

The Sanctions on Environmental Performances: An Assessment of Indonesia and Brazil Practice



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ABSTRACT

This study aims to offer an overview of the effect of environmental law sanctions, particularly criminal sanctions for restoring environmental functions for firms, on restoring environmental functions in Indonesia and Brazil. Using conceptual techniques, statutory methodologies, and comparative legal approaches with Brazil, this study examines how norms emerge in the law. The research shows that criminal sanctions for environmental function restoration in Indonesia have not had their full intended effect and often lead to confusion over their implementation since they do not specify a means of gauging whether or not their goals have been met. This discovery also suggests that criminal consequences for environmental function restoration have not been utilized to their full potential. This is because criminal sanctions do not offer a mechanism for gauging the degree to which ecological restoration efforts have been fruitful. Brazil, which is more likely to apply administrative sanctions and has a better impact, conducts a wide range of things, including imposing fines, canceling company licenses, and other preventative steps used to anticipate excessive environmental exploitation. Brazil has taken these precautions to avoid the negative effects of environmental overexploitation. The actions are in effect to ensure that environmental exploitation does not reach unsustainable levels.



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1. Introduction

The formation of the concepts of law concerning global environment began with environmental catastrophes that transcended national borders, thus the leaders of the nations involved in these cases understood the significance of laws that control international or cross-border environmental contamination. The Trail Smelter Arbitration (United States vs. Canada), which challenged air pollution from iron ore smelting in Canada that poisoned Washington State in the United States, is the first transboundary environmental calamity.¹

¹ Hilaire Tegan and others, 'Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues', *Bestuur*, 9.2 (2021), 90–100. <https://doi.org/10.20961/bestuur.v9i2.55219>

The U.S. government demanded that Canada pay compensation and cease iron smelting activities (injunction) due to future pollution of the U.S. territory. Canada rejected the proposals because it believed it had the right to establish industries on its territory. The arbitrator who resolved this issue, however, believed that "the state has the right to conduct activities within its territory, but is also obligated to ensure that such activities do not cause disturbance/loss to the territory of other countries." In essence, this is indicated by 'the state must protect other countries from the activities of individuals/entities within its jurisdiction so as not to cause harm to other countries.', meaning that a state is always obligated to protect other states from harmful acts committed by individuals within its jurisdiction).³

The "Lac Lanoux Arbitration (France vs. Spain)" case has also encouraged the international community to consider the significance of a worldwide environmental law system. This lawsuit involves the use of water from Lake Lanoux, which falls under the authority of France. Nonetheless, it is believed that this construction (project) would alter the course of the river via Spanish territory, as the river's source is Lake Lanoux. Prior to this occurrence, France and Spain had signed the "Treaty of Bayonne" on May 26, 1866, which stipulated that work on Lake Lanoux had to be approved by both sides. Therefore, when France initiated a project without prior consent, Spain requested that it be canceled since it was deemed a violation of the agreement and would disrupt the flow of rivers in Spain and the lives of Spanish inhabitants. The matter was eventually determined by an arbitration panel, which ruled that France "did not violate" the Treaty of Bayonne since France "considered" Spain's rights over the water of Lake Lanoux, which flows into Spanish territory, prior to constructing the dam.⁵ This case demonstrates that a country does not have "absolute freedom" to use its natural resources and must take into account the interests of other nations whose pursuits may be jeopardized by growth inside their territory. This case simultaneously demonstrates that the environmental effect recognizes no administrative borders.⁶

The 1967 collision of the Torrey Canyon tanker with a reef in northwest England was one of the incidents that influenced the formation of international environmental law. This catastrophe resulted in oil contamination in the British and French waters and complicated legal complications due to the American owner. Union, a ship registered in Liberia with an international crew,

³Pujiyono Suwadi and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, ahead-of-p ahead-of-print (2022) <https://doi.org/10.1108/IJHRH-04-2022-0032>

⁵ Alexandre Kiss and Dinah Shelton, 'Strict Liability in International Environmental Law', *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah*, 2007, 1131–51 <https://doi.org/10.1163/ej.9789004161566.i-1188.183>

⁶ Widiatedja Parikesit and Muhammad Q Shah, 'The Rise of Centralistic Governance in Spatial Planning in Indonesia and Australia: A Comparative Study', *Bestuur*, 11.1 (2023), 121–43 <https://doi.org/https://doi.org/10.20961/bestuur.v11i1.70120>

contaminated the waters of England and France.⁸ This fact requires a complex legal settlement and opens the eyes of legal practitioners, the shipping industry, and environmentalists because the impact of pollution is unprecedented. Therefore, several legal regimes have emerged after this incident aimed at protecting the sea from oil spills.⁹

Since environmental issues transcend the limits of government and state management, these environmental disasters have increased human awareness of the significance of conserving the environment and enforcing its laws. Air, water, and sea are three essential aspects of environment or nature to humanity, and were selected as examples in the three scenarios shown above. If the quality of these sources of life is compromised, it will endanger the lives of all living creatures, including people. It should also be mentioned that international environmental legislation formed after these events is still specialized or sectorial because it regulates just a single problem. The Torrey Canyon event, for instance, spurred the debate of international regulations in the field of oil spills from tankers, as well as a number of regulations addressing safety standards for large tankers. As I argue in Chapter 1 of this book, subsequent advances in international law were more affected by scientific investigations, such as the publishing of *The Silent Spring* (1962) and *Meadows and Meadows, The Limits to Growth* (1972) by Rachel Carson. (1972). These books succeeded in creating a new awareness of the significance of environmental protection, so that heads of state and government were persuaded to declare a comprehensive legal instrument to protect the planet and attempt to strike a balance between the importance of "development" (development) and "environmental protection" (environmental protection).¹⁰

Environmental issues in developing nations such as Indonesia are distinct from those in developed nations. Environmental concerns in Indonesia are frequently the result of "development" initiatives by the government or society (both people and legal entities).¹¹ In the end, numerous environmental issues in Indonesia directly and indirectly diminish environmental quality. However, all parties must equally acknowledge that large-scale infrastructure development is essential for the advancement of civilization. The positive effects of infrastructure development include a rise in regional income and improvement in the well-being of the

⁸ Gregory Rose, 'Australian Law to Combat Illegal Logging in Indonesia: A Gossamer Chain for Transnational Enforcement of Environmental Law', *Review of European, Comparative and International Environmental Law*, 26.2 (2017), 128–38 <https://doi.org/10.1111/reel.12206>

⁹ Keith MacMaster, 'Environmental Liability for Deep Seabed Mining in the Area: An Urgent Case for a Robust Strict Liability Regime', *Ocean Yearbook Online*, 33.1 (2019), 339–76 https://doi.org/10.1163/9789004395633_014

¹⁰Michael G. Faure, 'Effectiveness of Environmental Law: What Does the Evidence Tell Us?', *SSRN Electronic Journal*, 36.2 (2012) <https://doi.org/10.2139/ssrn.2165715>

