Journal Equity of Law and Governance

Vol. 3, No. 2, October 2023
ISSN: 2775-9512 (Print) 2776-5121 (Online)
https://www.ejournal.warmadewa.ac.id/index.php/elg

Enforcement of Environmental Criminal Sanctions against Tourism Accommodation Companies Based on Local Wisdom and Restorative Justice

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Abstract – The enforcement of violations in customary law by entrepreneurs in tourism accommodation services has traditionally relied solely on administrative sanctions or fines, lacking legal regulations incorporating local wisdom and restorative justice in environmental criminal enforcement against tourism accommodation entities (empty norms). This study aims to address this gap by exploring (1) the philosophical and juridical foundations of local wisdom in environmental criminal law enforcement against tourism accommodation firms, (2) proposing a model for environmental criminal punishment against these companies, and (3) assessing the legitimacy of environmental criminal sanctions based on local wisdom and restorative justice. Employing a normative legal research method, the study reveals that (1) the philosophical and juridical underpinnings of local wisdom in environmental criminal law enforcement align with the realization of deliberative concepts stipulated in Article 18B paragraph (2) of the 1945 Constitution of Indonesia, (2) the suggested model for environmental criminal punishment adopts a corporate culture model integrated with a dual-track system, emphasizing restorative justice through penal mediation involving deliberation and consensus, (3) the validity and legitimacy of enforcing environmental criminal sanctions against tourism accommodation firms are substantiated through a proposed Bi System, intertwining the criminal justice system with penal mediation, thereby enhancing compliance and resolution within a dual-framework approach.

Keywords: Environmental Criminal Enforcement, Local Wisdom, Restorative Justice.

I. INTRODUCTION

Indonesia, endowed with natural resources including oceans, sunny beaches, and fertile land, possesses immense potential for fostering national development and enhancing the populace's welfare when managed effectively. The tourism sector plays a pivotal role in this development, serving as a vital source of foreign exchange earnings and contributing significantly to the proliferation of job opportunities and community income. Revenue generated from tourism taxes has emerged as a fundamental pillar in Regional Original Revenue *(Pendapatan asli daerah/PAD)* (Setiawan, 2015).

To accommodate the surge in tourist visits, numerous auxiliary facilities such as tourism accommodation venues, restaurants, art shops, entertainment facilities, and tourist destinations have been burgeoning (Kurniansah & Hali, 2018). This growth underscores the necessity for establishing entities that cater to the tourism industry, such as the Indonesian Hotel and Restaurant Association *(Perhimpunan hotel dan restoran Indonesia/PHRI)*, the Association of Indonesian Travel Companies/Association of the Indonesian Tours and Travel

Agencies (ASITA), and various other tourism institutions. These organizations operate professionally to manage and deliver tourism services while ensuring a high standard of travel comfort. Each entity operates within its respective domain, striving to strike a balance among various tourism business groups (Saimima & Makawangkel, 2019).

Within the sphere of tourism support, accommodation facilities play a pivotal role. The tourism accommodation industry contributes significantly to tourism development, directly influencing the need for accommodation facilities like hotels and inns. Economically, the relationship between the tourism accommodation industry and tourism itself is intimate (Haller et al., 2021). Higher tourist numbers, extended stays, and increased spending in tourist areas directly impact regional income and local economic activities. Sociologically, increased tourist footfall prompts communities and local authorities to enhance their infrastructure and services to cater more effectively to tourists' needs (Saimima & Makawangkel, 2019).

Behind the strides made in the tourism industry, there often lies an adverse impact, stemming from deliberate environmental harm that tarnishes the allure of tourist attractions (Pramono, 1993). This includes a series of transgressions within the tourism accommodation services, wherein frequent violations occur. These breaches commonly involve infringements on business licenses and conflicting endeavors with the local community's environment or the indigenous peoples' surroundings. For instance, the establishment of tourism accommodations, such as restaurants, open stages, souvenir shops, sunset viewing spots, and parking lots, often encroaches upon lands belonging to temples (known as *Laba Pura*) and the sacred realms of *Pura Luhur*. Many Balinese temples comprise two distinct types of land: the *Palemahan Pura Land*, housing sacred structures (pelinggih-pelinggih), and complementary facilities supporting ceremonial activities, and the *Pelaba Pura Land* designated for ceremonies.

