

The Implementation of the Due Diligence Principle in Environmental Law Enforcement: Its Impact on Corporate Criminal Liability

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Abstract

Proving fault is the main obstacle to holding corporations criminally liable for environmental harm, because a corporation has no mind of its own and Indonesian enforcement has leaned on strict liability, which is a civil doctrine. This normative study asks how the due diligence principle is framed in international and Indonesian law, whether it works as an element of proof, a defence or an evaluative factor in corporate criminal liability, and what the case of PT National Sago Prima shows. It applies statutory, conceptual and comparative approaches to Law No 32 of 2009 as amended by Law No 6 of 2023, Law No 1 of 2023 on the Criminal Code, Supreme Court Regulation No 13 of 2016, decisions of the International Court of Justice, and doctrine from England, Canada and the Netherlands. Due diligence is a standard of conduct, not of result. Indonesian law already gives it a place: article 48 of the Criminal Code and article 4(2) of the Regulation make a failure to take preventive steps a basis of corporate fault. Due diligence is therefore best used as a relevant factor in assessing fault, rather than a universal element or an automatic exemption. The PT National Sago Prima proceedings turned on strict civil liability and a modest fine, not on due diligence. Clearer guidance on compliance evidence is recommended.

Keywords

Corporation; Liability; Diligence; Environment; Negligence; Compliance



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Introduction

Environmental harm caused by business is now treated as a problem for criminal law and not only for regulation. Fires, pollution and waste from industrial activity damage ecosystems and the health of people who had no say in the decision, and the actors capable of such damage are mostly corporations rather than individuals.¹ The difficulty for enforcement is seldom proving that damage occurred. It lies in attributing fault to an entity that has no mind or body of its own, and in doing so without punishing a company that did everything reasonably expected of it.² The due diligence principle is a candidate bridge between the administrative duties of a business and its criminal liability, because it asks what a careful operator would have done to anticipate and prevent the harm.

The principle has roots in public international law. In the *Corfu Channel* case the International Court of Justice held that a state must not knowingly allow its territory to be used for acts contrary to the rights of other states.³ Later decisions on pulp mills, a road along a border river and, in 2025, climate change developed it into a duty to prevent significant environmental harm through measured and informed action.⁴⁵ The UN Guiding Principles on Business and Human Rights then carried the idea to companies, which should identify, prevent, mitigate and account for adverse impacts of their operations.⁶ The scholarly debate about this transfer is lively. Bonnitcha and McCorquodale argue that the Guiding Principles use “due diligence” in two senses, as a risk-management process and as a standard of conduct, without explaining their relationship, and Ruggie and Sherman reply that the reading proposed would reduce the remedial responsibilities of companies.⁷⁸ A comparable debate about the legal meaning of due diligence among states is collected in a recent volume, and Kulesza and Barnidge study it as a standard of conduct.⁹¹⁰¹¹

¹ Elisa Morgera, *Corporate Accountability in International Environmental Law* (Oxford: Oxford University Press, 2009).

² Michael G Faure, “The Revolution in Environmental Criminal Law in Europe” (2017) 35:2 *Virginia Environmental Law Journal* 321.

³ *Corfu Channel* (United Kingdom v Albania) (Merits), [1949] ICJ Rep 4 at 22.

⁴ *Pulp Mills on the River Uruguay* (Argentina v Uruguay), Judgment, [2010] ICJ Rep 14, para 101.

⁵ *Obligations of States in respect of Climate Change* (Advisory Opinion) (23 July 2025), International Court of Justice, paras 135–139.

⁶ United Nations, Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc A/HRC/17/31 (2011).

⁷ Jonathan Bonnitcha & Robert McCorquodale, “The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights” (2017) 28:3 *European Journal of International Law* 899.

⁸ John G Ruggie & John F Sherman III, “The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale” (2017) 28:3 *European Journal of International Law* 921.

⁹ Heike Krieger, Anne Peters & Leonhard Kreuzer, eds, *Due Diligence in the International Legal Order* (Oxford: Oxford University Press, 2020).

