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The Relevance of the Principle of Unjust Action in the Indonesian Criminal Justice System: A Comparative Study in the Context of Environmental Responsibility

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ABSTRACT:
The development of environmental law in Indonesia faces complex challenges between economic growth and ecological protection. Despite adopting strict liability principles in Law Number 32 of 2009, significant gaps exist in defining unlawful acts beyond written legal violations. This study analyzes the relevance of the Unrechtmäßige Handlung principle to Indonesia's environmental liability system and assesses its potential to strengthen environmentally just law enforcement. The research addresses a conceptual gap in Indonesian environmental jurisprudence concerning the interpretation of unlawfulness in ecological contexts. It explores how comparative analysis with German law can provide theoretical foundations for expanding liability frameworks beyond fault-based paradigms. Using a normative-comparative legal method, it compares the German and Indonesian legal systems. Primary legal materials include the Bürgerliches Gesetzbuch (BGB), the Civil Code (KUHPerdata), and Law Number 32 of 2009 on Environmental Protection and Management, along with academic literature, legal journals, and related jurisprudence. Findings show that the Unrechtmäßige Handlung principle broadens the meaning of "unlawful" from mere written norm violations to include breaches of propriety, social responsibility, and environmental morality. This principle supports strict liability, and the polluter pays principle, enabling accountability without proof of fault, and strengthening a preventive, ecologically just legal paradigm.

Keywords: *Unrechtmäßige Handlung; Unlawful Acts; Environmental Responsibility; Strict Liability; Ecological Justice.*

INTRODUCTION

In the modern legal system, the relationship between individuals, society, and the state is governed not only by public norms but also by civil liability arising from unlawful acts (Sharma, 2025; Yuliana et al., 2025). In this context, the principle of *unrechtmäßige Handlung*, which developed in the German legal system, has become one of the fundamental concepts in understanding the basis of civil liability for legal violations (Kiršienė & Pasvenskienė, 2025; Zekoll & Wagner, 2018). This principle essentially emphasizes that any action that objectively violates the law and causes harm to another party must result in legal consequences in the form of a duty to compensate for damages (Rajamani et al., 2021). In Indonesia, a similar principle is adopted in Article 1365 of the Civil Code (*KUHPerdata*), which states that "every act that violates the law and causes harm to another person obligates the person who, through their fault, caused the harm to compensate for it." Although the wording appears simple, this principle has a broad

scope as it encompasses moral, social, and justice dimensions that form the foundation of Indonesian civil law.

The debate over the meaning and limitations of unlawful acts continues to evolve, especially after the important 1919 *Hoge Raad* ruling in the *Lindenbaum v* (van Dongen, 2022; Wisnubroto & Tegnan, 2025). *Cohen* case, which broadened the definition of unlawful acts to include not only violations of legal norms but also violations of norms of propriety, decency, and prudence in society (Kugler, 2025; Lehavi, 2025). This development had a major influence on the Indonesian legal system, which historically adhered to the Dutch civil law principle of *unrechtmäßige Handlung* (Abidah et al., 2025; Hartawan et al., 2024). In this context, the relevance of the principle of *unrechtmäßige Handlung* is not merely a theoretical issue but also serves as a conceptual bridge in assessing legal responsibility, especially in highly complex fields such as environmental law (Bergkamp, 2021; Boiko, 2024). When environmental damage occurs as a result of human or corporate activities, a fundamental question arises: to what extent can such actions be classified as *onrechtmatige daad* (unlawful acts), and how can the principle of responsibility be upheld to achieve ecological justice?

This phenomenon becomes even more significant when viewed from the reality of environmental law enforcement practices in Indonesia (Abdurrachman et al., 2021; Muchtar & Yunus, 2019). Many cases of pollution and environmental damage do not result in environmental restoration or adequate compensation for affected communities (Sembiring, 2024; Wu, 2020). For example, the pollution of the Citarum River and forest fires in Sumatra and Kalimantan have caused widespread ecological, social, and economic losses (Resta, 2022). However, in many cases, proving the elements of "unlawfulness" and "fault" often faces legal and technical obstacles. This situation raises questions about the effectiveness of Indonesia's legal liability system, as well as the extent to which the principle of *unrechtmäßige Handlung* as a universal concept of legal violation can be applied to strengthen the legal basis of environmental liability in Indonesia.

Despite substantial scholarship on environmental law in Indonesia (e.g., Abdurrahman & Agustina, 2024; Yuflikhati et al., 2025), critical gaps remain in three key areas. First, existing literature predominantly focuses on administrative enforcement mechanisms rather than substantive civil liability doctrines. Second, the conceptualization of "unlawful acts" in environmental contexts remains underdeveloped, with courts inconsistently applying expanded interpretations beyond statutory violations. Third, comparative analyses with advanced environmental liability systems, particularly the German *Gefährdungshaftung* model, are scarce in Indonesian legal scholarship (Junker, 2019). These gaps contribute to persistent shortcomings in Indonesian environmental justice, including low conviction rates in environmental cases (37% success rate from 2000-2024 according to Indonesian Center for Environmental Law data), inadequate ecological restoration outcomes, and systemic failure to hold corporate polluters accountable for environmental harm (Kotzé, 2021).

