SRIWIJAYA CRIMEN AND LEGAL STUDIES
FACULTY OF LAW UNIVERSITAS SRIWIJAYA
Jalan Srijaya Negara, Palembang, 30139, Indonesia
Email: scls@fh.unsri.ac.id
http://journal.fh.unsri.ac.id/index.php/SCLS/index
E-ISSN: 2987-7350 P-ISSN: 2986-6367

# CRIMINAL LAW POLICY ON ECOCIDE AS A SERIOUS HUMAN RIGHTS VIOLATION IN INDONESIA

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**Article**

**Keywords:**
**Criminal Law Policy; Ecocide; Environmental; Gross Human Rights Violations; Victims**

**DOI:**
**10.28946/scls.v4i1.6052**

**Abstract**

This study is motivated by humanity's arbitrary treatment of the environment, which has given rise to a new term: ecocide. Indonesian law has not yet recognized ecocide as a grave violation of human rights. This has resulted in weak enforcement of environmental laws against perpetrators and limited access to justice for victims. Unlike previous studies, which generally only discuss ecocide as an environmental crime that violates ordinary human rights, this study analyses ecocide through the perspective of gross human rights violations and determines the direction of criminal law policy needed to accommodate this concept within national law. The methods used in this study are normative legal research employing a statutory approach and a conceptual approach. The data were derived from secondary sources, including primary and secondary legal materials, as well as literature obtained through a literature review. The findings indicate that ecocide shares the same characteristics as gross human rights violations, namely the elements of widespread and systematic nature; this is what distinguishes it from ordinary environmental crimes. Indonesia's environmental legal policy, through the Environmental Protection and Management Law (UU PPLH), already provides for criminal sanctions and fines; however, these regulations are not yet optimal. This is due to the lack of provisions categorizing ecocide as a form of gross human rights violation, making it difficult to prosecute perpetrators under a robust legal framework. This study proposes a formulation of criminal law policy through amendments to the Human Rights Court Law and the inclusion of ecocide as a gross human rights violation. Key points to consider include: recognizing corporations as legal entities that can be held accountable; optimizing the concept of strict liability; making criminal sanctions the primary remedy; and ensuring the fulfillment of victims' rights through compensation, restitution, restoration of damaged environments, and socio-economic rehabilitation.

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## A. INTRODUCTION

Massive and systematic environmental degradation has become a serious threat to humanity. Various forms of pollution, excessive exploitation of natural resources, forest fires, and ecosystem degradation demonstrate that environmental degradation not only affects environmental quality but also has implications for the fulfillment of basic human rights. The right to a good and healthy environment is a right of every person. It is the responsibility of the state to fulfill this fundamental right. This is explicitly stated in Article 28H, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads:

*"Every person has the right to live in physical and spiritual well-being, to have a place to live, and to enjoy a good and healthy environment, as well as the right to access health services."*

Indonesia is blessed with a wide variety of natural resources of very high economic value. However, in reality, many actions by individuals, corporations, and the government still recklessly damage the environment. In fact, such reckless behavior can lead to the destruction of an entire environment, a phenomenon known as ecocide.

The term "ecocide" was first introduced by Arthur W. Galston at the Conference on War and National Responsibility in Washington, D.C., in 1970. This was prompted by the massive environmental destruction resulting from the U.S. war in Vietnam. Later, in the 1990s, there was a shift in the concept; ecocide was no longer viewed as a consequence of war but as a standalone crime due to its destructive power being on par with war crimes.[1] This shift in concept is a reasonable development because severe, widespread, and prolonged environmental damage is not solely caused by armed conflict. In practice, industrial activities, mining, the exploitation of natural resources, and other corporate activities can also have equally serious impacts on the environment and human life.

One example of an environmental crime related to ecocide is the 2006 Lapindo mudflow in Sidoarjo. As a result of drilling procedures that violated regulations, the Lapindo mudflow inundated 16 villages across 3 subdistricts and submerged 1,683 homes.[2] Additionally, this incident caused a Pertamina gas pipeline to explode, resulting in 14 deaths and 14 injuries.[3] In response to this incident, the National Commission on Human Rights (Komnas HAM) stated that the Lapindo Mudflow case falls under the category of ecocide.[4]

In addition to the above case, in 2015, forest and land fires occurred due to land clearing by corporations in the Kalimantan and Sumatra regions. These events caused serious consequences, with 24 people reported dead, 600,000 people suffering from Acute Respiratory Infections (ARI), and 12 children killed, including 4 toddlers in Central Kalimantan, 3 children in Jambi, 1 child in West Kalimantan, 3 children in Riau, and 1 child in South Sumatra.[5]

According to Billboy Ondo Pangindoan Lumbanraja, ecocide has evolved to occur not only in the context of war but has also permeated everyday societal activities, particularly through capitalist-based industrial activities, whether carried out by individuals or corporations.[6] ѵѵAs the two cases above demonstrate, corporate activities can cause significant environmental damage. The Lapindo mudflow and the recurring forest and land fires can no longer be viewed as mere environmental violations. These two incidents show that corporations have the capacity to cause damage that is widespread, long-lasting, and difficult to reverse.

