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Ecological Corruption and the Tyranny of Positive Law: A Rawlsian Analysis of Corporate Land-Burning Impunity

Augustha Kwanzaa Rich Samuel Simbolon[1], Christian Joseph Silaban[2]
[1,2] Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia
Corresponding email: 2310611402@mahasiswa.upnvj.ac.id

Abstract: *The impunity enjoyed by land-burning corporations in Indonesia is not merely a technical failure of enforcement but a structural injustice legitimized by positive law itself. Using normative-juridical research with statutory, case, and conceptual approaches, this article reads recurrent forest and land fires through the lens of ecological corruption and John Rawls's justice as fairness. It argues that (1) recurrent fires in corporate concessions can be construed as ecological corruption because land-clearing costs are externalized onto the public and ecosystems; (2) positive law operates as a legalistic tyranny through the dilution of strict liability after the Job Creation Law amended Article 88 of Law No. 32 of 2009, administrative sanctions treated as a cost of doing business, and outcomes disproportionate to ecological harm; and (3) parties behind the veil of ignorance would reject such rules because they conflict with equal liberty, the difference principle, fair equality of opportunity, and the just savings principle. The novelty of the article lies in using Rawls's theory of justice, which none of the studies reviewed applies to this problem, as a test of corporate land-burning impunity. The article recommends restoring strict liability, proportionate corporate sanctions under the new Criminal Code, permit revocation for repeat offenders, and stronger access to justice for victims.*

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INTRODUCTION

Forest and land fires (*karhutla*) in Indonesia have changed from a seasonal event into a chronic problem that recurs in the same places.[1] Greenpeace estimates that the area burned in 2023 was at least 2.13 million hectares, almost double the official figure of 1.16 million hectares reported by the Ministry of Environment and Forestry.[2] Around 60 percent of that burned area had already burned in 2015–2022.[3] Walhi recorded that most hotspots between January and September 2023 lay inside the concessions of 194 companies, about 38 of which had also experienced fires in 2015–2020.[4] A similar pattern continued in 2026: an opinion piece by a Senior Campaigner at Pantau Gambut cited 52,317 hotspots in Cultivation Rights (*Hak Guna Usaha*) areas and 10,576 hotspots in Forest Utilization Business Permit (*Perizinan Berusaha Pemanfaatan Hutan*) areas between January and August 2026.[5]

Repeated fires in concessions have not been followed by commensurate accountability. LBH Palangkaraya recalls that three companies were investigated after the 2015 fires, but the cases were later closed.[6] In the case of PT Kumai Sentosa, whose concession burned over 2,358 hectares, the Pangkalan

[1]Greenpeace Southeast Asia, "Report: Indonesia's Chronic Forest Fires – 2023," October 21, 2024, https://www.greenpeace.org/southeastasia/publication/66509/report-indonesias-chronic-forest-fires-2023/.
[2]Greenpeace Southeast Asia, "Chronic Forest Fires."
[3]Greenpeace Southeast Asia, "Chronic Forest Fires."
[4]Sapariah Saturi and Budi Baskoro, "Kala Organisasi Lingkungan Laporkan Kasus Kebakaran Hutan dan Lahan di Konsesi Perusahaan" [When Environmental Organizations Report Forest and Land Fires in Corporate Concessions], *Mongabay Indonesia*, October 29, 2023, https://mongabay.co.id/2023/10/29/kala-organisasi-lingkungan-laporkan-kasus-kebakaran-hutan-dan-lahan-di-konsesi-perusahaan/.
[5]Putra Saptian Pratama, "Balada Korek Api dalam Penegakan Hukum Karhutla" [The Ballad of the Matchstick in Forest-Fire Law Enforcement], *Katadata*, September 16, 2026, https://katadata.co.id/indepth/opini/6aa8a03582d3d/balada-korek-api-dalam-penegakan-hukum-karhutla.
[6]Saturi and Baskoro, "Kala Organisasi Lingkungan."

Bun District Court acquitted the corporation of the criminal charges on February 17, 2021, in Decision No. 233/Pid.B/LH/2020/PN.Pbu.[7] Accountability was established only through the civil track, when the Supreme Court rejected the judicial review petitions of both companies in Decision No. 297 PK/Pdt/2024 and upheld damages of IDR 175,179,930,000 together with environmental restoration.[8] In a public dialogue at the Gadjah Mada University (UGM) Faculty of Law in September 2026, speakers noted that companies sanctioned in 2019 and 2023 reappeared in fire cases.[9] A study of PT Bumi Mekar Hijau likewise found that initial administrative sanctions were weak as a deterrent because the company often treated them as an operating cost.[10]

