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RESTORATIVE JUSTICE APPROACH TO CORPORATE PERPETRATORS OF ENVIRONMENTAL CRIMES BASED ON NATIONAL LEGAL IDEALS

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Abstract

Indonesia is a state based on the rule of law, placing law as one of the instruments for the state to uphold its national ideals and as a means to achieve justice, certainty, and benefit for all members of society. This study examines the application of restorative justice in addressing corporate environmental crimes within Indonesia's legal framework. Although the National Criminal Code (KUHP Nasional) recognizes both individuals and corporations as legal subjects and acknowledges restorative justice, its implementation in environmental law enforcement remains limited. Law Number 32 of 2009 on Environmental Protection and Management still prioritizes a retributive approach, restricting the use of restorative mechanisms in corporate environmental offenses. Using a normative legal research method, this study analyzes statutory provisions and theoretical frameworks to explore the possibility of integrating restorative justice into corporate liability. The findings highlight the need for legal reforms to align environmental law enforcement with national legal ideals, particularly Pancasila. Incorporating restorative justice in corporate environmental crimes would emphasize remediation, victim compensation, and community involvement, ensuring a balance between legal certainty, justice, and environmental sustainability.

Keywords: ***Restorative justice, corporate liability, environmental crimes, legal reform, Pancasila, Indonesian legal system.***

INTRODUCTION

Indonesia is a state based on the rule of law, placing law as one of the instruments for the state to uphold its national ideals and as a means to achieve justice, certainty, and benefit for all members of society.This principle is enshrined in the national legal framework, which is founded upon the values of Pancasila and the 1945 Constitution, serving as the fundamental basis and guiding doctrine of Indonesia's legal system. In the context of environmental law, these national legal ideals underscore the imperative of maintaining a balance between sustainable development, the protection of the public's right to a healthy environment, and the legal obligations of the state and relevant stakeholders in ensuring environmental preservation.

The enactment of Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH) constitutes a legal policy formulated to fulfill the imperative of ensuring every citizen's right to a clean and healthy environment, as mandated by Article 28H of the 1945 Constitution. National economic development must be pursued sustainably while taking environmental considerations into account. However, the deterioration of environmental quality poses an increasing threat to the survival of humans and other living beings. Therefore, comprehensive and consistent efforts in environmental protection and management are required from all stakeholders to ensure legal certainty and safeguard the public's right to a sustainable and ecologically balanced environment. The UUPPLH still has weaknesses, particularly in its criminal provisions. The law remains predominantly influenced by a retributive penal approach, which undermines the effectiveness of criminal law instruments in ensuring public protection. (Rena Yulia,2013). Thus, within the national legal system, environmental law enforcement remains predominantly retributive, focusing primarily on the imposition of penalties on offenders.

The conventional criminal justice system, which primarily focuses on imprisonment or fines, is often deemed inadequate in restoring environmental damage or preventing future violations, particularly in the context of corporate criminal liability. This repressive approach frequently fails to deliver justice or provide remediation for victims and the affected environment. On the contrary, environmental crimes continue to show an increasing trend,

manifesting in various forms such as waste pollution, illegal logging, air pollution, and others (Muhammad Akib, 2012).Environmental law enforcement should not always be pursued through criminal proceedings aimed at punishing offenders or adopting a retributive approach. Instead, the enforcement of environmental law should be directed toward restoring environmental sustainability to its original condition.

The UUPPLH prioritizes administrative and civil law enforcement over criminal sanctions, as these legal instruments allow for the imposition of remedial measures that focus on environmental restoration.(Siti Sundari Rangkuti,1994). Therefore, a legal approach is required that goes beyond mere retributive measures, which focus solely on punishment. Instead, the incorporation of a restorative justice approach in criminal law enforcement is essential to ensure that enforcement efforts are directed toward remediating environmental damage.

The concept of restorative justice transforms the criminal justice system from being perpetrator-centered into a more balanced approach, involving victims and the community through a structured communication framework. This interactive model repositions the criminal justice system as a conflict resolution mechanism rather than solely a means of imposing punishment.(Rena Yulia, 2013) In line with this, the implementation of restorative justice is not intended to replace the criminal justice system or other formal law enforcement mechanisms. Instead, restorative justice seeks to resolve cases by emphasizing remediation of the harm caused by criminal acts and restoring relationships between the parties involved, including both victims and offenders. This approach allows victims the opportunity to receive accountability from offenders and an apology, which can facilitate the healing process (Howard Zehr & Barb Toews, 2004).

