



# Restorative Justice in Environmental Crime: An Empirical Analysis of Diversion Practices in Indonesia's Mining and Plantation Sectors

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## Abstract

Environmental crime, particularly in the mining and plantation sectors, has emerged as a critical challenge in Indonesia, causing significant ecological damage and socio-economic harm. Despite the dominance of punitive approaches within environmental law enforcement, there is a growing interest in restorative justice as an alternative framework that emphasizes accountability, victim restoration, and environmental recovery. However, the application of restorative justice through diversion mechanisms in environmental crime remains underexplored, both theoretically and empirically. This study aims to analyze the implementation of restorative justice in environmental crime cases in Indonesia, with a particular focus on diversion practices in the mining and plantation sectors. Employing an empirical socio-legal approach, this research combines qualitative analysis of case studies, regulatory frameworks, and law enforcement practices. Data were collected through document analysis, including court decisions, prosecutorial policies, and environmental regulations, as well as secondary empirical findings reported in recent studies. The findings indicate that while restorative justice has been formally recognized in Indonesia's legal framework, its application in environmental crime remains limited and inconsistent. Diversion practices are often constrained by the absence of clear procedural guidelines, the dominance of retributive legal culture, and the lack of institutional coordination among law enforcement agencies and environmental authorities. Moreover, the interests of affected communities and ecological restoration are not yet fully integrated into the decision-making process. This study argues that restorative justice in environmental crime requires a reconstructed framework that integrates ecological restoration, community participation, and corporate accountability. It proposes a model of "eco-restorative justice" that expands the traditional scope of restorative justice by incorporating environmental recovery as a central objective. This model emphasizes structured diversion mechanisms, multi-stakeholder involvement, and measurable ecological outcomes. The study contributes to the development of environmental criminal law by offering both empirical insights and a normative framework for reform. It also provides policy recommendations for strengthening the role of restorative justice in addressing environmental harm in resource-intensive sectors.

**Keywords:** *Restorative Justice; Environmental Crime; Diversion; Mining Sector; Plantation Sector; Eco-Restorative Justice; Indonesia*

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## 1. Introduction

Environmental crime has emerged as one of the most pressing global challenges in the 21st century, particularly in developing countries rich in natural resources such as Indonesia. The rapid expansion of extractive industries, especially in the mining and plantation sectors, has significantly contributed to environmental degradation, including deforestation, soil contamination, water pollution, and biodiversity loss. These impacts not only threaten ecological sustainability but also undermine the livelihoods and rights

of local communities. Within this context, environmental crime is no longer viewed merely as a regulatory violation but as a serious offense with profound social and ecological consequences.<sup>1</sup>

In Indonesia, environmental crimes frequently occur in sectors that are economically strategic yet environmentally vulnerable. The mining and plantation industries, particularly palm oil plantations, have been repeatedly associated with illegal land clearing, forest fires, and improper waste disposal. Despite the existence of comprehensive environmental regulations, enforcement remains inconsistent and often ineffective. Traditional approaches to environmental crime have largely relied on punitive mechanisms, such as criminal prosecution and administrative sanctions. However, these approaches have shown limited success in restoring environmental damage and addressing the broader social impacts of such crimes.<sup>2</sup>

The limitations of punitive approaches have led to increasing interest in alternative justice mechanisms, particularly restorative justice. Restorative justice emphasizes dialogue, accountability, and the restoration of harm, rather than mere punishment. It seeks to involve multiple stakeholders, including offenders, victims, communities, and state institutions, in a process aimed at repairing harm and preventing future violations. While restorative justice has been widely applied in cases involving minor offenses and juvenile justice, its application in environmental crime remains relatively underdeveloped.<sup>3</sup>

One of the key mechanisms through which restorative justice can be implemented is diversion. Diversion refers to the redirection of cases away from formal judicial proceedings toward alternative resolution processes that prioritize restoration and reconciliation. In the Indonesian context, diversion has gained prominence through various legal reforms, particularly in juvenile justice. However, its application in environmental crime is still limited and lacks a clear procedural framework. This raises important questions about the feasibility and effectiveness of diversion in addressing complex environmental harms that often involve corporate actors and large-scale ecological damage.<sup>4</sup>

From a theoretical perspective, the application of restorative justice in environmental crime presents unique challenges. Unlike conventional crimes, environmental harm often affects diffuse victims, including ecosystems, future generations, and broader society. This complicates the identification of victims and the measurement of harm. Moreover, environmental crimes frequently involve corporate entities with complex organizational structures, making accountability more difficult to establish. These characteristics require a rethinking of restorative justice principles to accommodate the specific nature of environmental harm.<sup>5</sup>

Empirically, studies on restorative justice in environmental crime are still limited, particularly in the Indonesian context. Existing research tends to focus on normative analyses or case-specific observations, without providing a comprehensive empirical assessment of diversion practices in key sectors such as mining and plantations. This creates a significant research gap, as there is a lack of systematic understanding of how restorative justice is actually implemented in practice, what challenges are encountered, and what outcomes are achieved.<sup>6</sup>

Furthermore, there is a need to critically examine the institutional and cultural factors that influence the implementation of restorative justice in environmental crime. Law enforcement agencies in Indonesia often operate within a legal culture that prioritizes punitive measures, while coordination between environmental authorities and criminal justice institutions remains limited. In addition, there is often insufficient involvement of affected communities in decision-making processes, which undermines the legitimacy and effectiveness of restorative approaches.<sup>7</sup>

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<sup>1</sup>Rob White, *Environmental Crime: A Reader* (Willan Publishing, 2009).