This pattern cannot be understood merely as a technical weakness in proving cases. Pantau Gambut argues that the asymmetry in forest-fire law enforcement arises from unequal power relations rather than from technical limits on proof.[11] Burning is also assessed as a rational business choice because clearing land with heavy equipment is far more expensive.[12] The gap between damage and punishment is also visible in the tin trading corruption case, in which the Financial and Development Supervisory Agency (BPKP) calculated environmental damage and restoration costs of IDR 271.07 trillion,[13] whereas the first-instance sentence against Harvey Moeis was only 6.5 years' imprisonment and was criticized by Walhi as disproportionate to the environmental damage.[14] On the normative side, the amendment of Article 88 of Law No. 32 of 2009 by the Job Creation Law removed the phrase that relieved plaintiffs from proving fault, making proof of fault more difficult.[15]

On the basis of these symptoms, this article proposes two analytical concepts. *Ecological corruption* is understood as the abuse of power over licensing, supervision, and law enforcement that shifts the costs of environmental damage from business actors to the public and ecosystems. *The tyranny of positive law* is understood as a condition in which formally valid law protects the powerful through evidentiary requirements, procedures, and sanctions that are disproportionate to the damage. Both concepts are the authors' analytical tools, not standard terms in legislation.

John Rawls's theory of justice is chosen because it tests justice at the level of the basic structure of society—the main institutions that distribute rights, duties, and the fruits of social cooperation—rather than mere compliance with rules.[16] Rawls originally stated that justice as fairness did not cover environmental considerations, but Lennie shows, through a more generous reading, that Rawlsian justice is in fact closely tied to environmental justice.[17] Töns uses Rawls to formulate a vision of sustainable and socially just governance,[18] while Darmawan uses it to assess unequal legal treatment and elite impunity in Indonesia.[19]

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[7]Andy Narto Siltor, "Strict Liability Korporasi atas Kegiatan Usaha" [Corporate Strict Liability for Business Activities], *MARINews Mahkamah Agung*, June 30, 2025, https://marinews.mahkamahagung.go.id/putusan/strict-liability-korporasi-atas-kegiatan-usaha-0mK.
[8]Siltor, "Strict Liability Korporasi."
[9]"Karhutla Terus Berulang, Akademisi UGM Desak Evaluasi Sistemik dan Penegakan Hukum" [Forest Fires Keep Recurring, UGM Academics Urge Systemic Evaluation and Law Enforcement], *Universitas Gadjah Mada*, September 7, 2026, https://ugm.ac.id/?p=97305.
[10]Rianingsi Adiratna Pansariang and Jamie Jorgan Sembiring, "Mekanisme Pengawasan Sanksi Administratif Pelanggaran Hukum Internasional Fenomena Karhutla PT. Bumi Mekar Hijau" [Supervision Mechanism for Administrative Sanctions for Violations of International Law in the Forest-Fire Phenomenon of PT Bumi Mekar Hijau], *Unes Journal of Swara Justisia* 10, no. 1 (2026), https://doi.org/10.31933/wwahha57.
[11]Pratama, "Balada Korek Api."
[12]Pratama, "Balada Korek Api."
[13]Irfan Maulana, "Vonis Ringan Korupsi Timah Harvey Moeis Cs, Tak Sebanding dengan Kerusakan Lingkungan" [Light Sentences for Harvey Moeis et al. in the Tin Corruption Case Are Not Proportionate to the Environmental Damage], *Mongabay Indonesia*, December 30, 2024, https://mongabay.co.id/2024/12/30/vonis-ringan-korupsi-timah-harvey-moeis-cs-tak-sebanding-dengan-kerusakan-lingkungan/.
[14]Maulana, "Vonis Ringan Korupsi Timah."
[15]Tri Suhendra Arbani, "Asas Pertanggungjawaban Mutlak (*Strict Liability*) atas Kerusakan Lingkungan Pasca Undang-Undang Cipta Kerja" [The Principle of Strict Liability for Environmental Damage after the Job Creation Law], *Jurnal Al-Ḥadārah Al-Islāmiyah* (April 2022), https://journal.uin-alauddin.ac.id/index.php/alhadarah/article/view/34342.
[16]John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), §§2–3.
[17]Tyra Lennie, "Rawlsian Anti-Capitalist Environmental Justice," *Ethics, Politics, and Society* 6, no. 2 (2024): 22–49.
[18]John Töns, *John Rawls and Environmental Justice: Implementing a Sustainable and Socially Just Future* (London: Routledge, 2022).
[19]Dio Dera Darmawan, "Teori Keadilan John Rawls dalam Reformasi Penegakan Hukum di Indonesia" [John Rawls's Theory of Justice in Law Enforcement Reform in Indonesia], *Dandapala*, July 18, 2025, https://dandapala.com/article/detail/teori-keadilan-john-rawls-dalam-reformasi-penegakan-hukum-di-indonesia.

Previous studies have addressed parts of this problem. Wardhany discusses corporate criminal liability in forest fires in Jambi, together with corporate liability systems and restorative settlement.[20] Arbani examines the diminished meaning of strict liability after the Job Creation Law.[21] Pansariang and Sembiring examine the supervision of administrative sanctions in the PT Bumi Mekar Hijau case.[22] None of them uses Rawls's theory of justice as a test of the impunity of land-burning corporations; this is the contribution of the present article.

