



The Development of Corporate Criminal Liability Paradigm in Environmental Pollution Cases

Febrianti Mustikasari^{1*}, Syaifuddin Zuhdi²

^{1,2} Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

*Corresponding email: cl00200276@student.ums.ac.id

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Abstract

Criminal liability by corporations is a legal consequence of environmental pollution caused by the activities of the corporation itself. This research is a normative juridical research that combines statutory and comparative approaches through processing of primary, secondary, and tertiary legal materials with descriptive analysis methods. The purpose of this study is to determine the development of the paradigm and corporate criminal liability in cases of environmental pollution. The results of this study found that corporate criminal liability related to environmental pollution cases is at least regulated in Law Number 32 of 2009 (UUPLH), the Omnibus Law, and the New Penal Code which will soon come into effect. There are differences in the provision of criminal sanctions in each law. But in general, it can be concluded that environmental pollution by corporations is a legal act that must be dealt with legally so as not to create a greater adverse impact on the environment and society.



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A. INTRODUCTION

Indonesia's natural wealth is one of the most abundant in the world, with an alluring biodiversity and natural resources (Parmawati, 2019). Indonesia is located in the tropics, which provides a diverse range of ecosystems from tropical rainforests to coral reefs to volcanoes. This makes it home to thousands of unique plant and animal species, including rare and endangered species such as the Sumatran tiger, orangutan and Komodo dragon (Manik, 2018). Indonesia's nature not only provides habitat for unique flora and fauna, but also plays a vital role in maintaining global climate balance and storing carbon (Burhanuddin & Nessa, 2018). In addition, Indonesia also has significant natural mineral resources, such as tin, nickel, coal and gold, which are an important source of income for the country. Indonesia's waters are also rich in marine life, with spectacular coral reefs and diverse fish species such as tuna, shrimp and other demersal fish, which provide a source of income for coastal communities.

Indonesia's natural resources have become a big attraction for many corporations, both domestic and foreign, which utilize them for various economic purposes (Luturlean, 2019). For example, mining corporations often operate open-

pit or underground mines in various parts of Indonesia to generate significant revenues, mainly for the reason of contributing wealth to the country (Sahban, 2018). In addition, in the fisheries sector, fishing companies often conduct massive operations to catch fish, shrimp and other seafood in Indonesian waters with the intention of utilizing existing natural resources.

The utilization of natural resources by corporations generally aims to achieve material interests, which are initially considered to have positive impacts such as the creation of jobs and increased economic activity in local communities (Diatmika & Rahayu, 2022). But in fact, the adverse impacts are much greater, especially for the preservation of the environment, especially the natural environment around the area where natural resources are utilized. The adverse impact is none other than environmental pollution (Setiadi, 2021).

Environmental pollution by corporations is a serious problem that not only brings harm to the environment, but also involves the surrounding community. Many companies, especially those operating in heavy industries such as mining, chemical industry, and manufacturing, are often a significant source of environmental pollution (Supramono, 2022). The impact of environmental pollution by companies is not only local, but can also have far-reaching long-term consequences. The environmental damage that occurs can threaten the sustainability of the ecosystem and reduce the quality of life for the surrounding community (Arliman, 2018). In fact, this adverse impact can be even more widespread and felt by the community in general if environmental pollution occurs so massively and occurs continuously.

Based on environmental statistics, by 2023 at least 84,096 villages in Indonesia have experienced water, soil and air pollution, of which 8,462 were caused by factory activities (Badan Pusat Statistik, 2023). This number is so large and insignificant with conservation efforts both in action and in regulations that should be able to guarantee environmental sustainability. Currently in Indonesia, the law governing corporations as perpetrators of environmental pollution has been regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. In fact, apart from Law No. 32 of 2009, the issue of environmental pollution by corporations, especially in terms of criminal liability, is also regulated in Law No. 11 of 2020 concerning Job Creation / Omnibus Law, and Law No. 01 of 2023 concerning the Penal Code as a new criminal law in Indonesia.

