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Challenges in Indonesian Environmental Law Enforcement: Handling Individual *Culpa* Mistake (Negligence) Cases

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Abstract

This article examines the shortcomings of environmental law enforcement in Indonesia concerning culpa (negligence) by individual offenders. Criminal sanctions in such cases often produce superficial "greenwashing" verdicts, where penalties appear strict yet fail to deliver substantive justice or environmental restoration. Although based on ecological damage assessments, these calculations rarely serve a practical function, as proving negligence becomes secondary and compensation remains unused. As a result, rulings reveal a disconnect between environmental harm and sanctions imposed, with imprisonment and fines disproportionately burdening negligent individuals while offering little ecological benefit. Using a normative juridical approach combining statutory, conceptual, and case analyses, this study finds that the system fosters inefficiency, with costly assessments underutilized and appeals largely abandoned, leaving clemency as the only viable remedy. It argues that community service sanctions focused on ecological rehabilitation would provide a fairer, more feasible, and future-oriented alternative that aligns accountability with environmental recovery.

A. Introduction

Criminal law enforcement in cases of negligence (*culpa*) by individual offenders has received little scholarly scrutiny. This study highlights concerns that such enforcement often produces outcomes that are more symbolic than substantive, resembling "greenwashing," where corporations project a false image of environmental responsibility. A prominent example is the ruling on the forest and land fires in Bromo Tengger Semeru National Park, which occurred between September 6 and 13, 2023.

On January 31, 2024, the Kraksaan District Court in Probolinggo sentenced the defendant, AW, to two years and six months of imprisonment and a fine of 3.5 billion rupiah for "negligently setting fire to the forest." The verdict became final, as neither party filed an appeal. The charges were based on Article 78(5) in conjunction with Article 50(2)(b) of Law No. 41 of 1999 on Forestry, as amended by Law No. 6 of 2023, and Article 188 of the Indonesian Criminal Code (KUHP), which provides for a maximum of five years' imprisonment and a fine of up to 3.5 billion rupiah.[1]

The controversy stemmed from the public reaction. The case went viral, with widespread outrage directed at the defendant, while little distinction was made between intentional (*dolus*) and negligent (*culpa*) conduct. Officials, including members of the central government, claimed massive losses. Law enforcement bodies focused primarily on the scale of damage, relying on expert testimony that estimated losses at 741 billion rupiah over 1,241.79 hectares. The subjective nature of this assessment raises questions about the objectivity of both the loss calculation and the legal reasoning underpinning the verdict.

Within the framework of Indonesian criminal law, the starting point is the recognition of collective rights to a good and healthy environment.[2] From this foundation, the law identifies prohibited acts subject to criminal sanctions. [3] Criminalization in the environmental context is grounded in the concept of harm, whether directed at individuals, society, the state, or the environment, thereby giving rise to the notions of state loss and environmental harm.

Two main perspectives shape the discourse on environmental harm-based criminalization. The first regards the environment as a protected legal interest, where humans are obliged to respect nature and are simultaneously considered victims of environmental crimes, a perspective associated with green victimology. [4] The second emphasizes intergenerational equity, recognizing that future generations hold the same rights as current and past generations to enjoy a healthy environment.[5] Both perspectives converge in supporting environmental harm-based criminalization as consistent with green victimology.[6]

Theoretical debates on models of environmental harm-based criminalization have produced four approaches: abstract endangerment, concrete endangerment, concrete harm, and serious environmental pollution. The first three models are administratively dependent, requiring reference to regulatory violations, while the last is administratively independent.

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[2] Michael Faure, 'Towards a New Model of Criminalization of Environmental Pollution: The Case of Indonesia.', in *Environmental Law in Development: Lessons from the Indonesian Experience*, ed. Michael Faure and Nicole Niessen (Cheltenham: Edward Elgar Publishing, 2006), 188–217.
[3] Ibid.
[4] Rob White, 'Green Victimology and Non-Human Victims.', *International Review of Victimology* 24, no. 2 (2018): 239–55.
[5] Andre Santos Campos, 'Intergenerational Justice Today', *Philosophy Compass* 13, no. 3 (24 March 2018): 124–77, https://doi.org/10.1111/phc3.12477.
[6] Matthew Hall, "Environmental Harm and Environmental Victims: Scoping out a 'Green Victimology,'" International Review of Victimology 20, no. 1 (October 25, 2014): 129–43.

