in line with the provisions of Article 3 paragraph (2) of Supreme Court Regulation 1/2024, that: "*The application of the principle of Restorative Justice does not aim to eliminate criminal liability*." The environmental organization Walhi also rejects the idea that restorative justice is a concept that softens the punishment of criminal offenders (Sahputra 2022). Article 78 of Law 32/2009 explicitly argues that administrative sanctions do not eliminate criminal liability, which postulates: "*Administrative sanctions as referred to in Article 76 do not exempt the person in charge of the business and/or activity from the responsibility for restoration and criminal liability*."

As the name implies, environmental restorative justice must restore the perpetrator. The selection of the type of sanction needs to be adjusted to the complexity of the violation and the good intention of the perpetrator to improve themselves. The imposition of sanctions is not intended to dissolve or collapse the business entity. Environmental restorative justice is a moderate solution to pursue individual or business entity accountability. In this case, the Author agrees with Kurniawan and Supanto (2023) that the application of restorative justice can prevent retributive punishment or retaliation against perpetrators of the crime. A business entity that is involved in a crime does not need to be closed, as long as it carries out its environmental restoration obligations and compensates the state and community for losses. Environmental restorative justice also demands accountability from the main perpetrator, mastermind, as well as the beneficial owner, not the field executors. However, increased sanctions are very possible in the event of a serious environmental impact and are technically difficult to restore, or the violation is deliberately committed and for economic gain.

The following is a summary of the advantages and disadvantages of each environmental legal instrument (Appendix 1).

Applying multiple legal instruments needs to take into consideration the principle of subsidiarity, namely whether criminal law is the first step (*primum remedium*) or the ultimate step (*ultimum remedium*). With the enactment of the Job Creation Law, the law enforcement paradigm emerged from *primum remedium* to *ultimum remedium*. Some administrative violations that were previously subject to criminal sanctions are now subject to administrative sanctions; those are violations related to the absence of permits in the environmental sector.

Several European countries adopt the principle of *ultimum remedium*, for example, Germany, Austria, Portugal, and the Netherlands. These four countries rely on administrative law as the primary instrument in prosecuting environmental violations. In Germany, administrative fines are used to punish more than 50 percent of environmental violations (Faure & Svatikova, 2012). Criminal sanctions are only directed at individuals and not corporations, so corporations are subject to administrative and civil sanctions. In addition, criminal sanctions are only applied to very serious violations.

The same paradigm has also emerged in the United States. Administrative sanctions are an important part of the environmental enforcement regime. To increase compliance, the United States Environmental Protection Agency (USEPA) issues Administrative Compliance Orders to encourage compliance as well as fines. In 2022, USEPA settled 1,650 civil and administrative cases. This resulted in a reduction of 95 million pounds of pollution and the receipt of USD154 million in fines (USEPA, 2023). Major changes have also taken place in the United Kingdom and Belgium, countries that initially relied heavily on criminal law as the main instrument in environmental cases. In the United Kingdom, the enactment of the Regulatory Enforcement and Sanctions Act of 2008 authorized environmental agencies to apply alternative sanctions, namely civil monetary sanctions. A similar change occurred in Belgium, where cases that do not enter the prosecution stage can be referred to the administrative sanction (Faure, 2017).

Based on studies from Kurniawan & Supanto (2023) and Anggraini & Amrullah (2023), environmental restorative justice is applied through the *ultimum remedium* principle. According to this view, criminal sanctions should be excluded and replaced with other settlement mechanisms. However, these studies do not fully analyze the criteria for criminal offenses in Law 32/2009 that can be subject to the *ultimum remedium* principle. In Law 32/2009, not all criminal offenses can be applied to the *ultimum remedium* provision because there are gradations of criminal acts and different material impacts.

The author divides environmental violations in Law 32/2009 in conjunction with the Job Creation Law into four categories. Category I is a business who does not undertake the obligations of the business permit or government approval, but the act has not caused any impacts on human health and/or safety. Violations in Category I are subject to administrative sanctions, to improve environmental governance and the capacity of the business in fulfilling the requirements of the business permit or government approval.