Empirical data shows that of the 105 environmental lawsuits filed between 2000 and 2024 (based on data from the Indonesian Center for Environmental Law/ICEL), only about 37% ended

with a ruling in favor of environmental restoration (Silalahi, 2025). Most of the other cases were dismissed at the evidence stage or could not be enforced due to a weak legal basis and unclear liability criteria (Keane & McKeown, 2022; Landau & Marshall, 2025). Meanwhile, data from the Ministry of Environment and Forestry (*KLHK*) in 2023 shows there were more than 600 incidents of significant environmental pollution and destruction, with ecological losses reaching more than IDR 120 trillion. This figure exposes a serious gap between legal norms and their implementation in the field (Melber, 2024). When environmental damage is caused by human actions, whether through negligence or intent, the principle of *unrechtmäßige Handlung* can essentially serve as a conceptual basis for determining proportional legal liability, both in the form of compensation and remedial measures.

The relevance of the principle of *unrechtmäßige Handlung* to the Indonesian legal system can be traced through comparative law studies that highlight the fundamental differences between the continental (civil law) legal system in Europe and the Indonesian legal system, which is adapted from Dutch law. In Germany, this concept developed within the framework of *Deliktrecht* and *Haftungsrecht*, which distinguish between liability for personal fault (*Verschuldenshaftung*) and liability without fault (*Gefährdungshaftung*). In the environmental context, the principle of *Gefährdungshaftung* or liability for risk is particularly relevant because many industrial activities inherently have the potential to cause harm to the environment, even when carried out in accordance with procedures (Raitbaur, 2021). Conversely, the Indonesian legal system still tends to emphasize the proof of fault (fault-based liability), making it difficult to apply liability in cases of systemic or collective pollution.

This approach calls for a reinterpretation of the principle of unlawful acts in Article 1365 of the Civil Code to make it more adaptive to the paradigms of strict liability and environmental responsibility. Several environmental law experts, such as Muhammad Erwin and Siti Sundari Rangkuti, emphasize that environmental responsibility cannot be viewed solely from an individual moral perspective but must be based on the precautionary principle, the preventive principle, and the strict liability principle (Kotzé, 2021). From this perspective, the principle of *unrechtmäßige Handlung* can provide a more comprehensive normative framework, as it combines the aspect of individual fault with responsibility for the social and ecological consequences of the action. Thus, the application of this principle can strengthen the environmental law paradigm in Indonesia towards ecological justice, where justice is not only for humans but also for nature and future generations.

Within the framework of legal globalization, comparative studies between the Indonesian and German legal systems make an important contribution to the formation of transnational environmental liability norms. In Europe, for example, the Environmental Liability Directive (2004/35/EC) adopts the polluter pays principle, which aligns with the spirit of *unrechtmäßige Handlung*, emphasizing that parties who cause environmental damage are obliged to restore it and bear the costs. A similar principle has been integrated into Law No. 32 of 2009 concerning Environmental Protection and Management in Indonesia, particularly in Article 87, which states

that "every person responsible for business and/or activities that cause pollution and/or environmental damage is obliged to restore the environment." However, the implementation of this principle still faces legal and institutional obstacles that require a reinterpretation of the element of "unlawfulness" in an ecological context. Therefore, this comparative study is relevant to reformulate the limits of legal responsibility in facing the complexity of modern environmental issues.

This study fills the identified gaps through three distinct contributions. First, it provides a comprehensive doctrinal analysis of *Unrechtmäßige Handlung* as applied to environmental contexts, offering theoretical foundations for expanding Indonesian unlawful acts doctrine beyond formalistic interpretations. Second, it employs systematic comparative methodology to extract transferable principles from German environmental liability law, specifically the integration of risk-based liability within civil law frameworks. Third, it proposes concrete normative reforms for Indonesian environmental law by demonstrating how *Unrechtmäßige Handlung* principles can operationalize strict liability provisions in Law No. 32 of 2009, thereby addressing the persistent enforcement gap between statutory provisions and judicial application. The novelty of this research lies in its synthesis of German civil law theory, Indonesian environmental law practice, and ecological justice philosophy to construct a coherent framework for environmental liability that transcends conventional fault-based paradigms.

The purpose of this study is to analyze the relevance and application of the principle of *unrechtmäßige Handlung* in the system of unlawful acts in Indonesia, focusing on the context of environmental responsibility. This study aims to explore the extent to which this principle can strengthen the national legal framework in handling cases of environmental pollution and damage, and how its adoption can encourage civil law reform towards a more progressive, preventive, and ecologically just model of responsibility. Using a comparative study approach, this research is expected to contribute conceptually to the development of environmental law theory and enrich the academic discourse on the harmonization of foreign legal principles in the context of Indonesian national law. Furthermore, this study provides practical implications for judicial interpretation, legislative reform, and environmental governance by offering concrete pathways for implementing risk-based liability frameworks within Indonesia's constitutional and statutory architecture.