Some of these laws stipulate various provisions related to corporate responsibility in protecting the environment, including sanctions for violations committed. One important aspect of the Law is the obligation of corporations to comply with environmental standards set by the government and carry out efforts to prevent environmental pollution. If a company violates these provisions and causes environmental pollution, they can be subject to administrative sanctions, such as fines and revocation of business licenses. In addition, if environmental

pollution committed by a corporation causes significant harm to the environment or public health, the corporation can be criminally prosecuted. Criminal penalties can include hefty fines or even imprisonment for corporate officers involved in unlawful acts (Marcelino et al., 2022).

Regarding the development paradigm of corporate criminal liability in environmental pollution cases, this has never been mentioned or explored in previous research. Irene B.D. Sariowan's research entitled "Criminal Liability for Corporations Proven to Commit Environmental Pollution and Destruction According to Law No. 32 of 2009" and Anak Agung Gede Duwira Hadi Santosa's research entitled "Corporate Criminal Liability for Environmental Pollution (A Comparison of PPLH Law with Omnibus Law Environmental Cluster)" explain the criminal liability and penalties imposed on corporations as perpetrators of environmental pollution based on Law No. 32 of 2009 (Irene, 2022) and its comparison with the Omnibus Law on Environmental Cluster (Anak, 2021). The explanation of punishment has similarities with this research, but there is a renewal in this research where this research not only focuses on the provisions in Law No. 32 of 2009 and the Omnibus Law on Environmental Cluster, but also includes provisions in Law No. 01 of 2023 concerning the Penal Code. This research emphasizes the discussion of corporate criminal liability in cases of environmental pollution that are and will be applicable in the future.

Based on the above statement, the main problem in this research is how the paradigm development and legal comparison of corporate criminal liability in environmental pollution cases according to Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 11 of 2020 concerning Job Creation/Omnibus Law, and Law Number 01 of 2023 concerning the Penal Code. Therefore, since this research highlights corporate criminal liability in cases of environmental pollution, the discussion will focus on the description and legal comparison of the provisions of the three legal regulations.

B. RESEARCH METHOD

This research is a normative juridical research compiled through a statutory approach in order to obtain achievements by examining more deeply the laws and regulations related to the legal issues raised and a comparative approach which is realized by the comparative micro method, namely by comparing 1 (one) type of law with other laws in 1 (one) country. The data reviewed in this study were obtained through literature studies consisting of primary legal materials which include Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 11 of 2020 concerning Job Creation, and Law Number 01 of 2023 concerning the Penal Code, secondary legal materials such as books, articles, and journals, and tertiary legal materials obtained from the internet. All

data obtained is then reviewed using the descriptive analysis method as a means of conveying systematic results and can be accounted for.

C. RESULTS AND DISCUSSIONS

Corporate Criminal Liability in Environmental Pollution Cases

Environmental pollution is an inevitable consequence of the utilization of the environment, one of which is realized by conducting industrial activities. Nature as a whole will face the dangerous risk of pollution (Husain, 2019). Although the adverse effects are widely felt, environmental pollution is the responsibility of humans as an entity that is given reason and intelligence in acting and making the right decisions. The emergence of various negative effects, especially those felt by living beings as a result of changing environmental conditions, cannot be separated from human interference, so it can be understood that humans are the masterminds of environmental pollution that occurs today (Dewata & Danhas, 2023).

Environmental pollution can occur on a small or large scale, can be done by individuals or groups, and can be caused by various factors. However, the more activities and waste produced, the greater the impact. This indirectly implies that corporations, which are currently increasing in number, are the parties that have a major contribution to the occurrence of environmental pollution in Indonesia. In fact, it is clear that it is a joint task and requires collaboration between the government and the community in creating a sustainable environment (Sekhroni et al., 2019).

