Volume 9, Issue 6, 2026 ISSN: 2617-4596
DOI: https://doi.org/10.31058/j.mana.2026.96008

Reflection and Reconstruction of Criminal Policy for Ecological Environmental Protection in the Lower Reaches of the Yangtze River

Yuling Ding[1*]

[1] Communication University of Nanjing, Nanjing, China
*Correspondence: Yuling Ding

Received: 20 September 2026**; Accepted:** 16 October 2026**; Published:** 4 November 2026

Abstract:

The ecological environment in the lower Yangtze River basin is under severe strain. Public expectations of criminal law have run high, pushing the region's criminal policy for environmental protection toward a stricter orientation—both broadening the reach of criminalization and imposing heavier punishments. Yet case numbers have not declined appreciably under this regime, and environmental quality improvements remain modest, producing a striking mismatch between the heavy reliance on criminal law and its limited returns. Criminal policy should instead be grounded in the actual patterns of offending and the characteristics of the harms caused. Ecological crimes in the lower Yangtze region concentrate on four offenses: environmental pollution, illegal fishing of aquatic products, illegal hunting, and illegal mining. These offenses differ markedly in who commits them, how the acts are carried out, and the degree of harm inflicted. This paper argues for upholding the fundamental criminal policy of combining leniency with severity and adopting differentiated enforcement by offense type, so that the governance of ecological crimes can become more precise.

Keywords:

Yangtze River Protection, Ecological Environment, Criminal Policy, Differentiated Governance

1. An Analysis of Criminal Policy for Ecological Environmental Protection in the Lower Reaches of the Yangtze River

Criminal policy refers to the ensemble of approaches for rationally organising state responses to crime [1]. The governance of ecological and environmental offences in the lower Yangtze River basin is bounded by China’s fundamental national criminal policy, yet it carries distinctive features shaped by regional ecological conditions and crime patterns. At present, the criminal policy in this region is moving toward greater stringency, manifested in both the expansion of criminal coverage and harsher penalties.

The broadening of the criminal net can be observed in three respects. First, substantive criminal law has lowered the threshold for criminalising environmental pollution offences and expanded the scope of punishable conduct. Second, procedural

law has advanced the specialisation of environmental adjudication: nearly all 19 higher people's courts in the Yangtze River basin have established specialised environmental and resource tribunals. Third, authorities have strengthened the linkage between administrative enforcement and criminal prosecution to boost investigative efficiency. Local judicial practice has followed this stringent trend. For example, the Guidelines for the Trial of Criminal Cases Involving Environmental Pollution issued by Jiangsu Province prescribes "the implementation of the strictest judicial protection system for the environment". It also expands the scope of liable parties for unit offences of environmental pollution to include "persons who knowingly engage in conduct causing environmental pollution". This scope is broader than that laid out in the Symposium Minutes on Issues Concerning the Handling of Criminal Cases Involving Environmental Pollution (hereinafter the Symposium Minutes), jointly released by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice and Ministry of Ecology and Environment.

Harsher sentencing is another prominent feature. The Eleventh Amendment to the Criminal Law of the People's Republic of China raised the maximum statutory penalty for environmental pollution offences from seven to fifteen years of fixed-term imprisonment. The Symposium Minutes stipulate aggravated punishment for specific polluting acts committed within the Yangtze River Economic Belt. Relevant judicial documents in Zhejiang Province also mandate tight restrictions on the use of probation and exemption from criminal sanctions. Even so, this stringent governance approach has yielded unsatisfactory results. Between 2017 and 2020, the number of ecological and environmental crime cases in Shanghai, Jiangsu, Zhejiang and Anhui stood at 2,802, 2,915, 3,253 and 3,131 respectively, with no discernible downward trend. In 2019, China's national Ecological Environment Status Index was 51.3, indicating moderate ecological quality. Across the 41 cities in the Yangtze River Delta, the average share of days with good air quality reached only 76.5%, showing limited improvement. Heavy reliance on criminal law has failed to deliver anticipated governance outcomes, which calls for urgent critical reflection.

2. The Rationale for Criminal Policy Concerning Ecological Environmental Protection in the Lower Reaches of the Yangtze River

The formulation of criminal policy must be premised on crime patterns and characteristics. Ecological conditions differ markedly across the upper, middle and lower reaches of the Yangtze River, and crime patterns vary correspondingly. Ecological and environmental offences in the lower Yangtze River basin are heavily concentrated in four categories: illegal fishing of aquatic products, environmental pollution, illegal hunting, and illegal mining. In Jiangsu Province, these four offences account for approximately 31%, 25%, 15% and 12% of relevant cases respectively; in Zhejiang Province, the proportions are roughly 37%, 19%, 13% and 10%. In Anhui Province, illegal mining makes up 24% of cases, illegal hunting and environmental pollution each account for 10%, and illegal fishing accounts for 6%. In Shanghai, illegal fishing of aquatic products constitutes 57% of cases, environmental pollution 15%, and illegal hunting 3%. Such concentration creates prerequisites for differentiated governance.