<sup>2</sup>Michael Faure & Marjan Peeters, *Climate Change Liability* (Edward Elgar, 2011).

<sup>3</sup>John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>4</sup>Indonesia, *Undang-Undang No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*.

<sup>5</sup>Rob White & Diane Heckenberg, *Green Criminology* (Routledge, 2014).

<sup>6</sup>Angus Nurse, *Policing Wildlife: Perspectives on the Enforcement of Wildlife Legislation* (Palgrave, 2015).

<sup>7</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

This study aims to address these gaps by conducting an empirical analysis of diversion practices in environmental crime cases within Indonesia's mining and plantation sectors. Specifically, it seeks to examine how restorative justice is applied in practice, identify the challenges and limitations of current approaches, and evaluate their effectiveness in achieving environmental restoration and social justice. By focusing on these sectors, the study captures the dynamics of environmental crime in resource-intensive industries that are central to Indonesia's economy.

The novelty of this research lies in its attempt to integrate empirical findings with normative analysis to develop a reconstructed framework of restorative justice tailored to environmental crime. This study introduces the concept of "eco-restorative justice," which expands the traditional scope of restorative justice by incorporating ecological restoration as a central objective. This approach emphasizes not only the resolution of conflicts but also the recovery of environmental damage and the prevention of future harm.

In conclusion, this study contributes to the growing body of literature on environmental criminal law and restorative justice by providing both empirical insights and a conceptual framework for reform. It offers a more holistic understanding of how justice can be achieved in cases of environmental harm, moving beyond punitive approaches toward more sustainable and inclusive solutions.

## 2. Literature Review

The concept of restorative justice has gained significant attention as an alternative paradigm to traditional punitive approaches in criminal law. Rooted in the idea of repairing harm rather than merely punishing offenders, restorative justice emphasizes dialogue, accountability, and the involvement of all stakeholders affected by a crime.<sup>8</sup> Unlike retributive justice, which focuses on the violation of legal norms, restorative justice shifts the focus toward the consequences of wrongdoing and the restoration of relationships between offenders, victims, and communities. This paradigm has been widely applied in juvenile justice and minor offenses, but its application in more complex areas, such as environmental crime, remains limited and contested.

Scholars such as John Braithwaite argue that restorative justice can be effectively integrated into regulatory systems through responsive regulation, where enforcement strategies range from persuasion to punishment depending on the severity of the offense.<sup>9</sup> This approach is particularly relevant in environmental law, where compliance often requires cooperation between regulators and regulated entities. However, critics note that restorative justice may face significant challenges when applied to environmental crime, especially in cases involving corporate actors and large-scale ecological harm.

Environmental crime itself has been conceptualized within the framework of green criminology, which expands the traditional scope of criminology to include harm against the environment and non-human entities.<sup>10</sup> Scholars such as Rob White emphasize that environmental crime should not be limited to legally defined offenses but should also encompass harmful practices that may be lawful yet environmentally destructive. This broader perspective highlights the inadequacy of conventional criminal law in addressing environmental harm, as legal definitions often lag behind ecological realities.

One of the central challenges in applying restorative justice to environmental crime lies in the diffuse nature of victims. Unlike conventional crimes, where victims are identifiable individuals, environmental harm often affects ecosystems, communities, and future generations.<sup>11</sup> This raises fundamental questions about representation, participation, and the measurement of harm within restorative processes. The absence of clearly identifiable victims complicates the implementation of restorative justice mechanisms, including diversion, which typically rely on direct interaction between offenders and victims.

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<sup>8</sup>Tony Marshall, *Restorative Justice: An Overview* (Home Office, 1999).

<sup>9</sup>John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>10</sup>Rob White, *Environmental Crime: A Reader* (Willan, 2009).

<sup>11</sup>White & Heckenberg, *Green Criminology* (Routledge, 2014).

Diversion, as a mechanism within restorative justice, has been widely studied in the context of juvenile justice and minor criminal offenses. It allows cases to be resolved outside formal judicial proceedings, often through mediation or community-based processes.<sup>12</sup> In Indonesia, diversion has been institutionalized through legal reforms, particularly in the juvenile justice system.<sup>13</sup> However, its extension to environmental crime remains underdeveloped, both in terms of legal framework and practical implementation. Existing studies indicate that diversion in environmental cases is often ad hoc and lacks standardized procedures, which limits its effectiveness and consistency.

In the context of corporate environmental crime, the application of restorative justice becomes even more complex. Corporate actors operate within hierarchical and often opaque organizational structures, making it difficult to attribute responsibility and ensure accountability.<sup>14</sup> Furthermore, the primary motivation of corporations—profit maximization—may conflict with the goals of restorative justice, particularly when environmental restoration requires significant financial investment. This tension highlights the need for a more robust framework that integrates corporate accountability with restorative principles.

