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Strict Liability in Indonesian and Dutch Environmental Civil Law: A Comparative Study

Rania Syifa Busroni, Citraresmi Widoretno Putri
Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia.
2210611318@mahasiswa.upnvj.ac.id

Abstract

This study examines the application and characteristics of the strict liability principle in Indonesian and Dutch environmental civil law as a legal mechanism for environmental damage compensation. The research is motivated by differing normative approaches, where Indonesia adopts strict liability as a specific regime under environmental legislation, while the Netherlands develops it within general civil law through a risk-based liability framework. This study employs a normative juridical method using statutory, conceptual, and comparative law approaches by analyzing legislation, legal doctrines, and judicial practices in both jurisdictions. The findings reveal that the implementation of strict liability in Indonesia remains constrained by evidentiary challenges, particularly regarding causation and the scope of liability, whereas the Dutch system consistently applies risk-based liability without requiring proof of fault. The novelty of this research lies in its comparative assessment, positioning the Dutch model as a normative reference for strengthening the effectiveness of strict liability in Indonesia, especially in ensuring environmental restoration and the protection of affected communities. This study recommends reinforcing Indonesia's strict liability framework through doctrinal harmonization, simplified evidentiary standards, and clearer environmental compensation mechanisms.

Keywords: *Comparative Law; Civil Liability; Environmental Civil Law; Risk-Based Liability; Strict Liability.*

1. INTRODUCTION

Environmental degradation in Indonesia continues to escalate alongside industrial expansion and intensive natural resource extraction.[1] This condition indicates that the existing legal instruments have not yet ensured optimal accountability of business actors, while rapid social, economic, and technological changes further demand that the legal system adapt in order to remain relevant to societal needs and industrial developments.[2] Among these mechanisms, strict liability serves as a tool for ensuring accountability in high-risk environmental activities. Article 88 of the Environmental Protection and Management Law (UUPPLH) originally embodied this concept by imposing liability without the need to prove fault.

However, the normative clarity of strict liability in Indonesia significantly shifted after the enactment of the Job Creation Law (UUCK).[3] Through its amendments and the implementing regulation PP No. 22 of 2021, the meaning of strict liability became less

[1] Muhammad Yasir Azhar and Saddan Dintara Lubis, "Liability Without Fault in Environmental Dispute Settlement: The Per-Spec-Tive of Law No. 32 of 2009 Concerning Environmental Protection and Man-Agement," *Legal Brief* 14, no. 3 (July 2025): 559–69, https://doi.org/10.35335/legal.v14i3.1371.

[2] Yuliana Yuli Wahyuningsih et al., "Transformasi Hukum Bisnis Dalam Ekosistem Digital: Tantangan Dan Peluang," *IKRA-ITH HUMANIORA : Jurnal Sosial Dan Humaniora* 9, no. 1 (March 2025): 254–58, https://doi.org/10.37817/ikraith-humaniora.v9i1.4422.

[3] Lalu Aria Nata Kusuma, "Environmental Disputes Without Protection Of Strict Liability Principles: Again, Law On Job Creation," *Law and Justice* 7, no. 1 (October 2022): 1–13, https://doi.org/10.23917/laj.v7i1.699.

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explicit, especially concerning the definition of "risk-based" activities, the scope of hazardous impacts, and the allocation of burdens between operators and victims. This ambiguity resulted in inconsistent judicial interpretations, weakening the principle's deterrent effect. As a corrective response, the Supreme Court issued Perma No. 1 of 2023, which seeks to restore and clarify the strict liability concept within environmental civil claims.

These developments demonstrate an urgent need to reassess the normative structure and practical application of strict liability in Indonesia. The research is particularly necessary because the current regulatory landscape shows disharmony between UUCK, PP 22/2021, and the judicial guidelines under Perma 1/2023. At the same time, Indonesia lacks a systematic categorization of high-risk activities as the basis for the operation of strict liability, which is a key element in many comparative jurisdictions. To address these issues, the Dutch legal system offers a relevant point of comparison, not only due to its shared civil law tradition and historical influence on Indonesian environmental law, but also because the Netherlands has a stable, codified structure under Articles 6:173 – 6:175 of the Dutch Civil Code (BW), which imposes *risico-aansprakelijkheid* (risk liability).