This article therefore asks three questions: (1) how can recurrent fires in corporate concessions be construed as ecological corruption; (2) how does Indonesian positive law perpetuate the impunity of land-burning corporations, such that it may be called the tyranny of positive law; and (3) how does Rawls's theory of justice assess and reconstruct that impunity. Its objectives are to construct ecological corruption as an analytical framework for fires in corporate concessions, to dissect how norms, proof, and sanctions in positive law produce impunity, and to test that impunity against the original position, the veil of ignorance, the two principles of justice, and the just savings principle, and then to formulate a just reconstruction. The article proceeds as follows: Section B explains the method; Section C sets out the theoretical framework, the analysis of ecological corruption and of the tyranny of positive law, the Rawlsian test, and the reconstruction; and Section D concludes.

METHOD

This is normative-juridical legal research that treats law both as written norms and as practice visible in court decisions and enforcement policy. It is descriptive-prescriptive: it describes how norms work, then assesses them and formulates improvements using a Rawlsian standard of justice.

The statutory approach is used to examine constitutional provisions on the environment,[23] the prohibition on burning land and criminal liability under the Environmental Law,[24] the responsibility of permit holders for fires in their work areas under the Forestry Law,[25] and corporate criminal liability under the National Criminal Code.[26] The case approach is used to read the PT Kumai Sentosa case,[27] the PT Bumi Mekar Hijau case,[28] and the tin trading corruption case as a comparator on the value of environmental damage in corruption cases.[29] The conceptual approach is used to build the concepts of ecological corruption and the tyranny of positive law and to articulate Rawls's theory of justice.

Primary legal materials consist of statutes and regulations. Secondary legal materials consist of journal articles, books, civil society organization reports, and media publications. All secondary sources are limited to the last five years (2021–2026); the only exception is Rawls's primary text, *A Theory of Justice*, which is needed as the authoritative source of his theory. The authors acknowledge three limitations. First, data on the area and location of fires come from civil society reports and news coverage and have not been independently verified. Second, court decisions are read through the Supreme Court's official publication summaries rather than complete copies of the decisions. Third, figures quoted from opinion pieces or public dialogues are treated as the claims of the speakers, not as tested facts.

[20]Nyimas Enny Fitriya Wardhany, "Pertanggungjawaban Pidana Korporasi dalam Kebakaran Hutan yang Menyebabkan Kerusakan Lingkungan" [Corporate Criminal Liability in Forest Fires Causing Environmental Damage], *Legalitas: Jurnal Hukum* 14, no. 1 (2022): 177–86, https://doi.org/10.33087/legalitas.v14i1.326.
[21]Arbani, "Asas Pertanggungjawaban Mutlak."
[22]Pansariang and Sembiring, "Mekanisme Pengawasan."
[23]Constitution of the Republic of Indonesia of 1945, Article 28H(1) and Article 33(4).
[24]Law No. 32 of 2009 on Environmental Protection and Management (Environmental Law), Articles 69(1)(h), 98, 99, and 116.
[25]Law No. 41 of 1999 on Forestry (Forestry Law), Article 49.
[26]Law No. 1 of 2023 on the Criminal Code (National Criminal Code), Articles 45–50.
[27]Siltor, "Strict Liability Korporasi."
[28]Pansariang and Sembiring, "Mekanisme Pengawasan."
[29]Maulana, "Vonis Ringan Korupsi Timah."

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The analysis is qualitative and proceeds in three steps: (1) construing corporate forest and land fires as ecological corruption; (2) dissecting positive-law norms and practice to show the mechanisms of impunity; and (3) testing the results against the original position, the two principles of justice, the principle of the rule of law, and the just savings principle, and then formulating a reconstruction.

RESULT AND DISCUSSION

Theoretical and Conceptual Framework

a. Ecological Corruption as an Analytical Concept

This article uses corruption in a broad sense, namely the abuse of entrusted power for private gain at the expense of the public interest. In the environmental context, that power includes the authority to grant permits, supervise concessions, and enforce the law. Ecological corruption has three features: power over space and licensing is abused or left unexercised; perpetrators obtain private gain from cost savings; and the costs of damage are shifted onto the public, ecosystems, and future generations. These three features are the authors' analytical construct.

This concept does not mean that every forest fire is automatically a criminal act of corruption under the anti-corruption statute. Fires in concessions are generally processed under the Environmental Law, whereas the tin case shows that environmental damage can be counted as part of state losses in a corruption case.[30] The concept of ecological corruption functions here as a lens for seeing structural patterns, not as a criminal qualification.

b. Justice as Fairness

For Rawls, justice is the first virtue of social institutions, so laws and institutions, however efficient and well arranged, must be reformed or abolished if they are unjust.[31] The primary subject of justice is the basic structure of society, that is, the way the major social institutions distribute fundamental rights and duties and the fruits of social cooperation.[32]

To test principles of justice, Rawls uses the original position, a hypothetical situation in which the parties choose principles of justice under conditions of equality and fairness.[33] The parties stand behind a veil of ignorance: they do not know their place, class, social status, or natural fortune, nor their conception of the good.[34] Under such conditions, rational parties tend to choose rules that protect the worst-off position, because they cannot gamble on not being among those who are harmed.[35]