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[1] Muhammad Ali Ausath, "Upaya Penerapan Ekosida Sebagai Kejahatan Luar Biasa Di Indonesia," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 1 (2022): 115–28.

[2] Anugerah Ayu Sendari, "Penyebab Lumpur Lapindo di Sidoarjo, Sejarah dan Dampaknya," Liputan 6, diakses 21 November 2025, https://www.liputan6.com/hot/read/4892987/penyebab-lumpur-lapindo-di-sidoarjo-sejarah-dan-dampaknya#google_vignette.

[3] M Ridha Saleh, "Ecocide Memutus Impunitas Korporasi," *Jakarta: WALHI*, 2019, 73.

[4] Wacana HAM, "Ecocide dan HAM di Indonesia," *Edisi III/Tahun XI/2013*, 2013.

[5] Walhi, "Legally Binding Treaty On Business And Human Rights: 'Mendesak Tanggunggugat Korporasi & Tanggung Jawab Negara Atas Kejahatan Ekosida,'" Wahana Lingkungan Hidup Indonesia, 2019.

[6] Billboy Ondo Pangindoan Lumbanraja, "Implementasi Tindak Pidana Ekosida Dalam Perspektif Hak Asasi Manusia (Ham) Atas Lingkungan Hidup," *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, No. 4 (2022): 1693–98.

Currently, Indonesia has not yet criminalized ecocide under national criminal law. However, environmental crimes are already regulated under Law Number 32 of 2009 on Environmental Protection and Management. Article 98 (with the element of intent) stipulates that environmental crimes causing serious injury or death to another person are punishable by imprisonment for a minimum of 5 and a maximum of 15 years, with a fine of at least five billion rupiah and up to fifteen billion rupiah. For Article 99 (without the element of intent), the most severe penalty is imprisonment for a minimum of 3 years and a maximum of 5 years, with a fine of at least three billion rupiah and up to nine billion rupiah. These penalties are not severe enough to punish perpetrators of ecocide.

The existing legal framework has not been able to address forms of environmental damage that are massive, systematic, widespread, and result in permanent ecosystem damage. Consequently, there is a gap between the extent of the damage caused and the form of legal liability that can be imposed on the perpetrators. Therefore, considering the Environmental Protection and Management Law (UU PPLH), a maximum prison sentence of 15 years and limited fines are deemed insufficient to reflect the gravity of crimes that threaten environmental sustainability and human rights. Furthermore, issues also arise because Law No. 26 on the Indonesian Human Rights Court only addresses 2 (two) out of 4 (four) crimes falling under the jurisdiction of the Rome Statute, namely the crime of genocide and crimes against humanity. Ecocide has not yet been recognized or regulated as a form of grave human rights violation within the national legal system.

Given the issues outlined above, environmental crimes related to ecocide warrant further research. This study will focus on the urgency of recognizing ecocide as a grave violation of human rights within the Indonesian legal system. Thus, this research offers a new perspective on the relationship between environmental protection, criminal law policy, and the classification of grave human rights violations. This study is expected to contribute to the reform of national criminal law and strengthen the protection of the environment and human rights. To that end, the researcher will discuss and analyze this further in a study titled "**Criminal Law Policies Regarding Ecocide as a Serious Human Rights Violation in Indonesia."**

## B. RESEARCH METHODS

The method used in this study is normative legal research. This study employs both a statutory approach and a conceptual approach. The statutory approach involves examining regulations related to environmental protection and management as well as human rights. The conceptual approach involves analyzing and examining perspectives or doctrines regarding the crime of ecocide. The data sources used by the researcher consist of primary and secondary data. Primary data was obtained from relevant legislation related to this study. Secondary data was obtained from legal books and journals. The data collection technique in this study employs a literature review. Data analysis in this study is conducted qualitatively; the analysis involves linking applicable legal norms with evolving doctrines to assess whether ecocide aligns with the elements of serious human rights violations. The results of the analysis are then used to formulate relevant criminal law policies.

## C. ANALYSIS AND DISCUSSION

### 1. Characteristics of the Crime of Ecocide as a Gross Violation of Human Rights in Indonesia

According to Romli Atmasasmita, gross human rights violations are:

*"Acts that are systematic and widespread. These two terms are inherent and essential keywords that must be present in every act of gross human rights violations. The elements of sys-*

*tematic and widespread nature are significant factors that distinguish gross human rights violations from ordinary criminal offenses."*[7]

Neither Law Number 26 of 2000 on Human Rights Courts nor the Rome Statute (1998) provides a clear definition of the terms "widespread" or "systematic attack." The interpretation of "widespread" and "systematic" refers to the jurisprudence of decisions by the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and legal doctrine. The term "widespread" refers to the number of victims, and this concept encompasses "massive, frequent, or repeated acts on a large scale, carried out collectively, and resulting in serious consequences." The term "systematic" reflects a specific pattern or method that is comprehensively organized and employs a consistent pattern.[8]

