Non-Penal Policy in the Application of the Concept of Compensation for Nature Conservation for Environmental Damage Based on the Principle of Justice

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ABSTRACT

Environmental damage has become a crucial issue amidst the rapid pace of globalisation. This situation may arise due to the gradual erosion of global society's culture, which prioritises industrialisation over environmental conservation. Efforts to address this problem involve a series of non-penal measures to anticipate environmental damage. This is because, in essence, environmental restoration is far more important than mere punishment. This study examines non-penal policies regarding the application of the concept of compensation for environmental damage based on the principle of justice. Based on these issues, various aspects can be raised, including: what is the essence of environmental protection in the era of globalisation? How do non-penal policies regarding the application of the concept of compensation for environmental damage align with the principle of justice? The aim of this research is to address the various issues discussed. This study employs a normative legal method using a case-based, conceptual, philosophical, and historical approach. The findings include the urgency of non-penal policies that impose a legal obligation on those who damage the environment to repair and restore nature in a responsible manner. Essentially, taking responsibility for safeguarding and caring for the natural world constitutes a just act towards nature itself and truly embodies the principle of divinity.

Introduction

Environmental damage has become a crucial problem in the present day, where humans, as part of the macrocosm (the environment), are unable to preserve it properly. All acts of environmental destruction are caused by unlawful actions, leading to various environmental problems. Environmental damage is fundamentally caused by the rapid development of human civilisation. However, at present, this problem is not solely caused by nature. Problems can also be caused by humans as inhabitants of the environment because, over time, humans experience growth in thought, needs, social interaction, culture, and industrialisation. It is this, in fact, that is the cause of environmental damage. Furthermore, the world has now entered the era of globalisation, which has ushered in an era of industrialisation that has had adverse implications for the environment through increasingly rapid and massive development, whilst neglecting environmental protection.[1]

'*Macrocosm*' derives from Ancient Greek, a combination of the words 'macro' meaning 'large' and 'micro' meaning 'small', and 'cosmos' meaning 'order' or 'an ordered world', from the Neoplatonic scheme which perceives recurring patterns at all levels of the cosmos. There are several philosophical statements regarding the relationship between the microcosm and the macrocosm; for example, according to *Anaximenes*, "just as our soul, being air, holds us together, so does wind or air encompass the whole cosmos." Meanwhile, *Democritus* explained that humans are "a small world." *Hippocrates* also stated that the human body is described as a micro-structure that serves as an analogy for the structure of the cosmos.

Meanwhile, Pythagoras stated that the human being is a microcosm meaning a summary of the universe not because, like other animals, even the smallest ones, it is composed of the four elements, but because it contains all the forces of the cosmos. For the universe contains the gods, the four elements, animals, and plants. All these forces are present within the human being; they possess reason, which is a divine power. Furthermore, they possess the properties of the elements, as well as the power to move, grow, and reproduce.[2]

From an Islamic and Hindu perspective, the macrocosm *(the greater universe)* is connected to the microcosm, in which the behaviour of individual humans influences the balance of the universe. Therefore, a fundamental conclusion and point of argument can be drawn: that humans are a vital component of worldly life and determine the future fate of the universe.

Human nature as a microcosm is connected to the universe (macrocosm).[3] From its root word, *phusis*, which signifies both the smallest essence of all things and the greatest entity encompassing the universe. Galen identified the connecting bridge in the nature of the cosmos, which sympathises with the entities within it, and also concerns the imitation between 'the great' and 'the small', and vice versa. The implication is that humans, as components of the macrocosm, must be able to safeguard it properly and refrain from any actions that cause damage to the universe.[4]

Environmental damage occurs because of the many parties racing to achieve industrialisation and an increasingly pragmatic mindset. The Indian revolutionary hero Mahatma Gandhi once said that the earth is sufficient to meet humanity's needs but not enough to satisfy the desires of a select few. However, the turmoil of human life signifies the accelerating pace of civilisation, leading to a world in an increasingly unstoppable state. This is marked by the frequent disregard for the environment by humans as a component of life. The environment should, in fact, be treated as a friend; thus, actions that cause environmental damage can be avoided.

Indonesia is currently still facing quite serious problems regarding environmental pollution and damage, which are becoming increasingly widespread and complex. Environmental issues remain a major responsibility as they will affect the quality of life in the future. The exploitation of natural resources and the environment has led to a deterioration in the quality of the environment, particularly natural resources.[5] The environmental damage occurring today is classified as a widespread social phenomenon. This is based on the view that the damage on Earth is caused by human actions driven by various interests. Humans are social beings endowed with reason and the capacity for social interaction. Consequently, the damage occurring is caused by the actions of individuals or groups of individuals, which result in harm to the natural world and are termed a social phenomenon.

Environmental degradation is caused by a variety of human activities, such as the rise of industrialisation, capitalism and corporate competition in business expansion, which, to a greater or lesser extent, disregard the environment. Environmental damage actually violates the mandate of the Constitution as explained in Article 33 Paragraph 4 of the 1945 Constitution, which states that 'The national economy shall be organised on the basis of economic democracy with the principles of solidarity, efficiency with justice, sustainability, environmental awareness, self-reliance, and by maintaining a balance between progress and national economic unity'. The wording of that article continues to mandate a balance between progress and unity. Therefore, every industrialisation development policy programme aimed at economic growth must always be implemented whilst taking into account other balances, such as the balance of the ecosystem. For instance, the damage caused by factory waste and corporate actions in clearing protected forest land to create industrial zones also leads to the disruption of ecosystem balance. Furthermore, this causes both direct and indirect harm to the local community.

Then there is the air pollution in the Mandailing Natal region caused by a gas leak at one of the industries, which contaminated the air. This leak resulted in air pollution that led to fatalities five people died and 24 fainted due to toxic gas from the waste. A hazardous waste leak also occurred in Mandailing Natal, North Sumatra, caused by a gas pipeline leak belonging to a company in Mandailing Natal. The gas pipeline leak released dangerous gases; it was reported that five people died from gas poisoning and at least 24 people fainted.[6]

Environmental issues on a global scale, and specifically in Indonesia, are also a particular concern for humanity as a microcosm. Indeed, as a component of life on Earth, humanity must be able to act as a shield and pioneer in preserving the environment from various forms of damage on land, at sea (in water bodies), and from air pollution. Preventable damage certainly falls into many categories, including protecting against greedy human actions such as forest burning, illegal logging, illegal mining, land clearing without regard for environmental aspects, corporations failing to comply with environmental principles, and the disposal of corporate waste without adhering to factory waste treatment mechanisms in accordance with national legislation.