Romli Atmasasmita states that the restorative justice approach aims to restore disrupted or imbalanced conditions to a state of harmony within a given society, ensuring that conflicts are resolved. Additionally, this approach seeks to generate benefits for the nation and the state (Hermien Hadiati Koeswadji, 1993). In the context of restorative justice, its implementation must align with the national legal ideals, both in substance and philosophy, particularly Pancasila. According to one of the drafters of Pancasila, Muhammad Yamin, in his speech before the BPUPKI session on May 29, 1945, he stated that “deliberation, as enshrined in the fourth principle, serves as a force that provides opportunities for interested parties, enhances the state’s responsibility, and creates obligations that do not constrain one’s conscience.” (M. Fatwa, 2010). This perspective aligns with Bambang Waluyo, who emphasizes that the principle of restorative justice reflects the spirit of deliberation and consensus, where victims, offenders, and the community can actively participate in resolving conflicts together. Therefore, both materially and philosophically, restorative justice must derive its legitimacy from the national legal ideals, namely Pancasila (Bambang Waluyo, 2017).

In practice, Indonesia has accommodated the restorative justice approach through various regulations, one of which is Supreme Court Regulation (PERMA) Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, enacted on May 7, 2024. This PERMA represents a positive step in resolving criminal cases by emphasizing victim restitution and offender accountability. However, the regulation remains limited to individualsand has yet to address corporate criminal liability.

Furthermore, restorative justice has also been accommodated in Law of the Republic of Indonesia Number 1 of 2023 on the National Criminal Code (hereinafter referred to as the National Criminal Code), which explicitly recognizes corporations as legal subjects that can be held criminally liable. The restorative justice approach, as one of the methods for resolving criminal cases, is enshrined in Article 51(c) and Article 54(2) of the National Criminal Code. This approach focuses on conflict resolution, restoring balance, and fostering a sense of security and harmony in society. With this recognition, restorative justice is expected to serve as an alternative mechanism for addressing various criminal offenses, including those committed by corporation

Although the concept of restorative justice has been incorporated into various criminal law regulations in Indonesia, its application to environmental crimes committed by corporations remains unrecognized within the Indonesian legal system. Normatively, Law Number 32 of 2009 on Environmental Protection and Management (UU PPLH) does not adopt the concept of restorative justice, and several of its provisions tend to restrict the possibility of applying a restorative approach to environmental crime resolution. One such provision is Article 85(2) of UU PPLH, which stipulates that out-of-court dispute resolution does not apply to environmental crimes as regulated under this law.

The implementation of restorative justice in environmental crime cases in Indonesia can provide legal protection for communities affected by pollution or environmental destruction caused by corporations. This approach is considered more effective, as the conventional environmental criminal justice system often fails to provide adequate compensation, whereas extrajudicial mechanisms tend to be more satisfactory for both offenders and victims (Yeni Widowaty dan Fadia Fitriyani,2014).

The legal issue in environmental law enforcement in Indonesia is the absence of explicit regulations accommodating the application of restorative justice to corporations as perpetrators of environmental crimes. Although the National Criminal Code (KUHP Nasional) recognizes corporations as legal subjects that can be held criminally liable, Law Number 32 of 2009 on Environmental Protection and Management (UU PPLH) remains oriented toward a retributive approach, stating that out-of-court dispute resolution does not apply to environmental crimes and restricting the possibility of applying restorative justice mechanisms in such cases.

Additionally, Supreme Court Regulation (PERMA) Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice only regulates the application of this approach to individuals, not to corporations as perpetrators of criminal offenses. Consequently, Indonesia's legal system has not fully opened space for environmental restoration mechanisms and compensation for victims through a restorative approach in cases involving corporations. From the perspective of national legal ideals (cita hukum nasional), law enforcement should not only aim to uphold legal certainty but also reflect justice and benefit society in accordance with Pancasila values, particularly the fourth principle, which emphasizes deliberation and consensus. Therefore, it is essential to examine whether restorative justice can be applied in environmental law enforcement against corporations to realize national legal ideals aligned with Pancasila values.

LITERATURE REVIEW

The literature review generally involves analyzing previous research or scientific literature. Based on a literature search, several studies discuss restorative justice in corporate criminal liability. However, research specifically addressing a restorative justice approach to corporate perpetrators of environmental crimes remains limited. Restorative justice is an alternative approach in the criminal justice system that focuses on victim recovery and the active accountability of offenders. In the corporate context, this approach requires companies to take responsibility for the impact of their actions and engage in environmental restoration. This concept has evolved globally and has been incorporated into various legal systems.

Corporate criminal liability has developed alongside the recognition of corporations as legal subjects in various jurisdictions. Legal mechanisms such as *vicarious liability*, *strict liability*, and corporate criminal liability are applied to hold corporations accountable for criminal offenses. In cases of environmental crimes, the restorative justice approach emphasizes damage repair, victim compensation, and preventive measures to avoid future violations. Compared to retributive justice, this approach is more effective as it encourages corporate involvement in environmental restoration and crime prevention.