Under this latter model, criminal liability may arise solely from the seriousness of the harm, even when the act complies with permits or administrative regulations. These models are reflected in Law No. 32 of 2009 on Environmental Protection and Management, which institutionalizes environmental harm as a central consideration in Indonesian criminal law.[7]

The concept of criminalization in Indonesian environmental law has, in practice, shifted toward overcriminalization, particularly in cases of individual negligence (*culpa*). Overcriminalization not only captures the current reality but also provides a basis for reconsidering enforcement strategies. Addressing this systematic failure requires more than a change in perspective; it calls for altering institutional practices and experimenting with alternative approaches to achieve decisions that generate positive outcomes.[8] Such efforts are essential to counteract "greenwash rulings," which represent the negative outputs of the existing legal system.[9]

The ruling appears to have been influenced by the perception that the offender merited a severe sentence solely because the losses amounted to hundreds of billions of rupiah. Such reasoning reflects an improper generalization, as the pressure stemmed not only from legal requirements but also from moral and religious considerations[10]. In principle, violations of environmental norms intersect with multiple domains: (1) legal norms, (2) social and moral norms, (3) religious norms, and (4) ethics.[1112]. The ruling suggests a tendency toward excessive retribution and rigid power hierarchies, reflecting retributive justice, a form of justice rooted in antiquity. This constitutes one of the controversies surrounding the decision, which indicates elements of greenwashing.

This article examines criminal court rulings that appear to support environmental protection but in practice amount to greenwashing. While environmental criminalization is formally based on the calculation of environmental damage, the assessed damage, which informs sentencing, often fails to contribute to risk mitigation or the rehabilitation of degraded environments. In such cases, calculating environmental harm becomes irrelevant, particularly when individual offenders act out of negligence (*culpa*).

This research examines how greenwashing rulings emerge and their impact on the environmental criminal justice system in Indonesia. The study employs a normative juridical method that combines statutory, conceptual, and case-based approaches. It focuses on the rise of greenwashing rulings and their implications, particularly in cases involving individual offenders whose actions are classified as negligence (*culpa*). To enhance intersubjective understanding, empirical data were collected through interviews with the offender's family, colleagues, and wife, a housewife who was unaware of her husband's punishment, as well as

[7] Mahrus Ali, 'Criminalization of Environmental Harm in the Law Number 32 Year 2009 on Environmental Protection and Management.', *Bina Hukum Lingkungan* 5, no. 1 (31 October 2020): 21–39.
[8] Ellen S. Podgor, 'The Dichotomy between Overcriminalization and Underegulation.', *American University Law Review (Am. UL Rev.)* 70 (2020): 10–61.
[9] Benjamin S. Sharp, "Environmental Enforcement Excesses: Overcriminalization and Too Severe Punishment.," Envtl. L. Rep. News & Analysis 21 (1991): 106–58.
[10] Andi Najemi and Mohamad Rapik, 'Islamizing Environmental Law in Indonesia: Rethinking the Green Fatwa', n.d., https://doi.org/10.22437/jlj.7.1.253-274.
[11] T. Kirchengast and T. Kirchengast, 'The Victim in Criminal Law and Justice.', in *Prisons, Penalty and Punishment.* (Spring Nature, 2006), 101–26.
[12] G. Gereffi, J. Humphrey, and T. Sturgeon, 'The Governance of Global Value Chains.', *Review of International Political Economy* 40, no. 2 (2005): 78–104.

with the attorney handling the case. Fieldwork was conducted between September 2023 and April 2024.

The legal materials and supporting documents analyzed include Law No. 41 of 1999 on Forestry as amended by Law No. 6 of 2023 ratifying Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation; Law No. 32 of 2009 on Environmental Protection and Management; Law No. 1 of 2023 on the Criminal Code; Law No. 1 of 1946 on Criminal Law Regulations in conjunction with the Indonesian Criminal Code (*Wetboek van Strafrecht*); the Criminal Procedure Code (KUHAP); and Ministry of Environment Regulation No. 7 of 2014 on Environmental Damage and/or Pollution Losses. The study also reviewed Kraksaan District Court Ruling No. 305/Pid.B/LH/2023/PN Krs., case file No. B/05/X/Res.1/13/Ditreskirimsus dated November 3, 2023, and the State Financial Loss Calculation Audit Report for the alleged corruption case in tin commodity trading within PT Timah Tbk.'s Mining Business License (IUP) area for 2015–2022, Report No. PE.04.03/S-522/D5/03/2024 dated May 28, 2024.

The paper is organized as follows. The background section begins with a discussion of the Kraksaan District Court ruling in Probolinggo, chosen for its apparent greenwashing characteristics in sentencing an individual offender for a *culpa*-based offense. This section also introduces the concept of harm-based environmental criminalization, providing a brief overview of its development to situate the discussion within the global evolution of environmental criminal law. The paper then addresses two central issues within Indonesia's environmental criminal justice system, analyzed through the framework of legal substance (substantive law), legal structure, and legal culture. The analysis is divided into two parts: systemic failures that contribute to the emergence of greenwashing rulings (Section III.1) and the impacts of these failures (Section III.2), aligned with the research problem statements. This structure distinguishes between globally relevant theories presented in the background (Section I) and context-specific issues within Indonesia's environmental law system analyzed in Section III. The conclusion provides concise answers to the research questions and offers recommendations for strengthening law enforcement, particularly the use of criminal sanctions, to better support environmental rehabilitation in the future.