Industry, the environment, and criminal law are always at stake when addressing environmental issues. This is not without reason; environmental damage is plain to see, yet there are always justifications that subsequently lead to a lack of effectiveness in the enforcement of criminal law, particularly within the Indonesian criminal justice system. For instance, the special criminal proceedings for environmental offences

often reach deadlocks, which result in the ineffective enforcement of the law; for example, sentences do not reflect the principle *of 'In dubio pro natura'.* Not all judges adjudicating environmental criminal cases share the same understanding of this principle. Many environmental cases are won by environmental destroyers or mining companies because the law can, it seems, be 'manipulated'.[7]

In addressing the ineffectiveness of the environmental criminal law enforcement process, the environment must remain the central focus as the victim. The environment is a component of the state, and it is the state's responsibility to protect it. The state is a legal system established in accordance with existing legal provisions. The establishment of the state is structured through various sources of law and its instruments, including *the trias politica*: the legislative, executive, and judicial branches. All these components must remain grounded in the applicable law.[8]

Consequently, economic progress and the development of human civilisation in the industrialised world are the causes of damage to the earth. The damage occurring on the earth is, in essence, caused by the development of human civilisation, which has continually advanced over time. It is necessary to examine this progress, as there are undoubtedly negative aspects accompanying it. For instance, as science and technology become more advanced, there is a corresponding decline in manners, ethics, morals, and religious principles. This occurs unconsciously and of its own accord. This is a phenomenon occurring today that must be the subject of a comprehensive study in order to protect the Earth in general and Indonesia in particular.

Criminal law faces a volatile and fluctuating situation. Amidst the development of global human civilisation, there has been a shift in the criminal law's stance towards human conduct. This is a clear indication that criminal law constantly adapts to the evolution of human civilisation. On this basis, the role of criminal law has shifted from being *the 'primum remedium'* to *the 'ultimum remedium'.* According to Modderman, criminal law should be employed as a last resort when other legal disciplines have failed; thus, criminal law must take the lead.[9]

As a consequence of the increasing intensity and prevalence of social phenomena that damage the environment, it must be understood that criminal law plays a role here in providing safeguards for the surrounding environment. Criminal law, whilst functioning as public law, holds a strategic role as a branch of law that is both imperative and persuasive, as well as repressive. Thus, criminal law fundamentally bears a noble duty: to safeguard and preserve the safety of the world's ecological environment.

Environmental damage with massive repercussions necessitates legal flexibility and law enforcement to address environmental aspects and their restoration. Environmental damage is caused by human greed or avarice in the race towards industrialisation and investment that disregards environmental concerns. Environmental damage can be felt as a comprehensive impact and results in victims or aggrieved parties. For instance, the loss of the caused by indiscriminate deforestation and/or the clearing of national forest land through land burning are examples of actions that harm the environment and society. Victims of environmental crimes are therefore part of the broader category of victims of crime, as outlined in the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, which focuses on establishing fundamental principles regarding the fulfilment of justice for victims and the prevention of abuse of power. As stated in point 10 of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, "In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.[10]

According to Soerjono Soekanto, law enforcement is the process of harmonising the relationship between values articulated in legal principles and firm convictions, and manifesting these in attitudes and actions as a practical expression of ultimate values to foster peace in social life.[11] Theoretically, there are various studies on law enforcement that are increasingly developing. One particularly influential theory and school of thought is that of progressive law enforcement, which states that law is not merely about the law itself. Rather, it delves further into the extent to which it pertains to human beings themselves. Law enforcement is the process of making a concerted effort to uphold legal norms in practice as a guide for human behaviour in social life. The objective of law enforcement itself is to enhance order and legal certainty within society. Consequently, criminal law enforcement constitutes a series of efforts to harmonise the relationship between the values enshrined in various criminal law regulations such as the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and special laws governing environmental protection, amongst others accompanied by a strategic understanding that is also manifested in daily conduct. The aim of law enforcement is to achieve peace and order amongst people as a well-functioning microcosm. This is also emphasised by Gustav Radbruch, who states that the primary aim of law enforcement is to achieve justice; thus, in law enforcement, the priorities must be justice, utility, and legal certainty.

Law enforcement is one aspect of criminal law policy that serves to prevent criminal acts.[12] According to Pieter Hoefnagels, there are three components within criminal law policy itself, namely the formulation stage, the application stage, and the execution stage. This first stage involves the enforcement of criminal law *in abstracto* by the law-making body, also known as the legislative policy stage. The second stage is application, which is the stage of implementing criminal law by law enforcement officials, ranging from the police to the courts, also known as the judicial policy stage. The third stage, execution, is the stage of carrying out criminal sentences in concrete terms by penal enforcement officials, also known as the executive or administrative policy stage.

Regarding environmental damage, the law must intervene to mediate issues and find solutions. The law provides guidelines for everyone to act with caution and avoid any actions that may damage the environment. In addition to the problem of human behaviour and legal entities often failing to adhere to ecosystem balance, challenges also arise from the effectiveness of law enforcement. According to the data obtained, the total costs of environmental restoration and environmental damages resulting from the resolution of environmental disputes are significant. For example, in civil judgments between 2015 and 2021, the total environmental damages and restoration costs amounted to Rp. 20,754,656,478,500. Based on this figure, the amount of environmental compensation and restoration costs that have been paid is Rp. 90,891,201,184. Meanwhile, the total environmental compensation paid into the state coffers through out-of-court settlements between 2015 and 2020 amounts to Rp. 140,000,000. The amounts paid are significantly lower than the total environmental damage costs set out in court rulings. Furthermore, the management of these environmental restoration funds also poses a challenge, meaning that environmental restoration is not proceeding effectively. This represents a critical issue in the enforcement of criminal law.

