



## Corporate Criminal Liability for Illegal Toxic and Hazardous Waste Dumping

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**Abstract.** Modern corporations and industries play a crucial role in global economic development. However, with rapid industrial growth, large-scale production, and intensive use of natural resources, humans have inadvertently created serious threats to the environmental balance. One of the most significant and damaging negative impacts is environmental pollution, specifically the problem of toxic hazardous material waste. The protection of communities from environmental crimes involves imposing criminal sanctions not only on individual legal subjects but also on corporate legal entities, a concept known as corporate criminal liability. The aim of this research is to analyze the manifestation of corporate criminal liability in cases involving the illegal disposal of hazardous toxic waste into the environment. Additionally, it seeks to examine the enforcement of corporate law in these instances. This research employs qualitative methods with a normative juridical approach. The legal sources used in this normative research include primary legal materials, secondary legal materials, and tertiary legal materials. The findings of this research suggest that the handling of corporate criminal acts, particularly in cases of hazardous toxic waste dumping, falls short of delivering complete justice due to obstacles in the investigation, prosecution, and the establishment of environmental impacts in the prosecution of corporate environmental crimes. Therefore, it is essential to consider the application of the doctrine of strict liability in cases of environmental pollution, especially in waste dumping incidents. The implementation of strict liability for corporations in the prosecution of environmental criminal acts, such as the dumping of toxic hazardous waste, eliminates the need to prove wrongdoing, whether intentional or negligent, including the motive behind the corporation's actions.

**Keywords:** Law, Corporation, Dumping, Waste, Toxic Hazardous Materials, Environment

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**Abstrak.** *Perusahaan dan industri modern memainkan peran penting dalam pembangunan ekonomi global. Namun, dengan pertumbuhan industri yang pesat, produksi skala besar, dan penggunaan sumber daya alam yang intensif, manusia secara tidak sengaja telah menimbulkan ancaman serius terhadap keseimbangan lingkungan. Salah satu dampak negatif yang paling besar dan merusak adalah pencemaran lingkungan, khususnya masalah limbah bahan beracun dan berbahaya. Perlindungan masyarakat dari kejahatan lingkungan hidup meliputi pemberian sanksi pidana tidak hanya terhadap subjek hukum perseorangan tetapi juga terhadap badan hukum korporasi, suatu konsep yang dikenal dengan pertanggungjawaban pidana korporasi. Penelitian ini bertujuan untuk menganalisis wujud pertanggungjawaban pidana korporasi dalam kasus pembuangan limbah bahan beracun berbahaya ke lingkungan secara tidak sah. Selain itu, penelitian ini berupaya untuk memeriksa penegakan hukum perusahaan dalam kasus-kasus ini. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis normatif. Sumber hukum yang digunakan dalam penelitian normatif ini meliputi bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Temuan penelitian ini menunjukkan bahwa penanganan tindak pidana korporasi, khususnya kasus pembuangan limbah B3, belum memberikan keadilan yang utuh karena adanya kendala dalam penyidikan, penuntutan, dan penetapan dampak lingkungan hidup dalam penuntutan tindak pidana korporasi. Oleh karena itu, penting untuk mempertimbangkan penerapan doktrin pertanggungjawaban ketat dalam kasus pencemaran lingkungan, khususnya pada insiden pembuangan limbah. Penerapan tanggung jawab yang ketat bagi korporasi dalam penuntutan tindak pidana lingkungan hidup, seperti pembuangan limbah beracun dan berbahaya, menghilangkan kebutuhan untuk membuktikan kesalahan, baik disengaja maupun lalai, termasuk motif di balik tindakan korporasi.*

**Kata kunci:** *Hukum, Korporasi, Dumping, Limbah, Bahan Beracun Berbahaya, Lingkungan Hidup*

## 1. Introduction

The rapidly developing industrial revolution has brought about significant changes in various aspects of human life. Modern corporations and industries play a pivotal role in global economic development.<sup>1</sup> While there are numerous positive impacts resulting from the industrial revolution, such as increased prosperity and improved human living standards, it is impossible to overlook the growing negative consequences. Among the most striking and damaging of these is environmental pollution, specifically the problem of toxic hazardous material waste.<sup>2</sup> Environmental pollution, stemming from industrial activities such as hazardous waste disposal, greenhouse gas emissions, deforestation, and land degradation, has caused substantial ecological harm. In addition to harming the environment and diminishing its carrying capacity, environmental pollution poses a threat to human health. Furthermore, it jeopardizes the sustainability of the environment itself, despite the fact that the continuity of human life is undeniably reliant on the availability of both biotic and abiotic resources.