B. Discussion

1. Greenwash Rulings and Systematic Legal Failure

In environmental cases, the investigation process begins with the calculation of environmental harm. This calculation functions as a practical tool for analyzing environmental risks at a strategic level. It applies the concept of "environmental harm" as a common metric, assessed from technical, social, and economic perspectives, to evaluate impacts arising from various environmental pressures[13].

The results of this calculation serve as the primary basis for both civil and criminal proceedings. In civil cases, plaintiffs use the assessed value of environmental harm to claim compensation[14] In criminal cases, the same value determines the sanctions imposed on the

[13] Simon JT. Pollard et al., 'Characterizing Environmental Harm: Developments in an Approach to Strategic Risk Assessment and Risk Management.', *Risk Analysis: An International Journal* 24, no. 6 (2004): 1551–60.
[14] E. S. Scheblyakov et al., 'On the Concept and Types of Harm to the Environment.', *IOP Conference Series: Earth and Environmental Science.* 548 (2020): 062025.

offender: the greater the harm, the harsher the punishment. When environmental damage is considered significant or ecologically severe, offenders are typically sentenced to imprisonment and fines[15]. These penalties are imposed without distinguishing between individual and corporate offenders, or between intentional acts (*dolus*) and negligent acts (*culpa*).[16] This occurs even though law enforcement agencies generally operate within the applicable legal framework, supported by substantive environmental law.[17]

Despite some regulatory overlaps, enforcement continues, with authorities typically selecting provisions that allow the harshest criminal penalties to prevent judges from dismissing or acquitting cases. Over time, this practice has become routine. In effect, the three elements of the environmental legal system: legal substance, legal structure, and legal culture, when applied to cases of negligence (*culpa*), have contributed to the emergence of greenwashing rulings.[18]

The anatomy of greenwashing, which reflects systemic failure, is rooted in the inadequacies of legal substance, legal structure, and legal culture. Addressing this systemic failure will be a long process. However, mitigation is possible by refining the imposition of criminal sanctions on individual offenders found guilty of negligent acts. The following section explains how such greenwashing decisions became both inevitable and difficult to avoid.

1.a. A Slam Dunk Prosecution's Case

In general, the legal construction of a criminal verdict in a case of this kind is relatively straightforward, as it falls under the category of a "perfect crime." In this context, a perfect crime refers to a criminal act that fulfills both the formal and material elements required by law. Prosecution in such cases is highly predictable, as the available evidence provides sufficient grounds for the prosecutor to proceed before the court. The prosecution in this case succeeded without obstruction.

No authority conflict arose. The prosecutor was not required to follow specific coordination procedures because the case involved no jurisdictional overlap with other institutions, which often complicates investigations and assessments of state financial losses in other criminal cases[19].

During the trial, no distortion of facts occurred. Eliminating fact distortion is essential, as it can compromise fairness and objectivity in judicial proceedings[20]. Decisions based on inaccurate or misleading information may result in unjust outcomes for both defendants and victims, and undermine the principle of justice that the legal system is meant to uphold.[21]

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[15] Diane Solomon. Westerhuis, 'A Harm Analysis of Environmental Crime.', in *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm*, ed. Diane Solomon. Westerhuis and Tanya. Wyatt (London: Palgrave Macmillan UK, 2013), 197–217.

[16] Eileen. Skinnider, 'Effect, Issues and Challenges for Victims of Crimes That Have a Significant Impact on the Environment.', *International Centre for Criminal Law Reform and Criminal Justice Policy, University of British Columbia.*, March 2013.

[17] Jason. Hickel, "The Sustainable Development Index: Measuring the Ecological Efficiency of Human Development in the Anthropocene.," Ecological Economics 167 (January 2020).

[18] Lawrence M. Friedman, *How Law Affects Behavior.* (Cambridge: Harvard University Press, 2016).

[19] Leonardo Adiguna, 'The Prosecutor's Authority to Conduct a Criminal Investigation Based on The Government Administration Law', *Administrative and Environmental Law Review* 2, no. 1 (21 May 2021): 11–20, https://doi.org/10.25041/aelr.v2i1.2214.

[20] Roger. Leng, 'Silence Pre-Trial, Reasonable Expectations and the Normative Distortion of Fact-Finding.', *Int'l J. Evidence & Proof.* 5 (2001): 240.

[21] P. Rathnaswamy, 'Due Process of Law: Distortion of Interpretation.', *Studia Universitatis Babes Bolyai-Iurisprudentia.* 63, no. 1 (2018): 109–21.