Funds for the payment of environmental damage by perpetrators of environmental crimes are paid into the state treasury. This is stipulated in Article 1(1) (k) of Government Regulation No. 44 of 2014 on the Types and Rates of Non-Tax State Revenue applicable to the Ministry of Environment and Article 8 of Minister of Environment Regulation No. 7 of 2014 on Environmental Losses due to Pollution and/Damage, which states that environmental losses constitute non-tax state revenue that must be remitted to the state treasury. The consequence of these environmental funds entering the state treasury as non-tax state revenue is that they become commingled with other funds in the state treasury. This means that when compensation for environmental damage enters the state treasury, it becomes state money (part of the state budget) and the responsibility for environmental restoration is subsequently deemed to lie with the state rather than the perpetrator. This leads to a misunderstanding of the mechanism for enforcing environmental law. Such a situation also means that the mechanism for environmental restoration cannot be carried out easily, but must instead follow the state budgeting mechanism and be strictly supervised by law enforcement institutions. This poses a crucial problem in the enforcement of criminal law.

Speaking of criminal law policy, one of its objectives is the future reform of criminal law due to outdated legislation that requires proper updating. Therefore, there is a need for scientific research to discuss Non-Penal Policies in the Application of the Concept of Compensation for Natural Restoration Regarding Environmental Damage Based on the Principle of Justice. What is the essence of environmental protection in the era of globalisation? What are the non-penal policies regarding the application of the concept of compensation for environmental damage based on the principle of justice? This needs to be addressed to provide a solution to the problem of the ineffectiveness of handling environmental criminal cases where there is clear and concrete environmental damage and pollution. It must be emphasised once again that what is termed the environment is a constitutional right of the Indonesian people. This is enshrined in Article 28H Paragraph 1 of the 1945 Constitution, which states: “Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to enjoy a good and healthy environment, as well as the right to health services.” Therefore, on this basis, every criminal act against the environment must be enforced by prioritising the principles of criminal law, both penal and non-penal.

When discussing penal measures, we are referring to the primary mechanisms of punishment as set out in the 2023 Criminal Code, namely imprisonment and fines. Therefore, what is meant by penal measures is limited to these, involving the restriction of another person’s freedom and the imposition of a sum of money as a compulsory payment to the state (a fine). In line with developments in global and national law, criminal law is no longer confined to penal measures alone, but has expanded to include non-penal aspects. The mechanism for handling criminal cases through non-penal means is a broad and expanded approach to criminal case management, so that it is not confined solely to imprisonment and fines. Instead, it has expanded to include mechanisms such as the payment of compensation (restitution and compensation) to victims or parties harmed by criminal acts.[13]

Methods

The research method employed in this study is the normative legal method, which is a form of legal research based on the analysis of literature or secondary data as the primary source of study.[14] The approaches employed include a legislative approach, examining various regulations concerning environmental protection and management, and a conceptual approach, analysing the concepts of non-penal policies, restitution for ecological restoration, and the principle of justice in environmental law. Furthermore, this research also employs a *'green justice'* approach, which emphasises ecological justice by positioning the environment as a subject that must be protected. This research also emphasises the balance between human interests and nature conservation within the concept of law enforcement.

This approach is used to analyse the extent to which non-penal policies on ecological restoration compensation can achieve substantive justice, both for the community and for environmental sustainability. The legal materials used consist of primary, secondary, and tertiary sources obtained through a literature review. Subsequently, the legal materials were analysed qualitatively and then presented in a descriptive-analytical manner to provide a comprehensive understanding of the application of the concept of ecological restoration compensation based on the principle of *green justice.*

Results and Discussions

A. Non-Penal Policies in the Application of the Concept of Restorative Compensation for Environmental Damage Based on the Principle of Justice

1. General Study about Non-penal policy

Non-penal policies encompass preventive instruments such as Environmental Impact Assessments (EIA), UKL-UPL, environmental permits, and economic instruments (Article 14 of the Basic Environmental Law), as well as mitigation and restoration (Articles 53–87 of the Environmental Protection and Management Law). The perpetrator is obliged to carry out restoration through environmental quality recovery, rehabilitation, and nature restoration with compensation if unable to do so. The "polluter pays" principle in Article 2(j) requires the perpetrator to bear the full costs without proof of fault (*strict liability,* Article 88).

Compensation for nature conservation is a form of non-penal redress in the form of financial compensation for the restoration of damaged ecosystems, such as the rehabilitation of forest land or protected wildlife. This is set out in Article 54 of the Basic Law on the Environment. The calculation is based on recommendations from conservation organisations and covers the costs of mitigation, rehabilitation and conservation. These funds are deposited into the state treasury as non-tax state revenue (PNBP) and allocated for restoration, although this is often criticised as not being directly channelled into environmental restoration.

Environmental crimes must be treated with the utmost seriousness. This is because environmental issues result in losses to the state, impact environmental carrying capacity and productivity, and pose the potential for ecological disasters caused by environmental damage.[15] Environmental crimes affect the general public and the fate of many people; indeed, they concern not only humans but also the lives of animals and plants as part of the microcosm of the universe. Therefore, in addressing the potential for ecological damage, there must be a response involving extraordinary measures, which must be implemented through more rigid and robust mechanisms. Law enforcement capable of fostering a culture of compliance and providing redress for victims is urgently needed.

Restorative justice, as a practice and social movement, began in the 1970s as a response to a criminal justice system that was too harsh and ineffective in reducing crime and rehabilitating offenders. Modern restorative justice is rooted in a rejection of the criminal law model and retributive and rehabilitative punishments that have failed.

The principle of environmental justice is considered highly urgent to ensure the preservation of the environmental ecosystem. This principle guarantees the fair distribution of burdens, public participation, and the restoration of environmental victims (as outlined in Article 2(g) and Article 3(f) of the Law on the Protection and Management of the Environment). This is in line with restorative justice, where compensation supports the restoration of ecosystem balance and intergenerational justice, rather than merely serving as a penal sanction. Its implementation is considered effective if the

restoration funds are channelled directly towards environmental restoration following an environmental crime.

2. The essence of environmental protection in the era of globalisation

The environment is, in essence, a habitat where living beings grow, develop and continue their natural life. The term 'environment' is derived from two words: 'environment' and 'life'. 'Environment' signifies a container or place that accommodates something, and can also be interpreted as an area for growth and development. Meanwhile, 'life' signifies not being dead or the presence of a spirit and breath. Thus, if interpreted more strictly, the area or container that harbours living beings must, in essence, remain in balance with the condition of those living beings. However, if the area, container or place that subsequently becomes the habitat for living beings is no longer in balance or has been polluted, then this constitutes environmental damage and pollution.