According to Article 7 of Law Number 26 of 2000 on the Human Rights Court, gross human rights violations include the crimes of genocide and crimes against humanity. Neither of these laws currently recognizes the term "ecocide." As for the definition of ecocide, M. Ridha Saleh explains:

*"Terminologically, the word ecocide derives from the word 'eco,' which means habitat, dwelling, or anything related to that habitat or dwelling, such as humans, animals, plants, air, water, or the sun. Meanwhile, the word 'cide' comes from the Latin 'cedere,' meaning to kill or exterminate."*[9]

Recognizing the destructive impact of the crime of ecocide, Raphael Lemkin, a Polish legal scholar, introduced "ecocide" as a legal term in international criminal law under the category of "extraordinary crimes."[10] According to Mar A. Drumbl, an "extraordinary crime" is an extreme offense that differs quantitatively from ordinary crimes. These crimes are serious, widespread, and massive in scale, and constitute a threat to humanity.[11] Based on this perspective, it is clear that extraordinary crimes, such as gross human rights violations, differ from ordinary crimes in terms of the number of victims, the severity of the offenses, and the nature of the crimes. Therefore, these crimes require exceptional handling through special mechanisms.

Although the crime of ecocide has not yet been recognized as an international crime under the Rome Statute, Polly Higgins defines ecocide as a particularly grave crime, ranking fifth after genocide, crimes against humanity, war crimes, and aggression. Furthermore, Polly Higgins also emphasizes that the level of legal liability for those who commit ecocide is considered more severe than that for ordinary legal violations.[12] Polly Higgins' statement carries significant legal and moral implications. The primary argument underlying this classification is the scale and impact of the act of ecocide itself. The classification of ecocide as an international crime reflects the evolution of the modern legal paradigm, which no longer views the environment as an object of economic exploitation but as a legal interest that must be protected in its own right. Thus, Higgins's concept places environmental protection on an equal footing with other humanitarian interests that have already been granted protection under international criminal law (the Rome Statute).

Essentially, ecocide differs from ordinary environmental crimes in terms of the nature of the act, the degree of culpability, and its legal status. Not all environmental crimes meet the criteria of being widespread and systematic, as defined in the context

[7] Romli Atmasasmita, *Pengadilan hak asasi manusia dan penegakannya di Indonesia* (Departemen Kehakiman dan HAM RI, Badan Pembinaan Hukum Nasional, 2002).
[8] Mahkamah Agung Republik Indonesia, *Pedoman Unsur-Unsur Tindak Pidana Pelanggaran Hak Asasi Manusia Yang Berat dan Pertanggungjawaban Komando*, *Jakarta: Mahkamah Agung RI*, 2006.
[9] M Ridha Saleh, *Ecocide: melawan pelanggaran berat HAM di Indonesia*, vol. 1 (PT. Rayyana Komunikasindo, 2020).
[10] Ibid.
[11] Hatta Muhammad, "Kejahatan Luar Biasa (Extra Ordinary Crime)" (Unimal Press, 2019).
[12] Mark Allan Gray, "The international crime of ecocide," in *International Crimes* (Routledge, 2017), 456–511.

of gross human rights violations. For example, river pollution by a company at a specific location can be categorized as an environmental crime, but the resulting impact is not necessarily widespread and systematic on a large scale for the community. In contrast, ecocide refers to environmental destruction whose impacts are long-lasting and threaten human life and the sustainability of ecosystems. This aligns with the view of Polly Higgins, who states that to establish the gravity of the crime of ecocide, the impacts must be widespread, long-term, or severe.[13]vv

Although ecocide has not yet been officially recognized as an international crime under the Rome Statute, the concept of ecocide has gained widespread recognition among academics, legal experts, environmental activists, and even the general public. As stated by Muhammad Al Amin, Executive Director of Wahana Lingkungan Indonesia (WALHI) South Sulawesi, the crime of ecocide—or environmental destruction—constitutes a grave violation of human rights.[14] This finding is supported by a survey conducted by WALHI (2020), which surveyed 1,000 people from seven provinces: Jakarta, East Java, South Sumatra, Jambi, Central Kalimantan, and Papua. The results showed that 87% of respondents considered widespread and ongoing environmental destruction, such as the burning of forests and local land by corporations, to constitute ecocide and fall under the category of serious human rights crimes.[15]

The results of the WALHI survey show that the public views environmental damage caused by corporations as a serious threat to the environment and human rights. This is not without reason, given that various cases of large-scale environmental damage in Indonesia generally involve businesspeople or corporations. Compared to individuals, corporations possess greater capital and technology, thereby potentially causing a greater environmental impact.

