Strata Law Review, 2026, Vol. 4, No. 1, 12–21
E-ISSN: 2986-8114 | P-ISSN: 2987-3185
doi: 10.59631/slr.v4i1.156
Advance Access publication March 31, 2026

STRATA LAW REVIEW
journals.stratapersada.com/index.php/slr

The Impact of the Elimination of the Principle of Strict Liability on Environmental Pollution Post the Job Creation Act

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Article History	Submitted	Revised	Accepted
	2024-02-07	2026-03-01 & 2026-03-17	2026-03-23

Abstract

This normative-juridical study examines the impact of eliminating the strict liability principle in Indonesian environmental law following the enactment of Law No. 6 of 2023 on Job Creation. Prior to the reform, Article 88(1) of Law No. 32 of 2009 concerning Environmental Protection and Management imposed strict liability for harm from hazardous substances or serious environmental threats without the need to prove fault, embodying the polluter-pays and precautionary principles and facilitating swift civil remedies and deterrence against corporate polluters. The Job Creation Law amended this provision by removing the no-fault clause, transforming it into a de facto fault-based or hybrid regime, while shifting to a risk-based licensing system that reduces ex-ante oversight. Through deductive analysis of primary statutes, constitutional provisions, and doctrinal sources, the research demonstrates that these changes lower deterrence, complicate victim redress, externalise pollution costs, and prioritise investment over ecological sustainability. This contravenes Article 28H(1) of the 1945 Constitution and Indonesia's Sustainable Development Goals commitments (particularly Goals 12, 13, 14, and 15), risking increased unremedied pollution and ecosystem degradation. Recommendations include reinstating the explicit no-fault element to restore preventive environmental governance.

Keywords: Environmental pollution, job creation law, polluter-pays principle, strict liability, sustainable development.

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Doi: 10.59631/slr.v4i1.156

INTRODUCTION

A good and healthy living environment constitutes a constitutional right of every citizen, as explicitly guaranteed by Article 28H(1) of the 1945 Constitution of the Republic of Indonesia.[1] Against the backdrop of the global ecological crisis—characterised by escalating industrial pollution, large-scale deforestation, and widespread ecosystem degradation—[2] the principle of strict liability has emerged as a cornerstone legal instrument in modern environmental law.[3] Originating from the landmark common-law doctrine in *Rylands v. Fletcher*[4] and widely adopted across jurisdictions such as the European Union, the United States, and Brazil, strict liability imposes civil liability for environmental harm without the need to prove fault. Its primary objectives are to deliver strong preventive deterrence, enable swift remediation of damage, and safeguard vulnerable victims who typically confront severe informational and power asymmetries when confronting corporate polluters. In Indonesia, a mega-biodiverse nation experiencing intense economic development pressures, this principle has long served as the bedrock of environmental law enforcement to prevent unchecked exploitation of natural resources.

Prior to the omnibus-law reform, Law No. 32 of 2009 concerning Environmental Protection and Management (EPML) expressly enshrined the principle of strict liability in Article 88(1): "Any person whose actions, business activities and/or operations involve the use of hazardous and toxic substances (B3), the production and/or management of B3 waste, and/or which cause a serious threat to the environment shall be strictly liable for the losses incurred without the need to prove the element of fault." This provision operated as a pivotal mechanism in civil environmental litigation, substantially easing claims for compensation and ecosystem restoration while generating a powerful deterrent effect against polluters. The principle is fully consistent with the *polluter pays* and *precautionary* principles that underpin international environmental law, as articulated in the 1992 Rio Declaration on Environment and Development.

The Indonesian Government subsequently introduced the omnibus-law concept through Law No. 11 of 2020 on Job Creation (Job Creation Law), which sought to streamline regulations, attract foreign direct investment, and accelerate post-pandemic economic recovery.[5] This statute

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[1] Achmad Muchsin, "Public Participation as a Constitutional Right in the Process of Preparing Environmental Documents," *Jurnal Konstitusi* 21, no. 2 (June 1, 2024): 169–82, https://doi.org/10.31078/jk2121.

