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Overcoming the Dilemma between the Clarity and Flexible Norms in Environmental Offenses

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Abstract:

Environmental offences are phrased abstractly and flexibly due to the standards developed by other administrative bodies with environmental responsibilities. The phrasing violates the *lex certa* principle that an offence must be defined clearly with not more than one interpretation. People easily grasp well-defined transgressions and know the penalties for violating them. Therefore, this study aimed to formulate a balance between flexibility and clarity in environmental offences using doctrinal legal research with the statute and conceptual approaches. The findings showed that the design representing this balance includes leaving technical and environmental offences to government regulation while including the essential elements in the Act. Administrative officials are granted the discretionary ability to determine a criminal act on these technical matters. However, this discretionary window must not violate the principles of reason and proportionality to maintain clarity and legal certainty. Science would make a formula for an offence currently considered unclear and obvious. The results also indicated that a legal rule's clarity is determined by its phrasing and the underlying notion of justice. This study was limited to identifying the formula for bridging the gap between hard and flexible norms while defining environmental crimes. Therefore, future studies could explore how law enforcement officers understand environmental crimes supported by administrative demands or obligations covered by the law.

Keywords: environmental offences; legality principle; flexible norm; justice.

Introduction

A crime must be stated sufficiently and explicitly to make what is prohibited apparent. In the legality principle, *Lex praevia* and *lex certa* cooperate to achieve

temporal clarity and precise meaning translated as settled law. Sufficient clarity is the statement that individuals know from the relevant provision and with the assistance of the court's interpretation of the act and omission that make them accountable.[1] Accordingly, *lex certa* restricts the lawmakers' capacity to use criminal law in broadly influencing human conduct and cautions drafters to establish precise laws.[2]

Criminal conduct must be clear about what is forbidden and the resulting penalties to avoid ambiguity.[3] This formulation provides legal certainty and prevents investigators, public prosecutors, and judges from acting arbitrarily when dealing with a criminal offence.[4] In terms of environmental crime, such a theory faces formidable obstacles. Administrative and criminal laws are intertwined in environmental crimes, making this one of their most notable traits. Environmental law is an evolving area of study whose significance is minimized by the clarity with which criminal offences are defined.[5] The result is a dilemma between the flexible rules that environmental law seeks and the clear norms defining criminal law.

No study has examined the rapidly evolving environmental law features that influence the definition of criminal acts in the environmental field. Similarly, the requirements to avoid the vagueness of a norm in formulating criminal acts have not been examined. Previous studies focused on the need for criminal law to be considered the ultimate remedy for environmental crimes,[6] applying criminal

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[1] J. Corsi, "An Argument for Strict Legality in International Criminal Law," *Georgetown Journal of International Law* 49, no. 4 (October 15, 2018): 1321–81.

[2] Rodrigo Dellutri, "The Nullum Crimen Sine Lege Principle in the Main Legal Traditions: Common Law, Civil Law, and Islamic Law Defining International Crimes through the Limits Imposed by Article 22 of the Rome Statute," *New York International Law Review* 25, no. 1 (2012).

[3] Evgeny Tikhonravov, "Nulla Poena Sine Lege in Continental Criminal Law: Historical and Theoretical Analysis," *Criminal Law and Philosophy* 13, no. 2 (June 1, 2019): 215–24, https://doi.org/10.1007/s11572-018-9466-9.

[4] William J. Stuntz, "Substance, Process, and the Civil-Criminal Line," *Journal of Contemporary Legal Issues* 7 (1996): 1; William Stuntz, "The Pathological Politics of Criminal Law," *Michigan Law Review* 100, no. 3 (December 1, 2001): 505–600; Donald A Dripps, "The Substance-Procedure Relationship in Criminal Law," in *Philosophical Foundations of Criminal Law*, ed. R.A. Duff and Stuart Green (Oxford University Press, 2011), 0, https://doi.org/10.1093/acprof:oso/9780199559152.003.0018.