¹¹Suwari Akhmaddhian, Haris Budiman, and Rahul Bhandari, 'The Strengthening Government Policies on Mineral and Coal Mining to Achieve Environmental Sustainability in Indonesia, Africa and Germany', *Bestuur*, 11.1 (2023), 95–120 <https://doi.org/https://doi.org/10.20961/bestuur.v11i1.71279>

populace.¹⁴ However, the negative effects are equally significant, including the preservation of environmental functions, the depletion of natural resources owing to overexploitation, air pollution caused by industrial pollutants, and the development of economic infrastructure that is associated with environmental destruction.¹⁵

Thus, large-scale infrastructure development must include sustainable development to reduce negative repercussions. Cases in Indonesia involving environmental damage as a result of the production of a corporation or development appendages include the Lapindo Brantas case, which does not pollute the environment to routine cases each year, namely the export of smoke to neighboring countries, namely Malaysia and Singapore, resulting from the burning of forest areas by Forest Management Rights (henceforth abbreviated as the HPH) holders, and many others. Obviously, these two cases violated the constitutional rights of Indonesian residents and society to live in a healthy environment, as well as human rights, as a good and healthy environment is a part of human rights. There were four cases in the history of environmental pollution in Japan, notably the Itai-itai case (cadmium pollution), the Minamata case (Nigata), the Kumamoto case, Kyusu (mercury poisoning), and the Yokkaichi air pollution case. The Itai-Itai case was exposed in the Toyama City region in 1910. In 1968, specialists and the Japanese Ministry of Health and Welfare determined that cadmium pollution produced itai-itai sickness (it hurts, it hurts). Minamata happened in Nigata in 1965 due to mercury poisoning, while Minamata occurred in Kumamoto Bay nine years earlier.¹⁶

There is also a well-known incidence of contamination by B-3 waste, especially the 1962 article named *Silent Spring* by Rachel Carson. DDT residues infiltrated the food chain in deep-sea squid, Antarctic penguins, and human adipose tissue, according to the book. The article by Rachel Carson exemplifies human avarice in the past as it related to the food industry. Where excessive DDT usage causes DDT to accumulate in the bodies of humans and animals.¹⁸

In contrast to the authors' portrayal, such issues are typically not properly addressed in the Indonesian setting. Parties directly or indirectly associated with the environment must enhance their environmental knowledge and sensitivity in

¹⁴Donna Okthalia Setiabudhi, Ahsan Yunus, and Andi Rifky, 'The Role of Land Management Paradigm Towards Certainty and Justice', *Bestuur*, 11.1 (2023), 43–60 <https://doi.org/https://doi.org/10.20961/bestuur.v11i1.71710>

¹⁵A.Tauda and Gunawa, 'Cryptocurrency: Highlighting the Approach, Regulations, and Protection in Indonesia and European Union', *Bestuur*, 11.1 (2023), 1–25 <https://doi.org/10.20961/bestuur.v11i1.67125>

¹⁶Muhamad Haris and others, 'Bestuur Governing Indonesia ' s Plan to Halt Bauxite Ore Exports : Is Indonesia Ready to Fight Lawsuit at the WTO?', *Bestuur*, 11.1 (2023), 26–42 <https://doi.org/10.20961/bestuur.v11i1.69178>

¹⁸Lego Karjoko and others, 'Indonesia's Sustainable Development Goals Resolving Waste Problem: Informal to Formal Policy', *International Journal of Sustainable Development and Planning*, 17.2 (2022), 649–58 <https://doi.org/10.18280/ijstdp.170230>

order to combat all types of environmental challenges in Indonesia. Then, in terms of the parties' knowledge, the mindset of the Indonesian people as a whole, which solely considers immediate or personal concerns, continues to prevail in the minds of individuals. This is supported by a belief that nature belongs to everyone, and not entrusted to children and grandchildren, where everyone can see and observe that the export of smoke, which occurs regularly each year, is evidence of a lack of concern from the private sector for the environment, for example, HPH holders who burn tens or even hundreds of thousands of hectares of forest each year to clear land for agriculture and plantations.²⁰

According to Fringer, the current global environmental crisis is caused by at least several factors, including incorrect and failed policies; inefficient technology that tends to harm the environment; low political commitment, ideas, and ideology that ultimately harm the environment; deviant actions and behavior of state actors; the spread of cultural patterns like consumerism and individualism; and unguided individuals. Departing from this perspective, what is required to overcome environmental problems is better policymaking; new and different technologies; increased political and public commitment; the creation of pro-environmental ideas and ideologies (green thinking); the management of deviant actors; and the modification of cultural patterns, behavior, and awareness of each individual to control environmental impacts.²²

Environmental impact control is an endeavor to supervise an activity performed by everyone, particularly businesses having a substantial influence on the environment. In this instance, environmental impact is defined as the influence of environmental changes caused by a business and/or activity, such that the protection and management of the environment is an obligation of the state, government, and all stakeholders in the implementation of sustainable development, so that the Indonesian environment can continue to serve as a source of life and support for the Indonesian people and other living things. In this instance, the construction of legal products in Indonesia must emphasize the prevention and management of environmental harm.²⁵

In the past decade, environmental issues have become increasingly prevalent. Recent globalization in numerous industries has not been spared and is tied to the emergence of environmental issues. Pollution and environmental degradation frequently result from the production or growth of individuals and businesses. As an ecosystem, the environment has a mechanism that can preserve its equilibrium.

²⁰Gary F. Peters and Andrea M. Romi, 'Discretionary Compliance with Mandatory Environmental Disclosures: Evidence from SEC Filings', *Journal of Accounting and Public Policy*, 32.4 (2013), 213–36 <https://doi.org/10.1016/j.jaccpubpol.2013.04.004>

²²Ngoc Hanh Tran, Limin Fu, and Dirk Michael Boehe, 'How Does Urban Air Pollution Affect Corporate Environmental Performance?', *Journal of Cleaner Production*, 383. August 2022 (2023), 135443 <https://doi.org/10.1016/j.jclepro.2022.135443>

²⁵Risno Mina, 'Desentralisasi Perlindungan Dan Pengelolaan Lingkungan Hidup Sebagai Alternatif Penyelesaian Permasalahan Lingkungan Hidup', *Arena Hukum*, 9.2 (2016), 149–65 <https://doi.org/10.21776/ub.arenahukum.2016.00902.1>

Whenever there is an imbalance in the ecosystem, it will eventually recover on its own since the biological cycles inside it are capable of conducting self-repair. Currently, however, there are numerous environmental harms that it cannot heal on its own. This degradation is produced in part by garbage that contaminates land, water, and air.

