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The Dilemma and Countermeasures of Public Interest Litigation of Marine Environmental Pollution in China

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Abstract: Cases of marine environmental pollution (MEP), such as condensate leakage in the *Sanchi* case, not only directly infringe on private personal health and property rights, but also cause serious damage to the marine ecological environment. This paper analyzes dozens of MEP cases and summarizes the typical rights, interests, and remedies under Chinese law. Traditional tort liability legislation remedies the problem of infringement of private interests by environmental torts through compensation and punitive damages but it cannot reverse the damage to the marine ecological environment. Traditional civil legislation is built on the basis of rights and interests regarding damages and relief. MEP infringes on a wide range of citizens' environmental rights and should be addressed by the environmental public interest litigation (EPIL), which is an important way to protect citizens' environmental rights. This paper analyzes the legal interests, relief measures, and limitations of the existing EPIL legislation that is applicable to MEP cases under Chinese law, so as to make corresponding legislative suggestions.

Keywords: environmental rights; legal remedies; public power; private rights

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1. Introduction

In 2015, the Scheme for the Reform of the Compensation System for Ecological Environmental Damage [1] defined, for the first time, ecological environmental damage (EED); that is, adverse changes to environmental elements such as atmosphere, surface water, groundwater, soil, and biological elements such as plants, animals, and micro-organisms caused by environmental pollution and ecological destruction, as well as the degradation of ecosystem functions involving the above elements [2]. Marine environmental pollution (MEP), such as oil spills from ships [3], dumping of waste [4], and microplastic pollution [5], causes irreversible ecological damage to the marine environment, soil, and air [6]. What can be done about the problem of EED caused by MEP?

Traditionally, in China, the environmental damage that private law is concerned with is mainly the infringement of personal body and property interests of individuals by pollution [7]. From the definition of EED, it can be seen that the concept emphasizes the damage of environmental pollution acts or events to ecological environmental public interests rather than to private interests [8]. MEP's damage to personal well-being and property rights can be remedied through private interest litigation [9]. The infringement of the ecological environment caused by MEP involves the public interests of a wider group [10]. The consequences of infringement are non-intuitive, long-term, latent, and extensive [11]. It will be difficult to prevent and punish in the traditional way of investigating the causal relationship of tort liability [12]. At present, China's legislation and judicature have many shortcomings and difficulties in dealing with EED cases that do not involve private interests but only involve public interests.

This article aims to solve the problem: in China, how should EED be remedied? In order to solve the above problems, this paper will study three aspects: First, what is the relationship between EED caused by MEP and EPIL? Second, the main contents of China's

existing legal system of EPIL. Third, a summary of the typical problems in judicial practice when the above provisions apply to cases of EED.

This paper is structured as follows. Section 2 presents the methodological framework of this study, explores the typical MEP case, *Sanchi*, and analyzes the EED problems caused by *Sanchi*. Section 3 explains how the EED caused by MEP is a violation of citizens' environmental rights and the most effective and necessary relief measure for the infringement of this right is EPIL. Section 4 divides China's existing litigation legislation on EED into two categories: marine natural resources and other natural resources. It summarizes the characteristics of China's existing public interest litigation legislation on ecological environmental damage and analyzes the difficulties faced when it is applied to MEP. Based on the analysis of the previous content, Section 5 puts forward corresponding suggestions about the legislative system of public interest litigation of MEP. Section 6 presents conclusions.

2. Methodology

Through qualitative research, this study discusses the nature of EED caused by MEP, the relationship between EED and citizens' environmental rights, public interest litigation, and the necessity of public interest litigation relief for EED.

Two data collections were used to conduct the qualitative research. Through the method of analyzing the literature, this study collects and sorts out the main legal documents related to EPIL in China in the past decade. This includes, but is not limited to, laws, regulations, administrative rules, and judicial interpretations, and divides them into two categories: those that pollute the marine natural environment and those that pollute other natural resources and environments. Through review of the literature, this study summarizes the types of EPIL in China, the subjects who have the right to file such litigation, the causes of EPIL, and the main procedures. Second, through case collections and analysis, this study sums up the types of rights and interests that are usually violated in MEP cases, relief measures, and remaining problems. By searching the MEP cases through the China Judicial Documents Network, 81 cases were found from 2020 to September 2022 [13]. Most of them involve the infringement of private property rights and personal rights, which are remedied through tort litigation. Fifteen cases involved violations of natural resources and EED.

This study focuses on typical cases such as *Sanchi*. On 6 January 2018, the Panamanian ship *Sanchi* collided with the Hong Kong bulk carrier CF Crystal. The whole ship *Sanchi* caught fire, taking the lives of 32 people while causing a vast oil spill [14]. *Sanchi* was loaded with 136,000 tons of condensates. "Condensate" is a generic term used to describe a variety of very low-density, low-viscosity liquid hydrocarbons that typically occur along with natural gas [15]. Condensates can exist separately from crude oil or be combined with it. They contain toxic hydrogen sulfide, mercaptan, and other components, which cause certain pollution to the atmosphere and the sea after volatilization. Meanwhile, they generate toxic fumes, such as nitric oxide, nitrogen dioxide, nitrogen oxide, and sulfur oxide after combustion and decomposition, which poisons the human body through inhalation and skin invasion [16]. The spilling of oil or condensates will have a long-term impact on the surrounding marine ecological environment for decades [17].

The oil spill from *Sanchi* damaged not only people's lives and private property but also marine natural resources and the environment. China's provisions on compensation for oil pollution damage from ships are mainly in the Chinese Civil Code [18], the Marine Environment Protection Law, and the Maritime Code [19]. According to the above-mentioned laws, the basic principle is that whoever leaks oil shall pay compensation [20]. Anyone whose property or personal rights have been damaged by oil pollution has the right to claim compensation from the relevant parties of *Sanchi*. The remaining problem is that *Sanchi* has caused a large area of pollution to the offshore environment and the ecological environment has suffered serious irreversible damage. Who will make a claim? On what basis is the claim made? How about the existing legal system of EPIL in China, and what are the dilemmas applicable to the above claims? This will all be analyzed below.

3. The Necessity of Public Interest Litigation of MEP

3.1. MEP Violates Citizens' Environmental Rights

Private law is concerned with the definition, regulation, and enforcement of rights in cases where both the person to whom the right inheres and the person upon whom the obligation rests are private individuals [21]. The legal system of private law is based on rights and interests and also damages and relief, in which rights and interests mainly refer to exclusive private interests. MEP will cause damage to private personal and property rights, which will lead to relief through civil tort litigation. Most importantly, MEP violates the environmental rights of a wide range of people. Environmental integrity is the basic right of citizens [22]. It refers to the basic right enjoyed by citizens regarding the environment on which they rely for survival. Jane Hancock believes that "the environmental right is the primary right of human beings". [23] Article 26 of the Constitution stipulates that the state shall protect and improve living environments and the ecological environment and prevent and control pollution and other public hazards. Article 26 of the Chinese Constitution recognizes the environmental rights enjoyed by citizens in the form of state obligations and responsibilities. Environmental rights can be divided into procedural rights (tools used to achieve substantial rights) and substantive rights (fundamental rights). Substantive rights include the right to tranquility, the right to clean air, and the right to enjoy a beautiful environment. Procedural rights prescribe formal steps to be taken in enforcing legal rights. Procedural rights include three fundamental access rights: access to information, public participation, and access to justice [24]. Accordingly, environmental rights are not private rights in the traditional sense, which need to be guaranteed by the government through the use of public power [25]. Environmental rights are obviously different from general private rights, such as creditors' rights or property rights [26].

