



Implementation of the Principle of Strict Liability Through Civil Law Enforcement to Protect and Manage the Environment

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Abstract:

Settlement of environmental disputes in Indonesia currently relies on the principle of liability based on fault, requiring plaintiffs to prove the defendant's fault. However, the removal of the strict liability principle, as stated in Article 88 of Law No. 32 of 2009 on Environmental Protection and Management, has significantly impacted dispute resolution processes. This study aims to explore the urgency of implementing strict liability and analyze the legal consequences of its elimination in addressing environmental conflicts. Using normative legal research with statute, conceptual, and comparative approaches, the study explains the concept and legal basis of strict liability, examines civil law in environmental cases, and assesses the effectiveness of strict liability in protecting the environment. Given Indonesia's ongoing environmental challenges such as pollution, deforestation, and rapid industrial growth, enforcing strict liability through civil law is vital for holding parties accountable without the need to prove fault. Strengthening civil law enforcement, supported by a robust judicial system and public awareness, is essential for sustainable environmental management and protection.

Keywords: Strict Liability; Civil Law Enforcement; Protection and Management

INTRODUCTION

In the social order of life, the relationship between various components of the environment is complex and interdependent, creating a dynamic balance that maintains environmental stability (Purwadi, 2024). This balance is particularly evident in regions such as Indonesia's tropical rainforests, which are rich in biodiversity and natural resources. However, recent cases of environmental damage, such as the 2023 lawsuit against a mining company in Central Kalimantan for river pollution under the principle of strict liability, highlight the urgent need to enforce legal mechanisms that hold polluters accountable. These incidents demonstrate how disturbances in one component of the environment can cascade, threatening the broader ecological and social order, and underline the importance of robust civil law enforcement to protect and restore environmental stability (Eko Pasundan, 2022).

The goals and ideals of the Indonesian state law are stated in the fourth paragraph of the Preamble to the 1945 Constitution, hereinafter referred to as, namely "protecting the entire nation and all of Indonesia's blood." This statement is a constitutional rule of the state's obligation and the government's duty to protect all human resources in the Indonesian environment, for the welfare of all Indonesian people and all humanity, including protecting natural resources. This is the basis

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for the state's obligation to protect every citizen and all aspects related to the constitutional rights of the Indonesian people (Anwar & Sari, 2021).

Environmental protection is one form of protection for the entire Indonesian nation that has received special attention. The actualization of sustainable environmental protection in Indonesia has been explicitly stated in the 1945 Constitution of the Republic of Indonesia and in laws and regulations as a form of legal certainty regarding the legitimacy and seriousness of lawmakers. The Indonesian government is a state organ tasked with achieving these ideals (Ardiansyah et al., 2024).

A healthy environment is the right of all citizens. However, increasing industrial, mining, and other economic activities often have a negative impact on the environment. Therefore, an effective legal instrument is required to prevent environmental damage. Regulations related to the environment in Indonesia include the space where the Republic of Indonesia exercises its sovereignty, sovereign rights, and jurisdiction. In this case, the Indonesian environment is a natural condition with a strategic role that is of high value as a place for the Indonesian people and nation to organize national and state life in all aspects. Therefore, environmental management aims to develop a system with integration as its main characteristic (Aminah, 2019).

In its application, the orientation or objective has not been applied holistically, considering that environmental pollution and environmental destruction are phenomena in society that can now be easily found, such as throwing garbage into rivers, illegal logging, and dumping hazardous and toxic waste without first being processed. This phenomenon has resulted in environmental disputes. Environmental disputes are disputes between two or more parties arising from activities that have the potential and/or have had an impact on the environment (Ilmiah Galuh Justisi et al., 2025).

One of these legal instruments is the principle of strict liability, which allows business actors to be held responsible for environmental damage without proving any element of fault. This principle is stated in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Act) (Sodikin, 2022).

Kiss and Shelton emphasize the crucial role of strict liability in environmental protection and preservation for the benefit of present and future generations (Serlika Aprita et al., 2023). Strict liability is needed as a response to the development of high-risk activities that cannot always be answered with the availability of scientific evidence.

