

Judicial Interpretation of Strict Liability in Environmental Law a Comparison Between Indonesia and China

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Abstract. *Strict liability principle allows legal accountability for environmental pollution without requiring proof of fault. This article aim to compares its application in Indonesia and China through a normative-legal and comparative approach. In Indonesia, the principle is regulated under Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management, yet its implementation remains inconsistent due to the absence of technical regulations and institutional weaknesses. In contrast, China applies strict liability more effectively through environmental courts, reversed burden of proof, and public interest litigation by prosecutors. These differences indicate the urgency of strengthening enforcement instruments in Indonesia so that the principle can function as an operational tool for environmental protection. The proposed policy recommendations include drafting implementing regulations, establishing environmental courts, and reforming procedures for public lawsuit.*

Keywords: Asset; Bankruptcy; Consumer; Developer; Protection.

1. Introduction

Indonesia is one of the countries with a very high level of environmental degradation. Since 1950, massive deforestation for commodities such as oil palm plantations and the paper industry has resulted in the loss of more than 74 million hectares of tropical rainforest, an area equivalent to twice the size of Germany. The loss of these forests has not only led to the destruction of abundant habitats and biodiversity, but has also increased the potential for disasters such as landslides. (Hudali, Mukti & Bobur Baxtishodovich Sobirov., 2023). In addition to this historical destruction, the rate of primary forest loss again experienced a 27% surge in 2023, partly driven by the nickel mining industry. (Deforestation in Indonesia spiked last year., 2023). In response to the growing cases of environmental damage caused by modern industrial activities, the principle of

strict liability was adopted to address the shortcomings of the traditional liability principle, namely liability based on fault, whereby under the adoption of strict liability, responsibility may be imposed once damage has occurred, even though the defendant has acted with utmost care. (Muhamad Erwin, 2025).

Indonesia's environmental legal framework has developed since Law Number 4 of 1982 on the Basic Provisions for Environmental Management, which for the first time incorporated the principle of sustainable development in the definition of environmental management. The enactment of Law Number 23 of 1997 on Environmental Management repealed Law Number 4 of 1982, and this law also implemented principles such as the precautionary principle, public participation, and access to information into the national legal system. (I Nyoman Nurjaya, 2017). Subsequently, in 2009, environmental law in Indonesia again underwent changes through Law Number 32 of 2009 on Environmental Protection and Management (hereinafter referred to as UUPPLH), which adopted several crucial principles, one of which is the principle of strict liability.

The principle of strict liability is a crucial concept for imposing liability on environmentally destructive corporations, as examined by Sodikin. (Sodikin, 2022). However, significant progress at the normative level highlights a major irony: the weakness of law enforcement in practice. This fundamental weakness is rooted in systemic governance problems, manifested in two main forms. First, bureaucratic constraints caused by strong sectoral ego, in which the environmental ministry often clashes with the interests of ministries in the forestry and mining sectors. (Laode M. Syarif. 2022). Second, the fragile integrity of officials, where corrupt practices among government officers and law enforcers directly undermine the effectiveness of existing regulations, thereby casting doubt on the achievement of comprehensive environmental justice.

One of the fundamental functions of law is to serve as an instrument for realising social order through achieving public compliance with the prevailing norms. In the context of environmental law, this process operates within a cycle known as the regulatory chain, which includes the stages of legislation; regulation; issuing permit; implementation; and enforcement (Laode M. Syarif, & Andri G. Wibisana.

From this series of stages, law enforcement holds a crucial role as the culmination of the entire process. Without effective law enforcement, the various legislative and regulatory products that have been established will lose their significance and risk becoming merely "words on paper". Environmental law enforcement can be defined as an effort to achieve compliance with the rules and requirements stipulated in applicable environmental law provisions, both in general and individually. This effort is realised through supervision and the application of sanctions within the realms of administrative, civil, and criminal law. Thus, law enforcement becomes an imperative mechanism that ensures that legal norms are not merely prescriptive but also functional in regulating societal behaviour in

order to achieve the objectives of environmental protection. (H. Bachrul Amiq, 2013).

As previously mentioned, UUPPLH comprehensively codifies the protection and management of the environment, including strict liability (liability without proving fault) (Law Number 32 of 2009 concerning Environmental Protection and Management, Article 88). In Indonesia, this principle is explicitly regulated in the UUPPLH, Article 88 affirms absolute liability for environmental polluters who use Hazardous and Toxic Substances (B3) in their activities without the need to prove fault (Lalu Aria Nata Kusuma, 2022).

The implementation of the strict liability principle through the UUPPLH faces several problems, including authority conflicts between the Ministry of Environment and Forestry and local governments, compounded by limited human resources and budget constraints that hinder supervision and the enforcement of environmental restoration sanctions against polluters. As a result, public access to absolute compensation mechanisms remains far from ideal, even though ecological and social losses caused by pollution continue to accumulate.

On the other hand, China once experienced a pollution crisis that peaked in the early 2000s, which prompted the need for large-scale environmental law reform (Zhilin Mu, Shuchun Bu, and Bing Xue, 2015). The legal foundation for strict liability for polluters had actually been laid down in Chapter VIII of China's Tort Liability Law of 2009 (Tort Liability Law of the People's Republic of China (2009), Chapter VIII, Art. 65-66). In that chapter, Article 65 stipulates that polluters must bear liability for the losses incurred.

As a further response to the crisis, the Chinese government enacted an amendment to the Environmental Protection Law in 2014. This law functions as a "reinforcing statute" that does not redefine the strict liability principle but significantly strengthens its enforcement. A comparative study of the implementation in both countries is expected to identify procedural and institutional improvement mechanisms that can be applied in Indonesia.