Another important dimension is the role of the state and regulatory institutions in facilitating restorative justice. In many jurisdictions, environmental enforcement is fragmented across multiple agencies, leading to coordination challenges and inconsistent application of the law.<sup>15</sup> In Indonesia, this issue is particularly pronounced, as environmental governance involves various ministries, local governments, and law enforcement bodies. The lack of coordination often undermines the effectiveness of both punitive and restorative approaches.

Despite these challenges, there is a growing body of literature advocating for the integration of restorative justice into environmental law. Scholars argue that restorative justice can offer more sustainable solutions by focusing on environmental recovery, community engagement, and long-term prevention.<sup>16</sup> However, most of these studies remain normative and lack empirical validation, particularly in developing countries such as Indonesia. This indicates a significant gap between theoretical proposals and practical implementation.

Moreover, existing research tends to treat restorative justice and environmental law as separate domains, without fully exploring their intersection. There is limited scholarship that systematically examines how restorative justice mechanisms, such as diversion, operate within the specific context of environmental crime, especially in sectors characterized by high ecological impact, such as mining and plantations.<sup>17</sup> This gap is critical, as these sectors are central to Indonesia's economy and are frequently associated with environmental violations.

Based on this review, three major research gaps can be identified. First, there is a lack of empirical studies examining the actual implementation of restorative justice in environmental crime cases in Indonesia. Second, there is insufficient theoretical development regarding how restorative justice principles can be adapted to address the unique characteristics of environmental harm. Third, there is an absence of integrated models that combine restorative justice with environmental restoration and corporate accountability.

To address these gaps, this study proposes the concept of eco-restorative justice, which redefines restorative justice by incorporating ecological restoration as a central objective. This concept emphasizes three key elements: environmental recovery, community participation, and structured diversion mechanisms. By integrating these elements, eco-restorative justice provides a more comprehensive framework for addressing environmental crime, particularly in resource-intensive sectors.

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<sup>12</sup>Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* (2002).

<sup>13</sup>Indonesia, UU No. 11 Tahun 2012.

<sup>14</sup>Celia Wells, *Corporations and Criminal Responsibility* (Oxford, 2001).

<sup>15</sup>Faure & Peeters, *Climate Change Liability* (2011).

<sup>16</sup>Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (2002).

<sup>17</sup>Angus Nurse, *Environmental Crime and Social Conflict* (Ashgate, 2013).

In conclusion, while restorative justice offers promising alternatives to punitive approaches, its application in environmental crime requires significant theoretical and practical development. This study contributes to the literature by bridging the gap between theory and practice, providing empirical insights, and proposing a reconstructed framework that aligns restorative justice with the demands of environmental protection.

### 3. Research Methodology

This study employs an empirical socio-legal approach to examine the implementation of restorative justice in environmental crime, particularly through diversion practices in Indonesia's mining and plantation sectors. The socio-legal approach enables the analysis of law not only as a set of normative rules but also as a social practice shaped by institutional behavior, enforcement patterns, and community responses.<sup>18</sup> This approach is particularly relevant for environmental crime, where the effectiveness of legal norms depends heavily on their practical application and interaction with socio-economic realities.

The research combines normative legal analysis with empirical investigation. The normative component focuses on examining the legal framework governing environmental crime and restorative justice in Indonesia, including statutory regulations, prosecutorial guidelines, and institutional policies. Key legal instruments analyzed include Indonesia's Environmental Protection and Management Law, the Child Protection and restorative justice regulations issued by law enforcement agencies, as well as relevant provisions on diversion and alternative dispute resolution.<sup>19</sup> This analysis aims to identify the extent to which restorative justice is formally recognized and regulated within the existing legal system.

The empirical component is based on qualitative data collection and analysis, drawing primarily from document-based sources and reported case practices. Data sources include court decisions, prosecutorial records, policy documents, and publicly available reports on environmental law enforcement in the mining and plantation sectors. In addition, this study incorporates findings from recent empirical research and institutional reports that document the application of restorative justice and diversion in environmental cases.<sup>20</sup> The use of multiple data sources allows for triangulation, thereby enhancing the reliability and validity of the findings.

Data analysis is conducted using a qualitative analytical method, which involves interpreting legal texts and empirical materials to identify patterns, inconsistencies, and underlying factors influencing the implementation of restorative justice. The analysis focuses on three main dimensions: (1) the legal basis and procedural framework of diversion, (2) the actual practices of restorative justice in environmental cases, and (3) the challenges and limitations encountered by law enforcement institutions.<sup>21</sup> Through this analytical framework, the study seeks to bridge the gap between normative expectations and empirical realities.

To strengthen the analytical depth, this study adopts a comparative and interpretative perspective, drawing insights from international literature on restorative justice and environmental crime. Although the primary focus is Indonesia, comparative references are used to contextualize findings and identify best practices that may inform legal reform. This approach allows the study to move beyond descriptive analysis and contribute to theoretical and policy development.

In terms of research validity, this study applies methodological triangulation by combining different types of data and analytical perspectives. This includes cross-referencing legal documents with empirical findings and scholarly literature to ensure consistency and credibility.<sup>22</sup> Additionally, the study adopts a critical interpretative stance to evaluate the effectiveness of existing frameworks and to identify areas for improvement.

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<sup>18</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

<sup>19</sup>Indonesia, *Undang-Undang No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*.

<sup>20</sup>Terry Hutchinson, *Researching and Writing in Law* (2018).