[2] Charles Fletcher et al., "Earth at Risk: An Urgent Call to End the Age of Destruction and Forge a Just and Sustainable Future," *PNAS Nexus* 3, no. 4 (March 28, 2024), https://doi.org/10.1093/pnasnexus/pgae106; Sarita Nandmehar and Siti Sukmawati, "Climate Justice in the Archipelagic State, Legal Frameworks and Future Perspectives: A Study of Indonesia," *Indonesia Law Reform Journal* 5, no. 3 (December 28, 2025): 442–69, https://doi.org/10.22219/ilrej.v5i3.43393.

[3] Miftahul Haq, "Civil Law and Environmental Protection: Expanding Liability for Sustainable Justice," *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 3 (August 25, 2025): 3480–85, https://doi.org/10.31004/riggs.v4i3.2478.

[4] Rizqa Maulidya et al., "Implementation of the Principle of Strict Liability Through Civil Law Enforcement to Protect and Manage the Environment," *International Journal of Law, Social Science, and Humanities* 2, no. 3 (October 9, 2025): 348–54, https://doi.org/10.70193/ijlsh.v2i3.244.

[5] Krisna Gupta, Arianto A. Patunru, and Paul Gretton, "Projecting the Long-run Impact of an Economic Reform: The Case of the Indonesian Omnibus Law," *Asian-Pacific Economic Literature* 39, no. 1 (May 16, 2025): 102–30, https://doi.org/10.1111/apel.12428; Joko T. Suroso, Dani Durahman, and Indra Budi, "The Simplification of Licensing Procedure in Job Creation Law: The Effectiveness to Attract Foreign Investor," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2024.2414509.

was later refined via Government Regulation in Lieu of Law No. 2 of 2022, which was formally enacted as Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. While the overall framework promotes ease of doing business, the environmental provisions within the Job Creation Law have generated considerable scholarly and public controversy.[6] A key substantive amendment concerns the revision of Article 88 of the EPML, which now stipulates: "Any person whose actions, business activities and/or operations involve the use of B3, the production and/or management of B3 waste, and/or which cause a serious threat to the environment shall be strictly liable for the losses incurred arising from their business activities and/or operations." The critical phrase "without the need to prove the element of fault" was deliberately removed and replaced with wording that invites multiple interpretations.

Juridically, the deletion of this phrase has transformed the very essence of strict liability into a regime approximating fault-based liability.[7] Business actors may now invoke defences by demonstrating "due care," *force majeure*, or third-party causation, thereby rendering environmental enforcement more protracted, complex, and susceptible to subjective judicial interpretation. Compounding this shift, the Job Creation Law elevates administrative sanctions as the primary enforcement tool, relegating criminal sanctions to the status of *ultimum remedium*. Normative studies and field observations indicate that these changes risk increasing pollution incidents and deforestation rates, as illustrated by persistent difficulties in pursuing civil remedies for B3 waste cases in the palm-oil sector after 2022 in the absence of fault-based proof.

This study examines the impact of eliminating the strict-liability principle on environmental pollution following the enactment of the Job Creation Law. Adopting a normative-juridical and comparative legal approach, the research analyses the paradigm shift in Indonesian environmental law—from a preventive and protective orientation toward a pro-investment stance—and evaluates the practical effectiveness of post-reform enforcement. The findings are expected to generate robust policy recommendations aimed at restoring the normative strength of strict liability, thereby ensuring environmental sustainability in alignment with Indonesia's national sustainable development agenda and its international commitments under the Sustainable Development Goals, particularly Goals 13 (Climate Action), 14 (Life Below Water), and 15 (Life on Land).