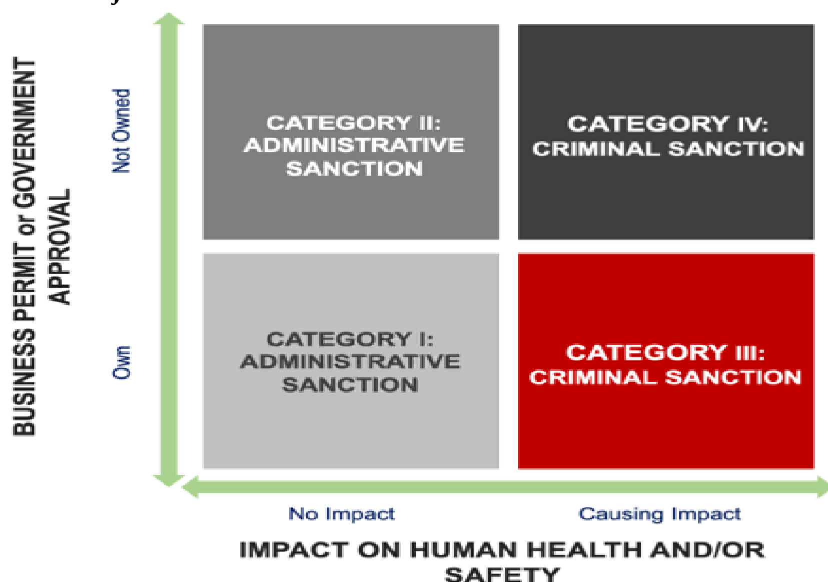
Category II is a business exercised without a business permit or government approval, but has no impact on human health and/or safety. Before the Job Creation Law, violations of this category were subject to criminal sanctions. The implementation of the Job Creation Law makes Category II violations subject to administrative sanctions. Administrative sanctions that can be applied to Category II violations are written warnings, government coercion, and administrative fines.

Category III is an act of a business permit or government approval holder that results in human health and/or safety impacts. Even though the business is equipped with a business permit

or government approval, Category III violations are subject to criminal sanctions. Criminal sanctions are also imposed on Category IV violations, namely businesses without a business permit or government approval and resulting in human health and/or safety impacts. Category III or Category IV violations can be punished with criminal sanctions in accordance with Article 98, Article 99 paragraph (2), or Article 99 paragraph (3) of Law 32/2009. It should also be noted that even if there is an excess of environmental standards that results in environmental pollution and/or environmental damage, the act is not necessarily punishable if it occurs due to negligence, as stipulated in Article 82B paragraph (2) of Law 32/2009.

It is incorrect to assume that criminal sanctions can only be implemented after the application of administrative sanctions. There are still eleven formal criminal offenses that can be directly subject to criminal sanctions according to Law 32/2009 in conjunction with Job Creation Law, those are: a) releasing and/or distributing genetically modified products into environmental media that violates the regulations (Article 101); b) producing the waste of hazardous and toxic materials without managing it (Article 103); c) dumping waste and/or materials into environmental media without permit (Article 104); d) importing waste into Indonesian territory (Article 105); e) importing the waste of hazardous and toxic materials into Indonesian territory (Article 106); f) importing prohibited hazardous and toxic materials according to regulations into Indonesian territory (Article 107); g) burning land (Article 108); h) officials issuing environmental approvals without being equipped with an Environmental Impact Assessment or Environmental Management Effort and Environmental Monitoring Effort (Article 111); i) officials intentionally not conducting inspection resulting in environmental pollution and/or environmental damage and human death (Article 112); j) providing false information, misleading, removing information, damaging information, or providing incorrect information in supervision and law enforcement (Article 113); and intentionally preventing, obstructing, or inhibiting the duties of environmental inspector and/or civil servant investigator (Article 115).

Figure 1. **The Categories of Environmental Violations in Law 32/2009, in Conjunction with the Job Creation Law**



Source: Processed Data

In addition, criminal sanctions are non-negotiable if the act causes injury, harm to human health, death of people, or the crime is committed intentionally. The element of intent in a crime can be proven, among others, through: the act is intended to save costs or for profit seeking, the act is an order or will of the business leader, or the act occurs repeatedly without any prevention and mitigation efforts.