Various environmental problems, both current and potential in the future, significantly impact nature conservation and human health. Therefore, there is a need for awareness of the regulation of environmental issues through legal instruments.<sup>3</sup> Environmental pollution and destruction carried out by corporations are elements in the implementation of environmental law enforcement, representing a means of repressive action. Environmental law enforcement should

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<sup>1</sup> In Song Kim and Helen V. Milner, “Multinational Corporations and their Influence Through Lobbying on Foreign Policy,” In *Multinational Corporations in a Changing Global Economy*. Brookings Institution: Washington, DC. 2019. [https://www.brookings.edu/wp-content/uploads/2019/12/Kim\\_Milner\\_manuscript.pdf](https://www.brookings.edu/wp-content/uploads/2019/12/Kim_Milner_manuscript.pdf).

<sup>2</sup> Eric W. Orts, “Reflexive Environmental Law,” in *Environmental Law*, ed. Peter S. Menell (London: Routledge, 2018), 347. UN report warns that countries are unlikely to meet the 2020 goal of minimizing the harm caused by chemicals and waste, necessitating urgent action. Chemical production, currently valued at US\$5 trillion annually, is set to double by 2030. Hazardous chemicals persist in the environment and pose health risks. Progress on international treaties has been uneven, with over 120 countries yet to adopt vital chemical classification standards. Chemical pollution impacts health and ecosystems, but the economic benefits of mitigating harm are substantial. The report calls for global collaboration and aligning chemical management with broader sustainability goals. For further explanation, see: Tilman Altenburg and Claudia Assmann, ed., *Green industrial policy: Concept, Policies, Country Experiences* (Geneva, Bonn: UN Environment, 2017), 45; Tasficia Rifa and Mohammad Belayet Hossain, “Micro plastic pollution in South Asia: The impact of plastic pollution over the unsustainable development goals,” *Lex Publica* 9, no. 2 (2022): 2.

<sup>3</sup> Neil Gunningham and Darren Sinclair, “Regulatory pluralism: Designing policy mixes for environmental protection,” *Law & Policy* 21, no. 1 (1999): 49.

be regarded as a tool.<sup>4</sup> The primary goal of environmental law enforcement is to ensure compliance with the values of protecting the carrying capacity of ecosystems and environmental functions, which are generally formalized in statutory regulations, including provisions governing waste or emission quality standards.<sup>5</sup>

The regulation of environmental issues in Indonesia was initially governed by the Environmental Law, specifically No. 4 of 1982 concerning Basic Provisions for Environmental Management, which was later replaced by Law No. 23 of 1997 concerning Environmental Management and subsequently strengthened by Law No. 32 of 2009 concerning Environmental Protection and Management. Under Law No. 32 of 2009, provisions were introduced regarding hazardous and toxic materials, and the management of such materials and their waste is mandated to minimize environmental risks, ensuring the well-being of humans and other living creatures. Therefore, the proper management of hazardous and toxic materials and their waste is imperative.<sup>6</sup>

Hazardous and toxic waste refers to substances, energy, and/or other components that, due to their nature, concentration, and/or quantity, originate as residual byproducts of business activities, either directly or indirectly, and have the potential to pollute and/or harm the environment or pose a threat to the

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<sup>4</sup> Environmental law enforcement should be viewed as a tool, implying that its primary purpose is to achieve compliance with environmental regulations, protect the environment, and promote sustainable practices. By considering it as a tool, the focus is on balancing economic interests with environmental protection, encouraging responsible behavior, and driving positive change in environmental practices. In essence, it highlights that enforcement serves as a strategic means to accomplish broader environmental and sustainability objectives, rather than merely as a punitive measure. See: Bradley C. Karkkainen, "Information as environmental regulation: TRI and performance benchmarking, precursor to a new paradigm?," *Georgetown Law Journal* 89, no. 2 (2001): 257; Mary Ellen O'Connell, "Enforcement and the success of international environmental law," *Indiana Journal of Global Legal Studies* 5, no. 9, (1995): 47.

<sup>5</sup> Dinah Shelton, "Human Rights, Environmental Rights, and the Right to Environment," in *Environmental Rights*, ed. Steve Vanderheiden (London: Routledge, 2017), 509; Amtul Chowdhury and Mohammad Belayet Hossain, "Role of environmental law and international conventions in mitigating climate change effects on food system and livestock production," *Lex Publica* 8, no. 2 (2021): 14.

<sup>6</sup> It is absolutely essential and necessary to handle hazardous and toxic substances and their resulting waste in a correct, safe, and responsible manner. It emphasizes the critical importance of ensuring that these materials are stored, transported, treated, and disposed of in a way that minimizes risks to the environment, human health, and the well-being of other living organisms. Essentially, it underscores the requirement for careful and responsible handling of such materials to prevent harm and adverse impacts. For further discussion, see: Lalu Aria Nata Kusuma, "Environmental Disputes Without Protection of Strict Liability Principles: Again, Law on Job Creation," *Law and Justice* 7, no. 1 (2022): 3; See; Michael D. LaGrega, Phillip L. Buckingham, and Jeffrey C. Evans, *Hazardous waste management* (Long Grove: Waveland Press, 20100), 5.