This research aims to analyse the legal framework and practice of the implementation of the strict liability principle in environmental law in Indonesia and China, to evaluate its effectiveness, and to identify technical and institutional barriers that hinder optimal implementation. The main focus is directed at the normative provisions in Indonesia's Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH) and China's Environmental Protection Law of 2014. In addition to normative analysis, this research also examines relevant court decisions in both countries in order to understand how the strict liability principle is interpreted and applied by judges in environmental disputes. This study further compares institutional and procedural structures in both jurisdictions to formulate best practices that can be adapted by Indonesia. The

final results of this research are expected to offer concrete policy recommendations, including regulatory improvements and enhanced inter-agency coordination, in order to accelerate compensation and environmental restoration.

Unlike previous studies that place greater emphasis on normative aspects or the general theory of strict liability, this paper proposes a comparative institutional approach between Indonesia and China to evaluate the functionality of the strict liability principle in environmental adjudication practice. This research highlights the gap between written legal norms and their factual implementation, particularly in the context of structural obstacles such as the unpreparedness of implementing regulations, the complexity of class action and environmental public interest litigation procedures, and the absence of a specialised environmental court in Indonesia. These obstacles are further reflected in judicial practice, as demonstrated in selected environmental cases, where courts do not always apply strict liability consistently. By comparing China's environmental legal mechanisms—which have become more systematic and institutionalised, supported by specialised environmental courts and guiding cases—this study aims to fill a gap in the literature that has yet to comprehensively address procedural, institutional, and case-based dimensions as key factors in the successful application of strict liability.

Research Objectives

To achieve these objectives, this research employs a normative juridical approach focusing on the examination of legislation and legal documents. Judicial decisions are incorporated as an important source of analysis to illustrate the practical application of strict liability in environmental cases. Primary legal materials include the UUPPLH, China's Environmental Protection Law, and relevant court decisions. Secondary legal materials are obtained from scientific literature, legal journals, and reports issued by relevant official institutions. Data collection techniques are conducted through a literature study, while the analysis is carried out descriptively and comparatively. The comparative method enables a comprehensive depiction of the differences and similarities in the application of strict liability in both countries and provides a normative basis for formulating policy recommendations to strengthen environmental law enforcement in Indonesia. Thus, the problem identification of this paper is: (1) How is the strict liability principle implemented in Indonesian environmental law under Law Number 32 of 2009? and (2) How is the strict liability principle implemented in Chinese environmental law under the Environmental Protection Law of 2014.

2. Research Methods

This research employs a normative-juridical approach, focusing on the examination of statutory regulations and relevant legal documents,

complemented by a comparative approach to analyze the similarities and differences in the application of the strict liability principle between the Indonesian and Chinese legal systems. Utilizing primary legal materials such as Indonesia's Law No. 32/2009 and the Job Creation Law, alongside China's Environmental Protection Law and Tort Liability Law and secondary sources from academic literature, the study gathers data through comprehensive library research. The analysis is conducted descriptively and comparatively, evaluating procedural mechanisms, institutional roles, and case-specific dimensions through the study of landmark rulings, such as the *PT Kallista Alam* case in Indonesia and the *Zhang Yushan* case in China, to assess the consistency of judicial interpretation and identify technical or institutional barriers in environmental law enforcement.

3. Result and Discussion

3.1. Strict Liability Theory

The principle of strict liability, or absolute liability, is a legal principle which states that a party may be held liable for losses arising from their actions without requiring the element of fault (*schuld*), whether in the form of intent (*dolus*) or negligence (*culpa*). This principle departs from the general doctrine in civil law which necessitates proof of *mens rea* or wrongful intent in unlawful acts (Muhammad Ihsan Abdurrahman & Rosa Agustina, 2024). In environmental law, this principle aims to facilitate injured parties in claiming compensation for environmental damage. It was developed to address types of conduct that inherently involve high risk, particularly in the context of the environment, where damage is often extensive, complex, and difficult to prove individually.

The principle of strict liability may only be applied to extrahazardous, ultra-hazardous, or abnormally dangerous activities. When strict liability is applied, the claimant only needs to prove the existence of loss, the defendant's act, and a causal relationship between the loss and the defendant's act. Meanwhile, to be released from a strict liability claim, the defendant may prove the existence of justification grounds, including force majeure, contributory fault of the victim, and the fault of a third party. Under the strict liability principle, an activity may be categorised as an abnormally dangerous activity if the following factors are present:

- a. The existence of a high degree of risk of harm to persons, land, or the property of others.
- b. The likelihood that the harm caused will be great.
- c. The inability to eliminate the risk by exercising reasonable care.
- d. The extent to which the activity is not a matter of common usage.
- e. The inappropriateness of the activity to the place where it is carried out.

f. The extent to which the value to the community is outweighed by its dangerous attributes.

The origin of the strict liability principle can be traced to the case of *Rylands v. Fletcher* (1868), in which the English court held that a landowner was liable for damage caused by the escape of water from his reservoir, even in the absence of negligence (*Rylands v. Fletcher* [1868] UKHL 1, LR 3 HL 330). This case became a jurisprudential foundation for the application of liability without fault in civil law. In international environmental law, the strict liability principle is adopted to address challenges in proving fault in cases of transboundary pollution, for instance in the Trail Smelter arbitration between the United States and Canada. Although strict liability was not explicitly applied in that case, it demonstrated a tendency to impose state responsibility for environmental harm caused to another state, regardless of fault.