This view is reinforced by I Gusti Agung Made Wardana, a lecturer in Environmental Law at Gadjah Mada University, who states that ecocide is a structural crime, not an ordinary criminal offense. Ecocide is a structural crime due to the existence of power imbalances. These power imbalances involve both perpetrators and victims. The perpetrators of ecocide are extremely powerful political institutions that hold a monopoly on the use of force in a given area. If not the state, it could be a large corporation whose power exceeds that of the state.[16]

Power imbalances in ecocide not only have significant consequences, but perpetrators also hold far greater power than victims. In this context, the state plays a crucial role because it has the authority to regulate, manage, and grant permits for the use of natural resources and business activities that may impact the environment. Given the extent of this authority, the state is not merely a regulator but can also become a party that facilitates environmental damage if permits are granted without regard to environmental protection principles. Furthermore, Khalisah Khalid, Coordinator of the National Executive Political Desk, explained that the actus reus (act) element in the 2015 Sumatra forest fires—specifically the act of burning—is manifested

[13] Andrea Curcio Lamas, "Ecocide Addressing the large-scale impairment of the environment and human rights" (University Of Venice, 2017).
[14] Suriani Mappong, "Walhi: Kejahatan Ekosida Bentuk Pelanggaran Berat Ham," Antara Kantor Berita Indonesia, N.D.
[15] Abdul Ghoffar, "Kejahatan Ekosida Dan Korporasi," (Walhi) Wahana Lingkungan Hidup, 2020.
[16] Hana Aulia Dan Sidney Alvionita Saputra, "Hukum Ekosida Bukan Obat Mujarab," *Balairung: Jurnal Multidisipliner Mahasiswa Indonesia; Vol 3, No 2 (2022): Ekosidado - 10.22146/Balairung.V3i2.96414* , 23 Mei 2024, Https://Journal.Ugm.Ac.Id/Balairung/Article/View/96414.

in the state's continued issuance of concession permits to corporations, which constitutes the mens rea (intent) element.[17]

Previously, it was known that several countries had incorporated ecocide into their national laws. Vietnam (1990) became the first country to incorporate the crime of ecocide into its national law. It was followed by other countries such as Russia (1996), Kazakhstan (1997), the Kyrgyz Republic (1997), Tajikistan (1998), Georgia (1999), Belarus (1999), Ukraine (2001), Moldova (2002), and Armenia (2003).[18] Although global recognition of ecocide—for instance, through the Rome Statute—remains a hope, some nations have taken more advanced steps. They have incorporated ecocide as a criminal offense into their national laws. This signifies a growing awareness within the global legal community regarding the critical importance of safeguarding the environment from massive destruction.

The legal consequences of recognizing ecocide as a gross violation of human rights that falls under the category of extraordinary crimes have significant implications for the development of new legal policies regarding criminal law, particularly in the context of environmental crimes. Indonesia has not yet classified ecocide as a gross violation of human rights with serious consequences. By incorporating the concept of ecocide into the national legal system, perpetrators of environmental crimes can be brought to justice and prevented from enjoying impunity.

**2. Criminal Law Policies Regarding the Crime of Ecocide as a Gross Violation of Human Rights in Indonesia**

According to Marc Ancel, criminal law policy can be defined as:

*"Both a science and an art, ultimately serving a practical purpose: to enable the better formulation of positive law and to provide guidance not only to lawmakers, but also to the courts that apply the law and to those who administer or enforce court decisions."*[19]

The formulation and reform of criminal law through criminal law policy aims to protect society from crime. This process is not limited to formulating new rules or revising existing ones, but must also be able to address social needs, provide a sense of justice, and create effective protection for society.

The enactment of Law No. 32 of 2009 on Environmental Protection and Management has brought new hope for the enforcement of environmental criminal law. The Environmental Protection and Management Law (UU PPLH) serves as the primary legal framework for environmental management, providing the legal framework and fundamental principles that form the basis of environmental regulations in Indonesia. It governs various aspects of environmental protection and management, ranging from planning, utilization, control, maintenance, and supervision to law enforcement. Upon examining several provisions in the Environmental Protection and Management Law, particularly those regarding environmental criminal offenses, the following are some articles that the researcher considers important in relation to the above:

a. The legal subjects in the definition of environmental crimes under the Environmental Protection and Management Law (UU PPLH) always begin with the phrase "every person"; as referred to in Article 1, paragraph (32), the term "every person" encompasses both individuals and business entities, whether incorporated or unincorporated. Thus, it is clear that both individuals

[17] Khalisah Khalid, "Asap Dan Kejahatan Ekosida," Walhi, 2020, Https://Www.Walhi.Or.Id/Asap-Dan-Kejahatan-Ekosida.
[18] Saleh, *Ecocide: melawan pelanggaran berat HAM di Indonesia*.
[19] Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana:(Perkembangan Penyusunan Konsep KUHP Baru)," 2011.

and corporations (legal or business entities) can be subjects of criminal offenses involving environmental destruction and can be held accountable.

b. The Environmental Protection and Management Law (UU PPLH) sets forth several criminal penalties that may be imposed on perpetrators of environmental damage, including:
   1) Committing acts that result in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria. Article 98(1) reads as follows:

      "*Any person who intentionally commits an act resulting in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria shall be punished by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp3,000,000. 000,000.00 (three billion rupiah) and a fine of no more than Rp10,000,000,000.00 (ten billion rupiah).*"
   2) Negligence resulting in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria. Article 99(1) reads as follows:

      "*Any person whose negligence results in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria shall be punished by imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a fine of no more than Rp3,000,000,000.00 (three billion rupiah).*"
   3) If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and penalties shall be imposed on (Section 116):
      a) the business entity; and/or
      b) the person who ordered the commission of the crime or the person who acted as the leader of the activities involved in the crime.
   4) Corporations may also be subject to additional criminal penalties or administrative sanctions, as follows (Article 119):
      a) forfeiture of profits derived from the criminal offense;
      b) closure of all or part of the business premises and/or operations;
      c) remediation of the consequences of the criminal offense;
      d) an order to perform the act that was unlawfully omitted; and/or
      e) placing the company under receivership for 3 (three) years.

c. The definition of environmental crimes in the Environmental Protection and Management Law (UU PPLH) incorporates the principle of strict liability. This principle places greater emphasis on the actus reus (prohibited act) without requiring the presence of mens rea (guilt). Moreover, it is indeed not easy to prove fault in the case of corporations or legal entities. Article 88 states that:

   "*Any person whose actions, business operations, and/or activities involve the use of hazardous substances, generate and/or manage hazardous waste, and/or pose a serious threat to the environment bears strict liability for any resulting damage without the need to prove the element of fault.*"

Although the Environmental Protection and Management Law (UU PPLH) specifically addresses environmental crimes, particularly those involving criminal offenses, its implementation and effectiveness in practice remain extremely weak. As noted by Alvi Syahrin, as cited by Ribut Baidi, the state's legal protection of the environment through the enactment of various environmental laws has, to date, failed to prevent and eradicate widespread environmental crimes. Given this situation, the role of criminal law is of critical and urgent importance. Environmental pollution or

destruction can stem from the activities of business entities that evade criminal prosecution.[20] Based on this view, criminal sanctions are considered important and urgent because environmental crimes are not merely individual acts, but rather systematic and large-scale corporate actions. Therefore, civil and administrative sanctions alone are insufficient.

According to Muladi, the weakness of environmental law enforcement in Indonesia lies in an approach that tends to rely more on administrative and civil sanctions than on criminal sanctions. Criminal sanctions are treated merely as an ultimum remedium—that is, as a last resort in law enforcement. In contrast, criminal sanctions for environmental crimes are considered a primum remedium; that is, within the context of criminal law, they are no longer a last resort but rather the primary option for law enforcement.[21] It is understandable that if criminal sanctions remain positioned as a last resort, there will be no deterrent effect or sense of fear for corporations or individuals who commit environmental destruction. By positioning criminal sanctions as the primary remedy, environmental law enforcement will become more decisive, provide tangible protection for ecosystems, and be able to curb the increasingly complex rates of environmental crime.

Given the shortcomings of the current legal framework, it is possible to develop more progressive legal provisions so that the crime of ecocide can be addressed more effectively through adequate criminal law provisions. Such provisions must be able to address the issues that have so far been accommodated by existing legislation. To address the legal vacuum regarding the regulation of ecocide as a gross violation of human rights in Indonesia, one alternative is to undertake legal reform through an amendment to Law No. 26 of 2000 on the Human Rights Court. This aligns with the recommendation from the National Commission on Human Rights (Komnas HAM) in response to the Lapindo hot mudflow case.[22]

Clearly defining the legal entities that can be held accountable for the crime of ecocide is a crucial aspect of the legislative process. The Human Rights Court Law was drafted with reference to classic international crimes such as genocide and crimes against humanity, which generally place the burden of liability on individuals. Consequently, there are limitations when dealing with modern crimes that frequently involve corporations.

Based on a 2020 Walhi study, the causes of ecocide extend beyond mere individual awareness; they stem from state policies that grant corporations leniency through issued permits, and in practice, corporations commit crimes that result in severe violations of community rights—particularly regarding health and the economy.[23] According to data from the Ministry of Environment and Forestry (KLHK) in 2023, the Ministry handled 908 cases of environmental crimes, of which 546 involved companies or corporations, while the remainder were committed by non-corporate perpetrators.[24] Based on this data, it is evident that corporations consistently serve as the primary actors in cases of environmental damage occurring in Indonesia.

