



Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law

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Abstract: The Indonesian Criminal Code regulates as a legal subject is a natural person. The development of criminal law in Indonesia has made the perpetrators not only individuals but also corporations. Where corporations are legalised by the state through legislation. One of the Indonesian laws that regulates corporations as offenders is Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management. The companies in environmental management can control community land with the status of Cultivation Rights Title and Building Rights Title. In reality, however, the regulation of companies as perpetrators of crimes is still weak and there is no uniformity of regulation to have a deterrent effect. The method used in this paper is normative jurisprudential legal research, focusing on the identification of criminal sanctions against corporate environmental offenders, with a legal approach. The results of the research showed that the criminal regulation against the perpetrators of criminal acts has been regulated as an ultimum remedium for certain cases, but it is less assertive towards the victims of criminal acts and requires a firm and fair regulation and binds all parties involved in the legalisation of the corporation and the protection of its victims. The legal regulation of corporate criminal offences in the Criminal Code has not been clearly regulated, but in the Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management, as one of the sectoral laws, the regulation has been carried out, but has not adopted the legal wisdom prevailing in the community, although it has been established.

Keywords: Legal forms, corporations, environmental crimes, environmental protection, environmental law

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Abstrak: *KUHP Indonesia mengatur bahwa subjek hukum adalah orang perseorangan. Perkembangan hukum pidana di Indonesia membuat pelakunya tidak hanya orang perseorangan tetapi juga korporasi. Dimana korporasi dilegalkan oleh negara melalui peraturan perundang-undangan. Salah satu undang-undang di Indonesia yang mengatur korporasi sebagai pelaku tindak pidana adalah Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Perusahaan dalam pengelolaan lingkungan hidup dapat menguasai tanah masyarakat dengan status Hak Guna Usaha dan Hak Guna Bangunan. Namun pada kenyataannya, pengaturan terhadap perusahaan sebagai pelaku tindak pidana masih lemah dan belum adanya keseragaman pengaturan untuk menimbulkan efek jera. Metode yang digunakan dalam penelitian ini adalah penelitian hukum yuridis normatif, dengan fokus pada identifikasi sanksi pidana terhadap pelaku tindak pidana lingkungan hidup korporasi, dengan pendekatan perundang-undangan. Hasil penelitian menunjukkan bahwa pengaturan pidana terhadap pelaku tindak pidana telah diatur sebagai upaya terakhir (ultimum remedium) untuk kasus-kasus tertentu, namun kurang tegas terhadap korban tindak pidana dan memerlukan pengaturan yang tegas dan adil serta mengikat semua pihak yang terlibat dalam penegakan hukum terhadap korporasi dan perlindungan terhadap korban. Pengaturan hukum tindak pidana korporasi dalam KUHP belum diatur secara jelas, namun dalam Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, sebagai salah satu undang-undang sektoral, pengaturannya sudah dilakukan, namun belum mengadopsi kearifan hukum yang hidup dalam masyarakat, meskipun sudah ditetapkan.*

Kata Kunci: *Bentuk hukum, korporasi, kejahatan lingkungan, perlindungan lingkungan, hukum lingkungan*

Introduction

In general, the Indonesian Criminal Code regulates individuals, as in the general provisions, point 14 states that "a suspect is a person who, because of his actions or circumstances, should be suspected, based on preliminary evidence, of being the perpetrator of a criminal offence". Then, in point 15, it goes on to say that "the accused is a suspect who is prosecuted, investigated and tried in court". Thus, in the Criminal Code, what is considered a legal subject is a natural person.

At present, the perpetrators of criminal acts are not only individuals, but also companies, which are legalised by the state, as well as management related to the environment, since land management, other than protected forests, is almost entirely controlled by the owners of business use rights or building use rights, which are usually owned by companies or state-owned

enterprises/regional enterprises, which are legal entities created by the government so that their existence is determined by law.¹

Structurally, the government is responsible for environmental damage. For example, the Ministry of Forestry has issued a general license to an excavation company. If environmental damage occurs, the company does not care because it has a license to operate.² From a legal point of view, this is correct, but when it comes to exploring and exploiting other materials that are found to be of high value, the business is expanded by clearing the forest as well as digging it up. This is clearly a structural mistake because it causes more damage. In this case, we can say that the structural perpetrators are the executive or the legislature.