The strict liability principle is also reflected in various international legal instruments, such as the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which regulates the liability of the exporting state for damage caused by hazardous waste. In addition, the 1992 Rio Declaration, particularly Principle 16, affirms that the party responsible for pollution must bear the cost of pollution in accordance with the “polluter pays” principle, which was first formulated in the OECD Guiding Principles (1972) and reaffirmed in the Rio Declaration (1992) as Principle 16: the polluting party shall bear the costs of remediation (Organisation for Economic Co-operation and Development, *Environmental Principles and Concepts*, General Distribution OCDE/GD (95)124 (Paris: OECD, 1995). The application of the strict liability principle in environmental law aims to encourage business actors to exercise greater care in their activities and to provide more effective protection for society and the environment from the risk of damage caused by hazardous activities.

The application of strict liability serves to expedite victims’ access to compensation, reduce the claimant’s burden of proof, and create a deterrent effect for business actors to manage environmental risks more carefully. In many jurisdictions, the strict liability principle is chosen because of its function as a powerful deterrent and as a mechanism to enforce the polluter pays principle. This principle is considered essential to address complex environmental damage cases, such as long-tail environmental claims and extensive harm to biodiversity, which were previously often borne by public funds (Robert A. Rosen, 2002).

Nevertheless, the strict liability doctrine is not implemented uniformly across all countries. Its application is strongly influenced by the structure of national legal systems, the capacity of supervisory institutions, and the nature of the relationships between citizens, the state, and corporations. In some countries, such as China, the principle has been firmly institutionalised and supported by consistent judicial mechanisms. Meanwhile, in other countries such as Indonesia,

although the norm recognises absolute liability, its implementation still faces significant procedural and institutional challenges. Therefore, a comprehensive understanding of the strict liability principle is essential as a basis for examining how countries such as Indonesia and China formulate, interpret, and apply this doctrine within their respective legal systems. This comparative study not only tests the extent to which the effectiveness of the norm is realised but also identifies legal and institutional gaps that may be addressed for more progressive environmental protection.

3.2. Implementation of the Strict Liability Principle in Indonesia

The application of the principle of strict liability in the Indonesian legal system constitutes part of the progressive development of environmental law influenced by global discourse following the 1972 Stockholm Conference and the 1992 Rio Declaration. Before being explicitly accommodated in the Environmental Protection and Management Act (UUPPLH), this principle had been introduced in a limited manner in Law Number 23 of 1997 concerning Environmental Management, yet it did not possess adequate normative force because it remained merely an academic interpretation. The principle of strict liability in Indonesian environmental law was first explicitly regulated in the UUPPLH. Article 88 states that:

“Any person whose actions, business, and/or activities use hazardous and toxic substances (B3), produce and/or manage B3 waste, and/or cause serious threats to the environment shall be strictly liable for the losses incurred without the need to prove elements of fault” (Law Number 32 of 2009 concerning Environmental Protection and Management, Article 88).

With the phrase “without the need to prove elements of fault,” this norm provides a legitimate basis for strict liability in relation to acts that result in significant ecological impacts. In contrast to the conventional civil liability regime, which requires proof of fault, this provision affirms that in environmental cases, the existence of impact and causal connection is sufficient to establish a legal obligation. Substantively, strict liability in Article 88 functions as a *sui generis* norm regulating specific civil liability for environmental matters, and it may be categorised as a material offence because it emphasises consequences (damage/pollution) rather than the intention or negligence of the perpetrator.

Recent developments show that Article 88 of the UUPPLH underwent editorial changes through Government Regulation in Lieu of Law (PERPPU) Number 2 of 2022 concerning Job Creation (hereinafter referred to as the UUCK), whereby the wording of Article 88 was amended to:

“Any person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or cause serious threats to the environment shall be strictly

liable for the losses arising from their business and/or activities” (Government Regulation in Lieu of Law (PERPPU) Number 2 of 2022 concerning Job Creation).

The phrase “without the need to prove elements of fault” is no longer included in the body of the article. Nevertheless, the substance of the strict liability principle is retained in the article’s elucidation, which states that elements of fault do not need to be proven by the claimant. Thus, this amendment does not automatically eliminate the principle of strict liability in Indonesian environmental law. As explained by Andri Gunawan Wibisana, the main issue in the application of this principle lies in conceptual errors within judicial practice, in which strict liability is often equated with liability based on proof of fault or unlawful acts, thereby obscuring its normative character, which is *sui generis* and non-fault based (Andri Gunawan Wibisana, 2021).

Accordingly, the strict liability norm in the UUCK represents the State’s effort to strengthen environmental protection through legal mechanisms that are more aligned with victims’ interests and oriented towards restoration. However, its effectiveness largely depends on judicial courage, the clarity of technical regulations, and the capacity of society to access litigation channels.

Although the wording of the article has been amended through the UUCK, implementing regulations relating to strict liability have not been revised. The implementing regulations concerning strict liability still refer to the general implementing regulation on environmental protection, namely Government Regulation Number 22 of 2021 concerning the administration of environmental protection and management. The regulation governs the application of strict liability through a single provision, namely Article 501, which establishes the legal framework for civil law enforcement in cases of environmental pollution or damage. Paragraph (1) affirms that civil law enforcement may be carried out through strict liability, meaning that the claimant is not required to prove fault on the part of the business actor. However, paragraph (2) requires that the use of strict liability must be expressly requested by the claimant and clearly stated in the lawsuit. Paragraph (3) further limits the application of strict liability to persons responsible for businesses and/or activities that use hazardous and toxic substances (B3), produce or manage hazardous waste, or pose a serious threat to the environment. Despite this, paragraph (4) allows defendants to present defenses by proving that they did not use B3, did not generate hazardous waste, did not pose a serious environmental threat, or that the pollution or damage was caused by another party or a force majeure event. Paragraph (5) provides exemptions from strict liability if the defendant can prove that the environmental harm resulted from a natural disaster or war, a compelling situation beyond human control, or an act of another party. Finally, paragraph (6) stipulates that if another party is proven to have caused the pollution or damage, that party shall bear full responsibility for the resulting losses. Overall, Article 501 offers a clear

structure regarding the conditions, scope, and exceptions of strict liability while reinforcing the accountability of business actors in environmental protection (Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management).