The outcome of that choice is two principles. The first guarantees an equal right to the most extensive set of basic liberties compatible with a similar liberty for all.[36] The second permits social and economic inequalities only if they (a) are to the greatest benefit of the least advantaged and (b) are attached to offices and positions open to all under conditions of fair equality of opportunity.[37] Part (a) is known as the difference principle. The first principle has priority over the second.[38]

Rawls also distinguishes formal justice from substantive justice. Formal justice means impartial and consistent administration of law and institutions, whatever their substantive principles.[39] The principle of the rule of law demands clear and public rules, like treatment of like cases, and legal processes that guarantee reasonable opportunities for the parties to a dispute.[40] Finally, the just savings

[30]Maulana, "Vonis Ringan Korupsi Timah."
[31]Rawls, *A Theory of Justice*, §1.
[32]Rawls, *A Theory of Justice*, §2.
[33]Rawls, *A Theory of Justice*, §3.
[34]Rawls, *A Theory of Justice*, §24.
[35]Rawls, *A Theory of Justice*, §26.
[36]Rawls, *A Theory of Justice*, §§11, 46.
[37]Rawls, *A Theory of Justice*, §§11, 13, 46.
[38]Rawls, *A Theory of Justice*, §46.
[39]Rawls, *A Theory of Justice*, §10.
[40]Rawls, *A Theory of Justice*, §38.

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principle obliges each generation to set aside real capital for the next so that just institutions can be maintained.[41]

c. Rawls and Environmental Justice

Rawls's theory was not designed to resolve environmental problems. Lennie notes that in the first edition of *A Theory of Justice*, Rawls stated that justice as fairness could not cover considerations about the environment and nonhuman animals, and then shows that this claim conflicts with the idea of a well-ordered society that ignores nature.[42] Through a more generous reading that draws on an anti-capitalist and environmental justice framework, Lennie concludes that a well-ordered Rawlsian society must be committed to environmental justice.[43] Töns, for his part, argues that sustainable development raises problems—such as ecological interdependence, historical inequalities in resource use, and limits to growth—that conventional theories of justice handle poorly, and develops his answer from within Rawls's framework.[44]

This article follows that expansive reading while remaining aware of its limits. Rawls himself did not include the environment as an object of the principles of justice, so the application here is constructive: ecological damage is assessed through its effects on the liberties, opportunities, and welfare of citizens and later generations, which do fall within the reach of Rawls's theory. Darmawan also warns that Rawls's theory has been criticized as too ideal by Sandel, as insufficiently radical by Cohen, and as neglecting global distributive justice by Pogge, so it cannot answer all the challenges of law enforcement alone.[45]

d. The Tyranny of Positive Law

Positive law is law that is valid because it has been enacted by a competent authority. The tyranny of positive law, as used in this article, does not mean that positive law is itself tyrannical; it means a condition in which the formal validity of rules and procedures is treated as sufficient reason to accept substantively unjust outcomes. Rawls's distinction between formal and substantive justice provides the basis for this concept: consistency in applying rules does not guarantee justice if the rules themselves are unjust.[46] Darmawan is consistent with this in stressing the need for substantive, not merely procedural, justice in Indonesian law enforcement.[47]

Forest and Land Fires in Concessions as Ecological Corruption

a. Permitting Power Left Unexercised

The first feature of ecological corruption is that power over space and licensing is abused or left unexercised. Walhi's data show that the 2023 hotspots were concentrated in the concessions of 194 companies, about 38 of which also burned in 2015–2020.[48] Walhi therefore demands that the government act not only when fires appear but also evaluate permits, revoke licenses, impose criminal sanctions, and blacklist companies that burn repeatedly.[49] Greenpeace adds that about 60 percent of the area burned in 2023 had burned before, so the fires were chronic rather than single incidents.[50]

Normatively, permit holders are not in a neutral position. The Forestry Law places responsibility for forest fires in the work area on the permit holder,[51] and the Environmental Law prohibits clearing land by burning.[52] If fires continue to occur in the same work area without permit

[41]Rawls, *A Theory of Justice*, §44.
[42]Lennie, "Rawlsian Anti-Capitalist Environmental Justice."
[43]Lennie, "Rawlsian Anti-Capitalist Environmental Justice."
[44]Töns, *John Rawls and Environmental Justice*.
[45]Darmawan, "Teori Keadilan John Rawls."
[46]Rawls, *A Theory of Justice*, §§1, 10.
[47]Darmawan, "Teori Keadilan John Rawls."
[48]Saturi and Baskoro, "Kala Organisasi Lingkungan."
[49]Saturi and Baskoro, "Kala Organisasi Lingkungan."
[50]Greenpeace Southeast Asia, "Chronic Forest Fires."
[51]Forestry Law, Article 49.
[52]Environmental Law, Article 69(1)(h).

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revocation, that failure is not only the corporation's failure but also the state's failure to use its licensing power.

