



Legal Accountability in the Lapindo Mudflow Case: Assessing Liability Between Strict Liability and Fault- Based Responsibility

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Abstract

Strict liability is a form of liability where a party is held accountable for the damage or harm caused by action of the party regardless of intent or fault. Strict liability is typically imposed in industries where inherently risky activities are undertaken, e.g., hazardous waste disposal, nuclear power, or the manufacture of chemicals. This research evaluates if the concept of strict liability is appropriate for the Lapindo mudflow. A qualitative approach allows for an in-depth analysis of the legal principles and arguments that have underpinned the handling of the Lapindo case. The application of strict liability principle is connected with PT Lapindo Brantas, a construction company appointed by BPMIGAS to perform oil drilling and natural gas. The eruption of mudflow was caused by the drilling activities of PT Lapindo Brantas, which were risky in nature and led to devastating consequences on the surrounding communities. Since the drilling activities are perilous in nature, particularly in an area of high subsurface instability potential, strict liability could be imposed. The damage caused by the mudflow—property loss, people displacement, and degradation of the environment—was the direct result of the activities of the company. In strict liability, PT Lapindo would have been responsible for the harm, regardless of whether their action was negligent or intentional, because drilling in this area can be considered an inherently dangerous act.

Keyword: Strict liability; Oil Drilling; Environmental Damages

A. Introduction

Legal responsibility is a mainstay of the justice system, providing a platform to hold individuals, businesses, and institutions accountable for actions or omissions that result in harm. The concept doesn't only restrict to only Indonesia, this idea is widely spread in international law, which is made of principles and rules. It ensures that all activity, interaction with both

countries and individuals should fulfil the right and duties as it impacts widely to the international community.¹

The concept of responsibility becomes increasingly complicated where there are multilayered factors at play, e.g., industrial activity, environmental hazard, or technological development. These cases necessitate a careful analysis of the legal responsibility of the parties and the appropriate mechanism of determination of responsibility. Legal systems typically utilize two broad types of responsibility, namely strict responsibility and fault-based responsibility, which carry distinct legal connotations and applications.²

Strict liability is a form of liability where a party is held accountable for injury or harm caused by their act regardless of intent or fault. The doctrine applies most appropriately where the activity involved is inherently dangerous or where the potential for injury is great and where the focus is placed on the harm caused and not on the culpability of the actor. Strict liability is typically imposed in industries where inherently risky activities are undertaken, e.g., hazardous waste disposal, nuclear power, or the manufacture of chemicals. In these industries, the law attempts to ensure that the victims of an accident or injury are compensated promptly, without necessitating lengthy investigation into the fault or intent of the violators.

The contrast of fault-based liability only holds parties accountable if it can be demonstrated that their actions or omissions were negligent, reckless, or intentional. This form of liability follows the rationale that individuals or organizations are only to be held liable if they have violated a legal duty of care that approximately resulted in injury. Fault-based liability is usually connected with claims in negligence, where the claimant needs to prove that the defendant was negligent in not acting with reasonable care, thereby inflicting injury or damage. As opposed to strict liability, where the emphasis is on the result, fault-based liability demands closer examination of the actor's conduct and of the situation leading up to the incident.

This distinction between these two forms of liability has significant implications for legal systems and for those individuals or organizations undertaking high-risk activities. Strict liability offers a more straightforward approach, with victims compensated without the need to

¹ Andreas Mulyono and Rizky Karo Karo, "Questioning a Fair Settlement as the Legal Resolution of Global Interests," *IOP Conference Series: Earth and Environmental Science* 1270 (2023): 012025. <https://doi.org/10.1088/1755-1315/1270/1/012025>.

² Abdul Haris Malik, Sanusi Sanusi, and Fajar Ari Sudewo, "Corporate Strict Liability in Environmental Crimes in Indonesia and the Netherlands," *EAI* (2022). <https://doi.org/10.4108/eai.28-5-2022.2320558>.

prove negligence or intent. It is particularly useful in enterprises where the risks of harm are well-known and where victims may find it difficult to prove fault. Yet strict liability also raises issues of fairness, inasmuch as it will impose liability on parties even when they have not been negligent or reckless. This can be unjust, particularly in cases where harm results from factors beyond the control of the responsible party.

Fault-based responsibility, by contrast, is a more individualized and fact-specific methodology. It requires a careful examination of the defendant's intent, conduct, and foreseeability of injury. This approach is generally seen as more just because it is directed at determining if the defendant's act was in fact wrongful. However, it is also seen as more complex and burdensome, particularly in cases where proof of fault is not apparent or where negligence is difficult to establish. In addition, fault-based liability may not necessarily provide prompt compensation for victims because legal proceedings may be protracted and costly. The debate among strict liability and fault-based liability has grown more pressing in modern legal systems, particularly as industries become more complex and the risks involved in industrial and environmental undertakings escalate. In most cases, the impact of negligence or accidents can be catastrophic, not only to the immediate victims but also to the general environment, communities, and economies at large. The identification of the correct type of liability is thus essential in an attempt to ensure that the legal system provides justice and responsibility in such cases.³

In some legal systems, strict liability is further applied, particularly to environmental harm or hazardous activities. This approach ensures that the party that creates the risk is made liable regardless of their intention or fault. It also places industries and businesses under the responsibility to take due care to prevent the risk of harm, thus promoting enhanced safety levels. Strict liability, on the other hand, can also be criticized for being too stringent since it would hold responsible even those who are not at fault or who have taken reasonable care to prevent injury.