[5] Takdir Rahmadi, *Hukum Lingkungan Di Indonesia* (Jakarta: Rajawali Pers, 2012).

[6] Lidya Suryani Widayati, "Ultimum Remedium Dalam Bidang Lingkungan Hidup," *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 1 (2015): 1–24, https://doi.org/10.20885/iustum.vol22.iss1.art1; Avi Brisman and Nigel South, "Green Criminology and Environmental Crimes and Harms," *Sociology Compass* 13, no. 1 (2019): e12650, https://doi.org/10.1111/soc4.12650; Matthew J. Greife and Michael O. Maume, "Do Companies Pay the Price for Environmental Crimes? Consequences of Criminal Penalties on Corporate Offenders," *Crime, Law and Social Change* 73, no. 3 (April 1, 2020): 337–56, https://doi.org/10.1007/s10611-019-09863-4; Mahrus Ali, "Hukum Pidana Sebagai Last Resort Dalam Undang-Undang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Hukum IUS QUIA IUSTUM* 27, no. 1 (June 29, 2020): 68–86, https://doi.org/10.20885/iustum.vol27.iss1.art4; Fahriza Havinanda, "Politik Hukum Dalam Pembaharuan Sistem Hukum Pidana Lingkungan Dan Dampaknya Terhadap Penegakan Hukum Tindak Pidana Lingkungan Hidup," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 1, no. 1 (September 25, 2020): 106–21, https://doi.org/10.30743/jhah.v1i1.3013; Michael J. Lynch, "Green Criminology and Environmental Crime: Criminology That Matters in the Age of Global Ecological Collapse," *Journal of White Collar and Corporate Crime* 1, no. 1 (January 1, 2020): 50–61, https://doi.org/10.1177/2631309X19876930; Daan P. van Uhm and Rick C.C. Nijman, "The Convergence of Environmental Crime with Other Serious Crimes: Subtypes within the

sanctions,[7] and the corporations' criminal capability and punishments.[8] (Ali, 2020; Agustian, 2020). Therefore, this study aimed to formulate environmental offences that balance flexibility and norm-bending clarity. The concept of legality in criminal law should be rethought based more on justice than clarity and precision of rules.

The first section of this study discusses the characteristics of environmental offences and the legality principles (*nullum crimen sine lege*) in criminal law. It is insufficient to understand the core of the criminal act by only reading its formulation in the relevant article. On the contrary, one must follow several administrative rules throughout the laws and regulations. Criminal law only allows judges to impose penalties when a defendant violated a specific written rule that was in place before the crime was committed. The second section examines how the principle of legality in criminal law demands that an offence be formulated clearly. It also discusses how a legal norm's flexibility could be balanced in formulating environmental offences in legislation. The underlying notion of justice and its articulation in legislation influence how a legal rule is applied.

This study is a doctrinal or normative legal research because it examined legal principles and norms of environmental offences in legislation. It mainly focused on formulating legal norms with clarity and flexibility as demanded by Indonesia's criminal and environmental laws. The primary legal source was Law No. 32 of 2009 concerning Environmental Protection and Management. Secondary legal sources include books, journals and studies on the legality principles in criminal law, the nature of environmental offences, and discretion in administrative law. The legal sources were analyzed qualitatively through data reduction, presentation, and conclusions.

Environmental Crime Continuum," *European Journal of Criminology* 19, no. 4 (July 1, 2022): 542–61, https://doi.org/10.1177/1477370820904585.

[7] Sumarni Alam, "Optimalisasi Sanksi Pidana terhadap Pelanggaran Baku Mutu Lingkungan dari Limbah," *Jurnal Penelitian Hukum De Jure* 20, no. 1 (March 23, 2020): 137–51, https://doi.org/10.30641/dejure.2020.V20.137-151; Mahrus Ali and M. Arif Setiawan, "Penal Proportionality in Environmental Legislation of Indonesia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2009167, https://doi.org/10.1080/23311886.2021.2009167; Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, "Criminal Sanctions' Reformulation in the Reclamation of the Mining Community," *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 1 (June 7, 2022): 11–30, https://doi.org/10.25041/fiatjustisia.v16no1.2222; Alissa Greer et al., "The Details of Decriminalization: Designing a Non-Criminal Response to the Possession of Drugs for Personal Use," *International Journal of Drug Policy* 102 (April 1, 2022): 103605, https://doi.org/10.1016/j.drugpo.2022.103605.

