



Comparative Study of Strict Liability in Handling Industrial Pollution in the Fishing Industry in Indonesia and Malaysia

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Abstract. This study analyzes strict liability as the basis for corporate civil liability in fishing industry pollution cases, comparing Indonesia and Malaysia. Using normative legal research with statutory, conceptual, and comparative approaches, this study examines legal frameworks and enforcement practices. In Indonesia, strict liability is regulated under Article 88 of the Environmental Protection and Management Law (UUPPLH). However, it applies generally without differentiating between land and sea regimes, and enforcement heavily prioritizes financial compensation over environmental restoration, creating a restorative justice gap. In Malaysia, pollution is governed by the Environmental Quality Act 1974 and tort law. The comparison reveals that while both nations possess strict liability mechanisms, enforcing restorative sanctions faces greater procedural, financial, and technical hurdles than compensation. Consequently, this study recommends harmonizing liability standards within ASEAN to prioritize environmental restoration. Strengthening institutional capacity is crucial to ensure that civil sanctions effectively restore marine and coastal ecosystems, establishing restoration as a primary—rather than secondary—remedy in industrial pollution cases.

Keywords: Compensation, Environmental Restoration, Fishing Industry, Strict Liability.

1 Introduction

There are several serious and significant factors that contribute to the pollution of the actor's ecosystem which originates from the carelessness and lack of community responsibility for understanding the importance of maintaining the ecosystem [10]. Corporate activities in the fishing industry sector are one of the drivers of economic growth, but they often have negative impacts in the form of pollution and/or destruction of the environment. This damage is not only material in nature, but also affects the health and social order of the community [2]. As legal entities, corporations are included in the definition of "persons" who are prohibited from committing acts that result in pollution and/or destruction of the environment, as

stipulated in Article 69 Paragraph 1 of Law Number 32 of 2009 concerning Environmental Protection and Management [12].

This issue is evident in the fishing industry, where high production volumes generate waste that has the potential to damage the environment. A contextual case study in Indonesia highlights the pollution that occurs in the environment of the frozen fish fillet processing plant PT.ATB in Makassar [13]. The waste produced by this company includes solid waste (fish heads, bones, scales, and entrails) and liquid waste, which is voluminous and contains hazardous compounds such as sulfides, ammonia, phosphates, and lipids. This poorly managed waste has caused public complaints and waterlogging, indicating a failure to manage waste in accordance with environmental standards [13].

To overcome the difficulty of proving fault-based liability in complex pollution cases, Indonesian environmental law applies the principle of strict liability. This principle is explicitly stipulated in Article 88 of the Environmental Protection and Management Law, which requires the parties responsible for businesses or activities that produce and manage hazardous waste to be strictly liable for any losses incurred, regardless of proof of fault [11], [1]. In the context of the marine environment, the principle of Strict Liability must be applied due to the massive and rapid nature of the damage. However, this application is faced with a legal vacuum in international law regarding conventions that generally regulate Strict Liability for marine damage other than oil spills [5].

The focus of civil liability is regulated in Article 87 Paragraph (1) of the UUPPLH, which requires companies to pay compensation and/or take certain actions. Although the law provides the option of restoration as an effort to restore environmental functions (Article 54 of the Environmental Protection and Management Law), in practice, law enforcement tends to focus more on compensation. This creates a gap between the legal potential of restorative sanctions and the dominance of compensatory sanctions.

Therefore, this study takes a comparative approach between Indonesia and Malaysia. This comparison is crucial to evaluate whether the environmental legal framework in the ASEAN region, which has the same Strict Liability regime, is able to effectively compel fishing corporations to prioritize restorative justice for environmental preservation, given that Indonesia and Malaysia are coastal countries that share interests in marine environmental protection [6].

2 Method

The research method used is normative with a legislative, conceptual, and comparative approach related to strict liability in Indonesia and Malaysia and analyzes the concept of restorative justice (environmental restoration) as a civil sanction. The legal materials collected included primary and secondary legal materials, which were then analyzed qualitatively through interpretation,

systematization, and comparison to identify similarities, differences, and gaps in the implementation of restorative sanctions in both jurisdictions.