Environmental degradation is caused by a decline in human morality and ethical conduct in addressing their role as a microcosm that must maintain balance with the Earth and the universe. Furthermore, the weak enforcement of laws is also a cause of the current rise in environmental degradation. Among the forms of environmental damage occurring is the accelerating rate of deforestation, which has reached 1.8 million hectares per year, leading to the loss of 21% of Indonesia's total 133 million hectares of forest.[16] This loss of forest results in a decline in environmental quality, an increase in the frequency of natural disasters, and a threat to flora and fauna. Furthermore, 30% of Indonesia's 2.5 million hectares of coral reefs have been damaged. This damage also increases the risk of disasters in coastal areas, threatening marine biodiversity. Other forms of damage, such as the increasing pollution of Indonesia's water, air, and oceans, are also a particular concern.

The main causes of environmental degradation stemming from human activities include various forms of pollution such as air, water, soil, and noise pollution as well as deforestation practices. Although some factors may occur naturally, their intensity and frequency are increasing in line with increasingly massive human intervention. When these diverse factors reach extreme levels, they have the potential to trigger disasters. Furthermore, for the Indonesian people, who adhere to a communal religious mechanism, any wrongdoing committed has the potential to bring about calamity and danger to the environment.

In recent centuries, for instance, humanity has faced various major disasters linked to environmental degradation. For example, the massive earthquake that struck Aleppo, Syria, in 1138 claimed the lives of approximately 230,000 people. Then there was the earthquake in Haiti in 2010, which resulted in 316,000 fatalities. Meanwhile, the earthquake that struck Indonesia and Sri Lanka in 2004 also claimed 280,000 lives. Khandaker Tofayel Ahmed, "Environmental Degradation: Our Moral Responsibility," " Jagannath University Journal of Arts 9, no. 1 (2019): 132.

It is truly impossible to understand the relationship between the economy and environmental issues without studying the history of sustainable development. Knowledge of the past can provide a better understanding of the present. As Karl Marx said, the traditions of past generations weigh upon the living, much like a nightmare. Generally speaking, contemporary society is a product of the past; whether we like it or not, this is a consequence of the reality of life. What this means is that what is happening today in a country is the implementation of the civilisation that existed in the past. This is also based on the fact that history is, in fact, inherited by the next generation. The point is that because the past is always with society, it weighs upon it, limits its choices, and forces it to operate within the constraints it imposes whether or not people are fully aware of this if they wish to forge a new path and free themselves from the shackles of the past.[18]

Furthermore, the collapse of civilisation, as articulated by the British historian Arnold J. Toynbee, suggests that the downfall of a civilisation stems from the internal decline of that society itself. According to him, a civilisation declines when it loses its moral integrity and when the cultural elite degenerate into parasites, exploiting the people and creating a proletariat both within and outside society. Toynbee explains that civilisations die by suicide, not by murder. The implication is that, particularly when a society fails to respond effectively to the challenges of its time, it will die of its own accord. For example, the civilisations of Mesopotamia and Egypt initially flourished thanks to advances in agricultural technology that enabled long-term settled life. Success and specialisation in the agricultural sector, along with the ability to meet basic needs, allowed other sectors such as art, religion, and architecture to develop.

The decline in human morality and ethics is, in truth, caused by many factors, one of which is the ever-increasing desire to compete in the pursuit of grandeur and wealth.[19] This leads to social conflict, resulting in bloodshed and immorality. Amidst the hegemony and the race to pursue worldly needs and desires, which ultimately lead to extraordinary exploitation and exploration of the world one example being greedy industrialisation that disregards the balance of the environmental ecosystem.

The environment can be examined from a theological perspective, namely that God created the universe with a good and perfect purpose. Therefore, the universe must be properly safeguarded and maintained, and must not be polluted or destroyed. Article 1, Point 14 of Law No. 32 of 2009 on the Protection and Management of the Environment explains that environmental pollution is the introduction or discharge of living organisms, substances, energy, and/or other components into the environment through human activities, thereby exceeding the established environmental quality standards. Article 1, Point 13 further explains that environmental damage is a direct and/or indirect change to the physical, chemical, and/or biological properties of the environment that exceeds the established criteria for environmental damage.

Although Article 54 of Law No. 32 of 2009 on Environmental Protection and Management stipulates that any person who causes pollution and/or damage to the environment is obliged to restore the environment's functions. Environmental restoration is carried out through mechanisms to stop the source of pollution and clean up elements that pollute the environment, carry out remediation, rehabilitation and restoration, as well as other measures in line with current scientific and technological developments. According to these legal provisions, one form of restoration—namely the restoration of the environment is recognised under Indonesian positive law, with the aim of restoring the environment that has been damaged or polluted as a result of the actions of perpetrators of environmental crimes. These legal provisions carry a philosophical implication that environmental restoration is mandatory, and naturally, what is deemed mandatory must be carried out without exception. The word "mandatory" in every regulatory provision implies that natural persons and legal entities must comply with it, regarding the rules as the highest authority. In line with human life today, which is created and governed by, and cannot be separated from, the grace of God Almighty. Thus, the true law is all the rules established by God, which are then sanctified as the guiding principles of this vast universe.

Natural law and the protection and management of the environment are two concepts synonymous with humanity's role as God's vicegerents on Earth. Islamic theological teachings explain that humanity was created solely to worship its Lord. Humanity also serves as God's vicegerent on earth as creatures of God who are inherently social beings, they must always be able to uphold the teachings of truth and environmental conservation. God does not approve of those who cause destruction on earth; this is fundamentally and philosophically explained within Islamic theological studies. Ideally, therefore, when discussing the environment, the primary framework to be applied is the theological aspect. For the environment (the natural world) is, in truth, God's masterpiece. Consequently, environmental restoration cannot be approached through a legal-positivist mindset, which appears rigid and inflexible.

It is worth noting that the Environmental Quality Index fluctuates across various regions.[20] Several provinces show a significant decline in air and water quality. Major rivers such as the Citarum and Musi fall into the heavily polluted category due to industrial and domestic waste.[21] Meanwhile, this situation is exacerbated by the spread of environmental damage in Indonesia, which affects not only the land but also the seas, which are experiencing similar degradation. Plastic pollution, oil spills and coral reef damage are threatening marine life. Indeed, research indicates that Indonesia is one of the world's largest contributors of plastic waste to the oceans.