Outside environmental law, the Indonesian civil law system generally still adheres to the schuld (fault) principle, as reflected in Article 1365 of the Civil Code. Therefore, the existence of Article 88 of the Job Creation Law constitutes an exception of a *lex specialis* nature and marks an important shift towards objective liability in certain fields. Regarding its scope, the application of strict liability applies to business activities that use hazardous and toxic substances (B3), produce B3 waste, and/or pose a high risk to the environment. The Job Creation Law does not explicitly regulate the mechanism of the burden of proof, but generally under the principle of strict liability the claimant's burden of proof concerns only the existence of damage, the existence of the defendant's act, and the existence of a causal relationship between the damage and the defendant's act.

The principle of strict liability in the Environmental Protection and Management Law is closely correlated with the precautionary principle set out in Article 2 letter f. This principle emphasises that scientific uncertainty must not be used as a justification for delaying preventive measures against environmental impacts. In other words, even if the actor does not yet know with certainty that their action has caused damage, liability may still be imposed. One example of the implementation of this principle can be found in Supreme Court Decision No. 651 K/PDT/2015, which granted the Ministry of Environment and Forestry's claim against PT Kallista Alam concerning land fires in Rawa Tripa, Aceh. In that decision, the judge held that proof was sufficiently based on the impact and causal link, rather than malicious intent or negligence. Thus, Article 88 of the Job Creation Law serves not only as a symbol of the state's commitment to the principle of environmental responsibility but also as an important instrument for expanding access to ecological justice.

The consistency of the application of this principle is normatively reflected in the formulation of Article 88 of the Job Creation Law, which explicitly recognises strict liability as a form of absolute liability for environmental pollution and/or damage. This provision constitutes a legal breakthrough aimed at favouring and protecting victims (victim protection). Through this principle, affected communities who suffer harm are no longer burdened with the obligation to prove the element of fault on the part of the actor, considering the complexity of proof in modern high-risk industrial activities. Unfortunately, in practice, Indonesian courts have not consistently applied the simplification of the claimant's burden of proof as is common in environmental cases based on strict liability (Imamulhadi, 2013). Although Indonesia is normatively quite progressive, there are still no derivative

regulations (for example in the form of a Government Regulation or a Supreme Court Regulation) that technically elaborate the limits of high-risk activities, methods for proving causal relationships, or the measurement of ecological loss.

Although normatively Indonesia has been quite progressive, its implementation in the field demonstrates complex dynamics. To observe how this norm is tested in judicial practice, an analysis of several important cases becomes crucial. A landmark case often referred to as an example of the successful application of strict liability is Supreme Court Decision No. 651 K/PDT/2015 in the peatland fire case involving approximately $\pm 1,000$ hectares in Rawa Tripa, Aceh. The Ministry of Environment and Forestry (KLHK), as the claimant, sued PT Kallista Alam for acts of environmental pollution and damage within the company's concession area. In the final decision, the Supreme Court upheld the first-instance judgment and ordered PT Kallista Alam to pay Rp114.3 billion for environmental losses and Rp251.7 billion for ecosystem restoration costs. This decision marked an important milestone because the panel of judges no longer based liability on proof of negligence or fault, but rather on the factual consequences in the form of environmental damage that could be linked to the company's activities. The judge stated that the company had carried out activities in an area categorised as a peat swamp ecosystem with a high risk of fires and ecological damage. Although formally this decision reflects the application of strict liability, the legal battle in court required considerable time and resources from the Ministry of Environment and Forestry, as well as strong support from national and international environmental NGOs. This demonstrates that the successful application of this doctrine remains highly contextual and not yet systemic.

In contrast to the Kallista Alam case, the PT BMH (Bumi Mekar Hijau) case demonstrates a more complex and intricate legal enforcement dynamic. At the first instance, the Ministry of Environment and Forestry's claim concerning damage to approximately $\pm 20,000$ hectares of land due to fires amounting to Rp7.8 trillion was indeed rejected by the Palembang District Court, which triggered concerns because the judge erroneously continued to use a fault-based liability approach. However, this controversial decision was entirely overturned at the appellate level. The Palembang High Court granted the Ministry's claim on the basis of the application of the strict liability principle (Palembang High Court Decision Number 51/PDT/2016/PT.PLG, dated August 12, 2016). This decision was subsequently upheld at the cassation level by the Supreme Court. Therefore, the PT BMH case is an example in which the principle was initially overlooked but ultimately successfully enforced by the judicial system at the higher levels. This decision raises concerns about the inconsistency of courts in understanding and applying Article 88 of the Environmental Protection and Management Law.

The implementation of the strict liability principle is highly dependent on the capacity and courage of law enforcement institutions, particularly judges in

applying the principle of strict liability. Furthermore, the absence of implementing regulations for Article 88 of the Job Creation Law has resulted in a vacuum of legal interpretation, which is then subjectively filled by the courts. In addition, administrative oversight of companies is still not optimal. Many companies are subjected only to light sanctions in the form of reprimands or temporary suspension, without being pushed towards civil or criminal claims based on absolute liability.