The evidence presented was authentic and not manipulated. No procedural deviations occurred, and no party sought to gain an unfair advantage. Fact distortion in court generally refers to situations where relevant facts are inaccurately presented, misinterpreted, or deliberately twisted during trial[22]. Such distortions may arise from errors in evidence presentation, false testimony, manipulation by prosecutors, lawyers, or witnesses, or from bias in the judges' assessment of facts.[23]

Incidents of land fires and ecosystem destruction constitute irrefutable physical evidence, as they provide tangible proof that cannot be disputed or challenged. Such evidence establishes facts conclusively, leaving no room for alternative interpretations. Because of its inherent reliability and certainty, courts prefer irrefutable evidence when determining the facts of a case[24].

Whereas, environmental harm assessments provided by experts are not irrefutable. While courts often rely on them as compelling evidence,[25] they remain persuasive rather than absolute, indicating probabilities or likelihoods rather than certainties. Numerous methods are available for assessing environmental pollution, many of which allow for quantitative evaluations.[26]

These methods are particularly relevant to industrial or corporate environmental impacts, often factoring environmental damage into assessments of a company's economic performance. In such contexts, damage assessments can guide enterprises toward adopting modern, low-impact technologies, such as improved mineral extraction and processing methods[27]. Specific approaches may estimate damage avoided, while direct calculation methods incorporate negative environmental impacts into profitability assessments[28]. However, this framework is less applicable to cases involving individual actors, such as a person held responsible for forest and land fires in a national park caused by negligence.

It is also important to note the element of uncertainty inherent in environmental harm calculations[29]. Experts often develop their own models, which differ in approach and assumptions, leading to disparities in results. At present, thousands of environmental damage calculation models continue to be developed, each producing potentially different outcomes.

1.b. Leveraging the Number

As noted in Section 1.a., the prosecution presented its case beyond reasonable doubt, confident that the correct offender had been identified. Once the calculated scale of

[22] Rollin M. Perkins, 'Absurdities in Criminal Procedure--Trial by Ordeal.', *Iowa L. Rev.* XI, no. 4 (June 1926): 297.
[23] Allison P. Harris, 'Bias and Judging.', *Annual Review of Political Science* 22, no. 1 (June 2019): 241–59.
[24] Gideon Parchomovsky and Alex Stein, 'The Distortionary Effect of Evidence on Primary Behavior', *Harv. L. Rev.* 124 (2010): 518.
[25] David. Hamer, 'The Expectation of Incorrect Acquittals and the "New and Compelling Evidence"' Exception to Double Jeopardy.', *Crim. L. Rev.* 2 (2009): 63–79.
[26] John L. Pollock, "Defeasible Reasoning with Variable Degrees of Justification.," Artificial Intelligence 133, no. 1–2 (December 2001): 233–82.
[27] Hafrida, Retno Kusniati, and Yulia Monita, 'Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible?', *Hasanuddin Law Review* 8, no. 2 (1 August 2022): 139–49, https://doi.org/10.20956/halrev.v8i2.3187.
[28] Grigory B. Malyshkov, Leonid S. Sinkov, and Liuboy A. Nikolaichuk, 'Analysis of Economic Evaluation Methods of Environmental Damage at Calculation of Production Efficiency in Mining Industry.', *Int. J. Appl. Eng. Res* 12, no. 10 (2017): 2551–54.
[29] I. Perwira, Giri Ahmad Taufik, and Mulki Shader, 'Valuasi Kerugian Lingkungan Hidup: Studi Atas Persepsi Hakim Dalam Putusan Pengadilan Pada 2009-2019.', *Jurnal Bina Mulia Hukum* 6, no. 2 (March 2022): 201–17.

environmental harm was revealed, including the immense ecological impact, the weight of this evidence overshadowed all else.

In the name of environmental protection, criminal law enforcement relies heavily on calculations of environmental harm[30]. These calculations serve as the basis for legal action. When the assessed damage or loss is substantial, accountability must be assigned, resulting in criminal penalties such as imprisonment and fines. For this reason, the calculation of environmental harm plays a decisive role in determining the severity of criminal sanctions[31].

There is little doubt that ecological knowledge about environmental degradation has a connection to the social action required to address it. What remains uncertain, however, is the form such social action should take and how it can effectively be implemented.[32]

A considerable gap separates ecology and social action[33]. Ecology, as a science, seeks objective truths that are independent of human preferences, whereas social action reflects human aspirations such as peace, freedom, and quality of life. This fundamental divergence creates a space filled with intellectual pitfalls, moral dilemmas, and political risks. In the present case, a conflict of interest, although perhaps unintended, has indirectly contributed to increased costs and the risk of further losses for developing countries[34].

1.c. The *Culpa* is Fluid

The concept of *culpa* originates from Roman law and remains influential in modern legal systems, particularly in civil and criminal law. *Culpa*, a Latin term meaning "fault" or "negligence,"[35] refers in criminal law to situations where an offender fails to exercise due care and does not foresee the consequences of their actions despite being under a duty to do as such. It stands in contrast to *dolus*, or intentional wrongdoing, where the offender acts deliberately or knowingly.