[8] Sanggup Leonard Agustian, Fajar Sugianto, and Tomy Michael, "Criminalizing Corporations In Environmental Crimes :," *Rechtsidee* 7 (2020), https://doi.org/10.21070/jihr.2020.7.697; Mahrus Ali, "Kebijakan Penal Mengenai Kriminalisasi Dan Penalisasi Terhadap Korporasi (Analisis Terhadap Undang-Undang Bidang Lingkungan Hidup)," *Pandecta Research Law Journal* 15, no. 2 (September 4, 2020): 261–72, https://doi.org/10.15294/pandecta.v15i2.23833; Nur Afita and Hartiwiningsih Hartiwiningsih, "The Corporate Criminal Liability in the Management of Oil Palm Plantation Land," *Jurnal Pembaharuan Hukum* 9, no. 1 (March 2, 2022): 62–78, https://doi.org/10.26532/jph.v9i1.20492; Fiona Chan and Carole Gibbs, "When Guardians Become Offenders: Understanding Guardian Capability through the Lens of Corporate Crime*," *Criminology* 60, no. 2 (2022): 321–41, https://doi.org/10.1111/1745-9125.12300.

Result and Discussion

The Characteristics of Environmental Offenses and *Nullum Crimen* Principle

The characteristics of environmental criminal laws are the creation of hypothetical crimes involving behaviors that constitute a danger. Such actions signal legal interests prepared to be safeguarded. Furthermore, the licensing system is frequently linked to environmental crimes. By issuing permits or licenses, the authority states the specific requirements applicants must meet for their conduct not to be considered criminal offences.[9] The ruling party enforces standards demanding the execution of some acts or the non-performance of others, resulting in criminal penalties when broken. Environmental law's criminal provisions imply a standard that must be developed by authorized administrative officials,[10] indicating a sophisticated tactic. Moreover, legal professionals find it challenging to examine the many environmental law rules developed using the outlined methods. It is difficult to determine the nature and extent of the criminal provisions attributed to such provisions. Almost all environmental crimes must be sought out and created using several clauses dispersed across different laws and regulations. The difficulty of defining such crimes is increased by the wording of environmental law articles using more challenging syntax than straightforward legal terms.[11]

Illegal activities in environmental law are defined primarily based on the criteria described. It is insufficient to read the formulation of the criminal conduct in the relevant article. On the contrary, one must trace different administrative provisions dispersed throughout the laws and regulations to comprehend the criminal act. A flexible administrative requirement may also be used to determine the existence of a criminal act. Examples include Minister of Environment Regulation No. 5 of 2014 concerning Wastewater Quality Standards, Government Regulation No. 27 of 2012 regarding Environmental Permits, or Government Regulation No. 101 of 2014 regarding the Management of Hazardous and Toxic Waste.

It is impossible to isolate an environmental crime formulation from the necessity for regulators to strike a balance between environmental and human health hazards, prospective environmental losses, and citizen requests for new technologies and benefits. Creating regulations that consider environmental preservation and technological advancements is one of the challenges in laws and regulations about volatile settings. This is possible by formulating legal norms using ambiguous

[9] Michael G. Faure, "The Revolution in Environmental Criminal Law in Europe," SSRN Scholarly Paper (Rochester, NY, January 1, 2017), https://papers.ssrn.com/abstract=3372961; Federico Picinali, "The Denial of Procedural Safeguards in Trials for Regulatory Offences: A Justification," SSRN Scholarly Paper (Rochester, NY, June 10, 2016), https://papers.ssrn.com/abstract=2793682; Zachary Hoskins, "Criminalization and the Collateral Consequences of Conviction," *Criminal Law and Philosophy* 12, no. 4 (December 1, 2018): 625–39, https://doi.org/10.1007/s11572-017-9449-2; Arianne Reimerink, "Pollution in Environmental Law: Comparative Corpus Analysis," *International Journal of Lexicography* 35, no. 2 (June 1, 2022): 204–33, https://doi.org/10.1093/ijl/ecab027.