Environmental problems may be averted and addressed within the framework of constitutional democracy through the development of legal standards that take into account environmental sustainability alongside social, political, and economic factors. With its binding character, the law may be used to alter the direction of environmental and natural resource management, which has depended too much on harmful extraction to date. There is a constitutional guarantee in Indonesia that serves as the basis for the design of all environmental legislation and regulations. Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates the environment as a component of human rights, and Article 33 paragraph 4 of the 1945 Constitution regulates the environment as a principle for implementing an environmentally sound national economy.²⁶

According to Asshiddiqie, this regulation is a component of the Indonesian constitution that not only acknowledges the sovereignty of the people and the rule of law but also recognizes the sovereignty of the environment.²⁷ These two clauses also demonstrate the inclusion of sustainable development ideas in the 1945 Constitution. The articles of the 1945 Constitution suggest that it is possible to declare unlawful all development legislation that is exploitative and disregards environmental sustainability and sustainability by the Constitutional Court of the Republic of Indonesia (MK RI) by Law No. 24 of 2003 of the Constitutional Court. Law Number 14 of 1985, as amended by Law Number 3 of 2009 concerning the Supreme Court of the Republic of Indonesia and Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2011 concerning the Right to Judicial Review, allows the Supreme Court of the Republic of Indonesia (MA RI) to review policies in the form of statutory regulations under laws.²⁹

One of the measures used by the government to limit environmental damage is the criminalization of environmental damage perpetrators, such that the phrase environmental crime has become commonplace. Environmental crimes are controlled under Law Number 32 of 2009 on the Protection and Management of the Environment (henceforth abbreviated as the PPLH Law), wherein the wording of the PPLH Law acknowledges corporate responsibility for environmental crimes.

²⁶Mohammad Jamin and others, 'The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples', *Hasanuddin Law Review*, 9.1 (2023), 88–105 <https://doi.org/10.20956/halrev.v9i1.4033j>

²⁷J. Handayani, I. G. A. K. R., Karjoko, L., Jaelani, A. K., & Barkhuizen, 'The Politics Settlement of Land Tenure Conflicts During Jokowi's Presidency', *Journal of Indonesian Legal Studies*, 7.2 (2022), 487–524 <https://doi.org/10.15294/jils.v7i2.57539>

²⁹ Mohammad Jamin and Abdul Kadir Jaelani, 'Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City', *Bestuur*, 10.2 (2022), 198–212 <https://dx.doi.org/10.20961/bestuur.v10i2.66090>

The PPLH Law governs the application of sanctions against: 1) commercial entities; and/or 2) the person who gave the command to commit crimes or the person who led the criminal activities.³⁰

The corporations are shown to have committed environmental crimes, punishments are issued to those who gave orders or served as leaders, regardless of whether the crime was done individually or collectively.³¹ In addition, corporations may be subject to additional criminal sanctions if they are proven to have committed environmental crimes, including 1) confiscation of profits derived from criminal acts; 2) closing all or part of the place of business and/or activity; 3) improvement as a result of a crime; 4) the obligation to do what is neglected without rights; and/or 5) placing the company under guardianship for up to three years.³²

It is intriguing to debate "corrections due to criminal acts" as extra criminal penalties for firms found to have committed environmental crimes. Given that the PPLH Law does not quantify the success of the extra criminal sentence imposed on the business, this additional criminal sanction poses a difficulty. This is what the authors mean by legal ambiguity on the application of extra criminal punishments in the form of "remedial criminal acts" for businesses. The environment, however, should not engage in actions that render a judgment unenforceable. As this is understood to have occurred from the beginning, there was no explicit plan to apply further criminal consequences for businesses in the form of "crime improvement." This study attempts to propose a solution by establishing new, appropriate, and enforceable criminal penalties for corrective activities resulting from environmental crimes committed by businesses.

In Brazil, enforcing penalties for firms that break environmental laws typically takes the form of administrative law measures, such as the imposition of fines or the cancellation of company licenses, depending on the severity of the infraction. These measures are intended to deter future environmental law violations. However, Brazil does not rule out the possibility of utilizing criminal law instruments in the process of enforcing environmental laws, even though this approach is extremely efficient and has a beneficial impact. This is evident from the fact that in 2019, a court in Brazil sentenced a total of 13 individuals to a combined 287 years in jail for their role in the illegal clearing of forest land in the Amazon rainforest. Not only does the application of such sanctions assist to send the

³⁰ Adiguna Bagas Waskito Aji and others, 'Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases', *The Indonesian Journal of International Clinical Legal Education*, 2.1 (2020), 57–72 <https://doi.org/10.15294/ijicle.v2i1.37324>

³¹ Indah Nur Shanty Saleh and Bitu Gadsia Spaltani, 'Environmental Judge Certification in an Effort to Realize the Green Legislation Concept in Indonesia', *Law and Justice*, 6.1 (2021), 1–18 <https://doi.org/10.23917/laj.v6i1.13695>

³² Laura Liliana Huaranca and others, 'Social Perspectives on Deforestation, Land Use Change, and Economic Development in an Expanding Agricultural Frontier in Northern Argentina', *Ecological Economics*, 165.April (2019), 106424 <https://doi.org/10.1016/j.ecolecon.2019.106424>

message that crimes committed against the environment will not be allowed, but it also helps to dissuade other people from doing such acts.

2. Research Methods

This study is normative legal research, employing the case method, statutory approach, comparative legal approach, and conceptual approach based on legal certainty in further additional criminal sanction of "restoration of environmental function" in environmental offenses committed by corporations. Specifically, the study is centered on the environmental offenses committed by corporations.³⁴ To put it another way, one could say that the findings of this study cast doubt on the existence and legal certainty of additional criminal sanctions for corporations concerning the restoration of environmental functions as regulated in Article 119 letter b of the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management. This law was passed with the aim of improving environmental protection and management in Indonesia.³⁶ This study takes a comparative law approach by using Brazil as a comparative nation to examine the administrative law approach and criminal consequences for environmental criminal offenses perpetrated by corporations in Brazil. The legal comparison is performed by looking at the legal strategy that Brazil implemented in its legal system to overcome the prevention of environmental damage by applying sanctions in its legal system against environmental damage committed by corporations.

3. Results and Discussion

The Impact of Sanctions on Environmental Performance in Indonesia

As an extra criminal penalty system, the authors included a passing reference to the position of sanctions for restoring environmental functions against environmental crimes perpetrated by companies at the opening of the text. Before discussing the criminal provisions in the law, it is necessary to define the criminal in this paper so that it is easier to comprehend the meaning of the crime itself. From this definition, it confirms that whether a lawyer must always include criminal sanctions for enforcing the law itself or whether they are not required to be stated, both of which are criminal policies or policies determining criminal penalties by legislators.³⁸

³⁴Elias Erragragui and others, 'Stock Market Reactions to Corporate Misconduct: The Moderating Role of Legal Origin', *Economic Modelling*, 121.January (2023), 106197 <https://doi.org/10.1016/j.econmod.2023.106197>

³⁶Katherine Sievert and others, 'What's Really at "Steak"? Understanding the Global Politics of Red and Processed Meat Reduction: A Framing Analysis of Stakeholder Interviews', *Environmental Science and Policy*, 137.August (2022), 12–21 <https://doi.org/10.1016/j.envsci.2022.08.007>

³⁸ Rian Saputra, 'Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications', *Bestuur*, 8.2 (2020), 121–28 <https://doi.org/10.20961/bestuur.43139>