Indonesia’s national legal ideals emphasize justice based on Pancasila, which upholds the principles of social justice and deliberation. The implementation of restorative justice in the national legal system still faces regulatory and institutional challenges, necessitating policy reinforcement and coordination among stakeholders. While studies on corporate criminal liability exist, further research is needed to explore how restorative justice principles can be effectively applied to corporate liability for environmental crimes, ensuring legal certainty and achieving sustainable justice in accordance with national legal ideals.

METHOD

This research employs a normative legal research method to formulate arguments, theories, or new legal concepts as prescriptive solutions to the identified issues (Peter Mahmud Marzuki, 2005). The study examines environmental regulations, particularly Law Number 32 of 2009 on Environmental Protection and Management (UU PPLH), to assess the applicability of restorative justice in addressing environmental crimes committed by corporations. The research utilizes a statutory approach by analyzing the 1945 Constitution, UU PPLH, and the National Criminal Code (KUHP Nasional). Additionally, a conceptual approach is adopted to explore and examine theoretical frameworks related to conflict resolution (Johnny Ibrahim, 2005) in cases of environmental damage and pollution.Primary legal materials are derived from statutory provisions, while secondary legal materials include scholarly literature and legal commentaries. The collection of legal materials is conducted through an inventory method, ensuring comprehensive documentation of relevant sources. The research applies systematic and grammatical interpretation as its analytical method. The legal material analysis is conducted by structuring legal provisions into coherent and scientifically rigorous arguments. The study then integrates legal concepts and statutory frameworks to systematically examine the research problem, ultimately formulating a well-founded legal solution.

RESULTS AND DISCUSSION

Understanding Restorative Justice

Restorative justice is an approach to criminal case resolution that emphasizes victim restitution, social relationship restoration, and the active participation of all parties in achieving a fair resolution. This concept emerges as an alternative to the retributive justice system, which focuses on punishment as a form of retribution against offenders.According to Wesley Cragg, the theory of retribution has been largely ineffective in reducing crime rates. More critically, it fails to address or rectify the harm suffered by victims. Consequently, there has been a shift in the penal paradigmfrom retributive punishment to restorative or reparative justice, which prioritizes victim recovery and conflict resolution over mere penal sanctions(Wesley Cragg, 1992).

To gain a deeper understanding of the restorative justice approach, it is essential to first examine its terminology, definitions, and various conceptual frameworks. The term restorative justice has been defined in multiple ways by scholars, often incorporating different terminologies such as communitarian justice, positive justice, relational justice, reparative justice, and community justice. Each of these terms reflects a distinct aspect of restorative justice, emphasizing principles of community involvement, reconciliation, and reparative measures as alternatives to punitive legal mechanisms (Eva Achjani Zulfa & Indriyanto Seno Adji, 2011).

In addition to the variations in terminology, scholars define restorative justice with different formulations. Lafavedefines restorative justice as a criminal case resolution approach that involves the offender, the victim, their families, and other relevant parties in seeking a fair settlement, emphasizing restoration rather than retribution. This concept was introduced in 1977 based on the principle of restitution, wherein both the victim and the offender actively participate in a process aimed at ensuring reparation for the victim and rehabilitation for the offender (M. Ali Zaidan, 2016). According to Burt Galaway and Joe Hudson, restorative justice includes the following fundamental elements: first, crime is primarily viewed as a conflict between individuals, resulting in harm to the victim, society, and the offender. Second, the objective of the criminal justice process should be to create social harmony by reconciling the parties and repairing the harm caused by the dispute. Third, the criminal justice process must facilitate the active participation of victims, offenders, and the community in finding a resolution to the conflict (Eva Achjani Zulfa & Indriyanto Seno Adji, 2011).

Howard Zehr and Ali Gobar also define restorative justice as follows *Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms and obligations in order to heal and put things as right as possible (*Howard Zehr dan Ali Gohar, 2003).

According to Howard Zehr, there are three main pillars in the concept of restorative justice: first, needs, which are not limited to the needs of victims but also include those of the community and offenders; second, obligations/responsibilities, both the offenders and the community have a duty to make amends; and third, engagement, where all components or parties involved must play an active role (Howard Zehr, 1997). The three components mentioned above are essential elements that must be realized in every effort that claims to achieve restorative justice. In line with this, Bazemore and Walgrave propose three principles of restorative justice: first, it seeks to ensure that all parties are treated with equity, meaning that they and others in similar circumstances will feel that they are treated similarly; second, it aims to achieve the satisfaction of the victim, offender, and community; and third, it provides legal protection for individuals against unwarranted state action (Gerry Johnstone & Daniel W. Van Ness, 2007).

The concept of restorative justice, sometimes referred to as the restorative justice approach, emerges as a solution to the paradox of justice. Additionally, a new paradigm in addressing criminal acts is the restorative justice method. From the perspective of the restorative justice paradigm, criminal behavior is seen not only as a violation of the law requiring prosecution but also as a disagreement or conflict that disrupts relationships between individuals and society. This means that it is not the state but individuals who suffer the consequences of a criminal act. Consequently, such offenses impose a responsibility to repair the harm caused to relationships as a result of the crime(John Braithwaite and Heather Strang, 2001).