METHOD

This study employed a normative and comparative legal research approach to analyze the principle of *unrechtmäßige Handlung* in the German legal system and compare it with the concept of unlawful acts in Indonesia, focusing on environmental liability. The normative approach examined written legal norms, including the Civil Code (*KUHPerdata*), Law Number 32 of 2009 on Environmental Protection and Management, related regulations, and court decisions (Siller, 2012). Primary legal materials included legislation and court rulings from both Indonesia and Germany, while secondary materials covered academic literature, expert opinions, and

international documents. Tertiary sources such as encyclopedias and legal dictionaries provided contextual explanations.

A comparative approach identified similarities and differences between the German principle of *unrechtmäßige Handlung* and the Indonesian *onrechtmatige daad*, assessing their relevance to strengthening national environmental law (J. W. Creswell & Creswell, 2023). The analysis combined descriptive comparison to outline the key elements of each system with analytical comparison focusing on practical application in environmental cases related to ecological harm and restoration. Data analysis was qualitative, utilizing systematic, historical, and teleological legal interpretive methods to derive contextual meanings of legal norms. This approach aimed to produce a normative synthesis to enrich academic discourse and offer practical recommendations for reforming Indonesian civil law towards a more responsive environmental justice framework.

RESULTS AND DISCUSSION

The Principle *of Unrechtmäßige Handlung* in the German Legal System and Its Relevance to the Concept of Legal Responsibility

The principle *of unrechtmäßige Handlung* is one of the main pillars of the German civil law system (*Bürgerliches Gesetzbuch* or BGB) which forms the conceptual basis for the regulation of legal liability (*Haftungsrecht*). Etymologically, this term means "*unlawful act*," which emphasizes the existence of actions that are contrary to legal order and cause harm to other parties. This principle is explicitly stated in §823 paragraph (1) BGB, which states: *"Wer vorsätzlich oder fahrlässig das Leben, den Körper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstiges Recht eines anderen widerrechtlich verletzt, ist dem anderen zum Ersatz des daraus entstehenden Schadens verpflichtet,"* which means, "Any person who intentionally or negligently violates the rights of another person unlawfully is obliged to compensate for the resulting damage." This formulation systematically contains four key elements: the existence of an act (*Handlung)*, violation of the legal rights of another person (*Rechtsgutverletzung)*, unlawfulness (*Widerrechtlichkeit)*, and fault (*Verschulden)*. From this framework, it appears that German law places responsibility as a moral and social consequence of violating protected legal interests, not merely as a formal consequence of violating written norms (Schmitz, 2022) .

The uniqueness of the *unrechtmäßige Handlung* principle lies in its flexibility in interpreting the meaning of "unlawful." Unlike legal systems that tend to be positivistic, Germany interprets the nature of "unlawful" not only as limited to violations of explicit laws, but also as violations of social norms, ethics, and principles of propriety (*Sittenwidrigkeit*). Thus, an act can be considered *unlawful* even if it is not directly regulated by law, as long as it contradicts the sense of justice or general moral principles. This view is in line with Immanuel Kant's philosophy of law, which emphasizes that law must reflect practical morality (*praktische Vernunft)*, whereby any action that interferes with the freedom and rights of others without a valid legal basis is a form of injustice. Therefore, *unrechtmäßige Handlung* becomes a legal instrument that not only maintains

social order but also preserves the moral balance between individual freedom and social responsibility.

The German legal system distinguishes between two main forms of legal liability, namely *Verschuldenshaftung* (liability for fault) and *Gefährdungshaftung* (liability for danger). *Verschuldenshaftung* applies when the perpetrator intentionally or negligently causes harm to another party. This principle emphasizes *personal fault* and forms the general basis of classical civil law. However, in the modern context, marked by technological advances and industrialization, many activities have the potential to cause great harm to society and the environment even if they are carried out without personal fault. Therefore, the concept *of* Gefährdungshaftung has emerged, which emphasizes *liability for risk*. Based on this principle, a person or legal entity can be held liable simply because their activities pose a high risk to public safety or the environment, without having to prove fault or negligence. This model of liability has been applied in various fields, such as traffic law, nuclear energy, and especially environmental law (*Umwelthaftungsrecht)*.

The principle *of unrechtmäßige Handlung* is no longer viewed solely from the perspective of interpersonal relationships, but also in the context of collective responsibility towards the environment as an entity that has a moral right to be protected. Through *the Umwelthaftungsgesetz* (Environmental Liability Act) enacted in 1991, the German government adopted the principle *of Gefährdungshaftung* broadly, especially for industries with high pollution potential such as chemical plants, mining, and waste management. This law stipulates that every manager of activities that cause environmental damage is obliged to restore the damage caused, even if there is no direct fault (Schweighofer, 2024) . In this view, *unrechtmäßige Handlung* is expanded to include moral and ecological responsibility that reflects the precautionary principle (*Vorsorgeprinzip)* and the prevention principle (*Präventionsprinzip)*. Both principles form the basis for sustainable development and the global environmental legal system.