A creditor's rights involve the exercise of legal devices that assert the rights of creditors to collect debts and judgments [27]. A creditor's right is a human right and its subject of obligation is limited to the parties to the creditor's right relationship, such as a debtor [28]. The content of the creditor's right debt relationship is usually limited to the parties of the debt relationship and may reach a third party only when the law expressly stipulates or when there is a special agreed relationship [29]. Although a property right is a right to the world, the subject of interest in a property right usually belongs to the person to whom it belongs; one thing, one right, is the basic principle of property right [30]. Environmental rights are different from traditional creditors' rights and real rights.

First, environmental rights come from the social contract between citizens and the government [31]. Based on the classification of public property in ancient Roman law, the public trust theory came into being; that is, the state can only enjoy rights as the manager or trustee of public rights [32]. Administrative management can be interpreted as the management of air, water, forests, and other ecological environment elements by the government under the trust of all citizens for the purpose of rational utilization and protection of the ecological environment and for the benefit of the public [33]. In fact, the theory of public trust uses the concept of the social contract to explain the source and connotation of environmental rights [34]. The law of the jungle and survival obstacles are the direct driving forces for individuals to actively explore the state of survival in groups and social organizations [35]. This is also the main reason for the transfer of individual rights and organizational power. Some scholars believe that this combination and transfer can better safeguard individual personal rights and interests and wealth interests [36]. In this demand, the government accepts the entrustment, exercises administrative power, maintains social order, and protects citizens' rights and interests for survival [37].

Based on the social contract with citizens, the government is born with the mission and responsibility of providing public services [38], maintaining the ecological environment, and protecting the basic living environment of citizens [39]. Public goods are products or services that can be consumed or enjoyed by the vast majority of people [40]. Any individual's consumption of a product or service will not reduce others' consumption of this product or service. Public goods are non-competitive, non-exclusive, natural monopolies and

difficult to charge [41]. Environmental resources are non-exclusive and non-competitive public goods [42]. Due to the difficulties encountered by the government in the process of providing public services, today, with the continuous development of the concept of social governance [43], the government has transferred part of its responsibilities and obligations and solved them through a third party (market mechanism) [44]. This is also the core of the new public management concept [45], which brings administrative affairs into the concept and scope of the contract [46]. The basis of the contract is the basic equivalence of rights and obligations, which is the progress of modern public utility management [47]. From this perspective, the government, citizens, and third parties form a triangular relationship of contracts, as shown in Figure 1:

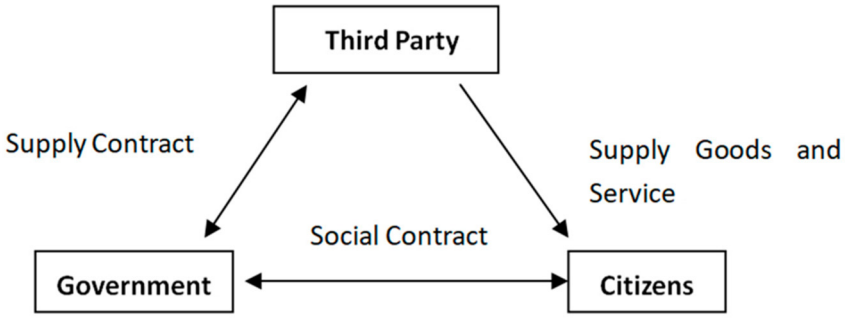

Figure 1. Relationship among the government, citizens, and a third party (Source: author).

Under this triangular relationship, the social contract between the government and citizens stipulates that the government provides public services for citizens and ensures the basic living environment for them [48]. The consideration in exchange is to transfer personal power to the administrative power of the government; the government can reasonably use and develop environmental resources to obtain benefits [49]. This kind of income will eventually be applied to the maintenance of social public services and order. Even if natural resources are owned by the state [50], based on the need to "provide material and organizational guarantees for civil freedom and independent development", the ecological service function cannot be regarded as owned by the state in any case. No matter how the state ownership is expanded, it cannot fully absorb the public interest [51]. In other words, enjoying the ecological benefits of the environment is the inevitable requirement of citizens' environmental rights for the government and the premise of the government's entrusted rights [52]. On the other hand, the government reached an agreement with a third party through a cooperation agreement in the form of development cooperation, which will develop and utilize resources and provide products and services to the public [53]. The basic principle and bottom line of the above agreement are to protect the sustainable use of environmental resources and protect the living environment of the people. Even if the quality of environmental resources is not improved, at least environmental resources should not be destroyed and citizens' survival rights and interests should not be affected.

According to the simple principle of relativity of contract [54], first of all, when the government transfers its responsibilities and obligations, it should and must obtain the consent of citizens [55], which is also the source of citizens' right to know and decision-making power in public affairs [56]. Second, if the quality of public services provided by the third party to citizens has problems or fails to meet the standards in the original agreement between the government and citizens, citizens have sufficient rights and reasons to require the government to assume responsibility [57]. The ways of assuming such responsibilities include, but are not limited to, taking remedial measures as soon as possible, providing services again, and compensating corresponding losses [58]. Whether the service supply is insufficient or inconsistent with the agreement due to the third party of service supply or other reasons, it cannot be the defense for the government to shirk its responsibility; that is, "purchasing" government does not mean the complete transfer of environmental protection obligations [59]. Therefore, citizens' environmental rights come from the social

contract with the government. The obligation subject of this right is the government [60]. The government transfers the responsibility of performing its obligations to a third party through the market mechanism, which requires citizens to know in advance and obtain citizens' consent. In case of environmental problems, the government is the ultimate obligation subject of repairing the environment and ensuring citizens' environmental rights. Therefore, environmental rights have the nature of creditor's rights [61], which come from the social contract with the government and cannot be transferred to a third party without the consent of citizens.

Third, environmental rights have some characteristics of property rights [62] but, because environmental resources can be considered public property, according to the construction of legal property rights systems in different countries, there are obvious differences in ownership, right subjects, and obligation subjects. The property right of ordinary things usually belongs to individuals [63]. As the owner, an individual has the right to possess, use, benefit, and dispose [64]. When there is an infringement of these rights and interests, they have the right to file a lawsuit, requiring them to eliminate the impact, stop the damage, restore the *status quo ante*, and compensate for the losses [65]. However, environmental resources and environmental rights are different. For example, Article 9 of the Chinese Constitution stipulates that all mineral resources, waters, forests, mountains, grasslands, unreclaimed land, mudflats, and other natural resources are owned by the state, that is, by the whole people, except for the forests, mountains, grasslands, unreclaimed land, and mudflats that are owned by collectives as prescribed by law. The state shall ensure the rational use of natural resources and protect rare animals and plants. It is prohibited for any organization or individual to seize or damage natural resources by any means. According to Article 9 of the Chinese Constitution, natural resources are either state-owned, that is, owned by the whole people, or collective-owned. If the ordinary property right is infringed, the owner of the property right can file a claim against the infringer according to the property right; however, if the natural resources owned by the state (the whole people) or collectively are infringed, the subject who can represent the state or collective needs to claim rights against the infringer. At that time, according to the interests represented by the litigation subject belonging to a broader group such as private or public, the litigation forms can be divided into private interest litigation and public interest litigation [66].

3.2. The Relief of Citizens' Environmental Rights Is Public Interest Litigation

Ancient Roman law made a detailed division of objects, which is different from the division rules of modern countries. Ancient Roman law divided legal objects into common objects and public objects [67]. The sea, air, and water belonged to public objects and to the owner. In order to protect the above-mentioned things and rights, ancient Roman legal proceedings also came into being [68]. The division between public interest litigation and private interest litigation is based on the scope of interests maintained by litigation [69].