<sup>21</sup>Miles, Huberman, & Saldaña, *Qualitative Data Analysis* (2014).

<sup>22</sup>Creswell, *Research Design* (2014).

The limitations of this study lie primarily in its reliance on secondary empirical data and publicly available documents, which may not fully capture the complexity of on-the-ground practices. However, this limitation is mitigated by the use of multiple data sources and the integration of diverse perspectives, allowing for a comprehensive analysis of the issue.

Ultimately, this methodological approach enables the study to provide a nuanced understanding of how restorative justice is implemented in environmental crime cases in Indonesia. By combining normative and empirical analysis, the study not only examines the legal framework but also evaluates its practical effectiveness, thereby providing a solid foundation for the proposed reconstruction of eco-restorative justice.

## **4. Results And Discussion**

### **4.1 Legal Framework of Restorative Justice in Environmental Crime in Indonesia**

The legal framework governing restorative justice in Indonesia has undergone significant development in recent years, particularly through institutional policies issued by law enforcement agencies. Restorative justice has been formally recognized as part of the criminal justice system, especially following the issuance of prosecutorial and police regulations that encourage alternative dispute resolution in certain categories of cases. However, its application in environmental crime remains limited and lacks a coherent and specific legal foundation.

At the normative level, Indonesia's environmental law is primarily governed by the Environmental Protection and Management Law, which emphasizes both preventive and repressive mechanisms in addressing environmental harm. This law provides a broad framework for administrative, civil, and criminal enforcement. However, the criminal provisions largely reflect a retributive orientation, focusing on punishment rather than restoration.<sup>23</sup> As a result, although environmental restoration is recognized as an objective, it is not systematically integrated into criminal proceedings.

Restorative justice, on the other hand, has been more explicitly developed through sectoral regulations, particularly within the prosecutorial system. The Indonesian Attorney General's Regulation on the termination of prosecution based on restorative justice represents a significant step toward institutionalizing restorative practices.<sup>24</sup> This regulation allows prosecutors to discontinue criminal proceedings under certain conditions, such as the existence of an agreement between the offender and the victim, the restoration of harm, and the absence of public interest concerns. However, these provisions are primarily designed for minor offenses and do not explicitly address environmental crime, which often involves complex and large-scale harm.

Similarly, police regulations on restorative justice emphasize mediation and community-based resolution, particularly in cases involving minor criminal acts.<sup>25</sup> These regulations reflect a shift toward a more flexible and responsive criminal justice system. Nevertheless, their applicability to environmental crime is limited, as such cases often involve corporate actors, multiple victims, and significant ecological damage that cannot be easily resolved through informal mechanisms.

A key issue within the Indonesian legal framework is the lack of procedural clarity regarding the use of restorative justice in environmental crime. There are no specific guidelines that define when and how diversion can be applied in cases involving environmental harm. This creates uncertainty for law enforcement officials, who may be reluctant to apply restorative approaches due to the risk of legal ambiguity or institutional scrutiny.<sup>26</sup> Consequently, restorative justice is rarely used in environmental cases, despite its potential benefits.

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<sup>23</sup>Indonesia, *Undang-Undang No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*.

<sup>24</sup>Peraturan Jaksa Agung RI No. 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

<sup>25</sup>Peraturan Kepolisian RI No. 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

<sup>26</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

Another important limitation is the fragmentation of legal authority among different institutions. Environmental governance in Indonesia involves multiple actors, including the Ministry of Environment and Forestry, local governments, police, and prosecutors. This institutional complexity often leads to coordination challenges, particularly in cases where both administrative and criminal sanctions are applicable.<sup>27</sup> The absence of a unified framework for restorative justice further complicates this situation, as different institutions may adopt inconsistent approaches.

From a doctrinal perspective, the Indonesian legal system has not yet fully developed the concept of restoration as a central objective of criminal law. While environmental laws recognize the importance of rehabilitation and recovery, these principles are often treated as secondary to punitive measures. This reflects a broader legal culture that prioritizes deterrence and retribution over restoration and reconciliation.<sup>28</sup> As a result, the potential of restorative justice to address environmental harm remains underutilized.

In practice, some elements of restorative justice can be observed in environmental enforcement, particularly in the form of administrative settlements and corporate compliance agreements. These mechanisms sometimes require offenders to undertake environmental restoration or pay compensation. However, these practices are not formally recognized as part of a restorative justice framework and are often implemented on an ad hoc basis.<sup>29</sup> This lack of formal recognition limits their consistency and effectiveness.

Furthermore, the role of affected communities in environmental decision-making remains limited. Although environmental law provides for public participation, this is often confined to procedural aspects, such as environmental impact assessments. In the context of criminal proceedings, community involvement is minimal, which undermines the participatory principles of restorative justice.<sup>30</sup> Without meaningful community engagement, restorative processes cannot fully achieve their objectives.

Despite these limitations, the existing legal framework provides a foundation upon which restorative justice in environmental crime can be developed. The recognition of restorative justice in prosecutorial and police regulations demonstrates a willingness to move beyond purely punitive approaches. However, significant reforms are needed to adapt these mechanisms to the specific characteristics of environmental crime.

