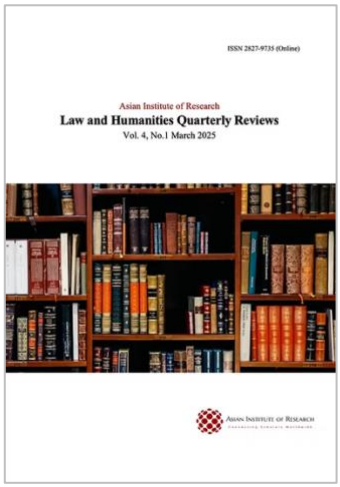

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Natural Resource Crime: Regulation, Legal Performance, and Environmental Justice Discourses

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Abstract
Environmental justice is a fundamental element in responding to the impacts of exploitation of natural resources, especially on vulnerable groups. However, the norms in Law Number 32 of 2009 concerning Environmental Protection and Management still leave ambiguity, especially in the application of the principles of primum remedium and ultimum remedium, which have an impact on legal uncertainty and the potential for manipulation of justice through alternative resolution mechanisms. This study uses a conceptual approach and theory of justice to analyze the basis of social justice in criminal law enforcement against natural resource crimes. The analysis results indicate that regulatory weaknesses and inconsistent law implementation hinder the effectiveness of environmental protection. Achieving social justice is not only limited to structural issues but must also include ecological concepts in distributive justice. Therefore, a legal policy reconstruction that is more oriented on substantive justice and adopts a holistic approach is needed to ensure legal certainty.

Keywords: Environmental Justice, Natural Resources Crime, Social Justice

1. Introduction

The discourse on justice has been present along with the presence of humans when relations between individuals, and groups, including in institutional bonds called the state. The meaning of law as an instrument of social control and control (Roscoe Pound in Muttaqin, 2021), is the choice of modern countries. The positivistic influence that places the legal framework as a state instrument and sees law not as a matter of good or bad but legitimate or illegitimate (Kelsen, 2024), becomes a conflict in seeing law, especially confronting it with aspects of justice and legal benefits. Although legal certainty is backed up by state power, in an abnormal position, justice should be applied, (Gustav Radbruch trans. Bonnie Litschewski Paulson & Stanley L. Paulson, 2006) in this perspective there is a loss of legal validity (Alexy, 2021). The influence of positivism is quite significant, some even say that justice will be found in legislation, among other things, in mapping out issues of fairness or unfairness, which cannot only be done by studying legislation but also by paying attention to the legal elements that are interconnected with each other (Purwendah, 2019).

In the context of environmental justice (Robert D. Bullard, 2000) it is needed as one of the important elements in enforcing environmental law. Early environmental justice as Early environmental justice as a class issue over the impacts caused by the industrial process (Azhar et al., 2023). However, it is an entry point in the environmental law enforcement process, including the involvement of vulnerable groups in environmental impacts in making decisions regarding environmental management.

There are five strategies for the environmental justice movement, namely identifying the impacts of injustice from environmental degradation due to discrimination (civil rights), distributing benefits and risks fairly and equally (distributive justice and ethics), ensuring fair procedures, and giving voice to all people, especially those who are politically powerless (public participations), addressing the reasons or causes of injustice (social justice), and reducing pollution and risks to society (ecological sustainability) (Muhdar, 2020).

Law enforcement against natural resource crimes often manipulates the perception of justice based on legislation which provides many options for providing solutions, including alternative dispute resolution, and the application of administrative and civil sanctions. (Subarsyah, 2020). Law Number 32 of 2009 concerning Environmental Protection and Management does not explicitly state the principle of primum remedium, although there is no longer a prohibition on separating different, distinct legal events without having to wait for the process as in the application of the principle of subsidiarity (Muhdar, 2020).