Environmental damage in Indonesia is complex and multi-dimensional. The main causes stem from irresponsible human activities that lack environmental consideration. Consequently, the environment is being sacrificed amidst the frenzy of industrialisation and the increasingly rapid advancement of technology.[22] Another example is the conversion of forests into oil palm plantations or open-pit mines. This has, for instance, accelerated the rate of deforestation and the loss of wildlife habitats.

Furthermore, the problem of human and corporate actions that damage the environment cannot yet be fully halted due to a conflict of interests between industrialisation and environmental

protection. Additionally, a crucial and equally vital issue is the weak enforcement of environmental criminal law, which further exacerbates the situation. Many industries continue to discharge waste into rivers without undergoing proper treatment processes. In urban areas, the increasing number of motor vehicles using fossil fuels has caused pollution to rise unchecked. This also represents a clash between prioritising the environment and industrialisation. This reality contributes to global climate damage and instability, namely the emergence of extreme weather phenomena. This is caused by the damage to or thinning of the ozone layer, leading to the greenhouse effect, whereby 80% of the sun's rays strike the Earth directly, causing the planet to overheat and impacting the stability of life on Earth.

Environmental instability poses a serious threat to human civilisation and life on Earth. The quality of the natural environment will continue to deteriorate. Measures must be taken to anticipate this environmental decline. The measures in question involve utilising legal mechanisms for environmental protection. The environment must, in fact, be protected wisely through existing legal mechanisms. Thus, criminal law mechanisms are the primary solution in safeguarding public interests, as criminal law essentially functions as public law.

B. The Urgency of Non-Penal Policies in the Enforcement of Criminal Law

Barda Nawawi Arief explains that criminal law policy, both *in abstracto* and *in concreto,* forms part of the overall national law enforcement system and is part of efforts to support national development policy. Barda Nawawi Arief, Several Aspects of the Enforcement and Development of Criminal Law (Bandung: Citra Aditya Bakti, 2018). According to Peter Hoefnagels, criminal law policy is the science of preventing the occurrence of criminal acts. Criminal law policy is a theory comprising three main components: legislation/formulation, application, and execution. All of these relate to the formulation of legislation aimed at reducing crime rates and updating regulations to ensure they remain current in line with societal developments and public needs. Criminal law policy is an integral part of criminal policy in addressing various criminal law issues. According to Marc Ancel, the definition of criminal policy is a rational mechanism or solution from a societal perspective to prevent crime.[24] Criminal law policy concerns the formulation of criminal legislation and the implementation of criminal law. Terminologically, criminal law is synonymous with punishment and retribution for crimes committed. Initially, crimes committed in the past during the Ancient Roman era were met with punishment meted out by the King. The retributive school of thought, with *its lex talionis,* is a concept that advocates retribution commensurate with the crime committed.

According to Christopher Lewis in his work titled Unlocking *Lex Talionis,* he argues that it is most reasonably interpreted as a 'quantitative' principle, not a 'qualitative' one.[25] The implication is that the punishment must not be harsher than the crime. This does not mean that the two must be exactly the same in form. Thus, *lex talionis* does not necessarily imply a system of physical punishment. This quantitative interpretation raises what is known as the "currency exchange problem" for any legal system where imprisonment is the sole or primary method of punishment for serious crimes.

Lex Talionis means, for example, an eye for an eye, a hand for a hand, and so on. The concept that developed in ancient or classical times is affiliated with retributive justice and the *primum remedium* approach, or the idea that punishment is the primary solution to resolving problems. This concept is known as *penal law* or punishment.

Criminal law, as public law, bears a social responsibility to create a good and healthy environment in accordance with the mandate of the Constitution.[26] However, criminal law may be applied only after other legal disciplines have been exhausted. When referring to the enforcement of environmental law, this is interpreted as an effort to hold polluters or environmental destroyers accountable so that they restore the damaged and polluted environment. One form of this accountability is carried out by the government as the guardian of the environment through the resolution of environmental disputes.

According to Marc Ancel, penal policy can be understood as a discipline that is not only scientific in nature but also contains an artistic element, with the practical aim of producing better formulations of positive law. Marc Ancel, Social Defence, A Modern Approach to the Criminal Problem (London: Routledge & Paul Keegan, 1965). Furthermore, this policy also serves as a guide for legislators, judicial officials in applying the law, and those responsible for enforcing court rulings. Meanwhile, according to A. Mulder, *strafrechtspolitiek* is a policy framework focused on the extent to which existing criminal law provisions need to be updated or adapted. This policy also encompasses efforts to prevent criminal offences,

as well as regulations regarding how the processes of investigation, prosecution, trial, and the enforcement of criminal sentences should be conducted. A. Mulder, Strafrechtspolitiek (Delikt en Delinkwent, 1980), 333.

The existence of non-penal policy as the most strategic policy within criminal policy has been affirmed in various UN Congresses on *the Prevention of Crime and the Treatment of Offenders.* At the 6th UN Congress in Caracas, Venezuela, in 1980, it was stated, amongst other things, that *"Crime Prevention Strategy should be based upon the elimination of causes and conditions giving rise to crime."* Non-penal policy focuses on the mechanisms for the enforcement of penalties using a non-penal concept, namely without the use of coercive measures such as imprisonment, detention, fines, and other penalties that restrict the freedom of others. However, non-penal refers to concepts such as the payment of compensation, placement under supervision, and so on. The concept of non-penal policy is a recent development within the National Criminal Code applicable in Indonesia and is based on the philosophy that sentencing must not conflict with the ethics of and morality. Furthermore, sentencing aims to prevent criminal acts by upholding legal norms for the protection and welfare of society.

The urgency of non-penal policies within the scope of resolving criminal cases has become paramount. This is because the current approach to criminal law issues no longer prioritises an offender-oriented perspective. This concept involves how criminal sanctions are implemented by focusing on holding the perpetrator criminally accountable, rather than the victim. Consequently, following the global and Indonesian reforms of criminal law and criminal sanctions, the true concept of criminal sanctions is *victim-oriented* that is, the implementation of criminal law mechanisms must not focus solely on the perpetrator but must also consider the plight of the victim following the criminal act. Therefore, in addressing the issue of environmental crimes, the victims of such crimes are, in essence, the state (a legal entity) and the public. Consequently, criminal law can address the aspects that have been harmed, even if it is the state that has suffered harm as a result of environmental crimes.