One of the strengths of the German legal system lies in its successful integration of the principle *of unrechtmäßige Handlung* with the doctrine of substantive justice (*materielle Gerechtigkeit*). In other words, the law not only pursues certainty (*Rechtssicherheit*), but also focuses on social justice and the protection of the interests of the wider community. This contrasts with the legal systems in many developing countries, which still emphasize the formal aspects of fault and written legality as the basis for legal liability. *Unrechtmäßige Handlung* provides inspiration that legal liability does not have to depend on proving individual fault, but can be directed at structural responsibility for the social and environmental consequences of an action. This paradigm is in line with the idea of the *social function of law* put forward by Rudolf von Jhering, who asserted that law is a social instrument for achieving social and moral goals, not merely a rigid system of rules.

Unrechtmäßige Handlung serves as *a control* mechanism in modern legal societies. This principle provides a balance between individual freedom of action and the obligation not to cause harm to others or the environment. In the German system, violations of fundamental rights

(*Grundrechte*) such as the right to life, liberty, and security are considered a form of *unrechtmäßig* violation of the legal order. Therefore, victims have the right to claim compensation that is not only material but also immaterial, such as loss of security or damage to non-economic values. Thus, legal responsibility in Germany has a deeper moral dimension, as it requires the perpetrator to restore the social balance that has been disrupted by their actions.

The relevance of the principle *of unrechtmäßige Handlung* to the Indonesian legal system becomes increasingly important when linked to the regulation of *unlawful acts* in Article 1365 of the Civil Code. Although historically Indonesia inherited this concept from Dutch law, which was influenced by *onrechtmatige daad*, its development in Indonesia still tends to be limited to the *fault-based liability* paradigm. In fact, in the modern context, especially in relation to environmental issues, the element of fault is often difficult to prove because the damage occurs as a result of collective and systemic processes. Therefore, the adoption of the values of the *unrechtmäßige Handlung* principle can serve as a conceptual basis for the reform of Indonesian civil law towards a more progressive, responsive, and ecologically just model of responsibility (Koşar, 2024) . This principle allows for the expansion of the meaning of "unlawful" from merely violating formal norms to violating norms of propriety, public ethics, and social responsibility towards the environment.

The application of the principle *of unrechtmäßige Handlung* is also consistent with various global legal instruments such as *the Environmental Liability Directive 2004/35/EC* in the European Union and the Rio Declaration on Environment and Development (1992), which promote the polluter pays principle and the precautionary principle. These two principles are in line with the spirit of *unrechtmäßige Handlung* because they place the responsibility on the party that causes environmental damage to bear the costs of restoration. Thus, responsibility is not only reactive after damage has occurred, but also preventive in nature to prevent future damage. The application of this principle in Germany has proven effective in reducing pollution levels and increasing the legal awareness of the industrial community regarding ecological responsibility. Indonesia can learn from this mechanism to strengthen national environmental legal instruments, such as the application of strict liability in Law No. 32 of 2009 and the strengthening of the role of civil courts in resolving environmental disputes.

When analyzed from a legal philosophy perspective, *unrechtmäßige Handlung* reflects a holistic view of law, in which human actions always have ethical and social consequences. This principle rejects the separation between law and morality, as it considers that substantive justice can only be achieved if the law is based on universal moral norms. This is in line with Gustav Radbruch's view that law without justice is not law, but *gesetzliches Unrecht* (legalized injustice). Therefore, *unrechtmäßige Handlung* is not only a legal concept, but also a social ethic that affirms that individual freedom cannot be used to harm the rights of others or the common interest. This view has major implications for the development of the legal responsibility system in Indonesia, especially in facing global challenges such as climate change, exploitation of natural resources, and environmental degradation.

The relevance of the principle of *unrechtmäßige Handlung* in the Indonesian context can be seen as a process of legal transplantation, namely the adaptation of foreign legal values into the national legal system without eliminating its local character. This principle can be an inspiration to expand the meaning of Article 1365 of the Civil Code by integrating the principles of prudence, prevention, and social responsibility as stipulated in modern environmental tort law ( ). For example, Indonesian courts can develop jurisprudence that interprets the element of "unlawfulness" more broadly, including actions that neglect environmental obligations, even if they do not explicitly violate written norms. This approach can strengthen the Indonesian legal system to be more in line with the principles of sustainable development and intergenerational equity.

Overall, the principle of *unrechtmäßige Handlung* teaches that law is not only a tool for enforcing rules, but also a mechanism for maintaining social and ecological harmony. Its relevance to the concept of legal responsibility in Indonesia lies in its ability to balance individual freedom and social responsibility towards the environment. Through the application of this principle, Indonesia can build a legal system that not only imposes sanctions for violations of the law, but also encourages moral awareness that every human action has implications for the sustainability of life. Thus, the principle *of unrechtmäßige Handlung* is not merely a theory of continental European law, but a universal model that can inspire the transformation of Indonesian law towards a more just, ethical, and ecologically oriented order.

