

Legal Analysis of Marine Pollution Due to Oil Spill by MV Ever Judger Ship in Balikpapan Bay: Review of the Implementation of the Strict Liability Principle in Law No. 32 of 2009

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Abstract

The oil spill by the MV Ever Judger in Balikpapan Bay in 2018 is one of the marine pollution cases that has received widespread attention in Indonesia. This incident caused significant environmental damage and caused social, economic and ecological losses. This article aims to analyze the application of the strict liability principle in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) in the context of the case. The principle of strict liability allows the liability of the perpetrator of pollution without having to prove the element of fault. Through a normative juridical approach, this article dissects the legal basis of marine pollution liability and assesses the effectiveness of its application to polluters from the shipping sector. The results of the discussion show that although the principle of strict liability is accommodated in Indonesian environmental law, its application still faces challenges in practice, especially in terms of law enforcement and proof of ecological losses.

KEYWORDS

Marine pollution, Strict Liability Principle, MV Ever Judger, Environmental Law.



Introduction

Marine pollution is one form of environmental damage that is very detrimental and complex to handle. The sea as an integral part of the global ecosystem has a crucial function, not only as a source of life and food reserves, but also as a supporter of global climate stability. Judith S. Weis emphasized that, long-term ecological impacts that are difficult to recover, such as disruption of the marine food chain, mass death of marine biota, and damage to coral reefs and mangrove ecosystems which are natural fortresses against coastal abrasion and flooding.¹In addition, marine pollution also has major socio-economic implications because it has a direct impact on the livelihoods of coastal communities, especially those who depend on the fisheries and tourism sectors for their livelihood.²Therefore, when a large-scale oil spill incident occurs, the consequences are not only limited to material losses, but also threaten the sustainability of the ecosystem and the future of future generations.

Indonesia, as an archipelagic country with more than 81,000 kilometers of coastline and extensive sea areas, is a country that is very vulnerable to marine pollution, especially due to its strategic location on international shipping routes and the high intensity of natural resource exploitation activities in coastal and marine areas.³Many foreign-flagged vessels cross or even anchor in Indonesian waters every day, whether for trade, logistics, or transportation of hazardous materials. This situation makes Indonesian sea areas a high-risk area for pollution due to ship

¹Judith S Weis, *Physiological, Developmental and Behavioral Effects of Marine Pollution* (USA: Springer, 2014), <https://doi.org/10.1007/978-94-007-6949-6>.

²Lince Septiani Inggeni et al., "Analysis of the Impact of Coral Reef Damage on the Economy and Social Community in Perea Village," *UNES: Journal of Sciencetech Research* 6, no. 2 (2021): 139–49, <https://ojs.ekasakti.org/index.php/UJSR/>.

³Hidayat Chusnul Chotimah, Muhammad Ridha Iswardhana, and Lucitania Rizky, "Collaborative Governance Model in Marine Plastic Waste Management to Achieve Maritime Resilience in Indonesia," *National Resilience Journal* 27, no. 3 (January 1, 2022): 348, <https://doi.org/10.22146/jkn.69661>.

accidents, oil spills, and industrial waste. One of the most significant marine pollution incidents that occurred in Indonesia was the oil spill by the MV Ever Judger ship in Balikpapan Bay on March 31, 2018.⁴This incident became an ecological disaster that not only damaged the environment, but also caused widespread social losses.

The oil leak incident from the Pertamina pipeline, which was allegedly caused by the anchor of the MV Ever Judger ship, caused a large oil spill that polluted Balikpapan Bay, East Kalimantan. The oil spill even triggered a major fire on the sea surface, which caused five people to die and many others to be injured. Reported from Unair News,⁵more than 7,000 hectares of waters and mangrove forests were directly affected by the oil spill. Marine biota died en masse, fishing activities were paralyzed, and the air around the location was polluted to the point of disrupting the health of residents. Although this incident attracted public attention and became a national topic of conversation, until now the law enforcement process against the responsible parties has not shown adequate results. This shows that Indonesia still faces major challenges in enforcing environmental law, especially when the perpetrators are foreign entities.

One of the principles that can be used to ensnare perpetrators of pollution is the principle of strict liability, namely legal responsibility without the need to prove the element of fault.⁶This principle has been explicitly accommodated in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH).⁷The article emphasizes that every person responsible for a business and/or

⁴Directorate General of Sea Transportation, "OIL SPILL AND SHIP ROPE FIRE OF MV. EVER JUDGER IN SEMAYANG PORT WATERS SUCCESSFULLY OVERCOME," Directorate General of Sea Transportation, 2018.

⁵Unair News, "Impact of Oil Spills in Indonesia and How to Handle Them," Unair News, 2024, <https://unair.ac.id/dampak-tumpahan-minyak-di-indonesia-dan-penanganannya/>.

⁶Fikry Latukau and Syah Awaluddin Uar, "Implementation of the Strict Liability Principle in International and National Environmental Law Related to the Marine Environment," *JiHK* 3, no. 1 (July 30, 2021): 45–54, <https://doi.org/10.46924/jihk.v3i1.144>.

⁷Indonesia, "Law Number 32 of 2009 Concerning Environmental Protection and Management," Government of the Republic of Indonesia § (2009).

activity that causes environmental pollution or damage is obliged to bear compensation and/or take certain actions without needing to be proven guilty. This means that by simply proving that the activities or actions of a certain party cause pollution, he/she is obliged to be responsible for the environmental consequences caused.

The principle of strict liability, when viewed theoretically, provides convenience and legal certainty for victims of pollution and the state in prosecuting the perpetrators. In addition to administrative and criminal approaches, the civil law approach also plays an important role in resolving environmental pollution cases, especially as a means of recovering losses experienced by the community. In this case, civil law instruments can be used through a lawsuit mechanism based on unlawful acts as regulated in Article 1365 of the Civil Code which reads:⁸

"Every act that violates the law and causes loss to another person, requires the person whose fault caused the loss to compensate for the loss."