According to Simon, a punishment or strap is a pain tied by criminal law to a norm breach and inflicted by a judge on a guilty person.³⁹ Van Hamel defines punishment as a particular type of suffering imposed by the competent authority to impose a sentence on behalf of the state as the person responsible for public law involvement for an offender, namely solely because the offender has violated a legal regulation that must be upheld by the country.⁴⁰

Although there is a little distinction in their usage, criminal and punishment are frequently similar terms. People outside of criminal law are permitted to use the term punishment. Punishment is a broad word for any legal repercussions for breaching a legal standard. The sanction for violating the standards of criminal law is disciplinary punishment. For violations of civil law, the penalty is civil punishment, and for violations of administrative law, the penalty is administrative punishment. People sometimes remark that punishment may also be perceived as a sanction, yet the concept is slightly different because sanction is interpreted as a threat or danger. According to the Great Indonesian Dictionary (KBBI), penalties can have both bad and good connotations. The negative connotation refers to a reward in the form of hardship or pain, while the positive connotation refers to a reward in the form of a gift or a legally established gift. In daily life, punishments are frequently regarded as a negative reward.⁴³

In law, the word sanction is occasionally used to combine administrative sanctions, civil sanctions, and criminal punishments into a single chapter or section. The word "criminal sanction" is difficult to comprehend if the term sanction is understood as "punishment" since it will mean "criminal punishment," and it will be much more difficult to comprehend if the term criminal is interpreted as "punishment". In the English legal system, sanctions are described as "the penalty or punishment provided as a means of enforcing compliance with

³⁹ Purniawati Purniawati, Nikmatul Kasana, and Rodiyah Rodiyah, 'Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)', *The Indonesian Journal of International Clinical Legal Education*, 2.1 (2020), 43–56 <https://doi.org/10.15294/ijicle.v2i1.37328>

⁴⁰ Edy Lisdiyono, 'Improving Legal Argument Critically in the Litigation Mechanism in Indonesia (an Empirical Study of Environmental Verdicts)', *Sriwijaya Law Review*, 1.1 (2017), 64–73 <https://doi.org/10.28946/slrev.Vol1.Iss1.10.pp080-092>

⁴³ Charles Baah and others, 'Examining the Correlations between Stakeholder Pressures, Green Production Practices, Firm Reputation, Environmental and Financial Performance: Evidence from Manufacturing SMEs', *Sustainable Production and Consumption*, 27 (2021), 100–114 <https://doi.org/10.1016/j.spc.2020.10.015>

the law".⁴⁵ In Dutch, sanction signifies both "agreement" and "a means of coercion as a penalty for not complying with the agreement".⁴⁶

Since a criminal is the driving force of criminal law, the definition of criminal is inseparable from the word "criminal law". According to Moeljatno, criminal law is a component of a country's prevailing law, which provides the fundamentals and guidelines for society,⁴⁷ such as 1) determine which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of specific penalties for those who violate the prohibition; 2) determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened; 3) determine in what way the imposition of the penalty can be carried out if a person is suspected of having violated the prohibition.

According to Remmelink, the term "criminal law" was first used to refer to all laws that describe what criteria are obligatory on the state if it is intended to declare a criminal law, as well as regulations that define what types of punishment are authorized. Today, the term "criminal law" refers specifically to regulations that define what types of punishment are authorized. In the context of this discussion, the term "criminal law" refers to either the relevant criminal law or the positive criminal law, which is also commonly referred to as *jus poenale*. Among these criminal statutes are the following: 1) instructions and prohibitions on infractions against them by organs designated competent by law are coupled with (threats of crime); standards that everyone is obligated to respect; 2) laws that prescribe what means can be utilized as a reaction to transgressions of certain norms; this is known as penitential legislation or, more generally, the law on punishments. 3) decide how the imposition of the penalty can be performed in the event that it is suspected that a person has broken the ban.⁴⁸ According to Packer, the rational foundation of criminal law is composed of three fundamental principles: guilt, violation, and punishment. These ideas are commonly called "three fundamental tenets" of criminal law. They involves the following aspects : (1) what actions must be determined as criminal acts (crimes); (2) what provisions must be determined if someone is known (allegedly) to be connected to a crime;

⁴⁵ Kishan Khoday and Usha Natarajan, 'Fairness and International Environmental Law from below: Social Movements and Legal Transformation in India', *Leiden Journal of International Law*, 25.2 (2012), 415–41 <https://doi.org/10.1017/S0922156512000118>

⁴⁶ Wahyu Nugroho, 'Relationship between Environmental Management Policy and the Local Wisdom of Indigenous Peoples in the Handling of Covid-19 in Indonesia', *Onati Socio-Legal Series*, 11.3 (2021), 860–82 <https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1193>

⁴⁷ Nadia Astriani, 'Legal Politics of Water Resources Management in Indonesia: Environmental Perspective', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 30.1 (2018), 185 <https://doi.org/10.22146/jmh.28664>

⁴⁸ Yoon Young Chun and others, 'What Will Lead Asian Consumers into Circular Consumption? An Empirical Study of Purchasing Refurbished Smartphones in Japan and Indonesia', *Sustainable Production and Consumption*, 33 (2022), 158–67 <https://doi.org/10.1016/j.spc.2022.06.015>

and (3) what should be done against someone who is known to be connected to a criminal act. In addition to the definitions of criminal, penalty, sanction, and law that were presented earlier, the definition of "crime" is going to be brought up quite a bit in the discussion that is going to follow.

Illegal law scholars have extensively addressed the issue of preventing illegal activities through the application of criminal penalties since this is a highly intriguing topic relating to the *ultimum remedium* character of these criminal punishments. The legislator's criminal decision is a policy for criminalizing or punishing conduct that was not previously a criminal crime. A second issue is criminal law, which today imposes fines not only on persons (individuals) but also on organizations.⁴⁹ The problem lies not only in its execution but also in the question of criminal accountability and the repercussions if a company is penalized with a reasonably hefty fine or is subjected to an extra sanction in the form of license revocation. The weighing against it is justifiable due to the fact that the repercussions of companies undertaking illegal conduct are often extremely destructive to society. The magnitude, pattern, and formulation of criminal fines stated in the Criminal Code Bill (henceforth abbreviated as the RUU KUHP) and those defined in laws outside the KUHP would impede the reform of criminal provisions that have been or will be implemented in accordance with laws outside the KUHP.⁵⁰

Remmelink explained why the state takes action when a crime is committed and why it inflicts misery. This is considered to be a suitable instrument since it motivates the government to behave well and prevent injustice. Here, criminal law serves as a response to social and psychological dangers.⁵² Consequentialists believe that the presence of punishment is justifiable if the punishment produces good if it avoids worse outcomes, and if there are no other choices that would produce equally good (or terrible) outcomes. In the philosophy of punishment, justification for criminal punishment is constantly sought. In a theoretical debate on punishment, Packer seeks to include two conceptual perspectives, each with distinct moral implications, into his argument.⁵³

⁴⁹ Fachruddin Majeri Mangunjaya and Jeanne Elizabeth McKay, 'Reviving an Islamic Approach for Environmental Conservation in Indonesia', *Worldviews: Environment, Culture, Religion*, 16.3 (2012), 286–305 <https://doi.org/10.1163/15685357-01603006>