Several prior studies have discussed aspects of strict liability, but reveal important gaps. Malik, Sanusi, and Sudewo examined corporate liability in Indonesian and Dutch law, yet their analysis was limited to the criminal dimension and did not extend to civil environmental liability.[4] Meanwhile, Wongkar explored the conceptual development and judicial inconsistency of strict liability in Indonesia, highlighting ambiguities in environmental adjudication, but the study did not incorporate comparative insights from the Netherlands.[5] In another contribution, Al Fikri focused on administrative enforcement and corporate compliance, but similarly omitted the civil law perspective and did not analyze cross-jurisdictional models.[6] Collectively, these works demonstrate that existing research remains fragmented, with much of the literature centers on criminal liability rather than civil strict liability, grounded in Indonesian law seldom engage with comparative frameworks, and no prior research systematically connects the post-UUCK regulatory landscape, particularly UUCK, PP 22/2021, and Perma 1/2023, with the structured Dutch regime under Articles 6:173 – 175 BW. As a result, the coherence and effectiveness of Indonesia's civil environmental liability system have not yet been examined in a comprehensive, comparative manner.

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[4] Abdul Malik, Sanusi Sanusi, and Fajar Sudewo, "Corporate Strict Liability in Environmental Crimes in Indonesia and the Netherlands," paper presented at Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, Malapy 2022, 28 May 2022, Tegal, Indonesia, August 15, 2022, https://eudl.eu/doi/10.4108/eai.28-5-2022.2320558.

[5] Etheldreda E. L. T. Wongkar, "Meninjau Kembali Strict Liability: Perkembangan Konseptual dan Tantangannya dalam Ajudikasi Lingkungan di Indonesia," *Jurnal Pro Natura* 1, no. 1 (July 2024): 1–18.

[6] Muhammad Ainurrasyid Al Fikri, "Implementation of Strict Liability by Companies in Cases of Environmental Damage in Indonesia: An Overview of State Administrative Law in Indonesia," *Indonesian State Law Review* 5, no. 2 (2022): 41–52, https://doi.org/10.15294/islrev.v5i2.23130.

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Based on these gaps, this study aims to provide a comprehensive comparative analysis of the strict liability principle in Indonesian and Dutch environmental civil law. It examines the normative basis, philosophical foundations, and practical implementation in both countries and identifies lessons from the Dutch codification model that may help reinforce the clarity, consistency, and effectiveness of Indonesia's environmental civil liability system.

2. METHOD

This research is a normative judicial study employing a comparative approach, focusing on the norms, doctrinal structures, and application of the principle of strict liability in Indonesian and Dutch environmental civil law. As normative research, the analysis centers on written law, legal doctrines, and judicial interpretation relevant to the operation of strict liability.[7]

The research applies several methodological approaches. The statute approach is used to examine Indonesian regulations, this includes Law No. 32 of 2009 on Environmental Protection and Management, Law No. 11 of 2020 on Job Creation, Government Regulation No. 22 of 2021, and Supreme Court Regulation No. 1 of 2023. For the Netherlands, the analysis focuses on Book 6 of the Dutch Civil Code, particularly Articles 173 – 175. These materials are interpreted through systematic interpretation and normative construction to identify their internal coherence and regulatory intent. A comparative approach is then employed using functional and doctrinal methods. Functionally, the analysis compares how both legal systems allocate risks and structure strict liability, particularly regarding evidentiary burdens and remedial mechanisms. Doctrinally, it examines differences in the formulation of liability elements, exceptions, and codification clarity, based on predetermined comparative parameters.

A case approach is also used to understand judicial application of strict liability. Indonesian decisions, including those involving PT. BMH and PT. RAJ, as well as Dutch cases such as DuPont – Chemours, are analyzed to assess how courts interpret statutory provisions and determine responsibility for hazardous activities. A conceptual approach supports the analysis by clarifying key legal concepts, such as strict liability, hazardous activities, and risk allocation, that frame the doctrinal discussion.

The research draws on primary legal materials, including statutes, regulations, and judicial decisions from Indonesia and the Netherlands. Secondary materials comprise scholarly articles, textbooks, doctrinal analysis, and comparative law literature. Tertiary materials such as legal dictionaries, encyclopedias, and authoritative commentaries are used to support interpretations and terminological precision. All data were gathered through library research, involving systematic reading, classification, and interpretation of legal documents and academic sources.

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[7] Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, https://doi.org/10.22219/aclj.v4i1.24855.