This approach is in line with the provisions of Article 87 paragraph (1) of Law No. 32 of 2009, which states:

"Any person responsible for a business and/or activity that violates environmental law provisions that cause environmental pollution and/or damage, resulting in losses to other people or the environment, is required to pay compensation and take certain actions."

Articles 90 and 91 of the PPLH Law also provide a legal basis for the community and government agencies to file a lawsuit for compensation. Thus, the civil law approach opens up space for ecological and social recovery, not only for the state but also for fishing communities, shrimp farmers, and coastal communities that are directly affected. Unfortunately, in the case of the MV Ever Judger, the civil lawsuit mechanism has not been optimally utilized, even though the losses incurred are very real and massive.

⁸Mendy Cevitra and Gunawan Djajaputra, "Unlawful Acts (Onrechtmatige Daad) According to Article 1365 of the Civil Code and Its Development," *Unes Law Review* 6, no. 1 (2023): 2722–31, <https://doi.org/10.31933/unesrev.v6i1>.

However, the application of the strict liability principle in environmental pollution cases in Indonesia, including in the case of MV Ever Judger, is still far from expectations. Many technical, administrative, and political obstacles hinder the law enforcement process. In this case, although there have been investigative findings stating that the anchor of MV Ever Judger was dragged and damaged Pertamina's undersea pipeline, causing an oil spill, the legal process against the ship owner was not carried out transparently and completely.⁹In fact, the shipping company and the local government had shifted responsibility to each other, and the public was not given complete information regarding the final results of the investigation process. This shows that even though the principle of strict liability exists, its enforcement mechanism is still ineffective. The application of the principle of strict liability is becoming increasingly important considering that marine pollution often involves extensive damage and is difficult to prove with conventional legal approaches that require proof of the element of fault. In the environmental law system, the main focus is not only on punishment, but also on restoration and ecological justice. Unfortunately, in the case of the MV Ever Judger, we witnessed how Indonesian environmental law is still not fully able to reach foreign actors who are outside of direct jurisdiction. Therefore, the use of the principle of absolute liability allows the state to demand direct accountability from the perpetrators who caused the pollution, so that the process of handling the damage and providing compensation to the community can be carried out more quickly and fairly.

If we look deeper, this case also reflects the weak legal position of Indonesia in dealing with transnational actors. The MV Ever Judger is a Panamanian-flagged ship, and its management is based abroad, so the process of summoning the law and executing responsibility becomes very difficult if there is no international legal cooperation or strong cross-border

⁹Energy World, "Pertamina Prepares Lawsuit Against MV Ever Judger," Energy World, 2018, <https://www.dunia-energi.com/pertamima-siapkan-gugatan-terhadap-mv-ever-judger/>.

litigation mechanisms. This is a reflection that in addition to improving regulations and strengthening the principle of strict liability, Indonesia also needs to strengthen international cooperation in the field of environmental law, especially in dealing with pollution carried out by foreign actors. Otherwise, cases of pollution by foreign vessels will continue to recur without clarity on firm and fair law enforcement. In addition, it is also important to highlight the significant changes in the normative aspects of Indonesian environmental law after the enactment of Law Number 11 of 2020 concerning Job Creation. One of the crucial articles affected is Article 88 of Law Number 32 of 2009 which regulates the principle of strict liability or absolute responsibility.¹⁰ Before the amendment, this article explicitly stated that polluters are required to bear compensation and/or take remedial action “without the need to prove an element of fault.” However, after the Job Creation Law was enacted, this phrase was removed from the article’s formulation. This editorial change raises concerns about the erosion of the power of the strict liability principle, because it opens up room for multiple interpretations at the implementation level. As a result, the state or victims of pollution could again be burdened with the responsibility of proving fault, which is essentially contrary to the spirit of ecological justice. This change shows that although normatively Indonesia already has progressive environmental law principles, the dynamics of current legislation have the potential to weaken protection of the environment and the rights of affected communities.

In line with this, attention also needs to be directed to ecological and social justice which is the moral basis of the principle of strict liability. Marine pollution such as the case of MV Ever Judger generally harms local communities who do not have the power to sue legally. Fishermen, seaweed farmers, and other coastal communities are the first to be affected by

¹⁰Jalu Akbar Maulana and Fadila Nur Annisa, “Legal Analysis of Changes in the Meaning of Strict Liability in Environmental Law After the Enactment of the Job Creation Law,” *Amnesty: Journal of Law* 6, no. 2 (August 11, 2024): 297–313, <https://doi.org/10.37729/amnesti.v6i2.4935>.

pollution, both economically and health-wise.¹¹ However, they are also often the most powerless to access justice. The state should be there to protect them, not only as a regulator, but as a guarantor of ecological justice. In this case, the principle of strict liability that sides with victims should be the main legal tool to bridge the inequality of access to justice, not be weakened through changes in norms that are open to multiple interpretations.

To comprehensively understand the challenges of environmental law enforcement in this case, this study starts from three main problem formulations. First, how can legal responsibility for the marine pollution incident by the MV Ever Judger be reviewed from a national legal aspect, especially regarding violations of applicable legal instruments. Second, how is the principle of strict liability or absolute responsibility as regulated in Article 88 of Law Number 32 of 2009 applied normatively and practically in the context of marine pollution, including the dynamics of its application after the enactment of the Job Creation Law. Third, how does the MV Ever Judger case reflect the inequality of ecological justice and protection of pollution victims, and to what extent the direction of environmental law reform is able to respond to the needs of affected communities fairly and sustainably.

Considering the various aspects above, it is important to conduct a legal analysis of the application of the strict liability principle in the context of the MV Ever Judger case and the marine pollution it caused. This study is not only relevant to understand the extent of the effectiveness of Law No. 32 of 2009 in protecting Indonesia's marine environment, but also as a reflection of the readiness of national law in facing the increasingly complex challenges of cross-border pollution. In an era of increasingly severe climate change and environmental degradation, environmental law can no longer be lenient or permissive. The state must be able to act firmly, fairly, and side

¹¹Wiranti Tanjung et al., "Criminal Liability for Pollution of Balikpapan Bay by the Captain of the Mv Ever Judger Ship of the People's Republic of China (Study of Balikpapan District Court Decision Number: 749/Pid.B/LH/2018/PN Bpp)," *Journal of Legal Studies* 2, no. 2 (2023): 63–85.

with the preservation of nature for the sake of the sustainability of all living things.