The ambiguity of norms and meaning in the law enforcement process is trigger for conflict in environmental problems which comprehensively gives rise to unclear implementation by law enforcers of the ultimum remedium principle and the primum remedium principle. In the enforcement of environmental criminal law. This shows the weakness of the ratio legis in the formation of the rules of Law Number 32 of 2009 concerning Environmental Protection and Management. The legal norms that are formed become irrelevant to the logic that is to be built due to the unclear indicators of its implementation. This causes the law not to work as it should and can lead to environmental injustice.

The Focus of the discussion in this paper is to analysis the basis of social justice in enforcing criminal law in natural resource-based cases which are studied using a conceptual approach and theory of justice.

2. Concept of Social Justice

In legal practice, if the regulator, executor, and influencer who are in one container in the formation and implementation of a norm deviate from the ratio legis, then it can give rise to a distribution of risk from the legal logic that has been regulated so that the basis of justice does not confirm each other.

Social justice in the perception of environmental justice is related to the concept of distributive justice in managing natural resources, including the neglect of protection against risks that the criminal justice system is supposed to guard against. Here, the use of natural resources is brought into the everyday calculus of redistributive justice into considerations of what is distributed, and what costs to the people and natural resources that distribution brings. Staying within the bounds of liberalism, social justice focuses on what each person needs to live the kind of life they value and desire. But beyond just distribution, the concept also introduces sustainability, or at least the full ecological costs of those life choices. Incorporating the concept of ecological space into global distributive justice illustrates a commitment to ecological and environmental justice, in addition to social justice (Schlosberg, 2007).

The concept of sustainable development attempts to provide access to natural resources for underprivileged communities. The idea is equivalent to the assumption that future generations can at least utilize the same natural resources as the present generation (Jacobs, 2014). Justice for future generations cannot be separated from the concept of intra-generational justice. It is difficult to discuss justice in the future if no justice can be felt in the present. There are four derivative elements in the intra-generational principle, including the aspect of environmental justice as social justice.

Social justice in the context of environmental justice is one part of justice that will move humans to try as hard as possible to realize a just social order, especially a social system that can accommodate the demands of society (Jacobs, 2014). Environmental justice is a movement that focuses on land use (Brinkley & Wagner, 2024). Environmental justice encompasses a broader idea of social justice (Lynch et al., 2015). Integrating the concepts of social justice into environmental justice certainly raises the fundamental question of what values should be evaluated. This of course depends on the identification of relevant stakeholder groups in the justice community or affected parties in the context of distributive justice (Mukti & Sobirov, 2023).

Another perspective states that environmental protection and management go hand in hand with poverty reduction efforts (Jacobs, 2014). The affirmative action in question is that poverty alleviation must go hand in hand with environmental conservation, not impoverishment (Gosiita, 1993). Therefore, the importance of a forum to achieve procedural justice as a component of environmental protection for the next generation that is also socially just.

Other non-legal factors that must be considered to follow the rule of law, such as accessibility to community facilities. Because natural resource justice has not been fulfilled, law enforcement cannot deny the existence of restrictions on community access to natural resources in structural cases concerning the environment. This affirmation is only a medium to understand the reciprocal relationship of a problem and is not a justification for anyone to damage the environment. So this condition can be explored further if law enforcers adopt an intra-generational justice perspective.

To avoid injustice in law enforcement, the difference in responsibility for the impact of environmental degradation must be used to take action against major actors. In handling structural cases and major cases, law enforcers must treat them differently. To ensure that actors are held accountable for the environmental damage they have created, affirmative action is targeted not only at structural cases but also at major cases. Therefore, equality in law enforcement for these two situations cannot be fully enforced. Environmental law enforcement needs to be balanced on special treatment instruments or affirmative action from the perspective of sustainable development through the component of intra-generational justice.

Before entering the stage of enforcing the law, stakeholders must be able to make rules with mutual agreement from the community, which throughout the process provides a forum for communication and developing opinions for the community to form a rule through the idea of habeas communication (communication paradigm). This is related to decision-making regarding the environment, including all organizations involved in environmental governance (Blackwatters et al., 2025). Procedural justice begins to be achieved after communication and active involvement. Procedural justice is a key factor in upholding social justice in the environmental law enforcement process (Dudayev, 2020).

