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ANDALAS BORNEO JUSTICE

Article

Constitutional Accountability and Corporate Criminal Liability for Fire-Related Human Rights Harms in Indonesia

Windy Rizky Putri[1]*, Davit Rahmadan[2] and M. Sadam Husin[3]

[1]Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia; [2]Faculty of Law, Universitas Riau, Pekanbaru, Indonesia; [3]Pusat Studi Pancasila, Riau, Indonesia.

*Corresponding author: windyrizkyputri@fh.unsri.ac.id

Abstract

Forest and land fires (*kebakaran hutan dan lahan*) returned on a large scale in 2026, the first fire season under Indonesia's new Criminal Code and Criminal Procedure Code. South Sumatra, Central Kalimantan, Jambi and Riau operated under alert or emergency status while haze threatened the constitutional rights to life, health and a good and healthy environment. This article examines how the constitutional accountability of the state and corporate criminal liability relate. Using doctrinal research with statutory, conceptual and case approaches, it analyses the Constitution, environmental, forestry and human rights legislation, the codes in force since 2 January 2026, Presidential Instruction No. 11 of 2026, leading fire judgments and documented enforcement in the four provinces. It finds, first, that the state bears a positive obligation of due diligence, enforceable mainly through administrative, civil and constitutional avenues rather than criminal law, and proposes a four-step test for assessing its breach. Second, the 2023 Criminal Code gives corporate criminal liability a firmer statutory basis by codifying attribution and failure-to-prevent criteria, yet 2026 enforcement remained weighted toward individuals: by late September police had named 196 individuals but only four corporations as suspects, even though reports against corporations covered most of the hectares under police examination. Third, the article proposes a dual-track accountability framework that links supervision to enforcement and channels corporate sanctions toward victim remedies and restoration, while keeping state and corporate liability legally distinct.

Keywords: Constitutional Accountability, Corporate Criminal Liability, Human Rights, Forest and Land Fires, Environmental Justice

Introduction

Forest and land fires, known in Indonesia as *kebakaran hutan dan lahan* (commonly abbreviated *karhutla*), returned on a large scale in 2026. By late April the national fire monitoring system had already recorded about 52,000 hectares burned, many times the figure for the same period of 2025.[1] By mid-September, burned-area indications compiled by the National Disaster Management Agency (BNPB) stood at about 19,800 hectares in Riau, 15,830 hectares in Central Kalimantan, 1,926 hectares in South Sumatra and 1,879 hectares in Jambi, within a total of about 85,766 hectares across six priority provinces.[2] The figures continued to rise. Central Kalimantan declared an emergency

[1] 'Menteri LH Sebut Luas Karhutla selama 2026 Sudah Mencapai 52 Ribu Hektare', *Antara*, 25 April 2026 https://megapolitan.antaranews.com/berita/525993/menteri-lh-sebut-luas-karhutla-selama-2026-sudah-mencapai-52-ribu-hektare.

[2] Akbar Ridwan, 'Indikasi Lahan Terbakar di 6 Provinsi Prioritas Penanganan Karhutla (14 September 2026)', *Databoks Katadata*, 14 September 2026

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response status from 31 August to 29 September 2026, and by 7 October its command post reported more than 17,000 hectares burned in 5,848 fire incidents.[3] Riau declared an emergency alert status from 13 February to 30 November 2026, South Sumatra from 22 April to 30 November 2026, and Jambi had likewise been on emergency alert since April.[4]

The human consequences are familiar. The 2015 season, the most destructive in recent memory, burned an estimated 2.6 million hectares and cost Indonesia about US$16.1 billion, while atmospheric modelling estimated 100,300 excess deaths across Indonesia, Malaysia and Singapore.[5] In 2026 the provincial health office of South Sumatra recorded 348,708 cases of acute respiratory infection between January and August, 113,883 of them in Palembang; these figures are not attributable to haze alone, but haze was later reported at dangerous levels in Palembang, Prabumulih and Penukal Abab Lematang Ilir for about two weeks, and two deaths were reported as possibly linked to haze pending medical confirmation.[6] In Jambi, a women's organisation reported that about 150 children in one village suffered sore throats and coughs during the haze.[7]