3 Discussion

3.1 Strict Liability Regime and the Dilemma of Environmental Restoration in Indonesia

Indonesia is an archipelago country [8]. Indonesia's geographical condition as an archipelagic state with thousands of islands [4]. The initial milestone in the regulation of strict liability in Indonesian legislation was the first environmental law [3]. The environmental civil liability regime in Indonesia is strongly rooted in the doctrine of strict liability, which is explicitly stipulated in Article 88 of the Environmental Protection and Management Law (UUPPLH). This principle functions as *lex specialis*, which obliges corporations that manage or produce hazardous waste to be strictly liable for damages without the need to prove fault. However, the Environmental Protection and Management Law is general in nature and its provisions do not specifically divide the application of strict liability for land and sea regimes. In fact, marine cases require immediate or instant application [5], unlike land regimes. Meanwhile, awareness of the strategic values of managing coastal areas in a sustainable, integrated and community based manner is also very lacking [7].

Civil liability in Indonesia is regulated in two dimensions contained in Article 87 Paragraph (1) of the Environmental Protection and Management Law, namely the obligation to compensate for damages and the obligation to restore the environment. Although the law requires environmental restoration to restore environmental functions (Article 54 of the Environmental Protection and Management Law), the practice of industrial fishery waste pollution cases in Makassar shows that enforcement tends to focus more on financial compensation. This creates a gap, where settlements tend to be limited to monetary compensation rather than forcing comprehensive restoration measures, making restorative justice difficult to achieve. In addition, supervision by relevant agencies, such as the Marine Service, still faces challenges such as a lack of competent human resources and integrated supervision, which further weakens the enforcement of restoration sanctions.

3.2 Environmental Civil Liability Regime in Malaysia

The implementation of the principle of strict liability in cases of industrial pollution affecting the fisheries sector is highly relevant in Malaysian environmental law. This principle explicitly eliminates the requirement to prove fault-based liability, meaning that industry players remain liable as long as it can be proven that their activities have caused environmental damage [15].

There are two legal frameworks governing environmental pollution in Malaysia, namely: 1) the Environmental Quality Act 1974 (EQA 1974) and tort law. EQA 1974 is the main legal basis governing air and water pollution control and hazardous waste

management, as stipulated in Article 24 (section 24), which expressly prohibits the discharge of pollutants into Malaysian waters without permission from the environmental authorities. Furthermore, Article 25 also states that the actions referred to in Article 24 constitute a criminal offense. Furthermore, Article 25 also states that the actions referred to in Article 24 constitute a criminal offense.

With regard to civil liability for environmental damage, the 1974 EQA does not explicitly apply the principle of strict liability. The sanctions imposed on polluters are more administrative and criminal in nature, rather than compensation for victims, such as fishing communities. Therefore, in order to file a claim for damages suffered due to pollution caused by the fishing industry, it is still necessary to file a lawsuit through civil law based on the principle of tort.

The application of Malaysian civil law or tort law in cases of environmental pollution that cause economic and ecological damage can be pursued by adhering to the principles of nuisance, negligence, and strict liability [15]. This principle provides legal certainty for affected communities—such as fishermen, fish farmers, and coastal communities—to seek civil damages from industrial actors who pollute the environment.

First, using the nuisance principle—which applies when an action taken by a person or legal entity causes disturbance to the use of the surrounding environment. In the context of industrial pollution in the fishing industry, victims can file a lawsuit if industrial pollution disturbs shared environmental resources, for example, causing a decline in fish catches, the death of marine life, and the pollution of aquaculture areas.

Second, using the principle of negligence – applicable when someone violates their legal obligation to exercise due care, causing harm to another person. The elements that must be fulfilled in order to be considered a violation of legal obligations include: actual harm has occurred; there is a direct causal relationship; and the harm can be reasonably calculated. For example, a lawsuit may be filed if an industry or company fails to treat hazardous liquid waste before discharging it into the sea. In this context, the plaintiff must prove a direct causal link between the negligence and the harm suffered.