At present, environmental management is mostly carried out by corporations, but corporations have not yet become the subject of criminal prosecution.³ Although there are many laws and regulations that regulate it, they are still different, some stipulate that only management can be held accountable, and some stipulate that the corporation is a legal entity.⁴ The Environmental Protection and Management Law is one of the laws that can be held accountable.⁵ There is no uniform and consistent pattern of corporate punishment, including for environmental crimes, such as "when the corporation commits a crime and who is involved and when is accountable and what sanctions are effective", especially when environmental crimes occur long after the encroachment or exploitation, recognizing that corporations are not just

¹Sherajul Mustajib Sharif and Md Kamal Uddin, "Environmental Crimes and Green Criminology in Bangladesh," *Criminology and Criminal Justice* 23, no. 3 (2023). Libor Klimek, "European Approach To Combat Environmental Crime: Legal And Institutional Aspects," *Lawyer Quarterly* 13, no. 1 (2023). Nanci Yosepin Simbolon, et.al., "Study On The Reconstruction of The Concept of Criminal," *Journal of Law and Sustainable Development* 11, no. 10 (2023), p. 1–24.

²Hartiwiningsih Hartiwiningsih, "Problematika Hukum Pidana Lingkungan Hidup Dan Upaya Penanggulangannya," in *Prosiding Seminar Nasional & Kongres Pembina Hukum Lingkungan Se-Indonesia*, ed. Amiruddin A. Dajaan Imami et. al., (Bandung: Fakultas Hukum Universitas Padjadjaran, 2013), p. 433–445.

³Supriyadi Widodo Eddyono, "Kompilasi Putusan Mahkamah Konstitusi Dan Perubahan Kitab Hukum Acara Pidana (KUHAP) Indonesia" (Jakarta, 2017).

⁴Pavel Bureš, "International Legal Personality of Transnational Corporations - Any Chance for the Theoretical Shift with Respect to a Legally Binding Instrument on Human Rights and TNCs?," *International and Comparative Law Review* 22, no. 2 (2022). Livia Ventura, "Philanthropy and the For-Profit Corporation: The Benefit Corporation as the New Form of Firm Altruism," *European Business Organization Law Review* 23, no. 3 (2022). S. Jose, "Environmental Impacts and Benefits of Agroforestry," *Environmental Science*, 2019.

⁵Michael O. Maume and Matthew J. Greife, "Giving the Green Light: Corporate Environmental Crimes, the Treadmill of Production, and Environmental Justice," *Crime, Law and Social Change* 79, no. 3 (2023). Edra Satmaidi, "Konsep Deep Ecology Dalam Pengaturan Hukum Lingkungan," *Supremasi Hukum: Jurnal Penelitian Hukum* 24, no. 2 (2017).

fictional entities,⁶ but that then business they do is real and can harm individuals and the wider community, and that corporations are very powerful in maintaining their existence through the legality of their business.⁷

The current Criminal Code cannot be used as a basis for corporate criminal liability, so to overcome this, legal rules are needed that can ensnare everyone involved,⁸ both those who legalize and those who run the corporation, this is what attracts me to further research in a scientific work with the problem of how the legal regulation of corporate crime and how the legal form and determination of penalties for perpetrators of corporate crime against the environment.⁹

This research uses normative legal research methods,¹⁰ secondary data with a legislative approach,¹¹ primary legal materials used are the 1945 Constitution, the Penal Code, Law No. 32 of 2009, and other related laws and regulations. Secondary legal materials consist of books, articles related to the research. Tertiary legal materials consist of encyclopedias and legal dictionaries. All the legal materials are collected based on the research problem and then studied in depth to describe the legal pattern of corporate offenders.

Discourse on Legal Regulation of Corporate Criminal Offences

The corporation is a concept that has developed as a result of modernization, where in the field of civil law corporations are known as legal entities. legal entities. Meanwhile, corporations are also known among criminal law experts. criminal law experts.¹² The quality, quantity, and industry in which

⁶Sabungan, et.al., "Pembaharuan Hukum Pidana Masa Kini," 2019, p. 17.

⁷Muhammad Natsir, *Korporasi Antara Sanksi Dan Tindak Pidana Lingkungan Di Aceh*, ed. Meta Suriyani, (Yogyakarta: Deepublish, 2019). Mahrus Ali, "Overcoming the Dilemma between the Clarity and Flexible Norms in Environmental Offenses," *De Jure: Jurnal Hukum dan Syariah* 14, No. 2 (2022).

⁸Muhammad Natsir and Andi Rachmad, "Penetapan Asas Kearifan Lokal Sebagai Kebijakan Pidana Dalam Pengelolaan Lingkungan Hidup Di Aceh," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (2018), p. 468–489.