To achieve social justice in environmental justice, there are actually three things that must be included in it, first, distribution justice. Second, procedural justice, and third is recognition justice. Recognition justice is crucial in the environmental justice contest, this is because recognition justice is related to respect for the identity, rights, and dignity of individuals or groups.

3. Criminal Law Enforcement in Natural Resource-Based Cases

Humans are the most important component to change and influence the environment around them, but the environment has a limited ability to accept these changes or is called environmental carrying capacity. If it has exceeded the highest capacity limit, then there is a violation of environmental carrying capacity which has an impact on ecosystem imbalance, thus causing problems or issues with natural resources, such as environmental pollution due to the release of emissions or waste, forest fires, mining activities and so on (Akib, 2014). This can be estimated based on environmental quality standards.

The debate among legal experts regarding the terms “environmental criminal law” and “criminal environmental law (strafrechtelijk milieurecht)” is still ongoing today. According to Andi Hamzah, environmental law contains

administrative, civil and criminal sections, depending on the perspective from which the term is used (Hamzah, 2005).

In relation to environmental law enforcement, there are efforts to fulfill regulations in a preventive manner and through the imposition of sanctions or legal action in the event of a violation of the criminal provisions in Law No. 32 of 2009 concerning Environmental Protection and Management or repressively. Thus, to reduce and/or prevent environmental pollution and/or degradation, both systems or approaches are required.

Preventive efforts made in the process of implementing laws and regulations can be carried out through monitoring and direction from state administrative officials (administrative law aspects), while through the enforcement of sanctions or legal action, repressive actions are taken to end violations, rehabilitate the environment, and provide compensation to parties who are harmed by environmental pollution or destruction (administrative, civil, and criminal law aspects). The main effort that can be made to prevent violations of regulations and/or environmental pollution is the arrangement or preparation of environmental regulations. In other words, environmental law enforcement is a process to ensure compliance with environmental laws and regulations, which have a scope of application in the fields of administrative law, criminal law, and civil law (Hamzah, 2005).

The implementation of regulations related to natural resources must be in accordance with the basic values of law enforcement, such as the values of justice, certainty, and benefit (Muhammad Ridwan Hidayat et al., 2024). Conceptually, orders, prohibitions, permits, and exemptions can be used to describe legal norms in laws and regulations. Legal norms are only intended for the people and the government. Although broad in nature, this shows that legal norms do not only apply to certain groups of individuals or are intended for certain people but for “everyone” and that the events or things regulated are not concrete and specific events (IS, 2007).

Regulations that are the main basis for planning and implementing environmental policies, in addition, can be the first step in enforcing the law against environmental violations and crimes. The complete chain of environmental policy regulations (regulatory chain) is described as follows: (R, 2000)