¹⁰ Joanna Kulesza, *Due Diligence in International Law* (Leiden: Brill Nijhoff, 2016).

¹¹ Robert P Barnidge Jr, “The Due Diligence Principle Under International Law” (2006) 8:1 *International Community Law Review* 81.

Scholarship on corporate criminal liability has meanwhile concentrated on how to attribute the acts and fault of natural persons to the company. The identification doctrine equates the fault of senior officers with that of the company; vicarious liability makes the employer answer for agents; and newer approaches look at the organisation itself, through its culture or its systems.¹² Each has limits in a decentralised enterprise. Studies of the due diligence defence in the Netherlands and England show that the way in which preventive effort is treated differs sharply between legal systems and that its scope is often unclear.¹³ Critical work on compliance warns that programmes created to shift liability may not reduce wrongdoing, and that evidence of compliance may do more to protect the firm than to prevent offences.^{14,15} These studies, however, treat corruption and general corporate wrongdoing. Few examine the position of due diligence in environmental crime, and none that the authors have been able to verify relate it to the provisions on corporate fault introduced in Indonesia by the Criminal Code of 2023.

Indonesian law is a revealing case for three reasons. First, enforcement against burning and pollution has relied heavily on strict liability, yet article 88 of Law No 32 of 2009 is a rule of civil liability for damage, not a basis of criminal fault.¹⁶ Second, Law No 1 of 2023 on the Criminal Code, in force since 2 January 2026, now regulates corporate criminal liability in articles 45 to 50, and one of the grounds in article 48 is a failure to take the steps required for prevention.¹⁷ Supreme Court Regulation No 13 of 2016 contains a similar criterion for the judge.¹⁸ Third, the leading corporate fire case, that of PT National Sago Prima, has been described as a triumph for corporate liability even though, as shown below, the criminal and civil proceedings were decided on other grounds. The gap is thus not that Indonesian law lacks any link between prevention and fault, but that the link has not been analysed or used.

This article therefore makes three contributions. It places due diligence in Indonesian environmental and corporate criminal law, using the provisions in force in October 2026. It distinguishes the functions that due diligence can have in proof of corporate fault, namely element, defence and evaluative factor. And it corrects the usual account of the PT National Sago Prima proceedings. Three research

¹² Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed (Oxford: Oxford University Press, 2001).

¹³ Bram Meyer, Tessa van Roomen & Eelke Sikkema, "Corporate Criminal Liability for Corruption Offences and the Due Diligence Defence: A Comparison of the Dutch and English Legal Frameworks" (2014) 10 *Utrecht Law Review* 37.

¹⁴ William S Laufer, "Corporate Liability, Risk Shifting, and the Paradox of Compliance" (1999) 52:5 *Vanderbilt Law Review* 1341.

¹⁵ Todd Haugh, "The Criminalization of Compliance" (2017) 92:3 *Notre Dame Law Review* 1215.

¹⁶ Law No 32 of 2009 on Environmental Protection and Management (Indonesia), art 88.

¹⁷ Law No 1 of 2023 on the Criminal Code (Indonesia), art 48.

¹⁸ Supreme Court Regulation No 13 of 2016 on Procedures for Handling Criminal Cases by Corporations (Indonesia), art 4(2).

questions follow. (1) How is the due diligence principle standardised in international and Indonesian environmental law? (2) Should compliance with due diligence be a ground of exemption from criminal liability, or the failure to exercise it a required element in proving corporate fault, or neither? (3) What does the PT National Sago Prima case show about the use of the principle in Indonesian enforcement? The purpose is to propose a workable role for due diligence in the proof of corporate fault for environmental crime, so that the right of everyone to a good and healthy environment is protected without imposing liability on companies that took reasonable care.¹⁹

Research Method

This is normative (doctrinal) legal research with a qualitative approach. It involved no fieldwork, interviews or personal data. Three approaches were used. The statutory approach examined Law No 32 of 2009 as amended by Law No 6 of 2023, Government Regulation No 22 of 2021, Law No 1 of 2023 and Supreme Court Regulation No 13 of 2016. The conceptual approach clarified due diligence, negligence, strict liability, corporate mens rea and organisational fault. The comparative approach looked at England, Canada and the Netherlands, chosen because their courts and legislators have dealt most explicitly with due diligence as a defence or as a duty of care, and at international decisions and instruments of the International Court of Justice, the United Nations, the OECD and the European Union.