⁹Adeyemi Adebayo and Barry Ackers, "Insights on Corporate Governance Practices of State-Owned Enterprises (SOEs)," *Journal of Accounting and Investment* 23, no. 1 (2022), p. 170–195.

¹⁰Chunuram Soren, "Legal Research Methodology: An Overview," *Journal of Emerging Technologies and Innovative Research (JETIR)* 8, (2021), p. 1–44.

¹¹Bachtiar, *Metode Penelitian Hukum*, ed. Oksidelfa Yanto (Tangerang: UNPAM PRESS, 2018). Richard F Elmore, "Backward Mapping: Implementation Research and Policy Decisions," *Political Science Quarterly* 94, no. 4 (1979), p. 601–16. Patricia Leavy, *Research Design: Quantitative, Qualitative, Mixed Methods, Arts-Based, and Community-Based Participatory Research Approaches* (New York: The Guilford Press, 2017).

¹²Thomas Schröder, "Corporate Crime, the Lawmaker's Options for Corporate Criminal Laws and Luhmann's Concept of 'Useful Illegality,'" *International Journal of Law,*

a company operates all appear to be growing at an accelerated rate these days. A corporation is an individual that is a legal entity; a corporation or company here means an association or organisation that is required by law such as a company. is an association or organisation that is required by law such as a human being (persona) as the bearer (or owner) of rights and obligations. a human being (persona) as the bearer (or owner) of rights and obligations has the right to sue or be sued in court.¹³

Corporations have a significant part in human existence on Earth. Because of the increasing reliance of humans on businesses, it is feasible that these entities will do whatever it takes to maximize their profits. Thus, it is no longer unusual for firms to When a firm violates relevant regulations, it is no longer unusual.¹⁴ Experts in criminal law and criminology frequently use the term "corporation" to refer to what is recognized as a legal person, or "rechtsperson" in Dutch, in other legal contexts, especially civil law.¹⁵

The definition of the corporation cannot be separated from the civil law. Therefore, the civil law definition of the corporation, which is a synonym of the legal person, will be presented first. When explaining the civil law concept of corporation, two terms tend to appear, namely the words legal entity and corporation, which are used as differentiators when the author explains the criminal law concept of corporation.

A private or civil legal entity is a legal entity established under civil or civil law, which concerns the personal interests within the legal entity. This legal entity is a private legal entity established by a private person for certain purposes, namely profit, social education, science, politics, culture, art, sport and others, in accordance with the laws in force. Meanwhile, public legal entities are legal entities established under public law, which concern the interests of the public, the people or the state in general. These legal entities are institutions created by those in power on the basis of legislation, which is administered by the executive, the government or a governmental body subordinate to it. Examples of public legal entities are states, provinces, districts, villages and others.¹⁶

Crime and Justice 57 (2019). Iván Navas Mondaca and Antonia Jaar Labarca, "Corporate Criminal Liability in Chilean Case Law," *Politica Criminal* 13, no. 26 (2018).

¹³Suhartati, et. al., *Buku Ajar: Anatomi Kejahatan Korporasi* (Surabaya: PT. Revika Petra Media, 2018).

¹⁴Muhammad Ridwan Lubis, "Criminal Sanctions Against Corporations Committing Forest Burning: A Perspective of Environmental Law in Indonesia," *Journal of Law and Sustainable Development* 11, no. 12 (2023).

¹⁵Noura Taha Aloumi, "Corporate Criminal Liability for Bribery in Kuwait: Issues in Disclosing Commissions," *Journal of Financial Crime* 29, no. 3 (2022).

¹⁶Irina Z. Ayusheeva, "The Concept of Public Association: Problems of the Concept Definition under the Civil Law of the Russian Federation," *Kutafin Law Review* 10, no. 1 (2023). Rodliyah Rodliyah, et.al., "Konsep Pertanggungjawaban Pidana Korporasi (Corporate

Compared to the civil law idea, this meaning of legal person is more expansive. Alternatively, it may be argued that while all companies are legal organizations, some corporations are not; an example of this would be an organization made up of individuals or assets that aren't considered legal entities, like a company.¹⁷ Declaring a corporation to exist is not hampered by the unfairness and flaws in the law about what constitutes a corporation, particularly if the organization is currently operating to support society and is, in fact, necessary.