Currently, law enforcement against violations that encroach upon customary provisions in traditional villages, undertaken by tourism accommodation service providers, is solely resolved through administrative law enforcement-imposing administrative sanctions or fines (Prathama, 2022). This approach is deemed inequitable by the local community. The application of local wisdom and restorative justice becomes imperative, given the absence of regulations at the legislative level governing their utilization in environmental criminal enforcement against tourism accommodation companies. The legal issues highlighted in this study are primarily associated with law enforcement against violations committed by tourism accommodation providers solely through administrative means, which are considered unjust when customary provisions or traditional village regulations are transgressed.

Moreover, violations within the social environment, construed as customary disputes, are addressed through customary law-an approach involving the exploration and fair application of societal values. The resolution of customary disputes pursues a win-win solution to reinstate balance and foster harmonious relations among disputing parties (Sirtha, 2008). Customary dispute resolutions align with principles of harmony and appropriateness, as advocated by Astiti (2010), who emphasize teachings rooted in *Tri Hita Karana* and *Tat Twam Asi.*

Violations of customary law disturb the cosmic balance, necessitating corrective action by the *Prajuru Adat*, referred to as adatreactie or customary reactions, which are then formulated into *Pamidanda* or customary sanctions. These sanctions, *Sangaskara Danda* (religious ceremony-based punishments) and *Jiwa Danda* (physical and psychological measures) aim to uphold religious values and village sanctity, seeking peace and restoring the village's sanctity and security.

Juridically, enforcing environmental criminal sanctions against tourism accommodation entities using local wisdom and restorative justice presents several challenges (Imanuddin, 2019). Presently, there exist no legal regulations encompassing the use of local wisdom and restorative justice in environmental criminal enforcement against tourism accommodation companies. Both local wisdom and restorative justice have not been accommodated in Indonesian national law, especially within Law Number 10 of 2009 concerning Tourism, which

predominantly regulates tourism law enforcement through administrative law instruments-administrative sanctions and fines *(Undang-Undang (UU) Nomor 10 Tahun 2009 Tentang Kepariwisataan, 2009)*. Dissatisfaction with current law enforcement practices in tourism, primarily due to perceived injustices and the failure to prevent criminal acts, has spurred consideration of alternative methods. Among these alternatives, leveraging local wisdom and restorative justice emerges as a potential avenue for addressing issues pertaining to criminal acts in the tourism sector. Given the aforementioned background, the researcher is inclined to undertake a dissertation study entitled "Enforcement of Environmental Criminal Sanctions against Tourism Accommodation Companies Based on Local Wisdom and Restorative Justice."

In the Introduction section, authors should summarize the research objectives at its conclusion. Preceding these objectives, authors should provide an extensive background and a concise literature review to document existing methodologies. This aids in discerning the most effective strategies from prior research, delineating the primary limitations of earlier studies, proposing solutions to address these limitations, and emphasizing the scientific significance or innovations within the paper. It is important to avoid an exhaustive literature review or a summary of results in this section.

Building upon the aforementioned problem background, the formulation of issues in this study can be articulated as follows:

1. What is the philosophical and juridical basis of local wisdom in environmental criminal law enforcement against tourism accommodation companies?
2. How is the model of punishment of environmental criminal offense against tourism accommodation company?
3. How is the legitimacy validity of environmental criminal sanctions enforcement against tourism accommodation companies based on local wisdom and restorative justice?