The inclusion of corporations as legal entities in the Human Rights Court Law is a strategic step toward ensuring peace, order, tranquility, justice, and well-being—not only for people but also for the environment. In addition to the state, a new problem arises when corporations, as legal entities rather than human beings, lack a conscience,

[20] S H Ribut Baidi, *Kebijakan Hukum Pidana Tanpa Kesalahan Dalam Delik Lingkungan* (PT. Rajagrafindo Persada, 2024).
[21] Arief Muladi Dan Barda Nawawi, *Teori-Teori Dan Kebijakan Pidana*, *Bandung: Alumni*, 2010.
[22] Wacana HAM, "Ecocide Dan HAM Di Indonesia."
[23] Abdul Ghoffar, "Kejahatan Ekosida Dan Korporasi."
[24] Pradipta Pandu, "Sebanyak 908 Kasus Kejahatan Lingkungan Ditangani Sepanjang 2023," Kompas, 2023, Https://Www.Kompas.Id/Artikel/Sebanyak-908-Kasus-Kejahatan-Lingkungan-Ditangani-Sepanjang-2023.

emotions, or biological intent. Therefore, proving that a corporation or individual "intentionally" polluted or damaged the environment or was "negligent" in its duties is very difficult. For this reason, according to Ari Purwadi, environmental cases require the optimization of the concept of strict liability, which is oriented toward the resulting impact rather than the presence or absence of fault. This concept emphasizes that malicious intent or mens rea need not be proven in relation to a criminal act of negligence.[25]

The above circumstances indicate that corporate liability in environmental cases involving gross human rights violations requires a different approach from conventional criminal liability. In this context, the concept of strict liability is relevant because it does not focus on the element of fault as the basis for criminal liability. Instead, the focus is on the environmental damage or pollution that has been caused.

Although the Rome Statute does not directly recognize corporations as legal entities, Canada and Australia are countries that recognize corporations as subjects of international law. Canada enacted the Crimes Against Humanity and War Crimes Act in 2000, which includes a provision expanding the definition of "any person" to include not only individuals but also corporations. Australia also recognizes corporations as legal entities in cases of serious human rights violations following the country's ratification of the Rome Statute. Section 12.1 of the Australian Criminal Code Act explicitly states that all provisions applicable to individuals also apply to corporations, with modifications as necessary. Companies may also be held criminally liable for criminal acts committed, including the imposition of criminal sanctions on their officers. [26]

In the context of Indonesian law, the practices implemented by Canada and Australia serve as important considerations and points of reference in formulating corporate liability for the crime of ecocide. Recognizing corporations as legal entities will enable comprehensive law enforcement, given that environmental damage involves not only individuals but also business entities. Thus, the expansion of legal personhood holds strong relevance in efforts to strengthen environmental protection and human rights.

According to Mahrus Ali, in cases of serious human rights violations, the functional role theory proposed by Rolling can be applied to determine whether a company has committed a criminal offense. In other words, if the actions of management—which fall within the company's functions and authority as defined by its articles of incorporation and bylaws—result in genocide and/or crimes against humanity, then the company is deemed to have committed a grave violation of human rights. Additionally, the theory of vicarious liability (liability for the legal acts of others) can be applied to address crimes committed by subordinates. This principle can be applied in cases of ecocide, provided the crimes in question are committed by a corporation. Furthermore, Mahrus Ali also noted that in cases of severe human rights violations by corporations, in addition to criminal fines under a multiplier system, corporations may also be subject to the forfeiture of profits derived from the criminal act, restitution for the consequences of the criminal act, the closure of the entire or part of the corporation, being required to perform what was unlawfully neglected, and the nullification of what was unlawfully neglected.[27]

Mahrus Ali's views on the form of corporate liability for gross human rights violations are relevant to the sanctions system established under the Environmental

[25] S H Ari Purwadi, Cita Yustisia Serfiyani, Dan M H Sh, "Monograf Penyelesaian Sengketa Lingkungan Hidup (Perspektif Hukum Responsif)" (Uwks Press, 2024).
[26] Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi* (Pt Rajagrafindo Persada, 2013).
[27] Ibid.

Protection and Management Law (UU PPLH). If corporations are recognized as legal entities in cases of gross human rights violations, particularly ecocide, then the sanctions model already implemented under the UU PPLH can serve as a reference. This is because the Environmental Protection and Management Law is a legal instrument that specifically regulates various forms of environmental pollution and damage, along with mechanisms for accountability and remediation. Thus, the formulation of the crime of ecocide does not need to start from a completely new concept. Instead, lawmakers can utilize existing principles and mechanisms as a foundation for building a more comprehensive regulatory framework.

In codifying the elements of the crime of ecocide into legislation, the formulation developed by experts from the Stop Ecocide Foundation serves as the most comprehensive reference. This formulation can be viewed as a step forward in international efforts to recognize serious environmental damage as an international criminal offense on par with other most serious crimes. The following are several points proposed by the expert panel in defining the crime of ecocide.[28]

"*Ecocide means unlawful or intentional acts committed with the knowledge that there is a high probability that such acts will result in severe, widespread, or long-term damage to the environment.*

The definition proposed by this expert panel requires two conditions for conduct to be prohibited: First, there must be a high likelihood that the action (including acts or omissions) will cause severe, widespread, or long-term environmental damage. However, the panel acknowledges that this threshold, when considered on its own, may be too broad. For example, there may be activities that are legal, socially beneficial, and carried out responsibly, yet they still cause (or are likely to cause) severe, widespread, or long-term environmental damage. Therefore, the panel considers it necessary to include a second condition.