[10] Douglas Husak, "Crimes Outside the Core," *Tulsa Law Review* 39, no. 4 (2004), https://core.ac.uk/reader/232683560.

[11] D. Schaffmeister, "Perlindungan Hukum Pidana Atas Obyek-Obyek Lingkungan Hidup," in *Kekhawatiran Masa Kini : (Pemikiran Mengenai Hukum Pidana Lingkungan Dalam Teori & Praktek)*, trans. Tristam P. Moeliono (Bandung: Citra Aditya Bakti, 1994).

language, including criminal provisions regarding a standard still developed by administrative officials.[12]

The principles of *nullum crimen* are as follows no crime without the written law, no retroactive criminal law, maximum certainty, and crime by analogy. The legality concept, which may be a foundation for avoiding criminal liability, is without a doubt of enormous relevance to the individual, such as ambiguous or unimplemented legislation. The idea of this principle is the ability to depend on a lenient provision at the time of sentencing.[13] The *nullum crimen* principle, which states that only illegal actions under the law are criminal, helps ensure that the legal system is predictable. Additionally, the principle emphasizes that the individual is almost always the weaker party in the criminal process and should be protected against the judiciary's abuse of authority.[14]

Criminal law only permits courts to impose punishments when a defendant had broken a clear-cut written rule that was in place before the crime was committed. This legality norm (*nullum crimen*) has been upheld by courts using the concepts that forbid ex post facto and imprecise laws, judicially created offences and the need that penal statutes be properly construed. Furthermore, courts and commentators have assigned the principle various purposes.[15] It is intended to guarantee fair advance notice of criminal penalties and give the public some limited ability to anticipate the law interpretation by courts. Additionally, the principle is intended to prevent the abuse of discretion and ensure that the legislative branch determines legal actions. The legality concept also ensures uniformity among decision-makers in imposing criminal sanctions under comparable situations. This occurs when commentators do not necessarily list the concept as the principle's conventional objective.[16]

The *nullum crimen* principle requires that criminal acts be described clearly and not multi-interpretatively to jeopardize legal certainty. This principle appears to be violated by the flexible formulation of environmental crimes.[17] Clearly defined criminal activities also safeguard people in a way consistent with the legality principle. This implies that the criminal code shields citizens from unrestrained governmental power.[18] People cannot be criminalized entirely based on the government's wishes. Therefore, establishing a clear legal definition of a criminal

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[12] Franziska Weber, Morag Goodwin, and Michael Faure, "The Regulator's Dilemma: Caught Between the Need for Flexibility & the Demands of Foreseeability Reassessing the Lex Certa Principle," *Albany Law Journal of Science & Technology* 24, no. 3 (January 1, 2014), https://www.albanylawscitech.org/article/19236-the-regulator-s-dilemma-caught-between-the-need-for-flexibility-the-demands-of-foreseeability-reassessing-the-lex-certa-principle.

[13] Paul Robinson, "Criminal Law's Core Principles," *Washington University Jurisprudence Review*, October 14, 2021, https://scholarship.law.upenn.edu/faculty_scholarship/2251.

[14] Andrei Moise, "The 'Nullum Crimen, Nulla Poena Sine Lege' Principle and Foreseeability of the Criminal Law in the Jurisprudence of European Court of Human Rights," *Scholars International Journal of Law, Crime and Justice* 3 (July 28, 2020): 240–47, https://doi.org/10.36348/sijlcj.2020.v03i07.004.