Methods

This study uses a normative legal method, namely a research approach based on the study of normative legal materials as the main foundation for analyzing problems. The normative legal approach does not emphasize observation or collection of empirical data from the field, but rather focuses on the analysis of applicable laws and regulations, legal principles, and relevant legal doctrines and literature. In the context of this study, the normative legal approach was chosen because the main problem studied is related to the application of written legal norms, especially related to the principle of strict liability in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management. This study seeks to understand how this principle is formulated in positive legal norms, as well as how it is implemented in practice through a case study of marine pollution due to an oil spill by the MV Ever Judger ship in Balikpapan Bay.

The sources of legal materials in this study are divided into three main categories. First, primary legal materials, namely laws and regulations that are the main legal basis in the analysis, such as Law Number 32 of 2009, Law Number 17 of 2008 concerning Shipping, and implementing regulations relevant to marine environmental management and legal responsibility for pollution. Second, secondary legal materials, in the form of legal literature, scientific journals, expert opinions, and previous research results that discuss the principle of strict liability, marine pollution, and environmental law enforcement in Indonesia and internationally. Third, tertiary legal materials such as legal dictionaries and legal encyclopedias, which are used to clarify the concepts and terminology used in this study. The data analysis method used is qualitative analysis, by systematically examining the contents of applicable legal norms, then comparing them with the facts in the MV Ever Judger case as stated in official investigation

reports, news, and other public documents. This process is carried out to assess the extent of the conformity between legal norms and the reality of their implementation in the field. Thus, the normative legal approach in this study aims to explore the strengths and weaknesses of environmental legal norms in dealing with marine pollution incidents, as well as to provide a solid argumentative basis in assessing the effectiveness of the application of the strict liability principle in Indonesian legal practice.

Results and Discussion

1. MV Ever Judger Oil Spill and Legal Responsibility for Marine Pollution

The oil spill incident by the MV Ever Judger ship in Balikpapan Bay on March 31, 2018 became a dark milestone in the history of marine environmental protection in Indonesia. This incident not only reflects the fragility of the national marine area surveillance system, but also illustrates the structural weaknesses in environmental law enforcement against foreign actors in Indonesia's jurisdiction. The Panama-flagged MV Ever Judger ship is suspected of illegally dropping anchor in a prohibited zone, namely the Pertamina undersea pipeline area.¹²As a result, the pipe was pulled and broke, causing a large volume of crude oil to spill into the waters of Balikpapan Bay. This spill is not a minor incident. Reported from Mongabay,¹³The oil spill polluted more than 7,000 hectares of sea area, damaged mangrove and seagrass areas, and caused a huge socio-economic impact. Hundreds of marine life died, fishermen lost their livelihoods, and coastal communities experienced health problems due to exposure to hazardous substances from the oil. In fact, a major fire that occurred above the sea surface killed five people and destroyed a number of fishing boats.

¹²Energy World, "Pertamina Prepares Lawsuit Against MV Ever Judger."

¹³Lusia Arumingtyas, "Pertamina Oil Spill in Balikpapan Bay Pollutes 7,000 Hectares of Area," Mongabay (Jakarta, 2018), <https://mongabay.co.id/2018/04/04/tumpahan-minyak-pertamina-diteluk-balikpapan-cemari-7-000-hektar-area/>.

The explosion spread fire and thick smoke around the port and industrial area of Balikpapan.

From a legal perspective, this incident is clearly a form of marine pollution that should be subject to strict legal sanctions. Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) explicitly prohibits all activities that cause environmental pollution and damage. Article 69 paragraph (1) letter a states that:

"Everyone is prohibited from carrying out acts that result in environmental pollution and/or damage."

Meanwhile, the definition of environmental pollution in Article 1 number 14 of the PPLH Law states:

"Environmental pollution is the entry or introduction of living creatures, substances, energy and/or other components into the environment by human activities so that they exceed the established environmental quality standards."

The oil spill condition by MV Ever Judger clearly exceeds the threshold of marine environmental quality standards that are permitted. The consequences of this pollution are not only physical damage, but also disruption of the function of the marine ecosystem which is the main support for the lives of coastal communities.¹⁴In a situation like this, the law should be the most obvious tool of correction and protection. In addition to the PPLH Law, another important legal basis is Law Number 17 of 2008 concerning Shipping, which in Article 229 paragraph (1) states:¹⁵

"Waste disposal in waters may only be carried out at certain locations determined by the Minister and meeting certain requirements."

¹⁴Kinanti Sekarayu and Nur Azizah Hidayat, "COUNTRY RESPONSIBILITIES FOR OIL PIPE LEAKAGE," *JUSTITIA LAW JOURNAL* 4, no. 1 (2020): 70–86.

¹⁵Indonesia, "Law Number 17 of 2008 Concerning Shipping," Government of the Republic of Indonesia § (2008).

And In Article 325 of the Shipping Law, criminal sanctions are also stipulated for violations of this article:

“(1) Any person who discharges ballast water, dirt, garbage or other materials into waters outside the provisions of the laws and regulations as referred to in Article 229 paragraph (1) shall be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah); (2) If the act as referred to in paragraph (1) results in damage to the environment or pollution of the environment, he shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah); (3) If the act as referred to in paragraph (1) results in the death of a person, he shall be punished with imprisonment for a maximum of 15 (fifteen) years and a maximum fine of Rp. 2,500,000,000.00 (two billion five hundred million rupiah)”

In addition to criminal and administrative sanctions, civil law aspects can actually be a strategic path in recovering losses suffered by the community and the environment. Article 87 of the PPLH Law emphasizes that polluters are required to pay compensation and take certain actions for the damage caused. This provision can be operationalized through civil lawsuits by the state or affected communities, either individually or in groups. The lawsuit instrument based on unlawful acts in Article 1365 of the Civil Code provides a strong basis, especially because losses due to marine pollution are real and measurable, ranging from loss of livelihood, damage to marine ecosystems, to impacts on public health.¹⁶ Unfortunately, in the case of the MV Ever Judger, this path has not been maximized, so that the recovery of losses is largely borne by the state rather than the perpetrators of pollution.