C. Non-Penal Policies in the Form of Compensation for Environmental Damage: A Comparative Study of Indonesia and the United States of America

Penal policy focuses on the enforcement of criminal sanctions, whereas non-penal policy is more concerned with prevention, education, and proactive measures prior to the commission of a crime. However, what is referred to as non-penal policy focuses on compensation efforts tailored to the extent of the loss suffered by the victim. If the victim is the state in a case of environmental crime, then compensation should be paid by the perpetrator to the victim through a direct enforcement mechanism. Thus, restitution for environmental damage does not, in fact, require the rigidity inherent in a positivist perspective. This means that if environmental damage is caused by a corporation or other private legal entity, or by a natural person, compensation can be prioritised without having to wait for a final and binding court ruling. If, from the outset, there is an indictment by the Public Prosecutor and/or a preliminary investigation by the police regarding allegations of a particularly serious environmental crime, then the police and the Public Prosecutor's Office should, in fact, make preliminary notes regarding the urgency of imposing restitution on the private legal entity or individual as the perpetrator of the environmental crime. This is also supported by an environmental audit conducted by the state (the Ministry of the Environment) and subsequently assisted by the Attorney General's Office of the Republic of Indonesia.

Once the existence of severe environmental damage has been assessed, it is necessary to include in the indictment details of the environmental offence and a request for restitution submitted to the panel of judges. Thus, throughout the law enforcement process, restitution to the environment can be carried out without having to wait for a final and binding court decision. Subsequently, the defendant in an environmental criminal case may undertake environmental remediation by carrying out environmental clean-up in accordance with the damage that has occurred. For example, if deforestation results from the felling of a forest, the defendant is effectively required to restore the affected area. This concept exists in the United States under the name Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA.

When discussing comparative studies, there is certainly a concept that can be applied in Indonesia, adopted from other countries that have implemented such mechanisms earlier. Although legal cultures differ, this should not be an obstacle to examining the best concepts that can be used in Indonesia, provided that such concepts are deemed capable of providing solutions to various law enforcement issues in Indonesia, particularly regarding the restoration of environmental damage through non-penal mechanisms.

When examining comparative studies, one is confronted with the similarities and differences between the two countries. Indonesia and the United States are both densely populated nations. Indonesia's population is not significantly different from that of the United States. Furthermore, regarding the qualifications of their legal enforcement systems, Indonesia operates under a 'rechtstaat' (*rule of law* state) whilst the United States operates under *the 'rule of law'.* Indonesia has a Continental European legal system, whilst the United States has the American Common Law system.[26] Both represent states founded on the law in force, although *the 'rechtstaat'* and *the 'rule of law'* have their own distinct differences. Differences in legal systems should not be a reason for not attempting to apply or transplant mechanisms from countries with legal systems different from Indonesia's. Just as the pre-trial mechanism is actually a mechanism found in the United Kingdom or countries affiliated with the Common Law system. However, based on the protection of human rights, the supremacy of the law, and the principle of equality before the law, pre-trial proceedings have been implemented in Indonesia.

Pre-trial proceedings in Indonesia are inspired by the principle *of habeas corpus* within the common law/Anglo-Saxon system to protect an individual's right to liberty from the arbitrary actions of law enforcement officials and the state.[29] The *Habeas Corpus* Act 1679 in England requires officials to demonstrate the lawful grounds for detention in court.[30] If the grounds are found to be unlawful, the detainee is released immediately. This has been protected as a human right since the inception of *the Magna Carta* in 1215.[31] Therefore, based on this line of reasoning, the concepts existing in different countries legal systems can, in fact, be applied as potential solutions to various problems that arise.

A comparative study that can be applied is that of the United States. This is based on a concept that is well-suited for implementation in Indonesia: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) enacted in the United States. This mechanism applies *strict, retroactive,* and *joint liability*, which was enacted by US Federal Law in 1980 and amended through the Superfund Amendments and Reauthorization Act (SARA) in 1986, granting the EPA the authority to manage hazardous waste sites across all US states. This mechanism applies within the jurisdiction of the United States, including the mainland, territorial waters, and the exclusive economic zone relating to Superfund.

To date, no other country has implemented CERCLA within its own jurisdiction. Yet this concept is highly flexible as it is not strictly positivistic or rigid. CERCLA does not always require a ruling from a US federal court for its implementation. This mechanism is implemented through emergency removal actions without a court ruling via Unilateral Administrative Orders (UAOs) to Potentially Responsible Parties (PRPs) for voluntary clean-up, supported by Superfund funding. More than 70% of environmental cases are resolved through administrative settlement negotiations rather than litigation.[32]

D. The Urgency of Non-Penal Policies on the Application of the Concept of Compensation for Environmental Damage Based on the Principle of Justice

Developments in criminal law cannot, in fact, negate the evolution of human thinking, which has shifted from primitive and classical modes to a more humanistic, rehabilitative and constructive approach. Initially, criminal law was solely offender-oriented, with the enforcement of criminal law focusing solely on the punishment of suspects or perpetrators of criminal acts, rather than on the rehabilitation of victims of crime.

According to Law No. 31 of 2014 on the Protection of Witnesses and Victims, it is explained that a victim is a person who has suffered physical, psychological, and/or economic loss caused by a criminal act. Meanwhile, if we examine Law No. 1 of 2023 on the National Criminal Code, Article 145 states that "every person" is interpreted as *a natural person* and *a legal person*. This is also explained in Article 1, Point 32 of Law No. 32 of 2009 on the Protection and Management of the Environment, which states that "every person" refers to an individual or a business entity, whether incorporated or unincorporated. On this legal basis, victims of criminal acts are not limited to *natural* persons, but also include legal entities. From a civil law perspective, the state is a public legal entity.[33, p. hlm. 150] Whilst under public law the state is an organisation of offices or a collection of state organs comprising governmental bodies, under civil law the state is a collection of legal entities comprising governmental bodies.[34] Furthermore, the Government is also a legal subject in civil law matters. Thus, the Government is a legal entity, as Van Apeldoorn asserts that the state, provinces, municipalities, and so on are legal entities.[35] However, its establishment is not carried out through a specific mechanism, but rather develops through historical

processes and struggles. The Government is also regarded as a legal entity because it carries out commercial activities (*acts jure gestionisi*).

The state's status as a legal entity positions it as a legal subject and entitles it to compensation following environmental damage or pollution. Consequently, when discussing the environment and its impacts, the direct victims are undoubtedly the public and the state. This is because the state is entrusted with a constitutional responsibility to preserve the land, water, and natural resources contained therein. Consequently, in the event of environmental pollution and environmental damage, this automatically results in the state becoming a victim and suffering loss.