Fault-based responsibility is more commonly applied where there is injury resulting from negligence or intentional actions. In these cases, the legal system tries to establish that the defendant breached a duty of care that resulted in injury. It only holds accountable the

³ Tsabita Latifaturrohman and Rohmat Junarto, "Perlindungan, Penegakan, dan Pemenuhan Hak atas Tanah Korban Lumpur Lapindo," *Tunas Agraria* 6, no. 1 (2023): 56-70, <https://doi.org/10.31292/jta.v6i1.204>.

individuals personally responsible for the harm, and it also allows for a more critical examination of facts. Fault-based responsibility can be seen as less efficacious because it requires complete investigation of what has been done by the defendant and how the incident has taken place.⁴

Strict liability vs fault-based responsibility is essential for policy and lawmaking. In enterprises in which the risks of harm are high, strict liability may be the better approach, insofar as it assures recovery to the victims without the need to establish fault. Where the injury is less anticipated or where the defendant's action was not in direct causal connection to the harm, fault-based liability can provide the more equitable and sensible solution. Lastly, the law must balance the need for proper compensation and the justice principle, such that those who cause injury are punished but not in a manner that is overly punitive or unjust.

The evolving nature of law also plays a role when determining the kind of liability. As new technologies are created and industries formed, risks in various activities evolve as well. For example, new forms of energy production, transportation, and communications raise new questions about liability and responsibility. The legal systems in these cases would need to adapt and develop new models for attributing liability, both strict liability and fault-based responsibility, based on the type of situation.

Foreseeability is a significant element for establishing liability. Under both fault-based responsibility and strict liability, the court must decide whether the harm caused was foreseeable either as a result of the defendant's behavior or the inherent dangers of the activity involved. In strict liability cases, the focus is on the dangerousness of the activity itself, while in fault-based responsibility, the question of foreseeability will routinely encompass whether the defendant could reasonably have anticipated the harm, as the law continues to evolve, it can be seen that both strict liability and fault-based responsibility both play important roles in securing legal responsibility. While strict liability is a more efficient and expedited manner of compensating victims, fault-based responsibility is less standardized and more situational. The challenge is to achieve the right balance between the two forms of liability, so that the legal system can provide justice and accountability in an increasingly changing world. This research

⁴ Juliya Maria and Leni Indrayani, "Analisis Yuridis Terhadap Pengelolaan Sumber Daya Alam oleh PT Lapindo Brantas yang Menyebabkan Bencana," *Bina Hukum Lingkungan* 1, no. 1 (2016), <http://repository.umsu.ac.id/xmlui/bitstream/handle/123456789/2134/Tesis%20Juliya%20Maria.pdf?sequence=1&isAllowed=y>.

aims to examine the legal liability in the Lapindo mudflow case by giving emphasis on strict liability versus fault-based liability. The 2006 Lapindo mudflow eruption caused vast environmental destruction and displaced numerous individuals. It presented complex legal questions on the liability of the involved companies and state agencies. Specifically, it led to the question of whether the principle of strict liability, in which the parties are held accountable even without fault, or fault-based liability, in which fault and negligence or intention to do wrong have to be established, should be imposed in this instance. The research uses a qualitative research strategy, one that is appropriate to the investigation of legal questions within intricate and multi-dimensional circumstances. A qualitative approach allows for an in-depth analysis of the legal principles and arguments that have underpinned the handling of the Lapindo case. Using this approach, the researcher aims to gain a better understanding of the legal frameworks and assess how the law has been applied in determining liability in this particular case.⁵

Documentary research is the focus of this study. With analysis of legal writings, i.e., court verdicts, state decrees, and treatises on law,⁶ the scholar plans to learn from these works and know what and how courts had interpreted and implemented the law. Special focus shall be laid upon judicial orders passed in the case of Lapindo as well as linked precedential principles providing enlightenment to enforcing strict responsibility and responsibility founded upon fault. These reports shall be examined to establish the rationale behind judicial rulings and to assess the fairness and consistency of the judicial decisions.

In addition to judicial rulings, scholarly articles, books, and journals on law shall be accessed to cast further illumination on the legal principles under examination. Secondary sources shall be utilized to position the Lapindo case in the broader framework of Indonesian tort law and liability. The researcher will further examine international perceptions of strict liability and fault-based responsibility and compare them with those applied in Indonesia. This comparison will help to determine if the legal system of Indonesia is in line with global practices and whether reforms are required.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

⁶ Soekanto Soerjono and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: RajaGrafindo Persada, 2003).