This structured omission (*deliberate omission*) makes clear that the relationship between corporations and the state has shifted from mere administrative negligence to a form of passive collusion (*implicit collusion*). From the corporation's perspective, the decision not to allocate budget for fire-prevention infrastructure such as canal blocks or watchtowers is a form of cost cutting that gives it an illicit financial benefit (*unjust enrichment*). Corporations deliberately allow land to burn for the sake of land-clearing cost efficiency, then shift the entire burden of ecological damage and public health impacts onto society and the state.

b. Private Gain from Cost Savings

The second feature is private gain. Pratama describes burning as a rational business choice because clearing land with heavy equipment is far more expensive, and because the drainage and canalization of peat make land prone to burning.[53] He cites a 2025 Pantau Gambut study that recorded a canal network in Sumatra, Kalimantan, and Papua totaling 281,253.51 kilometers.[54] In such a calculation, fire risk is a cost variable, and weak law lowers the price of that risk. Pansariang and Sembiring reach a consistent finding: the initial administrative sanctions against PT Bumi Mekar Hijau were weak as a deterrent and were often treated by the company as an operating cost.[55]

c. Costs Shifted onto the Public

The third feature is cost shifting. Greenpeace estimates that about 599,000 hectares of peatland burned in 2023, releasing about 553 million tons of CO_2e.[56] About 28 percent of the area burned in 2023 lay in 211 Peat Hydrological Units (*Kesatuan Hidrologis Gambut*) in seven provinces that had already been prioritized for restoration.[57] The direct impacts on residents include health problems such as respiratory infections, haze, and flight disruptions, as noted in a study of forest fires in Jambi.[58] Because smoke crosses national borders, the problem also touches on state responsibility under the principle of *sic utere tuo ut alienum non laedas* and the due diligence obligation in the ASEAN Agreement on Transboundary Haze Pollution.[59]

The scale of cost shifting is clear in the tin case. BPKP calculated environmental damage and restoration costs from the mining at IDR 271.07 trillion, consisting of environmental loss costs of IDR 183.703 trillion, environmental economic loss of IDR 74.493 trillion, and restoration costs of IDR 12.157 trillion.[60] This case is not a forest fire case, but it shows two things: ecological damage can be quantified as public loss, and the amount can far exceed the punishment imposed on the perpetrators.[61]

Thus the three features of ecological corruption are satisfied as a pattern: permits are left unexercised, profits are enjoyed by business actors, and costs are borne by the public. The defense that the El Niño phenomenon caused the fires is also weak, because a speaker in the UGM dialogue rejected El Niño as a justification for corporations on the ground that the phenomenon is predictable.[62]

[53]Pratama, "Balada Korek Api."
[54]Pratama, "Balada Korek Api."
[55]Pansariang and Sembiring, "Mekanisme Pengawasan."
[56]Greenpeace Southeast Asia, "Chronic Forest Fires."
[57]Greenpeace Southeast Asia, "Chronic Forest Fires."
[58]Wardhany, "Pertanggungjawaban Pidana Korporasi."
[59]Pansariang and Sembiring, "Mekanisme Pengawasan."
[60]Maulana, "Vonis Ringan Korupsi Timah."
[61]Maulana, "Vonis Ringan Korupsi Timah."
[62]"Karhutla Terus Berulang."

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The Tyranny of Positive Law in Corporate Impunity

a. A Weakened Norm: The Shift in Article 88 of the Environmental Law

Before the amendment, Article 88 of the Environmental Law provided for strict liability without the need to prove fault.[63] The article applied to activities that use hazardous and toxic materials or pose a serious threat to the environment.[64] Arbani shows that the Job Creation Law removed the phrase that dispensed with proof of fault.[65] As a result, according to Arbani, victims and the state must again prove fault, even though such proof is difficult because of technological complexity, and environmental law enforcement may revert to old patterns.[66] The provision now in force is contained in the law that enacted the Job Creation Government Regulation in Lieu of Law as a statute.[67]

Arbani also notes that this change occurred amid the involvement of business interests in drafting the law, and that Indonesia narrowed the scope of strict liability just as the United States expanded it.[68] Within the framework of the tyranny of positive law, this change matters because loss is shifted through procedural law and the burden of proof, not through open rejection of environmental protection. The law is formally valid, but its effect favors the party best able to bear the cost of proof.

b. Unequal Proof: Two Tracks in the PT Kumai Sentosa Case

The PT Kumai Sentosa case shows two legal tracks that ended differently. On the criminal track, the Pangkalan Bun District Court acquitted the corporation on February 17, 2021.[69] On the civil track, the Supreme Court, in Decision No. 297 PK/Pdt/2024, rejected the judicial review petitions of both companies and upheld the decision ordering damages of IDR 175,179,930,000 to be paid to the state treasury, along with environmental restoration for a fire covering 2,358 hectares.[70]