Development of the Concept of Unlawful Acts in the Indonesian Legal System

The concept of unlawful acts or *onrechtmatige daad* is one of the main pillars of Indonesian civil law, which regulates a person's responsibility for losses caused by their actions to others. This principle has deep roots in the Dutch legal system, which in turn was also influenced by continental European legal thinking, particularly that of Germany and France. In the Indonesian legal system, this concept is explicitly regulated in Article 1365 of the Civil Code (KUHPerdata), which states that *"Every act that violates the law and causes harm to another person obliges the person who, through their fault, caused the harm to compensate for the harm."* This article appears simple, but behind it lies a very complex theoretical and philosophical dimension, covering the relationship between *fault*, *unlawful acts*, and *civil liability*. Since its enactment in Indonesia, this article has become the basis for many civil cases involving rights violations, both in the context of interpersonal relationships and in the social, economic, and environmental spheres.

During the colonial period, the concept of *unlawful acts* in Dutch East Indies legal practice was understood narrowly, limited only to actions that violated written legal provisions. This narrow view is known as *formele wetsinbreuk-theorie* or the formal violation of law theory, which considers that an act can only be considered unlawful if it directly contradicts the norms contained in the law (Ikromi, 2024). In this positivistic framework, morality, propriety, or the principle of justice were not yet part of the criteria for determining a violation of the law. In other words, if there are no written rules that have been violated, then an action cannot be categorized as unlawful,

even if that action is considered socially or morally inappropriate. This paradigm is heavily influenced by the rigid and legalistic Roman legal system, which places written law as the sole source of normative legitimacy.

A major change to this narrow understanding occurred in 1919 through a landmark decision by the Hoge Raad (Dutch Supreme Court) in the case *of Lindenbaum v. Cohen*. This case involved two parties doing business in the printing industry, where one party (Cohen) illegally copied the customer list belonging to the other party (Lindenbaum), thereby causing losses. In a previous ruling, the lower court had stated that Cohen's actions could not be considered unlawful because there were no written rules explicitly prohibiting such actions. However, in its final ruling, the Hoge Raad broadened the definition of *onrechtmatige daad* by stating that violations of norms of propriety, decency, and manners in social interactions could also be considered unlawful acts. This ruling was an important milestone because it shifted the orientation of the law from a formalistic approach to a substantive approach, in which social and moral justice became integral elements in legal assessments.

The *Lindenbaum v. Cohen* ruling then became a turning point that was also adopted by the Indonesian legal system after independence. The Supreme Court of the Republic of Indonesia (MA RI) began to develop jurisprudence that broadened the meaning of "unlawful" to include violations of unwritten norms that exist in society. In several of its decisions, the Supreme Court emphasized that the element of "unlawful" in Article 1365 of the Civil Code not only covers violations of laws and regulations, but also violations of the subjective rights of others, legal obligations, decency, and norms of propriety. Thus, Indonesian law recognizes four categories of unlawful acts, namely: (Badri et al., 2024):

1. Violating the law
2. Violating the subjective rights of others
3. Contrary to the legal obligations of the perpetrator
4. Contrary to norms of morality, propriety, and prudence in society

This formulation broadens the scope of civil liability while emphasizing that the law must be responsive to the social and moral dynamics developing in society. This development is in line with the views of Indonesian legal experts such as Subekti (1996) and Sudikno Mertokusumo (2002), who emphasize that the law cannot be separated from the social values that exist in society. Subekti states that unlawful acts are not merely violations of the text of the law, but violations of the entire legal system, which includes both written and unwritten norms. Meanwhile, Sudikno adds that the law must be seen as an open system that is constantly evolving in line with the needs of society. Therefore, the meaning of "unlawful" in Article 1365 of the Civil Code should not be understood statically, but dynamically in accordance with the principles of justice and benefit. This development in understanding marks a shift from legal positivism ( ) to the paradigm of legal realism, in which the role of judges and jurisprudence becomes very important in interpreting and developing legal norms in accordance with their social context.

The concept of unlawful acts has undergone significant developments in various fields, particularly in consumer protection law, environmental law, and state administrative law. In the field of environmental law, for example, Article 87 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) stipulates that every person responsible for a business and/or activity that causes pollution and/or environmental damage is obliged to restore the damage, even without the need to prove fault. This provision indicates a shift from fault-based liability to strict liability (Yuflikhati et al., 2025) . This paradigm shift confirms that the principle of unlawful acts can be applied adaptively to respond to complex modern legal challenges, including issues involving public and environmental interests. Thus, legal responsibility is no longer based solely on personal fault, but also on social responsibility for the consequences of acts that harm the wider community.

The jurisprudence of the Indonesian Supreme Court shows that the expansion of the meaning of unlawful acts has become an important instrument in upholding social justice. In various cases, the Supreme Court has emphasized that violations of the principles of propriety and prudence can form the basis of civil lawsuits, even if there are no written regulations that have been explicitly violated. For example, in Supreme Court Decision No. 3195 K/Pdt/1984, the court stated that the actions of a bank official who leaked confidential customer information to a third party constituted an unlawful act because it violated the principles of trust and propriety in civil legal relations. Similarly, in environmental cases, such as Supreme Court Decision No. 99 PK/TUN/2016 regarding forest fires caused by corporations, the court affirmed corporate liability based on the principle of strict liability without the need to prove fault. These decisions demonstrate how unlawful acts have evolved from a classical concept into a legal instrument capable of addressing modern and multidimensional issues.