In Indonesia, the position of the corporation as a subject of criminal law is currently only explicitly recognised in laws regulating offences outside the Criminal Code.¹⁸ This is because the Indonesian Criminal Code still adheres to the view of *societas delinquere non potest*, so it has not accommodated the position of corporations as subjects of criminal law. The few laws that have accommodated the position of corporations as subjects of criminal law are Law No. 8 Year 2010 on the Prevention and Eradication of Money Laundering, Law No. 41 Year 1999 on Forestry, and Law No. 32 Year 2009 on Environmental Management and Protection.¹⁹

It has been stated that the civil law definition of a company is narrow and the same as the definition of a legal person, thus it is also important to determine if the criminal law definition of a corporation also applies.²⁰ We will discover what counts as a topic of criminal law if we look at several rules that acknowledge the business as such. Considering corporations as subjects of criminal law, we shall investigate what constitutes a corporation under these laws. Considering corporations as subjects of criminal law, we shall investigate what constitutes a corporation under these laws.²¹

At present, environmental management is mainly carried out by companies, especially in relation to the management of environmentally related

Crime) Dalam Sistem Hukum Pidana Indonesia,” *Journal Kompilasi Hukum* 5, no. 1 (2021), p. 191–206.

¹⁷Pujiyono Pujiyono, *Hukum Perusahaan*, ed. M. Hadi Asrori (Surakarta: CV. Indotama Solo, 2014).

¹⁸Adhigama et. al., Budiman, *Indonesia Dalam Cengeraman Hukum Pidana: Catatan Situasi Reformasi Hukum Di Sektor Pidana Indonesia* (Jakarta Selatan: Institute for Criminal Justice Reform, 2018). Ishaq Ishaq, “The Debates Surrounding the Accommodation of Islamic Adultery Crime and Punishment into Indonesian Criminal Code,” *Journal of Indonesian Islam* 10, No. 1 (2016).

¹⁹Aulia Ali Reza, *Pertanggungjawaban Korporasi Dalam Rancangan Kitab Undang-Undang Hukum Pidana*, ed. Supriyadi Widodo Eddyono (Jakarta Selatan: Institute for Criminal Justice Reform, 2015).

²⁰Abdurrahman Alhakim and Eko Soponyono, “Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi,” *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019), p. 322–336.

²¹Adebayo and Ackers, “Insights on Corporate Governance Practices of State-Owned Enterprises (SOEs).”

businesses. Therefore, corporations should be subject to criminal offences and the laws and regulations that regulate them. However, there are still differences, some stipulate that only the management can be held accountable, and some stipulate that the corporation is a legal entity. In order for the corporation to be held accountable, this also applies in the environmental field.²² The definition of corporations as subjects of criminal law is still limited to certain criminal offences. The concept of the corporation was only popularised in 1997, in Law No. 5 of 1997 on Psychotropic Substances, in which Article 59 (3) states that the punishment, in addition to the conviction of the perpetrators, is a fine. Furthermore, Article 70 mentions that the punishment, in addition to being convicted, can also be a fine and additional punishment in the form of revocation of the business licence.

Based on Article 116 of Law No. 32 of 2009, it is specified that if an environmental offence is committed by, for or on behalf of an economic entity, criminal sanctions shall be imposed on the economic entity and/or the person who orders the offence. Article 117 of Law No. 32 of 2009 then confirms that the criminal sanctions imposed in terms of imprisonment and fines are increased by one third against the person who orders the offence. Article 118 goes on to state that, in the case of business entities, the sanctions imposed on business entities represented by authorised management are subject to additional penalties.²³

As a legal entity, there is no uniform and consistent pattern of punishment for corporations, including environmental crimes, such as "determining the time when the corporation commits an offence and the time of accountability and effective sanctions", moreover, environmental crimes occur long after the encroachment or exploitation, it is recognised that corporations are not just a fictional entity, but the business they do is something real and can harm individuals and the wider community, moreover, corporations are very strong in maintaining their existence with the legality of their business.²⁴

On the one hand, the perpetrators of environmental crimes can be traced back to cultural, structural and moral problems. Morally, it happens because today there is a demand that living in excess and luxury is the goal. In order to address this phenomenon, environmental ethics as taught by Islam or regional customary law need to be incorporated into a rule that binds all parties in the

²²Zainab Ompu Jainah, *Kapita Selektta Hukum Pidana*, ed. Intan Nurina Seftiniara (Tangerang: Tira Smart, 2018).

²³Renny Ariyanny et al., "Disgorgement of Profits: An Alternative Solution to Stolen State Assets' Recovery from Corporate Financial Crimes," *Hasanuddin Law Review* 9, no. 2 (2023), p. 139–154.