The state's role in addressing environmental damage and environmental restoration efforts must be optimised and carried out in a targeted manner. This is because, philosophically, within the legal framework, the state constitutes a complete entity that must be maximised; for instance, in a sovereign state, the law must be regarded as the supreme authority. Examining this from A.V. Dicey's perspective, the rule of law is founded on three key elements: the supremacy of law, *equality before the law,* and a constitution based on human rights.[36] If examined more comprehensively, a state governed by the rule of law must adopt the paradigm that the law must, in essence, be regarded as the *supreme* authority above all else. The supremacy of the law means placing the law in the highest position, with nothing standing above it. However, if constructed according to Mahfud MD's view that law is part of politics with certain qualifications, law is a dependent variable and politics is an independent variable (influencing variable). The influencing variable namely politics will affect the dependent variable. Law is referred to as a product of politics and power because these two elements are inseparable from one another.

Table 1 on the sources and status of funding for the enforcement of environmental and forestry criminal law

Type of funding	**Funding status**	**Legal Basis**
Fines	State Non-Tax Revenue (PNBP) of the Attorney General's Office	Article 1(1)(c) of Government Regulation No. 39 of 2016
Confiscation of proceeds derived from criminal offences	State Non-Tax Revenue of the Attorney General's Office	Article 1(1)(f) of Government Regulation No. 39 of 2016
Monetisation of recovery costs from remedial sanctions resulting from criminal offences	No classification	Court ruling practice

From the above description, it can be concluded that funds from the realm of environmental criminal law enforcement cannot be directly used for the restoration of environmental functions. This applies particularly to funds in the form of monetary sanctions, as the purpose of imposing such sanctions is not to restore environmental functions but to impose punishment. However, this does not mean that these funds cannot be utilised for environmental purposes.

Globally, restitution is a form of compensation for victims following a criminal offence. Restoration is carried out by providing physical, psychological and/or economic recovery. This is regulated under Indonesian positive law and constitutes a follow-up to an international declaration concerning victim justice and the abuse of authority, adopted in United Nations General Assembly Resolution No. 40/34 dated 29 November 1985. Based on this, people generally believe that restitution (compensation) is only granted to natural *persons* and there is no legal basis to justify its application to environmental issues. However, if we examine international legal sources, one of which is the 1985 Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, it permits restitution in relation to environmental damage. It must be recognised that this declaration is, in fact, a follow-up declaration focused on fundamental human rights derived from human rights.

The 1985 Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power provides for the possibility of restitution that is broad and flexible. This is complicated by the fact that, under Indonesian positive law, there is no legislation specifying the scope of victims of criminal offences whether this is limited to *natural persons* or also includes *legal persons.* It is this very issue that has led to the proposal to establish a conclusive point regarding whether restitution can be applied to all subjects of criminal offences, including legal persons, or only to natural persons. This reflects the instinct to strengthen legal certainty in the enforcement of environmental law. Provisions regarding restitution

(compensation) for the restoration of environmental damage are included in the study and elaboration of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted into United Nations General Assembly Resolution No. 40/34 on 29 November 1985. It should be noted that in the sub-section on restitution under Point 10, it is explained that "In cases of substantial environmental damage, restitution, if ordered, must include, to the extent possible, environmental restoration, infrastructure reconstruction, replacement of community facilities and reimbursement of relocation costs, whenever such damage results in the displacement of communities. Community dislocation is a condition where a community group experiences a shift, disruption, or disturbance in its social structure and way of life, such that normal social functions do not operate as they should. Dislocation is actually caused by government evictions resulting from development and industrialisation, natural disasters, socio-political conflicts, economic changes, environmental damage, and so on, which render it impossible to continue living in the environment as before.

Amartya Sen defines justice as a comparative approach that focuses on reducing actual injustice in society, rather than seeking a perfect ideal institution as in John Rawls' transcendental theory.[37] According to him, the concept of the 'capabilities approach' holds that justice is achieved when individuals possess the real freedom to develop their capabilities in order to lead a life they consider valuable. Amartya Sen distinguishes between *nitti*, meaning "formal rules and institutions", and *nyaya*, meaning "the realisation of justice in real life", prioritising the latter through a comparison of conditions before and after social intervention. Freedom is a central element, encompassing *opportunities* and processes to address inequalities in the distribution of resources, oppression, and a lack of capabilities.

When discussing the theory of urgency, one is confronted with the extent to which the implementation of such policies is crucial in bringing about change to a given provision. As a philosophical inquiry, for instance, to what extent is the purpose of law to create peace and public order? The answer is that peace and public order can be achieved to the fullest extent when there are laws in place to regulate them. Thus, the law has a primary function, namely to realise peace and order. Therefore, it is vital to pursue non-penal measures involving compensation for environmental damage resulting from environmental crimes. Essentially, this is necessary because, in worldly life, justice for the universe must always be championed; that justice for the environment is the highest goal that must be achieved and realised.

The very nature of the law is intended for the benefit of humanity, not for the sake of the law itself; thus, when the law fails to bring happiness to people, it is the law that must be adapted to meet human needs, not the other way round where people are forced to comply with laws that no longer align with their way of life as noble beings honoured by the Creator of the universe, and which subsequently become a burdensome and detrimental burden.[38, pp. 1–2]

Therefore, when discussing policy, in principle it originates from the ruling government, which is granted administrative authority as the entity managing the state. The policy itself aims to realise a better life in the future. Therefore, regulations in the form of laws and subordinate regulations are drafted to govern the life of the nation and the state. Policies embodied in legislation have urgency as rules that may be penal or non-penal in nature.

Originally, the philosophy of punishment in the world and in Indonesia was penal (punishment), which served to restrain the freedom of guilty individuals. Thus, penal punishment was directed solely as *lex talionis,* or punishment commensurate with the criminal act committed. After several centuries of application, human thinking evolved with the emergence of the philosophical paradigm of natural law, which emphasised that "a person who commits a crime is not an enemy but someone who is ill." This was articulated by Thomas Aquinas through the *concepts* of *'Poena et Poena' and 'Poena et Medicina*', meaning that a person who commits a crime must receive treatment. Therefore, when examining the perpetrator of a criminal act, the matter must be resolved by treating the perpetrator as someone who is ill. It is this concept that subsequently became the foundation for the emergence of non-penal policy. Non-penal policy refers to how criminal law is enforced without resorting to punishment involving the restriction of liberty, as in traditional concepts such as imprisonment, fines, probation, and so on. However, this non-penal mechanism is intended for criminal offences that are classified as urgent in terms of requiring immediate or short-term restoration. The non-penal policy that can be implemented falls within the remit of law enforcement officials in providing treatment to victims of criminal offences through restorative mechanisms to return them to their original state (*restitution in integrum*).