Similar to the legislation of modern countries, because the design of private interest litigation is mainly to maintain personal ownership, the scope of people initiating such litigation is limited to specific individuals [70]. However, the original intention of legislators in designing the public interest litigation system was to safeguard social public interests. Under this premise, unless prohibited by law, all citizens should have the right to file public interest litigation, which is also confirmed in The Institutes of Justinian [71]. Accordingly, the design of public interest litigation has strict distinctions from private interest litigation at the beginning; as two types of litigation, they have different purposes. It is not the same as the public interest litigation originated from private interest civil litigation in many modern countries. Some scholars equate group litigation in China [72] with public interest litigation, which is not rigorous. Public interest litigation is not the product of the polymerization of litigation initiators, nor for the protection of private interests. It is a logical error to embed the relevant legal system mainly focusing on private interest litigation into the public interest litigation system. Public interest litigation implies a legal action

that is initiated before the court of law for the purpose of the enforcement of a general interest of the public [73]. EPIL is different from environmental private interest litigation. It aims to safeguard the public interest, and any citizen has the right to initiate it [74].

The essence of public trust theory is to establish a trust contract between the public and the government on how to manage and protect the environment and natural resources through abstract legal fiction [75]. Its essence is to achieve the purpose of protecting the environment and natural resources through the mode of "right setting–right claim–right relief". [76] If the state transfers the right of natural resource development and utilization to a third party through agreement, and the third party infringes the environmental rights of the people, who can be the subject of litigation? First, anyone can bring a lawsuit against an infringer. At that time, if the infringement has a direct interest with the plaintiff of the lawsuit, it is an ordinary private interest lawsuit. If it has no direct interest with the plaintiff, the plaintiff is only a litigation activity for the protection of social and public environmental rights and other related rights. At that time, the nature of the litigation is the public interest.

According to the public trust theory put forward by Professor Sax, as the trustee of natural resources, the state has the right to file a lawsuit against the relevant parties when the natural resources are damaged or in danger of damage [77]. At that time, this kind of lawsuit is meant for the protection of social and public environmental rights and is public interest litigation. The result of such litigation may be the assumption of civil liability, administrative liability, or criminal liability. As a group of people, the state cannot appear in court in person, so it assigns this right of action to procuratorial organs or other organizations as a government agent. If these state organs or organizations do not file a lawsuit *ex officio*, any citizen can file a lawsuit in accordance with the theory of public trust and litigation trust, so as to protect the trust property [78].

It is both the right and obligation of the government to file such a lawsuit to safeguard the natural environment and protect the environmental rights of the people. This is also reflected in Article 26 of the Chinese Constitution, which means that when the government fails to file such a lawsuit in time to maintain the natural environment, it should face legal consequences. Some scholars call this the "responsibility system of ecological environment administration". [79] People have the right to supervise and they should have the right to bring administrative public interest litigation for government inaction. This kind of administrative public interest litigation is different from ordinary administrative litigation in terms of purpose and means [80]. Ordinary administrative public interest litigation is aimed at the specific administrative acts of administrative organs, while environmental administrative public interest litigation may be aimed at the abstract administrative acts of administrative organs and even the relevant acts or omissions that violate people's environmental rights, which should be within the scope of such litigation.

Litigation is a form of relief for the protection of relevant rights and interests. Under the concept of no rights without a remedy, the rights and interests without the protection of a perfect litigation system are naked rights, which are extremely vulnerable to infringement [81]. After being infringed, due to the lack of reasonable relief, the widespread infringement of rights and interests will occur again and again, forming a vicious circle. EPIL is one of the relief mechanisms of environmental rights and is also one of the most important ones. Therefore, when MEP infringes on citizens' environmental rights, public interest litigation should be brought. To sum up, the rights and interests infringed by marine environmental pollution and the corresponding litigation remedies are shown in Figure 2.

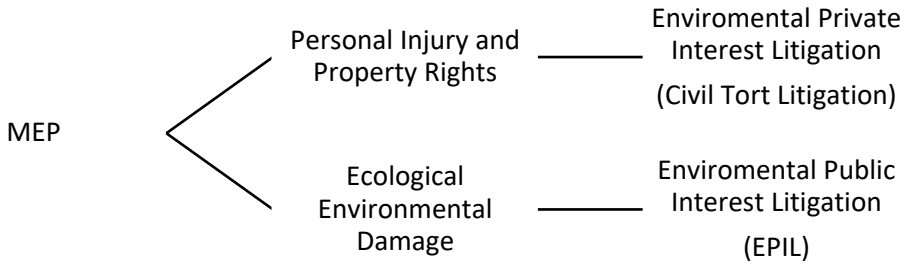

Figure 2. MEP and litigation (Source: author).

4. Analysis and Discussion: Difficulties Faced by Public Interest Litigation Relief of MEP

EPIL is a type of litigation that aims to safeguard social public environmental interests. It is usually caused by environmental infringement [82]. Ecological environmental violations generally cause double damage to private interests and public interests at the same time [83]. The aspect of environmental infringement that compromises the public interest and is generally harmful to society should be addressed by public interest litigation. At present, the relevant legislation on EPIL in China is mainly a two-track system, which can involve disputes over marine natural resources and the ecological environment and disputes over other natural resources and the ecological environment. The legislation related to the marine ecological environment is a field that our country has tried first in environmental protection legislation; the legislation in other natural resources fields has been gradually carried out on that basis.

4.1. Legislation Related to Public Interest Litigation for Disputes over Marine Natural Resources and Ecological Environment

China's earliest provisions that stipulate the substantive content of the EPIL system appear in the Marine Environmental Protection Law [84]. The law has been amended four times. Article 4 of the law stipulates that the protection of the marine environment by the whole public is both a right and an obligation. At the same time, the people have the right to supervise the marine environment supervision and management personnel. Although the law does not propose specific measures, the provision confirms the principle that the marine environment belongs to the public resources of the people. Article 89 of the law establishes that the main body that represents the state to safeguard the marine environment and claims compensation from the responsible party is the department with the right to supervise and manage the marine environment. However, the law does not further specify which departments have the right to supervise and manage the marine environment and what their respective authorities are. However, this article clarifies the premise for the Department of Environmental Supervision and Management to file a damage-compensation lawsuit, that is, to address the destruction of the marine ecosystem, marine aquatic resources, protected marine areas, and heavy losses to the country. The provisions of the law consider the damage to the marine environment to be a special type of tort and the claim mechanism is constructed according to the rules of tort liability and damage compensation.