²⁴Hariman Satria, "Environmental Pollution: Assessing the Criminal Liability of Corporations," *Hasanuddin Law Review* 4, no. 2 (2018), p. 194–203.

exploitation of the natural environment.²⁵ For example, Aceh's Qanun on environmental management is based on, among other things, local wisdom, which means that local ideas that are wise, full of wisdom and good value should be embedded and followed by the community.²⁶

Article 118 of Law No. 32 of 2009 stipulates that if an environmental offence is committed by, for or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed on: the business entity represented by the authorised management as the functional actor, and/or the person who gave the order to commit the offence or the person who acted as the leader of the activity in committing the offence. If the environmental criminal offence is committed by a person who, by virtue of an employment or other relationship, acts within the scope of the business entity's activities pursuant to Article 116, the criminal sanction shall be imposed on the person who gave the order or the person who acted as the leader in the criminal offence, regardless of whether the criminal offence was committed individually or jointly; however, if the criminal offence is committed by virtue of an order pursuant to Article 117, the criminal sanction shall be imposed on the person who gave the order or the person who acted as the leader in the criminal offence.²⁷

Additional penalties directed at economic enterprises are also provided for by the Law on Environmental Management and Protection. These can include, as stated in Article 119, taking back any profits made from criminal offenses, closing down all or a portion of the business and/or activities location, fixing criminal offenses, having to take care of things that have been neglected without cause, and/or putting the company under guardianship for a maximum of three (three) years. While the language of Article 119 of the Law on Environmental Management and Protection appears to limit the imposition of this kind of punishment to "business entities" and exclude individuals, the prior legislation covered all criminal offenders, including both business entities and individuals.

The following are some of the criminal arrangements in environmental legislation:

²⁵Yusrizal, "Tanggung Jawab Korporasi Terhadap Korban Kejahatan Tindak Pidana Lingkungan Hidup," *Kanun: Jurnal Ilmu Hukum* 14, no. 2 (2012), p. 217–232.

²⁶Sudarti and Ainun Najib, "Punishment of Criminal Act of Accusing Adultery (Qadzaf) in Indonesian Positive Law: Perspective of Maqasid Al-Sharia," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 18, no. 2 (2021), p. 261–280.

²⁷Natsir and Rachmad, "Penetapan Asas Kearifan Lokal Sebagai Kebijakan Pidana dalam Pengelolaan Lingkungan Hidup di Aceh."

1. Liability for Environmental Crimes in General

a. Individual Person

Criminal responsibility for those who commit crimes against the environment is inextricably linked to the legislative policies found in laws and regulations. The Law on Environmental Protection and Management is the environmental legislation. "Every person" is the topic that can be held accountable, and according to Article 1 Point 32, "every person" is defined as "individual or business entity, both incorporated and unincorporated".

b. Corporation

Apart from private individuals, companies may also be the target of environmental crimes and may be held responsible for committing such crimes, taking into consideration the following factors:

- a. Legal and non-legal entities, such as organizations and the like, are included in corporations.
- b. Corporations have the option to operate as public or private entities (private judicial entities).
- c. Should it be determined that environmental offenses are carried out by an organization, the corporation's management and members may face individual or collective punishment.
- d. The company has a mismanagement problem.
- e. Legal entities may be held liable following the successful identification, prosecution, and conviction of the culpable individual inside the entity.
- f. With the exception of the death sentence and incarceration, companies are essentially subject to all criminal penalties and acts.
- g. The imposition of criminal penalties on businesses does not absolve individuals of their responsibility.
- h. When criminalizing businesses, care should be taken to consider their ability to control the business through the policies of the management or corporate executive officers, who have the authority to make decisions and have the corporation's acceptance of those decisions²⁸.

Individuals, groups of people, and companies in the form of foundations, legal entities, and other organizations can all be subjects of environmental crimes. Furthermore, environmental crimes committed by corporations may be prosecuted by a private court system or by a public one.²⁹

The principles of *primum remedium* and *ultimum remedium* are found in the environmental protection and management law. As a result, this

²⁸Zairin Harahap, "Penerapan Sanksi Pidana Di Bidang Lingkungan Hidup Menurut UUPH," *Jurnal Hukum IUS QUIA IUSTUM* 12, no. 30 (2005), p. 275–287.

²⁹Novalina Romauli Sirait, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Lingkungan Hidup Menurut UU No. 32 Tahun 2009," *New England Journal of Medicine* 2, no. 2 (2018), p. 230–248.

environmental law is a unique and specific procedural framework, and its application is derived from the general provisions of the Criminal Procedure Code under *lex specialis*. It is necessary or binding to apply procedural law to the *Ultimum remedium* principle since it is a unique, specialized, or special topic. Stated differently, certain articles of the Law on Environmental Protection and Management prohibit the operationalization of criminal law provisions where administrative law consequences effectively address legislative infractions mentioned in the article.