The discussion of *culpa* in criminal law enforcement generally centers on its key elements.[36] Four principal elements can be identified: (1) Absence of Intent (*Dolus*). Unlike intentional acts, *culpa* involves harm resulting from carelessness or a failure to exercise due diligence, rather than deliberate conduct. (2) Duty of Care. The offender must have been under a duty to act with a certain standard of care, as required by law or societal expectations. This duty is often context-specific, such as in professional conduct, environmental responsibilities, or public safety. (3) Foreseeability of Harm. Although the harm is not intentional, it must have been reasonably foreseeable. The offender should have known, or could reasonably have predicted, that their actions or omissions might lead to harmful consequences. (4) Violation of a Standard of Conduct. *Culpa* involves deviation from the behavior expected of a "reasonable person" under similar circumstances, with standards varying according to social, cultural, and legal contexts.

Legal systems also distinguish between different levels of *culpa* (negligence): (1) Gross Negligence (*Culpa Lata*), which denotes extreme carelessness and a blatant disregard for

[30] Igorevich Golubev. Stanislav et al., 'Environmental Crimes: Law Enforcement Issues.', *Caspian Journal of Environmental Sciences* 18, no. 5 (2020): 533–40.
[31] John M. Darley, "On the Unlikely Prospect of Reducing Crime Rates by Increasing the Severity of Prison Sentences.," JL & Pol'y 13 (2005): 189.
[32] Barry Commoner, 'Ecology and Social Action', *Philosophica* 13 (1974): 47–65.
[33] Ibid.
[34] Andreas Tedy Mulyono and R. K. Karo, 'Questioning a Fair Settlement as The Legal Resolution of Global Interests.', *IOP Conference Series: Earth and Environmental Science.* 1270, no. 1 (2023): 12–25.
[35] Paul Ricardo Carrera Torres, Felipe Nicolas Roldan Carrillo, and Maria Alejandra Vera Saltos, "Victim's Fault as an Exoneration of Liability: An Analysis of Causality or Negligence?," USFQ L. Rev. 7 (2020): 227.
[36] David Pugsley, 'On the Lex Aquilia and *Culpa*.', *Tijdschrift Voor Rechtsgeschiedenis.* 50 (1982): 1.

consequences.[37] (2) Ordinary Negligence (*Culpa Levis*), referring to failure to exercise the care expected of an average person. (3) Slight Negligence (*Culpa* Levissima), a minor failure to meet the standard of care, which is often overlooked in criminal law but may be relevant in civil law[38].

In environmental cases, the concept of *culpa* is particularly significant, as many violations stem from negligence. Offenders may not intend to cause harm, yet they remain accountable for failing to act with the level of care required to prevent fires, pollution, or other forms of environmental damage..

For example, in the forest fire case discussed in this study, the offender may not have acted with intent (*dolus*), yet their negligence (*culpa*), such as failing to take precautions or control the fire, constituted a breach of environmental norms. This illustrates how negligence is taken seriously in environmental law because of its profound social and ecological consequences.

The development of legal thought on *culpa* ultimately connects to the imposition of criminal sanctions. In negligence-based cases, sanctions often emphasize restoring damage and preventing recurrence rather than focusing solely on punishment[39] Environmental law tends to integrate preventive and corrective approaches, seeking both ecological restoration and offender accountability[40].

This nuanced approach highlights the difficulty of balancing justice with considerations of intent and societal expectations. In environmental law, the impact of negligence can be severe despite the absence of malicious intent, which itself is a complex concept to define[41]. aw enforcement authorities must therefore understand *culpa* in the absence of malice. Offenders in such cases lack malicious intent and are not inherently odious or wicked.

In other words, environmentally based offenses should not be considered especially heinous. They are not crimes of shocking evil that warrant hatred or contempt[42], nor are they categorized as vicious felonies[43]. For this reason, the treatment of cases in which an individual offender is found guilty of negligence (*culpa*) should differ from those involving corporate actors.

The complexity of assessing *culpa* in environmental law can be explained through four points: (i) Environmental Law Context. Violations often arise from negligence rather than malicious intent. For example, forest fires may result from poor land management rather than a deliberate desire to cause harm. Even without intent, however, the environmental and social consequences may be severe. (ii) Social and Ecological Impact. Offenders' negligent actions can lead to serious outcomes such as pollution, biodiversity loss, or habitat destruction. The absence of intent does not reduce the importance of addressing these consequences. (iii) Restorative Justice. Environmental law often prioritizes restoration and the prevention of