One concrete case that reflects this issue is the pollution of the Cikijing River by PT Kahatex in Sumedang Regency, West Java. The company was proven to have discharged liquid waste exceeding quality standards into the river, which serves as the main source of irrigation for community agricultural land. The legal process undertaken by the Ministry of Environment and Forestry resulted in Supreme Court Decision Number 187/K/TUN/LH/2017, which upheld the revocation of the company's wastewater disposal permit (IPLC) by the government (Supreme Court Decision Number 187/K/TUN/LH/2017). Although the pollution was proven, the basis of liability used in this case relied more heavily on aspects of administrative violations, without directly linking it to the principle of strict liability as stipulated in Article 88 of the Job Creation Law. In fact, the characteristics of this case meet the elements for applying absolute liability, such as the existence of high-risk activities, extensive ecological damage, and the difficulty for the affected community in proving the element of fault on the part of the perpetrator.

The strict liability principle in this context should not be understood merely as a written norm, but also as an effective instrument for ecological restoration. Strict liability is designed to ensure legal certainty in environmental cases involving modern industrial activities with significant potential risks, particularly when proving the element of fault becomes a disproportionate burden for affected communities (Muhammad Ainurrasyid Al Fikri, 2022). The non-application of this approach in the PT Kahatex case demonstrates the continuing weakness in the implementation of the strict liability principle in environmental judicial practice in Indonesia. Instead of functioning as a mechanism of objective liability, the norm is frequently overshadowed by fault-based evidentiary paradigms that are more aligned with the conventional civil liability regime.

Overall, this analysis reveals a paradox within Indonesian environmental law: the existence of a progressive strict liability norm under Article 88 of the Job Creation Law clashes with judicial implementation that remains far from optimal. Inconsistent judicial interpretation, as reflected in the dynamics of the decisions in the PT Kallista Alam and PT BMH cases, and the disregard of this principle in the PT Kahatex case, confirms that the core problem lies at the level of practice. These obstacles are exacerbated by the absence of implementing regulations at the procedural-judicial level, creating legal uncertainty in terms of proving causality and calculating damages. Therefore, the future of strict liability enforcement in

Indonesia depends not only on the courage of individual judges, but also on institutional will, particularly from the Supreme Court, to promptly issue a Supreme Court Regulation (PERMA). Only through this instrument can uniform interpretation be realised, and access to ecological justice for pollution victims become not merely contextual, but a systemic legal certainty.

3.3. Implementation of the Strict Liability Principle in China

Facing a severe environmental crisis and the increasing threat to social stability, the Chinese government undertook substantial measures in the past decade (Alex Wang, 2013). One form of this response was legislative reform through the major amendment to the 2014 Environmental Protection Law, which aimed to strengthen China's environmental legal system in terms of both substance and enforcement. Before 2014, the liability of polluters was generally regulated under the 2009 Tort Liability Law of the People's Republic of China, particularly in Articles 65–68, which stipulated that polluters were liable for environmental damage without the need to prove fault (fault-based liability does not apply in this context) (Tort Liability Law of the People's Republic of China, 2009, Articles 65–68). Article 65 states: "Where any harm is caused by environmental pollution, the polluter shall assume tort liability."

To understand the context behind the emergence of the strict liability principle in China's environmental law, it is necessary to trace the ecological crisis that prompted major reforms in its legal system. During the early 2000s, the People's Republic of China experienced a significant environmental crisis. A 2007 World Bank report indicated that 16 of the world's 20 most polluted cities were located in China, and air pollution had become the leading cause of premature death in urban areas (World Bank, 2007). This situation pushed the Chinese government to undertake systemic reform of its environmental legal framework. One of the most significant steps was the 2014 amendment to the Environmental Protection Law, replacing the previous 1989 version. The revision not only increased sanctions against polluters but also explicitly integrated the strict liability principle into the national legal system. Its aim was to accelerate environmental law enforcement, strengthen the role of social organisations, and create disincentives for environmentally harmful industrial activities.

This strict liability principle was subsequently reinforced and further developed in Chapter V of the 2014 Environmental Protection Law, which expressly obliges business actors to undertake environmental restoration and compensation regardless of the presence or absence of fault. In practice, this system rejects most common defences such as "force majeure" or "due diligence," and emphasises the need to prove the causal link between activities and damage.

Not only strengthening the liability of primary actors, the 2014 Environmental Protection Law also innovatively expanded the accountability framework to third

parties serving as professional facilitators. Article 65 expressly regulates this by stating:

“Where any environmental impact assessment institution, environmental monitoring institution, or institution engaging in the maintenance or operation of environmental monitoring equipment and pollution prevention and control installations makes falsification in the provision of relevant environmental services and is liable for the environmental pollution or ecological disruption caused, it shall assume joint and several liability with other parties liable for the environmental pollution or ecological disruption...” (Environmental Protection Law, Article 65).

This provision constitutes a breakthrough demonstrating China’s seriousness in targeting not only direct perpetrators but also the professionals who enable environmental harm through corrupt practices or professional negligence. Furthermore, in the Interpretation on Several Issues Concerning the Application of Law in Environmental Tort Dispute Cases issued by the Supreme People’s Court of the PRC in 2015, it is affirmed that in environmental pollution cases Article 7 specifies several evidential matters that a defendant may advance in a strict liability case, namely: (1) there is no possibility that the discharged pollutant could have caused the loss; (2) the discharge of the pollutant capable of causing the loss did not reach the location of the loss; (3) the loss had occurred prior to the discharge of the pollutant; (4) other circumstances in which it can be verified that there is no causal link between the polluting conduct and the loss, such that a defence based on ignorance or compliance with technical standards cannot be relied upon as a ground for exoneration of liability (Supreme People’s Court of the PRC, 2015). Thus, China’s legal framework normatively supports the firm and operational application of strict liability.