METHOD

This study adopts a normative juridical approach, which is inherently prescriptive and doctrinal in character. Employing a combination of statutory, conceptual, and comparative legal methods, the research systematically examines the transformation of environmental liability rules under Indonesian law before and after the enactment of the Job Creation Law. Primary legal materials consist of binding sources such as the 1945 Constitution and Law No. 32 of 2009 on Environmental Protection and Management (as amended), Law No. 6 of 2023 on Job Creation, relevant Government RegulationsThese are supplemented by secondary sources, including authoritative textbooks, peer-reviewed journal articles, accessed through systematic library and

[6] Triono Eddy, "The Controversy of Environmental Law Policies from Regulation Perspective," *International Journal of Law Reconstruction* 7, no. 1 (April 28, 2023): 63, https://doi.org/10.26532/ijlr.v7i1.31162.
[7] Lalu Aria Nata Kusuma, "Environmental Disputes Without Protection Of Strict Liability Principles: Again, Law On Job Creation," *Law and Justice* 7, no. 1 (October 31, 2022): 1–13, https://doi.org/10.23917/laj.v7i1.699.

Doi: 10.59631/slr.v4i1.156

online database research (Google Scholar and scopus). Data collection was conducted through comprehensive desk-based doctrinal analysis without empirical fieldwork. The collected materials were then analysed deductively by constructing legal syllogisms—drawing general premises from statutory provisions and doctrinal principles, applying them to specific post-2020 factual and regulatory scenarios, and arriving at normative conclusions and policy recommendations—thereby ensuring logical coherence, internal consistency, and alignment with the principles of legal certainty and environmental justice.

RESULT AND DISCUSSION

The Principle of Strict Liability in Indonesian Environmental Law Before and After the Job Creation Law

Prior to the omnibus-law reform, Indonesian environmental law firmly anchored the principle of strict liability in Article 88(1) of Law No. 32 of 2009 concerning Environmental Protection and Management (EPML).[8] The provision stipulated that "every person whose actions, business undertakings and/or activities involve the use of hazardous and toxic substances (B3), the production and/or management of B3 waste, and/or which cause a serious threat to the environmental living shall be strictly liable for the losses incurred without the need to prove the element of fault." This formulation represented a deliberate departure from the general fault-based tort regime under Article 1365 of the Indonesian Civil Code (KUHPerdata), which requires proof of unlawful act, fault, damage, and causation. By eliminating the evidentiary burden of fault, Article 88(1) EPML embodied the *polluter-pays principle* and the *precautionary principle* enshrined in Principle 16 of the 1992 Rio Declaration, thereby facilitating swift civil remedies, ecosystem restoration, and effective internalisation of environmental externalities. The provision functioned as a powerful deterrent, particularly against corporate actors engaged in high-risk activities, and aligned with Indonesia's constitutional obligation under Article 28H(1) of the 1945 Constitution to guarantee every citizen's right to a good and healthy environment.

The enactment of Law No. 11 of 2020 on Job Creation—subsequently refined and promulgated as Law No. 6 of 2023—[9] fundamentally altered this regime through the revision of Article 88 EPML. The amended text now reads: "every person whose actions, business undertakings and/or activities involve the use of B3, the production and/or management of B3 waste, and/or which cause a serious threat to the environmental living shall be strictly liable for the losses incurred arising from their business undertakings and/or activities." The deliberate excision of the phrase "without the need to prove the element of fault" and its replacement with a causation-oriented

[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 21, 2021): 53–60, https://doi.org/10.25041/aelr.v2i1.2318; 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 11, 2024): 297–313, https://doi.org/10.37729/amnesti.v6i2.4935.

[9] Nunik Nurhayati et al., "Legal Certainty of The Positive Fictive Policy In Business Licensing Through The Online Single Submission Risk-Based Approach System In Indonesia," *Jurnal Ius Constituendum* 10, no. 2 (June 8, 2025): 224–41, https://doi.org/10.26623/jic.v10i2.12009.

clause has juridically transformed the nature of liability.[10] Although the term "strictly liable" (*bertanggung jawab mutlak*) is retained, the absence of the no-fault presumption reverts the provision, in doctrinal terms, to a hybrid or de facto fault-based regime. Legal scholars uniformly observe that this textual modification invites judicial interpretation requiring plaintiffs to establish not only damage and causation but also implicit fault or negligence on the part of the polluter, thereby reintroducing the very evidentiary barriers that strict liability was designed to eliminate. Deductively, if the premise of strict liability rests on no-fault accountability for ultra-hazardous activities (as per its common-law origins in *Rylands v. Fletcher* and its statutory adoption in jurisdictions such as the EU Environmental Liability Directive), then the post-2023 formulation fails to satisfy that core element and cannot be regarded as genuine strict liability.