One of the primary objectives of this research is to evaluate if the concept of strict liability is appropriate for the Lapindo mudflow. Strict liability is typically applied in cases where activities are inherently dangerous, such as the drilling of natural resources, and where there is a high likelihood of inflicting damage. Under this principle, liability is incurred irrespective of whether the party at fault was negligent or intentional. In the case of Lapindo, the company engaging in drilling operations argued that the mudflow was caused by circumstances beyond its control, i.e., an earthquake. Strict liability, however, can still be applicable if there is a determination that the activities of the company were an unreasonable risk to surrounding communities. The fault-based principle, however, requires proof of negligence or wrongful intent. Fault-based responsibility is more likely to be the traditional form and is based on the general principle that some person or some corporation should only be held liable for harm if it has breached the duty of care. In the Lapindo case, the company involved could have avoided liability if it could prove that it was not negligent in its operations.

The study will also consider the contribution of the Indonesian legal system in attributing liability in environmental disasters. The Indonesian legal system has both civil and criminal laws regulating environmental protection and corporate accountability. The researcher will examine how the laws were applied in the Lapindo disaster and whether the results of the law were reasonable according to the principles of equality and justice. In particular, the research will look at whether or not the court judgments are indicative of public expectations of corporate accountability in environmental disasters.

The study will also address the broader implications of the Lapindo mudflow case for environmental law in Indonesia. The case has raised serious questions about whether existing legal frameworks are adequate in addressing large-scale environmental destruction and holding corporations accountable. By looking at the apportionment of liability, the research aims to establish if there are loopholes or gaps in the law that need to be addressed to prevent such a tragedy from happening again in the future. These may be recommendations for legal reform or changes to how environmental damage is quantified and assessed. By using the contrast between fault-based and strict liability, the study endeavours to contribute to the current legal and scholarly discussion on whether and how to hold companies liable for inflicting environmental harm. The research will also illuminate the challenges faced by the Indonesian

legal system in dealing with complex environmental cases and how legal reforms can improve the framework of accountability.⁷

Through an analysis of the legal reasoning for the court ruling and the social impacts of the Lapindo mudflow, the researcher will provide a critical examination of the legal implications of the case. This will involve establishing whether fault-based responsibility or the doctrine of strict liability best promotes the interests of justice, deterrence, and equity under environmental law. Research will also consider how these principles of law would be applied in future cases regarding environmental disasters in Indonesia, the research will make recommendations about the suitability of strict liability and fault-based responsibility for massive environmental catastrophes. The researcher will offer legal reform suggestions that can enhance the liability of businesses and improve the effectiveness of environmental protection legislation in Indonesia. This will assist in creating stronger legal frameworks that can address the problem of environmental dangers and disasters in the future, this research will provide a comprehensive legal analysis of the Lapindo mudflow case, examining the implications of strict liability and fault-based responsibility. From documentary research, legal analysis, and comparison with international standards, the research aims to contribute to the understanding of how liability should be distributed in environmental disaster cases. The findings will yield valuable lessons for policymakers, legal practitioners, and scholars who seek to improve the legal system's response to environmental destruction in Indonesia.

B. Discussion

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B. 1. The Lapindo Mudflow Case

The Lumpur Lapindo, also referred to as the Lapindo mudflow case, began on May 29, 2006, when there was an uncontrollable eruption of hot mud in Sidoarjo, East Java, Indonesia. The mudflow resulted from the drilling operations being conducted by PT Lapindo Brantas, a company that engages in oil and gas exploration activities, and it was drilling for a gas well in the location. The mudflow, initially a small mud bubble, developed into a gigantic and

⁷ H. S. Salim and Erlies Septiana Nurbani, *Metode Penelitian Hukum: Pengantar dan Penerapannya* (Jakarta: Rajawali Press, 2014).

devastating mud flow that engulfed villages, farmlands, and infrastructure, displacing thousands of residents from their homes. The mud flowed for decades, with unabating environmental devastation and social unrest, leaving a permanent impact on the lives of individuals in the affected community.⁸

The immediate impact of the mudflow was catastrophic. Over 13,000 people were displaced, and hundreds of hectares were covered with hot, thick mud. The eruption buried houses, farms, and factories, impacting the local economy, which was predominantly agricultural. The eruption also produced far-reaching environmental damage, with the mudflow threatening local water supplies, wiping out biodiversity, and creating long-term health problems. The calamity also caused damage to transportation and other lifeline infrastructures, which amounted to millions of dollars in order to repair them. The resulting aftermath of the eruption caused a humanitarian disaster with the victim populations unable to resettle and obtain livelihoods as well as gaining long-term physical and psychological issues.

There were several parties implicated in the case of the Lapindo mudflow, and every one of them played a fundamental role in the disaster. The main company to fault was PT Lapindo Brantas, which is part of the Bakrie Group, and was busy conducting the drilling operation when the mud eruption occurred. Lapindo's drilling activities were blamed for being poorly managed, with proper precautions not well established to prevent such an accident. The company received a lot of flak for its carelessness, and legal action was later instituted against it. Indonesia's government also had a vested interest, particularly in the aftermath, with local and national governments leading the response and managing the compensation. Local communities affected aside from Lapindo and the government were also significant stakeholders in the case, demanding compensation, restoration of the environment, and justice for the destruction inflicted.