¹⁶Justitio Revenly Sumual, Fonnyke Pongkorung, and Youla O Aguw, “Obligation to Pay Compensation by the Person in Charge of Activities Due to Damage to Coastal Areas and Small Islands,” *Lex Crimen* 11, no. 4 (2020): 1–19, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/41999>.

However, even though these legal norms are fully and adequately available, their implementation in the case of the MV Ever Judger is very weak. The results of the investigation stating that the ship's anchor was the cause of the pipe damage were not followed by a serious law enforcement process. The Ministry of Environment and Forestry only imposed administrative sanctions on the ship, in the form of warnings and orders for certain actions. There was no criminal or civil justice process that ensnared the owner or manager of the ship, even though the incident had caused enormous losses to the environment and society.¹⁷The absence of lawsuits or legal claims in this case shows the weakness of the state in enforcing environmental jurisdiction over foreign actors. In fact, in the principle of state sovereignty over natural resources, the state has the right and obligation to maintain and enforce the law on natural resources within its territorial boundaries, including territorial sea areas and exclusive economic zones (EEZ).¹⁸In the absence of a thorough legal process against the MV Ever Judger, the state appears to be abdicating its responsibility to protect its citizens from the impacts of transnational pollution.

When this case is not brought to court, either civilly to seek compensation or criminally to provide a deterrent effect, then the message conveyed to the public is that environmental pollution by foreign actors can simply pass without any firm legal consequences. This is very much contrary to the spirit of Article 28H paragraph (1) of the 1945 Constitution which states:

¹⁷N Yuddin, WS Widiarty, and A Tehupeiori, "RESPONSIBILITY OF SHIP OWNER COMPANIES TOWARDS ENVIRONMENTAL POLLUTION CASES AS A RESULT OF OIL SPILLS FROM SEA SHIP CARGOES IN INDONESIA," *Syntax Idea* 5, no. 7 (July 1, 2023): 1–19, <https://doi.org/10.46799/syntax-idea.v5i7.2416>.

¹⁸Fathan Ali Mubiina, "Review of the Concept of the Legal State and Democracy in the Formation of the Blue Constitution in Indonesia," *SASI* 26, no. 1 (2020): 52–74, <https://doi.org/10.47268/sasi.v26i1.211>.

"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to receive health services."

Countries should guarantee these constitutional rights through strong, firm, and fair enforcement of environmental laws. In situations like the MV Ever Judge case, the state does not only act as a passive supervisor, but as a legal authority that actively represents the public interest and environmental sustainability.¹⁹ When foreign vessels can pollute Indonesian waters without being subject to appropriate legal responsibility, the country's legal position becomes weak and vulnerable to repeating similar incidents. If we look at it from a different perspective, this oil spill incident also reveals the existence of policy gaps between sectors. On the one hand, the energy and shipping sectors encourage exploitation and economic activity at sea. And on the other hand, there has been no strong integration with cross-sectoral marine ecosystem protection.²⁰ For example, coordination between Pertamina as the owner of the undersea pipeline and the shipping authority in determining the safe zone has not been fully integrated. The absence of an early warning system or detection of anchor activity approaching the pipeline is a reflection of the weakness of national ecological risk governance. In other words, this incident should be a momentum for a total evaluation of the governance of strategic sea areas, especially in industrial and heavy transportation areas.

It is also important to emphasize that oil spills are not just a temporary impact, but have long-term consequences for public health and the sustainability of the local economy. Research conducted by Kuppusamy et al. shows that exposure to hydrocarbons and toxic chemical compounds from crude oil can cause respiratory problems, skin irritation, and even

¹⁹Wahyu Widodo, *Environmental Law*, 1st ed. (Jakarta: Damera Press, 2023).

²⁰Muhammad Rafi Darajati, "Blue Economy: Opportunities for Regulation Implementation in Indonesia," *The Journalish: Social and Government* 4, no. 5 (2023): 41–53, <https://doi.org/10.55314/tsg.v4i5.599>.

cancer risk in the long term.²¹For fishermen and coastal communities, this spill has damaged trust in the sea as a source of life. When livelihoods are lost and environmental conditions do not recover, what is created is a socio-ecological imbalance that is difficult to restore with a formal approach alone. Therefore, law enforcement in this case must not be reactive and administrative, but must bring a spirit of comprehensive recovery.

Incidents like the MV Ever Judger should encourage the strengthening of the environmental litigation system in Indonesia. It is important to have an environmental court that not only handles lawsuits after pollution occurs, but also has a mandate for prevention, public education, and progressive ecological restoration. In cases in many countries, there is also a need for a special institution or unit under the Ministry of Environment and Forestry or the Ministry of Foreign Affairs to handle cross-jurisdictional pollution legally and diplomatically. Without this mechanism, similar incidents have the potential to recur and the public will again become victims of the imbalance of global legal power.²²These weaknesses in supervision and law enforcement demonstrate the need for reform of the marine surveillance system and environmental litigation mechanisms. Moving forward, Indonesia must strengthen international legal cooperation, develop a real-time monitoring system for foreign vessels, and draft derivative regulations from the PPLH Law that allow polluters to be sued directly, both by the government and affected communities.²³

This whole incident is not just about the oil spill. It is about the country's courage in upholding its ecological sovereignty. Marine pollution that is not responded to with firm law enforcement will create a bad

²¹Saranya Kuppusamy et al., *Total Petroleum Hydrocarbons: Environmental Fate, Toxicity, and Remediation*, Total Petroleum Hydrocarbons: Environmental Fate, Toxicity, and Remediation (Switzerland: Springer International Publishing, 2019), <https://doi.org/10.1007/978-3-030-24035-6>.

