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RECONSTRUCTING CIVIL LIABILITY FOR HAZARDOUS WASTE MANAGEMENT: STRICT LIABILITY AFTER THE JOB CREATION LAW IN INDONESIA

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Abstract: *This article examines the operation of strict liability in Indonesian environmental civil law after the Job Creation Law, with particular attention to corporate activities involving hazardous and toxic materials and waste (B3). It uses normative legal research through statutory, conceptual, and case approaches. The analysis corrects an important point in the post-amendment debate: Article 88 continues to include activities that use B3, produce or manage B3 waste, and/or pose a serious threat to the environment, while the amendment removed the explicit phrase stating that liability applies without the need to prove fault from the operative text. Strict liability nevertheless remains part of Indonesian law because the article retains the formulation "bertanggung jawab mutlak," and its application is further structured by Government Regulation No. 22 of 2021 and Supreme Court Regulation No. 1 of 2023. The latter clarifies that plaintiffs must establish the hazardous activity, legally cognizable environmental loss, and causation, but need not prove fault. The study finds that the principal problem is therefore not the disappearance of strict liability, but normative friction among the statute, its implementing regulation, and judicial practice. A workable reconstruction requires harmonized interpretation, clear separation of fault from causation, science-sensitive evidentiary standards, and consistent use of environmental restoration as a civil remedy.*

Keywords: *Strict Liability; Hazardous and Toxic Waste (B3); Corporate Civil Liability; Environmental Restoration; Article 88 UUPPLH.*

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Introduction

Industrial activity generates economic value, but some production processes also create environmental risks that are difficult to reverse. Hazardous and toxic materials and waste, commonly referred to in Indonesian law as B3 and B3 waste, require a liability framework that does not leave affected communities or the environment carrying the cost of industrial risk. Environmental civil law serves a corrective function in this setting: it allocates the economic consequences of pollution to the party whose activity creates the relevant risk and provides a route for compensation and ecological restoration (Rahmadi, 2015; Rangkuti, 2000; Wibisana, 2017). Effective liability and remedies are also part of environmental rule of law because environmental rights have little practical value when violations cannot be corrected through enforceable legal mechanisms (United Nations Environment Programme, 2019).

Conventional fault-based liability is often difficult to operate in technically complex pollution cases. A plaintiff may be able to show that contamination occurred, yet still face substantial obstacles in reconstructing internal corporate decisions, identifying the precise negligent act, or explaining an industrial process that is largely controlled by the defendant. The problem becomes sharper when several sources of pollution coexist or when scientific evidence cannot identify a single mechanism with complete certainty. Indonesian environmental scholarship has therefore treated strict liability and the precautionary principle as important responses to evidentiary asymmetry, while maintaining that causation and environmental loss remain distinct questions (Imamulhadi, 2013; Aminudin et al., 2021; Wibisana, 2019).

Article 88 of Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) placed strict liability at the center of civil responsibility for high-risk environmental activities. The original provision expressly referred to persons whose activities use B3, produce or manage B3 waste, and/or pose a serious threat to the environment, and stated that liability arose without the need to prove fault. This construction complemented the constitutional right to a good and healthy environment under Article 28H(1) of the 1945 Constitution and reflected the corrective dimension of the polluter-pays principle (Asshiddiqie, 2009; Organisation for Economic Co-operation and Development, 1972; Wibisana, 2017).

The Job Creation reform changed the wording of Article 88. Contrary to a recurring formulation in some secondary discussions, the phrase concerning a “serious threat to the environment” was not removed from the provision. The significant textual change was the deletion of the closing phrase “without the need to prove the element of fault,” while the expression “bertanggung jawab mutlak” remained. This distinction matters because an inaccurate account of the amendment can shift the analysis away from the actual legal problem. The debate is better framed as a question about how the retained concept of strict liability should be interpreted after the explicit no-fault clause was removed and after Government Regulation No. 22 of 2021 introduced a detailed enforcement scheme (Maulana & Annisa, 2024; Pambudhi & Ramadayanti, 2021; Rianda, 2021; Wibisana, 2021; Winarni, 2022).

Judicial guidance issued after the statutory reform is also material. Supreme Court Regulation (PERMA) No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases expressly regulates “tanggung jawab mutlak” and gives courts a structured basis for applying it. Article 38 requires proof of the qualifying hazardous activity, environmental or related loss, and a causal relationship between the activity and the damage. At the same time, the regulation permits strict liability without a prior administrative finding of non-compliance and recognizes only limited defenses. This framework confirms that the absence of fault and the existence of causation are separate legal propositions.