II. METHOD

This study adopts a normative legal research methodology, which delves into the internal aspects of law, focusing on legal norms as its primary subject (Diantha, 2016). Normative legal research employs multiple approaches, such as statutory and conceptual approaches, based on the nature of the research problem. The research utilizes various legal sources comprising primary, secondary, and tertiary legal materials (Soekanto & Mamudji, 2003). The methodology involves gathering legal materials through a comprehensive literature review process. Subsequently, the collected legal materials will undergo descriptive, interpretative, evaluative, and argumentative analyses in this research.

III. RESULT AND DISCUSSION

1. Philosophical and Juridical Basis of Local Wisdom in Environmental Criminal Law Enforcement Against Tourism Accommodation Companies

Placing corporate tourism accommodation companies as one of the parties that can be held criminally liable is a progress and a positive thing, but in terms of punishing corporations it must be wise by paying attention to the purpose of punishment in line with the ideals of Indonesian criminal law reform, because given the important role of corporations in the economic development of the country and the wider community as described in the introduction. Taking into account the positive and negative sides of the existence of corporations in the tourism sector, then according to the law enforcement against violations still pay attention to the principle of subsidiarity and place criminal law as an ultimum remidium, in order to provide space for justice for the people affected by a violation of the law in the field of tourism.

Placing criminal law as the ultimate remedy in addressing criminal acts committed by tourism accommodation companies, particularly as corporate entities, necessitates a cautious and judicious approach. Herbert L. Pecker's perspective, as quoted by Lilik Mulyadi, emphasizes that crime revolves around criminal sanctions, acting as both the primary enforcer

and the primary deterrent, serving as an effective method to combat criminal activities (Mulyadi, 2013). In light of the negative ramifications associated with punishment, the reformation of Indonesian criminal law, notably reflected in Law Number 1 of 2023 on the Criminal Code (hereafter referred to as the Criminal Code 2023), has articulated the objectives and criteria for punishment *(Undang-Undang (UU) Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023)*.

In prosecuting a tourism accommodation company under the purview of criminal law, aligning with the reformative ideals becomes imperative. This holds true, especially in environmental crimes, where environmental concerns intertwine with the rights of citizens within the community. Therefore, enforcement should not solely prioritize legal certainty but, more crucially, focus on social justice for the affected community and its safeguarding (Akib, 2014).

Addressing the concept of justice within Indonesian society inexorably intertwines with the principles derived from *Pancasila*. The concept of justice in *Pancasila* values centers on maintaining equilibrium, termed as monodualistic balance by Barda Nawawi Arief, representing a harmony between individual interests and societal well-being (Gunarto, 2012). In relation to criminal offenses perceived as disrupting this balance, criminal law should serve as a mechanism to rectify disturbances caused by such transgressions. This principle holds relevance in environmental criminal law enforcement, where the ideal function of criminal law is to redress ecological disruption or loss stemming from offenses of both tangible and intangible value (Jazuli, 2015).

Pancasila itself is listed in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), which reads "....., then compile the Indonesian National Independence in a Constitution of the State of Indonesia, which is formed in an arrangement of the Republic of Indonesia with the sovereignty of the people based on: One God, a just and civilized humanity, Indonesian unity, and a democracy led by wisdom in deliberation/representation, and by realizing a social justice for all Indonesian people." Although there is no explicit mention of *Pancasila*, the principles listed in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia are the precepts of *Pancasila (Undang-Undang Dasar (UUD) Tahun 1945 dan Amandemen Nomor - Tentang UUD 1945 dan Amandemen, 1945).*

Settlement with local wisdom and restorative justice emphasizes the realization of four things. First, putting criminal law back to its nature as the ultimum remedium (last remedy), if other legal remedies and peace mechanisms do not materialize. Second, it emphasizes the responsibility of the perpetrators of criminal acts directly to the victims of the criminal acts committed. Third, paying attention to the interests and protection of victims of crime. Fourth, to build a harmonious relationship between the victim and the perpetrator.