²²Darajati, "Blue Economy: Opportunities for Regulation Implementation in Indonesia."

²³Rina Saraswati and Andi Wirawan, "IoT and the Maritime Frontier: Innovations in Vessel Safety and Tracking," *Asian American Research Letters Journal* 1, no. 4 (2024): 1–10, <https://www.aarlj.com/index.php/AARLJ/article/view/68>.

precedent and open up opportunities for increasingly wild and uncontrolled environmental exploitation.

2. Implementation of the Strict Liability Principle in Law No. 32 of 2009: Between Norms and Reality

The principle of strict liability is one of the most progressive pillars in the modern environmental law system. Schäfer and Ott argue that unlike the principle of fault-based liability, which requires proof of intent or negligence, strict liability allows polluters to be held legally responsible simply by showing that their activities or businesses have caused damage or pollution. This approach is especially important in the context of environmental damage, because many pollution cases have unclear causal links, involve high technology, and multinational corporations that are difficult to legally touch. This principle places the focus on consequences and impacts, rather than on intent or fault. Therefore, strict liability is considered a fairer and more efficient legal tool, as well as responsive to the urgency of environmental protection and the rights of affected communities.

Indonesia adopts this principle explicitly in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). The article reads:

"Every person responsible for a business and/or activity that causes environmental pollution and/or damage is obliged to bear compensation and/or take certain actions, without the need for proof of fault."

This article has a strategic position because it shifts the burden of proof from the victim or the state to the business actor. When it is proven that a business causes environmental damage or pollution, then the responsibility for compensation and recovery is automatically imposed on

the perpetrator.²⁴In the context of the MV Ever Judger case, this article should be the state's main tool to demand legal accountability from the ship's owner or operator. It is not necessary to prove that the ship's owner intended to pollute the Indonesian sea, it is sufficient to show that the ship's activities such as lowering anchors on pipelines have caused real damage to the marine ecosystem.²⁵Unfortunately, although this article has a solid normative basis, its implementation in the Indonesian legal system still faces many challenges. In practice, this principle has not been implemented as it should. The case of MV Ever Judger is a clear example of how a well-formulated norm does not automatically become real protection if it is not followed by adequate legal and institutional infrastructure. In fact, this principle was designed to be an answer to environmental emergencies and the inequality of legal relations between perpetrators of pollution who are strong in terms of capital and the victim community who are weak in terms of structure.

Important changes related to the principle of strict liability can also be found in the dynamics of national legislation, especially after the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). Prior to this change, Article 88 of Law Number 32 of 2009 explicitly stated that every person responsible for a business that causes pollution is obliged to bear compensation “without the need to prove the element of fault.” This phrase is the core of the principle of strict liability, which explicitly shifts the burden of proof to the perpetrator without requiring the element of culpa (fault or negligence). However, after the enactment of the Job Creation Law, this phrase was removed from the wording of Article 88. Textually, the new norm only states that the

²⁴Riadhi Alhayan and Jelly Leviza, “The Role and Authority of the North Sumatra Provincial Government Regarding the Implementation of the Principle of Absolute Liability Based on Law Number 32 of 2009 Concerning Environmental Protection and Management,” *Samudra Keadilan Law Journal* 15, no. 2 (2020): 223–36, <https://www.walhi.or.id/walhi-sumut-hari-lingkungan-hidup-sedunia-pilgubsu->.

²⁵Sekarayu and Hidayat, “COUNTRY RESPONSIBILITIES FOR OIL PIPE LEAKAGE.”

perpetrator of pollution “is obliged to bear compensation and/or take certain actions,” without mentioning the phrase “without proof of fault.”²⁶This change has caused controversy and concern among academics and environmental law practitioners. Listiyani and Nopliardy believe that the removal of the phrase has the potential to weaken the principle of strict liability, because it opens up opportunities for polluters to defend themselves on the pretext of innocence, or demand proof of malicious intent (*mens rea*).²⁷Although the government stated that in substance the principle still applies, the lack of normative clarity can lead to multiple interpretations at the court level. As a result, the burden of proof tends to be placed on the victim or the state, which is contrary to the original spirit of Article 88 of Law No. 32 of 2009.

WrongOne consequence of the current weak environmental legal infrastructure is the suboptimal use of civil lawsuit mechanisms as a means of recovery. In fact, the application of strict liability is most effectively carried out through lawsuits for damages in the civil realm. In many countries, this principle is a strong basis for the community or state to sue polluters to pay for ecological and social losses proportionally. Something similar should be applied in the Indonesian context by strengthening civil lawsuit procedures, involving environmental legal aid institutions, and preparing loss valuation guidelines.²⁸If these efforts are made, the principle of strict liability will not only become a progressive norm, but will also become a real tool in distributing substantive justice to victims of environmental pollution.

²⁶Abdul Rokhim, “Degradation of the ‘Strict Liability’ Norm in Environmental Law Enforcement,” *Jurispruden: Journal of the Faculty of Law, Islamic University of Malang* 5, no. 2 (June 22, 2022): 178–95, <https://doi.org/10.33474/yur.v5i2.14627>.

²⁷Nurul Listiyani and Rakhmat Nopliardy, “STUDY OF THE JOB CREATION LAW ENVIRONMENTAL CLUSTER ON THE REMOVAL OF THE STRICT LIABILITY PRINCIPLE,” *AL-ULUM SOCIAL SCIENCES AND HUMANITIES* 2, no. 1 (2022): 43–53, <https://doi.org/10.31602/alsh.v8i2.8274>.

²⁸Henny Yunita Fitriani and Dona Budi Kharisma, “Corporate Criminal Liability in Environmental Crimes Based on the Principle of Strict Liability (Case Study of Environmental Pollution by PT. Rayon Utama Makmur (RUM) Sukoharjo Regency,” *UNS Postgraduate Law Journal* 8, no. 2 (2020): 64–73, <https://doi.org/10.20961/hpe.v8i2.49757>.