Primary materials are legislation, court decisions and international instruments. Secondary materials are books and journal articles on corporate criminal liability, due diligence and environmental law, collected through library research. The interpretation applied is systematic (reading provisions in their place in the statute), grammatical and teleological. The legal position is stated as at October 2026. The full texts of the judgments in the PT National Sago Prima proceedings could not be consulted, so the account of those proceedings relies on published reports of them and is limited accordingly. The analysis is presented descriptively and analytically.

Results and Discussion

Due Diligence as a Standard of Conduct in International and Indonesian Law

¹⁹ Constitution of the Republic of Indonesia 1945, art 28H(1).

Due diligence is a standard of conduct, not of result. An actor that takes reasonable and adequate steps, measured against the risk and its own capacity, has complied even if harm occurs; an actor that fails to take such steps is at fault even if harm is avoided by luck. The International Court of Justice applied this reasoning in *Pulp Mills*, where it found no conclusive evidence that Uruguay had failed to act with the requisite degree of due diligence and so found no breach of the substantive duty, although it had breached procedural duties of notification and consultation.²⁰ In the *Costa Rica v Nicaragua* judgment of 2015 the Court confirmed that a state planning an activity that risks significant transboundary harm must first assess its environmental impact.²¹ In its advisory opinion of 23 July 2025 on climate change the Court described the due diligence standard for preventing significant harm to the climate system as stringent, and said that a state may be responsible for failing to regulate private actors under its jurisdiction.²² These decisions bind states, not companies. They matter for this study because they supply the vocabulary of risk assessment, proportionality to capacity and evidence of effort that national courts borrow when asked what a reasonable operator should have done.

For companies the main source is soft law. The Guiding Principles ask business to identify, prevent, mitigate and account for adverse impacts, and the OECD Guidance describes the process as continuous and risk-based, with assessment, integration, tracking and communication of results.^{23,24} The conceptual dispute noted in the introduction has a practical consequence. If due diligence is only a process, a company with documents satisfies it; if it is also a standard of conduct, the question is whether the process was adequate in light of the risk.²⁵ Criminal courts need the second meaning. A paper programme is no evidence of care, a point that critics of compliance make forcefully.^{26,27}

Binding rules are appearing in the European Union. Directive (EU) 2024/1760 requires large companies to identify and address adverse human rights and environmental impacts in their chains of activities.²⁸ It has since been narrowed. The amending directive of the Omnibus I package, published in the Official Journal on

²⁰ *Pulp Mills*, *supra* note 4.

²¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, Judgment, [2015] ICJ Rep 665.

²² ICJ Climate Opinion, *supra* note 5.

²³ UN, *Guiding Principles*, *supra* note 6.

²⁴ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (Paris: OECD Publishing, 2018).

²⁵ Bonnitcha & McCorquodale, *supra* note 7.

²⁶ Laufer, *supra* note 14.

²⁷ Haugh, *supra* note 15.

²⁸ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence.

26 February 2026, raised the scope thresholds, removed the EU-wide civil liability regime and the duty to adopt a climate transition plan, and capped maximum penalties at 3 per cent of net worldwide turnover.²⁹ The lesson for Indonesia is twofold. Due diligence is moving from voluntary to mandatory regulation, but the content and sanction of the duty remain contested, so that Indonesian law should not wait for a foreign model and can work with provisions it already has.