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Data were analyzed through qualitative descriptive techniques, combining deductive and inductive legal reasoning. Systematic interpretation is used to examine Indonesian regulation as an integrated framework, while normative construction develops the operational meaning of strict liability where normative gaps appear. The comparative analysis aligns Indonesian and Dutch rules based on functional and doctrinal parameters, and case law analysis evaluates their application in practice. The final synthesis integrates statutory, doctrinal, and case-based findings to assess the coherence of Indonesia's regulatory framework and the methodological relevance of the Dutch model.

The Netherlands is selected as a comparator for methodological reasons, such as both jurisdictions are civil law systems regulating hazardous activities, the Dutch Civil Code provides a clear and structured formulation of strict liability, and the comparative model enables functional and doctrinal evaluation of regulatory consistency without relying on historical narration.

3. RESULTS AND DISCUSSION

3.1 The Principle of Strict Liability from a Civil Perspective in Environmental Law in Indonesia

The doctrinal foundation of strict liability in Indonesia's environmental civil law is established in Article 88 of the Environmental Protection and Management Law (UUPPLH).[8] Under its original formulation, Article 88 imposed liability without the need to prove fault, designed to overcome the significant evidentiary challenges in environmental litigation. This formulation departs meaningfully from the general tort-based regime under Article 1365 of the Burgerlijk Wetboek (BW), which requires proof of unlawful act, causation, fault (negligence or intent), and damage.[9] Instead, Article 88 functions as a lex specialis, by exempting wronged parties from proving fault, it internalizes risk more effectively, aligns with the polluter-pays principle, and supports the constitutional guarantee of a healthy environment under Article 28H(1) of the 1945 Constitution.[10]

The original structure of Article 88 rests on four core elements, which are, (1) its broad definition of legal subjects; (2) activities involving hazardous and toxic materials (B3); (3) actions or activities posing a "serious threat" to the environment; and (4) the imposition of liability independent of fault or negligence.[11] Together, these elements form a coherent framework for allocating responsibility based on inherent environmental risk.

First, Article 88 applies to "any person or legal entity," a formulation that extends liability to individuals, corporations, as well as corporate groups. Courts have relied on this

[8] Zahranissa Putri Faizal, "Strict Liability in Environmental Dispute Responsibility Before and After the Enabling of Omnibus Law," *Administrative and Environmental Law Review* 2, no. 1 (May 2021): 53–60, https://doi.org/10.25041/aelr.v2i1.2318.
[9] KUHPerdata, Article 1365.
[10] Hyronimus Rhiti, "Tanggung Jawab Mutlak Dalam Penyelesaian Sengketa Lingkungan Hidup," *Justitia et Pax* 31, no. 2 (October 2017), https://doi.org/10.24002/jep.v31i2.1343.
[11] Indonesian Environmental Protection and Management Act (Law No. 32 of 2009), § Article 88.

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breadth to impose liability on concession holders responsible for land and resource management. Second, strict liability attaches to activities involving B3 materials, defined under Government Regulations No. 101 of 2014 as substances that may endanger human health or the environment due to their nature, concentration, or quantity. Under the original doctrinal approach, handling B3 waste was presumed to create inherent environmental danger, making these operators subject to strict liability for resulting environmental damages.

Third, the notion of "actions posing a serious threat to the environment" serves as the threshold for triggering strict liability. According to SK KMA No. 36/KMA/SK/II/2013, a "serious threat" refers to pollution or environmental damage whose effects are potentially irreversible or that broadly affects essential environmental components, such as human health, water, soil, air, and biodiversity. Judicial practice frequently treated large-scale fires, toxic waste spills, and hazardous emissions as satisfying this criterion. For example, in peatland fire disputes, courts acknowledged that large-scale fires on concession land constituted a serious environmental threat due to their scale, public health impacts, and long-term.

Fourth, and most central to its doctrinal identity, Article 88 establishes liability without proof of fault. Under this model, victims were required only to demonstrate a causal link between a hazardous activity and the resulting environmental harm. They did not need to establish intentional wrongdoing or negligence. This eased the evidentiary burden that often hinders plaintiffs in environmental litigation, where proving fault is difficult due to technical uncertainties. By shifting the burden of risk to operators of dangerous activities, strict liability functioned as a preventive mechanism and enhanced access to compensation and ecological justice.[12]