These harms interfere with constitutionally protected interests. Article 28H(1) of the 1945 Constitution of the Republic of Indonesia guarantees every person the right to live in physical and spiritual prosperity, to have a home, to enjoy a good and healthy environment and to obtain health services. Article 28I(4) places responsibility for the protection, advancement, enforcement and fulfilment of human rights on the state, especially the government, and Article 33(4) requires the national economy to be organised on principles that include sustainability and environmental insight (*berwawasan lingkungan*).[8] The statutory framework repeats these commitments. Law No. 39 of 1999 on Human Rights recognises the right to a good and healthy environment and assigns the government the duty to respect, protect, enforce and advance human rights, while Law No. 32 of 2009 on Environmental Protection and Management (the Environment Law) declares the same right

https://databoks.katadata.co.id/lingkungan/statistik/6aa76bb9f08b0/indikasi-lahan-terbakar-di-6-provinsi-prioritas-penanganan-karhutla-14-september-2026, reporting BNPB data drawn from the SiPongi fire monitoring system of the Ministry of Forestry.

[3] Governor of Central Kalimantan Decree No. 100.3.3.1/230/2026 on the emergency response status for forest and land fires, and Decree No. 100.3.3.1/231/2026 on the emergency response command post, as reported in 'Percepat Penanganan Karhutla, Pemprov Kalteng Tetapkan Status Tanggap Darurat Tahun 2026', *Hai Kalteng*, 31 August 2026 https://haikalteng.id/berita/read/9145/; 'Agustiar Bercanda soal Karhutla, 17 Ribu Hektare Lahan Kalteng Terbakar dan Asap Menyebar', *Monitor Indonesia*, 16 October 2026 https://monitorindonesia.com/nusantara/read/2026/10/636893/agustiar-bercanda-soal-karhutla-17-ribu-hektare-lahan-kalteng-terbakar-dan-asap-menyebar.

[4] 'Pemprov Riau Tetapkan Status Siaga Darurat Karhutla', *JawaPos*, 14 February 2026 https://www.jawapos.com/berita-daerah/2602140110/pemprov-riau-tetapkan-status-siaga-darurat-karhutla; 'Sumsel Tetapkan Siaga Karhutla hingga November 2026', *Metro TV News*, 24 April 2026 https://www.metrotvnews.com/read/bzGCe4WG-sumsel-tetapkan-siaga-karhutla-hingga-november-2026; Teguh Suprayitno, 'Kebakaran Hutan di Jambi Meluas, Api Lalap Taman Nasional', *Mongabay Indonesia*, 29 September 2026 https://mongabay.co.id/2026/09/29/kebakaran-hutan-di-jambi-meluas-api-lalap-taman-nasional/.

[5] Ann Jeannette Glauber and others, *The Cost of Fire: An Economic Analysis of Indonesia's 2015 Fire Crisis* (Jakarta: World Bank, 2016) http://hdl.handle.net/10986/23840; Shannon N. Koplitz and others, 'Public Health Impacts of the Severe Haze in Equatorial Asia in September-October 2015: Demonstration of a New Framework for Informing Fire Management Strategies to Reduce Downwind Smoke Exposure', *Environmental Research Letters*, 11.9 (2016), 094023 https://doi.org/10.1088/1748-9326/11/9/094023.

[6] Whisnu Mardiansyah, 'Dinkes Sumsel Catat 348.708 Kasus ISPA hingga Agustus 2026', *Metro TV News*, 15 September 2026 https://www.metrotvnews.com/read/NA0CrVAe-dinkes-sumsel-catat-348-708-kasus-ispa-hingga-agustus-2026; Taufik Wijaya, '7 Kabupaten di Sumatera Selatan Terus Terbakar, Rawa Gambut Kembali Membara', *Mongabay Indonesia*, 12 October 2026 https://mongabay.co.id/2026/10/12/7-kabupaten-di-sumatera-selatan-terus-terbakar-rawa-gambut-kembali-membara/.