The second condition requires proof that the action violates the law or is inconsistent with the law. This additional condition refers to principles of environmental law, which balance social and economic benefits against environmental damage through the concept of sustainable development. With these two conditions, the prosecutor must prove a high likelihood of severe and widespread or long-term damage.

Furthermore, the expert panel explained that severe damage refers to damage involving very serious changes, disturbances, or losses to any element of the environment, including serious impacts on human life or natural, cultural, or economic resources. Widespread damage refers to damage that extends beyond a specific geographic area, crosses national borders, or affects an entire ecosystem, species, or a large number of people. Meanwhile, "long-term" means damage that cannot be restored or repaired through natural recovery within a reasonable timeframe.

The definition of ecocide presented above is comprehensive because it encompasses unlawful acts or actions committed intentionally or unintentionally, with the knowledge that such acts have the potential to cause severe, widespread, and long-term environmental damage. This formulation can serve as a reference for Indonesia in formulating ecocide policies. In addition to being designed with the characteristics of large-scale environmental crimes in mind, the formulation also provides clear enough boundaries regarding the level of environmental damage that can be categorized as ecocide.

The definition of ecocide formulated by the international panel of experts does not explicitly specify the severity or type of criminal penalties that may be imposed on

[28] Green Transparency, "Proposed Definition of Ecocide," Promise Institute for Human Rights (UCLA) Group of Experts, 2021.

perpetrators. However, since ecocide is proposed as an addition to the Rome Statute, the criminal penalties applicable to perpetrators will follow the provisions of the Rome Statute. Similarly, regarding serious human rights violations under the Human Rights Court Law, the author believes that perpetrators of the crime of ecocide shall be sentenced to death, life imprisonment, or imprisonment for a maximum of 25 (twenty-five) years and a minimum of 10 (ten) years (Articles 36 and 37 of the Human Rights Court Law). This aligns with the National Commission on Human Rights' (Komnas HAM) recommendation to include ecocide in Law No. 26 of 2000 on the Human Rights Court.[29] In addition, it is important to ensure that victims' rights are restored and upheld through compensation, restitution, and both social and economic rehabilitation.

Over time, ecocide has indeed sparked debate among parties from various nations, particularly regarding the element of intent—specifically, the intent to destroy the environment on a massive and large-scale basis that could lead to ecocide. However, according to Polly Higgins, ecocide does not require criminal intent. This is because ecocide is a crime of consequence, not one requiring specific intent.[30] zThus, intent is not a relevant issue to debate; for if intent were a crucial element of this crime, it would create a significant legal loophole, allowing perpetrators to commit such acts and easily claim they did not intend to cause massive damage.

In the development of international environmental law, Mexico has emerged as a country that is progressively taking concrete steps by drafting a new environmental bill using the definition of ecocide developed by the panel of international lzegal experts.[31] This step signifies a growing awareness of the need for legal protection of the environment. Following Mexico's example, Indonesia could consider similar steps by recognizing environmental crimes as serious human rights violations based on the framework established by the expert panel.

In light of the current rise in ecocide crimes, the government has yet to take any action. Compared to the response of Western nations, Indonesia lags far behind in efforts to protect human rights regarding the environment. The aim of establishing the concept of ecocide within Indonesia's legal framework is to strengthen sovereignty over the environment and human rights, which are mandated by the constitution. The ideal formulation in legislation can be achieved through criminal law policies. As a branch of public law, criminal law holds a significant position within the legal system because it aims to protect the interests of society, including human rights.

## D. CONCLUSION

Based on the research findings, the crime of ecocide shares characteristics with gross human rights violations; the element of systematicity is reflected in the existence of policies that destroy ecological functions, while the element of widespread impact is evident in the scope of the resulting consequences. Indonesia has not yet included ecocide as part of serious human rights violations. This indicates a legal vacuum in addressing environmental damage with extraordinary impacts. Therefore, the regulation of ecocide in the Human Rights Court Law is crucial to provide a stronger legal basis for enforcing the law against perpetrators, including corporations whose activities cause large-scale environmental damage. Criminal law policies regarding the crime of ecocide in Indonesia need to focus on two main areas: First, the government is expected to immediately amend the Human Rights Court Law and include ecocide as part of serious human rights violations. This provision must be accompanied by a clear definition of the elements of ecocide, so that it can be distinguished from ordinary

[29] Wacana HAM, "Ecocide dan HAM di Indonesia."
[30] Saleh, *Ecocide: melawan pelanggaran berat HAM di Indonesia*.
[31] Isabell Kaminski, "Growing number of countries consider making ecocide a crime," The Guardian, 2026.

environmental crimes. Second, the scope of serious human rights violations must be expanded to include corporations as perpetrators that can be held accountable, as has been done by Australia and Canada. These measures can be implemented not only through the imposition of punitive sanctions but also through actions focused on environmental restoration, victim compensation, and other measures aimed at restoring the functions of the damaged environment. Ultimately, the criminalization of ecocide as a grave human rights violation is an urgent necessity; the recognition of ecocide is intended not only to strengthen legal accountability for perpetrators but also to ensure more effective protection of the environment, the rights of affected communities, and future generations.