If we refer to Law No. 1 of 2023 on the National Criminal Code and link it to Law No. 32 of 2009 on the Protection and Management of the Environment, victims of criminal offences are not merely natural

persons (*naturlijk person*), but have entered the realm of legal persons (*rechtperson*) as. Therefore, today the victims of criminal offences are not merely natural persons but also extend to the realm of legal persons. A legal person is a subject of criminal law to whom rights and obligations may be attributed. Consequently, it is entirely possible for a legal person such as the state, acting as a legal person to be the victim of a criminal offence. The state becomes a victim of environmental criminal offences when the environment is damaged by a series of actions such as forest fires, the indiscriminate disposal of industrial waste, the irresponsible clearing of forest land, the indiscriminate felling of trees, and other actions that lead to a decline in environmental quality standards and an increase in environmental damage.[39]

Environmental damage and pollution caused by the actions of natural persons or by corporations as legal entities may be treated as criminal offences as appropriate. In this context, where the perpetrators are natural persons and/or legal entities, the state and the public are the direct victims. If examined from the perspective of non-penal policy, every environmental criminal offence can be resolved and remedied through the restoration of the environment as the victim of the offence. The restoration referred to involves the payment of compensation by the perpetrators (natural persons and legal entities) to the state through a targeted mechanism. This means that the compensation paid by the perpetrators of the criminal offence is paid to the state through a series of actions such as reforestation and nature conservation, as well as making a full contribution to environmental restoration. The importance of environmental restoration is carried out through preliminary measures. Therefore, examining the principles of the Indonesian judicial system in accordance with Law No. 48 of 2009 on Judicial Power, Article 2(4) explains that one of the principles applicable in the judicial system is that proceedings must be conducted simply, swiftly, and at low cost. Therefore, environmental restoration must be based on the principles of simplicity, speed and low cost. Consequently, in the context of environmental restoration, the payment of environmental compensation can be carried out through simple and swift mechanisms. Environmental restitution payments can be made to the state and should be processed as soon as possible to repair the environment. This is also based on the principle of justice that favours the environment.

The concept of compensation for environmental damage, grounded in the principle of justice, prioritises restoration as the primary objective, rather than merely financial compensation. Justice in this context must encompass three dimensions simultaneously: justice for the victims, justice for the perpetrators in terms of proportionality of liability, and justice for the environment as an entity which also possesses intrinsic value. Therefore, the approach used is no longer purely retributive, but adopts the principle of restorative justice, which emphasises the restoration of the situation, as well as strict liability, which affirms the absolute responsibility of the perpetrator.

Normatively, this concept is firmly rooted in Law No. 32 of 2009 on the Protection and Management of the Environment. Article 87 stipulates that every person responsible for a business and/or activity that causes environmental pollution or damage is obliged to pay compensation and/or take specific measures in the form of environmental restoration. This norm demonstrates that the law is not only oriented towards the restoration of human losses, but also the restoration of disrupted ecological functions. Thus, the environment is positioned as a subject that must be restored, not merely an object of exploitation.

The principle of justice is also reflected in the application of *the 'In dubio pro natura'* principle, namely that in conditions of uncertainty or doubt, decisions must favour environmental protection. This principle is particularly important in environmental cases, which are often scientifically complex and difficult to prove. Furthermore, distributive justice requires that the burden of loss should not be borne solely by the victims or the community, but should be proportionately allocated to the perpetrators, without compromising the interests of future generations. In other words, environmental justice possesses a strong intergenerational dimension.

The application of the principle of strict liability, as set out in Article 88 of the Law on Environmental Protection and Management, facilitates victims' ability to claim compensation without having to prove the perpetrator's fault. This principle is a vital instrument in ensuring access to justice, particularly for communities who are economically and structurally disadvantaged. In many cases of environmental pollution or damage, proving the element of fault is often a major obstacle, so the presence *of strict liability* provides a solution to expedite recovery and accountability.

In practice, compensation for environmental damage can be classified into several forms. Firstly, material compensation, which covers tangible economic losses such as medical costs resulting from pollution, loss of livelihood, and the costs of land rehabilitation or restoration. Secondly, immaterial compensation, which encompasses psychological suffering, loss of cultural value, and social damage that

cannot be directly quantified in monetary terms, yet still holds value that must be accounted for through an ecological valuation approach.

However, the primary priority within the concept of environmental justice is the restoration of the environment itself. Actions such as reforestation, reclamation, or bioremediation are concrete forms of efforts to restore the function of damaged ecosystems. The payment of a sum of money must not replace the obligation to restore, but should only serve as a supplement. Environmental justice is solely the restoration of environmental conditions (*restitution in integrum*). The environment cannot experience the benefits of the law or legal certainty. It is environmental justice alone that the environment requires.

Conclusions

The essence of environmental protection in the era of globalisation is that it is urgently needed and must be maximised. Globalisation is an era of uncertainty, so anything can happen, and the environment is therefore at risk of being sidelined. It is therefore of the utmost importance that the environment is protected without exception. Within the context of the Indonesian state, the environment must indeed be safeguarded and preserved in accordance with the principles outlined in the Pancasila and the 1945 Constitution. There must be consistency in protecting the environment and balancing this with industrialisation.

Non-penal policies regarding the application of the concept of compensation for environmental damage, based on the principle of justice, are implemented to the fullest extent. Justice for the environment entails safeguarding, conserving, and restoring damaged environments to their original condition (*restitution in integrum*). Looking to other nations, the United States of America has the CERCLA concept, which is highly suitable for implementation in Indonesia. CERCLA is a concept of treatment or restitution imposed on perpetrators of environmental crimes, carried out by providing compensation for the damaged environment in a flexible manner without necessarily waiting for a final court ruling. It is important to implement this in Indonesia through *exclusionary rules* for urgent specific criminal offences, such as environmental crimes. Therefore, the state, through the executive and legislative branches, must consider implementing this concept in Indonesia as a form of environmental justice.

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