[7] Suprayitno.

[8] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [1945 Constitution of the Republic of Indonesia], arts 28H(1), 28I(4) and 33(4). Translations in this article are the authors' own.

to be part of human rights and lists state responsibility as a governing principle.[9] Fires therefore engage constitutional obligations, not merely regulatory compliance.

The fires are overwhelmingly anthropogenic and closely linked to land preparation for commodity plantations, particularly on drained peatland. Political economy research describes a 'fire economy' in which a range of actors capture rents from burned land, and patronage networks that have allowed well-connected companies to use fire as a cheap clearing method despite its prohibition.[10] The 2026 data point in the same direction. Between 1 September and 2 October 2026, an environmental organisation counted 22,690 hotspots inside 81 forestry and plantation concessions in South Sumatra; in Jambi, an independent satellite analysis found burned areas in at least 33 oil palm plantations and 15 forest utilisation concessions, and the Governor stated that about 80 per cent of the burned land had been set deliberately.[11] Such data do not establish the legal responsibility of any particular company. As the same analysts acknowledged, satellite imagery cannot by itself identify who caused a fire, which can only be determined through investigation and due process.[12] But they explain why corporate accountability is central to any legal response.

Indonesian law has responded along two tracks that have developed largely in isolation. The first is a public law track that asks whether the state has discharged its duties, best known through the citizen lawsuit brought by residents of Central Kalimantan after the 2015 fires. The Palangka Raya District Court found the President, several ministers, the Governor and the provincial legislature liable for unlawful omissions; the judgment was upheld on appeal and in cassation, but annulled by the Supreme Court on case review in November 2022.[13] The second is a corporate liability track, in which the government obtained large civil judgments against concession holders and criminal courts began convicting corporations as such.[14] In 2026 the executive added a third element. Presidential Instruction No. 11 of 2026, issued on 31 August 2026, directed ministries and regional heads to enforce the prohibition on burning and to apply criminal, civil and administrative sanctions to anyone who burns, orders, facilitates or allows burning, including corporations, rights holders and public officials.[15] Within two weeks the Ministry of Environment had sealed 50 business entities in eight provinces, including eleven in South Sumatra, six in Central Kalimantan and one in Riau, and by mid-

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[9] Law No. 39 of 1999 on Human Rights, arts 9(3), 71 and 72; Law No. 32 of 2009 on Environmental Protection and Management, arts 2(a) and 65(1), as amended by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law.

[10] Herry Purnomo and others, 'Fire Economy and Actor Network of Forest and Land Fires in Indonesia', *Forest Policy and Economics*, 78 (2017), 21-31 https://doi.org/10.1016/j.forpol.2017.01.001; Helena Varkkey, *The Haze Problem in Southeast Asia: Palm Oil and Patronage* (London: Routledge, 2016).

[11] Wijaya; Suprayitno.

[12] Suprayitno.

[13] Palangka Raya District Court Decision No. 118/Pdt.G/LH/2016/PN Plk (22 March 2017); Palangka Raya High Court Decision No. 36/PDT/2017/PT PLK; Supreme Court Decision No. 3555 K/Pdt/2018 (16 July 2019); Supreme Court Case Review Decision No. 980 PK/Pdt/2022 (3 November 2022). On the review decision and its date see Resti Fauzi, 'Perbuatan Melawan Hukum Pemerintah dalam Peristiwa Kebakaran Hutan: Kajian Putusan Nomor 118/PDT.G/LH/2016/PN.PLK', *Jurnal Yudisial*, 17.1 (2024), 61-80 https://doi.org/10.29123/jy.v17i1.611, pp. 62-63.

[14] Supreme Court Decision No. 1 PK/Pdt/2017 (PT Kallista Alam); Supreme Court Decision No. 3067 K/Pdt/2018 (17 December 2018) (PT National Sago Prima); Meulaboh District Court Decision No. 131/Pid.B/2013/PN.MBO jo. Banda Aceh High Court Decision No. 201/Pid/2014/PT BNA jo. Supreme Court Decision No. 1554 K/Pid.Sus/2015. See Muhammad Rizqi Hengki, 'Penanggulangan Karhutla melalui Pertanggungjawaban Pidana Korporasi', *Dandapala*, 13 August 2026 https://www.dandapala.com/article/detail/penanggulangan-karhutla-melalui-pertanggungjawaban-pidana-korporasi.