environment, human health, and the survival of both humans and living creatures.<sup>7</sup> Article 76 of Law No. 32 of 2009, concerning Environmental Protection and Management, primarily seeks to protect both biotic and abiotic communities from pollution resulting from human activities. Under Article 97 of the same law, environmental offenses are categorized as crimes, allowing criminal responsibility to be assigned to corporate entities. This provision aims to prevent companies from shielding themselves and shifting responsibility solely to their employees.<sup>8</sup>

Because activities with the potential to reduce the environmental carrying capacity or cause environmental pollution are fundamentally not limited to human actions but also encompass corporate activities, the protection of the community necessitates the imposition of criminal sanctions on perpetrators of environmental crimes.<sup>9</sup> This extends beyond individual legal subjects and includes corporate legal entities, known as corporate criminal liability. Corporations that neglect their environmental responsibilities have garnered significant attention. Therefore, it is imperative to consider resource management approaches that promote environmental preservation, aligning with the concept of sustainable development within the context of development. This research aims to analyze the framework of corporate criminal liability in cases involving the illegal disposal of hazardous toxic waste into the environment and assess corporate law enforcement within this context.

## 2. Research Methods

This research employs qualitative methods with a normative juridical approach. In this approach, the focus is on legal doctrines and principles, and the research primarily relies on library materials or secondary data. These library materials constitute the core of the research and encompass primary, secondary, and tertiary

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<sup>7</sup> Nelly Marisi Situmeang, "Licensing for Hazardous and Toxic Waste Management: A Study on Environmental Administrative Law (Case Study: Court Judgment Number 1872/PID. B: H/2015/PN. LBP)," *Journal of Environmental and Development Studies* 3, no. 1 (2022): 40.

<sup>8</sup> Fatma Ulfatun Najhica, "Legal Review of Policy Changes on Environmental Pollution in the Law on Environmental Protection and Management of the Job Creation Law in Indonesia," in *International Conference on Environmental and Energy Policy (ICEEP 2021)*. Atlantis Press, 2021, 5.

<sup>9</sup> To safeguard the well-being of the community and the environment, it is necessary to enforce legal penalties, including criminal sanctions, against individuals and corporations who commit environmental crimes. Essentially, it emphasizes that both individuals and companies can have a negative impact on the environment, and there should be legal consequences for such actions to protect the community and the environment. See, Neal Shover and Aaron S. Routhe, "Environmental crime," *Crime and Justice* 32, (2005): 321; Wayne Gray and Jay Shimshack, "The Effectiveness of Environmental Monitoring and Enforcement: A Review of the Empirical Evidence," *Review of Environmental Economics and Policy* 5, no. 1 (2011): 3-24.

legal materials. Primary legal materials are authoritative sources, including legislation, official records or minutes related to legislation creation, and judicial decisions. Secondary legal materials, on the other hand, consist of publications about law that are not categorized as official documents, such as law-related publications, journals, and commentary on court rulings. For this study, the research draws from various primary legal materials, including the 1945 Constitution, Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 32 of 2009 concerning Environmental Protection and Management, and Government Regulation No. 101 of 2014 concerning the Management of Hazardous and Toxic Waste. In addition to primary legal materials, the research incorporates secondary legal materials, including scientific books on criminal law and criminal procedural law theories and principles, books on criminal trial practices, works on corporate responsibility, and literature related to environmental crime. Furthermore, tertiary legal materials, such as articles, journals, theses, dissertations, legal dictionaries, and both print and electronic newspapers or magazines, are referenced in support of this research.

### 3. Results and Discussion

#### 3.1. Environmental Crimes and Legal Implications in Indonesian Law

Environmental crimes, also known as environmental offenses, refer to acts or actions that can damage or pollute the environment. Environmental pollution by industries or factories constitutes a form of corporate crime. Corporate crime encompasses actions conducted by individuals or legal entities, such as companies or industries, with the potential to cause environmental harm. Both environmental pollution and destruction are pressing concerns in the context of environmental protection and ecosystem balance.<sup>10</sup> The definition of environmental pollution, according to Law No. 32 of 2009, occurs when living creatures, substances, energy, and/or other components enter or are released into the environment through human activities, exceeding established environmental quality standards. In the development of environmental law, environmental pollution is categorized into

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<sup>10</sup> Environmental pollution and destruction are both pressing concerns within the realm of environmental protection and the maintenance of ecosystem balance. Pollution involves the introduction of harmful substances into the environment, while destruction encompasses physical and structural changes to ecosystems. Recognizing the urgency of these issues underscores the need for proactive measures and effective environmental policies to safeguard the environment and maintain equilibrium within ecosystems See: Peter Knoepfel, "Environmental Policy (2002)," in *Environmental Policy Analyses: Learning from the Past for the Future-25 Years of Research*, ed. Peter Knoepfel (Springer Berlin, Heidelberg, 2007), 7; Avi Brisman and Nigel South, "Green criminology and environmental crimes and harms," *Sociology Compass* 13, no. 1 (2019): 2.