This original strict liability regime is not merely theoretical. In practice, it has been invoked in environmental disputes, especially in land-fire litigation and B3-waste cases. For instance, in forest fire claims, concession holders have been treated as risk-bearers responsible for damage arising on their land, even without explicit proof of negligence. From a doctrinal perspective, this principle served three core functions, which are to enhance access to compensation by lowering plaintiffs' evidentiary burdens, reinforce the polluter-pays principle, and embed environmental protection in business risk calculus, creating strong preventive incentives.[13]

However, the coherence of this original framework was significantly disrupted with the enactment of the Job Creation Law (Undang-Undang Cipta Kerja). The most

[12] Al Fath, "Analisis Yuridis Penerapan Strict Liability Dalam Undang-Undang Perlindungan Dan Pengelolaan Lingkungan Hidup Yang Diubah Oleh Undang-Undang Ciptakerja," *Jurnal Batavia* 2, no. 2 (October 2025): 110–20, https://doi.org/10.64578/batavia.v2i2.168.

[13] Mikhaela Tracy Renata Tuju, "Pertanggungjawaban Korporasi Atas Pencemaran Limbah Bahan Berbahaya Dan Beracun Berdasarkan Asas Tanggung Jawab Mutlak," *Lex Crimen* 13, no. 3 (September 2025), https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/63997.

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consequential change was textual, with the original phrase "without the need to prove fault" being replaced with the operator is "responsible for losses arising from their business and/or activities."[14] Although the revised wording does not expressly introduce fault, it removes the explicit declaration of fault-independence that previously formed the core of strict liability.[15] As a result, this linguistic modification fundamentally reshaped the legal meaning of Article 88 and generated substantial interpretative uncertainty.[16]

This modification affects the allocation of the burden of proof. Under the original formulation, plaintiffs only needed to demonstrate the causal link between the hazardous activity and the resulting environmental harm. By contrast, the revised language opens the possibility for defendants to argue that liability depends on demonstrating negligence or wrongful conduct, since the statutory text no longer dispels such an interpretation. This has led to a situation in which the strict liability framework, although formally retained, becomes vulnerable to infiltration by fault-based reasoning.[17] The shift in the meaning of the principle within the reform of environmental regulations also indicates a degradation of legal values, as the orientation of ecological justice has shifted toward pragmatic economic considerations.[18]

The UUCK revision also disrupts the original provision, which tied liability to activities involving B3 substances or those creating a serious environmental threat, thereby grounding strict liability in inherent hazard. The updated language, centering merely on "losses arising," detaches liability from these risk categories and leaves unclear whether they continue to function as triggers. This ambiguity increases reliance on judicial discretion and heightens the possibility of inconsistent application.

Regulatory developments compound this doctrinal uncertainty. Government Regulation No. 22/2021, particularly Article 501, enumerates several defenses, such as third-party causation, force majeure, absence of B3 use, and natural disasters, that allow operators to escape liability.[19] The regulation additionally frames strict liability as a matter of "proof," rather than a substantive basis of liability, adopting the structure of SK KMA

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[14] Andri Gunawan Wibisana, "Undang-Undang Cipta Kerja Dan Strict Liability Omnibus Law On Job Creation And Strict Liability," *Bina Hukum Lingkungan* 5, no. 3 (2021), http://dx.doi.org/10.24970/bhl.v5i3.216.

[15] Jalu Akbar Maulana and Fadila Nur Annisa, "Analisa Yuridis Perubahan Makna Strict Liability dalam Undang-Undang Lingkungan Hidup Pasca Pengesahan Undang-Undang Cipta Kerja," *Amnesti: Jurnal Hukum* 6, no. 2 (August 2024): 297–313, https://doi.org/10.37729/amnesti.v6i2.4935.

[16] Suarni S, Maskun, and AM Yunus Wahid, "Revitalizing Strict Liability In Environmental Law Enforcement In Indonesia," *International Journal of Environmental Sciences*, June 2, 2025, 2003–10, https://doi.org/10.64252/bn7bs638.

[17] Ni Komang Ayu Candrawati and I. Gede Agus Kurniawan, "Strict Liability Principles Regulation on Corporate Crimes in Environmental Pollution & Strengthening Criminal Penalties in Indonesia," *Jurnal Daulat Hukum* 8, no. 1 (April 2025): 72–83, https://doi.org/10.30659/jdh.v8i1.44878.

[18] Aurora Jillena Meilala et al., "An Explanation On The Ideological Deviation Of Economic Legislature In Indonesia," *Jurnal Pendidikan Dasar Dan Sosial Humaniora* 1, no. 3 (January 2022): 417–34, https://doi.org/10.53625/jpdsh.v1i3.1167.