There are many forms of environmental pollution committed by corporations, 3 (three) of which are:

1. Water Pollution;

Many corporations discharge their wastewater into rivers, lakes, or seas without adequate treatment, causing the water area to become polluted. This water pollution by corporations includes the discharge of industrial waste such as heavy metals, toxic chemicals, or untreated organic waste. This has been done by the palm oil company PT SIPP in 2023 where PT SIPP dumped waste into the environment by not paying attention to Environmental Management Efforts and Environmental Monitoring Efforts (UKL/UPL) (Kementerian Lingkungan Hidup dan Kehutanan, 2023).

2. Soil Pollution;

Corporations often dump their waste on the ground without proper management to cut operational costs. This has a negative impact because it causes the soil to lose its fertility over time. PT Putra Restu Ibu Abadi is a clear example of a corporation that has caused soil pollution in Lakardowo Mojokerto by dumping hazardous waste without a permit. This stems from the unrest of local residents who for approximately 2 (two) years have been fighting to sue the company for

alleged environmental pollution. Some children were even found to have dermatitis as a result of the environmental pollution (VOA Indonesia, 2017).

3. Air pollution;

Activities carried out by corporations always produce waste gas that needs to be disposed of. This disposal process often escapes the corporation's attention, causing the air to become polluted and affecting air quality in the environment. Communities living around corporations will eventually become victims, such as the residents of Sukoharjo whose air has been polluted by the activities of PT Rayon Utama Makmur (RUM). As a result, the community feels a pungent stench that causes dizziness, nausea, vomiting, and shortness of breath (WALHI, 2022).

Preserving nature by not causing pollution is a shared obligation, including for corporations (Pardede et al., 2023). Basically, environmental pollution can be prevented as early as possible by corporations, which are generally business actors. It's just that in practice, many corporations are then negligent, ignore, or even deliberately dispose of waste into the environment without first being processed. This action cannot be justified because it causes prolonged adverse effects on the environment, living things that live in it, as well as communities living around industrial areas. Considering the impact of environmental pollution is so dangerous, if the activities carried out by the corporation turn out to have serious consequences for the environment, then as a legal state that upholds the values of environmental sustainability, the corporation must be responsible, one of which is through criminal liability which can be considered as a final effort (Tatariyanto, 2018).

Initially, criminal liability by corporations was a renewal because previously the Penal Code (Kitab Undang-Undang Hukum Pidana) only recognized the term individual as a subject in criminal law. Fault is the basic foundation of criminal liability. To be able to determine an error, at least 3 (three) main elements must be fulfilled, namely (Moeljatno, 2002):

1. The ability to take responsibility for the perpetrator;
2. There is a mental connection between the perpetrator and the act whether based on intent (*dolus*) or negligence (*culpa*);
3. There are no excuses or justifications.

The three elements above are a unity that is connected to each other. If the three elements of guilt have been fulfilled, then the corporation can be held criminally liable. However, in this case, there is confusion where the feelings possessed by corporations are not the same as those possessed by humans, making it difficult to impose criminal liability on corporations due to the absence of rights and obligations like humans (Santosa, 2021).

However, over time and the development of legal issues, corporations are then considered as legal subjects that can be held criminally liable. This concept is called "deelneming" or the extension of criminal acts in the realm of criminal law

as stipulated in Article 55 of the Penal Code (Gunawan & Gultom, 2023). This loading can be applied due to 2 (two) things (Santosa, 2021):

1. An employee of a corporation commits a crime which is then borne by the corporation where the employee works (vicarious liability theory);
2. The corporation itself is responsible for the criminal offense committed (identification theory).

However, in the case of environmental pollution by corporations, it is necessary to conduct a more careful examination to determine who is indeed responsible for the pollution that occurred. This examination is intended to ensure that criminal liability is imposed on the right party, whether a corporation or indeed a criminal offense committed by an individual based on legal facts relevant to the developing theory of corporate criminal liability.

There are at least 5 (five) theories related to criminal liability by corporations:

1. Theory of *Direct Corporate Criminal Liability*

This theory, commonly referred to as the identification theory, frames corporate liability as distinct from personal liability. It holds that a corporation can be held criminally accountable for offenses committed by individuals within its management, provided these individuals have a direct and substantial connection to the corporation. Thus, the actions of those in managerial positions are seen as the actions of the corporation itself, making the entity liable for certain offenses committed under their authority (Pinto & Evans, 2003).