This mechanism is regarded as effective in suppressing the rate of environmental degradation that reached a critical point in the early 2000s, notably due to coal-related air pollution, groundwater degradation, and uncontrolled expansion of heavy industry. The 2014 Environmental Protection Law is seen as a systematic effort to integrate environmental protection with the precautionary principle, corporate accountability, and participatory transparency. Overall, the strict liability norm within China’s environmental legal system is imperative and directly linked to obligations for ecological restoration, not merely financial compensation. The norm is also combined with aggressive administrative and criminal enforcement mechanisms, including substantial fines, factory closures, and the criminal prosecution of corporate individuals involved in serious violations.

As a significant example of the application of strict liability in China, the 2014 Environmental Protection Law opened space for non-governmental organisations (NGOs) to bring public-interest environmental litigation. Since 2015, dozens of suits have been filed by various NGOs, including Friends of Nature, targeting companies over a range of issues from water and air pollution to forest

destruction. In many of these early cases, the courts granted the claims brought by the NGOs. Those decisions generally no longer concerned themselves with the presence or absence of intent or negligence, but focused on the fact that there had been a breach of environmental quality standards or ecological damage (Richard Zhang Qing and Benoit Mayer, 2017). These cases constituted an important milestone in the history of Chinese environmental law because they demonstrate that:

- 1) Claims may be filed on behalf of the public without direct individual victims.
- 2) The burden of proof for the claimant becomes lighter, as it is sufficient to demonstrate the existence of a violation or damage, which aligns with the spirit of the strict liability principle.

The seriousness of the Chinese government is also reflected in the establishment of specialised judicial infrastructure. The first environmental court was established in 2007 in Guiyang, and by December 2021, the number had expanded rapidly to 2,149 environmental courts nationwide. These courts are specifically designed to handle environmental cases more efficiently through the “three-in-one” model, which integrates the handling of criminal, civil, and administrative cases. To improve the quality of judgments, these courts also employ judges with professional backgrounds in environmental matters and even involve experts. The effectiveness of this system is evident from the growth of the number of cases handled; for instance, the number of environmental public-interest lawsuits in 2018 alone experienced an explosive increase of 792.08% compared to the previous year. Although the term *strict liability* is not always used, this judicial practice significantly increases the legal risks and costs for polluters, which is consistent with the application of the principle of absolute liability (Xiulin Qi 2023).

The application of strict liability can also be analysed in the 2018 pollution case in Guangdong Province. In December 2019, the Guangdong High People’s Court delivered its final judgment against Zhang Yushan and Kuang Dayao, who were found responsible for severe pollution in a former mining pond (Dashi’gu Water Pond) caused by the dumping of solid waste and domestic refuse. The court applied the principle of strict liability, thereby requiring the perpetrators to fund ecosystem restoration and to pay compensation for the loss of environmental functions (Zhang Yushan & Kuang Dayao v. 2018), this judgment affirms three main points, namely:

- 1) The objectivity of liability;
- 2) The “actual damage” standard;
- 3) As well as the principles of prevention and restitution.

Although the perpetrators argued that other parties had also contributed to the pollution, the court did not incorporate elements of fault-based proof into its main considerations. The judges only assessed that: (a) the perpetrators were the lawful managers of the pond, (b) the waste disposal activities occurred during their period of management, and (c) there was a direct causal relationship between these activities and the environmental damage that occurred. Accordingly, the burden of proving the absence of causation was placed on the perpetrators, in line with the doctrine of liability without fault as regulated in the 2009 Tort Liability Law and now incorporated into the Civil Code of the People's Republic of China. The polluter pays principle and the precautionary principle were implemented when the judges focused on the actual consequences of the pollution, rather than on the perpetrators' intent or negligence.

In the judgment in the case of Zhang Yushan & Kuang Dayao, the term "actual damage" was interpreted broadly, covering not only physical damage but also "loss of ecosystem service functions". This broad interpretation accords closely with the theory of restorative justice. According to Hazrati and Heffron, the essence of restorative justice lies in its focus on the needs of victims including nature and society and aims to "return them to their original position before the harmful activity occurred" (M. Hazrati and R.J. Heffron, 2021). Thus, the obligation to restore the ecosystem and to pay compensation for the loss of natural functions becomes a unified obligation of remediation, consistent with the aim of restorative justice to "repair harm".

This judgment is directed not only towards restoration but also towards future prevention. It reflects the dual function of strict liability, namely enforcing restitution for damaged environments while creating a strong deterrent effect for other business actors. According to Rosen, such legal liability constitutes a "powerful deterrent" against environmental non-compliance. The requirement of restoration also reflects the precautionary principle, which Kriebel (et al.) defines as the obligation to take "preventive action in the face of uncertainty" (David Kriebel, 2021). All implementation costs imposed on the perpetrators embody the polluter pays principle, which Rosen explains as the basis for ensuring that the costs of damage are not borne by taxpayers. Ultimately, this public-interest litigation mechanism represents a manifestation of environmental justice, which, according to Hazrati and Heffron, provides voice and access to justice for victims who are often unconventional, such as nature itself or the wider community.