In conclusion, the Indonesian legal framework for restorative justice in environmental crime remains fragmented and underdeveloped. While there are formal provisions supporting restorative approaches, their application is limited by doctrinal gaps, procedural ambiguity, and institutional fragmentation. These challenges highlight the need for a more integrated and structured framework that can effectively incorporate restorative justice into environmental law enforcement.

#### **4.2 Diversion Practices in Environmental Crime within the Mining and Plantation Sectors in Indonesia**

Empirically, diversion practices within environmental crime cases in Indonesia—particularly in the mining and plantation sectors—remain limited, non-systematic, and insufficiently documented in official sectoral data. According to the Indonesian Attorney General's Office, a total of 1,985 criminal cases were resolved through restorative justice mechanisms in 2024. However, publicly available reports do not disaggregate these figures by crime category, and there is no specific indication of how many of these cases relate to environmental offenses, let alone those arising from mining or plantation activities.<sup>31</sup> This absence of disaggregated data suggests that diversion in environmental crime has not yet developed into a structured or institutionalized practice.

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<sup>27</sup>Faure & Peeters, *Climate Change Liability* (2011).

<sup>28</sup>Ashworth, A., & Horder, J., *Principles of Criminal Law* (10th ed., Oxford University Press, 2022).

<sup>29</sup>Rob White, *Environmental Crime: A Reader* (Willan Publishing, 2009).

<sup>30</sup>John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>31</sup>Indonesian Attorney General's Office, "Annual Performance Report 2024."

This empirical limitation is closely linked to the normative structure of Indonesian environmental law. While restorative justice has been increasingly promoted through general criminal justice policies—such as the Attorney General Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021—the Environmental Protection and Management Law (Law No. 32 of 2009) maintains a more restrictive approach. In particular, the law has been interpreted as excluding out-of-court settlements for criminal environmental offenses, thereby reinforcing a litigation-centered enforcement model.<sup>32</sup> This creates a doctrinal tension between the expansion of restorative justice in general criminal law and the relatively rigid structure of environmental criminal law.

In practice, this tension results in diversion mechanisms being applied, if at all, in a fragmented and informal manner, often outside a clearly defined procedural framework. Rather than functioning as a formal alternative to prosecution, diversion in environmental cases tends to appear in the form of administrative settlements, negotiated compliance agreements, or discretionary enforcement decisions.<sup>33</sup> These practices may include compensation payments, commitments to environmental rehabilitation, or cessation of harmful activities. However, they are rarely framed explicitly as restorative justice processes, and their implementation lacks consistency, transparency, and standardized evaluation criteria.

The structural characteristics of environmental crime further complicate the application of diversion. Unlike conventional criminal offenses, environmental harm typically involves diffuse and collective victims, including affected communities, ecosystems, and future generations.<sup>34</sup> In the context of mining and plantation activities, environmental damage often spans large geographical areas and affects multiple stakeholders simultaneously. This makes it difficult to identify a single victim or a clearly defined group of victims who can participate in restorative processes. Consequently, the traditional model of diversion—based on direct interaction between offender and victim—becomes inadequate for addressing environmental harm.

Empirical observations from policy reports and international initiatives also highlight the complexity of environmental conflicts in Indonesia. The Open Government Partnership (OGP) has documented that environmental disputes in Indonesia frequently arise from extractive industries, including mining operations and plantation expansion. These conflicts often involve not only environmental degradation but also social tensions, land disputes, and threats against environmental defenders.<sup>35</sup> Such multi-layered conflicts require more sophisticated mechanisms than conventional diversion, as they involve a wide range of actors and interests that cannot be easily reconciled through bilateral agreements.

In the mining sector, recent studies emphasize that law enforcement remains predominantly oriented toward deterrence and regulatory compliance, rather than ecological restoration. For example, research on illegal mining in Indonesia underscores the continued reliance on legislative enforcement and sanctions, with limited emphasis on restorative mechanisms that ensure environmental recovery.<sup>36</sup> This suggests that, even where diversion-like practices exist, they are not yet integrated into a broader framework of restorative justice aimed at repairing ecological damage.

A similar pattern can be observed in the plantation sector, particularly in cases related to deforestation and land conversion. Environmental violations associated with plantation expansion often result in long-term ecological harm, including biodiversity loss and increased carbon emissions. While some enforcement actions require companies to undertake remedial measures, these actions are typically imposed through administrative or civil mechanisms rather than through structured restorative justice processes.<sup>37</sup> As a result, the potential of diversion to facilitate meaningful environmental restoration remains largely unrealized.

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<sup>32</sup>Law No. 32 of 2009 on Environmental Protection and Management.

<sup>33</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

<sup>34</sup>Rob White & Diane Heckenberg, *Green Criminology* (Routledge, 2014).

<sup>35</sup>Open Government Partnership, Indonesia Commitment ID0137.

<sup>36</sup>Arif Rohman, "Illegal Mining in Indonesia," *Cogent Social Sciences* (2024).

<sup>37</sup>Atikah Mardhiya Rohmy et al., *Trees, Forests and People* (2024).

Institutionally, there are emerging efforts to shift toward a more restoration-oriented approach. The Attorney General's Guideline No. 8 of 2022 on handling environmental crime cases introduces the concept of environmental recovery as part of criminal enforcement.<sup>38</sup> This development indicates a growing recognition that punitive measures alone are insufficient to address environmental harm. However, the guideline does not yet establish a clear procedural link between environmental recovery and diversion mechanisms, leaving a gap between policy intention and operational implementation.