Examining the Law on Environmental Protection and Management reveals that it actually prioritizes out-of-court settlements. This is also consistent with the customary law that the Acehnese people have long adopted, which incorporates *diyāt* as a form of punishment. Known as "*dhiet*" for murder, "*sayam*" for persecution, and "*suloh*" as an attempt to make amends between the offender and the victim or his heirs, *diyāt* is still thought of as a successful punishment and is still followed by the community.³⁰ "Every settlement ends with *peusujuk* (bargaining flour) and *pemat jaro* (shaking hands), this is done every time criminal, civil, and other social problems are resolved."³¹

2. Forms of Criminal Sanctions in National Environmental Legislation

The choice of penalties under criminal law is not just a technical legal matter; rather, it is an integral component of the legislation's overall content. This means that, when it comes to the substance or material of the legislation at the legislative policy stage, the question of penalization, depenalization, criminalization, and decriminalization must be understood in its entirety.³² The types of penalty or types of Article 10 of the Criminal Code, are: Main penalty 1) Death penalty 2) Imprisonment 3) Criminal detention 4) Criminal fine 5) Exile (BPHN translation). Additional punishment 1) Deprivation of certain rights 2) Confiscation of certain goods 3) Announcement of the judge's decision.³³

The main penalties in Article 10 of the Criminal Code can be explained as follows:

³⁰Muhammad Natsir, "Perlindungan Hukum Terhadap Korban Penganiayaan Melalui Diyāt Dan Sayam Pada Peradilan Adat Aceh," *Arena Hukum* 12, no. 1 (2019), p. 91–112.

³¹Rusjdi Ali Muhammad, "Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law (Upaya Perdamaian Untuk Penyelesaian Perkara Pidana: Reaktualisasi Kearifan Lokal Dalam Hukum Pidana Indonesia)," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021), p. 171. Yusi Amdani, "Proses Pelaksanaan Penyelesaian Perselisihan Di Lembaga Peradilan Adat Aceh Tingkat Gampong (Desa)," *Asy-Syiráh: Jurnal Ilmu Syari'ah Dan Hukum* 48, no. 1 (2014).

³²Fernando I Kansil, "Sanksi Pidana Dalam Sistem Pemidanaan Menurut KUHP Dan Di Luar Kuhp," *Lex Crimen* 3, no. 3 (2014), p. 26–34.

³³Fernando I Kansil, "Sanksi Pidana Dalam Sistem Pemidanaan."

- a. Death penalty, regarding the death penalty, there are countries that have abolished this punishment, such as the Netherlands, but in Indonesia itself this death penalty is still applied for certain serious cases, although there are many pros and cons against this punishment. Suhaidi believes that the use of the death penalty in Indonesia is still relevant and does not need to be abolished because the law is in line with human rights, namely to protect the wider community, the death penalty is needed for serious crimes such as murder, drug dealers
- b. Imprisonment, imprisonment is divided into life imprisonment and temporary imprisonment. Life imprisonment is until death, while temporary imprisonment is a minimum of 1 year and a maximum of 20 years. The convict is obliged to stay in prison for the duration of the sentence and is obliged to do daily work according to the laws and regulations
- c. Imprisonment, this punishment is less severe than imprisonment and is imposed for minor crimes or misdemeanours. This punishment may alternate with imprisonment or a fine. The difference between detention and imprisonment is that in detention the minimum is 1 (one) day and the maximum is 1 (one) year, and the offender is in the form of violation, while in imprisonment is for life or between one day and 20 (twenty) years, as well as criminal offenders
- d. Fine, if the fine is not paid, it will be replaced by imprisonment
- e. Exile, this penalty is imposed for political reasons on people who have committed crimes punishable by imprisonment.³⁴

Additional penalties are combined penalties that are imposed together with the main penalties, such additional penalties include: a) Deprivation of certain rights; b) Confiscation of certain goods; c) Announcement of the judge's decision.³⁵ The impression is that the static law cannot keep up with the times, especially since law enforcement agencies do not take advantage of opportunities for legal discovery. What is regulated in the Criminal Code is a form of crime that existed at the time the Criminal Code was formed. Because the Criminal Code was created by the colonialists, who believed that the individual was the subject of the law, all of the aforementioned offenses are directed at the individual as the subject of the law.