In the condition that the actions fulfill the elements of an environmental crime, criminal responsibility must still proceed, instead of suspending the case. In fact, in the criminal realm, there are also restorative instruments for restoration, those are criminal fines, additional sentence for profit confiscation, and money laundering conviction (for recovery of state losses), as well as additional sentence for restoration due to criminal acts (for environmental restoration). In addition, the execution of a criminal verdict is more effective because the public prosecutor, as the executor, has the authority to take coercive measures so that the convict executes the verdict. The author cites the argument from Pardede & Santoso (2022), which states that restorative justice does not have to be achieved by diverting cases to non-criminal channels. The implementation of restorative justice does not seek to negate the role of the criminal justice system, but rather looks forward to a resolution of cases that is embedded with a spirit to restore the negative impacts caused by criminal acts.

Table 3. **Law Enforcement Authority and Legal Innovation in Law 8/2010**

No.	Authority	Article in Law 8/2010
1	Criminalization of gatekeepers/parties who facilitate money laundering (*third-party money launderer*)	Article 4
2	Criminalization of parties who receive or enjoy the proceeds of crime (*passive money launderer*)	Article 5
3	Criminalization of corporations	Article 6
4	Additional sentence for corporations	Article 7 paragraph (2)
5	Asset confiscation for corporations	Article 9 paragraph (1)
6	Criminal penalties for parties who participate in an attempt, assist, or conspire to commit money laundering	Article 10
7	Anti-tipping-off regulation	Article 12
8	Exceptions to confidentiality provisions	Article 28
9	Temporary suspension of transactions	Article 65
10	*In rem* asset confiscation	Article 67 paragraph (2)
11	Enforcement of money laundering does not require first proving the predicate crime.	Article 69
12	Order to financial service providers/goods and services providers to postpone transactions regarding assets	Article 70
13	Order to financial service providers/goods and services providers to block assets	Article 71
14	Request for asset information to financial service providers/goods and services providers	Article 72
15	Recognition of electronic evidence	Article 73
16	Reverse burden of proof principle	Article 77 and Article 78
17	*In absentia* law enforcement	Article 79
18	Protection for witnesses and informants	Article 83 - Article 87
19	Request for financial transaction information to FINTRAC	Article 90

Source: Processed by the Author from Law 8/2010.

The author also wants to add the latest legal developments in Indonesia, namely the authority of environmental investigators to investigate money laundering. This authority is granted through the Constitutional Court Verdict Number 15/PUU-XIX/2021. Criminalization of money laundering originating from environmental crimes will strengthen the deterrent effect and liability of the perpetrators. Individuals or corporations who commit money laundering certainly have evil intentions (*mens rea*) and deliberately commit the predicate crime for profit motives. Enforcement is very necessary to prevent and eradicate fraud in the business sector.

Money laundering law enforcement increasingly adds a restorative nuance, because law enforcement officials can utilize asset recovery instruments against state losses and punish the beneficial owners. There are several advantages when the officials use money laundering instruments in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (Law 8/2010), including in table 3.

5. CONCLUSION

After the enactment of the Job Creation Law, there have been restorative efforts by the government to decriminalize several administrative violations in Law 32/2009. Law enforcement based on environmental restorative justice is not the termination of criminal cases, but rather the requirement of the perpetrator's liability to restore the environment and compensate the state and society through various legal instruments in Law 32/2009. The beneficiaries and main perpetrators of criminal acts must restore the condition of the victim, especially the environment that has been polluted and/or damaged. Law enforcement based on environmental restorative justice in Indonesia can be implemented through multiple legal instruments, those are the applicatio-partially or in parallel-of administrative sanctions, environmental dispute resolution, and criminal law. Environmental restoration can be achieved through administrative sanctions of government coercion, civil lawsuits, and/or out-of-court dispute resolution to carry out certain actions (environmental restoration), as well as additional criminal sentences to restore the damaged and/or polluted environment.

Meanwhile, state losses can be recovered through the application of administrative fines, civil lawsuits, and/or out-of-court dispute resolution for compensation settlement, as well as criminal fines and additional criminal sentences for confiscation of profits. Law 32/2009 also has an instrument to claim community losses through out-of-court dispute resolution. The community also has the right to file a civil lawsuit directly to claim community losses. To pursue the main perpetrators and beneficial owners, environmental criminal investigations can be followed up with money laundering criminalization. Law enforcement, especially against business entities, is not intended to stop business operations, but rather to encourage the business to comply with environmental protection principles. Companies are expected to increasingly internalize the principle of prudence, evaluate risk management, improve standard operating procedures, and reshuffle managerial boards that are not pro-environment.