In 2017, the Supreme People's Court issued the Provisions on Several Issues concerning the Trial of Disputes over Compensation for Damage to Marine Natural Resources and the Ecological Environment [85] (hereinafter TDCDMNREE). Article 2 of TDCDMNREE defines the case of damage to marine natural resources and the ecological environment, that is, the case of damage to marine natural resources and the ecological environment in the sea areas under the jurisdiction of the people's Republic of China, caused by activities at sea or in coastal land areas. Article 3 of TDCDMNREE further explains the basic rules for the "organ exercising the right to supervise and manage the marine environment" in the Marine Environment Protection Law to file a lawsuit; the "division of functions" is the basis for determining the qualified subject of the lawsuit. Article 6 of TDCDMNREE

stipulates that if the organ exercising the power of supervision and administration of the marine environment in accordance with the law requests the person responsible for the damage to the marine natural resources and ecological environment to bear civil liabilities such as stopping the infringement, removing the obstruction, eliminating the danger, restoring the original state, making an apology, and compensating for losses, the people's court shall reasonably determine that the person responsible bears civil liabilities according to the litigation request and the specific circumstances of the case. Article 7 of TDCDMNREE stipulates that the scope of compensation for the loss of marine natural resources and ecological environment includes: (1) the cost of preventive measures, that is, the cost of reasonable emergency response measures taken to reduce or prevent marine environmental pollution, ecological deterioration and the reduction of natural resources; (2) restoration cost, that is, the cost of taking or about to take measures to restore or partially restore the damaged marine natural resources and ecological environment functions; (3) loss during restoration, that is, the loss of marine natural resources and eco-environmental services before the partial or complete restoration of damaged marine natural resources and eco-environmental functions; (4) and investigation and assessment costs, that is, the costs incurred in investigating, exploring, and monitoring the polluted area and assessing the damage risk and actual damage such as pollution. TDCDMNREE clarifies the trial procedures of the People's Court, the potential liability of the responsible party, and the scope of compensation for losses. The above provisions continue the provisions of the relevant liability system for special tort damages.

Specifically, in the case of oil pollution damage from ships, such as *Sanchi*, the maritime administrative agency may take necessary measures such as removal, salvage, towing, and pilotage to mitigate pollution damage [86]. The relevant expenses shall be borne by the ships and relevant operation units that cause MEP. It is specified in the law that the relevant expenses arising from the clean-up activities organized by the state administrative units shall be borne by the ships that cause MEP [87]. The proportion of pollution clean-up expenses in the scope of compensation for ship oil pollution is very large. When a ship oil pollution accident occurs and the maritime administrative agency organizes compulsory pollution clean-up, the expenses incurred for this are essentially an act of the maritime administrative agency acting on behalf of the polluter to recover losses and reduce risks [88]. The expenses incurred from the compulsory pollution clean-up should still be compensated by the responsible party. Article 1234 of the Civil Code of the People's Republic of China stipulates the responsibility for ecological environment restoration. If the violation of state regulations causes EED, and the ecological environment can be repaired, the state designated organ or the organization prescribed by law shall have the right to request the infringer to assume the responsibility for repair within a reasonable period of time. If the infringer fails to repair the damage within the time limit, the organ or organization stipulated by the state or the law may repair the damage itself or entrust others to do so, and the costs incurred shall be borne by the infringer. Therefore, the polluter of the oil spill has the responsibility for ecological environment restoration and should repair the damage to the marine ecosystem.

In Article 10, TDCDMNREE clarifies the whereabouts of the compensation for damage. When it is determined that the responsible party is liable for compensation for harm to the marine natural resources and ecological environment, the compensation should be handed over to the state treasury after being received by the relevant authorities. This article confirms that this kind of marine natural resources and ecological environment damage litigation is different from other infringement litigation, and its damage compensation is not attributed to private individuals but to the state and the public.

Article 11 further clarifies that the settlement agreement on damage to marine natural resources and the ecological environment needs to be carried out in such a way that civil public interest litigation is open and recognized by the court. Article 12 breaks through the principle of damage required by the traditional tort liability case system and makes it clear that in cases of loss of marine natural resources and the ecological environment, even if

the damage has not been caused, the parties have the right of action when there is a threat of damage. In general, TDCDMNREE in 2017 broke through the way of using traditional tort liability compensation to address damage to the marine environment and introduced the mechanism of civil public interest litigation to address the infringement of the public interest aspect of the marine environment.

The relevant provisions on compensation for damage to marine natural resources and the ecological environment mentioned above are seen in Table 1.

Table 1. Provisions on Compensation for Damage to Marine Natural Resources and the Ecological Environment (Source: author).

Documents	Implementation or Revision Time	The Plaintiff	Cause of Action
Marine Environmental Protection Law	Formulated in 1982 (the third amendment in 2017)	Departments exercising the power of marine environment supervision and administration in accordance with the provisions of this law.	Destroying marine ecology, marine aquatic resources, and protected areas, causing heavy losses to the state.
Provisions of the Supreme People's Court on Several Issues concerning the Trial of Disputes over Compensation for Damage to Marine Natural Resources and the Ecological Environment	2017	According to the division of its functions, it brings a lawsuit for compensation for damage to marine natural resources and the ecological environment.	Engaging in activities at sea or in coastal land areas causes damage to marine natural resources and the ecological environment in the sea areas under the jurisdiction of the People's Republic of China.

4.2. Legislation Related to Public Interest Litigation for Other Natural Resources and Ecological Environment Disputes

In other cases of damage to natural resources and the ecological environment, China has also established a legal system of civil public interest litigation and administrative public interest litigation. The first explicit legislative recognition of the public interest litigation system dates back to Article 55 of the Civil Procedure Law of the People's Republic of China [89], which was revised in 2007, 2012, 2017, and 2021. However, there are two obvious problems in practice: First, Article 15 of the Civil Procedure Law clearly stipulates that organs, social organizations, enterprises, and institutions can support the injured units or individuals to bring a lawsuit to the people's court for acts that damage the civil rights and interests of the state, collective, or individual. Article 15 of the civil procedure law stipulates that only the injured unit or individual has the right to file a lawsuit, requiring the prosecutor to have a direct interest in the case. Second, who is the "organs and relevant organizations" in this article? There are many disputes in practice and the court often refuses to file a case on the ground of no right of action. Article 58 of the Environmental Protection Law stipulates the conditions for "social organizations": (1) registration with the Civil Affairs Department of the people's government at or above the municipal level divided into districts according to law; (2) specialized in environmental protection public welfare activities for more than five consecutive years without illegal records. Article 58 of the Environmental Protection Law takes legal registration and business activities as the limiting conditions for "social organizations" that can file public interest litigation. In 2015, in the form of judicial interpretation, Interpretation on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases, the Supreme People's Court used seven articles of law (i.e., Articles 18, 19, 20, 21, 22, 23, and 24) to transform the litigation claims and responsibility-bearing methods of environmental litigation cases into the public interest. The judicial interpretation clarifies the trial procedures and relevant contents of environmental civil public interest litigation cases and clearly explains the social organizations that can file public interest litigation. Social organizations, private non-enterprise units, foundations, and other social organizations registered with

the Civil Affairs Department of the people's government at or above the municipal level were divided into districts in accordance with the provisions of laws and regulations. The purpose and main business scope defined in the articles of association of social organizations are to safeguard social public interests and engage in environmental protection public welfare activities, which can be recognized as "specialized in environmental protection of public interest activities" stipulated in Article 58 of the Environmental Protection Law. Legal registration and business scope are still the limiting conditions for such organizations.