According to Bagir Manan, the substance of restorative justice encompasses principles such as fostering joint participation between the offender, the victim, and the community in resolving a criminal act or incident. It emphasizes collaboration among these parties, allowing them to work directly together in seeking a resolution that is considered fair for all stakeholders (win-win solution) (Bagir Manan, 2015). Although experts define restorative justice in various ways, all definitions share the same fundamental substance: an approach that prioritizes the recovery of losses and damages suffered by victims, as well as the restoration of social relationships within the community. The core principle of this concept is the involvement of all parties affected by a crime in jointly seeking a fair and constructive resolution. The primary goal of restorative justice is not retribution but reconciliation, restoration, and the creation of social harmony through dialogue and mutual agreement.

The Existence of Restorative Justice in Indonesian Society

In certain communities, particularly indigenous societies, the restorative justice approach continues to be practiced, especially in resolving customary criminal cases. However, within the state criminal justice system, this approach has shifted towards retributive justice. This shift occurred as the state, through prosecutors, took over prosecutorial authority, transforming criminal prosecution from a private matter into a public one. Consequently, the role of victims has become increasingly marginalized, while state dominance and intervention in the criminal justice process have intensified. (Bambang Waluyo, 2017). Thus, the state, through law enforcement institutions such as the police, the prosecution office, and the courts, holds primary control over the resolution of criminal cases by taking over disputes from the victims and ensuring that investigations, trials, and case resolutions are conducted in accordance with applicable legal regulations.

The takeover of disputes and their resolution procedures has transformed the function of law and the judiciary into a more coercive instrument, where members of society involved in legal processes find themselves in opposition based on their respective capacities. Nevertheless, there is a standpoint in criminology that suggests dispute resolution is more effective when entrusted to its rightful owners—the disputing or litigating parties themselves. In reality, if offenders and their victims reconcile and forgive each other, many positive outcomes can be achieved (Romy Hanitijo Soemitro, 1984).

The neglect of the victim's role in modern legal systems has prompted a re-evaluation of traditional mechanisms. In-depth studies on the position of crime victims within various criminal justice systems have led experts to reconsider traditional approaches to criminal case resolution. These traditional mechanisms emphasize reconciliation between the parties, with forgiveness as a fundamental principle. The resolution process typically takes place in a familial setting involving the victim and their family, as well as the offender and their family. This peaceful or familial resolution generally begins with an expression of remorse, a commitment to self-improvement, a willingness to repair damage or compensate for losses caused by the crime, and concludes with an apology from the offender and/or their family to the victim and/or their family (Natangsa Surbakti, 2014). This study redirects attention to the concept of restorative justice, which has long been acknowledged in various traditional legal systems.

Restorative justice has long been recognized and applied in various traditional legal systems, including in Indonesia. According to Andi Hamzah, the roots of restorative justice have existed since ancient times in various regions, including Europe, the Middle East, and Indonesia (Andi Hamzah,2012). The roots of restorative justice are inseparable from the traditional legal systems that have developed in various regions, including Indonesia, where customary law and religious law serve as fundamental foundations for dispute resolution. In line with this perspective, M. Hatta Ali stated that the concept of restorative justice in Indonesia parallels the types of sanctions in customary law, which aim to restore customary balance. These sanctions are determined through customary deliberations involving the perpetrator, the victim, the community, and customary elders (M. Hatta Ali, 2012).

As is well known, customary law, as a living legal system within society, emphasizes conflict resolution through deliberation. The concept of deliberation, recognized as local wisdom within the community, embodies the values of restorative justice. This process involves the perpetrator, the victim, and the community, aiming to restore the balance of social order that has been disrupted (Harefa, Beniharmoni, 2017) The conflict resolution process, which involves deliberation, customary fines, apologies, and the restoration of relationships, illustrates that the primary objective is not merely punishment but also the restoration of peace and harmony within the community (Ardian Kurniawan, et al.,2024).

In the deliberation process, customary authorities are involved, where the offender apologizes to the victim and the local community (Ardian Kurniawan, et al.,2024). One of the essential aspects of restorative justice is forgiveness, which is achieved through deliberation. In the customary legal system, dispute resolution typically involves multiple parties, including the victim, the offender, their respective families, and community leaders or customary authorities. The deliberation process aims to reach an agreement on the form of restitution that the offender must provide to the victim.