2. Theory of *Corporate Cultural Model*.

According to this theory, a corporation may be held criminally liable if it is established, based on a rational assessment, that the corporation has either authorized or permitted an individual to engage in a particular unlawful act. This doctrine emphasizes the role of the corporation in enabling or sanctioning the conduct, whether through explicit authorization or implicit approval. Consequently, corporate liability arises not only from direct involvement but also from the failure to prevent or discourage illegal activities within the organization (Hiariej, 2016).

3. Aggregation Theory.

According to this theory, when a group of individuals acts in concert to commit an offense, and the requisite elements for establishing corporate liability are met, the corporation itself may be subject to criminal responsibility. The theory posits that the collective actions of these interconnected persons can be attributed to the legal entity, thereby justifying the imposition of sanctions on the corporation. As a result, the criminal liability of a corporation is not solely dependent on the actions of a single individual, but rather on the aggregated conduct of its members (Satria, 2016).

4. Theory of *Vicarious Liability*.

This theory is the opposite of *nemo punitur pro alieno delicto* or no one is punished for the actions of others. According to this theory, instead of the corporation, criminal responsibility is imposed on the management of the corporation who is the party who directly commits certain acts. Based on this understanding, it can be understood that it is the management who is criminally responsible on behalf of the corporation (Hiariej, 2016).

5. Theory of *Strict Liability*.

This theory views that corporations can be held criminally responsible without the need to see who has committed the mistake so that there is no concept of proof of guilt. This is based directly on the provisions of the Act as stated in the article. The purpose of this theory is to protect society from dangerous behavior by setting higher standards and regulating criminal acts as much as possible with high efficiency (Dobson, 2008).

Indonesia in enforcing the law on the environment is guided by these theories by adjusting to the applicable laws and regulations. Criminal liability of corporations for environmental pollution which includes environmental offenses can be realized in the form of criminal sanctions such as imprisonment and fines, both applied based on the principle of *premium remidium* and *ultimum remidium*. These criminal sanctions can be enforced through various laws and regulations that regulate environmental offenses (Daulay, 2023). The purpose of providing criminal responsibility in the form of this sanction is because criminal punishment does not only aim to protect human interests, but also to protect environmental interests. This is because humans will not be able to enjoy their property and health optimally if environmental conditions do not meet the necessary quality standards. In addition, the use of criminal punishment is also intended to instill fear in those who have the potential to pollute or damage the environment (Yusyanti, 2019).

Indonesia as a state of law is not limited to only 1 (one) regulation to solve 1 (one) legal problem. Indonesia in the case of environmental pollution has at least 3 (three) legal guidelines governing law enforcement. These three regulations are the development of the paradigm of environmental law in Indonesia which regulates corporate criminal liability along with criminal sanctions which are an important aspect of criminalization (Najicha, 2021).

Law Number 32 of 2009 on Environmental Protection and Management.

Indonesia in addressing environmental pollution issues is guided by Law No. 32 of 2009 concerning Environmental Protection and Management (Law No. 32 of 2009 on Environmental Protection and Management). This law is the second amendment after it was first enacted in 1982 and then there was the first update in 1997. This law not only regulates law enforcement against the environment, but also regulates prevention efforts (Cahyani et al., 2023).

Article 1 point 32 of Law No. 32 of 2009 on Environmental Protection and Management explains that anyone, whether they are individuals or business entities, can all be held legally responsible when they are proven to have committed environmental offenses. One example of an offense against the environment is due to the occurrence of pollution. This implies that if a corporation, due to its activities, causes environmental pollution, then the corporation can be held legally responsible.

This law formulates at least 3 (three) law enforcement mechanisms against corporations in cases of environmental offenses, namely through (Agustian et al., 2020):

- a. Administrative Law;
- b. Civil Law; and
- c. Criminal Law.