In the pursuit of equitable law enforcement, a prioritization of a humanist or human-centric approach stands crucial in resolving criminal cases, thereby avoiding the undue labeling of individuals as criminals subjected to imprisonment. It is pertinent to note that peaceful resolution in criminal cases holds significant merit, particularly in ensuring the fulfillment of compensation rights. In instances of criminal offenses, the primary entity affected is the victim, as opposed to the broader populace or the state. Hence, emphasizing peaceful settlements becomes notably advantageous.

2. Model of Punishment for Environmental Crimes Against Tourism Accommodation Companies

Law enforcement concerning tourism accommodation companies extends beyond the conventional integrated criminal justice system. Researchers propose a conceptual framework in tandem with Sidik Sunaryo's ideology, aiming for an efficient and effective legal system, termed the "Bi System in Criminal Justice System." This approach combines the conventional criminal justice system, as stipulated by Law Number 8 of 1981 on Criminal Procedure (referred to as *KUHAP) (Undang-Undang (UU) Nomor 8 Tahun 1981 Tentang Hukum Acara*

Pidana, 1981)), and an alternative system for resolving criminal cases through non-penal means, notably penal mediation. This innovative system targets specific criminal offenses meeting predetermined criteria, intending to enhance the efficiency and effectiveness of the criminal justice mechanism. The goal is to streamline the decision-making process, ensuring that the initial decision serves as the final resolution without further legal recourse, thereby offering a comprehensive alternative system for certain types of criminal cases.

The resolution of criminal cases through the application of alternative solutions in the form of a dual system in the criminal justice system, the Criminal Procedure Code and laws and regulations outside the Criminal Procedure Code that regulate the criminal justice system (conventional) are placed as entry points and view points in the study and alternative paradigm of the criminal justice system as the principle of an integrated criminal justice system that upholds and practices the principles of legality, respect for human dignity, equality before the law and non-discrimination. Here, the law must be able to articulate the harmony of actualization of values and norms that characterize the standard of living that is prosperous, safe, orderly and balanced/proportional. The standard is realized through the adoption of the values of Continental European law, Anglo Saxon law, customary law and Islamic law which in this case always prioritizes the achievement of the value of justice, both procedural justice, substantial justice and psychological justice in addition to benefits and legal certainty by using the mechanism of penal mediation (Sunaryo, 2004). Of course, in this penal mediation, the litigants will use the medium of deliberation or negotiation to reach a mutual agreement as the highest value of justice and peace based on the principles of effectiveness and efficiency.

Broadly speaking, the concept of dual system (Bi System in Criminal Justice System) associated with penal mediation mechanism is as follows:

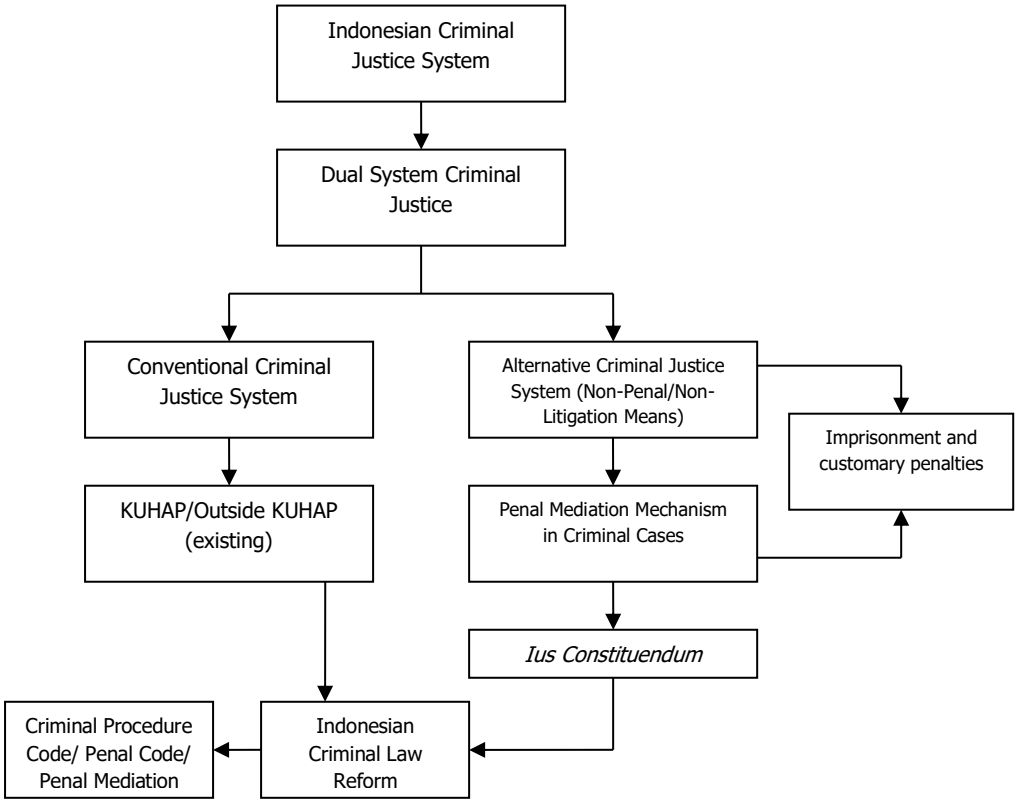

Figure 1. Dual system model (bi system in criminal justice system) associated with penal mediation mechanism

Based on the diagram above, in combining the conventional criminal justice system with the customary criminal justice system, both violations committed by tourism accommodation

companies or tourism investors/corporations, with the criteria of violating the tourism environment with serious and even detrimental impacts, especially regarding religious magical pollution in tourism destinations, then the company/investor/corporation can be sentenced to imprisonment as well as customary criminal sanctions. However, criminalization of tourism accommodation companies must be applied carefully because it will affect the tourism business world and the stability of community welfare.

Moreover, community adherence to legal provisions depends on their anticipation of greater benefits versus violating them, and vice versa. Essentially, individuals are inclined to pursue legal action if they anticipate benefiting, whether in monetary or non-monetary terms (Posner, 2003). This research employs legal economic analysis, a method utilizing economic concepts to elucidate legal repercussions, evaluate, or estimate the nature and application of legal standards. This approach prioritizes the fusion of legal analysis with economic rationale and considerations. Consequently, this framework ensures that legal regulations adequately satisfy the affected community's expectations. By adopting this approach, it becomes feasible to predict community responses to legal regulations more accurately.

3. The Validity of Legitimizing the Enforcement of Environmental Criminal Sanctions Against Tourism Accommodation Companies Based on Local Wisdom and Restorative Justice Can be Done through Penal Mediation

Penal mediation is one form of alternative dispute resolution outside the court (commonly known as ADR or Alternative Dispute Resolution; some call it Appropriate Dispute Resolution) (Anggraeni, 2020). ADR is generally used in civil cases, not criminal cases. In the development of theoretical discourse and the development of criminal law reform in various countries, there is a strong tendency to use penal mediation as an alternative to problem solving in the field of criminal law. According to Frehsee (1999) the increasing use of restitution in criminal proceedings shows that the distinction between criminal and civil law is not so great that it is becoming dysfunctional.

The subsequent discourse focuses on evaluating the validity and legitimacy of enforcing environmental criminal sanctions against tourism accommodation companies based on local wisdom and restorative justice utilizing penal mediation. The objective is to establish the validity and legitimacy of employing penal mediation in the environmental criminal enforcement pertaining to tourism accommodation companies. As per Kelsen (2007), legal validity implies the binding nature of legal norms, stipulating that individuals are obliged to adhere to and apply these norms. Legal effectiveness, on the other hand, denotes the actual compliance and application of legal norms by individuals in accordance with their stipulations.