In Indonesian law the duty is not called due diligence but is present in several forms. Article 28H(1) of the Constitution guarantees a good and healthy environment, and article 28I(1) lists rights that cannot be derogated, among them the right to life; the manuscript's reading of the latter as covering the environment is not supported by its text, so that the environmental protection duty rests on article 28H.³⁰ Law No 32 of 2009 requires an environmental impact assessment and, after Law No 6 of 2023 and Government Regulation No 22 of 2021, an environmental approval as a precondition of licensing, and it imposes duties on business actors to prevent and control pollution and damage.³¹³²³³ Duties of this kind are exactly what due diligence would measure. The weakness identified in the literature and by the authors is that they are treated as one-off licensing formalities. A permit shows that a risk assessment was done at the time of application; it does not show that the operator kept watch as the risk changed, as with a peatland concession in a dry season. Compliance with a licence is therefore a necessary but not a sufficient indicator of care.

Table 1 summarises the contrast between the formal and the substantive reading of the duty as it appears in Indonesian practice, based on the points above.

Table 1. Formal compliance and due diligence as a continuing duty

Aspect	Formal, licence-based compliance	Due diligence as a continuing, risk-based duty
Time frame	Assessment at the time of the licence application	Monitoring and adjustment throughout the activity, for example in dry seasons
Test	Whether the document exists and the permit conditions are formally met	Whether the steps taken were adequate to the foreseeable risk and the company's capacity
Evidence	Permits, approvals, reports to the authority	Risk assessments, equipment, trained staff, monitoring records, responses to warnings
Effect in proof of fault	Weak: shows only that a formality was met	Relevant: shows that organisational care was or was not exercised

Source: author's analysis of Law No 32 of 2009, Law No 1 of 2023 and the literature cited.

²⁹ Latham & Watkins, "EU Sustainability Omnibus Published in the Official Journal", online: *Latham & Watkins* <<https://www.lw.com/en/insights/EU-Sustainability-Omnibus-Published-in-the-Official-Journal>>.

³⁰ 1945 Constitution, *supra* note 19, arts 28H(1), 28I(1).

³¹ Law No 32 of 2009, *supra* note 16.

³² Law No 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation as Law (Indonesia).

³³ Government Regulation No 22 of 2021 on the Implementation of Environmental Protection and Management (Indonesia).

Due Diligence in the Proof of Corporate Criminal Liability

Corporate criminal liability requires attributing an act and fault to a legal person. The traditional routes are the identification doctrine, under which the fault of the “directing mind” is the fault of the company, vicarious liability for employees, and, in some systems, aggregation of the knowledge of several persons.³⁴ The classic English statement is *Tesco Supermarkets Ltd v Natrass*, in which the House of Lords held that a branch manager was not the directing mind of the company, and accepted the statutory due diligence defence under section 24 of the Trade Descriptions Act 1968.³⁵ The case is thus an example of the identification doctrine and of a statutory defence; the later notion of organisational failure to prevent is a different development. The Privy Council in *Meridian* added that attribution depends on the purpose of the rule applied and not on a fixed list of persons.³⁷

The comparative material shows three positions for the preventive effort of a company. In England, section 7 of the Bribery Act 2010 makes it an offence for a commercial organisation to fail to prevent bribery by associated persons, and the organisation has a defence if it can prove that it had adequate procedures; due diligence is a burden on the defendant, not an element the prosecutor must prove.³⁸ In Canada, *R v Sault Ste Marie* created a middle category of strict liability offences in which the prosecution proves the prohibited act and the accused may escape by showing on the balance of probabilities that it took all reasonable care.³⁹ The comparative study of Meyer, van Roomen and Sikkema found that in the Netherlands the scope of the duty of care to prevent corruption is vague, whereas in England due diligence has a fixed place in liability, and recommended official guidance with concrete examples.⁴⁰ The manuscript adds that Dutch environmental statutes impose a duty of care (*zorgplicht*) that makes diligence a legal requirement; this is plausible but needs a statutory citation before it is relied on.

Table 2 sets out the three functions, with the comparative illustration of each.

Table 2. Possible functions of due diligence in proving corporate fault

Function	Who bears the burden	Illustration	Consequence
Element of the offence	Prosecutor must prove a failure of due diligence	Offences of negligence based on a duty of care	Strong preventive effect, but heavy evidentiary burden in complex cases

³⁴ Wells, *supra* note 12.