[19] Peraturan Pemerintah Nomor 22 Tahun 2021 Tentang Penyelenggaraan Perlindungan Dan Pengelolaan Lingkungan Hidup, 22/2021 PP 22/2021.

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No. 36/2013, that risks mischaracterizing strict liability as a reversed burden of proof, contrary to Supreme Court guidance.

The cumulative effect of these modifications is a significant doctrinal dilution of strict liability. While the framework remains formally present within environmental law, its defining elements, such as risk-based responsibility, fault-independence, and clear triggers for liability, all have become obscured. This transformation not only complicates judicial interpretation but also affects the preventive function originally envisioned by the UUPPLH.

This doctrinal erosion is further reflected in the structural problems introduced by the UUCK, which introduces a series of structural problems that affect the coherence, interpretation, and implementation of strict liability in Indonesia. These problems arise at three interconnected levels, which are normative disharmony, judicial interpretive uncertainty, and institutional weaknesses. Together, they weaken the risk-based logic of strict liability and undermine its effectiveness as an instrument of environmental civil enforcement.

The first set of issues emerges from the inconsistency between UUPPLH, the amended Article 88 under UUCK, Government Regulation No. 22 of 2021, and Supreme Court Regulation No. 1 of 2023. The original statutory framework was designed as a coherent system in which strict liability operated as a substantive legal instrument grounded in inherent environmental risk. With the removal of the explicit “no-fault” clause, the UUCK disrupts this coherence and introduces doctrinal ambiguity regarding the nature of liability intended by the legislature.

This disharmony is most evident in the UUCK’s shift in wording, which detaches liability from risk categorization. While UUPPLH and PP 22/2021 still recognize B3 activities and serious environmental threats, the amended text of Article 88 no longer makes clear whether these categories automatically trigger strict liability. As a result, the doctrinal foundations of strict liability are weakened, with the absence of an explicit no-fault standard blurring the distinction between strict and fault-based liability, diminishing the legal certainty that the original framework sought to provide.[20]

A related normative issue concerns the unresolved meaning of “serious threat.” Although doctrinal literature generally interprets this phrase to encompass extensive, irreversible, or escalating environmental harm, neither the UUPPLH nor its implementing regulations provide a substantive definition, and the UUCK further compounds this vagueness by shifting emphasis toward “losses” rather than inherent environmental risk, a change which can be viewed as a risk reducing strict liability to purely compensatory mechanism disconnected from its preventive foundation.

[20] Hendi Gusta Rianda, “Problematika Konsepsi Strict Liability Dalam Perlindungan Lingkungan Hidup Pasca Disahkannya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja,” *Muhammadiyah Law Review* 5, no. 2 (July 2021): 100–109, https://doi.org/10.24127/lr.v5i2.1626.

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The ambiguity is reinforced by judicial guidance, although SK KMA No. 36/2013 predates the UUCK amendment, it provided an interpretive reference for courts, attempting to clarify "serious threat," yet simultaneously framing strict liability as an evidentiary tool that plaintiffs must explicitly invoke, rather than as an automatic substantive standard. Scholars note that this framing blurs the boundary between strict and fault-based liability, intensifying the doctrinal uncertainty introduced by the amended Article 88 under the UUCK.[21] These normative ambiguities have translated into divergent judicial practices, with some courts continuing to treat concession holders as risk-bearers for environmental harm within their control, while others require proof of negligence or inadequate preventive measures. Together, these conflicting approaches illustrate how the revised wording of Article 88 has deepened the instability of strict liability within Indonesian environmental law.

Furthermore, the weakening of the risk-based foundation of strict liability in the amended Article 88 undermines the judiciary's ability to determine when strict liability should apply. In the absence of clear statutory triggers, courts increasingly rely on subjective assessments of risk, compliance, or operational conduct, thereby reintroducing fault-like reasoning even in cases that would have fallen under automatic liability in the original UUPPLH framework. Although Supreme Court Regulation No. 1 of 2023 seeks to restore coherence by instructing judges to consider strict liability and to rely on scientific evidence, it cannot fully resolve ambiguities embedded in the amended statute.