Environmental violations occur frequently and require effective law enforcement, including civil law mechanisms. However, civil law enforcement in environmental cases remains unpopular in Indonesia because of lengthy and complex court processes. Many civil cases, especially those related to environmental damage, often proceed to the Supreme Court for cassation, as losing parties tend to appeal every unfavorable decision. For example, the 2024 civil lawsuit against a plantation company in Riau, accused of causing peatland fires under the principle of strict liability, faced multiple delays due to repeated legal challenges and appeals. Such tactics are sometimes used deliberately to prolong proceedings, including filing judicial reviews even when claims lack strong grounds. Furthermore, even after final rulings, enforcing court decisions often remains difficult, hindering effective environmental protection and justice (Sahoo, 2018).

Environmental (civil) disputes can be resolved through the courts or out of court based on the voluntary choice of the concerned parties. If the chosen out-of-court efforts are unsuccessful, then one or both parties can take the court route. A lawsuit through the courts can only be taken if the chosen out-of-court dispute resolution efforts are declared unsuccessful by one or both parties to the dispute (Article 84 of Law Number 32 of 2009, concerning Environmental Protection and Management).

METHODS

This study uses a normative legal research method, which views law as a system of norms, principles, rules, regulations, court decisions, agreements, and legal doctrines. Normative legal

research aims to analyze and evaluate legal materials to understand the legal framework and its application, rather than examining social phenomena such as behavior or motivation. This study focuses on interpreting statutory provisions and legal principles related to environmental law enforcement, especially the implementation of the principle of strict liability (Sugiyono, 2021).

Data Source In this study, the source is secondary legal materials obtained through library research, which consists of primary, secondary, and tertiary legal materials. The data collection methods used were literature and document studies. **Data Analysis** In this thesis research, the data were analyzed qualitatively, namely, analytical and prescriptive descriptive analysis.

RESULT

The initial milestone in the regulation of strict liability in Indonesian legislation was the first environmental law, Law Number 4 of 1982 concerning Basic Provisions for Environmental Management. This law serves as a legal umbrella that lays down the basic principles of environmental management in Indonesia (Halim & Ali, 2020). This situation was also affirmed by the Third Five-Year Development Plan (Repelita) (1979-1984). In the chapter on "Natural Resources and the Environment," Repelita emphasized the urgency of regulating environmental issues, including pollution (Tumangger et al., 2024).

The doctrine of strict liability developed in practice to overcome the limitations of the doctrine of liability based on fault (Machmud, 2012: 209). Liability based on fault places the burden of proof on the plaintiff, so that the plaintiff often has difficulty proving the existence of the unlawful act. This doctrine originated from the case of *Rylands vs. Fletcher* in England in 1868, which was then adopted in the laws and regulations of various countries and international conventions (Hanum et al., 2024).

Strict liability is a civil liability doctrine that states that responsibility arises immediately without being based on any element of fault (i.e., liability without fault). The principle of strict liability is the responsibility of a person involved in any activity that can be classified as very dangerous or very dangerous. Thus, he is obliged to bear all losses suffered, even if he acts very carefully to avoid the damage or loss, even if it happens unintentionally (Yuanitasari et al., 2023).

Palmer asserts that strict liability is inelastic (Palmer, 1988). The concept of strict liability, in line with Grey's opinion, is a deviation from the dominant concept of 'negligence' which is the basis for civil liability standards (Grey, 2001). Strict liability, or liability without fault, is a form of liability without the defendant's intention to cause harm or to violate reasonable rules of care (Nuradi & Rohaedi, 2020).

This causal relationship was re-emphasized in the Green Paper on Remedying Environmental Damage (EC 1993), which stated that "Strict liability, or liability without fault, reduces the burden of establishing responsibility because fault does not need to be proven. However, the injured party must still prove that the damage was caused by someone else's actions" (European Commission, 1993).