Forgiveness is a choice made by an individual who is in the position of a victim of an act that has caused harm, whether material or immaterial, committed by another person or party (Natangsa Surbakti,2014). Sociologically, the social context of the institution of forgiveness arises from disputes or conflicts between two or more individuals within a society. Such disputes or conflicts may also involve collectives or institutions, corporations, and even nations or groups of nations. (Romy Hanitijo Soemitro, 1984) In these situations, forgiveness is a crucial element in the resolution process between the parties. This is particularly relevant in dispute resolution mechanisms outside the court system, whether formal or informal, as well as in the attitudes of the parties involved in formal judicial proceedings. (Natangsa Surbakti,2014). The resolution of disputes outside the court system

between the parties involved indicates their willingness to negotiate and discuss the issues at hand to reach a settlement. This extrajudicial dispute resolution process is a cultural legal heritage that upholds traditional values, which continue to be widely observed even in modern industrial societies (Natangsa Surbakti,2014).

Within a scientific framework, the process of resolving criminal cases through a familial approach where reconciliation between both parties is primarily based on the victim's forgiveness of the offender is referred to as restorative justice. This explanation aligns with Howard Zehr's assertion that the cultural roots of restorative justice can be found in nearly all traditional societies across different parts of the world (Howard Zehr,2002).

For example, in several indigenous communities in Indonesia, criminal case resolution is carried out through a mechanism of forgiveness. In the Banjar community, there is a mechanism known as *Adat Bedamai*, where disputes are resolved through deliberation to reach a peaceful settlement, whether in civil or criminal cases. This approach aims to prevent prolonged conflicts and eliminate feelings of resentment (Raharjo, Trisno, 2010).

A similar approach is also found in the Dayak community through the practice of *Hukum Adat Pidana* (Customary Criminal Law) in resolving disputes via customary mechanisms led by a *Damang* together with *Let Adat* in the Customary Council. The *Damang* is responsible for overseeing customary law, resolving disputes, and preserving cultural traditions. Customary decisions are binding on the parties involved but serve only as considerations for formal legal authorities (Raharjo, Trisno, 2010).

Meanwhile, the Minangkabau community practices *Pesta Perdamaian* (Peace Festival), a grand event organized by the offending party and their family together with the aggrieved party. During this event, the offender formally apologizes according to customary traditions and provides compensation to the victim as a means of dispute resolution. This practice aims to restore social harmony disrupted by the offense, aligning with the principles of restorative justice in Minangkabau customary law (Natangsa Surbakti,2015).

These practices demonstrate that restorative justice is not a foreign concept in Indonesian society but has long been an integral part of local wisdom and customary dispute resolution systems across various indigenous communities. By emphasizing relationship restoration and social balance, this approach can serve as an inspiration for modern law enforcement, including in addressing corporate environmental crimes. Therefore, further study is needed on how restorative justice principles can be applied in corporate law enforcement to achieve a more holistic and justice-oriented legal framework in line with Indonesia’s legal ideals.

The dispute resolution mechanism within indigenous communities is also present in the Batak Karo society through *runggu*, a deliberative forum utilized to resolve disputes between conflicting parties, aiming to reach a consensus with the assistance of a mediator. *Runggu* is regarded more as a procedural mechanism rather than a formal institution, as it prioritizes dispute resolution through diplomatic discussions and mutual agreement to preserve social harmony, rather than solely determining legal liability or fault (Daniel Hutapea et.al., 2018).

These practices demonstrate that restorative justice is not a foreign concept in Indonesian society but has long been an integral part of local wisdom and customary dispute resolution systems across various indigenous communities in Indonesia. By emphasizing the restoration of relationships and social balance, this approach can serve as an inspiration for modern law enforcement, including in addressing environmental crimes involving corporations. Therefore, further study is required to examine how restorative justice principles can be applied in corporate law enforcement to achieve a more holistic and justice-oriented legal framework in accordance with Indonesia's legal ideals (*cita hukum*).

Restorative Justice in Indonesia’s Legal Ideals

In the context of national law, restorative justice must align with Indonesia’s *legal ideals* (*rechtsidee*), which are founded on the values of Pancasila. Pancasila serves as a philosophical framework that guides the legal system toward the aspirations of society. According to Attamimi, Pancasila as a *legal ideal* (*rechtsidee*) has two primary functions: the constitutive function and the regulative function, both of which must be implemented consistently and sustainably. As a *legal ideal*, Pancasila embodies three fundamental values:

1. Fundamental values, which are the core principles recognized as relatively absolute norms. The fundamental values of Pancasila encompass Divinity, Humanity, Unity, Democracy, and Justice.
2. Instrumental values, which are the manifestation of fundamental values in the form of legal norms, crystallized in statutory regulations.
3. Practical values, which are the application of fundamental and instrumental values in social reality. Practical values serve as a benchmark for assessing the effectiveness of fundamental and instrumental values in society, such as adherence to the law and the effectiveness of law enforcement (Teguh Prasetyo & Arie Purnomosidi, 2014).