The government of Indonesia created various task forces and committees to address the short- and long-term effects of the mudflow following the disaster. These committees were tasked with handling the relocation of the affected individuals, temporary shelters, and compensation processes for the victims. The government response has been condemned, however, on the basis of it being slow and not open enough in addressing the needs of the

⁸ Nilma Suryani, "Penegakan Hukum Pidana Lumpur Lapindo Masih Jauh dari Harapan," *Bina Hukum Lingkungan* 1, no. 1 (October 2016), <https://bhl-jurnal.or.id/index.php/bhl/article/view/51>.

affected community. There were also concerns of corruption and misuse in the release of compensation money, further complicating the relief efforts. The Lapindo mudflow case became a symbol of the conflict between corporate interests and the rights of local communities, with controversies persisting over accountability and compensation.⁹

The judicial saga for the Lapindo mudflow victims was long and complicated. The case went through a number of litigative phases, with multiple suits being instituted against PT Lapindo Brantas. One of the most dramatic legal twists was the class-action suit instituted by the victims, seeking compensation for loss due to the mudflow. In 2009, the Indonesian Supreme Court ruled that PT Lapindo was liable for the disaster and that the company has to compensate the victims. Despite this ruling, the compensation process was plagued by delays, with victims being given inadequate or belated payments.

In 2008, the Indonesian government took steps to regulate the compensation process by establishing a compensation fund and coordinating the release of funds to victims. Nevertheless, even with all these, the majority of the residents affected were dissatisfied with the amount of compensation they received, stating that the compensation was not sufficient to pay for the loss of property and livelihood. The victims also reported on the bureaucratic difficulties faced in attempting to receive compensation. Beyond compensation matters, there were matters of long-term rehabilitation of the affected areas environmentally. The government and PT Lapindo were criticized for doing insufficient work to repair the environment and land, and parts of some areas were still covered in mud years following the initial eruption.

The Lapindo mudflow legal case continued to evolve with time. The government of Indonesia announced in 2016 that PT Lapindo Brantas would be allowed to shift its blame for the mudflow disaster to its parent firm, the Bakrie Group. The move was unpopular since a majority of the public believed that the Bakrie Group had not been held completely responsible for the tragedy. The decision to shift the responsibility from the subsidiary to the parent company was disputed by some of the stakeholders, such as the victims, environmentalists, and lawyers, who argued that it went against the spirit of corporate accountability. During the subsequent years following the first eruption, the case of the Lapindo mudflow remained

⁹ Navaratu Annisa Devi and Ikhwan Aulia Fatahillah, "Analisis Yuridis Kasus Lumpur Lapindo dalam Perspektif Hukum Lingkungan di Indonesia," *CAUSA Jurnal Hukum dan Kewarganegaraan* 6, no. 4 (2024), <https://ejournal.warunayama.org/index.php/causa/article/view/6167>.

unresolved in many ways. The survivors continued to struggle with inadequate compensation, and the impact of the disaster on the environment remained evident in the region. Litigation went on, with several groups trying to hold PT Lapindo Brantas and its holding company responsible for the consequences of the disaster.¹⁰

The Indonesian legal system's handling of the Lapindo mudflow case raised fundamental questions about the responsibility of companies, environmental stewardship, and protection of vulnerable communities. The process has been faulted as the legal and administrative frameworks failed to address the interests of the victims properly, making them engage in a battle for justice and compensation years after the initial disaster. The case also draws attention to the bigger picture of natural resource management in Indonesia, particularly for oil and gas exploration, and the potential implications of poor regulation and oversight of the sectors.¹¹

The Lapindo mudflow disaster remains a vivid reminder of the dangers of industrial activities in risky locations and the potential for mass environmental disasters. Despite PT Lapindo Brantas and the government of Indonesia paying dearly legally and financially for their involvement in the disaster, many victims still feel that they have not received the complete support and compensation to which they are entitled. As the judicial process continues, the Lapindo mudflow disaster is a caution against imposing stricter environmental protection and greater corporate responsibility in the management of natural resources.

B. 2. Legal Responsibility in the Lapindo Mud Case

The principle of strict liability is the principle where a party is to be held liable for the damage or harm caused by their activities or actions, irrespective of whether there was intent to cause harm or negligence. This principle is applied primarily in cases of inherently dangerous or risky activities, such as industrial processes, where the risk of harm is high. In

¹⁰ Erva Yunita and Irwan Triadi, "Tindak Pidana Dalam Kasus Lumpur Lapindo (Terkait Dengan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup)," *Amandemen: Jurnal Ilmu Pertahanan, Politik, dan Hukum Indonesia* 1, no. 3 (July 2024): 92–102, <https://doi.org/10.62383/amandemen.v1i3.263>

¹¹ Achmad Romsan and Suzanna Mohamed Isa, "Corporate Responsibility for Environmental Human Rights Violation: A Case Study of Indonesia," *Pertanika Journal of Social Sciences & Humanities* 22, no. S (2014): 111–130, https://www.researchgate.net/publication/292858000_Corporate_responsibility_for_environmental_human_rights_violation_A_case_study_of_Indonesia

strict liability, focus is put on the consequence of the activity and not on whether or not the defendant was negligent or intending to harm. The mere occurrence of harm from a dangerous activity is enough to give rise to liability. This principle ensures that individuals who engage in dangerous endeavours take care not to cause harm, since they are held responsible for all outcomes that accrue as a result of their endeavours regardless of fault.¹²

Fault-based liability, however, revolves around the premise of negligence, upon which liability will only be imposed on the defendant if it can be proved that they have failed in their duty of care and, consequently, cause harm. Fault-based liability requires the party not to be liable unless it is found that their acts were unreasonable or intentional. It demands more diligent examination of what happened during the accident, given special focus as to whether or not the erring party did not act within reasonable care, or whether such acts were not reasonable in those circumstances. Thus, fault-based responsibility relies on proving that the defendant's conduct was the direct cause of the harm, and that this was due to a failure to meet the standard of care required.