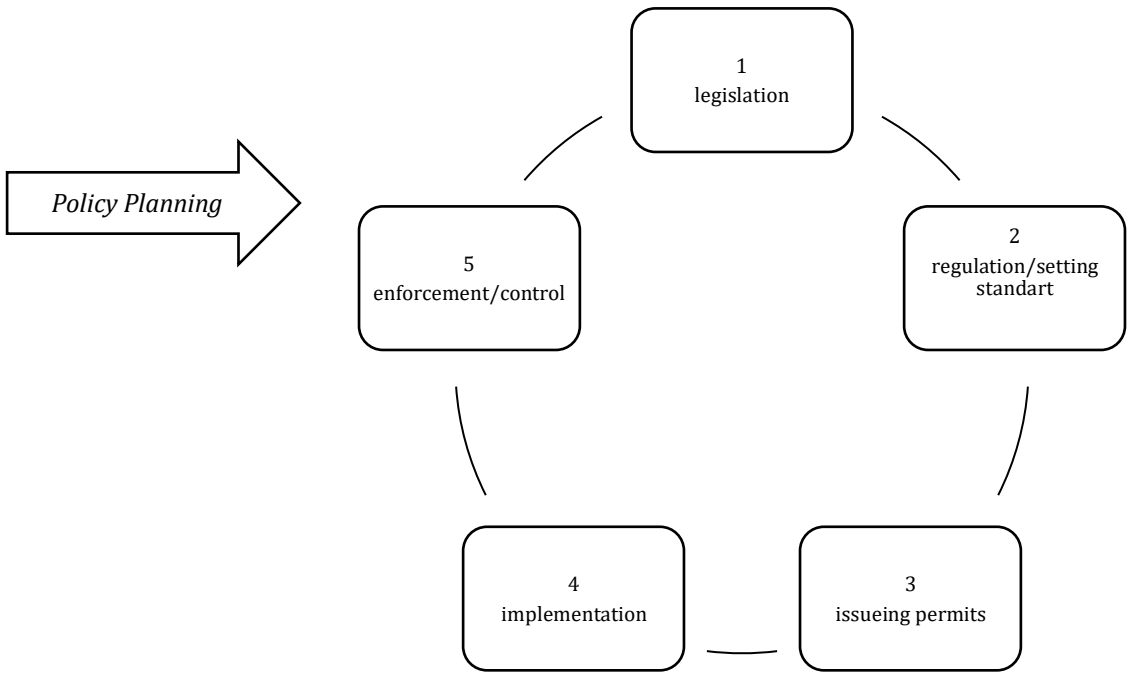

Figure 1: Regulatory Chain Cycle

Based on the graph above, after the regulation is formed, the next step is to determine what the environmental standards are, then grant permits, after that there is the implementation or implementation of laws and regulations and the last is environmental law enforcement.

These laws and regulations serve as instruments or means for the government to achieve policies and objectives for their basic framework, but if weak norms are established, then the rules formed in the implementation and enforcement of environmental law will be difficult to implement and enforce. This certainly has a great impact on society and is the main cause of the issue of injustice. It should be understood that the enforcement of criminal law in natural resource-based cases is an effort to protect natural resources from damage and unsustainable exploitation.

4. Environmental Crime Offense Qualifications

Indonesia applies the principle of legality as the main basis in implementing criminal law, that an act is only declared a crime if it has been regulated by laws and regulations. So to determine whether an event is an environmental crime or not, it is necessary to know the formulation of an environmental crime. The formulation of an environmental crime can be found in the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management or other laws and regulations that regulate environmental crimes or crimes.

Natural resource-based problems or issues are essentially not only administrative and civil issues, but also environmental crimes that are qualified according to the formulation of crimes and their elements. However, at the stage of policy formulation, the ambiguity of the norms regulated in each article can trigger conflict in environmental injustice issues.

The problem is the injustice that exists between humans and the environment. As can be observed, human activities have a significant impact on environmental quality. Among the environmental damages that are currently occurring are deforestation, air pollution, water pollution, decreased soil fertility, ozone layer depletion, and signs of global warming caused by human activities. Therefore, institutional structures, financial resources, and legal mechanisms must all be in place to preserve and maintain environmental quality.

In Law No. 32 of 2009 concerning Environmental Protection and Management which regulates criminal provisions from Article 97 to Article 120. These provisions are then qualified into formal and material crimes. The formulation of material crimes is contained in Article 98, Article 99, and Article 112, while the formulation of formal crimes is contained in Article 100 to Article 111 and Article 113 to Article 115.

It is crucial to distinguish between the criteria for formal and material crimes, because it has implications for the accountability and criminal sanctions imposed on the offender (Hamzani, AI, 2022). The formulation of the crime is considered a material crime, because the “consequence” of the act is what is threatened by law, namely exceeding the required quality standards, causing environmental pollution and/or damage. As a result, it can cause someone to be injured, either seriously or lightly, increase the health risk, and even cause death.

In this situation, the term “any person” refers to a person or business entity, whether incorporated or not. As part of the elements of environmental violations, the phrase “intentionally or negligently” refers to the perpetrator’s intent or state of mind (mens rea). As a result, actual proof requires special knowledge and skills.