Pancasila serves as the primary source of all legal norms or the foundation of legal order in Indonesia. In other words, Pancasila constitutes the *fundamental norm of the state* (*staatsfundamentalnorm*), forming the basis for the establishment of the Constitution (*Undang-Undang Dasar*, UUD) and subordinate legislation. As a *fundamental norm*, Pancasila mandates that the formulation of positive law must be directed toward realizing the ideals it embodies and serves as a benchmark for assessing the validity of positive law.Therefore, in the processes of lawmaking, implementation, and enforcement, Pancasila's values must always be upheld as guiding principles. Consequently, Pancasila holds the highest position in Indonesia's legal hierarchy, standing above the Constitution (Teguh Prasetyo, 2014). As a standard of evaluation, Pancasila functions to direct, regulate, and assess whether a legal provision reflects justice in accordance with Indonesia's *legal ideals* (*rechtsidee*).

As the *fundamental norm of the state* (*staatsfundamentalnorm*), Pancasila serves as the primary source of all legal norms in Indonesia. Consequently, in the processes of lawmaking, implementation, and enforcement, the values of Pancasila must always serve as guiding principles. One of the core principles embodied in Pancasila is the Fourth Principle (*Sila Keempat*), which emphasizes deliberation and consensus in decision-making, including in legal dispute resolution. This principle aligns with the concept of restorative justice, which prioritizes recovery and inclusive conflict resolution over retribution.

Legal development in Indonesia must be based on the nation's values and cultural identity, namely Pancasila, which the founding fathers established as the philosophical foundation of the state. Accordingly, Indonesia's legal system must adhere to the *rechtsidee* of Pancasila. The development of national law based on Pancasila must be directed toward accommodating and supporting legal needs in line with the progress and advancements in other sectors. This ensures that Pancasila-based law can create order and legal certainty, ultimately strengthening national unity and integrity (Teguh Prasetyo, 2014).

In the development of national law, it is imperative to ensure the enforcement of the values embodied in the principles of Pancasila. The legal framework must be capable of accommodating the evolving legal needs of society to uphold legal certainty, justice, and utility. Furthermore, it must establish an efficient and responsive regulatory structure that aligns with the administration of state and societal affairs, both in the present and in the future. Consequently, the formulation of national law must adhere to the prevailing legal values within Indonesian society, as enshrined in Pancasila (Teguh Prasetyo, 2014).

If restorative justice is linked to Pancasila, then its philosophy must align with Indonesia's legal ideals, which are grounded in the values of Pancasila. Restorative justice emphasizes the restoration of conditions, the balance of rights and obligations, and conflict resolution through deliberation, reflecting the principles of Pancasila, particularly as enshrined in the fourth principle (Pandji Setijo,2010). As stated by (Bambang Waluyo, 2017) in the resolution of criminal cases through restorative justice mechanisms, deliberation serves as a powerful tool that provides an opportunity for victims, offenders, and the community to collectively resolve conflicts. This deliberative process must be based on rational thought, considering unity, cohesion, and the common interest. Moreover, deliberation must be conducted consciously, honestly, and responsibly, driven by good faith in accordance with moral conscience. Thus, the decisions reached are expected to be acceptable to all parties and voluntarily implemented.

Thus, restorative justice is not merely an alternative approach to resolving criminal cases but is also an integral part of Indonesia's *rechtsidee* (legal ideals), which are grounded in the fundamental values of Pancasila. The dispute resolution mechanism based on deliberation , forgiveness, and restoration not only reflects substantive justice but also strengthens social harmony within the community. Therefore, in the formulation of future criminal law policies, the principles of restorative justice must be further reinforced within the judicial system to establish a more inclusive and equitable legal framework.

Corporations as Legal Subjects in Criminal Liability for Environmental Crimes

Initially, legal subjects referred exclusively to natural persons (human beings). However, as legal concepts evolved, the notion of legal subjects expanded beyond individuals possessing legal personality to include collective entities. These entities, consisting of groups of individuals acting collectively, are recognized as having the capacity to be subjects in legal relations and are referred to as legal persons (corporate entities) (Chaidir Ali, 2005).

The role of corporations as subjects in criminal law is inseparable from the process of social modernization. According to Satjipto Rahardjo, the impact of social modernization must first be acknowledged: the more modern a society becomes, the more complex its social, economic, and political systems will be. Consequently, the need for a formal system of social control increases. Social life can no longer rely on flexible and informal regulatory patterns but instead requires a well-organized, clear, and detailed legal framework. While such structured regulation may

accommodate the needs of an increasingly developed society, it also inevitably gives rise to numerous legal challenges (Satjipto Rahardjo, 1980)

The subject of corporate criminal law in Indonesia has been recognized since 1950 through the provisions of Article 11(1) of Emergency Law Number 13 of 1950 on Emergency Loans (Lilik Mulyadi, 2021).