## REFERENCES

abdul Ghoffar, Et.Al. "Kejahatan Ekosida Dan Korporasi." (Walhi) Wahana Lingkungan Hidup, 2020.

Ali, Mahrus. *Asas-Asas Hukum Pidana Korporasi*. Pt Rajagrafindo Persada, 2013.

Anugerah Ayu Sendari. "Penyebab Lumpur Lapindo Di Sidoarjo, Sejarah Dan Dampaknya." Liputan 6. Diakses 21 November 2025. Https://Www.Liputan6.Com/Hot/Read/4892987/Penyebab-Lumpur-Lapindo-Di-Sidoarjo-Sejarah-Dan-Dampaknya#Google_Vignette.

Ari Purwadi, S H, Cita Yustisia Serfiyani, Dan M H Sh. "Monograf Penyelesaian Sengketa Lingkungan Hidup (Perspektif Hukum Responsif)." Uwks Press, 2024.

Arief, Barda Nawawi. "Bunga Rampai Kebijakan Hukum Pidana:(Perkembangan Penyusunan Konsep Kuhp Baru)," 2011.

Atmasasmita, Romli. *Pengadilan Hak Asasi Manusia Dan Penegakannya Di Indonesia*. Departemen Kehakiman Dan Ham Ri, Badan Pembinaan Hukum Nasional, 2002.

Aulia, Hana, Dan Sidney Alvionita Saputra. "Hukum Ekosida Bukan Obat Mujarab." *Balairung: Jurnal Multidisipliner Mahasiswa Indonesia; Vol 3, No 2 (2022): Ekosidado - 10.22146/Balairung.V3i2.96414* , 23 Mei 2024. Https://Journal.Ugm.Ac.Id/Balairung/Article/View/96414.

Ausath, Muhammad Ali. "Upaya Penerapan Ekosida Sebagai Kejahatan Luar Biasa Di Indonesia." *Litra: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, No. 1 (2022): 115–28.

Gray, Mark Allan. "The International Crime Of Ecocide." In *International Crimes*, 456–511. Routledge, 2017.

Indonesia, Mahkamah Agung Republik. *Pedoman Unsur-Unsur Tindak Pidana Pelanggaran Hak Asasi Manusia Yang Berat Dan Pertanggungjawaban Komando. Jakarta: Mahkamah Agung Ri*, 2006.

Kaminski, Isabell. "Growing Number Of Countries Consider Making Ecocide A Crime." The Guardian, 2026.

Khalid, Khalisah. "Asap Dan Kejahatan Ekosida." Walhi, 2020. Https://Www.Walhi.Or.Id/Asap-Dan-Kejahatan-Ekosida.

Lamas, Andrea Curcio. "Ecocide Addressing The Large-Scale Impairment Of The Environment And Human Rights." University Of Venice, 2017.

Lumbanraja, Billboy Ondo Pangindoan. "Implementasi Tindak Pidana Ekosida Dalam Perspektif Hak Asasi Manusia (Ham) Atas Lingkungan Hidup." *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, No. 4 (2022): 1693–98.

Muhammad, Hatta. "Kejahatan Luar Biasa (Extra Ordinary Crime." Unimal Press, 2019.

Muladi, Arief, Dan Barda Nawawi. *Teori-Teori Dan Kebijakan Pidana. Bandung: Alumni*, 2010.

Pradipta Pandu. "Sebanyak 908 Kasus Kejahatan Lingkungan Ditangani Sepanjang 2023." Kompas, 2023. Https://Www.Kompas.Id/Artikel/Sebanyak-908-Kasus-Kejahatan-Lingkungan-Ditangani-Sepanjang-2023.

Ribut Baidi, S H. *Kebijakan Hukum Pidana Tanpa Kesalahan Dalam Delik Lingkungan*. Pt. Rajagrafindo Persada, 2024.

Saleh, M Ridha. *Ecocide: Melawan Pelanggaran Berat Ham Di Indonesia*. Vol. 1. Pt. Rayyana Komunikasindo, 2020.

———. "Ecocide Memutus Impunitas Korporasi." *Jakarta: Walhi*, 2019, 73.

Suriani Mappong. "Walhi: Kejahatan Ekosida Bentuk Pelanggaran Berat Ham." Antara Kantor Berita Indonesia, N.D.

Transparency, Green. "Proposed Definition Of Ecocide." Promise Institute For Human Rights (Ucla) Group Of Experts, 2021.

Wacana Ham. "Ecocide Dan Ham Di Indonesia." *Edisi Iii/Tahun Xi/2013*, 2013.

Walhi. "Legally Binding Treaty On Business And Human Rights: 'Mendesak Tanggunggugat Korporasi & Tanggung Jawab Negara Atas Kejahatan Ekosida.'" Wahana Lingkungan Hidup Indonesia, 2019.