That unlawful acts can be reviewed from formal and material aspects (Moeljatno, 2008). From a formal perspective, the unlawful element means that every criminal act requires a legal norm first (the principle of legality). While from a material perspective, an act is categorized as an act if an act is not allowed or should not be done. So that the element is not only reviewed from the perspective of statutory regulations (formal), but can be reviewed from a more concrete perspective (material) (Santosa, 2001).

The element of the act is no longer emphasized that the act is unlawful, because it violates the criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management, it is automatically an

unlawful act (Akib, 2014). Cases based on natural resources tend to be quite complicated to prove so that in some cases the judge must show courage and precision to expand the definition of unlawful acts to include moral offenses and also legal offenses. While the qualifications of formal offenses as regulated in the provisions of Articles 100 to 111 and Articles 113 to 120 refer to "acts" that are prohibited and subject to criminal penalties.

When the rule of law is violated, that is where criminal penalties are imposed. In the formulation of environmental crimes, there is ambiguity that often results in the non-application of criminal sanctions due to the unclear indicators of their implementation.

5. Application of the Ultimum Remedy Principle

The legal principle is a fundamental idea of abstract law and underlies a rule and concrete law enforcement (Ajie, 2016). Criminal law recognizes many principles, including the principle of ultimum remedium, which means that criminal law is the last resort (Rangkuti, 2018). The use of criminal sanctions in the principle of ultimum remedium is imposed if other legal sanctions, such as administrative and civil sanctions, are inadequate (Abdurrachman et al., 2021). The presence of the principle of ultimum remedium in Law No. 32 of 2009 concerning Environmental Protection and Management is to correct the failure of the practice of the principle of subsidiary law enforcement previously contained in Law No. 23 of 1997 concerning Environmental Management (Tjahjani, 2015).

The principle of subsidiarity in Law No. 23 of 1997 requires that before the application of criminal provisions, there are two conditions that must be met, namely sanctions given through other legal approaches are not complied with (administrative sanctions) and violations that have been committed more than once (Hapsari, 2020). Thus, criminal law in law enforcement against natural resource-based cases can be avoided and changed using other legal fields or by implementing severe social sanctions, unless administrative sanctions or civil sanctions are carried out efficiently.

The implementation of the principle of subsidiarity in the enforcement of environmental criminal law causes multiple interpretations and the limited capabilities of law enforcers with the intention of intimidating perpetrators who violate the required quality standards (Lisdiyono, Edy, 2018). By prioritizing administrative sanctions, the possibility of environmental damage increases. The application of administrative sanctions will be effective in restoring the damaged environment as long as the perpetrators comply with them, but if the perpetrators do not comply with the sanctions, it will worsen the condition of the environment. If criminal sanctions are used as a last resort, this will cause legal uncertainty for perpetrators who violate the criminal provisions in the environmental management law. Then if the implementation of criminal sanctions can only be carried out when administrative sanctions are not implemented, it will take longer to determine whether administrative sanctions have been imposed or not, this causes injustice to the community.

Several obstacles in the implementation of the subsidiary principle finally in Law No. 32 of 2009 concerning Environmental Protection and Management experienced a conceptual change to the ultimum remedium principle. The two principles have similarities regarding not directly applying criminal sanctions in environmental law enforcement, but the ultimum remedium principle can be directly applied if more than once against wastewater quality standards, quality standards, emissions, or disturbance quality standards (Mulkan & Aprita, 2022).

General explanation of number 6 of Law No. 32 of 2009 concerning Environmental Protection and Management states that "Enforcement of environmental criminal law still pays attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. The application of this ultimum remedium principle only applies to certain formal crimes, namely criminalization of violations of wastewater quality standards, emissions and disturbances". Based on this general explanation, the principle of ultimum remedium is a last resort after administrative steps are unsuccessful and is intended for certain formal crimes.