Compounding this normative regression is the parallel reform of the environmental permitting system under the Job Creation Law. The previous command-and-control approach—requiring a dedicated environmental permit (*izin lingkungan*)—has been replaced by a risk-based business licensing regime (*Perizinan Berusaha Berbasis Risiko*) administered through the Online Single Submission (OSS) system.[11] Low-risk activities require only a Business Identification Number (NIB); medium-risk activities demand additional standard certificates; and high-risk activities (including those with significant environmental impact) still necessitate an Environmental Impact Assessment (AMDAL) and government approval.[12] While this simplification ostensibly reduces bureaucratic hurdles to attract investment, it simultaneously diminishes ex-ante preventive oversight and weakens the linkage between licensing conditions and subsequent liability. In normative terms, the shift from mandatory environmental permits to risk categorisation lowers the threshold for commencing operations while eroding the deterrent effect previously reinforced by strict liability. Consequently, corporate actors—particularly in extractive, palm-oil, and chemical sectors—now operate under a lighter regulatory burden, with reduced exposure to automatic civil accountability for resulting pollution.

The doctrinal implications for environmental pollution are profound. Under the pre-reform strict-liability regime, victims (communities, NGOs, or the state) could obtain compensation and restoration orders merely by proving damage and causal nexus to the defendant's hazardous activity. Post-reform, the evidentiary burden has shifted, rendering civil claims protracted, costly, and uncertain. This directly undermines the preventive and restorative functions of environmental law. Furthermore, the Job Creation Law's emphasis on administrative sanctions as the primary enforcement tool—with criminal sanctions relegated to *ultimum remedium*—

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[10] Muh Farhan Arfandy and Ranggalawe Suryasaladin, "Analisis Kritis Penggunaan Strict Liability Dalam Berbagai Peraturan Perundang-Undangan Di Indonesia," *Indonesian Journal of Criminal Law* 5, no. 1 (2023): 9–17, https://doi.org/10.31960/ijocl.v5i1.2017.

[11] Evan Devara, Maret Priyanta, and Yulinda Adharani, "Inovasi Pendekatan Berbasis Risiko Dalam Persetujuan Lingkungan Berdasarkan Undang-Undang Cipta Kerja," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 1, no. 1 (September 13, 2021): 101–16, https://doi.org/10.23920/litra.v1i1.641.

[12] Eko Prasetyo, "Kesesuaian Sistem Pengawasan Perizinan Berbasis Risiko Di Sektor Lingkungan Hidup Pasca UU Cipta Kerja Dengan Prinsip Perlindungan Dan Pengelolaan Lingkungan Hidup Di Indonesia," *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, November 29, 2024, 84–102.

Doi: 10.59631/slr.v4i1.156

further dilutes deterrence.[13] Corporate criminal liability remains exceptionally difficult to establish under the identification doctrine prevailing in Indonesian jurisprudence, which requires proof that (i) a director or officer committed the offence, (ii) within the scope of authority, and (iii) for the benefit of the corporation. The removal of civil strict liability thus leaves a double gap: civil redress for victims becomes harder, while criminal accountability for corporations remains structurally elusive. Deductively, the logical consequence is a foreseeable increase in unremedied environmental pollution incidents, as the expected cost of non-compliance for polluters declines sharply.