Based on these findings, three key conclusions can be drawn. First, while restorative justice has gained significant traction in Indonesia's general criminal justice system, its application in environmental crime—particularly in the mining and plantation sectors—remains empirically limited and insufficiently documented. Second, structural and doctrinal barriers, including the rigidity of environmental criminal law and the diffuse nature of environmental harm, hinder the effective implementation of diversion. Third, existing practices that resemble restorative approaches are largely informal and lack a coherent institutional framework.

Therefore, the empirical evidence suggests that diversion in environmental crime should not be understood as a fully developed practice, but rather as an emerging and fragmented phenomenon. To become effective, diversion must be reconceptualized as part of a broader eco-restorative justice framework that integrates environmental recovery, community participation, and corporate accountability. Without such a reconstruction, diversion risks becoming merely procedural flexibility without substantive ecological impact.

#### **4.3 Challenges in the Implementation of Restorative Justice and Diversion in Environmental Crime**

The implementation of restorative justice and diversion in environmental crime cases in Indonesia faces a series of structural, doctrinal, and practical challenges that significantly limit their effectiveness. These challenges are not merely technical in nature but reflect deeper tensions within the legal system, particularly between punitive traditions and emerging restorative approaches.

One of the most fundamental challenges lies in the doctrinal inconsistency between environmental criminal law and restorative justice frameworks. While restorative justice has been increasingly institutionalized through prosecutorial and police regulations, environmental law—especially under Law No. 32 of 2009—continues to emphasize formal prosecution and sanctions.<sup>39</sup> This creates a normative conflict in which law enforcement officials are uncertain about the legitimacy of applying diversion in environmental cases. As a result, restorative justice is often perceived as inappropriate or even incompatible with environmental crime, particularly when such crimes are classified as serious offenses.

A second major challenge is the absence of clear procedural guidelines for implementing diversion in environmental crime. Existing restorative justice regulations in Indonesia are primarily designed for minor offenses and do not provide specific criteria for environmental cases.<sup>40</sup> There is no standardized framework defining when diversion may be applied, how environmental harm should be assessed, or what constitutes adequate restoration. This procedural ambiguity discourages law enforcement officers from adopting restorative approaches, as they may fear legal uncertainty or accusations of leniency.

Another critical issue is the diffuse and collective nature of victims in environmental crime. Unlike conventional crimes with identifiable victims, environmental harm often affects entire communities, ecosystems, and even future generations.<sup>41</sup> This makes it difficult to determine who should represent the victim in restorative processes and how their interests should be articulated. In mining and plantation contexts, affected parties may include local residents, indigenous communities, environmental NGOs, and

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<sup>38</sup>Attorney General Guideline No. 8 of 2022.

<sup>39</sup>Law No. 32 of 2009 on Environmental Protection and Management.

<sup>40</sup>Attorney General Regulation No. 15 of 2020.

<sup>41</sup>White & Heckenberg, *Green Criminology* (Routledge, 2014).

the state itself. The multiplicity of stakeholders complicates the implementation of diversion, which traditionally relies on direct engagement between offender and victim.

Closely related to this is the challenge of measuring environmental harm and restoration outcomes. Environmental damage is often complex, long-term, and sometimes irreversible.<sup>42</sup> Unlike financial losses or physical injuries, ecological harm cannot always be quantified in precise terms. This raises significant difficulties in determining what constitutes adequate restoration within a restorative justice framework. Without clear indicators and benchmarks, diversion agreements risk becoming symbolic rather than substantive, failing to achieve meaningful environmental recovery.

The role of corporate actors in environmental crime introduces another layer of complexity. Many environmental offenses in Indonesia's mining and plantation sectors are committed by corporations rather than individuals. Corporate structures, characterized by hierarchical decision-making and diffuse responsibility, make it difficult to attribute criminal liability and ensure accountability.<sup>43</sup> Moreover, corporations may have the financial capacity to comply with compensation requirements without fundamentally changing their behavior, thereby undermining the deterrent effect of legal enforcement. This creates a risk that diversion mechanisms could be misused as tools for negotiation rather than genuine restoration.

Institutional fragmentation further exacerbates these challenges. Environmental governance in Indonesia involves multiple agencies, including the Ministry of Environment and Forestry, local governments, police, and prosecutors.<sup>44</sup> The lack of coordination among these institutions often results in inconsistent enforcement practices and overlapping authority. In the context of restorative justice, this fragmentation makes it difficult to establish a unified approach to diversion, as different institutions may have divergent priorities and interpretations of the law.

Another significant barrier is the dominance of a retributive legal culture within the criminal justice system. Despite recent reforms, many law enforcement officials continue to prioritize punishment over restoration, particularly in cases perceived as serious or high-profile.<sup>45</sup> Environmental crimes, which often attract public attention due to their large-scale impact, are frequently handled through formal prosecution to demonstrate the state's commitment to law enforcement. This cultural orientation limits the willingness of practitioners to explore alternative approaches such as diversion.