When writing laws, legislators consider the concept of ultimum remedium when deciding whether behavior will be classified as a criminal act rather than just an administrative offense. According to the concept of ultimum remedium, not all perpetrators will be made a criminal offense. The application of criminal law to an act can be justified if it has been determined by the legal system as an unlawful act.

Only certain criminal acts such as violations of water quality requirements, waste quality standards, and emission quality standards are subject to the ultimum remedium principle (Imam Budi Santoso, 2018). Therefore, administrative sanctions should not immediately free violators from criminal guilt for violating these rules. Likewise, when someone is subject to criminal punishment, they are not immediately free from administrative sanctions considering that criminal law and administrative law are two different fields of law (Anwar, 2020).

There is a change in the concept of the principles contained in Law No. 32 of 2009 concerning Environmental Protection and Management, the principle of ultimum remedium is present to replace the principle of subsidiarity. In its application to natural resource-based cases, not all environmental crimes can be subject to the principle of ultimum remedium, it only applies to certain formal criminal acts by the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management.

6. Application of the Primum Remedium Principle

In addition to the ultimum remedium principle, Law No. 32 of 2009 concerning Environmental Protection and Management has indicated another principle, namely the primum remedium principle. Unlike the ultimum remedium principle which is the last resort for the application of criminal law, the primum remedium principle prioritizes criminal law enforcement in resolving natural resource-based cases. The primum remedium principle approach in the criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management is a solution to the suppression of environmental law (Havinanda, 2020) .

This is in accordance with the principle of legality, that anyone who violates a policy that regulates criminal law can be subject to criminal sanctions (Imam Budi Santoso, 2018). The legal problem is that the judge did not use primium remedium as a basis or reference in making decisions. Judges still use the principle of ultimum remedium even though criminal sanctions are the main choice or primum remedium in cases where the action is considered to be very detrimental to the interests of the state and society.

That in the law enforcement process, the judge's lack of understanding of the grouping of elements of environmental crimes in applying the principle of primium remedium for perpetrators of pollution through the release of waste and environmental damage can have an impact on the wider community and the environment (Pratiwi et al., 2021) . If it is difficult to prove, the judge must consider whether the incident has fulfilled the elements of evil contained in the rules so that it can be declared guilty even though it is not bound by a specific punishment. In other words, the formal elements of a formulation have almost determined that someone has committed a crime, which in its construction the nature of the formal crime is the component of knowledge or suspicion from within the perpetrator.

The presence of these elements, a person is declared to have violated the law against a norm when it is known or has strong reasons to believe that their actions can have a negative impact. The important thing about a crime is not whether the violation has consequences or not. A formal crime whose burden of proof is not on the prosecutor to show that the environment has been damaged or polluted, but on the prosecution to show that the defendant or suspect has violated the licensing requirements according to administrative law, criminal law provisions based on administrative law provisions, or statutory regulations.

A legal provision that stipulates that an act is prohibited and subject to criminal penalties must be established before a person can be held accountable for the act he/she committed. Criminal law is regulated to be implemented, so that it can be defended and justified from all legal needs that are protected and guaranteed peace and order.

On the other hand, it is said to be a crime if it violates the rules contained in the law. Criminal acts in environmental protection and management are any acts that are punished as crimes or violations in accordance with the provisions of criminal laws and regulations governing environmental protection and management.

Application of the principle of primium remedium becomes the basis for enforcing environmental law in situations or cases where environmental pollution and damage are clear and do not require evidence to provide a deterrent effect for those who commit environmental crimes. The criminal provisions of Law No. 32 of 2009 concerning Environmental Protection and Management do not directly regulate the formulation of this classification which respects the principle of primum remedium.

7. A New Approach to Environmental Law Enforcement Using a Holistic Paradigm

Currently, in environmental law enforcement, a new paradigm is known that prioritizes the values of justice compared to procedural provisions, this paradigm is considered to be able to meet the needs and aspirations of the community while still paying attention to the facts that occur in the community environment (Budiono & Izziyana, 2018). There are three principles used by law enforcement officers, namely: (Akib, 2012)

1. Comprehensive use of other areas of law;
2. Prioritize the ecosystem approach by setting aside economic, legal and political legal approaches;
3. Building values of justice and values of truth.