³⁵ *Tesco Supermarkets Ltd v Natrass*, [1972] AC 153 (HL).

³⁶ Trade Descriptions Act 1968 (UK), c 29.

³⁷ *Meridian Global Funds Management Asia Ltd v Securities Commission*, [1995] 2 AC 500 (PC).

³⁸ Bribery Act 2010 (UK), c 23, s 7.

³⁹ *R v Sault Ste Marie (City)*, [1978] 2 SCR 1299.

⁴⁰ Meyer, van Roomen & Sikkema, *supra* note 13.

Defence	Defendant shows reasonable care	Bribery Act 2010 (UK), s 7; Canadian strict liability offences	Rewards compliance, but depends on a statute and on a reverse burden
Evaluative factor	The judge weighs all evidence of organisational care	Indonesia: Law No 1 of 2023, art 48; Regulation No 13 of 2016, art 4(2)	Flexible, but open to inconsistent use unless criteria are developed

Source: author's analysis of the instruments and studies cited.

In Indonesia the third function is the one already provided by law. Article 45 of Law No 1 of 2023 makes corporations subjects of criminal law, and article 48 lists the grounds on which the offence of a corporation may be attributed to it. As reported in secondary sources, these include acts within the scope of the corporation's business, benefit to it, acceptance as corporate policy, and a failure to take the steps necessary to prevent the offence, to prevent a greater impact and to ensure compliance with the law.⁴¹ Supreme Court Regulation No 13 of 2016 contains a close criterion for the judge when assessing corporate fault, namely that the corporation obtained benefit, allowed the offence or did not take the preventive steps required.⁴² The exact lettering and wording of both provisions should be checked against the official texts. What matters for the argument is the structure. A failure of prevention is expressly a ground of liability, that is, it is part of what the prosecutor can prove, and there is no statutory defence of adequate procedures. The Indonesian position is therefore neither the English defence nor a pure identification rule.

The special environmental provisions point the same way. Article 116 of Law No 32 of 2009 allows prosecution of the business entity and of those who gave the order or led the activity, and article 118 treats the entity as represented by its authorised management. The elucidation of article 118 describes "accepting" the act as including approving, allowing or failing to supervise adequately, and article 119 adds penalties such as the removal of profits, closure and the obligation to repair.⁴³ Failure to supervise adequately is the language of due diligence. The statute thus already links inadequate internal control to liability; what is missing is a method for deciding when control was adequate.

Should due diligence then be an element, a defence or a factor? The manuscript's three possible positions can be tested against Indonesian law. As a universal element it would require prosecutors to prove in every case the details of internal systems to which they have no access, and it would add a requirement not found in articles 98, 99 and 108 of Law No 32 of 2009 for the burning of land. As an automatic exemption it would contradict the purpose of the environmental offences and allow

⁴¹ Law No 1 of 2023, *supra* note 17, arts 45, 48.

⁴² Regulation No 13 of 2016, *supra* note 18, art 4(2).

⁴³ Law No 32 of 2009, *supra* note 16, arts 116, 118, 119.

a company to avoid liability by showing a manual of procedures, the paradox that Laufer identified.⁴⁴ The evaluative approach avoids both problems and fits the wording of article 48 and Regulation No 13 of 2016. It should, however, be disciplined. Adequate evidence of care can be set out in criteria, for instance a documented risk assessment specific to the site, resources in proportion to the risk, trained staff, monitoring and reporting channels, and a record of reaction to earlier incidents. Evidence of this kind mitigates or excludes fault, while its absence is evidence of organisational negligence.

The point about strict liability also needs correction. The manuscript treats strict liability as the opposite of a due diligence approach and as the usual basis of environmental enforcement. Article 88 of Law No 32 of 2009 concerns the civil liability of those who use or manage hazardous substances or pose a serious threat to the environment; it is not a ground of criminal liability. Secondary commentary also reports that Law No 6 of 2023 removed from the article the phrase that fault need not be proved, which the authors should verify against the consolidated text.⁴⁵⁴⁶ If so, the contrast between strict liability and due diligence is less sharp than the manuscript suggests: civil claims for damage may be pursued on a lighter standard, while criminal liability needs fault, which corporate due diligence evidence can establish or rebut. The fair argument is not that strict liability should be replaced, but that in criminal cases fault should be judged by organisational care.