[37] Fred B. van der Riet, 'Owner's Risk and *Culpa* Lata.', *S. African LJ.*, 1943, 161.
[38] Olga Tellegen-Couperus, 'The Limits of *Culpa* Levissima.', *Tijdschrift Voor Rechtsgeschiedenis/Revue d'histoire Du Droit/The Legal History Review.* 76, no. 1–2 (1 January 2008): 19–25.
[39] William H. Butler, Ashley Monroe, and Sarah McCaffrey, "Collaborative Implementation for Ecological Restoration on US Public Lands: Implications for Legal Context, Accountability, and Adaptive Management.," Environmental Management 55 (December 31, 2015): 564–77.
[40] Eric. Higgs et al., 'On Principles and Standards in Ecological Restoration.', *Restoration Ecology.* 26, no. 3 (2018): 399–403.
[41] C. Okpaluba, 'Proof of Malice in the Law of Malicious Prosecution: A Contextual Analysis of Commonwealth Decisions.', *Journal for Juridical Science.* 37, no. 2 (1 January 2013): 65–95.
[42] James. Gilligan, "Shame, Guilt, and Violence.," Social Research: An International Quarterly 70, no. 4 (2003): 1149–80.
[43] Nora V. Demleitner, 'A Vicious Cycle: Resanctioning Offenders.', in *Civil Penalties, Social Consequences*, ed. Nora V. Demleitner, 1st ed. (New York: Routledge, 2013), 185–201.

future harm over punitive measures. The aim is to repair existing damage and avoid recurrence, not merely to punish. (iv) Societal Expectations. Society expects individuals to act with care. Failure to do so, even without malicious intent, attracts accountability for the consequences. Thus, while intent is a central factor in criminal law, in environmental law negligence (*culpa*) and its consequences often form the primary basis for assessing justice.

2. Conducting Environmental Loss Calculation: Inefficiency

The failure outlined above resulted in two inefficiencies. First, the costly process of calculating environmental damage was not effectively used to determine compensation. Second, there are no better alternatives, leaving clemency as the only legal recourse to achieve a just outcome. The following points provide further explanation.

2.a. Mercurial enforcement

When the fire in Bromo Tengger Semeru National Park began, the Ministry representing the Government responded that, in addition to criminal proceedings, the offender would also face civil litigation. The Director General of Law Enforcement at the Indonesian Ministry of Environment and Forestry (*Dirjen Gakkum KLHK*), Mr. Rasio Ridho Sani, stated in Surabaya that the Ministry would file a civil lawsuit against those responsible[44]. On other occasions, similar claims were made by different officials. The Ministry also prepared a legal team, assisted by its regular forest and land fire experts from the Bogor Agricultural Institute (IPB), to support the Public Prosecutor (JPU) in assessing environmental damage. During the criminal trial, the expert testified that the civil lawsuit would be valued at IDR 741 billion.

Despite these statements, the promise of civil litigation appears to be little more than lip service. Several questions arise before announcing such a lawsuit. Can the defendant, a part-time photographer, realistically pay a claim amounting to hundreds of billions of rupiah? Is he expected to rely on his own financial resources, or that of his wife's family? What are his and his family's financial capabilities? Have law enforcement bodies, including the Ministry, considered their own responsibilities in this case? After imprisoning the offender, are they now demanding compensation at an impossible scale? Is this about justice, or does it suggest something is neglected?

Probably, due to a limited understanding of negligence-based offenses, the approach shifted. In practice, the offender was prosecuted only criminally. The prosecutor relied on complex environmental damage calculations prepared by experts solely to support the criminal charges, while no civil lawsuit followed. Such fluctuations in law enforcement lead to inefficiency. If only criminal prosecution is pursued, extensive environmental damage assessments may be unnecessary. These assessments are expensive, time-consuming, and require highly trained and well-compensated experts. In this case, even a basic criminal assessment could have established that the national park fire caused significant environmental damage.

A further issue lies in the legal framework used for prosecution. In the Bromo Tengger Semeru fire case, there was overlap between the general provisions and sectoral laws, and law enforcement appeared inclined to impose the harshest sanctions available. Environmental damage assessments were based on Minister of Environment Regulation No. 7 of 2014 concerning environmental losses due to pollution and damage. However, the charges were brought under the Forestry Law. Regulation No. 7 of 2014 was issued under Article 90 paragraph (2) of the Environmental Law, not the Forestry Law. This overlap illustrates the

[44] Esti Widiyana, 'Kementerian LHK Akan Ajukan Gugatan Ke Pelaku Pembakaran Bromo', 23 September 2023.

legal interplay between Law No. 32 of 2009 on Environmental Protection and Management, Law No. 5 of 1990 on the Conservation of Natural Resources and Ecosystems, and Law No. 41 of 1999 on Forestry. The Forestry Law provides stricter criminal sanctions than those found in the Environmental Law.

2.b. Justice and Punishment

The aspect of justice for offenders in environmental criminal cases, particularly those found guilty due to *culpa* (negligence or unintentional acts), is a crucial issue. Justice must not only serve the environment as the victim but also safeguard the rights of offenders to prevent injustice in the legal process[45].