The first and most striking obstacle is the absence of implementing regulations that technically regulate the application of strict liability. The PPLH Law is not followed by the Regulation of the Minister of Environment Number 7 of 2014 which describes in detail important aspects such as: (1) who is authorized to sue on behalf of the community or the state; (2) how to calculate ecological losses in rupiah; (3) what minimum standards of scientific evidence must be met; and (3) how responsibility is imposed on foreign business entities.²⁹The absence of derivative regulations makes law enforcement officers, including KLHK investigators, prosecutors, and judges confused in implementing this principle, so they prefer administrative or mediation routes which are fast, but often do not provide a deterrent effect.³⁰

The second problem is the absence of a robust and independent environmental litigation mechanism. In Indonesia, not all courts have judges with a deep understanding of environmental law. There is no special environmental court like in India or the Philippines.³¹The Ministry of Environment and Forestry has not yet formed an environmental litigation unit that can specifically advocate or sue major polluters as in this case. The prosecutor's office also still prioritizes general criminal cases or corruption over environmental civil cases, even though in the strict liability framework, civil lawsuits are the key to restoring ecological damage. The weakness of this litigation system makes the principle of strict liability have no "fangs" when it has to deal with powerful actors, such as foreign corporations or giant companies that have legal power and large resources.

²⁹Indonesia, "Regulation of the Minister of Environment Number 7 of 2014 Concerning Environmental Losses Due to Pollution and/or Environmental Damage," Ministry of Environment § (2014).

³⁰Etheldreda ELT Wongkar, "Revisiting Strict Liability: Conceptual Developments and Challenges in Environmental Adjudication in Indonesia Information," *Jurnal Pro Natura* 1, no. 1 (2024): 1–18.

³¹United Nations Environment, *Environmental Courts and Tribunals - 2021: A Guide for Policymakers* (United Nations Environment Programme, Law Division, 2022).

The third problem is that there is another major challenge in the technical aspect of scientific evidence. In the case of the MV Ever Judger, to prove that the ship's anchor directly caused damage to Pertamina's undersea pipeline, a multi-layered scientific analysis is needed, starting from the ship's Automatic Identification System (AIS) data, seabed bathymetry maps, ocean current simulations, port CCTV footage, to pipe material forensics. This evidence is not only expensive to collect, but also requires independent and credible experts. Without such support, the evidence process will be very vulnerable to being defeated by the perpetrator's lawyers, who generally hire global technical teams to defend their companies. So, even though strict liability eliminates the need to prove fault, strong evidence is still needed regarding the direct link between the perpetrator's activities and the damage that occurred.

The PPLH Law also provides opportunities for the public to access justice through a lawsuit mechanism. Article 90 paragraph (1) states:

"Government agencies and regional governments responsible for the environment have the authority to file lawsuits for compensation and take certain actions against businesses and/or activities that cause environmental pollution and/or damage to the environment and/or result in environmental losses."

This article is also strengthened by Article 91 paragraph (1-3), which states:

"(1) The community has the right to file a class action lawsuit for its own interests and/or for the interests of the community if it experiences losses due to environmental pollution and/or damage; (2) A lawsuit may be filed if there are similarities in facts or events, legal basis, and type of claim between the group representative and its group members; (3) Provisions regarding the community's right to sue are implemented in accordance with statutory regulations."

These two articles open up space for class action lawsuits and public interest litigation. However, in practice, as in the case of the MV Ever Judger, this mechanism has never been used by the coastal communities of Balikpapan. Elif Oral argues that,³²the obstacles are complex, originating from the limited legal literacy of the community, the lack of environmental legal aid institutions, the absence of a litigation financing scheme from the state, and the fear of criminalization or intimidation from interested parties. As a result, the principle of strict liability which aims to ease the burden on victims has become a norm that is alienated from social reality.

The fourth problem that makes matters worse is the character of the perpetrator as a foreign entity flying the Panamanian flag. According to Hadju, jurisdiction over foreign-flagged vessels is very limited in the national legal system.³³The process of summoning companies, blocking assets, and implementing court decisions are often hampered by the boundaries of state jurisdiction and weak extradition agreements or cross-country law enforcement cooperation. In international maritime law, the concept of flag state jurisdiction is known, namely the flag state (Panama in this case) is responsible for the perpetrators of the ship. However, flag countries of convenience tend to ignore this responsibility.³⁴Therefore, Indonesia needs to build bilateral cooperation or encourage the ratification of international conventions such as the Civil Liability Convention (CLC) 1992, in order to have a stronger legal footing in prosecuting perpetrators of cross-border pollution.

³²Elif Oral, "The Environmental Rule of Law and the Protection of Human Rights Defenders: Law, Society, Technology, and Markets," *International Environmental Agreements: Politics, Law and Economics* 24 (September 1, 2024): 393–421, <https://doi.org/10.1007/s10784-024-09645-x>.

³³Zainal Abdul Aziz Hadju, "Analysis of UNCLOS 1982 Regarding the Issue of State Jurisdiction and Law Enforcement Over Foreign-Flagged Vessels," *SASI* 27, no. 1 (March 25, 2021): 12–32, <https://doi.org/10.47268/sasi.v27i1.254>.

³⁴Elly Kristiani Purwendah, "THE INFLUENCE OF SHIP FLAGS ON TANKER OIL POLLUTION CASES," *Ganesha Civic Education Journal* 2, no. 2 (2020): 52–63, <https://doi.org/https://doi.org/10.23887/gancej.v2i2.342>.