In essence, the elimination of the strict-liability safeguard reflects a deliberate policy reorientation from environmental protection toward investment facilitation. While the Job Creation Law's stated objective of bureaucratic simplification and economic recovery is legitimate,[14] the specific amendment to Article 88 EPML constitutes a normative retreat that prioritises short-term capital attraction over long-term ecological sustainability. This paradigm shift contravenes both domestic constitutional mandates and Indonesia's international commitments under the Sustainable Development Goals (particularly Goals 12, 13, 14, and 15). The revised framework, therefore, not only fails to uphold the polluter-pays and precautionary principles but actively facilitates greater environmental degradation by corporations that can now more readily externalise pollution costs onto society and future generations.

The Impact of Eliminating the Strict Liability Principle on Environmental Pollution Following the Enactment of the Job Creation Law

The elimination of the no-fault element in Article 88 of the Environmental Protection and Management Law (EPML) has produced a profound normative and practical weakening of environmental protection in Indonesia.[15] By transforming what was once a genuine strict-liability regime into a de facto fault-based or hybrid liability system, the Job Creation Law has significantly lowered the expected cost of non-compliance for corporate actors. Deductively, if the core function of strict liability is to internalise negative externalities without requiring plaintiffs to prove fault (as established in the pre-2023 formulation and consistent with the *polluter-pays* and *precautionary* principles), then its dilution necessarily reduces the deterrent effect and increases the likelihood of environmental pollution incidents. Corporate polluters can now more readily invoke defences of due diligence, *force majeure*, or third-party causation, thereby externalising the costs of pollution onto communities, ecosystems, and the state. This shift directly contradicts the constitutional guarantee under Article 28H(1) of the 1945 Constitution that every

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[13] Hajriyanti Nuraini, Nadia Astriani, and Yulinda Adharani, "Ketentuan Pidana Administrasi (Administrative Penal Law) Dalam Penegakan Hukum Lingkungan Setelah Diundangkannya UU Cipta Kerja," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 3 (September 28, 2022): 581–99, https://doi.org/10.24843/JMHU.2022.v11.i03.

[14] Imam Koeswahyono, Diah Pawestri Maharani, and Airin Liemanto, "Legal Breakthrough of the Indonesian Job Creation Law for Ease, Protection, and Empowerment of MSMEs during the COVID-19 Pandemic," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), https://doi.org/10.1080/23311886.2022.2084895; Sofi Ayyasi et al., "Top-Down Implementation of the Job Creation Law: Reforming Environmental Impact Assessment Policy and Implications for Environmental Governance in Indonesia," *Journal Governance Bureaucratic Review* 2, no. 2 (August 30, 2025): 107–17, https://doi.org/10.31629/jgbr.v2i2.7754.

[15] Kusuma, "Environmental Disputes Without Protection Of Strict Liability Principles: Again, Law On Job Creation."

citizen has the right to a good and healthy living environment, while undermining Indonesia's international commitments under the 1992 Rio Declaration and the Sustainable Development Goals (particularly Goals 12, 13, 14, and 15).

The parallel transition from a command-and-control environmental permitting system to a risk-based business licensing regime (*Perizinan Berusaha Berbasis Risiko*) has compounded these effects. The former mandatory Environmental Impact Assessment (AMDAL) and dedicated environmental permit (*izin lingkungan*) served as robust ex-ante preventive instruments.[16] Under the new framework, low- and medium-risk activities face minimal scrutiny, while even high-risk activities benefit from streamlined procedures through the Online Single Submission (OSS) system. Although the government has attempted to mitigate risks through enhanced post-licensing supervision, improved waste-treatment infrastructure, and additional regulatory measures, these ex-post tools lack the automatic civil accountability previously provided by strict liability. Normative analysis reveals that the simplification of licensing—intended to accelerate investment—has prioritised short-term economic gains over long-term ecological sustainability.[17] Small and medium enterprises (UMKM) and informal operators, which often fall outside rigorous oversight, now operate with even lower accountability thresholds, while large corporations exploit the lighter regulatory burden to expand high-risk activities in sectors such as palm oil, mining, and chemicals.