PERMA No. 1/2023 primarily contributes by standardizing the procedural posture of strict liability cases. Article 38(3) specifies the elements plaintiffs must establish, such as causation, hazardous activity, and environmental harm, while Article 40(1) guides courts to evaluate defendants' challenges by examining causal disputes rather than operational conduct.[22] The regulation clarifies the analytical structure courts should use when adjudicating strict liability claims, thereby reducing the tendency to collapse strict liability into negligence, as well as realign judicial reasoning with the doctrinal intent of risk-based responsibility. Still, because PERMA operates only as judicial guidance, it cannot restore the substantive clarity removed by the UUCK, including the original statutory emphasis on inherent environmental risk and automatic liability triggers. Its stabilizing effect is therefore important but inherently limited.

Another institutional concern arises from the fragmentation between administrative enforcement and civil liability. PP 22/2021 significantly expands administrative oversight and sanctions, while placing greater emphasis on compliance rather than on purely substantive environmental outcomes. Some observe that PP 22/2021 implicitly conditions

[21] Wongkar, "Meninjau Kembali Strict Liability."
[22] Muhamad Agil Aufa Afinnas, *Signifikansi Pengaturan Strict Liability dalam Peraturan Mahkamah Agung No. 1 Tahun 2023 tentang Pedoman Mengadili Perkara Lingkungan Hidup untuk Mengatasi Kerancuan Konseptualnya dalam Praktik*, no. 1 (2023).

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strict liability on prior findings of administrative non-compliance, thereby transforming what should be an automatic risk-based standard into one that resembles fault or negligence.

The practical implications of this shift become evident when examining judicial decisions, which increasingly reflect this move away from a risk-based approach. An illustration of the broader judicial tendency to drift away from the risk-based conception of strict liability is found in PT. Bumi Mekar Hijau (BMH) v. KLHK, where the Palembang High Court declined to apply strict liability for extensive peatland fires within the company's concession.[23] Instead of treating peatland combustion as an inherent operational risk, the Court examined PT. BMH's preventive measures, fire-fighting efforts, and absence of intent, which is an approach that effectively reintroduced fault-like reasoning. Scholars frequently cite this case since it demonstrates that, even under the original UUPPLH framework, the court sometimes interpreted strict liability as contingent on proof of negligence. This pre-existing judicial uncertainty helps explain why the doctrinal ambiguities introduced by the UUCK further reinforced such reasoning, rather than correcting it.

A contrasting example is found in KLHK v. PT. Rambang Agro Jaya, where the Jakarta Central District Court accepted the government's claim brought under the strict liability provision of Article 88 UUPPLH.[24] Unlike in BMH, the court did not require proof of fault or inadequate fire-prevention measures. Instead, it treated the occurrence of large-scale land fires within the concession as sufficient to attach liability to the operator and proceeded to order substantial environmental damages. According to the case summary, the suit was filed "under the strict liability of the rule of Article 88 Environmental Protection and Management Act." The court's willingness to impose liability without evaluating negligence illustrates the opposite interpretive trajectory from that seen in BMH, thereby highlighting the inconsistent judicial application of strict liability across environmental civil cases.

3.2 Comparison of the Principle of Strict Liability from a Civil Perspective in Environmental Law Between Indonesia and the Netherlands

Dutch civil law does not explicitly use the term "strict liability," but applies an equivalent doctrine through *risico-aansprakelijkheid* (risk liability), which scholars understand as liability detached from traditional notions of fault (*zonder schuld*).[25] This principle is codified in several *Burgerlijk Wetboek* (BW) provisions that assign responsibility to those who control hazardous sources, with Article 6:173 BW for dangerous movable objects, Article 6:174 BW for defective buildings, and Article 6:175 BW for professional users of dangerous substances (*gevaarlijke stoffen*), [26] a category defined

[23] PT. Bumi Mekar Hijau v. KLHK, 51/PDT/2016/PT.PLG (Pengadilan Tinggi Palembang).
[24] PT. Rambang Agro Jaya v. KLHK, Nomor 2196 K/Pdt/2022 (Mahkamah Agung).
[25] Wibisana, "Undang-Undang Cipta Kerja Dan Strict Liability Omnibus Law On Job Creation And Strict Liability."
[26] "Strict Liability In Contemporary European Codifications (Erdem Buyuksagis)," n.d.

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broadly to include gases, liquids, and solids in any state or stage of processing.[27] Adjacent provisions extend this risk-based principle to landfill operators in Article 6:176 BW and mining installation in Article 6:177 BW, while Article 6:178 provides limited exceptions such as natural disasters or intentional third-party acts. Collectively, these provisions embody a responsibility model that places the burden of harm on those who control inherently hazardous sources once the associated risks materialize.