Previous scholarship has mapped the development of strict liability in Indonesian environmental litigation, including forest and peatland fire disputes, and has exposed inconsistent judicial reasoning when judges blend strict liability with ordinary unlawful-act doctrine (Al Fikri et al., 2022; Haryadi, 2017; Rachma & Triwibowo, 2023; Wibisana, 2016a, 2016b, 2019). More recent studies examine the post-Job Creation formulation and the continuing need for judicial clarification (Satriawan et al., 2025; Subadi et al., 2026; Tumangger et al., 2024). However, a narrower issue remains important for B3 waste cases: how Article 88, Government Regulation No. 22 of 2021, and PERMA No. 1 of 2023 should be read together so that the no-fault character of strict liability is preserved without erasing the plaintiff's obligation to prove causation.

This article addresses that issue through three questions. First, how did the normative structure of strict liability change after the Job Creation Law? Second, what must a plaintiff still prove in a civil case involving B3 or B3 waste, especially in relation to causation and serious threat? Third, what interpretive and institutional reconstruction is needed to make the doctrine predictable while preserving corporate accountability and environmental recovery? The contribution of the article lies in separating three matters that are often conflated: the trigger for strict liability, the absence of a fault requirement, and the independent requirement of causal connection.

Method

This study uses normative legal research, also referred to as doctrinal legal research. The object of analysis is the legal norm governing environmental civil liability rather than the behavior of respondents or institutions. The research therefore does not employ interviews, surveys, or statistical testing. Its purpose is prescriptive: to identify the applicable rules, examine their coherence, compare judicial interpretations, and formulate a legally defensible reconstruction (Marzuki, 2017; Soekanto & Mamudji, 2015).

Three approaches are employed. The statutory approach examines the 1945 Constitution, Law No. 32 of 2009 as amended through Law No. 6 of 2023, Government Regulation No. 22 of 2021, PERMA No. 1 of 2023, and related environmental-loss rules. The conceptual approach analyzes strict liability, causation, the polluter-pays principle, precaution, and corrective environmental justice. The case approach reviews judicial reasoning developed in environmental civil disputes, including the PT Kallista Alam, PT Bumi Mekar Hijau, and PT Waringin Agro Jaya litigation, insofar as those decisions illuminate the treatment of strict liability and environmental damage (Wibisana, 2016b, 2019; Rachma & Triwibowo, 2023; Satriawan et al., 2025).

Primary legal materials consist of legislation, implementing regulations, Supreme Court regulations, and selected court decisions. Secondary legal materials include peer-reviewed articles and academic books on environmental liability and evidentiary doctrine; international instruments are used only as contextual support. The materials were collected through document study and verified against official legal repositories or journal metadata where available. Analysis was conducted through grammatical, systematic, and teleological interpretation, followed by comparison of the statutory norm with the reasoning patterns identified in relevant cases. The final stage evaluates whether the post-reform framework remains internally consistent with the civil-law function of strict liability.

Results and Discussion

Normative Evolution of Strict Liability after the Job Creation Law

Strict liability developed as a response to activities whose risks cannot fairly be placed on injured parties merely because negligence is difficult to prove. The classic common-law formulation in Rylands v. Fletcher linked liability to the accumulation and escape of a dangerous thing, while later environmental law adapted the underlying risk-allocation logic to industrial pollution and ecological harm. Principle 13 of the Rio Declaration also encouraged states to develop national law on liability and compensation for pollution and other environmental damage (United Nations, 1992). Indonesian law does not mechanically reproduce the common-law rule. Article 88 creates a statutory form of strict liability tailored to specified environmental risks, and its interpretation must begin with the language and structure of the UUPPLH rather than with foreign doctrine alone (Imamulhadi, 2013; Wibisana, 2017, 2019).

The original 2009 wording contained two elements in the same sentence: a defined range of high-risk activities and an express statement that fault did not need to be proven. The Job Creation reform retained the activity triggers—using B3, producing or managing B3 waste, and/or posing a serious threat—but replaced the final no-fault phrase with wording linking the loss to the relevant business or activity. Because "bertanggung jawab mutlak" remains, it is difficult to conclude that the legislature converted Article 88 into ordinary fault-based liability. Several scholars accordingly argue that the reform generated ambiguity but did not abolish strict liability as a legal category (Wibisana, 2021; Pambudhi & Ramadayanti, 2021; Rianda, 2021).

The more difficult tension appears in Government Regulation No. 22 of 2021. Article 501 places "proof of strict liability" within the civil-enforcement framework and, when read together with the surrounding supervision provisions, has been criticized for linking the mechanism too closely to findings of administrative non-compliance. That structure risks reintroducing fault-like reasoning through the back door. PERMA No. 1 of 2023 subsequently provides an important corrective by stating that strict liability may be invoked without a prior finding of administrative non-compliance and by allowing the judge to apply it even when the plaintiff did not expressly plead the doctrine, provided the nature of the activity justifies its use (Wibisana, 2021; Supreme Court of the Republic of Indonesia, 2023).