The main difference between these two principles is the need to prove fault. In strict liability, the plaintiff need not prove the defendant was at fault or negligent; it suffices that the harm was a result of the defendant's activity. In fault-based liability, the plaintiff does need to prove the defendant was negligent or in some manner responsible for the harm. The burden of proof is thus different, with strict liability being simpler for the plaintiff to establish harm and fault-based responsibility requiring careful scrutiny of the defendant's act and intent.

With regard to the Lapindo mudflow case, application of strict liability is most relevant. The eruption of mudflow was caused by the drilling activities of PT Lapindo Brantas, which were risky in nature and led to devastating consequences on the surrounding communities. Since the drilling activities are perilous in nature, particularly in an area of high subsurface instability potential, strict liability could be imposed. The damage caused by the mudflow—property loss, people displacement, and degradation of the environment—was the direct result of the activities of the company. In strict liability, PT Lapindo would have been responsible for

¹² Purnomo Wulandari and Sri Endah Wahyuningsih, "The Strict Liability by Corporate in Enforcement of Environmental Law," *Law Development Journal* 2, no. 4 (December 2020): 477–488, https://www.researchgate.net/publication/358428352_The_Strict_Liability_by_Corporate_in_Enforcement_of_Environmental_Law

the harm, regardless of whether their action was negligent or intentional, because drilling in this area can be considered an inherently dangerous act.

PT Lapindo Brantas and the Bakrie Group defended themselves according to the fault-based responsibility doctrine. They argued that the mudflow was an unforeseen event, perhaps brought about by an earthquake or natural causes, and that they had followed standard practice in their drilling operations. This defense put the onus of proof on the plaintiffs to establish that PT Lapindo's conduct was negligent and resulted in the eruption. According to this principle, attention was drawn on whether the corporation did not use reasonable means to avoid the calamity, i.e., adequate safety procedures in place during drilling.¹³

The law suit in the Lapindo case demonstrates the complexities involved in allocating liability in multifaceted industrial catastrophes. The strict liability regime would have benefited the victims because they would not have had to prove negligence or fault but only the occurrence of the damage. Fault-based responsibility, on the other hand, required lengthy legal arguments and evidence to establish that PT Lapindo's conduct caused the disaster. This distinction made the case more complicated, with protracted litigation and delayed payments to the victims, and questioning the justice of the legal process, the Lapindo case illustrates the value of clearly defined legal principles to hold parties liable for industrial and environmental disasters. Whereas strict liability doctrine avails a simple path to responsibility, particularly where risky activities are involved, responsibility based on fault ensures that accountability is reserved for only where clear proof of neglect or wrongdoing is present. The case also underscores the need for stricter regulations and safeguarding in sectors whose nature is inherently risky, as well as the overriding role of the judiciary in mediating the interests of corporations, the interests of the people, and the environment.

B. 3. Legal Principles in the Lapindo Mud Case

B. 3. 1. Strict Liability Principle in the Lapindo Mud Case

Strict liability is a legal doctrine that holds a party responsible for the harm caused by its activity or actions, irrespective of whether there was any negligence or intent to harm. This principle is particularly relevant in cases where an activity is very risky or dangerous and there

¹³ John C.P. Goldberg and Benjamin C. Zipursky, "The Strict Liability in Fault and the Fault in Strict Liability," *Fordham Law Review* 85, no. 2 (2016): 743–786, <https://ir.lawnet.fordham.edu/flr/vol85/iss2/16>

is a high possibility of damage. The essence of strict liability is that certain activities, by their hazardous nature, impose a duty on the concerned party to prevent harm despite the fact that they took all reasonable precautions. This rule is contrary to fault-based liability, where the plaintiff must prove that the defendant was negligent or acted with intent to cause harm.¹⁴

In strict liability, the defendant is not required to be mistaken in the harm in order to be liable. Instead, one must determine whether or not the harm arises out of an activity that is dangerous per se. For instance, activities such as working with hazardous chemicals, operating nuclear power plants, or drilling deep into the ground for oil and natural gas, are so dangerous that resultant harm, whether foreseeable or unforeseeable, renders one liable. In such a case, the law does not require evidence of intent or negligence because the risk involved in such activities is so high that the party undertaking them must be held liable for any harm that arises.

In oil and gas drilling, strict liability is typically enforced because the activity is full of high risks that can cause large-scale damage, as in the case of the Lapindo mudflow disaster. Drilling operations, particularly in unstable or unknown areas of geology, can have unforeseen consequences, including explosions, spills, and, as in the case of Lapindo, a catastrophic mudflow. They can cause irreparable harm to the environment, local community, and infrastructure, with long-lasting effects. Accordingly, most jurisdictions impose strict liability on companies that undertake such activities, rendering them economically responsible for the harm caused even when they have complied with all traditional procedures.