several types, including air pollution, water pollution, and land pollution.<sup>11</sup> This categorization highlights the diverse negative impacts of human activities on the environment, underscoring the need for legal protection across these various aspects. In addition to environmental pollution, environmental destruction is also a concern in environmental law, as regulated by Law No. 32 of 2009. Environmental damage occurs when the actions of individuals or legal entities result in direct or indirect alterations to the physical and/or biological characteristics of the environment, surpassing established environmental damage criteria.<sup>12</sup>

Sanctions for environmental crimes are regulated by Law No. 32 of 2009. The articles governing criminal sanctions can be detailed as follows: First, it is important to note that, unlike Law No. 23 of 1997, Law No. 32 of 2009 no longer includes criminal sanctions in the form of imprisonment.<sup>13</sup> Second, as environmental crimes, the criminal sanctions encompass imprisonment, fines, and disciplinary actions. Third, the severity of prison sentences and fines varies depending on the nature of the offense and its impact. Prison sentences can range from 1 (one) year to 15 (fifteen) years, while fines range from IDR 500,000,000 (five hundred million rupiah) to IDR 15,000,000,000 (fifteen billion rupiah). Fourth, Law No. 32 of 2009 also regulates criminal sanctions for officials who grant environmental permits and/or business/activity permits without fulfilling the necessary requirements specified by relevant legislation.

Criminal sanctions are also imposed on authorized officials who intentionally fail to monitor compliance with laws, regulations, and environmental permits by those responsible for businesses and/or activities, which can result in environmental pollution and/or damage leading to the loss of human life. Fifth, in addition to the mentioned sanctions, Law No. 32 of 2009 allows for the imposition of other criminal sanctions, such as the confiscation of profits obtained from criminal acts, closure of all or part of business premises and/or activities, reparations for the consequences of criminal acts, obligations to rectify neglect without rights, and/or the placement of the company or business activities under supervision for a maximum of 3 (three) years. These sanctions aim to provide penalties commensurate with actions that harm the environment and serve as an

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<sup>11</sup> A. Dan Tarlock and Pedro Tarak, "An Overview of Comparative Environmental Law," *Denver Journal of International Law & Policy* 13, no. 1 (1983): 6.

<sup>12</sup> David M. Ong, "The impact of environmental law on corporate governance: international and comparative perspectives," *European Journal of International Law* 12, no. 4 (2001): 685.

<sup>13</sup> Mahrus Ali, Rofi Wahanisa, Jaco Barkhuizen, and Papontee Teeraphan, "Protecting Environment through Criminal Sanction Aggravation," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 191.



effort to promote compliance with environmental regulations and enhance environmental protection.<sup>14</sup>

Provisions regarding criminal sanctions against perpetrators of environmental crimes in Law No. 32 of 2009 have several significant legal implications. First, this indicates that business activities can no longer evade criminal responsibility if they engage in actions classified as environmental crimes.<sup>15</sup> This places greater legal accountability on companies and legal entities to ensure that their activities comply with established environmental standards. Second, concerning Article 119, the criminal sanctions regulated in that article are, in fact, additional sanctions and not the primary criminal penalties. This raises important legal questions, such as the environmental implications if a business entity must be closed due to legal action, how to optimize reparations resulting from criminal acts, and other related aspects.<sup>16</sup>

Article 119 is closely linked to the environmental restoration provisions outlined in Articles 54 to 56 of Law No. 32 of 2009. These articles establish the obligations of individuals to engage in environmental restoration should they contribute to environmental pollution and/or destruction. The restoration process encompasses various stages, including halting the pollution source, removing pollutants, implementing remediation, rehabilitation, and restoration measures, or other actions in line with advancements in science and technology.<sup>17</sup> Article 55

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<sup>14</sup> Nur Hidayah Febriyani and Hartiwiningsih Hartiwiningsih, "Corporate Criminal Liability Post Elimination of Coal Faba Waste Status from B3 Waste Category in Indonesia," *Jurnal Hukum* 38, no. 1 (2022): 12.

<sup>15</sup> In light of current regulations, businesses can no longer avoid criminal responsibility if they engage in actions classified as environmental crimes. This signifies a heightened legal accountability for companies and legal entities to ensure compliance with established environmental standards. The shift towards holding businesses liable for their environmental actions underscores the imperative of enforcing environmental regulations and emphasizes the need for companies to act responsibly and in accordance with environmental laws, contributing to environmental protection and sustainability efforts. See: Rafael Alcadipani, and Cíntia Rodrigues de Oliveira Medeiros, "When corporations cause harm: A critical view of corporate social irresponsibility and corporate crimes," *Journal of Business Ethics* 167, no. 2 (2020): 285.

<sup>16</sup> John Boyle, "Cultural influences on implementing environmental impact assessment: insights from Thailand, Indonesia, and Malaysia," *Environmental Impact Assessment Review* 18, no. 2 (1998): 95.