There is an interesting relationship between the three mechanisms, especially in criminal law enforcement in environmental law where there are 2 (two) applications in criminal law, namely:

- a. Criminal Law as *Ultimum Remedium*

In this situation, criminal liability with the imposition of criminal sanctions by this Law is placed last. This applies to articles that contain formal offenses, namely crimes related to violations of wastewater quality standards, emissions, and nuisance. What this means is that criminal law can be applied after a failure in the application of administrative sanctions, civil, and alternative legal remedies. For example, Article 100 paragraphs (1) and (2) of the Law No. 32 of 2009 on Environmental Protection and Management states that any person who violates wastewater quality standards, emissions, and nuisance can only be punished with a maximum of 3 (three) years imprisonment and a maximum fine of 3 (three) billion after administrative efforts have not been able to achieve the objective of enforcing environmental law.

The enactment of these provisions shows that this law provides a larger portion in the application of administrative and civil sanctions than criminal sanctions. The formal offense contained in 12 articles out of a total of 22 articles regarding environmental crimes in the Law No. 32 of 2009 on Environmental Protection and Management shows that the applicability of criminal law as a last resort is actually preferred. This phenomenon is called administrative dependency of environmental criminal law by Faure. (Hamzah, 2008). This makes criminal sanctions ultimately dependent on the viability of the other two sanctions (Daulay, 2023).

- b. Criminal Law as a *Premium Remedium*

In this condition, criminal liability by applying criminal sanctions can be imposed as the first choice. This means that criminal sanctions can be given without having to wait for other legal remedies such as administrative, civil, or other alternative remedies to be implemented. Criminal sanctions automatically bind a person who

commits environmental crimes in the realm of meteril offense. For example, Articles 98 and 99 of the Law No. 32 of 2009 on Environmental Protection and Management punish the perpetrators for their negligence in damaging the environment with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least 1 billion rupiah and a maximum of 3 billion rupiah.

The Law No. 32 of 2009 on Environmental Protection and Management in the process of identifying fault before imposing criminal sanctions applies the principle of strict liability. The application of this principle is an exception to the traditional criminal principle that requires proof of guilt before the imposition of punishment. This is stated in Article 88 Law No. 32 of 2009 on Environmental Protection and Management with the phrase “absolutely responsible”. This means that parties who commit environmental offenses can be held liable without the need to first prove the element of guilt. This provision applies especially in cases of environmental pollution due to hazardous waste (Wati, 2022).

Based on the explanation above, corporations can be held criminally liable whether criminal law applies as an *ultimum remedium* or *premium remedium*; either with criminal sanctions in the form of imprisonment or fines. The criminal sanctions can be directly charged to the corporation or represented by an individual who is representative of the corporation itself. It's just that even though this principle is enforced, in the applicative order, corporate criminal liability in environmental pollution cases is still partial. This means that caution is needed in terms of proving guilt. The absence of the concept of omission that causes criminal liability can be imposed if the crime that occurs is intended to provide benefits to the corporation both financially and non-financially.

1. Law Number 11 of 2020 on Job Creation / Omnibus Law

Over time, legal provisions regarding environmental pollution have grown. Not only limited to the provisions contained in the Law No. 32 of 2009 on Environmental Protection and Management, but the issue of environmental pollution is also mentioned in the Omnibus Law or often referred to as the omnibus law. In the omnibus law, environmental pollution is included in the environmental cluster.

The environmental cluster in the Omnibus Law refers to the part of the law that deals with efforts to improve the investment climate in Indonesia by speeding up the licensing process for projects related to the environment. The environmental cluster is intended to strengthen environmental protection while accelerating economic growth and investment in the country. In addition, this cluster provides various provisions related to environmental licensing and environmental management procedures in the project development process. This includes simplifying the licensing process, improving the quality of environmental

management, and strengthening the supervision system and law enforcement against environmental violations (Nur et al., 2021).