The difference between validity and enforceability is that a legal rule prohibits theft by stating that any thief must be punished by a judge. This rule is valid for all those who must abide by the rule (subjects). For them stealing is prohibited but it can be said that this legal rule is valid especially for people who steal, which means breaking the rule. So, it can be said that the rule of law is valid even if the rule is less applicable in the case of theft.

This rule must be enforced by the judge not only on the subject but also on the organ that must enforce it. However, in certain circumstances, the organ may not be able to enforce the sanction against the person who violated the rule. In certain case the rule remains valid for the judge even without enforcement. Validity is the specific existence of a norm. A norm is valid is a statement that assumes the existence of the norm and assumes that the norm has binding force on the person whose behavior it regulates. A rule is a law, and a law if valid is a norm. So, law is a norm that imposes sanctions.

The enforceability of law implies that individuals conform to norms through their actions as expected. While validity pertains to the quality of a law, enforceability concerns the actual behavior of individuals rather than the law itself. Asserting that the law is effective means that individuals truly adhere to its stipulations. Thus, validity and enforceability delineate distinct phenomena. A law's validity lies in its proclamation, stipulating how individuals ought to behave. This proclamation, however, does not detail the actual execution of actions in

alignment with a norm. Assessing whether an action complies with a norm or aligns appropriately with it entails a value judgment. Such judgments convey ideas regarding the consistency of actions with a norm, where the norm functions as a standard of assessment. It can be posited that facts are interpreted within the framework of a norm, turning the norm into an interpretive scheme. Interpreting an individual's action as contrary to a norm doesn't signify a logical contradiction; instead, it denotes an action that fails to meet the norm's requirements, not one inherently against the norm. Consequently, the action becomes a specific legal condition for the occurrence of a consequence.

According to the theory of legal validity, a legal rule cannot be measured by moral rules or political rules. In this case, it means that the validity of a rule of law does not waver just because it does not correspond to moral rules, political rules, or economic rules. Because each of these fields regulates different things even though in certain cases they overlap. A legal rule can follow moral, political, or economic rules, as long as the legal rule does not sacrifice the basic norms in law. For example, a moral, political, economic, or religious rule cannot be applied in law if these rules conflict with the principles of justice, legal certainty, predictability, public order, protection of basic rights, the principle of benefit and others.

Furthermore, to provide legal validity and legitimacy to the enactment of penal mediation for environmental criminal law enforcement against tourism accommodation companies based on local wisdom and restorative justice, a comparison is made in advance of the settlement of criminal cases by customary institutions in several countries and several regions in Indonesia. In several countries such as Indonesia, Japan, New Zealand, West Samoa, Papua New Guinea, Bangladesh, the Philippines, Peru, and even many African countries where Customary Law is the basic foundation for the development of their legal system, it is noted that Customary Justice Institutions are still maintained as a means for the community to resolve a case both civil and criminal (in general, Customary Law does not distinguish between civil law and criminal law).

Based on the previously mentioned explanation of penal mediation, which relates to environmental criminal enforcement against tourism accommodation companies through local wisdom and restorative justice, the researcher presents a conceptualization of law enforcement via a future justice system model known as the "Bi System" within the criminal justice system. This alternative model aims to underpin and interconnect with a mechanism for resolving criminal cases through penal mediation, particularly at the investigative stage within the Indonesian criminal justice system. However, due to the fundamental nature and significant implications of this dual system within the criminal justice framework, the discussion herein will not be exhaustive. This system potentially constitutes a fundamental transformation within the Indonesian criminal justice system, necessitating further in-depth research and analysis. Nevertheless, an exploration of the concept/model of this dual system is vital as it intertwines with the current discourse on penal mediation, highlighting its integration within a criminal justice system that incorporates both non-penal/non-litigation and penal/litigation methods as articulated in the extant Criminal Procedure Code (Sunaryo, 2004).