The difference between the principle of strict liability and unlawful acts based on the doctrine of liability based on fault lies in the elements that must be proven by the plaintiff and what must be proven by the defendant. In strict liability, the plaintiff is not burdened with the obligation to prove the element of fault. The plaintiff only needs to prove that the defendant's actions or activities are part of an abnormally dangerous activity. According to the general principle in the Restatement (Second) of Torts 519 (1), a person must still be responsible for losses caused by their activities, including activities that are abnormally dangerous, even though they have made maximum efforts to avoid such losses ((Mulyana & Surya, 2020).

Under the principle of strict liability, the defendant can escape the lawsuit if they can prove that there is a reason for forgiveness. The reason for forgiveness in general is as follows:

- a. Force majeure conditions;

- b. The victim's own fault.
- c. Third party error.

Under the principle of strict liability, the plaintiff is only required to prove the existence of a loss and a causal relationship between the loss suffered and the defendant's actions or activities. The defendant is required to prove the existence of a forgiving reason or a factor that eliminates the error. Thus, it can be concluded that there is no transfer of proof from the plaintiff to the defendant; in other words, there is no reverse proof in the principle of strict liability (Kurniawan & Pamungkas, 2021).

The principle of strict liability has been adopted into the domestic laws of several countries. The UK adopted this principle in the Civil Aviation Act 1949, Nuclear Installations Act 1959 and 1965, and Animal Act 1971 (Sadino, Surono, & Arifin, 2020:3). The United States has passed the River and Harbors Appropriation Act (1899), Price Anderson Act (1957), Trans-Alaska Pipeline Authorization Act (1973), Comprehensive Environmental Response Compensation and Liability Act (CERCLA 1980/1986/1994), and Clean Water Act (CWA) (Sadino, Surono, & Arifin, 2020). The Netherlands, as a civil law country, also has it in Article 175 (1), Article 176 (1), and Article 177 (1) of its BW. Article 176, paragraph (1) of the Netherlands Civil Code regulates the liability of operators of final disposal sites (*de exploitant van eenstortplaats*), who are held accountable for losses arising before or after the site is closed as a result of air, water, or soil pollution caused by waste disposal carried out before the site is closed (Warlia et al., 2023). Strict Liability is a legal responsibility imposed on the perpetrator without having to prove any element of fault or negligence. In the environmental context, this applies to high-risk activities that impact the environment.

DISCUSSION

Implementation in Civil Law Enforcement

According to civil law, strict liability for the victim's losses is closely related to Article 1365 of the Civil Code, where liability is based on unlawful acts, known as *onrechtmatige daad*, or illegal acts. This article establishes that a person who causes harm to another is obliged to provide compensation without the need to explicitly prove fault. This forms the legal basis for applying the concept of strict liability in civil cases involving unlawful acts.

The concept of strict liability means that the element of fault does not need to be charged to the plaintiff as a basis for claiming compensation. Thus, this liability serves as a *lex specialis* that is more specific than the general principle of fault-based liability. In this context, anyone who causes harm due to certain actions must be held responsible, even if their fault cannot be directly proven.

Furthermore, strict liability shifts the burden of proof to the defendant to demonstrate the causal relationship between their actions and the damages suffered by the plaintiff. This means that the defendant must prove that the damage was not caused by their actions or that other factors exist that exempt them from liability. This principle aligns with the legal protection of victims who may face difficulties in proving fault, either technically or substantively.

According to Mella Ismelina Farma Rahayu, a professor of environmental law at Taruma Negara University, in the context of environmental civil decisions, strict liability does not eliminate the element of fault but reverses the burden of proof. The perpetrator must prove their innocence or that the damage occurred due to force majeure (i.e., unavoidable circumstances). This is stipulated in Article 22 number 33 of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which affirms the responsibility of business actors for environmental impacts.

An analysis of this concept reveals that strict liability is crucial for environmental protection and victim rights, as damages are often difficult to trace directly. By placing the burden of proof on the actor, the law balances the interests of business actors and affected communities,

encouraging more cautious and responsible behavior from business operators.