<sup>17</sup> The most challenging phases in the restoration process are often "remediation" and "rehabilitation." Remediation involves the complex cleanup of pollutants or contaminants from the affected environment, which can be costly and time-consuming, depending on the pollution's nature and extent. Rehabilitation goes beyond mere pollutant removal; it strives to restore the ecosystem to its natural or pre-pollution state, involving careful planning, native vegetation restoration, and wildlife reintroduction. Achieving ecological rehabilitation is challenging due to the intricate and dynamic nature of ecosystems, often requiring years of effort, ongoing monitoring, and adaptive management for a successful recovery. More discussion, see: Zahranissa Putri Faizal,



specifies that environmental permit holders are required to furnish guarantee funds for environmental restoration, which can be utilized during the recovery process. Additionally, Article 56 lays the groundwork for further regulations concerning pollution control and environmental damage, which will be detailed in government regulations. This framework underscores the significance of environmental recovery following an environmental offense and emphasizes the primary goal of reinstating environmental functions, with additional sanctions serving as incentives for both companies and individuals to adhere to environmental laws.<sup>18</sup>

### **3.2. Corporations and the Crime of Dumping Hazardous Toxic Waste**

Business activities conducted by corporations can have both positive and negative impacts on societal development and well-being, particularly in terms of health, when these activities result in environmental pollution or destruction.<sup>19</sup> Corporations often play a significant role in the management of Hazardous Toxic Materials waste, a pressing issue. Toxic hazardous waste comprises substances that are dangerous and toxic, posing risks to humans, the environment, and natural ecosystems, with potentially severe and long-term consequences. Materials falling into this category typically exhibit properties such as toxicity, corrosiveness, flammability, or hazardous characteristics. Toxic hazardous waste encompasses chemical industrial waste, hazardous medical waste, radioactive waste, and other toxic substances.<sup>20</sup> These hazardous properties, outlined in Article 5 of Government Regulation No. 101 of 2014, include explosiveness, flammability, reactivity, infectiousness, corrosiveness, and toxicity. Due to these characteristics, the proper management of hazardous materials is crucial, necessitating special handling to prevent adverse impacts on both the environment and human health.<sup>21</sup>

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“Strict liability in environmental dispute responsibility before and after the enabling of omnibus law,” *Administrative and Environmental Law Review* 2, no. 1 (2021): 53.

<sup>18</sup> Mahrus Ali and M. Arif Setiawan, “Penal proportionality in environmental legislation of Indonesia,” *Cogent Social Sciences* 8, no. 1 (2022): 2009167.

<sup>19</sup> Lina Liu, Muhammad Bilal, Xuguo Duan, and Hafiz MN Iqbal, “Mitigation of environmental pollution by genetically engineered bacteria—current challenges and future perspectives,” *Science of The Total Environment* 667 (2019): 444.

<sup>20</sup> Jupinder Kaur and S. K. Gosal, “Biotransformation of pollutants: a microbiological perspective,” *Rhizobiont in Bioremediation of Hazardous Waste* 54 no.5 (2021): 151.

<sup>21</sup> The Law No. 101 of 2014 on the Management of Hazardous and Toxic Waste in Indonesia regulates the management of hazardous and toxic waste. This law defines Hazardous and Toxic Waste, requires registration and permits for waste management, sets guidelines for handling, transportation, and disposal of Hazardous and Toxic Waste, and outlines procedures for the disposal of unnecessary waste. Additionally, the law establishes penalties for violations related to hazardous and toxic waste management and encourages the development of safe waste management plans. Its purpose is to protect the environment and human health from the negative

The resulting negative impacts have implications for the environmental law enforcement process, encompassing administrative, civil, and, as a last resort, criminal law enforcement, known as the *ultimum remedium* principle.<sup>22</sup> When environmental pollution and destruction lead to damage to environmental functions, the application of the *ultimum remedium* principle can be set aside, and administrative, civil, and criminal environmental law enforcement can be jointly applied, as outlined in Attachment I to Regulation of the Minister of the Environment of the Republic of Indonesia No. 2 of 2013 concerning Guidelines for the Application of Administrative Sanctions in the Field of Environmental Protection and Management. This attachment explains the application of sanctions, involving the combination of one type of administrative sanction with other sanctions, such as criminal sanctions.<sup>23</sup>

To prevent environmental pollution and damage that may occur as a result of this action, the law mandates that every individual and legal entity is obliged to carry out environmental management of the business activities they carry out.<sup>24</sup> Specifically related to the management of hazardous toxic materials waste, in Article 59 of Law no. 32 of 2009 stipulates several important provisions.<sup>25</sup> First, every individual or legal entity that produces toxic hazardous material waste has an obligation to manage the resulting toxic hazardous material waste. Second, if toxic

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impacts of waste and promote safer and responsible waste management practices. For more explanation.