⁵⁰ Abdul Kadir Jaelani, Reza Octavia Kusumaningtyas, and Asron Orsantinutsakul, 'The Model of Mining Environment Restoration Regulation Based on Sustainable Development Goals', *Legality: Jurnal Ilmiah Hukum*, 30.1 (2022), 131–46 <https://doi.org/10.22219/ljih.v30i1.20764>

⁵² Adriaan Bedner, 'Consequences of Decentralization: Environmental Impact Assessment and Water Pollution Control in Indonesia', *Law and Policy*, 32.1 (2010), 38–60 <https://doi.org/10.1111/j.1467-9930.2009.00313.x>

⁵³ Mahrus Ali and M. Arif Setiawan, 'Penal Proportionality in Environmental Legislation of Indonesia', *Cogent Social Sciences*, 8.1 (2022) <https://doi.org/10.1080/23311886.2021.2009167>

The first perspective is a retributive one, which perceives punishment as a negative incentive for any deviant action perpetrated by members of the general public. The utilitarian perspective examines punishment from the perspective of its benefits or applications. The first perspective holds that everyone is accountable for their own moral decisions. If the decision is accurate, he receives positive reinforcements such as praise, flattery, accolades, etc. However, if he is in the wrong, he must be held accountable and punished (negative reward). Therefore, the rationale for administering punishment is based on the premise that punishment is a negative incentive for accepting responsibility for errors. This approach sees punishment solely as punishment and as retribution for wrongdoing based on each individual's moral responsibility. This first approach is considered to be backward-looking, that is, it looks backward at the mistakes done in order to impose a sentence, and as a result of this orientation, punishment in this view tends to be corrective and oppressive.⁵⁴

The second perspective (utilitarian) focuses on the scenario or condition that should result from enforcing a punishment. The imposition of a sentence must be seen in terms of its goal, advantages, or application for the aim of improvement and prevention. On the one hand, punishment is designed to change the convict's attitude or conduct so that he will not repeat the same offense in the future. On the other hand, the purpose of punishment is to deter others from doing similar offenses. This second viewpoint is prospective and preventative at the same time.⁵⁵

In terms of executing the concept of punishment, the second viewpoint is perceived as more desirable. Today, preventive perspectives and coaching are regarded as more current, and they have affected criminal political policies in several nations across the globe. Packer contends that a third position, the behavioral view, which is only a modification of the traditional utilitarian view, is emerging now. In this third perspective, the notions of moral responsibility and free will are dismissed as mere illusions or wishful thinking, since human conduct is dictated by factors beyond the control of any one individual.⁵⁶

According to the third position, the role of the law, as stated by Packer, is anticipated to produce a change in the individual's personality. This behaviorism is also prospective, meaning that punishment is not viewed as retribution for offenders, but as a tool to alter the behavior of convicted individuals. In contrast to

⁵⁴ Shazny Ramlan, 'Religious Law for the Environment: Comparative Islamic Environmental Law in Singapore, Malaysia, and Indonesia', *SSRN Electronic Journal*, 15, 2019 <https://doi.org/10.2139/ssrn.3405923>

⁵⁵ Carlos Eduardo Lourenco and others, 'We Need to Talk about Infrequent High Volume Household Food Waste: A Theory of Planned Behaviour Perspective', *Sustainable Production and Consumption*, 33 (2022), 38–48 <https://doi.org/10.1016/j.spc.2022.06.014>

⁵⁶ Amir Hatamkhani, Ali Moridi, and Masoud Asadzadeh, 'Water Allocation Using Ecological and Agricultural Value of Water', *Sustainable Production and Consumption*, 33 (2022), 49–62 <https://doi.org/10.1016/j.spc.2022.06.017>

the utilitarian perspective, the behaviorist perspective is founded on strong determinism. Considered to have no free will, human beings cannot be held strictly accountable for their actions. Every antisocial conduct is the result of several causes that are beyond the individual's control.

The notion of punishment in Indonesia is still based on preventative and counseling perspectives, which are regarded as more current nowadays. As a result, it impacts numerous criminal political measures in Indonesia, including the determination of legal penalties. This perspective shifted, however, as lawmakers tended to always condemn someone with a long-term punishment and apply an unusual minimum penalty for those who violate the law. In the framework of carrying out government duties, offenders and policymakers (government) require more than punishment. Such situations make policymakers fear performing their responsibilities. In contrast, in most European nations, fines, administrative sanctions, or compensation are used to make punishments more effective and to achieve the intended purpose.

Criminal matters include policies on the determination of punishments and perspectives on the function of punishment. The policy of imposing punishments is likewise inextricable from the problem of the criminal policy's overall aims. Regarding additional criminal sanctions in the form of restoration of environmental functions for perpetrators of corporate environmental crimes, which confuse its application, the authors suggest several things to streamline the application of additional criminal sanctions in the form of restoration of environmental functions against corporate criminals, based on expediency and legal certainty. These suggestions are made in light of the fact that additional criminal sanctions in the form of restoration of environmental functions cause confusion in its application. As a result, one of the media of contemporary legal philosophy is the concept of legal certainty. It is relevant and reasonable if the additional punishment in the form of restoring the function of the environment so that it can be used as it was before is pursued by incorporating legal certainty and adding conditions, methods, and measures of success to ensure that its successful implementation is achieved. This would ensure that the environment can be used as it was before.⁵⁸

The damage done to the environment throughout the world and in Indonesia needs to have a more serious tone, with an emphasis on prevention and strict legal action against those who are responsible for the destruction of the environment. In light of the hard fact that damage to the environment is no longer confined to particular regions of the world but has instead become a problem that affects the

⁵⁸Corinne Vitale, 'Understanding the Shift toward a Risk-Based Approach in Flood Risk Management, a Comparative Case Study of Three Italian Rivers', *Environmental Science and Policy*, 146.May (2023), 13–23 <https://doi.org/10.1016/j.envsci.2023.04.015>

entire planet, it is clear that more has to be done.⁵⁹ An environmental problem can be broken down into three categories, according to Stewart and Krier: *first*, there is environmental pollution; *second*, there is improper usage or use of land; and *third*, there is excessive dredging that causes the depletion of natural resources. If one follows a single line of reasoning, then it follows that the indiscriminate and excessive use of natural resources is inextricably linked to the degradation of environmental quality, which includes the depletion of natural resources, pollution, and other forms of environmental damage.⁶⁰

The environmental damage that has taken place in Indonesia is quite worrying, and it has even reached the point where it has the potential to bring numerous environmental harms to future generations. This means that, in the end, future generations will have environmental problems because of environmental damage that took place in the past. Therefore, what needs to be emphasized is that the environment needs to be regarded and controlled for sustainable life, and not just for growth and equal development. This is something that must or ought to be emphasized.⁶¹ In Indonesia, there is still a severe lack of awareness regarding environmental sustainability in and of itself, which means that it will be even more challenging to lessen the impact of environmental issues in the future due to the current lack of awareness. As a result, in this particular scenario, what needs to be improved in order to achieve environmental sustainability is awareness regarding the significance of preserving and protecting the environment.⁶²