IV. CONCLUSION

Based on the discussion that has been stated previously, the following conclusions can be drawn:

1. The philosophical and juridical underpinnings of local wisdom in environmental criminal law enforcement against tourism accommodation companies emphasize the realization of several fundamental aspects. Firstly, it reinstates criminal law to its essence as the ultimum remedium, acting as a last resort when other legal remedies and conflict resolution mechanisms fail to materialize. Secondly, it underscores the direct responsibility of offenders toward the victims of their criminal acts. Thirdly, it prioritizes the interests and safeguarding of crime victims. Lastly, it endeavors to foster a harmonious relationship between the victim and the perpetrator of the crime. Meanwhile, the juridical foundation of local wisdom can be traced to Article 18B paragraph (2) of the 1945 Constitution of the

Republic of Indonesia. This article acknowledges and respects the unity of customary law communities and their traditional rights as long as they are aligned with societal development and the Unitary State principles of the Republic of Indonesia, regulated by law. However, at the legislative level, there's a lack of specific regulations addressing local wisdom. The existing arrangements pertaining to local wisdom remain dispersed within regional regulations that still uphold the traditions of indigenous peoples.

2. The model for criminalizing environmental offenses by tourism accommodation entities is crafted through the amalgamation of the corporate culture model and the dual-track system. The corporate culture model positions tourism accommodation entities as corporate entities that may face criminal liability if they fail to prevent or do not foster a work culture that prevents criminal actions committed by their management. Meanwhile, the dual-track system, referred to by researchers as the Bi System, integrates the criminal justice system with penal mediation in enforcing environmental criminal laws against tourism accommodation entities based on local wisdom and restorative justice. The Bi System involves seeking the criminalization of tourism accommodation entities primarily through deliberation and consensus conducted in penal mediation (community court). Should the deliberation and consensus within the penal mediation (community court) prove unsuccessful, punitive measures are then pursued through the criminal justice system. However, the application of criminalization against tourism accommodation entities must be approached cautiously due to its potential impact on the tourism business sector and the stability of public welfare. Hence, it can be asserted that the utilization of criminal sanctions against tourism accommodation entities is a measure of last resort (ultimum remedium).
3. The validation of enforcing environmental criminal sanctions against tourism accommodation companies based on local wisdom and restorative justice is executed through the implementation of penal mediation. This penal mediation operates under the concept of a dual system or the Bi System. Legal validation is also extended to the dual-track system adopted within customary criminal law. The rationale behind the dual system concept within the criminal justice system is the fusion of the established criminal justice system as defined by the Criminal Procedure Code, functioning as a conventional or standard system (also termed as penal/litigation means), and an additional criminal justice system designed as an alternative approach for resolving criminal cases (also referred to as non-penal/non-litigation means). This alternative system, carried out through penal mediation, specifically addresses certain types of criminal acts that fulfill defined criteria. The objective is to ensure that the decision reached stands as the definitive resolution without further recourse to legal remedies, be they ordinary or extraordinary, providing an alternative mechanism within the system.

The suggestions that can be put forward in the research are as follows:

1. In the absence of a clear legal framework concerning the application of local wisdom and restorative justice, law enforcers and customary institutions should establish a penal mediation mechanism. This initiative aims to transcend legal positivism, allowing law enforcement officials and customary institutions to prioritize justice and practicality in addressing customary crimes, particularly those involving tourism accommodation companies. Law enforcement officials can exercise discretion in their policies when addressing criminal issues.
2. Both the Central Government and Regional Governments ought to prioritize seeking deliberation and consensus in the enforcement of environmental crime laws against tourism accommodation companies. This proactive approach aligns with the implementation of restorative justice and the ultimum remedium doctrine, aiming to maintain a conducive environment for the tourism industry while ensuring the stability of public welfare.
3. To effectively resolve both general and specifically customary criminal cases involving tourism accommodation companies, law enforcers and the Indigenous Village Council (MDA) should collaborate. This collaboration is essential in creating a settlement

mechanism that integrates customary institutions with the Criminal Justice Sub-System, emphasizing values rooted in local wisdom and restorative justice.

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