<sup>22</sup> *Ultimum remedium* refers to the principle that the use of the most severe or punitive measures should only be employed when all other, less severe remedies or options have been exhausted or proven ineffective. It signifies that before resorting to the harshest measures, authorities should explore and utilize less severe alternatives, particularly in areas of law enforcement and regulatory actions. See: Nathalina Naibaho, "Rethinking the ultimum remedium principle to support justice and strong law enforcement institutions in environmental crimes," in *IOP Conference Series. Earth and Environmental Science*, vol. 716, no. 1. IOP Publishing, 2021: 23.

<sup>23</sup> Fadhilatun Ni'mah, Anis Mashdurohatun, and Andri Winjaya Laksana, "The Implementation of Administrative Sanctions on Violations of Environmental Law," *Ratio Legis Journal* 1, no. 3 (2022): 416.

<sup>24</sup> Christopher D. Stone, "Should trees have standing? —Toward legal rights for natural objects," in *Environmental Rights*, ed. Steve Vanderheiden (London: Routledge, 2017), 283.

<sup>25</sup> Article 59 of Law No. 32 of 2009, which is an Indonesian law, governs several important provisions related to the management of hazardous toxic material waste. These provisions include obligations for individuals and legal entities to manage such waste, requirements for the proper handling of imported toxic hazardous materials, the option to delegate waste management to capable third parties, the need for official permission from relevant authorities, the inclusion of environmental requirements in permits, transparent announcement of permit decisions, and the stipulation that further regulations on waste management are detailed in government regulations. This article is designed to ensure the correct and environmentally compliant management of toxic hazardous waste in Indonesia. See: Ismu Gunadi Widodo et al., "Constraints on Enforcement of Environmental Law Against Corporate Defendants," *Environmental Policy and Law* 49, no. 1 (2019): 76.

hazardous materials are imported into the territory of the Republic of Indonesia, produced, transported, distributed, stored, utilized, disposed of, processed or landfilled, then their management must follow the rules and regulations applicable to the management of toxic hazardous waste. Third, if individuals or legal entities are unable to manage toxic and hazardous waste themselves, they can hand over the task of managing it to other parties who have expertise and capability in managing toxic and hazardous waste. Fourth, the management of toxic hazardous waste must obtain official permission from the authorities, which can be the Minister, governor, or regent/mayor according to their authority. Fifth, in the permit granting process, the authorities are required to include the environmental requirements that must be met and the obligations that must be complied with by managers of hazardous toxic waste in the permit. Sixth, decisions regarding the granting of permits to manage toxic hazardous waste must be announced transparently. Seventh, further provisions regarding the management of Hazardous and Toxic Waste, including procedures and procedures that must be followed, are regulated in Government Regulations. All of these provisions are designed to ensure that the management of toxic hazardous waste is carried out correctly and in accordance with environmental standards that have been established to protect ecosystems and human health.<sup>26</sup>

### **3.3. Law Enforcement Against Corporations**

In principle, the environmental law enforcement process in Law no. 32 of 2009 concerning Environmental Protection and Management, there are 3 (three) law enforcement instruments, where these three instruments have different objectives in imposing sanctions. These three instruments are administrative law enforcement, civil law enforcement, and criminal law enforcement. Administrative law enforcement is aimed at freezing permits and revoking permits so that a business activity does not continuously pollute, civil law enforcement is aimed at compensation and restoration of the environment and criminal law enforcement is aimed at providing a deterrent effect and example to other corporations so that they do not pollute or environmental destruction.<sup>27</sup>

The enforcement of criminal law against corporations involved in criminal acts related to pollution and environmental damage, particularly waste dumping, requires the active involvement of law enforcement agencies, including the Police,

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<sup>26</sup> Adiguna Bagas Waskito Aji, Puji Wiyatno, Ridwan Arifin, and Ubaidillah Kamal, "Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases," *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020): 57.

<sup>27</sup> Courtney R. McVean and Justin R. Pidot, "Environmental settlements and administrative law," *Harvard Environmental Law Review* 39, no. 1 (2015): 191.

the Prosecutor's Office, and Civil Servant Investigators (*Penyidik Pegawai Negeri Sipil* or PPNS). The role and presence of PPNS in the criminal justice system are evident in Article 1, paragraph (1) of the Criminal Procedure Code, which designates investigators as officials of the Republic of Indonesia's state police or specific civil servant officials with special authority conferred by law to conduct investigations. Additionally, this role is defined in Article 1, No. 11 of Law No. 2 of 2002 regarding the police, where certain civil servant officials, as appointed investigators, possess the authority to investigate criminal acts within the scope of the laws governing their respective areas.<sup>28</sup> Further legal provisions outlining PPNS's investigative authority can be found in specific laws. For instance, Article 94 of Law No. 32 of 2009 concerning Environmental Protection and Management bolsters the authority of Civil Servant Investigators in handling environmental crimes. This authority extends beyond coordination to include the power to initiate legal prosecutions.