3.4. Similarities and Differences in the Application of Strict Liability

Indonesia and China both recognise the principle of strict liability in their respective national environmental law systems. In Indonesia, the principle is explicitly set out in Article 88 of the Job Creation Law (UUCK), whereas in China, the basis of absolute liability is stipulated in Articles 65–68 of the 2009 Tort Liability Law and strengthened in the 2014 Environmental Protection Law. In both

systems, the principle of strict liability allows victims or the public to sue polluters without the requirement to prove fault. Moreover, both countries face challenges in the implementation of the norm: Indonesia faces problems of inconsistent jurisprudence and procedural obstacles, whereas China encounters issues of local politics and disparities in the enforcement capacity across regions.

The main differences lie in the consistency of application and institutional structures:

a) Institutional Aspects:

China has established specialised environmental courts and strengthened the authority of the procuratorate in prosecuting polluters, whereas Indonesia does not yet have a nationally integrated system of environmental courts. Legal proceedings in Indonesia still take place in general courts, with judges who do not always have specialisation in environmental matters.

b) Burden of Proof and Technical Regulations:

In China, the burden of proof has been normatively regulated in a clear manner through the 2015 Interpretation of the Supreme People's Court, whereas in Indonesia, there is no implementing regulation that clarifies the evidentiary standards in strict liability cases, resulting in courts often still requiring proof of fault by the claimant.

c) Role of the State in Enforcement:

China employs the People's Procuratorate as the main actor in prosecuting environmental cases, whereas in Indonesia, civil law enforcement still depends heavily on the initiative of the Ministry of Environment (KLH) or NGOs.

d) Sanctions and Ecological Restoration:

In Chinese cases, strict liability not only results in compensation obligations but also in active orders for ecological restoration, including habitat restoration and land rehabilitation. In Indonesia, restoration is often merely declaratory or symbolic, lacking strong technical mechanisms to ensure its execution.

Table Comparison of Legal Aspects of Environmental Strict Liability: Indonesia & China

Aspect	Indonesia	China
Legal Basis	Article 88 of the Job Creation Law (UUCK) & Government Regulation No. 22 of 2021	Articles 65–68 of the 2009 Tort Liability Law; Chapters V & VIII of the 2014 Environmental Protection Law
Nature of Liability	Regulated as strict liability, but its application in court often still requires proving elements of fault	Recognised as strict liability normatively and reaffirmed in Supreme People's Court jurisprudence
Burden of Proof	The burden of proof has been regulated under Government	The burden of proof is explicitly regulated through the Supreme

	Regulation No. 22 of 2021, although not as detailed as in China	People's Court interpretation (2015); the perpetrator must prove the absence of a causal relationship
Judicial Forum	General courts; no specialised environmental courts currently exist	Environmental Courts are available in more than 10 provinces
Sanctions & Ecological Restoration	Generally in the form of compensation or administrative orders; ecological restoration is often not followed through	In addition to compensation, courts impose active ecological restoration orders (e.g., rehabilitation, revegetation, river restoration)
Technical Implementing Regulations	The implementing regulation is provided through Government Regulation No. 22 of 2021, Article 501, but it does not sufficiently accommodate	Supreme People's Court interpretations and Ministry of Ecology and Environment technical guidelines exist regarding law enforcement and classification of high-risk activities
Implementation Challenges	Judicial inconsistency, limited public access, and institutional unpreparedness	Local political pressure and disparities in interregional capacity

A fundamental distinction between Indonesian and Chinese judicial practice lies in how courts conceptualise environmental harm, as reflected in their case law. Chinese courts have adopted a substantive ecological conception of damage, as illustrated in *Zhang Yushan & Kuang Dayao* and a range of Environmental Public Interest Litigation (EPIL) cases. In *Zhang Yushan & Kuang Dayao*, the court interpreted “actual damage” broadly to encompass not only physical destruction but also the loss of ecosystem service functions, thereby recognising ecological harm as systemic and long-term. A similar approach is evident in EPIL cases such as *Taizhou Environmental Protection Federation v. Changlong Chemical et al.* and the *Taisheng Quarry* case, where courts calculated liability based on restoration costs and the loss of ecological service value rather than on regulatory non-compliance alone. This interpretation aligns closely with restorative justice theory, which views environmental harm as injury to ecological systems and collective societal interests, rather than as a mere violation of administrative standards.

In contrast, Indonesian courts have not consistently embraced an ecosystem-based conception of environmental damage. While the Supreme Court decision in *PT Kallista Alam* demonstrates a progressive understanding by ordering both compensation for environmental losses and ecosystem restoration costs, other cases reveal a more restrictive approach. In the *PT Kahatex* case, despite proven pollution and ecological harm, judicial reasoning focused primarily on administrative violations related to wastewater disposal permits. As a result, environmental damage was treated as a regulatory infraction rather than as a systemic ecological loss, thereby limiting the transformative potential of strict liability under Article 88 of the Environmental Protection and Management Law.

Chinese environmental adjudication further exhibits a restorative and preventive judicial function, as reflected in its case outcomes. Courts do not merely resolve disputes but actively engage in repairing environmental harm and preventing future damage. In *Taizhou Environmental Protection Federation v. Changlong Chemical et al.*, restoration of the polluted river was the central remedy, supported by significant monetary compensation for ecological losses. Similarly, in the *Taisheng Quarry* climate-related EPIL case, the court ordered ecosystem restoration under administrative supervision or, alternatively, the payment of restoration costs. These cases demonstrate that strict liability in China operates as a forward-looking mechanism, integrating restoration, deterrence, and precaution.

By contrast, Indonesian courts largely remain within a formal adjudicative framework, even when applying strict liability. In *PT Kallista Alam* and *PT Bumi Mekar Hijau (BMH)*, the successful application of strict liability depended heavily on the institutional capacity and persistence of the Ministry of Environment and Forestry, as well as strong support from environmental NGOs. Moreover, the absence of systematic post-judgment supervision mechanisms means that restoration orders often lack a clear enforcement framework. This limits the preventive function of strict liability and risks reducing it to a case-specific remedy rather than a systemic enforcement instrument.