In response to these various obstacles, systemic reform steps are needed. First, the government must immediately draft a Government Regulation implementing Article 88 of the PPLH Law which regulates the technical details of the implementation of strict liability, starting from the lawsuit mechanism, the parties authorized to sue, to the standards for proving damage.³⁵ Second, the establishment of environmental litigation units in the Ministry of Environment and Forestry and the Attorney General's Office, as well as regular training of environmental judges.³⁶ Third, the preparation of scientific ecological loss valuation guidelines that can be used in civil lawsuits. Fourth, the creation of an Environmental Emergency Response Fund that can be accessed directly for short-term recovery while the lawsuit is ongoing.³⁷ The enforcement of the principle of strict liability also needs to be supported by environmental law education reform, technical training for law enforcement officers, and cooperation with academics and experienced environmental NGOs. This principle will only truly come to life if the state has the political will to side with victims and the environment, and dares to fight against destructive economic forces. Otherwise, Article 88 will only be a dead text that will never be able to save a single hectare of polluted sea. In addition, in the context of international cooperation, Indonesia needs to actively strengthen its diplomatic position and involvement in global forums such as the International Maritime Organization (IMO) and the UN Environment Assembly.³⁸ Through active

³⁵Muhaimin Marsono, Syahrudin Nawi, and Ilham Abbas, "Implementation of Class Action Lawsuits in Indonesia," *Journal of Lex Theory (JLT)* 3, no. 2 (2022), <https://doi.org/10.52103/jlt.v3i2.1501>.

³⁶Ahsan Yunus, Muhammad Ramli Haba, and M Chaerul Risal, "ENVIRONMENTAL LAW ENFORCEMENT THROUGH ENVIRONMENTAL JUDGE CERTIFICATION IN INDONESIA," *Journal of Critical Reviews* 7, no. 19 (2020): 874–78, <https://doi.org/10.31838/jcr.07.19.106>.

³⁷Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (2023): 205–17, <https://doi.org/10.3233/EPL-230013>.

³⁸Helga Yohana Simatupang, Michael Romulus Panggabean, and Jusmalia Oktaviani, "PROGRESS AND PROSPECTS: PRESIDENT JOKOWI'S MARITIME DIPLOMACY AND GLOBAL MARITIME FULCRUM," *Jurnal Dinamika Global* 8, no. 2 (2023): 174–91, <https://doi.org/10.36859/jdg.v8i2.1888>.

participation and strengthening of negotiating position, Indonesia can push for ratification of joint protocol that strengthens flag state responsibility towards foreign-flagged vessels polluting other countries' waters. Including urging the existence of international environmental arbitration mechanism or special court for marine environmental disputes, such as those that have been established in several international arbitration cases by Permanent Court of Arbitration (PCA).³⁹

The Indonesian government can also enter into bilateral agreements with countries that are often the origin of foreign-flagged vessels, such as Panama, Liberia, or the Marshall Islands, in order to open up extradition routes or cross-border civil enforcement.⁴⁰ By having such an agreement, the process of legal summons and execution of decisions against foreign companies becomes more realistic. This step is important so that the principle of strict liability is no longer a unilateral principle that only lives in the national system but is sterile when dealing with global actors. Synergy is also needed between state institutions, such as the Ministry of Environment and Forestry, the Ministry of Foreign Affairs, and the Supreme Court, in forming a cross-sector task force that focuses on enforcing cross-border pollution laws. This task force can function as a coordinating center in the investigation, monitoring, and litigation of pollution cases involving foreign actors.⁴¹ If the principle of strict liability is implemented with a comprehensive framework like this, then ecological justice will no longer be an ideal, but a living legal reality.

³⁹ES Siregar et al., "From Negotiation to Adjudication: A Map of Dispute Resolution in International Law," *INNOVATIVE: Journal Of Social Science Research* 4, no. 4 (2024): 2275–85, <https://doi.org/10.31004/innovative.v4i4.13255>.

⁴⁰Ahmad Pradipta, Budhihatma Adikara, and Adis Imam, "CHALLENGES OF INDONESIA'S MARITIME DEFENSE DIPLOMACY POLICY IN RESOLVING THE NORTH NATUNA SEA CONFLICT," *Journal of Diplomacy and Security Studies* 13, no. 1 (2021): 83–101, <https://doi.org/10.31315/jsdk.v13i1.4365>.

⁴¹Setyani Dwi Lestari et al., "Comparison and Implementation of Environmental Law Policies in Handling Climate Change in ASEAN Countries: A Comparative Study of Indonesia, Malaysia, and Thailand," *International Journal of Energy Economics and Policy* 14, no. 2 (March 15, 2024): 687–700, <https://doi.org/10.32479/ijeeep.14998>.

By strengthening the legal structure based on strict liability, Indonesia will show that environmental protection is not just rhetoric, but part of a constitutional commitment to realizing ecological justice and long-term sustainability. This is proof that the state is not only on the side of development, but also of life itself..

3. Sub-Topic of Discussion

According to Martin et al., the concept of environmental justice was born from the awareness that environmental damage not only impacts nature, but also has unequal social implications. In many cases, poor and vulnerable groups are the main victims of environmental pollution, even though they have the smallest contribution to activities that damage nature. This is also evident in the case of marine pollution due to the oil spill by the MV Ever Judger ship in Balikpapan Bay. Traditional fishermen, pond farmers, fish traders, and coastal communities are the parties most directly harmed, both in terms of economy, health, and socio-culture. In fact, the Indonesian constitution clearly guarantees the rights of citizens to a good and healthy environment. Article 28H paragraph (1) of the 1945 Constitution states:

"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to receive health services."

However, in reality, victims of environmental pollution such as those experienced by the Balikpapan community often do not receive proper legal protection, or are even unable to access legal channels at all. This inequality is the main focus in the discourse on ecological justice. The state must not be neutral in conflicts between polluters (especially large corporations or foreign actors) and affected communities. The state must instead be an active protector who sides with the victims and the environment. Law No. 32 of 2009 has provided a mechanism to involve the community in the environmental legal process. Article 90 paragraph (1) states:

"Government agencies and regional governments responsible for the environment have the authority to file lawsuits for compensation and take certain actions against businesses and/or activities that cause environmental pollution and/or damage to the environment and/or result in environmental losses."