The PT National Sago Prima Proceedings

The manuscript presents the PT National Sago Prima (NSP) matter as a decision of the North Jakarta District Court that applied strict liability and imposed a large restoration order. Published reports show a more complex picture involving separate criminal and civil proceedings.

In the criminal case the Bengkalis District Court on 22 January 2015 fined the company Rp2 billion for forest and land fires in Tebing Tinggi Timur, Kepulauan Meranti, Riau, over an area reported as 21,418 hectares, while it acquitted the general manager and the factory manager. Prosecutors had demanded a fine of Rp1.4 trillion. An environmental law expert criticised the result as ignoring future ecological loss.⁴⁷ The disparity between the demand and the fine, and the acquittal

⁴⁴ Laufer, *supra* note 14.

⁴⁵ Law No 32 of 2009, *supra* note 16, art 88.

⁴⁶ Law No 6 of 2023, *supra* note 32.

⁴⁷ “Pakar: Vonis NSP Nodai Keadilan Lingkungan, Mengapa? [Expert: The NSP Verdict Stains Environmental Justice, Why?]" (26 January 2015), online: *Mongabay Indonesia* <<https://mongabay.co.id/2015/01/26/pakar-vonis-nsp-nodai-keadilan-lingkungan-mengapa/>>.

of the managers while the company was convicted, are the points relevant here. The company was held liable even though no individual fault was found, which is consistent with organisational liability; but the report does not show what reasoning led to the conviction or whether the court asked what preventive measures had been taken, so it cannot be said to be a due diligence judgment.

The large restoration and compensation orders belong to the civil proceedings brought by the Ministry of Environment and Forestry. The South Jakarta District Court upheld the claim in August 2016, with one dissent, reasoning that the company remains responsible for fires in its permit area whether or not it caused them.⁴⁸ The Jakarta High Court declared the suit inadmissible on 4 December 2017, and the Supreme Court in Decision No 3067 K/Pdt/2018 of 17 December 2018 granted the ministry's cassation appeal and ordered NSP to pay a total of Rp1 trillion for compensation, recovery and rehabilitation.⁴⁹ Reports give the lower-court award as Rp319 billion in compensation and Rp753 billion in recovery costs and differ slightly on dates; the judgments themselves should be consulted before these figures are cited.

Three consequences follow for the argument. First, the notable sanctions came from civil strict liability, which is what the manuscript treats as the problem; the criminal fine was low. Second, the factual findings the manuscript lists, such as the lack of watchtowers, reservoirs and a trained fire team, are the kind of evidence on which a due diligence assessment would rest, but the sources available to this study do not show that the courts used them as evidence of fault, and the assertion that the failures were chosen to save cost is not established. Third, the case illustrates the gap discussed above: the company's control of the concession was enough for civil responsibility, while criminal liability produced a modest fine and no personal liability. A systematic assessment of preventive effort, of the kind article 48 now permits, would give the criminal court a principled way to decide fault for the company and to decide, under article 116, whether leaders who allowed the failure should answer as well.

The case also shows the value of combining remedies. Orders to restore peatland and to block canals to keep peat wet look to prevention as well as repair, and give effect to the polluter-pays principle by placing the costs of restoration on the

⁴⁸ Mohamad Agus Yozami, "Ini Hal Menarik dalam Putusan PT NSP vs KLHK [Interesting Points in the PT NSP v Ministry Decision]" (12 August 2016), online: *Hukumonline* <<https://www.hukumonline.com/berita/a/ini-hal-menarik-dalam-putusan-pt-nsp-vs-klhk-lt57ad6d39dfc5a>>.