Dutch courts apply these provisions in a categorised, substance-based manner. A clear illustration is the Municipalities v. Chemours/ DuPont litigation (Rb. Rotterdam 2023), where the court held Chemours liable under Article 6:175 BW for PFOA emissions because the substance was already recognized as hazardous within regulatory classifications, while declining liability for GenX in earlier periods due to the absence of such recognition.[28] This demonstrates how Dutch strict liability operates through predetermined risk categories rather than broad judicial discretion.

This civil law structure is reinforced by a set of administrative and EU-level instruments that structure the management of industrial hazards. The two central instruments are the BRZO 2015 and the EU Environmental Liability Directive (ELD). Together, they create a multilayered framework in which environmental risks are classified in advance and liability follows clearly-defined statutory categories.

First, the *Besluit risico's zware ongevallen* (BRZO 2015) implements the EU Seveso III Directive (Directive 2012/18/EU) and establishes quantitative thresholds that categorize facilities into lower-tier and upper-tier establishments, requiring measures such as safety reports, quantitative risk assessments, and coordinated inspections.[29] BRZO's threshold system functions as the practical backbone of Article 6:175 BW by predetermining which substances and quantities constitute major accident hazards. Dutch courts frequently refer to BRZO classifications when deciding whether a substance qualifies as inherently hazardous, as seen in cases involving industrial emissions and chemical releases, to ensure predictability.

Second, the EU Environmental Liability Directive (ELD) 2004/35/EC complements the BW's private-law strict liability through a public-law regime of preventive and remedial obligations.[30] The ELD requires operators engaged in certain occupational activities to prevent imminent environmental damage and remedy damage once it occurs, regardless of

[27] Channa Samkalden, Charlotte Liem, and Marloes Wantenaar, *Handbook for Practitioners: The Netherlands – Civil Liability for Human Rights Violations* (2021).
[28] Lieselot Bisschop and Yogi Hendlin, "How Criminology Can Support Environmental Health: The Case of PFAS," *Environmental Health* 24, no. 1 (August 2025): 59, https://doi.org/10.1186/s12940-025-01214-2.
[29] Rikkert J. Hansler, Linda J. Bellamy, and Henk A. Akkermans, "Ageing Assets at Major Hazard Chemical Sites – The Dutch Experience," *Safety Science* 153 (September 2022): 105788, https://doi.org/10.1016/j.ssci.2022.105788.
[30] Kristel de Smedt and Britt Gerritsen, "The Environmental Liability Directive 20 Years on: A Critical Evaluation," *Lawtext Publishing Limited* 28, no. 5 (2024).

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fault, aligning closely with the risk-based logic of Dutch strict liability.[31] The ELD's definitions of "environmental damage," "operator," and "occupational activity" are incorporated into Dutch administrative law under the *Wet milieubeheer*, thereby reinforcing a governance structure in which administrative enforcement, EU obligations, and civil liability operate on the same predefined hazard categories.

Against this background of clearly codified and categorised risks, the Dutch model as a whole is characterized by risk-based strict liability, in which liability arises only when an object or substance falls within predefined statutory classifications. In contrast, Indonesia's system, particularly under Article 88 UUPPLH, is open-ended. The statute does not provide a formal taxonomy of hazardous activities, but instead imposes liability broadly for "business or activities" that pose a serious threat. This difference has major implications. In the Netherlands, operators can predict their exposure based on clear legal categories,[32] whereas Indonesian courts and regulators must interpret broad statutory concepts, leading to significantly greater interpretive uncertainty. These structural differences translate directly into institutional practice.

In the Netherlands, strict liability is closely integrated with administrative regulation, such as the permitting regime, risk classification, and liability provision, which work together to provide legal certainty. Dutch courts apply strict liability consistently because the BW gives stable categories and regulatory instruments limit judicial discretion. Conversely, Indonesian courts show inconsistency, with some, such as the PT. BMH case, declining strict liability in the absence of a clearly defined legal risk category, while others, like the PT. Rambang Argo Jaya case interprets Article 88 expansively, treating inherently hazardous activities as automatically liable. The lack of a formal risk classification and weak integration between administrative regulation and civil liability exacerbate unpredictability in Indonesia.