However, the application of strict liability also poses challenges, particularly in proving force majeure or unavoidable circumstances that exempt responsibility. Clear criteria and transparent verification mechanisms are necessary to prevent the misuse of this defense to evade liability. Therefore, the evidentiary aspects and supporting regulations must be strengthened to maintain justice and legal certainty.

Overall, the strict liability concept in civil law provides more effective protection for victims of unlawful acts, particularly in complex environmental law cases. Hence, its implementation should be supported by sound legal understanding and policies that ensure fair and consistent law enforcement, thus providing deterrence while offering optimal protection to the wider community.

Principles that are the Basis for Environmental Protection and Management Efforts

Indonesia is not the only country with environmental laws that impose strict liability. According to Shelton and Kiss, strict liability has been developed and adopted in several conventions (Wibisana, 2021:497). The draft principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities were approved by the International Law Commission in 2006. This principle upholds strict liability for losses caused by hazardous legal activities (Shelton & Kiss in Wibisana, 2021:497). The United States, Brazil, the European Union and its member states, and other countries have adopted and implemented strict liability for environmental pollution (Jones, Pendergrass, Broderick, & Phelps, 2015). China (Brüggemeier, 2011: 178), Malaysia (Mustafa & Arifin, 2011: 280), and Singapore (Hafrida et al., 2020) are three other countries that have implemented *strict liability*

Indonesia adopted the principle of strict liability in its national environmental laws and regulations when the country's first environmental law was enacted. Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, Article 21, stipulates that in several activities involving types of resources, absolute liability arises for the destroyer or polluter if environmental damage and/or pollution occurs. The wording of the article stipulates that further agreements on absolute liability will be delegated to other laws and regulations. However, until the enactment of Law Number 23 of 1997, further agreements on strict liability were never implemented.

Law Number 23 of 1997 concerning Environmental Management has formulated provisions regarding strict liability more explicitly and comprehensively. Article 35, paragraph (1), stipulates that the person responsible for a business and/or activity whose business and activity have a large and significant impact on the environment, which uses hazardous and toxic materials and/or produces hazardous and toxic waste, is absolutely responsible for the losses incurred with the obligation to pay compensation directly and immediately at the time of environmental pollution and/or damage.

This provision regulates the circumstances that can serve as grounds for exempting a party from liability for environmental damage or pollution. First, the presence of natural disasters or war refers to events beyond human control and is unavoidable. Natural disasters, such as earthquakes, floods, volcanic eruptions, and war, can cause significant damage without direct human involvement. Therefore, the party cannot be held responsible for losses resulting from such events.

Second, the existence of forced circumstances, or force majeure, refers to situations that exceed human capabilities and are unavoidable despite preventive efforts. Examples include unforeseen accidents or extraordinary events that cannot be anticipated even with due diligence. In such cases, the party may be exempt from liability because the damage was not caused by their negligence. Third, the existence of third-party actions causing environmental pollution and/or destruction means that if the damage is caused by another party outside the control of the main actor, then the primary party cannot be held accountable for the loss. This clarifies that liability should only be imposed on those who are truly responsible for causing damage.

Overall, this provision allows the party to prove that the environmental damage or pollution was not due to their fault but resulted from factors beyond their control. Thus, it upholds the principles of fairness and balanced responsibility in environmental law enforcement.

CONCLUSION

The principle of strict liability is an important tool in environmental law for enforcing responsibility for pollution and damage without the need to prove fault. Civil law enforcement can be an effective instrument if it is supported by a strong judicial system and increased public awareness. The application of strict liability extends beyond the management of hazardous and toxic materials and waste, covering activities or businesses that are unusual or carry high risks (*extra hazardous/ultra hazardous/abnormally dangerous*). Furthermore, the precautionary principle, as reflected in judicial decisions, is applied not only at the administrative and policy levels but also in court dispute resolution. To strengthen environmental protection, derivative regulations that clearly define the evidentiary mechanisms for applying the strict liability principle are needed to ensure more effective and consistent law enforcement.

Conflict of Interest

All the authors declare that there are no conflicts of interest.

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