The qualifications and restrictions of the People's Procuratorate as the initiator of public interest litigation are stipulated and clarified through the amendment of the provisions of the two procedural laws [90]. From the date of implementation of the amendment decision of the two procedural laws (1 July 2017), China has gradually established the relevant legal system of public interest litigation with the People's Procuratorate as the main body, which is a characteristic system produced in combination with China's national conditions. In 2018, the Supreme People's Court and the Supreme People's Procuratorate issued the interpretation on Several Issues Concerning the Application of Law in Procuratorial Public Interest Litigation Cases, which further clarified the conditions and procedural matters of prosecution of the People's Procuratorate in administrative public interest litigation and civil public interest litigation [91]. The protection of the ecological environment and resources belongs to the main type of cases in which the People's Procuratorate is responsible for filing public interest litigation. In 2019, the provisions of the Supreme People's Court on the Trial of Cases of Compensation for Ecological Environment Damage (Trial) were amended in 2020 and implemented on 1 January 2021, clarifying the specific administrative organs, prosecution conditions, jurisdiction, burden of proof, and other issues that exercise the prosecution power on behalf of the state. Article 1 stipulates that under any of the following circumstances, the people's governments at the provincial, municipal, and prefecture levels and their designated relevant departments and institutions, or the departments entrusted by the State Council to exercise the ownership of natural resources assets owned by the whole people, may file a lawsuit for compensation for ecological environment damage as a plaintiff if they fail to reach an agreement or cannot negotiate with the natural person, legal person, or other organizations that cause EED. This includes: (1) relatively large, significant particularly serious environmental emergencies; (2) environmental pollution and ecological destruction events occurring in key ecological functional areas and prohibited development areas designated in the national and provincial main functional area planning; (3) other consequences that seriously affect the ecological environment that may occur. The municipal and prefecture levels of people's governments mentioned in the preceding paragraph include the people's governments of cities divided into districts, autonomous prefectures, leagues and regions, cities not divided into districts, and districts and counties of municipalities directly under the central government. In fact, this provision is a public interest litigation system designed on the basis of China's unique property rights system, that is, the relevant departments that exercise the ownership of natural resources. The regulation excludes compensation for damage to the marine ecological environment from the adjustment in a clear way. So far, this provision complements the above-mentioned legal system of compensation for damage to the marine ecological environment and jointly constructs the legislative system of EPIL in China.

The legal basis of public interest litigation for the above natural resources and ecological environment disputes is shown in Table 2.

Table 2. Provisions on Public Interest Litigation (Source: author).

Documents	Implementation or Revision Time	The Plaintiff	Cause of Action
Civil Procedure Law	2012	Organs and relevant organizations stipulated by law.	Polluting the environment, infringing on the legitimate rights and interests of many consumers, and other acts that damage social and public interests.
Environment Protection Law	2015	Social organizations: (1) registered with the Civil Affairs Department of the people's government at or above the municipal level divided into districts according to law; (2) specialized environmental protection public welfare activities for more than five consecutive years without illegal records.	Behaviors that pollute the environment, destroy the ecology, and damage social and public interests.
Interpretation of Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases	2015	Organs and relevant organizations stipulated by law (further clarify social organizations, and clarify the "supporting prosecution units" in Article 15 of the Civil Procedure Law: procuratorial organs, departments responsible for environmental protection supervision and management, and other organs, social organizations, enterprises, and institutions).	To pollute the environment or destroy the ecosystem, which has damaged the public interest or has a major risk of damaging the public interest.
Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the people's Republic of China and the Administrative Procedure Law of the people's Republic of China	2017	People's Procuratorate (when there is no plaintiff or the said plaintiff has not prosecuted)	Acts that damage the ecological environment and resource protection, infringe on the legitimate rights and interests of many consumers in the field of food and drug safety, and damage the social and public interests.
	2017	People's Procuratorate	Administrative organs responsible for supervision and administration in the fields of ecological environment and resource protection, food and drug safety, state-owned property protection, transfer of state-owned land use rights, etc. illegally exercise their functions and powers or do nothing. 1. Make procuratorial suggestions to administrative organs 2. Bring a lawsuit to the People's Court
Interpretation of Several Issues concerning the Application of Law in Procuratorial Public Interest Litigation Cases	Formulated in 2018 (the revised content took effect in 2021)	The People's Procuratorate (1) make procuratorial suggestions to the administrative organ; (2) if the administrative organ fails to perform its duties according to law, bring a lawsuit to the court).	Administrative Public Interest Litigation: the administrative organs responsible for supervision and administration in the fields of ecological environment and resource protection, food and drug safety, state-owned property protection, transfer of state-owned land use rights, etc. illegally exercise their functions and powers or do nothing, resulting in the infringement of national interests or social public interests
		People's Procuratorate (when the announcement expires, and the close relatives of organs and relevant organizations, heroes and martyrs, etc. specified by law do not file a lawsuit)	Civil Public Interest Litigation: damage to the ecological environment and resource protection, infringes on the legitimate rights and interests of many consumers in the field of food and drug safety, infringes on the names, portraits, reputation, honor, and other acts that damage the social and public interests of heroes and martyrs

Table 2. *Cont.*

Documents	Implementation or Revision Time	The Plaintiff	Cause of Action
Several Provisions on Hearing Cases of Compensation for Ecological Environment Damage (Trial)	Formulated in 2019 (the revised content took effect in 2021)	Provincial-, municipal-, and prefecture-level people's governments and their designated relevant departments and institutions, or departments entrusted by the State Council to exercise the ownership of natural resource assets owned by the whole public	If the natural person, legal person, or other organization that caused ecological environment damage fails to reach an agreement or is unable to negotiate with it, a lawsuit for compensation for ecological environment damage shall be filed.
		Organs prescribed by the state or organizations prescribed by law	With respect to the same act of damage to the ecological environment, there is evidence that there is damage that was not found during the trial of the previous case and a civil public interest lawsuit is filed.
		The subject who has the right to sue for compensation for ecological environment damage	With respect to the same act of damage to the ecological environment, there is evidence to prove that there is damage not found in the previous trial and a lawsuit for compensation for ecological environment damage is filed.

4.3. The Existing Public Interest Litigation Legislation for Ecological Environment Damage Cannot Fully Prevent and Control MEP

MEP causes EED. The relevant provisions of the above legislation on public interest litigation cannot fully protect citizens' environmental rights, nor can they prevent further pollution of the ecological environment caused by MEP.

First, according to the above legislation, based on the differences of defendants and identities, China's EPIL has basically formed civil public interest litigation and administrative public interest litigation. These litigations could be divided into four categories according to the different initiators of the litigation: the EPIL filed by the People's Procuratorate; the EPIL filed by social organizations; the marine natural resources and ecological environment damage compensation litigation filed by the department exercising the right of marine environment supervision and management; the ecological environmental damage compensation litigation filed by the provincial and municipal level people's governments and their designated relevant departments and institutions; or the department entrusted by the State Council to exercise the ownership of natural resources assets owned by the whole public. The above correspondence is shown in Figure 3.

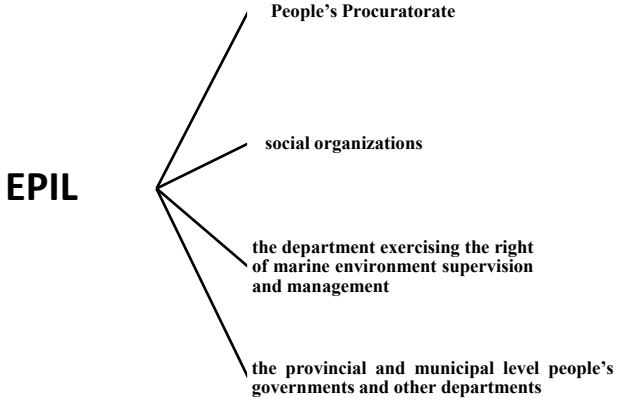

Figure 3. Plaintiffs in EPIL (Source: author).

Unlike many other countries, the plaintiffs in EPIL in China do not include natural persons. MEP causes damage to the ecological environment, which will affect the living environment of effectively every citizen. According to the above analysis of citizens' environmental rights, public interest litigation is an important remedy for environmental rights, so every citizen should have the right to bring a case. The existing legislation in China runs counter to this basic idea, which is the deprivation of citizens' environmental rights relief. Only by giving every citizen the right to sue can we better prevent and control MEP and other EED.