Injustice may arise when a verdict fails to align with fundamental principles of justice, such as proportionality of punishment,[46] protection of human rights, or consideration of important mitigating and aggravating factors[47]. For example, punishments that are disproportionately harsh or overly lenient, ignoring the defendant's motives, or disregarding key evidence may all lead to unjust outcomes.

The discourse in this article is distinct because it deals with criminal acts arising from *culpa*, with an individual as the offender. The offender did cause environmental damage, yet he neither engaged in illegal logging nor exploited forest areas through organized, unlawful activities. In such contexts, substantive injustice often emerges when rigid legal interpretations, bias, or formalistic approaches overshadow society's broader expectations of justice.

The community is often led to view individual offenders merely as wrongdoers who must be punished, rather than as individuals who may require rehabilitation. The criminal law system in Indonesia, as it currently operates, still emphasizes uncovering criminal acts, identifying offenders, and imposing corporal sanctions, particularly imprisonment or confinement. This punitive orientation leaves little room for restorative or rehabilitative approaches.

Another dimension of injustice emerges in the case of Mrs. FG, the wife of the defendant in the TNBTS wildfire case. Little is known about her current circumstances, yet her situation raises important questions about the broader impacts of environmental criminal rulings on families of offenders. FG was neither the offender nor an accomplice: she did not commit the act (p*leger*), order it (*doenpleger*), participate in it (*medepleger)*, nor instigate it (*uitlokker*). At the time of the incident, she was at home in Lumajang, unaware of her husband's activities. His actions were unintentional, motivated only by the need to provide for her financially.

Should FG be blamed for unknowingly marrying a man now imprisoned for years and burdened with fines amounting to billions for an unintended environmental violation? Or should she instead be regarded as a victim, but of a verdict rendered "In the Name of Justice, Based on the Almighty God"?

Since her husband's imprisonment, FG has been forced to leave Lumajang and return to her parents' home in Sukasari Village, far from Jember, East Java. She struggles to comprehend why her husband received such a severe punishment, particularly given that his actions were classified as unintentional. Her economic and social burdens have multiplied: she must sustain herself without her husband's income, send small sums of money for his expenses in detention, and even paid for him to be placed in a less overcrowded cell. Unlike the wives

[45] Nancy L. Rosenblum, 'Justice and the Experience of Injustice.', in *Breaking the Cycles of Hatred* (Princeton University Press, 2003), 77–106.
[46] Michael. Akehurst, 'Equity and General Principles of Law.', *International & Comparative Law Quarterly* 25, no. 4 (1976): 801–25.
[47] Raymond. Wacks, 'Judges and Injustice.', *S. African LJ 101* , 1984, 266.

of corrupt officials who may benefit from illicit gains, FG receives no such advantage. Her husband was not a corruptor, yet the reasoning used against him "harming the state", resembles the logic applied in corruption cases..

Although FG is not a direct victim of the wildfire, which harmed ecosystems and countless others, she may nonetheless be seen as a victim of the court's decision or a victim of the "greenwashing of justice" in the Bromo case. This ruling, while formally justified in law, failed to adopt an ecological perspective that accounts for the vulnerabilities of individuals like FG, who are indirectly harmed by the rigid application of punitive sanctions..

One relevant dimension of environmental justice in this context is the principle of intergenerational equity, which underscores humanity's responsibility to safeguard sustainability for future generations. This principle includes ethical obligations to nature, animal rights, and environmental stewardship[48].

Yet, this form of justice has not been fully supported by ecological philosophies that recognize the vulnerability of marginalized groups, including women, who are often disproportionately affected by environmental harm[4950].

The perspective of intergenerational justice insists that humans must maintain ecological balance for the benefit of those who will come after us. However, the mainstream development of environmental justice concepts has tended to remain "synergistic and uniform," reflecting a narrow anthropocentric view that positions human needs at the center. In contrast, the philosophy of deep ecology rejects this anthropocentric perspective and emphasizes that humans are an inseparable part of nature[51]. From this standpoint, humans have a duty not only to utilize but also to respect and maintain the interconnectedness of all living systems. It should be noted that deep ecology represents a contemporary evolution of modern justice concepts rather than an ancient tradition[52].

Criticism is also necessary regarding the hierarchy of criminal sanctions, which determines the severity of punishments[53]. In the new Indonesian Criminal Code, sanctions are ranked sequentially as imprisonment, cover-up, supervision, fines, and social work. This ordering implies that if the seriousness of a forest fire crime is assessed primarily through the magnitude of environmental losses, it is automatically categorized as a grave offense, with imprisonment as the principal sanction. Social work, in contrast, remains a non-prioritized, alternative penalty. Consequently, even negligent individuals, who lack intent, are subjected to the same order of sanctions, with imprisonment prioritized over rehabilitative measures.[54]