The holistic paradigm is closely related to social justice. This is supported by Jejen Musfah's opinion regarding the holistic paradigm in terms of education which provides an understanding of global problems or issues in the form of human rights, religious issues, social justice, multiculturalism, and global warming (Musfah, 2008).

According to this paradigm, sanctions in other legal fields can be implemented simultaneously, meaning that each of these legal fields is not an option or alternative punishment, but can be implemented simultaneously (Kim, 2013). This is because perpetrators of crimes who violate criminal provisions in Law No. 32 of 2009 concerning Environmental Protection and Management cannot be directly subject to criminal sanctions but must be given administrative sanctions first. The regulation regarding the application of these sanctions is in contrast to the holistic paradigm approach which wants the implementation of three legal fields at once, namely administrative law, civil law and criminal law side by side.

Environmental law enforcement based on this paradigm requires synergy from all parties, especially law enforcers as implementers in the law enforcement process to achieve justice. Currently, the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management still require the interests of ruling groups including influencers because in determining policies, of course, they cannot be separated from the influence of legal politics and have not prioritized the achievement of justice.

Criminal law that is limited in its application can lead to increased environmental damage. Administrative law in its application functions to restore the environment, but cannot scare perpetrators of environmental crimes. Therefore, in the interests of ecological sustainability, environmental law enforcement is required to take place by prioritizing a holistic approach, namely by utilizing all areas of law, both administrative law, civil law and criminal law simultaneously (Valini, 2019). Utilizing all areas of law is not only aimed at protecting the environment, but it must be remembered that the environment also needs to be managed properly. So that by prioritizing a holistic approach, environmental protection and management can go hand in hand with adhering to the principles of equality and justice (Ansar, Bakri, R., Asriyani, Abdurrahim, & Bakhtiar, 2023) .

That the current norm ambiguity raises the issue of justice for society to become increasingly complicated. Legislators and executors should be able to harmonize and formulate regulations related to the protection and management of life so that they are in line with legal principles and use holistic approaches to realize the values of justice and legal certainty for ecological sustainability.

Ecological sustainability is not only intended for future generations, it is necessary to see the fact that more than 70 million indigenous people live throughout the Indonesian archipelago, representing twenty percent of the total population, most of whom depend on nature for their livelihoods (Tamano, 2023). To maintain ecological sustainability, a holistic approach to realizing social justice in enforcing environmental law is needed. This includes imposing strict sanctions on perpetrators of environmental crimes, and using administrative, civil, and criminal law, especially if they come from large corporations. Furthermore, restoration efforts must be made to restore environmental damage, and preventive efforts must continue to be made to prevent environmental crimes in the future. And most importantly, the community must also be involved in the decision-making process and supervision of environmental crimes. Thus, a balance between economic, social, and environmental interests can be achieved.

8. Conclusion

The basis of social justice in enforcing criminal law against natural resource-based cases is still difficult to implement and enforce because it is constrained by weak legal norms in laws and regulations, which have an impact on environmental injustice for the community. Regulations on the application of the ultimum remedium principle and the primum remidium principle are not explicitly contained in the environmental protection and management law. The achievement of social justice is not only limited to structural issues but must include the concept of ecology in distributive justice. Regulations faced by law enforcement against environmental violations and crimes are the basis for implementing a policy concerning natural resources that must meet the values of justice. A holistic approach to environmental law enforcement requires the simultaneous application of administrative, civil, and criminal sanctions. This approach allows for the application of ambiguous legal principles, enabling law enforcers to use them as indicators to support the imposition of sanctions on environmental crimes that meet the necessary legal criteria. Perpetrators should not be able to evade criminal sanctions, and enforcement efforts must also consider environmental restoration while prioritizing social justice within society.

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