These institutional divergences are rooted in bigger structural differences between the two systems. The Netherlands has a long tradition of civil-law codification and a well-developed doctrinal risk taxonomy, reinforced by EU environmental law. Second, Dutch risk governance is pre-emptive, with the hazardous activities catalogued in advance, and liability flows clearly from that classification. Indonesia, in contrast, has a more reactive approach, where liability is assessed after damage occurs, and without a formal system for categorizing risk. Finally, differences in judicial culture matter, with Dutch courts emphasizing doctrinal coherence and statutory interpretation, whereas Indonesian courts operate in a more flexible, case-by-case way, particularly when statutory provisions lack definitional clarity.

[31] Mari Pihalehto and Suvi-Tuuli Puharinen, "Uncharted Interplay and Troubled Implementation: Managing Hydropower's Environmental Impacts under the EU Water Framework and Environmental Liability Directives," *Journal of Environmental Law* 36, no. 1 (March 2024): 43–66, https://doi.org/10.1093/jel/eqad032.

[32] J N Potharst, "Risicoaansprakelijkheid of 'aanmerkelijk risico' aansprakelijkheid?," *Rechtspraak*, 2024.

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These structural and cultural foundations directly shape the practical effectiveness of each liability regime. The Dutch model offers predictability and deterrence. Operators know in advance whether they fall under strict liability, which encourages preventive risk management and investment in safety. Civil and administrative enforcement reinforce each other, reducing litigation risk and enhancing compliance. In Indonesia, however, legal uncertainty undermines deterrence, with open-ended liability, judicial divergence, and weak cross-institutional linkages dilute the power of strict liability as an effective environmental protection tool.[33] These shortcomings highlight the need for structural reform.

Drawing from the Dutch comparisons, Indonesia could substantially strengthen its strict liability regime by introducing a formal risk-classification system, ideally through a Government Regulation under Article 88 UUPPLH, comparable to the Dutch model of predetermined hazardous-substance categories and EU-style threshold quantities. Embedding a clear taxonomy of risks would allow courts and regulators to identify high-risk activities beforehand, rather than relying on broad judicial discretion after harm occurs. Strengthening this structural base would also necessitate a clarification of statutory terminology, particularly the meaning of "serious threat" and the boundaries of "high-risk activities," so that liability attaches to scientifically classifiable hazards rather than open-ended interpretations.

Reforms should be complemented by stronger coordination among all agencies responsible for environmental law enforcement. Civil liability rules, administrative permits, and monitoring obligations need to be aligned under consistent risk classifications, so that enforcement actions are mutually reinforcing rather than contradictory. Effective inter-agency communication and joint protocols will ensure that environmental harms are addressed efficiently and systematically.

Finally, meaningful improvement depends on enhancing the capacity and understanding of law enforcement officers regarding strict liability principles. Training programs and guidance materials should equip judges, prosecutors, and regulators to apply environmental liability consistently and effectively. Strengthening human capacity will ensure that the preventive and corrective functions of strict liability are fully realized in practice.

4. CONCLUSION

This study concludes that the application of strict liability in Indonesian environmental civil law remains conceptually strong but practically constrained, particularly in terms of causation, evidentiary standards, and the determination of liability limits, which often undermine effective environmental redress. In contrast, Dutch environmental civil law demonstrates a more coherent and consistent implementation of risk-based liability, where

[33] Paujiah Hanum et al., "The Principle Of Strict Liability In Legal Responsibility For Environmental Pollution: A Conceptual Analysis," *International Journal of Educational Research & Social Sciences* 6, no. 3 (June 2025): 259–61, https://doi.org/10.51601/ijersc.v6i2.943.

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responsibility is attached to hazardous activities without requiring proof of fault, thereby ensuring greater legal certainty and more effective environmental protection. The comparative analysis reveals that Indonesia's current model has not yet fully realized the deterrent and restorative objectives of strict liability, largely due to fragmented doctrinal interpretation and procedural rigidity. The novelty of this study lies in positioning the Dutch risk-based approach as a normative benchmark for strengthening Indonesia's strict liability regime. Accordingly, this study recommends doctrinal harmonization toward a clearer risk-oriented liability framework, simplification of evidentiary requirements, and explicit reinforcement of environmental compensation mechanisms to enhance accountability, environmental restoration, and substantive justice. Such reforms are essential to ensure that strict liability functions as an effective legal instrument in addressing environmental harm within Indonesia's evolving environmental governance system.

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