Empirical patterns observable in post-2023 regulatory practice and doctrinal commentary confirm the anticipated rise in unremedied pollution. Victims face heightened evidentiary barriers in civil claims, rendering compensation and restoration orders more difficult, protracted, and uncertain. Corporate criminal liability remains structurally constrained by the identification doctrine, which demands proof of *actus reus* by a directing mind acting within authority and for corporate benefit—an exceptionally high threshold in environmental cases. Consequently, the state bears disproportionate costs for environmental remediation, while affected communities suffer irreversible ecological damage and severe public-health consequences, including elevated incidences of cancer, chronic organ failure, and toxic exposure linked to hazardous and toxic substance (B3) pollution. These outcomes illustrate a clear policy reorientation: environmental management is increasingly subordinated to investor interests rather than the constitutional and intergenerational imperative of sustainable development.

In deductive terms, the revised legal framework creates a foreseeable imbalance. Where strict liability once ensured that the risk-creator bore the full cost of ultra-hazardous activities, the post-Job Creation Law regime allows corporations to treat pollution risks as calculable business externalities that can be minimised through insurance or legal defences. This not only violates the *polluter-pays* principle but also erodes public trust in the rule of law and contravenes the state's duty to protect citizens' environmental human rights. The long-term risks—biodiversity loss,

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[16] Dewi Tuti Muryati, Dharu Triasih, and Tri Mulyani, "Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia," *JURNAL USM LAW REVIEW* 5, no. 2 (November 12, 2022): 693–707, https://doi.org/10.26623/julr.v5i2.5773.

[17] Anwar Sanusi, *Politik Ekologi Dan Masa Depan Kebijakan Lingkungan Di Indonesia* (Cirebon: PT. Arr Rad Pratama, 2025).

Doi: 10.59631/slr.v4i1.156

ecosystem collapse, and intergenerational inequity—far outweigh any short-term gains in investment attraction.

The findings of this normative-juridical study therefore demonstrate that the elimination of the strict-liability safeguard has materially weakened Indonesia's environmental governance architecture. To restore balance, legislative intervention is required to reinstate the explicit "without the need to prove fault" clause in Article 88 EPML, strengthen the integration of AMDAL within the risk-based licensing system, and establish clearer pathways for collective redress by affected communities. Such reforms would realign Indonesian environmental law with constitutional mandates, international obligations, and the overarching objective of ecologically sustainable development.

CONCLUSION

This normative-juridical study concludes that the elimination of the explicit no-fault clause in Article 88 of the Environmental Protection and Management Law through the Job Creation Law (Law No. 6 of 2023) has fundamentally undermined the principle of strict liability in Indonesian environmental law. The amendment, combined with the shift to a risk-based licensing regime, has transformed a robust preventive and restorative mechanism into a de facto fault-based or hybrid system, significantly lowering deterrence, complicating civil redress for victims, and facilitating the externalisation of pollution costs by corporate actors. Consequently, the revised framework prioritises short-term investment facilitation over long-term ecological sustainability, contravenes the polluter-pays and precautionary principles, violates constitutional guarantees under Article 28H(1) of the 1945 Constitution, and jeopardises Indonesia's commitments to the Sustainable Development Goals (particularly Goals 12, 13, 14, and 15). The foreseeable outcome is an increased incidence of unremedied environmental pollution, irreversible ecosystem damage, and disproportionate public-health burdens borne by communities and the state.

As a purely normative-juridical analysis relying on doctrinal interpretation, statutory comparison, and deductive reasoning without primary empirical data collection, this study is limited by the absence of quantitative evidence on post-2023 pollution trends, case-law statistics, or field-based assessments of enforcement efficacy. Future research should incorporate mixed methods, including longitudinal empirical monitoring of environmental incidents, judicial decision analysis, and stakeholder interviews to validate the deductive inferences drawn here. To address the identified normative regression, it is recommended that the legislature promptly reinstate the phrase "without the need to prove the element of fault" in Article 88 EPML, reinforce the mandatory and independent character of AMDAL within the risk-based permitting system, enhance mechanisms for collective civil actions by affected communities, and strengthen corporate criminal liability doctrines to ensure effective deterrence and alignment with constitutional and international environmental obligations.

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