In environmental management, engaging with the law is essential as a method of achieving our goals and satisfying our interests. Since law concerning environment is still a relatively new field of study, the majority of its content can be found in administrative law (*administratiefrecht*). Also, since environmental law incorporates features of other subfields of law, such as civil, criminal, tax, international, and land use planning law, it cannot be placed in any of the traditional categories of law (public and private).⁶³ Therefore, the law concerning environment generates divisions, such as administrative environmental law, civil environmental law, and criminal environmental law. These three subfields of

⁵⁹Adrianus Eryan Wisnu Wibowo, 'Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata', *Jurnal Hukum Lingkungan Indonesia*, 4.2 (2018), 183–86 <https://doi.org/10.38011/jhli.v4i2.66>

⁶⁰ Eric Rahmanul Hakim, 'Penegakan Hukum Lingkungan Indonesia Dalam Aspek Kepidanaan', *Media Keadilan: Jurnal Ilmu Hukum*, 11.1 (2020), 43 <https://doi.org/10.31764/jmk.v11i1.1615>

⁶¹ Stephen A. Sutton and others, "'Village" as Verb: Sustaining a Transformation in Disaster Risk Reduction from the Bottom Up', *Environmental Science and Policy*, 137.November 2021 (2022), 40–52 <https://doi.org/10.1016/j.envsci.2022.08.009>

⁶² Suwari Akhmaddhian, 'Discourse on Creating a Special Environmental Court in Indonesia to Resolve Environmental Disputes', *Bestuur*, 8.2 (2020), 129 <https://doi.org/10.20961/bestuur.v8i2.42774>

⁶³ Li Li and others, 'Urban Residents' Acceptance of Recycled Water: An Improved Innovation-Decision Model Considering the Needs Satisfied and Social Characteristics', *Sustainable Production and Consumption*, 33 (2022), 1005–17 <https://doi.org/10.1016/j.spc.2022.08.026>

environmental law are described below. However, the application of the method of legal approach should not be done in a haphazard manner; rather, it should be determined which legal approach is more practicable or advantageous in terms of the goal of effective and efficient prevention and enforcement of the repair of the damaged environment itself.

The Impact on Environmental Performances in Brazil

Human activities pose an ever-increasing risk to Brazil's unique and delicate ecosystem, which is located in a country that is rich in biodiversity.⁶⁴ As a means of enforcing environmental laws and regulating their compliance, the government of Brazil has instituted both administrative and criminal sanctions. In the following paragraphs, the authors investigate how the imposition of these sanctions altered Brazil's environmental performance.⁶⁵

To begin, administrative sanctions are defined as fines that are not considered criminal in nature and are administered by government bodies to ensure compliance with environmental legislation. The Brazilian Institute of Environment and Renewable Natural Resources is the primary-regulatory authority in Brazil that is responsible for implementing environmental regulations (henceforth abbreviated as the IBAMA).⁶⁶ IBAMA has the authority to apply administrative sanctions, which may take the form of fines, the seizure of equipment and products, a halt to activity, or the closure of facilities.⁶⁷

Compliance with laws governing the environment has improved as a result of Brazilian employment of administrative punishments, which have been effective. IBAMA has been successful in levying hefty fines against businesses and individuals who infringe upon environmental standards.⁶⁸ As a result, others have been dissuaded from engaging in activities of a similar nature. As an illustration, in 2019, IBAMA levied a fine of \$26 million on a mining business for causing damage to the environment in the Amazon rainforest. The imposition of such fines

⁶⁴ Martin Delaroche, François Michel Le Tourneau, and Marion Daugeard, 'How Vegetation Classification and Mapping May Influence Conservation: The Example of Brazil's Native Vegetation Protection Law', *Land Use Policy*, 122.September (2022), 106380 <https://doi.org/10.1016/j.landusepol.2022.106380>

⁶⁵ Deise Tatiane Bueno Miola and others, 'Silent Loss: Misapplication of an Environmental Law Compromises Conservation in a Brazilian Biodiversity Hotspot', *Perspectives in Ecology and Conservation*, 17.2 (2019), 84–89 <https://doi.org/10.1016/j.pecon.2019.04.001>

⁶⁶ Simone Athayde and others, 'Viewpoint: The Far-Reaching Dangers of Rolling Back Environmental Licensing and Impact Assessment Legislation in Brazil', *Environmental Impact Assessment Review*, 94.January (2022) <https://doi.org/10.1016/j.eiar.2022.106742>

⁶⁷ Kleber Isaac Silva de Souza and others, 'Environmental Damage of Urbanized Stream Corridors in a Coastal Plain in Southern Brazil', *Ocean and Coastal Management*, 211.April (2021) <https://doi.org/10.1016/j.ocecoaman.2021.105739>

⁶⁸ Luciana Gomes Barbosa, Maria Alice Santos Alves, and Carlos Eduardo Viveiros Grelle, 'Actions against Sustainability: Dismantling of the Environmental Policies in Brazil', *Land Use Policy*, 104.February (2021), 105384 <https://doi.org/10.1016/j.landusepol.2021.105384>

conveys unequivocally the message that environmental infractions will not be tolerated and serves to encourage regulatory compliance.⁶⁹

Second, the authors have the concept of criminal sanctions, which refers to punishments that are handed down by a court of law after a criminal prosecution. The Brazilian Environmental Crimes Law is a piece of legislation that governs illegal activities related to the environment in Brazil.⁷⁰ Individuals and businesses who violate environmental laws face consequences under this law in the form of sanctions, such as monetary fines, imprisonment, and mandatory community service. The Brazilian employment of criminal punishments has shown to be an effective means of discouraging individuals and organizations from engaging in illegal activities related to the environment.⁷¹ For instance, in 2019, a court in Brazil sentenced 13 individuals to a combined total of 287 years in jail for their participation in the unlawful destruction of forestland in the Amazon rainforest. The imposition of such terms not only helps to communicate the message that crimes against the environment will not be allowed, but also helps to discourage others from indulging in such actions.⁷²

The use of both administrative and criminal sanctions in Brazil has resulted in an improvement in the country's environmental performance. Companies have been motivated to adopt more environmentally friendly operations and to comply with environmental legislation as a result of the possibility of being subject to penalty. In addition, the fines and other punishments that were handed down to those who broke the law have contributed to making up for the harm that was done to the environment.⁷³ On the other hand, utilizing administrative and criminal sanctions both come with their own unique sets of difficulties. The slow and cumbersome nature of Brazilian legal system is one of the country's many obstacles. Since some cases can take years to be settled, the effectiveness of

⁶⁹ Vinicius B.F. Costa and others, 'Socioeconomic and Environmental Consequences of a New Law for Regulating Distributed Generation in Brazil: A Holistic Assessment', *Energy Policy*, 169.August (2022) <https://doi.org/10.1016/j.enpol.2022.113176>