Third, strict liability - states that the perpetrator is held liable even if there is no element of negligence or malicious intent, but the activity involved the use of hazardous or high-risk materials and caused harm to a third party. One case that applied the principle of strict liability was the Ng Huat Seng and Mohd Salleh case in 1990. In that case, the defendant carried out earthworks on his own property. Accidentally, the excavated soil slid onto the plaintiff's land and caused serious damage to the property. Even though there was no evidence of negligence or malicious intent, the court still ruled that the defendant was strictly liable for the damage that occurred (Ng Huat Seng v Mohd Salleh, 1990). This case became a jurisprudential precedent in affirming the applicability of the principle of strict liability.

3.3 Comparative Analysis: The Priority of Restorative Justice in ASEAN

Legal norms constitute a central symbol of community life (Rifai, A, Marwah, Amaliyah, Fauzia P. Bakti, Lukmansyah Rifai & Padma Liman, 2025,p.14). The biggest challenge facing Indonesia and Malaysia is the transition from financial sanctions to restorative sanctions. The absence of international law regarding strict liability for marine damage other than oil spills has forced both jurisdictions to rely on domestic legislation [5]. In Indonesia, this means "leveling" the application of Article 88 of the UUPPLH, while in Malaysia there are no legal provisions that explicitly regulate strict liability. In this comparative analysis, it is evident that the principle of strict liability as applied in Malaysian tort law needs to be integrated with a restorative justice framework to ensure that the responsibility of polluters does not stop at compensation but also includes ecosystem restoration, the empowerment of affected communities, and the prevention of repeated pollution.

Therefore, the direction of environmental law reform in Malaysia needs to consider a hybrid model, which is a combination of tort law principles (such as strict liability) and the principles of environmental restorative justice. This difference highlights the need for harmonization of liability standards in the ASEAN region. Both countries must overcome obstacles to the implementation of restorative sanctions, namely technical difficulties and the complex assessment of ecological damage. The main recommendation is to adopt a model that prioritizes restorative justice, not just as a supplement to compensation, to ensure sustainable coastal environmental restoration [6].

4 Conclusion

Indonesian environmental law has explicitly adopted the principle of strict liability through Article 88 of the Environmental Protection and Management Law (UUPPLH) as the basis for civil liability for hazardous waste pollution by the fishing industry. However, civil law enforcement tends to focus more on financial compensation payments. This makes restorative justice difficult to achieve.

A comparison between Indonesia and Malaysia highlights similar regional challenges. Although both jurisdictions have mechanisms for demanding strict liability, the implementation of restorative sanctions faces greater procedural, financial, and technical obstacles than compensatory sanctions. Furthermore, the absence of international law regarding strict liability for marine damage other than oil spills (such as coral reef damage) forces both countries to rely on domestic regimes that are not yet fully integrated for maritime cases.

5 Recommendations

The Indonesian government should strengthen the enforcement of environmental civil law by issuing technical regulations that prioritize environmental restoration sanctions over financial compensation. Courts and law enforcement agencies should be encouraged to actively seek comprehensive restoration orders (*Restitutio in Integrum*) and be consistent in enforcing administrative, civil, and criminal sanctions.

Diplomatic encouragement and initiatives from Indonesia and Malaysia are needed to harmonize civil environmental liability standards in the ASEAN region. This harmonization aims to create a legal framework that explicitly incorporates the principle of restoration priority and establishes mutually agreed methods for assessing ecological damage and enforcing cross-border restoration measures.

The relevant supervisory agencies in Indonesia (such as the Maritime Affairs Agency) and Malaysia need to strengthen their human resource capacity and integrate their supervisory systems. Supervision should not only focus on administrative compliance, but should also be able to become proactive agents that facilitate and demand the effective and immediate implementation of environmental restoration measures by corporations.

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