In the provisions of Law No. 8 of 1981 concerning Criminal Procedure Law, it is stated that criminal investigation is a subsystem or an integral part of the Integrated Criminal Justice System. The process of criminal law enforcement involves a series of legal procedures, starting from the stages of investigation, prosecution, and trial. The investigation of criminal acts related to environmental protection and management is conducted through the stages of investigation, prosecution, examination, as well as the completion and submission of case files. The essence of investigations in the field of environmental protection and management involves the collection of materials and information.<sup>29</sup>

In the initial stages of law enforcement against criminal acts such as waste dumping and other environmental crimes, Law No. 32 of 2009 concerning Environmental Protection and Management has established provisions for Environmental Supervisory Officers (*Pusat Penelitian Lingkungan Hidup* or PPLH) and Regional Environmental Supervisory Officers (*Pusat Penelitian Lingkungan Hidup Daerah* or PPLHD) responsible for overseeing compliance with laws and regulations governing pollution and environmental damage by those conducting businesses and activities. One of the functions of PPLH/PPLHD is to serve as environmental analysts in the enforcement process, involving activities such as

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<sup>28</sup> In accordance with the regulations stated in Law No. 2 of 2002, PPNS (Civil Servant Investigators) are authorized to conduct criminal investigations within the legal framework of their respective areas of jurisdiction. See: Novriadi Andra and Megawati Barthos, "The Authority of Prosecutors in Supervision of Every Investigation of Police and Civil Servant Investigators," In *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6<sup>th</sup>, 2021, Jakarta, Indonesia*. 2021, 3.

<sup>29</sup> Michel P. Pimbert and Jules N. Pretty, "Parks, People and Professionals: Putting 'Participation' into Protected-Area Management," in *Social Change and Conservation*, edited by Krishna B. Ghimire and Michael P. Pimbert (London: Routledge, 2013), 297.

monitoring, sampling, photography, and addressing violations. PPLH can also coordinate with PPNS.<sup>30</sup> Article 94 grants PPNS the authority to conduct investigations into environmental crimes, expanding their role beyond coordination to include legal prosecutions. This facilitates cooperation between Environmental Civil Servant Investigators and Police Investigators in the investigation of criminal acts related to environmental protection and management. Integrated law enforcement can be carried out among these investigative entities, the police, and prosecutors, with coordination by the Minister, as outlined in Article 95 of Law No. 32 of 2009 concerning Environmental Protection and Management. Criminal environmental law enforcement entails the application of criminal provisions outlined in environmental law.<sup>31</sup> The substance, institutional authority, and procedures are typically governed by environmental law unless otherwise specified.

However, law enforcement officers often encounter obstacles in handling cases of environmental corporate crime, particularly in instances of toxic hazardous waste dumping. One of the primary challenges is the limited number of professional law enforcement officers with expertise in environmental cases.<sup>32</sup> Corporations can pose a significant threat to environmental conditions when they fail to adhere to existing regulations, particularly those related to waste management and toxic hazardous materials.<sup>33</sup> Given the limited number of environmental supervisors, there is a pressing need for stringent oversight of every corporation. Unfortunately, the quantity and quality of supervision do not align with the active efforts to enforce preventive environmental laws. Referring to Decisions No. 566/Pid.Sus/2017/PN.Kwg<sup>34</sup>, No.

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<sup>30</sup> Natasya Arsyiprimeswari, Muhamad Adji Rahardian Utama, Seno Adhi Wibowo, and Vania Shafira Yuniar, "Environmental Law and Mining Law in the Framework of State Administration Law," *Unnes Law Journal* 7, no. 2 (2021): 347.

<sup>31</sup> David Spence, "The shadow of the rational polluter: Rethinking the role of rational actor models in environmental law," *California Law Review* 89, no. 4 (2001): 917.

<sup>32</sup> Kevin Tomkins, "Police, law enforcement and the environment," *Current issues in criminal justice* 16, no. 3 (2005): 294.

<sup>33</sup> Neil Gunningham, Robert A. Kagan, and Dorothy Thornton, "Social license and environmental protection: why businesses go beyond compliance," *Law & Social Inquiry* 29, no. 2 (2004): 307.

<sup>34</sup> The judgment found the defendant, Aprildo Tri Husodo, guilty of ordering hazardous waste disposal without permission. The court sentenced him to one year in prison and imposed a fine of IDR 500,000,000, substitutable with three months of imprisonment if unpaid. Probation applies unless the defendant commits another offense during the year. The court ordered the destruction of evidence and imposed a court cost of IDR 5,000. This pertains to a hazardous waste disposal case.