These offences exhibit distinct patterns. Environmental pollution offences are mostly committed by organisations. In Nanjing, 31 out of 42 environmental pollution

cases in 2019 involved organisational offenders, accounting for 73.8%, rendering judicial control relatively manageable. Offences of illegal fishing of aquatic products tend to cause minor harm. Among 66 such cases in Nanjing, no defendant received a custodial sentence: 60 defendants were ordered to pay fines and 6 were granted probation. Perpetrators of illegal hunting are generally elderly with poor legal awareness and mostly reside in rural areas; their transactions have shifted to online platforms including Xianyu and WeChat. By contrast, illegal mining offences feature group-based, organised conduct with clear division of labour. All 18 illegal mining cases in Nanjing were perpetrated by criminal groups.

In terms of harmful attributes, ecological and environmental offences carry high risks and trigger irreversible consequences. For example, the 2009 Yancheng water pollution incident cut off water supply for 200,000 residents for nearly 67 hours. Crimes of this type are highly covert, associated with a high dark figure of crime, difficult to prove through evidence collection, and marked by long incubation periods. In Nanjing's environmental pollution cases, half of the pollutant-discharging activities remained undetected for more than one year. A high dark figure weakens the deterrent effect of criminal punishment, so severe ex-post sanctions cannot achieve effective governance.

3. Reconstructing the Criminal Policy for Ecological Environmental Protection in the Lower Reaches of the Yangtze River

The stringent policy ignores the inherent traits of ecological and environmental crimes and overstates the deterrent power of punishment. Crime emergence follows its own evolutionary logic, and governance measures are subject to the overarching national criminal policy. It is essential to uphold the policy of combining leniency with severity and implement differentiated governance according to offence types.

3.1. Upholding the Policy of Combining Leniency with Severity

Combining leniency with severity is China's fundamental criminal policy. It requires imposing severe punishment where necessary, granting leniency where appropriate, and adopting differentiated treatment. The ecological situation in the lower Yangtze River remains severe, and ecological crimes may inflict substantial harm, so a necessary degree of severity must be maintained. Nevertheless, offences differ substantially in protected legal interests, behavioural forms and harm outcomes. Leniency and severity must be balanced to avoid blanket harsh treatment.

3.2. Formulating a Differentiated Governance Policy

First, the governance of environmental pollution offences shall prioritise risk prevention and control. Since such offences are frequently committed by organisations, authorities should encourage enterprises to establish environmental compliance programmes. High-pollution industries ought to develop special compliance systems, set up compliance bodies, formulate compliance policies and risk response mechanisms. This transforms the governance paradigm from ex-post punishment to ex-ante prevention, and criminal sanctions may serve as incentives to improve internal corporate management.

Second, the scope of criminal punishment for illegal fishing of aquatic products shall be narrowed. This offence is a minor offence yet generates a large caseload due to the low threshold for criminalisation. After the full rollout of the ten-year fishing

ban, case numbers may rise. Substantively, the threshold for criminalisation should be raised; conduct with obviously trivial harm shall stay outside criminal jurisdiction and be handled by administrative penalties. Procedurally, discretionary non-prosecution shall be improved to implement the Opinions on Lawfully Punishing Illegal Fishing and Other Violations and Crimes in the Yangtze River Basin, jointly issued by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice.

Third, policies targeting illegal hunting shall disrupt the black market industrial chain. Illegal hunting is driven by profit-making transactions, which have migrated to online channels. Regulators should strengthen supervision over online transactions, clarify the legal responsibilities of internet platforms, and sever the chains for purchasing and selling hunted wildlife.

Fourth, perpetrators of illegal mining, especially organisers, shall be severely punished. In the lower Yangtze River basin, illegal mining mainly takes the form of unauthorised sand extraction within river channels, and such criminal conduct is organised [2]. Illegal sand mining is typically carried out by well-structured criminal groups, with organisers as core members. Differentiated treatment shall be adopted: in principle, probation shall not apply to organisers. Fine amounts should be increased to undermine their economic foundation and deprive them of the capacity to reoffend.

In summary, the criminal policy for ecological environmental protection in the lower Yangtze River basin shall be grounded in regional crime patterns, adhere to the principle of combining leniency with severity, and carry out differentiated governance. Only through the precise deployment of punitive and non-punitive measures can governance costs be reduced and the effectiveness of ecological crime governance enhanced.

4. Conclusions

The criminal policy for ecological and environmental protection in the Yangtze River Basin is determined by China's basic criminal policy and the practical patterns of ecological and environmental crimes in the lower reaches of the Yangtze River. China's basic criminal policy for crime governance is the "combination of leniency and severity", which essentially features adjusting measures to local conditions and differentiated treatment. Judicial practice has proven that blind severe punishment not only wastes judicial resources but also fails to effectively curb the occurrence of ecological and environmental crimes. On the premise of clarifying the patterns of ecological and environmental crimes in the lower Yangtze River reaches, targeted and scientific criminal policies should be formulated to realize the precise governance of ecological and environmental crimes.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

Funding

This research received no specific grant from any funding agency in the public, commercial or not-for-profit sectors.

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