Second, China's existing public interest litigation legislation stipulates that the plaintiff is a social organization that meets certain conditions. The subjects of EPIL on behalf of the state include the Procuratorate, the department exercising the right to supervise and manage the marine environment, the provincial and municipal people's governments and their designated relevant departments and institutions, or the department entrusted by the State Council to exercise the ownership of natural resource assets owned by the people. The Procuratorate has a relatively wide range of rights to file public interest litigation [92]; other relevant subjects mainly file public interest litigation within the scope of their functions and powers according to their management functions and powers. The above-mentioned subjects who file EPIL on behalf of the state, except the Procuratorate, have a common feature: most of them are departments that exercise the ownership or supervision and management power of natural resources assets, that is, departments that have the right to use natural resources for income and related disposal in the market environment. The above-mentioned departments or institutions are not only market participants or referees, but also transaction rule-makers and supervisors. It is an important feature of EPIL in China to unify the judicial function, administrative function, and management function in government departments [93]. Some local courts are unable to resist the intervention of local government departments so the case cannot be settled [94]. As mentioned above, the biggest difference between EPIL and environmental private interest litigation is that the plaintiff has no direct interest in the litigation. Most of the plaintiffs currently stipulated in China's legislation are functional departments that exercise the benefits and disposal of natural resources on behalf of the state. They have a direct interest in environmental pollution damage, which is inconsistent with the purpose of public interest litigation. Many production and operation projects that cause MEP are closely related to the above-mentioned government functional departments. Relying on the above-mentioned departments to initiate public interest litigation to prevent MEP has a limited effect.

In addition, the above legal provisions of public interest litigation for EED are nested under the framework of traditional civil tort litigation and the premise of traditional civil tort liability is to remedy actual damage [95]. That means, according to the existing laws and regulations, that only when MEP has actually caused damage to the ecological environment, the relevant parties may have the right to file a public interest lawsuit and require the subject of the case to bear relevant liability. This is inconsistent with the basic principles and purposes of environmental protection in China. As we all know, the most important aspect of environmental protection is prevention [96] and the treatment of damage caused is only a component. The existing EPIL system may remedy the actual damage caused by MEP but cannot prevent the possibility of further damage to the ecological environment caused by it.

5. Suggestions: Improvement Path of EPIL

MEP causes damage to the ecological environment, which is a violation of citizens' environmental rights. According to the basic principles of China's Environmental Protection Law, the most important thing for environmental protection is prevention. For example, Article 5 of China's Environmental Protection Law stipulates that environmental protection shall adhere to the principles of giving priority to protection, putting prevention first, comprehensive treatment, public participation, and bearing responsibility for the damage. EPIL is the mechanism for relief and protection of infringed environmental

rights. In order to realize this function and value pursuit, the design of EPIL needs to meet the following criteria.

5.1. The Fairness of the EPIL Depends on Sufficient Confrontation Litigation

Theoretically, the litigation mode can be divided into an inquisitorial system, an adversary system, and a "hybrid" litigation pattern [97]. There are important differences in the implementation of substantive debate principles under different litigation modes [98]. Full debate and confrontation are important ways to protect the rights and interests of the parties. Modern public interest litigation is a litigation method often used in American society in the 1960s [99]. It aims to protect the environment and women's rights and interests through confrontational debate to remedy harm and promote reform. EPIL, also known as "civil litigation", is a relatively established form of public interest litigation in American judicial practices. The civil litigation provisions of the Clean Air Act of 1970 are the earlier legal provisions of such litigation in the United States [100]. This law gives individuals the right to file lawsuits in their own name. At the same time, it follows the characteristics of American law and does not distinguish between administrative public interest litigation and civil public interest litigation. The U.S. government administrative agencies and various companies may become defendants in such litigation [101]. The EPIL in the United States and the public interest litigation system in other countries are more or less affected and restricted by the private interest litigation system and the development path is relatively tortuous.

Although the EPIL systems of various countries are different, one thing is common, which is to ensure that the design of the litigation system (adversarial system or inquisitorial system) gives all parties full autonomy and equal litigation status [102]. On the basis of procedural justice, it is possible to realize substantive justice [103]. The core procedural justice of EPIL is to ensure that the prosecutor, who is often on the weaker side, can have sufficient opportunities for cross-examination and debate in the adversarial judicial process. Right and wrong are shown in the process of full confrontation and the judge decides accordingly. In order to ensure the realization of this goal, the litigation agent system, court proceedings, and systems of various countries will be targeted to the prosecutor.

In the judicial system of our country, due to the characteristics of court proceedings such as the setting of the burden of proof, the relevant system of litigation agents, and the centrality of case records [104], the plaintiff does not have the opportunity to fully confront the opposing party and is more likely to lose the lawsuit. Even due to litigation systems, local protection, and other reasons, the court cannot remain completely neutral; it is difficult to file related public interest litigation, let alone enter the court trial. For example, Friends of Nature is one of the earliest environmental protection social organizations established in China. It aims to rebuild the connection between man and nature and to protect the ecological environment through environmental education, public participation, legal activities, and policy guidance. As of 31 December 2021, Friends of Nature had filed a total of 51 environmental public interest litigation cases, of which 44 have been filed (including 15 air pollution cases, 4 water pollution cases, 2 climate change response cases, 8 soil pollution cases, 1 marine pollution case, 12 biodiversity protection cases, and 2 administrative litigation cases). Twenty-five cases have been closed, and nineteen cases are still pending. Support the prosecution of one case [105]. It can be seen from the above data that as the earliest environmental protection social organization established in China, in the 28 years since its establishment, it has filed fewer than two EPIL cases every year, including only one marine pollution case and only four water pollution cases. As an environmental protection social organization with a considerable scale, there are few EPIL cases in China, and it is normal for other subjects to file environmental public interest litigation. The difficulties in filing and accepting cases, collecting evidence, and enforcing judgments have become typical in environmental litigation.

The competition rules between (assumed) equal subjects make up the premise of equal opportunities and weapons for the parties, without regard to whether these can be achieved in practice [106]. In the traditional litigation mode, the inquisitorial system emphasizes result control more while the adversary system emphasizes procedure control more [107]. The construction of China's EPIL system should fully emphasize procedural control. On that basis, it is possible to ensure the fairness of the outcome of EPIL cases by ensuring the equal litigation status of litigants, especially those who are often in a weak position, and fully oppose the other party's right to speak.

5.2. The Plaintiff in EPIL Does Not Represent Private Interests and Does Not Have a Direct Interest. It Is the Starting Point of All System Designs

Public interest litigation is civil litigation that is not brought in order to safeguard the plaintiff's own rights and interests [108]. It is initiated by a specific party for the purpose of safeguarding social and public interests.

EPIL should not require the plaintiff to have a direct interest in their case, and in order to protect the ecological environment, the scope of the plaintiff should be expanded as much as possible [109]. Some scholars may worry that bringing citizens into the scope of plaintiffs will lead to a sharp increase in cases and increase judicial costs. According to Chinese traditional culture and customs, the Chinese people's enthusiasm for environmental litigation and awareness of environmental protection is still in the training stage, so the real concern is how to encourage people to participate in it. Since the objects of relief are national interests and social interests, the plaintiff should be the possible beneficiaries of these interests, that is, all members of society. According to the above analysis, the EPIL currently expressly stipulated in China's legislation can be divided into four categories of plaintiffs. Combing China's current legal provisions about the plaintiff, the requirements for several types of plaintiffs, most of which are government agencies, are extremely stringent [110]. Local governments are more or less involved in many domestic disputes involving the destruction of environmental public interests, so it is difficult for relevant government agencies to be identified as plaintiffs without direct interests [111]. At present, the social organizations stipulated in the legislation also have clear standards, though few of them can meet the criteria and are willing to file EPIL cases [112]. The essence of the current design of China's legal system is not to expand the subject of litigation, but to limit it.