The reasoning reported by MARINews is philosophically relevant. Civil liability arose without proof of fault; only loss and causation were required.[71] The criminal acquittal of the corporation did not bar civil liability.[72] The high environmental risk of the business justified imposing liability, and the corporation was found inadequate in extinguishing the fire in its concession.[73] The case is also evidence that strict liability can still be enforced by the judiciary; the problem is the inconsistency between the criminal and civil tracks and the long interval between the 2021 criminal acquittal and the final decision of 2024, which was only published in 2025.[74]

c. Sanctions as a Cost of Doing Business and Corporations That Change Faces

Hendry Julian Noor, in the UGM dialogue, observed that law enforcement more often targets individuals, while administrative sanctions against corporations are not yet firm, and proposed permit revocation as a more effective instrument.[75] Karina Dwi Nugrahati Putri observed that corporations can appoint certain parties as formally responsible persons so that operations continue, and that companies sanctioned in 2019 and 2023 reappeared in fire cases.[76] Wahyu Yun Santoso assessed that the execution of environmental damages decisions, including the principle of strict liability, is not yet optimal, and proposed blacklisting accompanied by mechanisms to prevent companies from escaping through new business entities.[77] Pansariang and Sembiring add that supervisory obstacles include limited personnel,

[63]Arbani, "Asas Pertanggungjawaban Mutlak."
[64]Environmental Law, Article 88.
[65]Arbani, "Asas Pertanggungjawaban Mutlak."
[66]Arbani, "Asas Pertanggungjawaban Mutlak."
[67]Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (Job Creation Law).
[68]Arbani, "Asas Pertanggungjawaban Mutlak."
[69]Siltor, "Strict Liability Korporasi."
[70]Siltor, "Strict Liability Korporasi."
[71]Siltor, "Strict Liability Korporasi."
[72]Siltor, "Strict Liability Korporasi."
[73]Siltor, "Strict Liability Korporasi."
[74]Siltor, "Strict Liability Korporasi."
[75]"Karhutla Terus Berulang."
[76]"Karhutla Terus Berulang."
[77]"Karhutla Terus Berulang."

budget, and technology, slow inter-agency coordination, and the difficulty of converting administrative findings into convincing evidence in court.[78] In the PT Bumi Mekar Hijau case, the Palembang District Court initially doubted the evidence of loss submitted by the Ministry of Environment and Forestry.[79]

Pratama describes this asymmetry as the result of unequal power relations: enforcement targets field perpetrators and simple tools, while corporations and permit issuers escape, and local communities become targets because they cannot afford legal counsel.[80] He observes that corporations are often acquitted or subject only to minor administrative sanctions, although he does not cite particular decisions.[81] As an opinion claim, this statement needs to be tested through more systematic study of decisions, but it is consistent with the other findings above.

d. Opportunities in the National Criminal Code

The National Criminal Code opens room for improvement. Corporate criminal liability is regulated in Articles 45–50 of Law No. 1 of 2023.[82] Corporate subjects include limited liability companies, foundations, cooperatives, state- or regionally owned enterprises, associations, and business entities in the form of firms or limited partnerships.[83] According to Topo Santoso, liability can extend beyond formal management to those who give orders, corporate controllers, and beneficial owners, even outside the formal corporate structure.[84] This provision is important for addressing the problem of puppet directors raised in the UGM dialogue.[85] How these provisions will be applied in forest-fire cases cannot yet be assessed from the materials used in this article, so they are regarded as an opportunity, not as evidence of improvement.

Thus the tyranny of positive law in the context of forest fires operates through four mechanisms: an aggravated burden of proof, two enforcement tracks that are out of step, administrative sanctions treated as a cost of doing business, and enforcement targets that are easier to reach among individuals than among corporations and beneficial owners. All four are formally valid, but their results protect the powerful.

Rawlsian Analysis of Impunity and the Reconstruction of Justice

a. The Original Position and the Veil of Ignorance

Imagine parties designing rules of liability for land fires without knowing whether they will later be concession owners, plantation workers, smallholders, villagers on the edge of peatland, or children of future generations.[86] Because they do not know their position, they would not agree to bear the risk of becoming victims of smoke or defendants unable to pay for a defense lawyer.[87] Rules that aggravate the proof of corporate fault, allow sanctions to become a cost of doing business, and leave enforcement to field perpetrators would be rejected, because they would fall on the weakest if the parties found themselves in that position.[88]

Moreover, corporations are not parties in the original position. The parties are persons with interests and life plans, and institutions are assessed only by their effects on those persons through the basic structure.[89] Corporate interests therefore deserve protection insofar as they accord with the

[78]Pansariang and Sembiring, "Mekanisme Pengawasan."
[79]Pansariang and Sembiring, "Mekanisme Pengawasan."
[80]Pratama, "Balada Korek Api."
[81]Pratama, "Balada Korek Api."
[82]Ady Thea DA, "Mengurai *Actus Reus* dan *Mens Rea* Pidana Korporasi dalam KUHP Nasional" [Unpacking *Actus Reus* and *Mens Rea* of Corporate Crime in the National Criminal Code], *Hukumonline*, April 6, 2023, https://www.hukumonline.com/berita/a/mengurai-actus-reus-dan-mens-rea-pidana-korporasi-dalam-kuhp-nasional-lt642ee304b78ff/.
[83]Ady Thea DA, "Mengurai *Actus Reus* dan *Mens Rea*."
[84]Ady Thea DA, "Mengurai *Actus Reus* dan *Mens Rea*."
[85]"Karhutla Terus Berulang."
[86]Rawls, *A Theory of Justice*, §§3, 24.
[87]Rawls, *A Theory of Justice*, §26.
[88]Rawls, *A Theory of Justice*, §26.
[89]Rawls, *A Theory of Justice*, §§2, 3.