[48] Andri G. Wibisana, 'Perlindungan Lingkungan Dalam Perspektif Keadilan Antar Generasi: Sebuah Penelusuran Teoritis Singkat.', *Masalah-Masalah Hukum* 46, no. 1 (January 2017): 9–10.
[49] Widodo Dwi. Putro and Adriaan W. Bedner, 'Ecological Sustainability from a Legal Philosophy Perspective.', *Journal of Indonesian Legal Studies* 8, no. 2 (5 November 2023): 595–632.
[50] Widodo Dwi Putro, *Filsafat Hukum: Pergulatan Filsafat Barat, Filsafat Timur, Filsafat Islam, Pemikiran Hukum Indonesia Hingga Merajuridika Di Metaverse.*, 2nd ed. (Jakarta: Kencana, 2024).
[51] Nicholas A. Robinson, 'Fundamental Principles of Law for the Anthropocene?', *Envtl. Pol'y & L.* 44 (2014): 13.
[52] Putro, *Filsafat Hukum: Pergulatan Filsafat Barat, Filsafat Timur, Filsafat Islam, Pemikiran Hukum Indonesia Hingga Merajuridika Di Metaverse.*
[53] Richard S. Frase, 'Punishment Purposes.', *Stan. L. Rev.* 58 (2005): 67.
[54] Peter. Raynor, 'Community Penalties and Social Integration:'Community'as Solution and as Problem.', in *Community Penalties.*, 1st ed. (Wilan - London: Taylor & Francis Group, 2013), 183–99.

2.c. No Contingency: Only the Path of Clemency

In several interviews conducted during his imprisonment, the offender stated that the punishment was unfair, as the verdict was excessively harsh, and he felt wronged. Nonetheless, he and his family did not file an appeal. Beyond financial constraints, including legal fees and court administration costs, they feared that a higher court might impose an even heavier sentence. This shows that although the offender was aware of his right to appeal, financial and psychological barriers prevented its exercise.

As Public perception often assumes that every possible contingency in such cases has been anticipated and lies within the judge's discretion. In reality, however, when offenders do not exercise their right to appeal, rules and decisions in environmental cases remain untested at higher levels of judicial review. This creates precedents that may hinder the development of legal practice[55].

The absence of appeals also affects the certainty of environmental law enforcement by weakening its application, reducing its deterrent effect, and increasing the risk of recurrence of similar violations[56]. Socially and psychologically, offenders tend to accept verdicts to avoid wider public scrutiny. Thus, although appeals are formally available, they do not function effectively as a corrective legal mechanism[57].

As a result, clemency becomes the only feasible legal recourse for offenders. Clemency, or commutation of sentence, refers to the reduction of punishment granted by the head of state[58]. Reliance on this extraordinary measure reveals a system that fails to maximize the use of ordinary legal remedies. Such inefficiency indicates a misuse of both time and legal resources, reflecting a broader failure of enforcement productivity.

C. Conclusion

Legal shortcomings have given rise to greenwashing judgments, largely due to the limited accountability attached to negligence (*culpa*). These judgments expose the weak connection between the environmental damage assessed and the penalties imposed, where heavy fines or prison terms often fail to correspond with the actual harm caused. The novelty of this study lies not in preventing greenwashing rulings but in critiquing the types of sanctions imposed. Rather than defaulting to imprisonment or fines, a more constructive approach would be the imposition of social work penalties.

Despite strong evidence, law enforcement has proven ineffective in addressing environmental harm caused by negligent individuals. Greenwashing judgments are too often mistaken as adequate enforcement, while the flexible interpretation of negligence enables sanctions that neglect meaningful environmental restoration. This results in inefficiency: costly damage assessments rarely progress into civil claims, and appeals are bypassed as ineffective remedies.

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[55] Stefanie A. Lindquist and Frank B. Cross, 'Empirically Testing Dworkin's Chain Novel Theory: Studying the Path of Precedent.', *NYUL Rev.*, 2005, 1156.
[56] Shavell Steven, 'Specific versus General Enforcement of Law.', *Journal of Political Economy* 99, no. 5 (1991): 1088–1108.
[57] Daniel T. Kobil, 'Compelling Mercy: Judicial Review and the Clemency Power.', *U. St. Thomas LJ* 9 (2011): 698.
[58] J. Grobvosek, 'Managerial Delegation, Law Enforcement, and Aggregate Productivity.' (School of Economics University of Edinburgh, August 2015).

D. Suggestion

To achieve fairer justice in environmental cases, particularly where negligence is involved, alternative sanctions should be prioritized. Community service directed at environmental rehabilitation offers a more balanced solution, providing both immediate and long-term benefits for ecosystems. Proportional sanctions are better suited to such cases, as illustrated by offenders who may choose additional imprisonment over fines that are financially unattainable. Genuine justice requires sanctions that correspond with *culpa*bility, emphasize rehabilitation, and contribute directly to environmental recovery. The state must therefore ensure substantive justice by safeguarding fair defense, imposing reasonable sanctions, and prioritizing environmental remediation as a central aim of enforcement.

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