[15] L. A. Zaibert, "Philosophical Analysis and the Criminal Law," *Buffalo Criminal Law Review* 4, no. 1 (2000): 101–38, https://doi.org/10.1525/nclr.2000.4.1.101.

[16] Corsi, "An Argument for Strict Legality in International Criminal Law."

[17] Li Li, "Nulla Poena Sine Lege in China: Rigidity or Flexibility?," SSRN Scholarly Paper (Rochester, NY, December 1, 2010), https://papers.ssrn.com/abstract=1806364.

[18] Shahram Dana, "Beyond Retroactivity to Realizing Justice: A Theory on the Principle of Legality in International Criminal Law Sentencing, 99 J. Crim. L. & Criminology 857 (2009)," UIC Law Open Access Faculty Scholarship, 2009, https://repository.law.uic.edu/facpubs/50.

offence protects individuals.[19] The design of clear environmental legislation (*lex certa*) provides legal protection and limits the discretion used by government employees, preventing unscrupulous behavior. According to Faure, policy and legislative instruments that need a high administrative capacity to implement should be avoided when capacity is weak. A law that stipulates specific guidelines has a better chance of being an effective tool than legislation that creates broad standards. Legislation containing fixed norms may be an alternative to laws that require much human capital and offer limited space for judgement, making administrative actors less susceptible to corruption.[20]

Overcoming the Dilemma between Clarity and Flexible Norms in Environmental Offenses

The legality principle that demands the clear articulation of legal rules conflicts with flexible, multifaceted, and complex environmental crimes, putting regulators in a difficult situation. Environmental crimes must be formulated flexibly to protect the environment and adapt to rapid technological developments. However, they must be defined precisely and without room for interpretation when they are to be known and understood by citizens. Violations of administrative rules, regulations, or obligations must also be expressly stated to ensure the offender knows the potential legal repercussions.[21]

The definition of environmental crimes should balance flexibility and rigor in applying the law. There are several definitions of criminal crimes in environmental law. In this case, a crime occurs based on the administrative demands or responsibilities stipulated in governmental or ministerial regulations. The first definition is assessing whether ambient air, water, or seawater quality standards or criteria for environmental damage, such as those promulgated in Articles 98 and 100, are violated. Article 98 section 1 states that any person intentionally violating this regulation shall be imprisoned for 3-10 years and fined IDR3,000,000,000-10,000,000,000. Section 2 of this Article states that in case the violation in paragraph (1) causes injury to human health, the person shall be imprisoned for 4-12 and fined IDR4,000,000,000-12,000,000,000. Moreover, section 3 states that in case the violation causes injury or death, the person shall be imprisoned for 5-15 years and fined IDR5,000,000,000-15,000,000,000. Article 100, section 1 also states that any person violating the quality standard of wastewater, emissions, or disturbances shall be imprisoned for 3 years and fined IDR3,000,000,000. These standards are further regulated in Government or Ministerial Regulations as required by Articles 20 and 21 of Environmental Protection and Management Law. However, there is no government regulation on environmental damage criteria and ambient air, water, or saltwater quality standards. A Ministerial Regulation on Emission Quality Standards

[19] Neha Jain, "Judicial Lawmaking and General Principles of Law in International Criminal Law," *Harv. Int'l L.J.*, January 1, 2016, https://scholarship.law.umn.edu/faculty_articles/476.
[20] Michael Faure, Morag Goodwin, and Franziska Weber, "Bucking the Kuznets Curve: Designing Effective Environmental Regulation in Developing Countries," *Virginia Journal of International Law* 15 (November 18, 2010): 95.
[21] Weber, Goodwin, and Faure, "The Regulator's Dilemma."

and Disturbance Quality Standards has also not been created. Therefore, Ministerial Regulation No. 5 of 2014 exclusively governs Wastewater Quality Standards.