This article emphasizes the position of the community not only as a passive victim, but as a legal subject who can sue the perpetrator of pollution. However, in practice, it is not easy for coastal communities or indigenous communities to file class actions without legal assistance, education, and state protection. In fact, it is not uncommon for victims of pollution to be criminalized because they are considered to be hindering investment or damaging the image of the local government. This is a great irony in environmental democracy. In addition to class actions, the community can also file lawsuits for the public interest as regulated in Article 91 paragraph (1-3) of the PPLH Law:

"(1) The community has the right to file a class action lawsuit for its own interests and/or for the interests of the community if it experiences losses due to environmental pollution and/or damage; (2) A lawsuit may be filed if there are similarities in facts or events, legal basis, and type of claim between the group representative and its group members; (3) Provisions regarding the community's right to sue are implemented in accordance with statutory regulations."

Unfortunately, this mechanism is also still minimally used because there is no strong public litigation infrastructure support. According to Widodo, many civil society organizations have limited capacity, while the state has not provided environmental litigation funds like developed countries. As a result, the principle of strict liability and the right to sue the public is only a legal text that does not work substantively. The MV Ever Judger case also shows that the state has not fulfilled its obligations in

carrying out environmental restoration and compensation for victims. Article 87 paragraph (1) of the PPLH Law states:

"Every person responsible for a business and/or activity that violates environmental law provisions that cause environmental pollution and/or damage, resulting in losses to other people or the environment, is required to pay compensation and take certain actions."

However, until now, there is no record that the owner of the MV Ever Judger has paid compensation to the victims or taken concrete recovery measures. Recovery is actually carried out by the government through the state budget. This is unfair because in the polluter pays principle, the polluter should be fully responsible, including financially, for all damage and losses caused. When people lose their livelihoods and experience health problems due to pollution, these losses must be fairly recovered through legal channels that can be accessed by the victims. This is where the civil law approach plays an important role in realizing ecological justice. Article 87 of the PPLH Law explicitly states that the perpetrator of pollution "is obliged to pay compensation and take certain actions." This compensation mechanism should be collectible through a civil lawsuit, either by the government or the community that has legal standing. However, in practice, the community often does not have the technical ability, access, or assistance to file a lawsuit. The civil mechanism that should strengthen the position of the victim does not work because the state does not provide structural support, such as legal aid or an environmental litigation fund. As a result, the principle of strict liability is only a written norm, not a real recovery system. This is a form of structural inequality that violates the essence of ecological justice, because the communities most affected are the most legally powerless.

The ecological losses in this case have also never been calculated systematically. Indonesia still does not have a national standard for

assessing non-economic ecological damage such as loss of biodiversity, damage to the marine food chain, or the death of large numbers of mangroves. As a result, the amount of compensation that can be claimed in cases like this is very limited and disproportionate to the long-term impacts caused. To realize true ecological justice, several reform steps must be taken immediately by the state:

- 1) Establish a National Marine Pollution Compensation Fund, which can be used to address direct impacts on communities and finance lawsuits if the perpetrator is outside the jurisdiction;
- 2) Develop official guidelines for environmental damage valuation, involving environmental scientists and legal experts;
- 3) Providing structural legal assistance to affected communities, especially fishermen, shrimp farmers and other coastal communities;
- 4) Train and appoint environmental judges in each district court and establish an environmental chamber in the Supreme Court;
- 5) Requires shipping companies or foreign-flagged vessels entering Indonesian territory to have environmental pollution insurance as an operational requirement.

Ecological justice cannot be achieved if the state only relies on administrative sanctions. Justice will only come if affected communities are given access to the law, their voices are heard, and they are given proper compensation. In a progressive legal system, the state should not only be a referee, but must stand on the side of the victims and the injured earth. Enforcing the principle of strict liability, protecting victim communities, and strengthening the environmental lawsuit system is not just a matter of legal technicalities, but a matter of the state's moral and political commitment to saving the future of future generations. The MV Ever Judger case should be an important lesson and momentum for profound reform of

Indonesia's entire environmental legal system so that it not only protects land and water, but also every citizen who lives depending on it.

Conclusion

Normatively, Indonesia actually has a strong legal framework through Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management, which regulates the principle of strict liability or absolute responsibility. This principle is designed so that the state or victims are not burdened with proving the fault of the perpetrator of pollution, but rather only need to prove the consequences of the act. However, in practice, the implementation of this principle still faces serious obstacles. The absence of implementing technical regulations, weak environmental litigation infrastructure, and the absence of a systematic scientific proof mechanism are the main obstacles. After the enactment of the Job Creation Law, editorial changes in Article 88, especially the removal of the phrase "without the need for proof of elements of fault" weakened the coercive power of this principle. As a result, the norm that should protect victims has become unclear in its implementation, increasing the risk of impunity for perpetrators of pollution, especially those from foreign entities.

On the other hand, the MV Ever Judger case also reflects the absence of ecological justice for affected communities. Coastal communities, fishermen, and vulnerable groups are the first to bear the losses due to pollution, but are also the most powerless in fighting for their rights. Although the PPLH Law has opened up space for class action and public interest lawsuits, its implementation is still minimal due to limited legal literacy, institutional support, and the absence of adequate legal assistance from the state. The absence of concrete compensation or remedial actions taken by the perpetrators also reinforces the fact that victims of pollution have not received proper legal protection. Therefore, reform of the environmental law enforcement system needs to be directed at strengthening the

mechanism for access to justice for the community, providing ecological recovery funds, and establishing an inclusive and equitable lawsuit system. Enforcing the principle of strict liability is not only a matter of law, but also a reflection of the state's commitment to the environment and the human lives that depend on it.

By examining the three conclusions, legal responsibility in the MV Ever Judger case, the effectiveness of the strict liability principle within the framework of the PPLH Law, and the urgency of ecological justice for affected communities. It can be concluded that the Indonesian environmental legal system still requires comprehensive reform and is oriented towards recovery and siding with victims. Law enforcement is not enough to be based on normative texts, but must be supported by political courage, seriousness of law enforcement agencies, and structural support that allows the community to be actively involved in demanding ecological justice. The MV Ever Judger case is not just an incident of pollution, but is a reflection of the still far ideals of fair, equitable, and sustainable environmental justice in Indonesia.

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