The plaintiff cannot reach a deal with the environmental destroyer privately; fully mobilizing the initiative of the plaintiff and relevant litigation participants should be the focus of the design of the EPIL. Since the plaintiff has no direct interest, there are two implications. First, the litigation costs should not be borne by the plaintiff and the litigation consequences should be attributed to public, rather than private, interests. The criminal justice system exists because what is considered a crime is generally something that is harmful; the state pursues it *ex officio*. Civil litigation, however, emphasizes private disposition [113]. Environmental pollution not only damages private rights and interests but also causes widespread social harm. The damage to private rights and interests can be addressed privately through civil proceedings, but in the case of infringement of the environmental public interest, cooperative solutions are illegal. China's judicial system has formed a cooperative environmental pollution litigation solution [114], which is closely related to the country's traditional cultural, social, and economic development characteristics, especially the system of legislation.

At present, many legal norms or judicial interpretations in China regard the failure to reach an agreement with the responsible party or the inability to negotiate as a prerequisite for litigation [115]. China's legislation takes negotiation as the pre-procedure of EPIL. Its original intention is to effectively resolve disputes and maintain a harmonious society, but how are openness and fairness of the negotiation process ensured, and how are the disguised loss and further damage to public resources in this negotiation link avoided? According to the simple, basic principles of civil law, private goods can be traded privately [116] and the trading conditions are legitimate as long as all parties are satisfied.

However, the transaction of public property or rights and interests requires the consent of all public owners. Natural resources and the ecological environment belong to the public. Although the state administrative organ can hold responsible those who have caused damage to natural resources and the ecological environment on behalf of the state, they can be dealt with through negotiation; however, the specific treatment conditions are open, and the consent of all the people is a prerequisite. In 2019, the Supreme People's Court of China made similar stipulations in Several Provisions on Hearing Cases of Compensation for Ecological Environment Damage (Trial), of which Article 20 provided the judicial confirmation procedure of a negotiated settlement. Article 20 stipulates that if an agreement on compensation for ecological environment damage is reached through consultation, the parties may apply to the people's court for judicial confirmation. After accepting the application, the people's court shall announce the contents of the agreement for a period of no fewer than 30 days. After the expiration of the announcement, if the people's court considers that the contents of the agreement do not violate the mandatory provisions of laws and regulations and do not harm the national interests and social public interests, it shall rule to confirm the validity of the agreement. The ruling shall clearly state the basic facts of the case and the contents of the agreement and shall be made public to the public. Although this clause stipulates the issue of announcement of negotiation agreement, it is after the parties submit it to the People's Court for judicial approval and the People's Court accepts it. The party concerned applies to the People's Court for judicial confirmation that what this article stipulates "may" not be necessary. It is difficult to ensure the openness and transparency of the negotiated settlement with the provision of such selective rights. At the same time, although this article stipulates that the negotiated settlement needs to be reviewed by the People's Court through the announcement procedure, it does not specify the relevant procedures and systems needed for the public to raise objections and only takes the People's Court as the subject that is responsible for the review of the contents of the negotiated settlement. The above provisions are too brief for public interest cases such as MEP that widely damage natural resources and the ecological environment.

Second, since the plaintiff does not have a direct interest, how to fully mobilize the initiative of the plaintiff and relevant litigation participants is the problem that legislators should consider. Since ancient times, Chinese people have had a culture of not watching things that do not involve their own interests. The existence of the legal system of EPIL is just the opposite of this cultural concept. It lacks the direct infringement of private rights, and to a certain extent, it requires the public to be willing to litigate in order to protect the ecological environment and the public interest. Therefore, the promotion of the legal system of EPIL in China will inevitably encounter obstacles different from those in other countries [117]. How to fully mobilize the initiative of people to participate in environmental protection and to be willing to litigate is the top priority of China's EPIL legal system. The public interest litigation system was originally designed by Roman law. After the plaintiff wins the lawsuit, what they receive is not compensation per se but a different form of reward. The design of the share of prosecutors and the protection of lawyers' economic interests all over the world are for this purpose, which is worth learning from. For example, American public interest litigation lawyers will obtain a certain share of the successful claim amount as litigation proceeds, and the active participation of lawyers can help prosecutors in a weak litigation position [118]. Some countries even clearly stipulate that the prosecutor has the right to obtain a certain proportion of the claims in public interest litigation to reward his contribution to the protection of environmental public interests [119]. Article 58 of China's Environmental Protection Law stipulates that social organizations that file lawsuits shall not seek economic benefits through litigation, which plays a positive role. However, from the perspective of encouraging EPIL, how to guide people to file environmental public interest litigation in a positive way is more conducive to the protection of the ecological environment. In some regions of our country, special funds are available to subsidize the costs of EPIL and to support citizens who file environmental public interest litigation. Other systems are also worthy of reference and promotion.

For example, on 5 September 2011, the Hainan Provincial Department of Finance and the Provincial Higher People's court jointly issued the "Interim Measures for the management of funds for provincial environmental public interest litigation in Hainan Province". The funds for provincial environmental public interest litigation in Hainan Province are allocated by provincial finance and are paid centrally by the state treasury and accounted for separately. According to the provisions of the measures, this fund will specifically pay the litigation costs incurred in accepting environmental public interest litigation cases in the Provincial High Court, the provincial first intermediate people's court, the Provincial Second Intermediate People's court, and Haikou maritime court. The case-acceptance fee, application fee, investigation and evidence-collection fee, identification fee, inspection fee, evaluation fee, and other expenses arising from the environmental public interest litigation can be paid from the environmental public interest litigation fund.

5.3. The EPIL Should Adhere to the Principle of Risk Prevention

The EED caused by MEP includes not only the treatment of the damage already caused, but also the prevention of the risk of further damage in the future. EPIL has gone beyond the traditional environmental tort litigation and should not be required to cause damage. Once environmental harm occurs, it is often huge and irreversible. EPIL should be more focused on prevention than post-relief, which is the biggest difference from traditional environmental tort litigation [120].

EPIL should break through the limitation of traditional civil tort litigation causality and existing damage and fully reflect the principle of risk prevention. Only then can we better avoid the possibility of marine environmental pollution and irreversible EED. Under the principle of risk prevention, the standard for deciding whether to restrict or control a certain discharge behavior does not have to prove that the substance has a direct causal relationship with environmental damage or has caused damage. As long as there is sufficient reason to doubt, it should be restrained or controlled. Enterprises need to bear the burden of proof and control pollution-discharge behavior without sufficient evidence to prove that the pollution discharge behavior will not affect the environment [121].