Strict liability has been applied in numerous historical cases of dangerous activities. In the United States, to cite an instance, strict liability has been applied in toxic waste dumping, nuclear explosions, and oil spills. One such very popular case is the Exxon Valdez oil spill in 1989, where Exxon was strictly liable for the harm that had been done to the environment by the spill, even though the firm had acted in accordance with procedure and had no intention of causing the harm. In Indonesia, there are similar legal frameworks for dangerous activities where sectors such as mining and chemical production are governed by strict principles of

¹⁴ Waya Muthia Wardhani and Fidelis Arastyo Andono, "Implikasi Tanggung Jawab Sosial dan Lingkungan Terkait Potensi Dugaan Kejahatan Korporasi: Studi Content Analysis pada PT Lapindo Brantas Inc.," *Jurnal Akuntansi Bisnis* 10, no. 1 (2022): 54–56, <https://journal.ubm.ac.id/index.php/akuntansi-bisnis/article/viewFile/987/868>.

liability. These instances underscore the necessity of imposing liability on businesses for the danger they generate so that they use utmost care to prevent harm.¹⁵

The Lapindo mudflow tragedy is a strong argument for strict liability. PT Lapindo Brantas, the drilling firm engaged in the operation that led to the mudflow, was carrying out an activity inherently risky. Drilling deep into the earth in a geologically unstable area, especially without careful risk assessment and mitigation strategies, is a hazardous undertaking. The eruption of mudflow that forced thousands of people out of their homes, destroyed farmland, and resulted in widespread environmental damage could have been anticipated given the nature of the operation. Therefore, in strict liability, PT Lapindo ought to have been held responsible for the harm caused by this disastrous event, regardless of whether negligence or fault could in fact have been proved.

Strict liability would have simplified the legal process concerning the victimized victims. Rather than having to prove that PT Lapindo Brantas had acted in negligence or in disregard of safety protocols, the victims could have focused on proving the causality between the drilling operation and the resulting damage. The company would have been negligent merely because the activity it was undertaking was by nature risky and resulted in great harm. Strict liability would have held the company accountable financially and legally for the consequences of its actions, either by fault or negligence.

Enforcement of strict liability would also serve as a deterrent to subsequent industrial activities in high-risk zones. By creating liability regardless of fault, the firms would have to maintain stricter safety, conduct sophisticated risk analysis, and take proper precautions to prevent catastrophes. The possibility of financial responsibility for any harm caused by their operations would make the companies operate more safely and ensure risks associated with their activities are reduced to their minimum level. Policy-wise, strict liability is equitable to what transpired to the Lapindo disaster since it resolves the imbalance of power and resources between powerful corporations and vulnerable local communities. This way, strict liability ensures that business enterprises are held accountable for whatever they do and that the aggrieved parties can easily access damages without going through intricate defenses for fault.

¹⁵ Dalinama Telaumbanua, "Pertanggungjawaban Pidana Korporasi di Bidang Lingkungan Hidup," *Refleksi Hukum* 9, no. 1 (2015): 101–102, <https://doi.org/10.4108/cai.28-5-2022.2320558>

This is particularly important in the case of Lapindo, as the parties involved have already suffered immensely and the legal procedure has been lengthy and complicated.

The mudflow caused long-term environmental damage, including loss of ecosystems, water resource pollution, and loss of agricultural land. Such damage is difficult to reverse, and the responsibility of rehabilitating the environment should be on the shoulders of the company that has committed the wrong. Strict liability in this case would not only hold PT Lapindo Brantas responsible for compensating the victims but also for contributing to the rehabilitation of the damaged environment, strict liability in this case of the Lapindo mudflow would comply with legal standards and public policy. The risks involved in drilling, the disaster that resulted from the mudflow, and maintaining corporate responsibility in ensuring accountability in such disasters provide sufficient grounds to justify applying strict liability. Through strict liability imposed on PT Lapindo Brantas, the judiciary will provide safety for vulnerable populations, guarantee the safety of the environment, and encourage companies to employ safer practices in conducting high-risk operations.

B. 3. 1. The Principle of Fault-Based Responsibility in the Lapindo Mudflow Case

Fault-based liability, or negligence-based responsibility, is a rule of law that holds that harm liability occurs only when a party is found to have violated a duty of care, leading to harm. According to this doctrine, a party can be made liable for their actions or inactions if it is possible to prove that they were negligent, i.e., they did not exercise the same degree of care that a reasonable person would have done in similar circumstances. This rule demands a close examination of the defendant's behavior, specifically whether or not they breached a duty of care imposed by law, whether the harm was foreseeable, and whether their behavior caused direct damage.