Instrument	Activity Trigger	Fault	Operational Significance
Law No. 32 of 2009, original Article 88	B3 use; B3-waste production/management; and/or serious threat	Expressly stated that fault need not be proved	Established statutory strict liability as a special civil-liability regime
Article 88 after the Job Creation reform / Law No. 6 of 2023	The same categories, including serious threat, remain	The explicit no-fault phrase is removed, while “bertanggung jawab mutlak” remains	Creates interpretive debate but does not textually convert the regime into ordinary negligence
Government Regulation No. 22 of 2021	Further regulates conditions and defenses in civil enforcement	Describes strict liability as a form of proof and links it to the supervision framework	Must be read consistently with the statute; scholarship criticizes fault-like implications
PERMA No. 1 of 2023, Articles 38–40	Hazardous activity/B3/B3 waste/serious threat	Fault is not an element; plaintiff still proves damage and causation	Allows judicial application without prior administrative non-compliance and specifies limited defenses

Table 1. Regulatory structure of strict liability before and after the Job Creation reform

B3 Waste, Serious Threat, and the Trigger for Liability

For B3 and B3-waste litigation, the qualifying activity must be identified before the court reaches questions of fault or causation. Article 88 uses alternative triggers. A plaintiff who proves that the defendant's business uses B3 or produces or manages B3 waste does not also need to establish that the activity independently satisfies the "serious threat" category; the serious-threat clause is an additional route for activities outside the first two categories. This reading follows the disjunctive structure of the provision and is consistent with PERMA No. 1 of 2023, Article 38(3)(a).

The term "serious threat" nevertheless remains important for other high-risk activities. UUPPLH defines it as a threat with widespread environmental impact that causes public concern. PERMA No. 1 of 2023 develops the concept further by directing judges to consider the breadth of actual or potential damage, the difficulty of restoration, the difficulty of prevention, serious danger to public health or safety, and the mismatch between the nature of an activity and the environment in which it is carried out. These criteria are more operational than the statutory definition alone, although they still require scientific evidence and contextual judgment rather than a single numerical threshold.

Accordingly, the appropriate reconstruction is not to invent a new statutory definition of serious threat. A better approach is to translate the existing statutory and judicial criteria into case-specific indicators through expert evidence, environmental sampling, spatial data, health information, and restoration assessments. Technical guidance may improve consistency, but it should not turn a flexible risk standard into a rigid checklist that excludes serious ecological harm merely because one numerical threshold is not met. This is especially important where pollution has cumulative or delayed effects.

Fault, Causation, and Evidentiary Architecture

The distinction between fault and causation is central to the doctrine. Strict liability removes the requirement to prove that the defendant acted negligently or intentionally; it does not relieve the plaintiff of the need to connect the relevant hazardous activity with the claimed loss. PERMA No. 1 of 2023 makes this explicit. Article 38(3) requires proof of the qualifying activity, the existence of environmental, property, or health loss, and causation showing that the loss resulted from the defendant's hazardous business or activity (Supreme Court of the Republic of Indonesia, 2023).

Causation in environmental disputes can be scientifically difficult. Pollution may move through soil, groundwater, air, or a food chain, and contamination can involve multiple sources over long periods. A court should therefore avoid two opposite errors: treating strict liability as if nothing beyond damage must be shown, or demanding the same degree of causal certainty that might be expected in a simple, single-event tort. PERMA No. 1 of 2023 provides room for science-sensitive adjudication by recognizing the precautionary principle when scientific uncertainty affects proof of causation and environmental impact (Aminudin et al., 2021).

Administrative compliance belongs to a different analytical category. A company may hold permits, follow reporting procedures, or satisfy formal operating standards and still cause damage through an activity that falls within Article 88. Such compliance may be relevant to factual context, but it does not automatically defeat strict liability because the doctrine is not premised on proving regulatory disobedience. This point is reinforced by PERMA No. 1 of 2023, Article 39(1), which permits the use of strict liability without a preceding finding of administrative non-compliance.

The same separation should govern defenses. PERMA No. 1 of 2023 limits release from strict liability to circumstances such as extraordinary natural disaster or the act of an unrelated third party, subject to specified conditions. Those defenses concern causal attribution rather than moral blame. Their structure confirms that Indonesian strict liability is not identical to an unlimited form of absolute liability; liability is strict as to fault, while causation and legally recognized defenses still matter.

Judicial Development and Continuing Inconsistency

Environmental case law has not always maintained these distinctions. Earlier litigation sometimes treated strict liability as an extension of unlawful-act doctrine, while other decisions relied on precautionary reasoning or administrative compliance in ways that blurred the doctrinal basis of liability. The PT Bumi Mekar Hijau litigation became a prominent example of the difficulty of establishing civil responsibility for large-scale fire damage, and later cases contributed to a more developed judicial understanding of environmental loss and risk (Wibisana, 2016b; Haryadi, 2017).