This research also strengthens the hypothesis that restorative justice in the environmental sector can also be realized through criminal law, because criminal law also has restorative instruments for recovering state and community losses, instruments for environmental restoration, and instruments for penalizing intellectual actors and beneficial owners.

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Appendix 1. **Strengths and Weaknesses of Three Environmental Legal Instruments**

Strengths	Weaknesses
Administrative Sanctions	
a. Prioritize remediation over punishment. b. Does not require a judicial process, so it is fast and low-cost. c. Under certain conditions, administrative sanctions are more wary by corporations, especially administrative sanctions of license suspension/revocation and administrative fines. This encourages compliance to minimize any mistakes in business operations. d. There is a monetary penalty in the form of an administrative fine, and it is deposited into state revenue.	a. Lack of public scrutiny, in contrast to civil and criminal decisions that are accessible to the public. b. Administrative law often tends to prioritize persuasive compliance over voluntary compliance (Faure and Visser 2003, cited in Nagara 2017: 21). c. In certain cases, the effectiveness of administrative law still requires the support of criminal law.
Environmental Dispute Resolution in Court (Civil Lawsuit)	
a. The judge has the discretion to order the defendant to take certain actions, such as stopping the source of pollution and/or restoring the environment. b. Maximizing financial penalties (compensation) for the defendant. c. Can apply the principle of strict liability, so that the plaintiff does not need to prove the defendant's fault.	a. The duration can take years and cost a lot of money because it starts from the field verification process, drafting the lawsuit, the legal efforts at the Supreme Court, and executing the verdict. b. The verdict is not necessarily absolute. The nominal loss or environmental recovery in the verdict can still be negotiated by the plaintiff and defendant. c. The judge is passive, so the plaintiff must calculate his losses accurately. d. The execution of the verdict is often hampered due to poor commitment from the head of the district court. e. In a civil lawsuit, the government cannot claim losses from the community. Losses experienced by the community must be requested directly by the community form the court.
Out-of-Court Environmental Dispute Resolution	
a. Prioritize dialogue, voluntariness, and a sense of ownership of the disputing parties. b. Guarantee the confidentiality of the identities of the parties involved (Kurniawan and Santoso 2023: 459). c. Settlement can be carried out more quickly and cheaply than through the courts, so that the polluters can immediately pay the damages or take certain actions. d. The government can act as a mediator between the community and the polluters. e. Encourage the enterprise to fundamentally improve business operations so that they are orderly and environmentally friendly. This is different from several civil lawsuit cases that actually make companies fight back. f. The government can claim environmental losses or facilitate the payment of community losses.	a. Cannot be settled when the case is subject to criminal and/or civil lawsuit proceedings. b. Honesty and commitment are required until completion from both parties, as well as a willingness to share resources. c. The value of compensation and/or environmental restoration may be smaller than its original value, because it depends on the ability of the polluters. d. There is no mechanism that can force the parties involved to execute the agreement (prone to default).

Strengths	Weaknesses
Criminal Law	
a. Criminal law gives investigators the authority to use coercive measures to find the main perpetrators, such as examining witnesses and suspects, confiscating, and requesting financial data and documents from relevant agencies. b. There are criminal sanctions in the form of imprisonment for deterrent effects and behavioral changes, as well as criminal fines for financial punishment. c. Judges can apply additional penalties, such as environmental restoration or confiscation of profits, to increase the deterrent effect and improve conditions. d. Prosecution of environmental cases can be followed up with money laundering prosecution to increase the deterrent effect, asset recovery, and find all beneficiaries.	a. The duration can take years, starting from the process of collecting initial information, investigation, prosecution, and up to the legal efforts at the Supreme Court. b. It is difficult to prove environmental cases without strong data and forensic support. c. It is expensive, because it requires experts, data and information, and coordination with related agencies. d. Investigations can be hampered if there is a pretrial lawsuit.

Source: Processed Data