Negligence in law means that a human being or entity fails to adopt the proper care or measures which are reasonable, and due to this, hurts or damages others. For proof of negligence, there are commonly four principal requirements that should be established:¹⁶ Duty of Care (There was a duty of care towards the victim from the defendant); Breach of Duty (The defendant

¹⁶ Abdul Rokhim, "Degradasi Norma 'Strict Liability' Dalam Penegakan Hukum Lingkungan," *Yurisprudens* 5, no. 2 (June 2022): 178–195, <https://doi.org/10.33474/yur.v5i2.14627>.

breached that duty by failing to act reasonably); Causation (The breach of the duty led to harm or damage); and Damages (The victim suffered actual damage or harm as a result of the breach).

For the case of Lapindo mudflow, fault-based liability principle would involve finding out whether PT Lapindo Brantas, the driller, had been negligent in the discharge of its duty of care in carrying out the operations with insufficient regard to the risks. PT Lapindo's defense rested on the arguments that the mudflow was a sudden occurrence and that they had carried out the drilling operation in accordance with regular procedure. But to find out if PT Lapindo was negligent, one has to look at what they did prior to and during the drilling operation to see if they breached their duty of care.

The Indonesian legal system does accept fault-based responsibility, particularly in negligence cases. Negligence is considered a tort under Indonesian civil law, and this can lead to liability for the injury caused. The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) provides for a torts and negligence system where it enumerates that a person or organization that is at fault in inflicting harm by negligence may be compelled to pay for the harm. The system seeks to hold those who are at fault accountable for payment for the harm done and compensation for the victims through the law for the recovery of their losses.

Law Number 32 of 2009 on Environmental Protection and Management also plays an important role in establishing fault-based liability in environmental cases. This law states that any activity that leads to harm to the environment must be conducted under strict regulation and standards in order not to cause harm. An organization that is found to have caused harm to the environment through negligence can be held liable for the harm caused. PT Lapindo Brantas' drilling activity leading to the mudflow disaster can be analyzed using this law since the drilling of an area in which geological dangers have already been determined would be seen as failing to exercise care not to bring harm.¹⁷

The Lapindo incident challenges the primary assumption of negligence on whether or not PT Lapindo Brantas took reasonable steps in identifying and evading the risks of the drilling activity. Drilling operations in the Sidoarjo region were inherently unsafe, given the geology of the region, including deep fault lines and potential seismic activity. Given all the risks, PT Lapindo had a responsibility to ensure that their drilling was performed in a manner that would

¹⁷ Andri G. Wibisana, *Penegakan Hukum Lingkungan melalui Pertanggungjawaban Perdata* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2018).

limit the possibility of such a large-scale failure. This includes undertaking thorough risk analysis, maintaining adequate safety practices, and ensuring the drilling was carried out by well-trained personnel who understood the potential risks.

Results from the investigation into the Lapindo mudflow suggest there were potentially multiple breakdowns of the company's duty of care. One of the most compelling pieces of evidence to establish allegations of negligence is the failure to undertake adequate geological risk assessment before drilling. Stories of experts' reports indicated that there was a history of seismic activities in the region, and instability beneath the earth's surface ought to have been anticipated. Second, it was alleged that PT Lapindo Brantas failed to monitor the well while drilling properly, thus allowing the pressure to build up and eventually lead to the mudflow. These failures were a potential failure of duty and suggested that the company had not been diligent in managing the risk associated with its drilling activities. The other potential sign of negligence was that it was unable to halt the drilling when early warning signs of instability began emerging. It has been reported that, just before the eruption of the mudflow, there were indications that the well was facing problems with pressure, indicating to the company that the operation was not safe. PT Lapindo's action of proceeding to drill in spite of these warning signs would amount to a failure to exercise reasonable care, resulting in the eventual calamity.

Also, the abrupt and unanticipated spilling of the mudflow itself is cause for concern regarding the preventive measures taken by PT Lapindo Brantas. The eruption led to the outburst of hot mud and gas, covered huge areas of land, left thousands homeless, and resulted in enormous environmental loss. The fact that the tragedy occurred on such a gigantic scale and with enduring effects suggests that the company's preventive measure was not adequate. Had appropriate safety protocols, including those to monitor and regulate the well in a better manner, been preserved by the company, the size of the mudflow could have been minimized. Besides these operational mistakes, PT Lapindo's response following the onset of the mudflow was also under fire. The company was held responsible for delaying to act rapidly to contain the disaster and bring relief to the affected communities. This delayed response also adds weight to the argument that the company was likely to be negligent in overall management of

the event. Quick and proper response could have mitigated the extent of the damage, but instead of that, the mud flowed unchecked for years.¹⁸

PT Lapindo's legal basis that the mudflow was caused by an earthquake or other natural reasons is contrary to the evidence of operational negligence. Even as the earthquake was thought to have contributed, geological assessment identified the mudflow to be most likely caused by the drilling activity itself. Failure by the company to consider the entire extent of the risks when making preparations for, and executing the drilling activity can be seen as a watershed failure of duty of care, just as well substantiating claims of negligence, there is significant evidence in the Lapindo case to suggest that PT Lapindo Brantas may have been negligent in its drilling operations. The failure of the company to adequately assess the geological risks, its failure to respond to signs of warning when it was drilling, and its failure to have proper safety measures in place all point to breaches of the duty of care it had to the surrounding communities. While the firm's argument relies upon the assumption that the mudflow was a sudden event, what preceded the eruption suggests a more stringent risk assessment and better safety protocols might have prevented or mitigated the disaster.