⁷⁰ Luciana Gomes Barbosa, Maria Alice Santos Alves, and Carlos Eduardo Viveiros Grelle, 'Actions against Sustainability: Dismantling of the Environmental Policies in Brazil', *Land Use Policy*, 104.October 2020 (2021), 105384 <https://doi.org/10.1016/j.landusepol.2021.105384>

⁷¹ Eve Bratman and Cristiane Bená Dias, 'Development Blind Spots and Environmental Impact Assessment: Tensions between Policy, Law and Practice in Brazil's Xingu River Basin', *Environmental Impact Assessment Review*, 70.March 2017 (2018), 1–10 <https://doi.org/10.1016/j.eiar.2018.02.001>

⁷² Simone Athayde and others, 'Viewpoint: The Far-Reaching Dangers of Rolling Back Environmental Licensing and Impact Assessment Legislation in Brazil', *Environmental Impact Assessment Review*, 94.August 2021 (2022) <https://doi.org/10.1016/j.eiar.2022.106742>

⁷³Jie Wang and others, 'Environmental Justice, Infrastructure Provisioning, and Environmental Impact Assessment: Evidence from the California Environmental Quality Act', *Environmental Science and Policy*, 146.May (2023), 66–75 <https://doi.org/10.1016/j.envsci.2023.05.003>

sanctions as a deterrent can often be diminished as a result.⁷⁶ In addition, the implementation of environmental regulations might vary from one region of the country to another, which can lead to disparities in the punishment meted out to those who violate the regulations.⁷⁷

In spite of this, the application of administrative and criminal punishments in Brazil has resulted in an improvement in the country's environmental performance.⁷⁸ Companies have been incentivized to comply with environmental standards by the possibility of facing sanctions, and the fines and penalties that have been levied on violators have helped compensate for the damage that they have caused to the environment.⁷⁹ On the other hand, the employment of sanctions is not performed without its drawbacks, the most notable of which is a sluggish judicial system and inconsistent compliance with environmental standards. It is necessary to have a legal system that is both more efficient and effective, as well as an enforcement of environmental standards that is more consistent across the country, in order to guarantee that the effectiveness of sanctions as a deterrent will be realized.⁸¹

The Criminal Sanctions for Corporates Recovering Environmental Functions

Environmental sanctions have been used in several countries to promote compliance with environmental regulations and to reduce environmental damage. However, the impact of sanctions on the stability of climate coalitions in countries such as Indonesia and Brazilia is an area that needs further exploration. In this

⁷⁶Rachel Irwin and others, 'Increasing Tree Cover on Irish Dairy and Drystock Farms: The Main Attitudes, Influential Bodies and Barriers That Affect Agroforestry Uptake', *Environmental Science and Policy*, 146.2020026 (2023), 76–89 <https://doi.org/10.1016/j.envsci.2023.03.022>

⁷⁷Thiago Lima Klautau de Araújo and others, 'Brazilian Amazônia, Deforestation and Environmental Degradation: Analyzing the Process Using Game, Deterrence and Rational Choice Theories', *Environmental Science and Policy*, 117.January (2021), 46–51 <https://doi.org/10.1016/j.envsci.2020.12.010>

⁷⁸Thiago Lima Klautau de Araújo and others, 'Brazilian Amazônia, Deforestation and Environmental Degradation: Analyzing the Process Using Game, Deterrence and Rational Choice Theories', *Environmental Science and Policy*, 117.August 2019 (2021), 46–51 <https://doi.org/10.1016/j.envsci.2020.12.010>

⁷⁹Pedro Bigolin Neto and Alexandra Mallett, 'Public Participation in Environmental Impact Assessment Processes through Various Channels – Can You Listen to Us Now? Lessons from a Brazilian Mining Case', *Extractive Industries and Society*, 13.November 2022 (2022), 101186 <https://doi.org/10.1016/j.exis.2022.101186>

⁸¹Alexandra Mallett and others, 'Environmental Impacts of Mining in Brazil and the Environmental Licensing Process: Changes Needed for Changing Times?', *Extractive Industries and Society*, 8.3 (2021) <https://doi.org/10.1016/j.exis.2021.100952>

study, the authors examine the impact of sanctions on the stability of climate coalitions in Indonesia and Brazil.⁸³

Indonesia is one of the world's largest greenhouse gas emitters due to deforestation and the burning of peatlands. The country has implemented a number of measures to reduce emissions, including the establishment of a climate coalition with Norway to reduce deforestation. However, the implementation of these measures has been hindered by corruption and inadequate law enforcement. The use of sanctions in Indonesia has been limited due to a lack of political will and inadequate legal frameworks. Environmental violations are often ignored or under-penalized due to corruption and lack of resources. This has resulted in weak law enforcement and a lack of deterrence for violators.⁸⁵

The impact of weak environmental sanctions on the stability of climate coalitions in Indonesia is significant. The lack of effective sanctions can undermine the credibility of climate coalitions and reduce the incentives for countries to cooperate. This can lead to a breakdown in cooperation and a reduction in the effectiveness of climate change mitigation efforts. Brazil is another country that has faced challenges in addressing climate change due to deforestation and weak environmental regulations.⁸⁶ The country has implemented a number of measures to reduce emissions, including the establishment of the Amazon Fund, which provides financial incentives for sustainable development and reducing deforestation⁸⁷. The use of sanctions in Brazil has been perceived as a more effective way than that of Indonesia, with both administrative and criminal sanctions being imposed for environmental violations. However, the legal system in Brazil is slow and bureaucratic, and cases can take years to be resolved. This can

⁸³ Maria Juschten and Ines Omann, 'Evaluating the Relevance, Credibility and Legitimacy of a Novel Participatory Online Tool', *Environmental Science and Policy*, 146.May (2023), 90–100 <https://doi.org/10.1016/j.envsci.2023.05.001>

⁸⁵ Paulo Horta and others, 'Brazil Fosters Fossil Fuel Exploitation despite Climate Crises and the Environmental Vulnerabilities', *Marine Policy*, 148.November 2022 (2023), 2021–24 <https://doi.org/10.1016/j.marpol.2022.105423>

⁸⁶ T. P. Assis, F. F. Cordeiro, and L. C. Schiavon, 'How Stock Market Reacts to Environmental Disasters and Judicial Decisions: A Case Study of Mariana's Dam Collapse in Brazil', *International Review of Law and Economics*, 73.November 2022 (2023), 106105 <https://doi.org/10.1016/j.irle.2022.106105>

⁸⁷ Carlos A. Peres, João Campos-Silva, and Camila Duarte Ritter, 'Environmental Policy at a Critical Junction in the Brazilian Amazon', *Trends in Ecology and Evolution*, 38.2 (2023), 113–16 <https://doi.org/10.1016/j.tree.2022.11.011>

reduce the effectiveness of sanctions as a deterrent and undermine the stability of climate coalitions.⁸⁸

The impact of environmental sanctions on the stability of climate coalitions in Brazil is less significant than in Indonesia.⁸⁹ However, the slow legal system can still undermine the effectiveness of sanctions and lead to a reduction in the incentives for countries to cooperate.⁹¹ The slow legal system in Brazil could reduce the effectiveness of sanctions as a deterrent.⁹² To ensure the stability of the climate coalition, effective and efficient environmental sanctions and a strong legal framework to enforce environmental regulations are needed. This will help drive compliance with environmental regulations and reduce environmental damage, as well as promote cooperation and stability in global efforts to address climate change.⁹³

In the authors' view, there are at least several things that need to be considered to enlarge the effectiveness of Administrative Sanctions and Criminal Sanctions for corporations in environmental law in Indonesia in particular. In the perspective of criminal law whose orientation is criminal sanctions.⁹⁵ In addition, if the concept of criminal aggravation geared toward environmental conservation is further examined, it has implications for inappropriately placing "deprivation of profits derived from criminal acts," "closure of all or part of places of business and/or activities," "improvement as a result of criminal acts," "obligation to do what is neglected without rights," and/or "placement of companies under guardianship" as additional punishments in the PPLH Law. These punishments are more severe than jail, confinement, and fines, as evidenced by their severity.