In addition, there is a lack of community participation and representation in environmental decision-making processes. Although environmental law formally recognizes public participation, its implementation in criminal proceedings remains minimal.<sup>46</sup> Affected communities are often excluded from negotiations and decision-making, reducing the legitimacy and effectiveness of restorative outcomes. Without meaningful participation, restorative justice cannot fully achieve its objective of repairing harm and rebuilding trust.

Finally, the absence of monitoring and enforcement mechanisms for diversion agreements poses a significant challenge. Even in cases where restorative measures are agreed upon, there is often no systematic mechanism to ensure compliance or evaluate outcomes.<sup>47</sup> This weakens the credibility of diversion as a tool for environmental justice and raises concerns about accountability.

Taken together, these challenges indicate that the implementation of restorative justice in environmental crime is constrained by a combination of legal, institutional, and socio-cultural factors. The current framework lacks the doctrinal clarity, procedural structure, and institutional support necessary to make diversion an effective mechanism for addressing environmental harm.

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<sup>42</sup>Faure & Peeters, *Climate Change Liability* (2011).

<sup>43</sup>Celia Wells, *Corporations and Criminal Responsibility* (Oxford, 2001).

<sup>44</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

<sup>45</sup>Ashworth & Horder, *Principles of Criminal Law* (2022).

<sup>46</sup>John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>47</sup>Creswell, *Research Design* (2014).

Therefore, addressing these challenges requires more than incremental reform; it necessitates a fundamental reconstruction of the legal and institutional framework governing restorative justice in environmental crime. This reconstruction must integrate doctrinal clarity, procedural guidelines, ecological considerations, and multi-stakeholder participation. Only through such a comprehensive approach can restorative justice move beyond its current limitations and become a meaningful tool for environmental protection.

#### **4.4 Reconstruction of Eco-Restorative Justice in Environmental Crime**

The preceding analysis demonstrates that the current application of restorative justice and diversion in environmental crime within Indonesia remains fragmented, inconsistent, and doctrinally underdeveloped. These limitations indicate that restorative justice, in its conventional form, is not fully compatible with the complex nature of environmental harm, particularly in the mining and plantation sectors. Therefore, a reconstruction of the restorative justice framework is necessary to align it with the specific characteristics of environmental crime.

This study proposes the concept of eco-restorative justice as a reconstructed model that integrates environmental recovery, community participation, and corporate accountability into the core of criminal justice processes. Unlike traditional restorative justice, which primarily focuses on interpersonal harm and reconciliation, eco-restorative justice expands the scope of restoration to include ecological systems and collective interests.<sup>48</sup> This reconstruction reflects the recognition that environmental crime is not merely a violation of legal norms but a disruption of ecological balance and social well-being.

The first element of the proposed model is the redefinition of harm. In conventional criminal law, harm is typically understood in terms of individual victims and measurable losses. However, environmental harm is inherently collective, diffuse, and long-term, affecting ecosystems, communities, and future generations.<sup>49</sup> Therefore, eco-restorative justice requires a broader conceptualization of harm that includes ecological degradation, loss of biodiversity, and the disruption of socio-environmental relationships. This expanded definition provides a more accurate foundation for assessing responsibility and determining appropriate restorative measures.

The second element is the institutionalization of ecological restoration as a primary objective of criminal enforcement. In the current Indonesian framework, restoration is often treated as a supplementary measure, secondary to punishment. By contrast, eco-restorative justice places environmental recovery at the center of legal responses.<sup>50</sup> This requires the development of clear standards for restoration, including measurable indicators of ecological improvement, timelines for implementation, and mechanisms for monitoring compliance. Restoration should not be symbolic but must produce tangible environmental outcomes.

The third element is the integration of structured diversion mechanisms specifically designed for environmental crime. Diversion should no longer be understood merely as the termination of prosecution but as a formal process that facilitates restorative outcomes. This process must include clear procedural stages, such as case eligibility assessment, stakeholder identification, negotiation, agreement formulation, and post-agreement monitoring.<sup>51</sup> Importantly, diversion in environmental cases must be conditional upon the offender's commitment to environmental restoration and compliance with agreed measures.

A fourth critical component is the inclusion of multi-stakeholder participation. Given the collective nature of environmental harm, eco-restorative justice must involve a broad range of actors, including affected communities, environmental experts, civil society organizations, and government agencies.<sup>52</sup> This participatory approach ensures that diverse perspectives are considered and that restorative outcomes

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<sup>48</sup>John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>49</sup>Rob White & Diane Heckenberg, *Green Criminology* (Routledge, 2014).

<sup>50</sup>Law No. 32 of 2009 on Environmental Protection and Management.

<sup>51</sup>Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* (2002).

<sup>52</sup>Mark Van Hoecke, *Methodologies of Legal Research* (Hart, 2011).

reflect the needs and interests of all stakeholders. It also enhances the legitimacy and transparency of the process.

The fifth element is the strengthening of corporate accountability mechanisms. Since many environmental crimes are committed by corporate entities, eco-restorative justice must address the specific challenges associated with corporate liability. This includes requiring corporations to undertake comprehensive environmental rehabilitation, adopt sustainable practices, and implement internal compliance systems.<sup>53</sup> Additionally, corporate participation in diversion processes should be accompanied by strict oversight to prevent the misuse of restorative mechanisms as a means of avoiding accountability.