Judicial consistency represents another critical divergence. China's EPIL framework, reinforced by guiding cases and specialised environmental courts, has produced relatively uniform judicial reasoning in applying strict liability principles. Across cases such as *Zhang Yushan & Kuang Dayao*, *Changlong Chemical*, and *Taisheng Quarry*, courts consistently rely on ecological assessments, recognise the public interest nature of environmental harm, and impose restoration-based remedies without requiring proof of fault.

Indonesia, however, demonstrates interpretive fragmentation, as reflected in the divergent outcomes of *PT Kallista Alam*, *PT BMH*, and *PT Kahatex*. While *Kallista Alam* and the appellate and cassation decisions in *PT BMH* applied strict liability by focusing on environmental consequences, the *PT Kahatex* case reverted to fault-based and administrative reasoning. The absence of implementing regulations or a Supreme Court Regulation (PERMA) has allowed such inconsistencies to persist, undermining legal certainty and weakening the doctrinal coherence of strict liability in Indonesian environmental law.

Scientific expertise also plays a decisive role in enabling strict liability to function effectively. Chinese courts systematically integrate certified environmental forensic experts, as seen in *Taisheng Quarry* and other EPIL cases, to assess ecological damage, climate impact, and restoration costs. This practice transforms strict liability into an evidence-based risk allocation mechanism, where liability is grounded in scientific causation rather than moral blameworthiness.

In Indonesia, by contrast, expert evidence remains underutilised or inconsistently engaged. Courts frequently place a disproportionate evidentiary burden on plaintiffs particularly affected communities to prove causation and fault, a practice that contradicts the rationale of strict liability. This explains why cases such as *PT Kahatex*, despite clear environmental harm, were resolved through administrative sanctions rather than civil liability for ecological damage.

Finally, China's EPIL framework institutionalises access to environmental justice by allowing NGOs and procuratorates to act as guardians of public and ecological interests. Cases such as *Changlong Chemical* and *Taisheng Quarry*, initiated by NGOs, demonstrate how removing the requirement of personal loss enables courts to address harm suffered by diffuse and unconventional victims, including ecosystems and future generations. This institutional design significantly strengthens the practical enforceability of strict liability.

Indonesia's system, by contrast, continues to rely heavily on state-initiated litigation, with complex and resource-intensive procedures for class actions and public interest claims. Consequently, access to ecological justice remains uneven and dependent on exceptional cases like *Kallista Alam*, rather than functioning as a routine judicial mechanism.

Overall, the comparative analysis reveals a paradox: Indonesia possesses a progressive strict liability norm, yet its judicial implementation remains inconsistent and fragile, as evidenced by contrasting outcomes in *Kallista Alam*, *PT BMH*, and *PT Kahatex*. China, although historically less explicit in statutory language, has developed a functional strict liability regime through institutional innovation, jurisprudential consistency, and scientific integration, as reflected in EPIL case law. This contrast demonstrates that the effectiveness of strict liability depends not solely on statutory formulation, but on institutional design, judicial culture, and procedural infrastructure. China's experience shows that strict liability becomes meaningful only when embedded within a restorative, expert-driven, and public-interest-oriented adjudication system.

4. Conclusion

The principle of strict liability constitutes an essential foundation in modern environmental law because it enables legal accountability for environmental pollution and/or degradation without the requirement to prove elements of fault. The application of the strict liability principle in Indonesia, as regulated under Article 88 of the Job Creation Law (UUCK), has been normatively adopted but has not yet functioned effectively in practice. Its implementation faces various juridical and structural challenges, such as the absence of specific implementing regulations for Article 88 and the inconsistency of court decisions in applying strict liability. Consequently, this principle has not become a robust instrument for promoting ecosystem restoration and achieving ecological justice in Indonesia.

The application of the strict liability principle in China is based on a combination of the 2014 Environmental Protection Law and the 2009 Tort Liability Law. Its implementation is strongly supported by progressive institutions and law enforcement mechanisms. China has taken concrete measures such as establishing specialised environmental courts, explicitly regulating the burden of proof through the Supreme People's Court Interpretation (2015), and disallowing defences based on lack of knowledge or compliance with technical standards as grounds for exemption from strict liability. These measures render the implementation of strict liability in China more effective and structured. Based on the conclusions above, several strategic recommendations are formulated to strengthen the effectiveness of the implementation of the strict liability principle in Indonesia so that it may achieve the objectives of ecological protection and justice. Strengthening the legal system is required through the following measures: first, in terms of implementing regulations, the Government has indeed issued implementing regulations; however, these regulations have not yet sufficiently accommodated the calculation of ecological losses, and therefore the Government is expected to promptly prepare implementing regulations for Article 88 of the Job Creation Law that specifically regulate the calculation of ecological losses. Second, from a preventive perspective, the establishment of a specialised environmental court at the provincial level with judges possessing ecological competence should be considered to ensure consistency in judicial decisions. Third, in terms of institutional arrangements, the Supreme Court is expected to develop guidelines through a Supreme Court Regulation to standardise the application of strict liability and reduce disparities in judgments. Specifically, by emulating successful practices in China, it is recommended that Indonesia strengthen the state's role as an active plaintiff. This can be achieved by reinforcing the authority of the Directorate General of Law Enforcement within the Ministry of Environment (KLH) and the Attorney General's Office. These entities can proactively file public interest litigation, particularly to represent the rights of affected communities who lack the resources or legal understanding to independently pursue legal recourse

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