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principles of justice, not as interests that override them. This is not an accusation that business activity is bad; it is an affirmation that business activity sits under a just basic structure.

b. The First Principle: Equal Liberty and the Integrity of Citizens

Rawls does not list a right to the environment as a basic liberty, but the Indonesian constitution guarantees the right to a good and healthy environment and directs a sustainable and environmentally sound economy.[90] Haze pressures liberties commonly protected by the first principle because it disturbs the health, activities, and basic welfare of citizens.[91] In line with Lennie's reading, Rawlsian justice cannot be separated from the ecological conditions that sustain those liberties.[92] If the law makes the perpetrators who cause that disturbance practically immune, citizens' liberty is no longer equal, because some citizens bear the burden of smoke while others enjoy the fruits of land clearing.

The concentration of concession holders' influence over licensing and rule-making also touches on the worth of political liberty. Arbani notes the involvement of business interests in drafting the Job Creation Law,[93] while Rawls emphasizes that political liberties must have fair value for all citizens, not only for those able to exploit them.[94] In this framework, regulation that appears neutral may in fact crystallize the advantage of the more powerful party.

c. The Second Principle: The Difference Principle and Equality of Opportunity

The inequalities permitted by the second principle must benefit the least advantaged.[95] The impunity of land burners produces the opposite: cost savings are enjoyed by business actors, while health, ecological, and fiscal costs are borne by the public, including communities around peatlands.[96] Those savings also cannot be justified as an investment incentive that ultimately benefits the poor, because nothing in the materials examined in this article shows that reducing corporate liability raises the welfare of those affected.

The fair equality of opportunity component is also violated. Pratama notes that local communities become targets of enforcement because they cannot afford legal defense.[97] Unequal access to legal defense makes the standing of citizens and corporations before the law unequal. In Rawls's language, background institutions fail to maintain the equality of opportunity needed for pure procedural justice.[98]

d. The Rule of Law: Law as Prohibition, Not Price

The principle of the rule of law demands like treatment of like cases and rules that can be predicted and obeyed.[99] When companies sanctioned in 2019 and 2023 appear again in fire cases,[100] and administrative sanctions are treated as an operating cost,[101] sanctions change function from prohibition to price. In this condition the law remains in force and is applied formally, but it fails to perform its function as a system of public rules that guides behavior. This is what the authors mean by the tyranny of positive law: procedural compliance masks substantive failure.[102]

The gap between damage and punishment in the tin case confirms the same point. The first-instance judgment imposed prison sentences of 4 to 8 years on six defendants, including 6.5 years for Harvey Moeis,[103] even though the calculated environmental loss reached IDR 271.07 trillion and

[90]1945 Constitution, Article 28H(1) and Article 33(4).
[91]Wardhany, "Pertanggungjawaban Pidana Korporasi."
[92]Lennie, "Rawlsian Anti-Capitalist Environmental Justice."
[93]Arbani, "Asas Pertanggungjawaban Mutlak."
[94]Rawls, *A Theory of Justice*, §36.
[95]Rawls, *A Theory of Justice*, §§13, 46.
[96]Greenpeace Southeast Asia, "Chronic Forest Fires."
[97]Pratama, "Balada Korek Api."
[98]Rawls, *A Theory of Justice*, §§13, 14.
[99]Rawls, *A Theory of Justice*, §38.
[100]"Karhutla Terus Berulang."
[101]Pansariang and Sembiring, "Mekanisme Pengawasan."
[102]Rawls, *A Theory of Justice*, §§1, 10.
[103]Maulana, "Vonis Ringan Korupsi Timah."

disasters in Bangka Belitung were recorded at 1,084 in 2023 and 2,044 in 2024.[104] Walhi considered the sentence disproportionate and recommended that compensation and forfeited assets be allocated to environmental restoration through a special account,[105] while the Mining Advocacy Network (Jatam) highlighted the absence of Ministry of Energy and Mineral Resources leadership among the 22 defendants.[106] Proportionality is part of justice; punishment far below the damage lowers the price of ecological crime.

e. The Just Savings Principle: Intergenerational Justice

The just savings principle obliges each generation to set aside real capital for subsequent generations.[107] This article reads the principle expansively, treating peat, forests, and climate stability as part of a capital that must not be exhausted; this reading is consistent with Töns's effort to frame Rawlsian justice within sustainability.[108] The release of about 553 million tons of CO_2e from the 2023 peat fires constitutes the depletion of that ecological capital,[109] and Greenpeace assesses that peatland restoration policy remains far from effective.[110] Impunity that allows fires to recur means that the present generation is consuming capital belonging to future generations without accountability.

f. Reconstructing Justice

On the basis of the test above, this article formulates a reconstruction consistent with Rawls's principles of justice. These recommendations are the authors' proposals derived from the analysis, with several elements also raised by the sources.