To operationalize these elements, this study proposes a three-stage eco-restorative justice model. First, the assessment stage, in which authorities evaluate the nature and extent of environmental harm, identify stakeholders, and determine the suitability of diversion. This stage requires interdisciplinary input, including environmental science and social impact analysis. Second, the restorative agreement stage, where stakeholders engage in a structured process to negotiate and formalize restoration measures. This agreement must include clear obligations, timelines, and performance indicators. Third, the implementation and monitoring stage, which ensures that agreed measures are carried out effectively. Independent monitoring mechanisms should be established to verify compliance and assess environmental outcomes.

This model represents a shift from a punishment-oriented paradigm to a restoration-oriented paradigm, while still maintaining the possibility of sanctions in cases of non-compliance. It does not eliminate the role of criminal law but redefines its purpose in the context of environmental protection.

Importantly, the proposed reconstruction aligns with international developments in environmental governance, which increasingly emphasize sustainability, accountability, and community engagement.<sup>54</sup> By adopting eco-restorative justice, Indonesia can enhance the effectiveness of its legal system in addressing environmental crime and contribute to global efforts toward sustainable development.

In conclusion, eco-restorative justice offers a comprehensive and context-sensitive framework for addressing environmental crime in Indonesia's mining and plantation sectors. By integrating ecological restoration, structured diversion, and multi-stakeholder participation, this model addresses the limitations of existing approaches and provides a pathway for meaningful legal reform. As such, it constitutes the primary theoretical and practical contribution of this study.

## 5. Conclusion

This study has examined the application of restorative justice in environmental crime in Indonesia, with a specific focus on diversion practices in the mining and plantation sectors. By combining normative and empirical analysis, the study reveals that although restorative justice has gained increasing recognition within Indonesia's criminal justice system, its implementation in environmental crime remains limited, fragmented, and structurally constrained.

At the normative level, Indonesian law demonstrates a clear inconsistency between the expansion of restorative justice in general criminal proceedings and the rigid, litigation-oriented framework of environmental criminal law. While regulations issued by prosecutorial and police institutions have introduced mechanisms for diversion and restorative settlement, these frameworks are not specifically designed to address the complexities of environmental harm. Consequently, restorative justice remains peripheral in environmental enforcement, rather than functioning as an integral component of the legal system.

Empirically, the study finds that diversion practices in environmental crime—particularly within the mining and plantation sectors—are not yet institutionalized. The absence of disaggregated data and formal procedural guidelines indicates that restorative approaches are applied only sporadically and often in

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<sup>53</sup>Celia Wells, *Corporations and Criminal Responsibility* (Oxford, 2001).

<sup>54</sup>United Nations, *Sustainable Development Goals (SDGs)*.

informal or administrative contexts. Moreover, the structural characteristics of environmental crime, including diffuse victims, large-scale ecological damage, and the involvement of corporate actors, pose significant challenges to the implementation of conventional diversion mechanisms.

The analysis further identifies several key barriers that hinder the effective application of restorative justice in environmental crime. These include doctrinal ambiguity, procedural uncertainty, institutional fragmentation, and the persistence of a retributive legal culture. In addition, the lack of community participation and the absence of measurable standards for environmental restoration undermine the legitimacy and effectiveness of restorative outcomes. These challenges demonstrate that the current framework is insufficient to address the multifaceted nature of environmental harm.

In response to these limitations, this study proposes a reconstructed model of eco-restorative justice, which redefines restorative justice by integrating ecological restoration, multi-stakeholder participation, and corporate accountability as core elements. This model shifts the focus of criminal enforcement from punishment to restoration, while maintaining accountability through structured diversion mechanisms and monitoring systems. By expanding the concept of harm to include ecological and collective dimensions, eco-restorative justice provides a more comprehensive and context-sensitive approach to environmental crime.

From a policy perspective, the implementation of eco-restorative justice requires several strategic reforms. First, there is a need for normative harmonization between environmental law and restorative justice frameworks, ensuring that diversion mechanisms can be applied without doctrinal conflict. Second, clear procedural guidelines must be developed to regulate the application of diversion in environmental cases, including criteria for eligibility, stakeholder involvement, and restoration standards. Third, institutional coordination among law enforcement agencies and environmental authorities must be strengthened to ensure consistent and effective implementation. Finally, mechanisms for monitoring and evaluating environmental restoration outcomes must be established to ensure that restorative processes produce tangible and measurable results.

This study contributes to the development of environmental criminal law by providing both empirical insights and a novel conceptual framework for reform. It highlights the limitations of existing approaches and offers a practical pathway for integrating restorative justice into environmental enforcement. More broadly, the study underscores the importance of rethinking criminal law in the context of environmental sustainability, where the ultimate goal is not merely to punish wrongdoing but to restore ecological balance and protect the rights of present and future generations.

Future research may further explore the empirical dimensions of eco-restorative justice through field-based studies, including interviews with law enforcement officials, corporate actors, and affected communities. Such research would provide deeper insights into the practical feasibility and impact of restorative approaches in environmental crime. In addition, comparative studies across jurisdictions may help identify best practices and inform the continued development of restorative justice in environmental law.

In conclusion, the transformation of restorative justice into an eco-restorative framework represents a necessary and timely evolution in addressing environmental crime. By aligning legal principles with ecological realities, this approach offers a more effective, equitable, and sustainable model of justice for the challenges of the modern era.

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