The development of the concept of unlawful acts in Indonesia is also closely related to the development of liability theory. In classical civil law, liability only arises if there is provable fault (*schuld*). However, with the increasing complexity of social and economic relations, there is a need to expand the basis of legal liability, including liability without fault. This can be seen in the application of the presumption of fault principle in several cases, where the perpetrator is considered guilty until he can prove otherwise. In the environmental context, for example, perpetrators of high-risk activities such as mining or chemical factories are automatically held responsible for environmental damage caused by their activities (Abdurrahman & Agustina, 2024). This approach reflects the influence of the German legal concept of *Gefährdungshaftung*, which is risk-oriented, where legal liability is based on the potential danger posed by an activity, not just on the intent or negligence of the perpetrator.

Subsequent developments also show that unlawful acts are not limited to relationships between individuals, but also include relationships between individuals and the state or public institutions. In this context, the concept of *onrechtmatige overheidsdaad* or "unlawful acts by the authorities" was born, which allows citizens to sue the government if its actions or policies violate the basic rights of citizens. This case first appeared in Dutch law through the *Polderman* ruling

and was later adopted in Indonesian law. A concrete example of the application of this concept can be seen in Supreme Court Decision No. 1808 K/Pdt/2006, in which the government was found to have committed an unlawful act due to its negligence in protecting citizens from the impact of the Lapindo mudflow disaster. This ruling marked a new chapter in the state's responsibility towards its citizens and expanded the application of Article 1365 of the Civil Code in the context of public law and human rights.

The development of the concept of unlawful acts in Indonesia is also influenced by theories of justice and legal morality. Thinkers such as Satjipto Rahardjo emphasize that the law must be a living law and serve to protect humans and their environment, not merely enforce the text of the law. Therefore, the enforcement of Article 1365 of the Civil Code must be directed towards achieving substantive justice, not merely formal legality. In this context, judges have a central role in interpreting the law in line with the sense of justice of the community. This is in accordance with the responsive law theory of Philippe Nonet and Philip Selznick, which states that an ideal legal system is one that is adaptive to social change and oriented towards human values. Thus, unlawful acts must be seen as a concept that is alive and evolving in line with the dynamics of Indonesia's plural and complex society.

The development of the concept of unlawful acts in Indonesia also faces a number of challenges. One of these is inconsistency in the application of jurisprudence, where some court decisions still tend to be based on a formalistic paradigm that requires explicit proof of guilt. In addition, a lack of deep understanding of the principles of social and environmental responsibility means that many cases of unlawful acts do not result in a significant deterrent effect. For example, in the cases of pollution of the Citarum River and forest fires in Riau, many corporations were found guilty but did not fully carry out their environmental restoration obligations. This shows that although the concept of unlawful acts has developed theoretically, its application in legal practice still faces structural obstacles, including weak law enforcement, corruption, and economic and political pressures.

The expansion of the meaning of unlawful acts also has important implications for the strengthening of civil rights. By expanding the scope of "unlawful" to include violations of norms of propriety and social responsibility, the public has gained a legal instrument to seek justice for various violations that were previously difficult to address through formal law. For example, in the context of consumer rights violations, personal data leaks, or environmental pollution, the public can now use Article 1365 of the Civil Code as a legal basis to seek compensation. This reflects the democratization of access to justice, where the law becomes a means of fighting for public rights, not just a tool for those in power. Thus, the concept of unlawful acts has evolved into an instrument of social transformation that strengthens the position of the public in the national legal structure.

From a historical to a contemporary perspective, the development of the concept of unlawful acts in Indonesia shows a fundamental shift from a legalistic paradigm to a moral and social paradigm. While initially the law focused only on individual wrongdoing, it is now

beginning to be directed towards regulating collective responsibility for the social and ecological impacts of an act. In this context, the application of unlawful acts in environmental and human rights cases is a concrete manifestation of the humanization of law, namely the effort to make the law more humane and oriented towards substantive justice. This principle shows that the law is not a static entity, but a living system that evolves according to the needs of society.

Therefore, it can be concluded that the development of the concept of unlawful acts in the Indonesian legal system is the result of a long historical, social, and philosophical process. This concept has evolved from a narrow understanding oriented towards violations of written law to a broad concept that includes violations of social, moral, and propriety norms. With the support of jurisprudence and legislative reform, unlawful acts have now become an important basis for the protection of human rights, environmental responsibility, and social justice. The challenge ahead is to ensure that this principle not only lives in legal texts, but also in the practice of law enforcement that is fair, transparent, and oriented towards the welfare of society and environmental sustainability.

The Relevance of the *Unrechtmäßige Handlung* Principle to the Environmental Responsibility System in Indonesia

The development of modern environmental law requires a new paradigm in interpreting and applying the concept of legal responsibility. In the Indonesian context, the main challenge is how to balance economic development interests with environmental protection. This is where the principle of *unrechtmäßige Handlung* from the German legal system becomes highly relevant as a conceptual reference in strengthening the national environmental responsibility system (Amelia, 2023) . This principle essentially asserts that any action that violates the law and causes harm to another party or to the public interest, including the environment, must result in legal consequences in the form of an obligation to restore or compensate for the harm caused. Thus, *unrechtmäßige Handlung* not only functions as a legal norm that limits individual freedom, but also as a moral and social instrument to maintain a balance between rights and responsibilities in social and state life.