The second definition is establishing the requirements for disseminating genetically modified products in environmental media. This aims to prevent the violation of government regulation No. 21 of 2005 addressing the Biosafety of Genetically Modified Products or No. 27 of 2012 regarding Environmental Permits in Articles 101 and 41 of the Environmental Law. The third definition is to violate Article 102 by performing unauthorized B3 waste management. Government Regulation No. 101 of 2014 concerning the Management of Hazardous and Toxic Waste is referenced in the procedure for managing B3 waste in Articles 58 and 59 of the Environmental Law. The fourth definition is to violate Article 104 by dumping waste deposits or materials into environmental media. The steps and prerequisites for disposing waste or materials are outlined in Article 61 of the Environmental Law. The fifth definition is to conduct operations or activities violating Article 109 without an environmental permit. In this context, the term environmental licenses refer to Government Regulation No. 27 of 2012. According to Article 12 of the Law concerning the Establishment of Laws and Regulations, the government regulation contains information for implementing the law as required. A government or ministerial regulation determines the presence or absence of criminal acts in Environmental Law. Proper law application means creating a government regulation to implement the Act's commands. Also, it refers to implementing the Law to the appropriate amount based on the relevant law.

Jimly stated that more intricate regulatory frameworks are required to implement the Act's requirements. The president must unquestionably be allowed to be innovative in executing the law. In this case, the President must possess the flexibility to self-regulate the policies to be established. This wiggle-room-related idea is known as *frijs ermessen* in the context of state administrative law. The president is free to set standards for the policy guidelines required to implement the law. Furthermore, the government functions slowly and tightly or becomes a lame-duck administration that cannot effectively work to improve public services and welfare. This applies when the government is too strictly constrained besides what has been normatively set by law.[22] Administrative officials are permitted to determine the presence or absence of criminal conduct regarding environmental deliberations when a government regulation has not been made. Determining a violation in Articles 98, 99, and 100 of Environmental Law refers to Government Regulation. However, the Environmental Law has no Regulation on the standard criteria for environmental damage or for exceeding ambient air, water, or seawater quality standards. This means administrative officials have the discretion to decide whether a particular act meets the criteria for a criminal offence.

Discretion refers to the freedom to decide, and the term '*freises ermessen'* originates in the German administrative law environment. The German word '*freies*', which means free man, derives from '*freie'*, meaning 'free' and 'unbound'. Ermessen refers to considering, judging, suspecting, and deciding. According to the *freies ermessen* epistemology, a person is free, independent, and unattached when speculating, passing judgement, and considering a decision.[23] Discretion allows state employees

[22] Jimly Asshiddiqie, *Konstitusi & konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2017).
[23] S. F. Marbun, "Hukum Administrasi Negara I," *Fakultas Hukum UII Press, Yogyakarta*, 2012.

or administrative bodies to act without being constrained by the law (Ridwan 2018). In this regard, Hadjon stated that the two authorities included in free or discretionary power are making independent decisions and interpreting ambiguous legal norms. There is a hazy standard (*leemten in het recht*), an open standard (open texture), or one that allows the government entity to carry out its obligations. Therefore, discretion is utilized to carry out public tasks by applying administrative law.[24]

Administrative officials are given the discretionary power to judge whether an act satisfies the non-criminal definition in Articles 99, 98, and 100 of the Environmental Law. The establishment of government regulation on the criteria for environmental damage or exceeding ambient air, water, or seawater quality standards is included in unregulated government affairs (*leemten in het recht*). Therefore, the question is whether the judgement of an environmental crime violates the *lex certa* principle. This study showed that the administrative authorities' discretionary power to decide whether an environmental offence has occurred must consider two requirements. The requirements are that officials cannot act arbitrarily or abuse their power. Therefore, these two criteria are used to evaluate the legality of discretionary activities of officials or governmental bodies.