1) Firmly restore strict liability. Legislators should restore the formulation of Article 88 of the Environmental Law that dispenses with proof of fault,[111] while consolidating judicial practice that already applies it, as in the PT Kumai Sentosa case.[112]
2) Make full use of the National Criminal Code against corporations and beneficial owners. Law enforcers should reach those who give orders, controllers, and beneficial owners,[113] and prevent corporations from escaping through puppet directors and new business entities.[114]
3) Change sanctions from price to prohibition. Permit revocation, blacklisting, and progressive sanctions, including dissolution for repeat offenders, should be used,[115] accompanied by real-time supervision and tiered administrative sanctions up to permit revocation.[116]
4) Open data and audit government claims. Greenpeace demands that the government fully open its data to substantiate its claims about handling the 2023 fires.[117] This openness is a condition of the publicity required by the principle of the rule of law.[118]
5) Direct enforcement outcomes toward restoration. Compensation and forfeited assets should be allocated to environmental restoration, as Walhi proposed in the tin case.[119]

[104]Maulana, "Vonis Ringan Korupsi Timah."
[105]Maulana, "Vonis Ringan Korupsi Timah."
[106]Maulana, "Vonis Ringan Korupsi Timah."
[107]Rawls, *A Theory of Justice*, §44.
[108]Töns, *John Rawls and Environmental Justice*.
[109]Greenpeace Southeast Asia, "Chronic Forest Fires."
[110]Greenpeace Southeast Asia, "Chronic Forest Fires."
[111]Arbani, "Asas Pertanggungjawaban Mutlak."
[112]Siltor, "Strict Liability Korporasi."
[113]Ady Thea DA, "Mengurai *Actus Reus* dan *Mens Rea*."
[114]"Karhutla Terus Berulang."
[115]"Karhutla Terus Berulang."
[116]Pansariang and Sembiring, "Mekanisme Pengawasan."
[117]Greenpeace Southeast Asia, "Chronic Forest Fires."
[118]Rawls, *A Theory of Justice*, §38.
[119]Maulana, "Vonis Ringan Korupsi Timah."

6) Strengthen access to justice for affected communities. Legal aid and technical evidentiary support for residents reduce the asymmetry highlighted by Pratama,[120] in line with Darmawan's proposal for quality legal aid access for vulnerable groups.[121]

g. Limitations of the Analysis. This analysis has limits. First, Rawls did not address the environment as an object of justice, so its application is an extension that follows Lennie and Töns.[122] Second, Rawls's theory is ideal, and the criticisms of Sandel, Cohen, and Pogge show its limits in multicultural societies, economic inequality, and global justice.[123] Third, much of the data used comes from civil society organizations and the media, so further research needs to test forest-fire decisions systematically and verify field data.

CONCLUSION

1. Recurrent forest and land fires in corporate concessions can be construed as ecological corruption because they fit the pattern: permits left unexercised even though the same areas burn repeatedly, private gain from savings on land-clearing costs, and the shifting of health, ecological, and climate costs onto the public and future generations.[124]
2. Positive law perpetuates impunity through four mechanisms: the aggravated burden of proving fault after the amendment of Article 88 of the Environmental Law,[125] the separation of criminal and civil tracks that produces different outcomes,[126] administrative sanctions treated as a cost of doing business,[127] and enforcement that more readily reaches individuals than corporations.[128]
3. According to Rawls's theory of justice, those rules and practices would be rejected in the original position because they conflict with equal liberty, the difference principle, fair equality of opportunity, the rule of law, and the just savings principle.[129]

SUGGESTIONS

1. For legislators: restore the strict liability formulation without proof of fault in Article 88 of the Environmental Law.
2. For the government and law enforcers: make permit revocation, blacklisting, and tracing of beneficial owners the standard response to corporations that burn repeatedly, and open fire and enforcement data to the public.
3. For the Supreme Court and the courts: draft guidelines on corporate sentencing and on calculating ecological loss that ensure proportionality between damage and punishment.
4. For future research: conduct empirical studies of corporate forest-fire decisions and test the impunity thesis with complete decision data.

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[122]Lennie, "Rawlsian Anti-Capitalist Environmental Justice."
[123]Darmawan, "Teori Keadilan John Rawls."
[124]Saturi and Baskoro, "Kala Organisasi Lingkungan."
[125]Arbani, "Asas Pertanggungjawaban Mutlak."
[126]Siltor, "Strict Liability Korporasi."
[127]Pansariang and Sembiring, "Mekanisme Pengawasan."
[128]"Karhutla Terus Berulang."
[129]Rawls, *A Theory of Justice*, §§24, 26, 46.

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