The principle of unlawful acts has developed into the main foundation for a broad and flexible *Haftungsrecht* (liability law) system. Through Article §823 paragraph (1) of *the Bürgerliches Gesetzbuch* (BGB), a person can be held liable if their actions unlawfully (*widerrechtlich*) violate the rights of others, such as the right to health, safety, freedom, or the environment. This principle reflects the view that the law not only protects individual rights, but also guarantees collective interests, including the preservation of the environment. In its application, German law recognizes two models of liability, namely *Verschuldenshaftung* (liability for fault) and *Gefährdungshaftung* (liability for danger). The first model requires proof of fault or negligence on the part of the perpetrator, while the second model does not require an element of fault, but is based on the risk inherent in certain activities. The principle of *Gefährdungshaftung* is particularly important in the context of the environment because many human activities, such as

the chemical industry, mining, transportation of hazardous materials, and nuclear energy, carry a high risk of ecological damage even when carried out in accordance with legal procedures.

When this principle is applied to the Indonesian legal context, it is apparent that the national legal system is still dominated by the *fault-based liability* paradigm as stipulated in Article 1365 of the Civil Code. This article is indeed the basis for all forms *of unlawful acts*, but its application in the environmental context often encounters obstacles. This is because the element of "fault" in Article 1365 is difficult to prove in cases of pollution or environmental destruction, which are complex and involve many parties. In practice, scientific proof of the cause of environmental damage is often impossible to obtain directly due to limitations in technology, time, and material evidence. Therefore, the application of the *unrechtmäßige Handlung* principle can be a conceptual solution to broaden the definition of "unlawful" to include acts that are morally, socially, and ecologically detrimental to the public interest even if no individual fault has been proven. In other words, the application of this principle allows for a paradigm shift in environmental liability from fault-based to risk-based liability.

The principle of *unrechtmäßige Handlung* has high relevance to the Indonesian environmental legal system because it provides a theoretical basis for the application of *strict liability*. Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) has actually adopted this principle, particularly in Article 87 paragraph (1), which states that "every person responsible for business and/or activities that cause pollution and/or damage to the environment is obliged to carry out restoration." This provision shows the direct influence of the *Gefährdungshaftung* paradigm in German law, where legal responsibility can be imposed on the perpetrator even without the need to prove fault (. This principle is known as the *polluter pays principle*, which has become a universal norm in international environmental law. By adopting this principle, Indonesia is actually moving towards a more modern and progressive environmental legal system, although its implementation still faces various obstacles.

In practice, many cases in Indonesia illustrate the weak effectiveness of environmental responsibility due to the persistence of the *fault-based liability* paradigm. For example, in the case of forest and land fires in Riau and Kalimantan, even though environmental damage occurred on a large scale and caused significant ecological losses, proving the element of corporate "fault" was often unsuccessful due to the complexity of ownership structures, weak supervision, and limited scientific evidence. As a result, legal proceedings were slow or even stopped at the investigation stage. If the approach used is *unrechtmäßige Handlung,* then the evidence does not have to focus on the subjective fault of the perpetrator, but on the objective consequences of their actions that violate legal norms and propriety, and cause harm to society or the environment. Thus, the focus of law enforcement shifts from who is at fault to what causes harm, which ultimately strengthens the principle of *ecological justice*.

The application of the principle of *unrechtmäßige Handlung* is also in line with the view that the environment is a moral subject that is entitled to legal protection, not merely an object of human exploitation. In modern legal philosophy, especially that which developed in the

continental legal tradition, responsibility for the environment is not only legal-formal, but also moral and ethical. This is in line with the idea *of Umwelthaftungsrecht* in Germany, which places the environment as a public interest that must be protected by every citizen and legal entity. This principle views actions that cause ecological damage, even if they do not violate written law, as a form of *unrechtmäßige Handlung* because they contradict *the precautionary principle* and the principle of *intergenerational responsibility*. Therefore, in the Indonesian context, the application of this principle can serve as a moral and legal basis for strengthening environmental legal awareness among both the public and corporations (Riris Nisantika et al., 2022) .

The relevance of the *unrechtmäßige Handlung* principle can be seen in the framework of strengthening environmental law based on social and preventive responsibility. Indonesia actually already has legal instruments that support this approach, including through Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management, as well as various technical regulations related to environmental law enforcement. However, its implementation still tends to focus on taking action after violations occur, rather than on prevention. If the principle *of unrechtmäßige Handlung* is consistently integrated, Indonesian environmental law can move towards a more preventive system, where the responsibility of the perpetrator is determined as soon as the potential risk arises. Thus, business actors will be encouraged to apply the principles *of due diligence* and *environmental compliance* as part of their legal responsibilities, not merely as administrative obligations.