389/Pid.B/LH/2019/PN.Ckr<sup>35</sup>, and No. 252/Pid.B/LH/2019/PN.Sbr,<sup>36</sup> it becomes evident that many cases involve the absence of permits for toxic hazardous waste disposal, which is an essential administrative component in environmental law. Consequently, administrative law enforcement, which should be executed by designated officials based on their level of authority, often proceeds sub optimally and at a slow pace, creating opportunities for more serious violations.<sup>37</sup>

In addition, addressing corporate criminal acts, particularly hazardous toxic waste dumping, has not achieved maximum justice due to obstacles in investigation, prosecution, and establishing environmental impacts to hold corporate environmental crime perpetrators accountable.<sup>38</sup> It is evident that demands for environmental restoration receive minimal attention both in the prosecutor's demands and in the final decisions. Therefore, the application of the doctrine of absolute liability in cases of environmental pollution crimes, especially waste dumping, becomes imperative. This principle places the burden of proof on environmental companies that have clearly erred or been negligent in environmental management.<sup>39</sup> Consequently, proof becomes simpler and easier to

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<sup>35</sup> This case involved PT. Lambgabe Mulia Perkasa, represented by Sony Hasiholan, who was found guilty of illegal hazardous waste dumping without authorization. The court imposed a fine of IDR 70,000,000, with the provision of asset seizure if unpaid. An additional penalty required environmental remediation supervised by the Environmental Agency of Bekasi Regency. Evidentiary documents were returned for use in the case against Sony Hasiholan, who was also ordered to pay court costs of IDR 5,000. This addresses an environmental violation involving hazardous waste disposal.

<sup>36</sup> This case involved PT. Cipta Rasa Utama, represented by Hermawan Sunyoto as Director, who was found guilty of illegal hazardous waste dumping without authorization. The court imposed a fine of IDR 750,000,000, with the provision of asset seizure if unpaid. An additional penalty required the cleanup and removal of 19,105 m3 of solid waste, specifically fly ash and bottom ash, at PT. Cipta Rasa Utama's location. Evidentiary documents were also listed, and the defendant was ordered to pay court costs of IDR 5,000. This case pertains to environmental offenses related to hazardous waste disposal.

<sup>37</sup> Marulak Pardede et al., "Perspectives of sustainable development vs. law enforcement on damage, pollution and environmental conservation management in Indonesia," *Journal of Water and Climate Change* 23, no.12 (2023), 35.

<sup>38</sup> Kenneth I. Ajibo, "Transboundary hazardous wastes and environmental justice: Implications for economically developing countries," *Environmental Law Review* 18, no. 4 (2016): 267-283: 464; See also, Matthew Greife, Paul B. Stretesky, Tara O'Connor Shelley, and Mark Pogrebin, "Corporate environmental crime and environmental justice," *Criminal Justice Policy Review* 28, no. 4 (2017): 327.

<sup>39</sup> Environmental pollution and destruction pose significant threats to Indonesia's environment. Restoring the environmental balance is essential for enhancing environmental protection, community development, and optimizing law enforcement. This objective is geared toward preserving nature and addressing environmental issues in Indonesia, especially those resulting from human activities. Solutions may involve civil, administrative, or criminal legal measures to combat and penalize polluters, ultimately creating a healthier, more attractive, and



apply. The implementation of absolute liability for corporations in proving environmental criminal acts related to toxic hazardous waste dumping implies that there is no need to prove wrongdoing, whether intentional or negligent, or establish the corporation's motive for committing the criminal act. This is in accordance with the criminal provisions outlined in Law no. 32 of 2009 concerning Environmental Protection and Management. The reason for this is that the corporate actions, in this context, indisputably lead to environmental pollution with long-term detrimental consequences.

#### 4. Conclusion

Criminal acts committed by corporations refer to actions carried out by individuals, whether acting independently or collectively, within or outside the corporate environment, based on employment or other relationships, on behalf of the corporation. Corporations can be held criminally liable for waste dumping if there is evidence that an individual involved in the unlawful act reasonably believed that the corporation's owners or authorities authorized or permitted the act. The application of strict liability to corporations in environmental crimes, especially in cases of dumping hazardous waste, eliminates the need to prove errors, whether intentional or negligent, including the corporation's motive, given the complexity of environmental crime cases. Law enforcement under Law No. 32 of 2009 on Environmental Protection and Management considers the *ultimum remedium* principle, reserving criminal enforcement as a last resort after other methods have proven ineffective, typically for formal offenses related to water and emission standards violations. The *ultimum remedium* principle applies when environmental damage results from toxic and hazardous waste. To improve supervision and enforcement, the government should establish a specialized unit to address environmental crimes like waste dumping of Hazardous and Toxic Waste, enhance human resources both qualitatively and quantitatively, monitor corporations' management of toxic hazardous waste, and provide community education on environmental management. Additionally, imposing supplementary criminal penalties alongside primary sanctions for dumping toxic hazardous waste can deter offenders and support environmental restoration, repair, and prevention efforts.

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comfortable environment for all. See: Arifin Maruf, "Legal aspects of environment in Indonesia: An efforts to prevent environmental damage and pollution," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021) 126.



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