³⁴Maria Ulfah, "Sanksi Pidana Pokok Dalam KUHP Dan RKUHP 2019 Sub Tema Tulisan: Sistem Perumusan Sanksi Pidana Dalam RKUHP," in *Prosiding Seminar Nasional Dan Call for Papers "Arah Kebijakan Hukum Pidana Indonesia, Analisis Terhadap Sejumlah Kebijakan Kriminal Kontroversial Dalam RKUHP"* (Bandung: Universitas Katolik Parahyangan, 2019), p. 247–270.

³⁵Erasmus A.T. Napitupulu et al., *Hukuman Tanpa Penjara: Pengaturan, Pelaksanaan, Dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2019).

The environmental protection and management legislation is a unique and particular arrangement of procedural law in general because it uses both the *primum remedium* and *ultimum remedium* principles. As a result, the Criminal Procedure Code's general provisions are implemented according to a *lex specialis*. It is necessary or required to apply procedural law to the concept of *ultimum remedium* because it is a unique, specialized, or particular topic.

Examining the Law on Environmental Management and Protection reveals that it actually prioritizes out-of-court settlements. This is also consistent with the customary law that the Acehnese people have long adopted, which incorporates *diyat* as a form of punishment. Known as "*sayam*" for persecution, "*dhiet*" for murder, and "*suloh*" as a peace effort between the offender and the victim or his heirs, *diyat* is still regarded as an effective form of retribution and is still respected by the community.³⁶

Forms of Criminal Sanctions in National Environmental Legislation

In this section, subtitles are written according to the content of those subtitles. The discussions in each section are comprehensively, logically, and systematically described. Articles 187–188 of the Criminal Code, which regulates fires, explosions, and floods, Article 191 of demolishing buildings to contain or channel water, Article 202 of putting dangerous goods into water used for public use, Article 497 of starting a fire on a public road that may cause a fire hazard, Article 500 of making explosive drugs without a permit, Article 501 of selling adulterated food or drinks, Article 502 of hunting in the forest without a permit, Article 503 of making noise or bothersome neighbors at night or near a house of worship, and Articles 548–549 of allowing livestock poultry walk in the garden or seeded land. The Environmental Protection Law was passed before the Criminal Code.

Article 10 of the Criminal Code contains the following regulations about the many forms of punishment that are allowed: 1. Death penalty; 2. jail; 3. imprisonment; 4. fine; and 5. penalty for dismissal. Then, Additional penalties are combined penalties that are imposed together with the main penalties, such additional penalties include: a) Deprivation of certain rights; b) Confiscation of certain goods; c) Announcement of the judge's decision.³⁷

The Indonesian Criminal Law, which until now is still considered sacred so that no changes have been made even though it is clearly in need of change or

³⁶Muhammad Natsir et al., "Inconsistency of Legal Norms For The Criminal Action of Zakat As A Source of Regional Original Income In Aceh," *Russian Law Journal* XI, no. 3 (2023), p. 445–456. Amdani, "Proses Pelaksanaan Penyelesaian Perselisihan Di Lembaga Peradilan Adat Aceh Tingkat Gampong (Desa)". Natsir, *Korporasi Antara Sanksi Dan Tindak Pidana Lingkungan Di Aceh*.

³⁷Rachmadan Eka Cipta and Ali Masyhar, "Controversial Criminal Punishment for Victim of the Spread of Immoral Chat," *Unnes Law Journal* 7, no. 1 (2021), p. 23–46.

reconstruction, especially regarding corporate crime. The current Criminal Code cannot be used as a basis for criminal accountability for corporate crime so that it requires criminal rules outlined in sectoral laws. According to Bismar Nasution, corporate punishment differs from conventional punishment in that its primary goals are repair and compensation, whereas traditional punishment's aim to arrest and punish, neglecting victims and violating their human rights in the process.³⁸ The purpose of corporate crime is to achieve the needs or benefits of the organization; this motive is not personal; instead, it is supported by internal operational norms and sub-sectoral organizations. As a result, the Criminal Code must be reconstructed to include corporate crime as a legal subject.³⁹

The Environmental Management Law uses administrative, civil, and criminal punishments, as was previously mentioned. Because administrative law enforcement is primarily focused on avoiding environmental pollution and devastation, administrative sanctions are the most significant of the three types of sanctions.⁴⁰ The Environmental Management Law defines administrative sanctions as written warnings, governmental pressure, environmental permit freeze, or environmental permit revocation. Although there are several exclusions in out-of-court settlements that do not apply to environmental criminal offenses, further penalties, including criminal penalties, will not be imposed if the culprit carries out or complies with the administrative punishment. Corporations are always a problem when asked for criminal responsibility. In addition to their own separate ways, separate regulations are needed to examine and prosecute corporations that carry out criminal acts.⁴¹

Specifically in the province of Aceh, when observed the Aceh Qanun on Environmental Management in determining criminal penalties does not use the right to determine penalties in accordance with the penalties recognised by the community or in accordance with the principles of the Aceh Qanun on Environmental Management including "Islamic, local wisdom" so that the penalties adopted are the basic criminal sanctions of imprisonment and fines or

³⁸Gomgom Tp Siregar and Rudolf Silaban, "The Relevance of Criminal Close to the Modern Criminal Justice System," *Jurnal Daulat Hukum* 5, no. 4 (2022), p. 318–327.