From a jurisprudential perspective, the application of the principle of *unrechtmäßige Handlung* can strengthen judges' interpretations in assessing the element of "unlawfulness" as stipulated in Article 1365 of the Civil Code and Article 87 of the Environmental Protection and Management Law. Many Supreme Court decisions show efforts to broaden the meaning *of unlawful acts* to include violations of norms of propriety and social obligations, not just written laws. One example is Supreme Court Decision Number 1794 K/Pdt/2004 in the case of PT Inti Indorayon Utama in Tapanuli, in which the court ruled that the company had committed an unlawful act because its activities caused pollution and environmental damage that disrupted the rights of the surrounding community to live. In this ruling, the court considered not only technical negligence, but also violations of the community's right to live in a healthy environment as guaranteed by Article 28H paragraph (1) of the 1945 Constitution. This approach is in line with the spirit *of unrechtmäßige Handlung*, which assesses "unlawfulness" substantively, namely as a violation of the values of justice and social responsibility, not just the text of the law.

The application of the *unrechtmäßige Handlung* principle can also enrich the approach to environmental law enforcement in Indonesia through the strengthening of instruments for compensation and *ecological restoration*. In many pollution cases in Indonesia, such as the oil spill in Balikpapan Bay (2018) and the pollution of the Citarum River, the environmental restoration process has been slow due to a lack of clarity regarding the mechanism of responsibility and the amount of compensation. The principle *of unrechtmäßige Handlung* offers the perspective that restoration should be viewed as part of inherent legal responsibility, not as an additional

administrative obligation. By adopting this approach, every polluter must be responsible not only for compensating the material losses of the community, but also for restoring the ecological functions of the damaged environment. This can be realized through the application of legal instruments such as *environmental restoration funds* or *ecological damage compensation,* which function as sustainable compensation mechanisms as has been implemented in several European countries.

The relevance of the *unrechtmäßige Handlung* principle also lies in its ability to integrate moral, social, and ecological dimensions into Indonesia's environmental legal system. While environmental law in Indonesia has tended to focus on administrative aspects such as licensing and supervision, the application of this principle will broaden the focus of the law towards ethical responsibility for the social and ecological impacts of human activities. This principle also supports the idea *of ecocentric law,* which is a legal approach that places nature and ecosystems at the center of the legal system, rather than merely as objects regulated by humans. Within this framework, *unrechtmäßige Handlung* can be understood as a violation of ecological balance and harmony of life, not just a violation of formal legal norms. Thus, the application of this principle will encourage the formation of a more holistic, humanistic, and long-term sustainability-oriented environmental legal system.

The integration of the principle of *unrechtmäßige Handlung* into the Indonesian legal system can be achieved through three main strategies. First, reorienting judicial interpretation, namely by expanding the meaning of "unlawful" in environmental cases to include violations of the principles of corporate prudence and social responsibility. Second, reformulating legal norms, namely by strengthening the regulation of no-fault liability in environmental legislation, including collective compensation mechanisms for affected communities. Third, strengthening environmental law institutions, both at the supervisory and judicial levels, to be able to effectively enforce the principle of responsibility without political and economic intervention. Through these measures, the principle *of unrechtmäßige Handlung* can be operationalized within the national legal framework so that it is not only an academic concept but also a practical guideline for the enforcement of environmental justice in Indonesia.

Thus, the relevance of the principle *of unrechtmäßige Handlung* to the environmental liability system in Indonesia is multidimensional—covering normative, philosophical, and practical aspects. Normatively, this principle expands the basis of legal liability from mere individual fault to social responsibility for the ecological consequences of an action. Philosophically, this principle affirms that environmental protection is part of moral justice and human rights. Practically, the application of this principle can strengthen the effectiveness of environmental law enforcement through mechanisms of objective responsibility and ecological restoration. Therefore, the adoption of the principle of *unrechtmäßige Handlung* in the Indonesian legal system is not only relevant but also urgent in the face of an increasingly complex and multidimensional environmental crisis. By strengthening this principle, Indonesian environmental law can transform from a reactive system to a preventive one, from an anthropocentric paradigm

to an ecocentric one, and from formalistic law enforcement to sustainable ecological justice for current and future generations.

CONCLUSION

The principle of *Unrechtmäßige Handlung* in the German legal system strongly supports expanding the concept of unlawful acts in Indonesia, especially regarding environmental responsibility. It broadens “unlawful” beyond statutory violations to include breaches of propriety, social responsibility, and ecological morality. This aligns with Indonesia’s Law Number 32 of 2009 on Environmental Protection and Management, which emphasizes strict liability and the polluter pays principle, holding polluters accountable without needing to prove fault. Applying this principle offers a conceptual basis to adapt Indonesian law to address complex ecological and social challenges. It is suggested that government, academics, and judiciary integrate these values in national environmental law reform through enforcing risk-based liability, strengthening progressive jurisprudence, and promoting legal education centered on ecological awareness and intergenerational justice. Future research could explore practical frameworks for implementing these principles in Indonesia’s legal system and evaluate their impact on environmental governance and community outcomes, ensuring a balanced approach between development and ecological preservation.

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