The PT Kallista Alam and PT Waringin Agro Jaya cases are also important because they illustrate the growing willingness of Indonesian courts to impose compensation and restoration obligations in serious environmental disputes. Scholarship on wildfire litigation shows, however, that judges have not used a single coherent theory of strict liability across cases. Some judgments emphasize hazardous activity, others rely on unlawful conduct, and still others combine strict liability with precaution. This inconsistency can reduce predictability even when the final outcome is environmentally protective (Wibisana, 2019; Rachma & Triwibowo, 2023; Satriawan et al., 2025).

PERMA No. 1 of 2023 improves the institutional framework because it places strict liability, serious threat, causation, available defenses, scientific evidence, and precaution in one procedural instrument. Its value lies less in creating a new liability regime than in organizing concepts that had previously been applied unevenly. For B3 waste cases, courts should use the regulation as a bridge between the concise language of Article 88 and the evidentiary realities of environmental litigation.

Reconstructing Corporate Civil Liability for B3 Waste

A coherent reconstruction should begin with hierarchy. Article 88 must remain the primary normative basis; Government Regulation No. 22 of 2021 should be interpreted consistently with the statute, and PERMA No. 1 of 2023 should guide adjudication without adding a fault requirement that the statutory concept of “tanggung jawab mutlak” does not contain. Where an implementing provision can be read in more than one way, the interpretation that preserves the no-fault function of strict liability is preferable because it gives effect to the specific liability category chosen by the legislature (Wibisana, 2021; Pambudhi & Ramadayanti, 2021).

Second, pleadings and judgments should separate four analytical steps: identification of the Article 88 trigger, proof of legally cognizable loss, proof of causation, and assessment of the limited defenses. Fault should not be inserted as a fifth element. This sequence makes judicial reasoning easier to review and prevents administrative compliance from becoming a surrogate test for civil liability.

Third, scientific asymmetry should be addressed through evidentiary management rather than by declaring causation irrelevant. Courts can use court-appointed or party experts, standardized sampling protocols, remote-sensing material where appropriate, environmental forensic evidence, and the precautionary principle when uncertainty is genuine. The objective is not to lower proof indiscriminately, but to prevent scientific complexity from becoming an automatic shield for operators whose activities create exceptional environmental risks (Aminudin et al., 2021; Wibisana, 2017).

Fourth, civil remedies should remain connected to environmental recovery. Compensation to affected parties is important, yet ecological damage often requires restoration orders and valuation of environmental loss. Indonesian jurisprudence and Regulation of the Minister of Environment No. 7 of 2014 already recognize environmental-loss calculation and restoration as distinct remedial concerns. Financial assurance, environmental guarantee funds, and insurance mechanisms should support enforcement where the applicable regulatory framework requires them, so that a final judgment is not rendered ineffective by the defendant’s inability to finance restoration (Haryadi, 2017; Wibisana, 2017).

Finally, the reconstruction must preserve the boundary between civil, administrative, and criminal enforcement. Strict liability under Article 88 is a civil liability rule. Administrative sanctions address regulatory compliance, while criminal responsibility follows its own statutory elements and safeguards. Coordination among these regimes is necessary, but importing civil strict liability directly into criminal guilt would obscure the different functions of each branch of environmental law (Wibisana, 2016a; Tumangger et al., 2024).

Conclusion

The post-Job Creation framework does not eliminate strict liability from Indonesian environmental civil law. Article 88 continues to regulate persons whose activities use B3, produce or manage B3 waste, and/or pose a serious threat to the environment, and it retains the expression "bertanggung jawab mutlak." The significant textual change is the removal of the explicit phrase stating that the element of fault need not be proven. Read together with PERMA No. 1 of 2023, the doctrine remains a no-fault form of civil liability, while causation and environmental loss still have to be established.

The principal weakness is normative and operational fragmentation. Government Regulation No. 22 of 2021 can be read in a way that ties strict liability too closely to administrative non-compliance, whereas PERMA No. 1 of 2023 expressly allows the doctrine to operate without such a prior finding. Judicial consistency will improve if courts distinguish the trigger for strict liability from proof of causation and resist using administrative compliance as a substitute for a fault analysis that Article 88 does not require.

For corporate B3-waste disputes, the most defensible reconstruction is therefore interpretive rather than revolutionary. Article 88 should be read in harmony with PERMA No. 1 of 2023; scientific uncertainty should be managed through appropriate evidence and precaution; serious-threat criteria should be applied contextually; and remedies should prioritize compensation and environmental restoration. This approach preserves legal certainty without shifting the economic and ecological consequences of hazardous activities back to victims or the public.

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