³⁹Syukri Kurniawan and Hari Sutra Disemadi, "Corporation's Criminal Liability in Indonesia: A Response to the Weak Enforcement of Corporate Social Responsibility," *Lentera Hukum* 7, no. 2 (2020), p. 209–30.

⁴⁰Reine Rofiana, "Legal Review of Corporate Crime Against Sanctions as Substitute for Fines (District Court of Serang, Banten, Indonesia)," *Nurani Hukum* 5, no. 2 (2022), p. 137–147.

⁴¹Kukuh Dwi Kurniawan and Fitria Esfandiari, "Additional Criminals To Corporations As An Efforts To Create Criminal Impact With Decision," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 6 (2021), p. 1713–1722.

administrative sanctions.⁴² The Aceh Qanun on Environmental Management is not in accordance with the idea of national legal reform, which is to form laws in accordance with the family of laws that are close to the characteristics of Indonesian society which is monodualistic and pluralistic and the sources of law in Indonesia include customary and religious law.⁴³ This expectation is also from the results of various national seminars that "the source of national law is expected to be oriented towards the legal values that live in the community, namely those sourced from the values of customary law and religious law.

The *dhiet* settlement pattern is only intended to resolve cases that cause death with the aim of eliminating grudges and prolonged hostility between the conflicting parties which resulted in unrest and even death. For the settlement of maltreatment cases in Acehnese society is known as *sayam*, the pattern of settlement with *sayam* has been known for much longer than the *dhiet* and *suloh* patterns. *Sayam* is a form of compensation in the form of property given by the perpetrator of persecution to the victim or the victim's heirs in connection with damage, bleeding or malfunctioning of limbs as a result of persecution, referred to in the well-known adage "*luka disipat, darah disukat* (meaning that wounds caused by persecution must be taken into account as well as the blood spilled must be taken into account).⁴⁴

The Aceh customary settlement principle violates the doctrine that "the nature of the crime is not erased so that the case will continue despite peace", but in accordance with the specificity of the Environmental Management and Protection Law, the principle of peace can be considered in drafting Ministry of Environment Regulations as an effort to achieve human values oriented towards cultural identity and religious morals of each region, it is believed that this principle has very promising prospects in achieving the real legal objectives of seeking peace, justice and tranquility in society while ignoring legal certainty based on the specificity adopted by the environmental management and protection law.

⁴²Muhammad Yusuf, "Eksistensi Hukum Jinayat Dalam Masyarakat Nusantara," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 1 (2021). Nuriman Nuriman and Syahrial Razali Ibrahim, "Measuring Validity and Reliability of the Model of Islamic Religious-Personality and Social Environment as a Mediator," *Jurnal Ilmiah Peuradeun* 8, No. 2 (2020). Zaki Ulya, "Dinamika Penerapan Hukum Jinayat Sebagai Wujud Rekonstruksi Syari'at Islam Di Aceh," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 5, no. 1 (2016), p. 135–148.

⁴³Dedy Sumardi, et.al., "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021), p. 426–449.

⁴⁴Natsir, "Perlindungan Hukum Terhadap Korban Penganiayaan Melalui Diyat Dan Sayam Pada Peradilan Adat Aceh." Abu Hapsin and Nazar, "Diat and Peace Money in the Crime of Culpable Homicide," *Ahkam* 32, No. 2 (2022).

Conclusion

Legal arrangements for corporate criminal offences in the Criminal Code have not been clearly regulated but in the Environmental Management and Protection Law as one of the sectoral laws have been regulated but have not adopted the legal wisdom prevailing in the community even though it has been assimilated. The legal form and determination of penalties for perpetrators of corporate crimes against the environment in accordance with the specificity of the Environmental Management and Protection Law can consider the principle of peace with dhiet and sayam patterns or other names in drafting an environmental ministry regulation in an effort to achieve human values oriented towards cultural identity and religious morals of each region, this principle has very promising prospects in achieving the real legal objectives of seeking peace, justice and tranquility in society.

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