However, it should be noted that the existence of the Omnibus Law has drawn mixed responses, both positive and negative, from various parties regarding its impact on the environment, workers' rights, and indigenous peoples, all of which are interrelated. Some are concerned that the simplification of the licensing process may come at the expense of environmental protection. In contrast, the government argues that the reforms are necessary to improve Indonesia's economic competitiveness (Pambudhi & Ramadayanti, 2021).

This fear is not a mere concern, but a real concern of a shift in the law. There are several provisions in the Law No. 32 of 2009 on Environmental Protection and Management that no longer apply since the enactment of the Omnibus Law. Some examples of articles in the Law No. 32 of 2009 on Environmental Protection and Management that have undergone changes due to the Omnibus Law are:

- a. The abolition of Article 40 of the Law No. 32 of 2009 on Environmental Protection and Management regarding environmental permits is no longer considered an urgency in order to obtain a business license. The abolition of this environmental permit has great potential to eliminate direct control over the environmental impact of a business or activity. As a result, the tendency of a corporation to act arbitrarily towards the environment is increasing and can have fatal consequences for the environment and also the surrounding community;
- b. Article 76 paragraph (1) regarding the transfer of supervision belongs to the central and regional governments. This transfer of supervision creates legal confusion and ambiguity in the bureaucracy due to changes in the authorized legal subject. Although the higher authority of a legal subject has implications for stronger power, it is just that the focus of supervision cannot be achieved thoroughly because the broad scope of a power tends to obscure the view of the problem point. This change has the potential to make the supervision process not optimal;
- c. Article 88 regarding the loss of the principle of strict liability at the evidentiary stage.

In UUPPLH, the concept of strict liability is adopted to address the substantial risks associated with ultrahazardous activities. This principle allows the party conducting such activities to be held strictly liable for any losses incurred, even if there is no element of intentionality in their actions. The doctrine of liability based on fault is considered inadequate to anticipate the enormous risks associated with environmental activities.

The omission of the phrase "without the need to prove the element of fault" in the Omnibus Law is considered a setback in environmental law enforcement, as it

reverts to the traditional doctrine focusing on liability based on fault. This results in obstacles in addressing environmental claims that are difficult to prove.

The existence of the Omnibus Law brings Indonesia to a new era, especially regarding environmental conservation issues. Provisions regarding corporate criminal liability in cases of environmental pollution have also undergone adjustments in legal practice. Although there are differences in legal formulation between UUPPLH and Omnibus Law, the criminal provisions related to environmental pollution are still regulated in Article 98 and Article 99 of the two laws without any significant changes. This means that the criminal provisions regarding environmental pollution are still relatively the same even though the various changes that have occurred have made law enforcement against corporations that commit environmental pollution increasingly difficult to realize.

2. Law Number 1 of 2023 on the Penal Code

The Penal Code is the legal framework that forms the basis for law enforcement in Indonesia, especially in handling criminal cases. The Penal Code is the center of various laws and regulations in which there are provisions regarding criminal offenses. Criminal law enforcement must be based on and implemented in accordance with the provisions in the Penal Code as *lex generalis* as long as there are no other provisions governing special provisions (Irmawanti & Arief, 2021).

Law Number 1 of 2023 on the Penal Code (New Penal Code) is an update of the Old Penal Code, which is a codification of criminal law from the Dutch legal system. The New Penal Code enacted in 2023 will replace the Old Penal Code in 2026. The existence of this Penal Code is so crucial because it will be the mecca of the law of various criminal issues, one of which is corporate criminal liability in cases of environmental pollution.

Unlike the Law No. 32 of 2009 on Environmental Protection and Management and the Omnibus Law, the New Penal Code does not have a separate section that addresses environmental issues. Although there is no article that specifically discusses environmental pollution, the New Penal Code has contained provisions on criminal liability by corporations that were previously not emphasized by the provisions in the Old Penal Code. This is emphasized through Article 145 which states that every person is a natural person, including corporations. The article directly explains that corporations can be punished as individuals if proven to have committed criminal offenses.