Therefore, in the specific system design, it should be different from the logic of rights and interests as well as damage and relief in private interest litigation and form a framework system of environmental public interests—a great possibility of harm and relief. That is, when the environmental public interest is at risk of being infringed upon, or the ecological environment is in danger of being destroyed, the relevant parties have the right to file public interest litigation. The law should make it clear that when certain acts or events are found to be likely to cause environmental hazards and dangers, the public will have the right to sue. The design of litigation consequences should also include the traditional ways of bearing civil liability, such as eliminating influence and eliminating obstructions but not limited to the post-relief methods stipulated in articles 1233–1235 of the Chinese Civil Code. For example, the provisions on Several Issues concerning the Trial of Disputes over Compensation for Damage to Marine Natural Resources and Ecological Environment, implemented in 2018, have broken through the traditional way of legal regulation of tort compensation for damage. Article 12 of the Provisions on Several Issues concerning the Trial of Disputes over Compensation for Damage to Marine Natural Resources and the Ecological Environment, implemented in 2018, stipulates that when activities are carried out at sea or in coastal land areas, which pose a threat of damage to marine natural resources and the ecological environment in the sea areas under the jurisdiction of the people's Republic of China, rather than actual damage, the relevant parties have the right of action; this provision applies mutatis mutandis. In cases of compensation for damage to marine natural resources and ecological environment, it plays the role of prevention of public interest litigation and does not take actual damage as the premise of litigation. Such legislative ideas should be extended to other natural resources and EPIL in China.

5.4. The Litigation Right of the National Litigation Representative Comes from the Authority, Which Is Both a Power and an Obligation, and Needs to Be Subject to Effective Supervision

Figure 4 shows the data information of EPIL cases handled by the People's Procuratorate from 2018 to 2020 [122]:

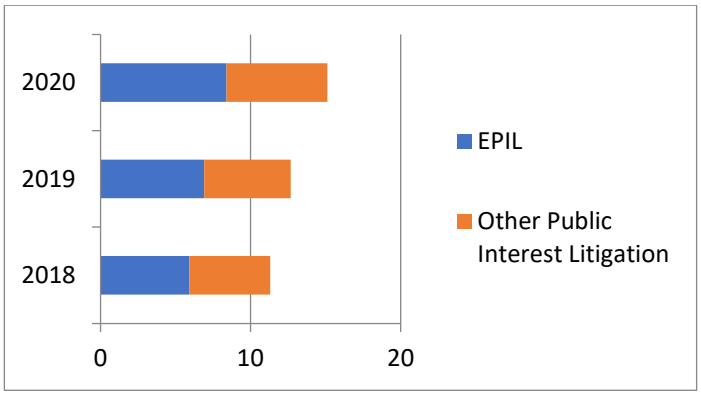

Figure 4. EPIL cases handled by the People's Procuratorate (Source: Author).

Of the 113,160 public interest litigation cases filed and handled by the People's Procuratorate in 2018, 52% (59,312) involved ecological environment and resource protection. In 2019, the People's Procuratorate filed and handled 126,912 public interest litigation cases, accounting for 54% (69,236) of public interest litigation cases in the field of ecological environment. In 2020, the People's Procuratorate filed 151,260 public interest litigation cases while the proportion of public interest litigation cases in the field of ecological environment reached 55% (84,000). According to the above data, the EPIL cases filed and handled by the People's Procuratorate each year account for the largest proportion of public interest litigation cases in China. In the past three years, the number of EPIL cases filed and handled each year has increased steadily, accounting for more than half of all public interest litigation cases.

The prosecution subject of MEP is likely to be the procuratorial organ. It is not our country's original creation for procuratorial organs to bring EPIL on behalf of the state [123]. As the procuratorial organs of various countries play different roles in the system, the terms of reference and procedures need to be designed according to national conditions. Some scholars have pointed out that the existing legislation in China has resulted in the overlapping of the functions of civil liability of EPIL and administrative liability of environmental administrative law enforcement as well as the concurrence and offside of judicial power between environmental judicial power and administrative power [124]. Through the revision of the Civil Procedure Law and the Administrative Procedure Law, China has clearly endowed the inspection organ with the power to file environmental public interest litigation on behalf of the state. This is essentially the expansion of the functions and powers of the inspection organ, which indirectly manage society through the expansion of the functions of the inspection organ. How to balance judicial and administrative functions, more scientifically how to limit the functions of procuratorial organs and innovate the public interest litigation procedures of procuratorial organs need to be constantly adjusted in the accumulation of practical experience. Power needs to be guaranteed through laws and policies. Responsibilities and obligations also need to be effectively supervised through laws and policies.

Cooper, an American professor of administrative ethics, believes that there are two types of responsibilities of administrators: objective responsibility and subjective responsibility. Objective responsibility stems from the role expectation of law, organization, and society for administrators; subjective responsibility is rooted in our own faith in loyalty, conscience, and identity [125]. The realization of ethical responsibility in public management requires the establishment of prevention and control mechanisms in public management,

so as to achieve the effect of supervising supervisors [126]. This can be achieved through external and internal control mechanisms. From the domestic practical experience in recent years, relying solely on the internal supervision mechanism of the organization cannot achieve the results of finding problems and correcting them in time. Establishing a sound and perfect external supervision mechanism is a necessary measure to ensure that the current EPIL system, which is mainly built by inspection agencies, plays a greater role [127]. The EPIL system is an important mechanism to protect the environmental rights of all people. The consequence of mechanism failure is not only dereliction of duty, but also an unbearable price for humans to pay.

The design of EPIL of state administrative organs needs to adhere to the idea of unity of duties. The administrative organ that carries out EPIL on behalf of the state needs to be clearly authorized by the law. Its action of filing EPIL is meant not only to exercise the power conferred by the law but also to fulfill the obligations of public trust. Therefore, if the state administrative organ fails to perform or fulfill the duty of carrying out EPIL with due diligence, it is a dereliction of duty. In order to urge the relevant state administrative organs to perform their duties, the law not only needs to clearly stipulate the conditions, time limits, and procedures for the state administrative organs to file EPIL, but also should give people channels for supervision and participation, such as environmental administrative public interest litigation. Therefore, environmental administrative public interest litigation is not only an important way to supervise the abstract administrative acts that may damage the environment made by administrative organs, but also an important way to supervise the lazy administrative acts of relevant administrative organs. The above rights are part of citizens' environmental rights.

6. Conclusions

Similar to the *Sanchi* oil spill case, MEP will damage not only people's lives and private property but also marine natural resources and the environment. In China, the relief of EED caused by MEP is a new thing and faces many difficulties. Theoretically, MEP infringes on a wide range of citizens' environmental rights and should be relieved by EPIL.

EPIL in China is mainly a two-track system, which can involve disputes over marine natural resources and ecological environment and disputes over other natural resources and the ecological environment. Marine Environmental Protection Law firstly stipulated the claim for EED caused by MEP. The provisions of the law consider EED to be a special type of tort, and the claim mechanism is constructed according to the rules of tort liability and damage compensation. TDCDMNREE has broken through this kind of legislative thinking to a certain extent and the compensation litigation for EED is no longer limited to the framework of private interest litigation. The plaintiff is no longer limited to the subject directly affected by pollution damage but can also be the relevant competent authority to file a lawsuit on behalf of the state and its citizens.

The legal system of EPIL in China can be divided into civil public interest litigation and administrative public interest litigation according to the differences in defendants and identities. By sorting out and summarizing China's current legislative documents, according to the different plaintiffs, it can be divided into four categories. Unlike many other countries, the plaintiff of EPIL in China does not include natural persons, which is not conducive to the protection of the marine ecological environment. Except for specific social organizations, other qualified plaintiffs may have direct interests in the disputed case, which is inconsistent with the purpose of EPIL to safeguard public interests. As a safeguard of environmental rights, prevention should be the primary value pursuit of the legal system of EPIL. In order to maximize the protection of citizens' environmental rights and solve the problem of MEP, the plaintiff of EPIL should expand rather than limit. The fairness of the results of EPIL depends on sufficient adversarial litigation. The plaintiff in EPIL is not for private interests and has no direct interest. The EPIL brought by the state litigation representative organ is not only a power given by law but also an obligation, which needs to be subject to effective supervision.

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