Subsequently, corporate criminal liability became widely acknowledged in various other laws, including:

1. Article 15 of Emergency Law No. 7 of 1955 on the Investigation, Prosecution, and Adjudication of Economic Crimes;
2. Article 19(3) of Law No. 6 of 1984 on Postal Services;
3. Article 5(3) of Law No. 5 of 1997 on Psychotropics;
4. Article 20 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, on the Eradication of Corruption;
5. Article 4(1) of Law No. 15 of 2003, as amended by Law No. 25 of 2003, on Money Laundering Crimes.

The legal status of corporations as subjects of law in environmental legislation has become increasingly clear, particularly concerning corporate liability for environmental crimes. This development was marked by the enactment of Law No. 4 of 1982 on the Basic Provisions for Environmental Management (UULH), which was later refined through Law No. 23 of 1997 on Environmental Management (UUPLH). Subsequently, these laws were repealed and replaced by Law No. 32 of 2009 on Environmental Protection and Management.This legislative evolution reflects a fundamental shift in criminal law, moving away from the traditional doctrine of *"Societas delinquere non potest,"* which holds that legal entities cannot commit crimes. The development of corporate criminal liability was pioneered by Enschede, challenging the 19th-century dogmatic perspective encapsulated in the principle of "Universitas delinquere non potest." This principle, deeply rooted in classical criminal law, maintained that culpability in criminal law was inherently personal and could only be attributed to individuals. Such an individualistic approach was strongly reflected in the Indonesian Penal Code (KUHP) (Muladi & Dwidja Priyatno, 1991).

Corporations are recognized as subjects of criminal law with support from several scholars, including Andi Zainal Abidin, who stated that corporations as perpetrators of offenses are included in *"functioneel daderschap"* by Rolling, as corporations in the modern world play an important role in economic life, holding many functions such as employers, producers, price setters, foreign exchange users, and others (Andi Zainal Abidin, 1983). Additionally, Omar Seno Adji also supported the recognition of corporations as subjects of criminal law, stating that "... the possibility of imposing criminal sanctions on associations is based not only on considerations of utility but is also theoretically justified." (Omar Seno Adji, 1984).

The National Criminal Code (KUHP Nasional) explicitly recognizes corporations as legal subjects that can be held criminally liable and has formulated several provisions regarding corporate liability. There are 16 articles in Book I of the National Criminal Code that regulate corporate criminal liability, covering various aspects: the definition and affirmation of corporations as subjects of criminal offenses (Articles 45, 165, and 182); provisions on corporate crimes (Articles 46 and 47); provisions on corporate criminal liability (Articles 48 and 49); justifications for corporations (Article 50); guidelines for imposing criminal sanctions on corporations (Article 56); sanction system provisions, including penalties and measures for corporations (Articles 118, 120, 121, 122, 123, and 124); and provisions on the grounds for eliminating prosecutorial authority over corporations (Article 132).

In the development of criminal liability in Indonesia, it is evident that not only individuals but also corporations can be held accountable. Observing the evolving formulation of corporate criminal liability in Indonesian law, Mardjono Reksodiputro identifies three systems of corporate criminal liability: (1) the corporate management as the perpetrator, making the management liable; (2) the corporation as the perpetrator, but the management is held liable; and (3) the corporation as both the perpetrator and the liable entity (Mardjono Reksodiputro, 1984).

Although recognizing corporations as entities subject to criminal liability is a significant advancement, imposing criminal sanctions on corporations must be carried out prudently, aligning with the objectives of criminal law reform in Indonesia. This is crucial given the strategic role of corporations in national economic development and societal welfare, as previously outlined in the introduction. Considering both the positive and negative aspects of corporate existence, particularly in environmental management and natural resource utilization, law enforcement against corporate violations must adhere to the principle of subsidiarity and uphold criminal law as an *ultimum remedium* to ensure fairness for communities affected by environmental law violations (Triwijaya, Ach. Faisol et al.,2020)Corporate prosecution and sentencing are based on and incorporate both preventive and repressive objectives of criminal punishment. In relation to the purpose of punishment under the National Criminal Code (KUHP Nasional), Article 51 outlines four primary objectives. First, criminal

punishment aims to prevent criminal acts by upholding legal norms to protect and safeguard society. Second, it seeks to rehabilitate convicts through guidance and training to reintegrate them as law-abiding and productive individuals. Third, punishment serves to resolve conflicts arising from criminal acts, restore balance, and promote a sense of security and social harmony. Fourth, it fosters remorse and alleviates guilt in the offender. Consequently, the punishment of corporations must align with the integrative theory of criminal objectives, serving as a means for general and specific prevention, societal protection, social solidarity maintenance, and retribution (Muladi dan Dwidja Priyatno, 1991).

If corporations are to be recognized as subjects of criminal law, their prosecution must align with the ideals of legal reform. This is particularly crucial in environmental crimes, as environmental issues inevitably intersect with citizens' rights. Therefore, law enforcement in this area should not solely emphasize legal certainty but, more importantly, prioritize social justice for affected communities and their protection (Triwijaya, Ach. Faisol et al.,2020).