There are 2 (two) important sections in the New Penal Code that contain corporate liability provisions, namely:

a. Criminal Liability by Corporations

This provision is contained in Article 45 - Article 50 and Article 56. Even Article 45 paragraph (1) explicitly states that corporations are the subject of criminal acts.

Corporate criminal liability can be imposed on the corporation itself, functional management, commanders, controllers, and beneficial owners of the corporation. This burden is certainly given on several considerations.

b. Forms of Punishment

The form of punishment for corporations is contained in Article 118 - Article 124. Not only does it consist of criminal sanctions, but corporations can be subjected to actions for acts that have been committed. Crimes for corporations consist of main and additional punishment (Article 118). The main punishment consists of fines (Article 119) and additional punishment consists of 12 forms such as compensation, revocation of certain licenses, and dissolution of the corporation (Article 120).

Based on the explanation above, there are several things in the New Penal Code Article that need to be criticized because their existence actually creates disharmony with existing environmental regulations. For example, the phrase "unlawfully" in Article 48 letter b. The emergence of this phrase, if associated with environmental pollution cases, is actually contrary to the purpose of environmental conservation itself because environmental pollution can still occur without the need for an element of deliberate unlawfulness. This phrase seems to be a requirement so that corporations can be held criminally liable. Whereas it is common that environmental pollution does not require unlawfulness in order to occur (Fakultas Hukum Universitas Indonesia, n.d.).

Next is Article 119, which only mentions fines as the main sanction that can be imposed on corporations. This is a provision that further weakens the function of criminal law in environmental law enforcement. When combined with the provisions contained in the Omnibus Law, many of which prioritize the application of administrative law, law enforcement on environmental pollution will find new obstacles and difficulties.

Environmental law enforcement requires handling by involving special instruments (Prameswari et al., 2021). Based on the three legal regulations above, changes and developments can be found. If examined more deeply, Law No. 32 of 2009 on Environmental Protection and Management is the law that prioritizes environmental sustainability the most (Nisa, 2020). The Omnibus Law and the New Penal Code indirectly rule out law enforcement on environmental sustainability in Indonesia. It can be concluded that this legal development shows that the imposition of criminal liability on corporations in cases of environmental pollution is still very weak or even tends to be weakened.

The government as the holder of power is responsible for being able to enforce the law as fairly as possible, especially in terms of environmental preservation (Hamim et al., 2023). The government must be able to act decisively in addressing corporations that pollute the environment. If the government is careless or even turns a blind eye to environmental pollution that is increasing every day, it can be predicted that there will be many natural disasters that harm

nature and society. In fact, the adverse effects will not only be felt for a moment but will continue if environmental pollution is not addressed immediately.

Table 1. The comparison of Environmental Protection and Management Law, Omnibus Law and New Penal Code Law.

	Law No. 32 of 2009 on Environmental Protection and Management	Omnibus Law	New Penal Code
Article	Article 1 point (32)	Environment Cluster	Articles 45 - 50 and Article 56
Law	<ul style="list-style-type: none"> • Administrative Law • Civil Law • Criminal Law 		Criminal Law
Forms of Punishment	Imprisonment and Fines		<ul style="list-style-type: none"> • Pidana principal: imprisonment and fines • Additional punishment: compensation, revocation of license, dissolution of corporation, etc.

Source: Author's Research

Broadly speaking, the three laws regulate the provisions on corporate criminal liability. All three agree that corporations can be subject to punishment for criminal offenses committed, one of which is environmental pollution. The difference is that the New Penal Code does not specifically mention environmental offenses in its articles. Like the old Penal Code, the new Penal Code becomes *Lex generalis* which basically provides the main foundation of criminal law in Indonesia.

The specification of environmental offenses, one of which is environmental pollution, is further addressed in the Law No. 32 of 2009 on Environmental Protection and Management and Ciptaker Law. These two laws have special provisions governing environmental pollution by corporations. Both impose criminal liability for environmental pollution committed by corporations where both stipulate criminal penalties in the form of imprisonment and fines. Apart from criminal penalties, there are also provisions for administrative law and civil law.