⁸⁸ Gabriel Cardoso Carrero and others, 'Land Grabbing in the Brazilian Amazon: Stealing Public Land with Government Approval', *Land Use Policy*, 120.April (2022), 106133 <https://doi.org/10.1016/j.landusepol.2022.106133>

⁸⁹Adrien Comte, Clément Surun, and Harold Levrel, 'Measuring and Managing for Environmental Sustainability. An Application of the Environmental Sustainability Gap (ESGAP) Framework in New Caledonia', *Environmental Science and Policy*, 146.May (2023), 113–22 <https://doi.org/10.1016/j.envsci.2023.05.007>

⁹¹ Arthur Nicolaus Fendrich and others, 'Taxation Aiming Environmental Protection: The Case of Brazilian Rural Land Tax', *Land Use Policy*, 119.April (2022) <https://doi.org/10.1016/j.landusepol.2022.106164>

⁹² L. Massaro and others, 'Balancing Economic Development and Environmental Responsibility: Perceptions from Communities of Garimpeiros in the Brazilian Amazon', *Resources Policy*, 79.October (2022), 103063 <https://doi.org/10.1016/j.resourpol.2022.103063>

⁹³ Miguel Frohlich and others, 'Towards Adaptive Coastal Management Law: Lessons from Australia and Brazil', *Ocean and Coastal Management*, 219.September 2021 (2022), 106057 <https://doi.org/10.1016/j.ocecoaman.2022.106057>

⁹⁵ Shohreh Soltani and others, 'Energetic and Environmental Assessment of a Photovoltaic Thermal-Thermoelectric System Using Nanofluids: Indoor Experimental Tests', *Energy Conversion and Management*, 218.November 2019 (2020) <https://doi.org/10.1016/j.enconman.2020.112907>

For instance, when a person is ordered to restore all the environmental damage resulting from a crime that has been shown to have caused substantial harm, the associated expenses are far more than a \$5 billion punishment. Therefore, it confirms that the action sanctions outlined in environmental laws and regulations should not be regulated as additional punishments, but should stand alone as action sanctions, so that the application or imposition of sanctions need not be cumulative with the principal punishment, in this case, fines.⁹⁶

The question of whether or not an additional criminal term for restoring environmental services ought to become the primary criminal consequence has been at the heart of dispute for a very long time. When it comes to violations of environmental laws that are committed by businesses, the PPLH Law governs the following.⁹⁷ Law Number 32 of 2009 on Environmental Protection and Management precisely regulates penalties for environmental offenses. Additional fines and additional research have elements that distinguish them from conventional criminal consequences for environmental offenses. *First*, confiscation of earnings from illicit activity. Regarding the advantages and designation of the intended profit deprivation, no regulations are more stringent. *Second*, administrative punishments, such as revocation of business licenses by the State Administrative Court, can also lead to the closure of all or a portion of the real place of business and/or activity.⁹⁸

Third, the improvement as a result of a crime cannot be clearly defined, given that the improvement as a result of a crime, particularly for environmental damage, is measurable and can overlap with the obligation to restore the environment in civil law enforcement. *Fourth*, the obligation to do what is neglected without rights is quite difficult to define, given that in cases of heavy pollution or environmental damage, it tends to be difficult for environmental functions to be reestablished. *Fifth*, the execution of placing a firm under guardianship for up to three years needs an environmental manager whose task it is to restore the corporate environmental management function to its pre-pollution

⁹⁶ John McCarthy and Zahari Zen, 'Regulating the Oil Palm Boom: Assessing the Effectiveness of Environmental Governance Approaches to Agro-Industrial Pollution in Indonesia', *Law and Policy*, 32.1 (2010), 153–79 <https://doi.org/10.1111/j.1467-9930.2009.00312.x>

⁹⁷ Scott Adam Edwards and Felix Heiduk, 'Hazy Days: Forest Fires and the Politics of Environmental Security in Indonesia', *Journal of Current Southeast Asian Affairs*, 34.3 (2015), 65–94 <https://doi.org/10.1177/186810341503400303>

⁹⁸ Ruslan Renggong, Abd Haris Hamid, and Yulia Yulia, 'Investigating Law Enforcement for Coral Reef Conservation of the Spermonde Archipelago, Indonesia', *Asian Journal of Conservation Biology*, 11.1 (2022), 3–11 <https://doi.org/10.53562/ajcb.61904>

or pre-destruction state. It has not yet been formally governed by statutes and rules.⁹⁹

However, there is currently no assurance for the company so long as it continues to engage in measures to restore environmental functions. Nobody else is responsible for harming the environment. For instance, when a company is found guilty of committing a criminal act of river pollution in its production process and is ordered to restore environmental functions, the question then arises “What if, during the process of restoring the environment, it is discovered that other parties (e.g., the community) are also polluting the river environment?” This certainly results in efforts to improve environmental conditions.¹⁰⁰

4. Conclusion

According to the findings, the criminal sanction for the restoration of environmental functions has not yet had its maximum impact. Also, it has a tendency to give rise to an ambiguity in the application since it does not have any measure of the success of the intention to restore the environment. Additionally, the findings indicate that the criminal sanction for the restoration of environmental functions has not yet reached its maximum potential. This is due to the fact that the criminal sentence does not provide a means of determining whether or not the goal of restoring the ecosystem was successful. Brazil, which is more likely to use administrative sanctions and has a better impact, does a variety of things, such as the provision of fines, the revocation of business licenses, and other preventive measures used to anticipate excessive exploitation of the environment. These are all measures that Brazil takes to anticipate excessive exploitation of the environment. These measures are conducted in order to prepare for unsustainable levels of environmental exploitation.

⁹⁹Truly Santika and others, ‘Heterogeneous Impacts of Community Forestry on Forest Conservation and Poverty Alleviation: Evidence from Indonesia’, *People and Nature*, 1.2 (2019), 204–19 <https://doi.org/10.1002/pan3.25>

¹⁰⁰Nathalina Naibaho and others, ‘Criministrative Law: Developments and Challenges in Indonesia’, *Indonesia Law Review*, 11.1 (2021) <https://doi.org/10.15742/ilrev.v11n1.647>

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