Restorative Justice Approach to Corporate Law Enforcement in Environmental Crimes

The environmental criminal law system in Indonesia still relies on a punitive (retributive) paradigm, which focuses on punishing perpetrators, either in the form of fines or imprisonment for corporate executives. This approach aligns with the ultimum remedium principle, where criminal law enforcement serves as a last resort aimed at punishing offenders (Hermien Hadiati Koeswadji, 1993) not to restore the polluted environment (Sukanda Husin, 2020). However, when linked to the enforcement of environmental crimes, there are consequences. Although criminal sanctions can serve as a deterrent, this approach does not directly contribute to the restoration of the environment damaged by environmental crimes. Furthermore, this system pays little attention to the restoration of the rights of affected communities, such as access to a healthy environment, economic recovery due to the loss of natural resources, and health guarantees for victims who suffer direct impacts from pollution or environmental destruction.

Environmental crimes committed by corporations have long-term impacts that not only damage ecosystems but also threaten the well-being of future generations. However, existing environmental laws still face various challenges in effectively holding corporations accountable, particularly because they tend to focus more on regulation and administrative sanctions rather than comprehensive environmental restoration (Chaitanya Motupalli, 2018). Similar to Indonesia's legal system, where environmental law enforcement still predominantly employs a retributive approach, as stipulated in Law Number 32 of 2009 on Environmental Protection and Management (UU PPLH). This regulation places greater emphasis on criminal and administrative sanctions for offenders, without providing sufficient space for comprehensive environmental restoration mechanisms. Moreover, Article 85(2) of UU PPLH explicitly limits out-of-court dispute resolution for environmental crimes, thereby hindering the application of restorative justice approaches, particularly in cases involving corporations. Additionally, the provisions on environmental crimes in UU PPLH fail to adequately address the interests of victims and lack sufficient public and victim participation.

The limited application of criminal law in addressing environmental crimes presents a significant challenge in law enforcement. The prosecution of corporations for environmental offenses remains rare. The most recent known case occurred in 2016, when PT. Indobarat was convicted and fined 2 billion rupiahs for illegally disposing of hazardous and toxic (B3) waste without prior treatment (Triwijaya, Ach. Faisol et al.,2020).However, criminal sanctions, whether in the form of fines or imprisonment, do not directly contribute to the restoration and remediation of environmental damage.

Addressing the shortcomings of the retributive approach in environmental law enforcement, restorative justice presents a more effective alternative. In his work titled *The Use of Restorative Justice for Environmental Crime*, Preston, a senior judge at the New South Wales Land and Environment Court, explores the potential application of restorative justice in addressing environmental crimes. He argues that restorative processes can serve as an alternative approach by involving offenders, victims, and the broader community to achieve a more equitable resolution while promoting sustainable environmental restoration. This approach can be implemented at various stages within the environmental criminal justice system, from pre-trial proceedings to sentencing and post-conviction measures (Brian Preston, 2011) Preston's perspective aligns with the author's view that the retributive approach applied in Indonesia's legal system has yet to provide maximum environmental protection. In the context of environmental law enforcement in Indonesia, the implementation of restorative justice offers a more comprehensive

solution. As outlined by Preston, this approach prioritizes environmental restoration rather than merely punishing offenders. Therefore, more inclusive and dialogical mechanisms should be adopted, such as requiring corporations to undertake environmental rehabilitation, providing direct compensation to affected communities, and strengthening public participation in environmental dispute resolution.

CONCLUSION

The restorative justice approach in enforcing the law against corporations for environmental crimes is a concept that aligns with national legal ideals based on Pancasila. The national legal system must not only uphold legal certainty but also reflect justice and societal benefits. The principles of restorative justice, which focus on environmental restoration and the recovery of affected communities' rights, are in harmony with the values of deliberation and consensus in the fourth principle of Pancasila.

In practice, Indonesia's criminal justice system remains dominated by a retributive approach that prioritizes punishment over environmental restoration. The Environmental Protection and Management Law (UU PPLH) has yet to fully accommodate restorative justice mechanisms, limiting the scope for their application. However, the national legal framework must evolve to address the need for substantive justice by providing space for inclusive, dialogical, and recovery-oriented resolutions.

Given that restorative justice has long been embedded in Indonesia's customary legal traditions, modern legal reforms are necessary to ensure its effective application in corporate environmental crime cases. This approach should manifest in corporate obligations for environmental rehabilitation, compensation for affected communities, and active involvement of victims, offenders, and stakeholders in dispute resolution.

Therefore, a more progressive reform of environmental criminal law is essential to incorporate restorative justice principles into regulations governing corporate criminal liability. This step will ensure that Indonesia's legal system becomes more inclusive, recovery-oriented, and aligned with national legal ideals that uphold a balance between legal certainty, justice, and societal benefit.

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