B. 4. Case Resolution and Court Decisions

The case's judicial solution was the realization of various rulings and hearings that led to finding PT Lapindo Brantas's fault in causing the disaster. It was 2009 that the Indonesian Supreme Court held PT Lapindo Brantas legally responsible for the mudflow disaster. It was a court judgment that determined PT Lapindo Brantas's responsibility for the impact of the eruption, a culmination in the judiciary battle. The court ordered PT Lapindo to compensate the victims of the tragedy, including the displaced, and for the environmental damage caused by the mud. But even with this ruling, the compensation was still delayed and inadequate, which led to frustration and dissatisfaction among the affected community.¹⁹

The court evaluation of the case was based on fault-based liability, where PT Lapindo Brantas was said not to have made adequate provision to prevent the disaster. According to the

¹⁸ Brahmantiyo Rasyidi, Gunawan Nachrawi, and Juwita, "The Principle of Strict Liability in Prosecuting Environmental Criminal Actions by Corporations," *Jurnal Humaniorum: Jurnal Hukum dan Ilmu Sosial* 1, no. 2 (April 2023): 41-47, <https://doi.org/10.37010/hmr.v1i02.13>.

¹⁹ Sammah Fatichah, Achmad Irwan Ramzani, and Kus Rizkianto, "Problematika Pertanggungjawaban Korporasi Atas Kejahatan Ekosida di Indonesia," *Salam: Jurnal Sosial dan Budaya Syar-i* 10, no. 1 (2023): 183-198, <https://doi.org/10.15408/sjsbs.v10i1.31114>.

court, the company had been careless in its drilling activities, e.g., incomplete geological surveys and failure to install proper safety arrangements. This judgment held the company responsible for the harm caused, based on its duty of care towards the surrounding populations and the environment. The court's judgment did not fully touch on the issue of rehabilitating the environment or the final effect of the mudflow on the region in the years to come.

The court decision was hailed as a significant victory for the victims as it affirmed their right to compensation and recognition of the liability of PT Lapindo Brantas for the disaster. The compensation plan was, however, tainted with procrastination in its fulfilment, and the majority of victims resented that the compensation they received was insufficient to address the extent of the losses incurred by them. The government involved in overseeing the compensation process also came under fire for not ensuring that the victims could receive timely and sufficient compensation. Even with the court ruling, the delayed and inefficient compensation process resulted in massive discontent among displaced individuals, eroding trust in the legal and governmental systems.

For PT Lapindo Brantas, the court's ruling held the company accountable but simultaneously resulted in loss of reputation. The ruling placed strong emphasis on the company's negligence and failure to consider and mitigate risks arising from its drilling operations. As a response to the ruling, PT Lapindo, as part of its parent organization the Bakrie Group, incurred major financial liability in terms of compensation and efforts toward rehabilitation of the environment. But the company's liability was not transferred to its parent company, a very controversial decision that has led to ongoing controversy regarding the responsibility and accountability of corporations.²⁰

The court decision impacted the Indonesian government in many cases. The government was required to manage the process of compensation and ensure that victims received the financial support they needed. But the government's slow response to the disaster and graft in the compensation fund payment tarnished its reputation. The Lapindo case also brought to light loopholes in Indonesia's systems of regulation for high-risk industrial activities, and the need for better regulation of firms engaging in potentially hazardous operations. The

²⁰ Aisyah Nurhalizah, "Mengubah Bencana Alam Lumpur Lapindo Menjadi Energi Terbarukan Sebagai Bahan Bakar Transportasi Ramah Lingkungan," *Forschungsforum Law Journal* 1, no. 2 (2024): 73-84, <http://dx.doi.org/10.35586/flj.v1i02.7218>.

ongoing destruction of the environment also called for further government intervention to restore affected areas and prevent future catastrophes. As a whole, the Lapindo court judgment was a major breakthrough in shaping the corporate and legal obligations under industrial tragedies. On one hand, it offered relief to victims in asserting that the company would be liable but also revealed severe problems within the regulatory and legal regime affecting the right of victims to recover decent compensation and holding the company responsible for its action. The case remains a good example of the need for improved legal frameworks, response mechanisms in a timely fashion, and increased corporate responsibility to prevent future environmental and social harm.

C. Conclusion

The Lapindo mudflow case exemplifies the complexities and shortcomings of Indonesia's legal systems in addressing industrial disasters, particularly in determining corporate accountability and ensuring justice for affected communities. The reliance on fault-based liability prolonged the litigation and burdened victims with the responsibility of proving negligence, while the potential application of strict liability principle could have offered a more efficient path to justice by recognizing the inherent risks of PT Lapindo Brantas' operations. The delays and inadequacies in the compensation process reveal the systemic weakness in legal enforcement and victim protection. This case highlights the urgent need for reform by advocating the broader application of strict liability principle in high-risk industries, the strengthening of environmental laws, and the establishment of more effective and transparent mechanisms for victim compensation. These reforms are essential to ensure accountability, deter corporate negligence, and enhance the responsiveness of Indonesia's legal framework in future environmental and industrial disaster cases.

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