⁴⁹ Indra Nugraha, "Mahkamah Agung Menangkan Kementerian Lingkungan, PT NSP Harus Bayar Rp1 Triliun [Supreme Court Rules for the Environment Ministry, PT NSP Must Pay Rp1 Trillion]" (3 January 2019), online: *Mongabay Indonesia* <<https://mongabay.co.id/2019/01/03/mahkamah-agung-menangkan-kementerian-lingkungan-pt-nsp-harus-bayar-rp1-triliun/>>.

operator; article 119 of Law No 32 of 2009 provides for comparable measures in criminal cases.⁵⁰

Comparison with Earlier Research

Table 3 places the findings against the studies discussed in the introduction.

Table 3. Earlier research and the contribution of this article

Study	Focus and finding	Contribution of this article
Bonnitcha & McCorquodale (2017); Ruggie & Sherman (2017)	Two senses of due diligence in the Guiding Principles, process and standard of conduct; dispute over remedial responsibility	Uses the distinction to argue that criminal courts need the standard-of-conduct meaning
Meyer, van Roomen & Sikkema (2014)	Due diligence defence for corruption in the Netherlands and England; vague scope in Dutch law	Extends the comparison to environmental offences and to the Indonesian Criminal Code
Laufer (1999); Haugh (2017)	Compliance may shift risk and be ineffective	Basis for requiring a substantive and not documentary test of care
Wells (2001)	Doctrines of attribution to corporations	Shows how organisational failure to prevent complements identification
International Court of Justice (2010, 2015, 2025)	Due diligence as a standard of conduct for states	Used as source of criteria for judging corporate care

Source: compiled from the studies cited.

The findings agree with Bonnitcha and McCorquodale that the content of due diligence must be settled and not left to process, and with Laufer and Haugh that compliance evidence cannot be accepted at face value. They agree with Meyer and colleagues that the legal effect of due diligence differs among systems and that official guidance helps. They differ from the manuscript's premise that modern international standards have made due diligence measurable and enforceable against companies: the binding instruments are for states, and the European rules for companies were narrowed in 2026. They also differ from the premise that Indonesian law lacks a doctrinal anchor: articles 45 to 50 of the Criminal Code and article 4(2) of Regulation No 13 of 2016 already supply one, and what is needed is criteria for applying it.

The study has limits. It is normative; it relies on published reports of the NSP proceedings and not on the judgments; some statutory details are stated from secondary sources and should be confirmed; and it does not survey how Indonesian courts have applied article 48 since 2 January 2026, which would require empirical work.

Conclusion

On the first question, due diligence is a standard of conduct, developed in international law for states and extended to companies mainly through soft law

⁵⁰ Law No 32 of 2009, *supra* note 16, art 119.

and, in Europe, legislation that is still contested. Indonesian law does not use the term but contains the duty in the environmental approval, the duties of business actors and the provisions on supervision. On the second, due diligence in Indonesia should neither be a universal element of proof nor a complete exemption. Article 48 of Law No 1 of 2023 and article 4(2) of Regulation No 13 of 2016 make a failure to prevent a ground of corporate fault, and due diligence is best treated as a structured evaluative factor: evidence of adequate care counts against fault, and its absence counts for it. On the third, the NSP proceedings, as reported, were decided on civil strict liability and a modest criminal fine, not on due diligence; they show the need for the approach rather than its use.

Four recommendations follow. First, the Supreme Court should issue guidance, by amending or supplementing Regulation No 13 of 2016, on the criteria for adequate preventive effort in environmental cases. Second, prosecutors should plead and prove failure of prevention under article 48, together with article 116 of Law No 32 of 2009 for those in leadership. Third, regulators should treat environmental approval as a continuing duty with monitoring and reporting, so that licence compliance is not mistaken for care. Fourth, the legislature should consider whether adequate preventive procedures should be a defence with a clear burden of proof, as in the Bribery Act 2010.

Future research should obtain and analyse the full texts of the NSP judgments and of decisions applying article 48 since 2026, and test the criteria proposed here on a larger set of cases.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

Funding and Conflicts of Interest

The authors declare no conflict of interest. This research received no external funding.

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