Soemadipradja & Taher

Environmental Strict Liability, Forest Fires, and What They Really Mean for Your Business

CLIENT UPDATE: Environment Enforcement on Forest and Land Fires

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The recurring forest and land fires that occur each year have once again drawn nationwide attention. Despite ongoing government efforts to prevent and control these fires, Central Kalimantan, West Kalimantan, and parts of Sumatra, particularly Jambi, continue to be among the areas most affected. This year, the risk of forest and land fires has been heightened by the strong El Niño conditions affecting Indonesia, which have contributed to a drier and longer dry season and increased the likelihood of forest and land fires.

The numbers tell their own story: 138 individuals have been named suspects in connection with 2026 forest and land fires, while eight corporations are under investigation. President Prabowo Subianto has made clear that the investigation should not stop with individuals but should also uncover any corporate involvement. For businesses and, more broadly, anyone involved in environmental litigation, this puts a different question on the table: **the issue is no longer simply who started the fire, but who may ultimately be held responsible for it.**

Strict Liability as A Wonder Tool

The interpretation of strict liability in Indonesian court practice appears to have evolved considerably.

Historically, strict liability had a relatively limited scope, applying primarily to abnormally dangerous activities. A nuclear facility provides a useful illustration. If a nuclear facility experiences a radioactive leak that causes environmental damage, the operator may be held liable even if it complied with all applicable safety standards and took reasonable precautions. The rationale is that the activity itself carries an inherent and exceptional risk of harm. Importantly, however, the operator's liability remains linked to harm resulting from the nuclear facility's activities; the mere occurrence of environmental harm, without a causal connection to the activity, would not by itself establish liability.

Today, however, there are cases where a company may be held strictly liable based on the alleged absence of adequate facilities or preventive measures, even without a clear finding of causations. In recent years, the occurrence of forest fires within a company's concession has increasingly been associated with the company's strict liability, regardless of whether the fire resulted from the company's actions.

Legally speaking, Article 88 of Law No. 32 of 2009 removes only the requirement to prove fault in establishing a company's liability (*liability without fault*). It does not dispense with the need to establish causation. A Plaintiff invoking strict liability must still prove, both legally and scientifically, that actual environmental damage occurred and that such damage was caused by the company's operational activities.

In plain terms, Article 88 expressly and exhaustively limits strict liability to cases involving activities that: (i) use hazardous and toxic substances (*B3*); (ii) produce and/or manage hazardous and toxic waste (*limbah B3*); and/or (iii) pose a serious threat to the environment. Accordingly, strict liability can only be invoked where the company's activities fall within one of these statutory categories. The third category, however, has in some cases been interpreted broadly in Indonesian court practice, such that a company's mere possession of an AMDAL document, or the occurrence of a forest fire itself is considered sufficient to meet the "serious threat" threshold and bring the case within the scope of strict liability. This approach arguably stretches the statutory language by treating the occurrence of environmental harm as sufficient, in itself, to trigger strict liability.

But this raises a simple question: if the forest fire is the event that occurred, can that event itself be used to conclude that, beforehand, the company's activities posed a "serious threat" to the environment? Put differently, can an *ex post* event—the occurrence of a forest fire—really be enough to establish, *ex ante*, that the company's activities posed a "serious threat" to the environment and therefore fall within the scope of strict liability?

A Growing Number for Environmental Enforcement

In April 2026, the Ministry of Environment reported that its non-tax state revenue (PNBP) had reached approximately IDR 1.4 trillion, highlighting the Government's increasing focus on environmental supervision and enforcement. This development signals an increasing focus on environmental supervision and enforcement by the Government, and a more assertive enforcement environment for businesses, particularly those operating in sectors with significant environmental exposure.

In environmental litigation, the government has tended to rely on broadly framed statutory provisions to pursue liability against concession holders for fire incidents occurring within their concession areas, including in circumstances where the concession holder's contribution to, or role in causing, the fire remains disputed. One provision frequently relied upon is Article 49 of Law No. 41 of 1999 on Forestry (as amended). This provision places responsibility on concession holders in relation to forest protection, including the prevention and handling of fires within their concession areas. Such claims may also be accompanied by reliance on the strict liability principle under Article 88 of Environmental Law.

The implications of environmental enforcement may extend beyond obligations to restore environmental damage. Minister of Environment Regulation No. 7 of 2014 also provides a basis for government to seek compensation for environmental damage, with such compensation treated as non-tax state revenue (PNBP).

For businesses, this means that environmental enforcement is no longer only a compliance issue. Environmental claims may also have significant financial consequences, particularly where the government may seek both environmental restoration and monetary compensation for environmental losses as state revenue.

In light of the above, the scope and application of environmental liability, including strict liability under Article 88, will become increasingly important for companies to understand and manage. Companies therefore need to understand not only what activities may trigger environmental liability, but also the evidentiary requirements for establishing actual damage and causation, in managing potential enforcement and litigation risks.

Why a Proactive Response Matters

The occurrence of a forest fire within a company's concession can expose the company to significant environmental claims, including claims based on strict liability under Article 88. The key question, however, is not simply whether a fire occurred within the concession. It is whether the company's activities fall within the statutory scope of strict liability, whether actual environmental damage has been established, and whether a causal link can be demonstrated between the company's activities and that damage. As enforcement becomes more assertive, maintaining this distinction will be increasingly important for businesses operating in environmentally sensitive sectors.

Companies should therefore take a proactive approach when a forest fire occurs within or near their concession. As a first step, they should promptly report the fire to the relevant authorities, monitor hotspots using publicly available sources, document and measure the affected area, preserve relevant evidence, and investigate the cause of the fire, including whether any third party may be responsible. Regularly monitoring publicly available hotspot data can also help companies identify and respond to potential fires at an early stage, while creating a contemporaneous record of the location, timing, and development of the fire. Contemporaneous documentation and evidence may prove critical in establishing what actually happened and in responding to any subsequent environmental claim.

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Ardian Deny Sidharta
Managing Partner
deny_sidharta@soemath.com

Romi Emirat
Partner
romi_emirat@soemath.com

between local court procedures and international legal standards.

If you would like to discuss any aspect of this update, or your industry activities or plans, please feel free to contact us.

Adirama Tri Satrio Wirawan
Senior Associate
adirama_tri@soemath.com

Anasthasia Gloria C. Stampfli
Associate
anasthasia_stampfli@soemath.com

Soemadipradja & Taher

Jakarta Mori Tower Level 19
Jl. Jenderal Sudirman No. 40-41, Jakarta 10210
+62 21 27 882 323
center@soemath.com | www.soemadipradjataher.com