The initial term for arbitrary or irrational behavior was willekeur, known as *kennelijke on redelijke*. Unreasonability relates to the idea that a judgement is considered unreasonable when it departs significantly from logic. Arbitrary actions occur when the government disregards interests and acts without respect for logic to satisfy demands.[25] This concept is connected to the rationality principle when arbitrarily tied to the illogical conduct of government agents or organs. Government employees or organs are prohibited from making cruel, dishonourable, or immoral decisions contrary to logic or morality. In this case, they are considered to have taken an arbitrary action. The principle of proportionality is linked to the necessity for government officials to parameterize rationality. Therefore, rational discretion needs to be proportionate. A balance between interests or goals is proportionality, which embodies knowledge of the causal chain between cause and effect. In this regard, proportionality and rights, punishment, and administrative justice require using proportionality.[26] The state administrative law prohibits the abuse of authority granted to a body or an administrative official. This authority must always be accompanied by the purpose and intent of its granting, and its use should be consistent with those goals. When people use their authority contrary to the intended reason, they are considered to have abused their position (Brett, 2021.).

Administrative officials are constrained by these two criteria when evaluating environmental crimes, meaning the legality principle holds. Article 15 of Law on the Establishment of Laws and Regulations states that the essential components of a criminal act are specified in the law. Technical issues are regulated in government regulations to ensure that criminal acts are properly comprehended. When the law governs these issues, it becomes difficult to adjust environmental laws to societal changes and the quick advancement of science and technology. Since it takes a while

[24] Philipus M. Hadjon et al., *Hukum Administrasi dan Tindak Pidana Korupsi* (Yogyakarta: Gadjah Mada University Press, 2011).
[25] Ridwan HR, *Hukum Administrasi Negara* (Depok: Rajawali Pers, 2018).
[26] Hadjon et al., *Hukum Administrasi dan Tindak Pidana Korupsi*.

to change a law, including technical provisions impedes enforcing and adjusting environmental laws to new scientific and technological advancements. These technical issues have not been addressed by government regulation. However, government officials judgments must be reasonable and proportionate for the arguments to be understandable (Kurniawaty, 2016.; Darumurti, 2016). This ensures that the legality lex certa principle remains intact.

The concept of legality has changed in recent years, resulting in the claim that the written law is unambiguous and plain. The legal provision lacks specificity or clarity, and it is not always ambiguous, causing doubts and uncertainties better explained by science. Moreover, a legal norm's clarity or truth is defined by how it is written in the law and the underlying justice principle (Arief, 2015a, 2015b). The offences in environmental law could be defined in ambiguous and flexible terms, provided they are founded in science and include justice. It is acceptable as long as the offences still represent the clarity of standards (*lex certa*).[27]

This study showed that a proper way to formulate environmental offences that balance normative flexibility and clarity is by putting a criminal offence in legislation and leaving technical issues to the government or other regulations. Administrative officials are given discretionary authority to judge the existence or absence of criminal acts based on these technical considerations. However, this must be reasonable and proportionate and not violate the principle of specialization. The power must reflect the clarity of norms, which implies the principle of legal certainty. Science would make a formulation that brings clarity to the current vagueness. In this case, the clarity depends on the underlying justice and how it is expressed in a statute.[28]

Conclusion

The principle of legality in criminal law requires the formulation of criminalized acts to be precise, strict, and free from multiple interpretations. This principle cannot be rigidly defended regarding formulating dynamic and environmental crimes that require flexibility. The clarity of the standard refers to the underlying justice-based principle rather than being restricted to the word choice only being understood in one way. Furthermore, administrative authorities are granted the freedom to reasonably and proportionately interpret legal requirements with no provisions in government regulations. This study was limited to finding the formula that helps define environmental crimes while bridging the gap between rigid and flexible norms. Therefore, future studies could investigate how law enforcement officials interpret environmental crimes whose evidence rests on administrative requirements or duties that must be included in government regulations.

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[28] Douglas Husak, "Willful Ignorance, Knowledge, and the 'Equal Culpability' Thesis: A Study of the Deeper Significance of the Principle of Legality," in *The Philosophy of Criminal Law: Selected Essays*, ed. Douglas Husak (Oxford University Press, 2010), 0, https://doi.org/10.1093/acprof:oso/9780199585038.003.0009.

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