Initially, the Old Penal Code became the first legal foundation for corporations that committed criminal offenses even though it did not use a clear clause in narrative but was interpreted explicitly in the clause “whoever”. The Old Penal Code then applies in tandem with the Law No. 32 of 2009 on Environmental Protection and Management which was born from concerns about the problem of environmental pollution, one of which is carried out by corporations. In the case of environmental pollution by corporations, the old Penal Code acts as the main law that imposes punishment, then Law No. 32 of 2009 on Environmental Protection and Management, especially Article 1 paragraph (32) “Every person is an individual or business entity, both legal and non-legal entities” which provides special confirmation as a *lex specialist* that corporate data is subject to criminal liability.

The enactment of the Ciptaker Law has loosened the criminal liability of corporations that commit environmental pollution. One of them can be seen from the disappearance of the strict liability principle that previously applied in Law No. 32 of 2009 on Environmental Protection and Management and the disappearance of several articles that are considered crucial. This is a legal setback that can affect the practice of policy implementation.

The New Penal Code has provided a clear clause that corporations are included as legal subjects that can be held criminally liable, which has not been accommodated by the Old Penal Code. The New Penal Code does not contain provisions on environmental crimes by corporations, but the New Penal Code emphasizes that corporations can be held criminally liable for crimes committed as determined by the Environmental Law and the Ciptaker Law. Changes in the law against corporations that commit environmental pollution show the development of a criminal law paradigm in Indonesia that increasingly recognizes the importance of corporate responsibility in preserving the environment.

The New Penal Code shows the development of explicit certainty that corporations can be held criminally liable, which has not been accommodated by the Old Penal Code. This shows that the Old Penal Code and the New Penal Code act as the main basic foundation that explains that corporations can be held legally responsible for crimes committed, while for Law No. 32 of 2009 on Environmental Protection and Management and Ciptaker Law, both are 2 (two) policies that determine what actions of corporations are classified as crimes against the environment and what forms of punishment can be given.

Among the three laws, Law No. 32 of 2009 on Environmental Protection and Management is a stricter regulation in imposing criminal liability than the Omnibus Law and the New Penal Code. This can be seen at least from the existence of articles in Law No. 32 of 2009 on Environmental Protection and Management that are abolished by the Omnibus Law. Not to mention the shift in the concept of proof that previously applied strict liability in the Law No. 32 of 2009 on Environmental Protection and Management then disappeared because the phrase

was abolished by the Omnibus Law. In relation to the form of punishment provided, the New Penal Code provides a wider choice than the previous regulation. It is hoped that this provision can strengthen the law on Law No. 32 of 2009 on Environmental Protection and Management and the Omnibus Law. Not only punishment in the form of imprisonment and fines, but additional penalties such as compensation and revocation of licenses can be given so that the purpose of punishment can be achieved optimally.

D. CONCLUSION

Corporate criminal liability in cases of environmental pollution is a consequence of actions that harm the environment. Indonesia is dealing with the phenomenon of environmental pollution, mainly caused by growing industrial activities. Environmental pollution can occur on various scales, both by individuals and groups, but the role of corporations is significant because the impacts they cause tend to be greater. Corporations can pollute the environment in various ways, such as discharging liquid waste into waters, discharging solid waste into the ground, or releasing toxic gases into the air. The result of these actions can be environmental damage, reduced water, soil and air quality, and negative impacts on human health and other living things.

The understanding of corporate criminal liability has evolved over time, where previously corporations were only considered as economic entities without criminal responsibility. However, with the development of environmental law and law enforcement, corporations can now be subject to criminal sanctions in accordance with applicable regulations. There are several theories and laws that regulate corporate criminal liability in cases of environmental pollution, which shows the government's commitment to protect the environment and uphold justice for those who damage it. Nevertheless, law enforcement against corporations in environmental pollution cases still requires improvement, especially in proving guilt and applying more effective sanctions.

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COMPETING INTEREST

We declare that there are no competing interests among the authors regarding this research article

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