[15] Presidential Instruction No. 11 of 2026 on Strengthening the Enforcement of the Prohibition on Land Clearing by Burning and the Control of Forest and Land Fires; 'Prabowo Terbitkan Inpres Karhutla, Bakar Lahan Kini Terancam Pidana', *Okezone* via *RCTI+*, 9 September 2026 https://www.rctiplus.com/news/detail/okezone/5469404/prabowo-terbitkan-inpres-karhutla--bakar-lahan-kini-terancam-pidana; 'Larang Bakar Hutan untuk Buka Lahan, Prabowo Terbitkan Inpres 11/2026', *Pasardana*, 10 September 2026 https://pasardana.id/news/2026/9/10/larang-bakar-hutan-untuk-buka-lahan-prabowo-terbitkan-inpres-11-2026.

September the national police were examining 95 corporations, sixteen of them in South Sumatra, fourteen in Central Kalimantan, six in Riau and two in Jambi.[16]

Yet the results so far are uneven. By 30 September 2026, police reports concerning corporations covered 25,384.94 hectares and reports concerning individuals 5,181.61 hectares, while the police had named 196 individuals but only four corporations as suspects.[17] Inquiry (*penyelidikan*), investigation (*penyidikan*), the naming of suspects, prosecution and conviction are distinct stages; these figures concern only the early stages and say nothing about guilt. These hectare figures describe the area covered by police reports, not area that any court has found to have been burned by the reported parties, and corporate investigations are typically more complex and slower. The asymmetry therefore does not prove that corporations are being shielded, but it is the starting point for this article's inquiry into how the state's constitutional duty and corporate criminal liability relate.

Scholarship mirrors the division between the two tracks. At the international level, Tan argued after the 1997 haze that Indonesia had incurred state responsibility for failing to control fires and the companies that set them, while later work showed how the ASEAN principle of non-interference has blunted that responsibility in practice.[18] Domestic environmental law scholarship has focused on civil liability, notably the uneven judicial treatment of strict liability in wildfire litigation and the doctrinal basis of the government's standing to claim environmental damages.[19] Criminal law scholarship has examined corporate liability under the Environment Law and Supreme Court Regulation No. 13 of 2016, documenting, among other things, the limited use of restorative additional penalties.[20] Comparative constitutional scholarship treats the right to a healthy environment as a source of positive state obligations,[21] and Indonesian commentary on the Central Kalimantan lawsuit has analysed the government's tort liability and its implications for the state's own standing to sue.[22] A 2026 study has examined how corporate liability for land fires is regulated and identified the difficulty of proving causation, weak oversight and complex corporate structures

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[16] 'Tindak Lanjuti Inpres Karhutla, KLH Segel 50 Badan Usaha di 8 Provinsi', *Sindonews* via *RCTI+*, 13 September 2026 https://www.rctiplus.com/news/detail/nasional/5472183/tindak-lanjuti-inpres-karhutla--klh-segel-50-badan-usaha-di-8-provinsi; 'Bareskrim: 95 Korporasi Masuk Tahap Penyelidikan-Penyidikan Terkait Karhutla', *Okezone* via *RCTI+*, 17 September 2026 https://www.rctiplus.com/news/detail/nasional/5475074/bareskrim--95-korporasi-masuk-tahap-penyelidikan-penyidikan-terkait-karhutla.

[17] '4 Korporasi Jadi Tersangka Karhutla, Siapa Saja dan Apa Perannya?', *iNews* via *RCTI+*, 2 October 2026 https://www.rctiplus.com/news/detail/inews/5485111/4-korporasi-jadi-tersangka-karhutla--siapa-saja-dan-apa-perannya-.

[18] Alan Khee-Jin Tan, 'Forest Fires of Indonesia: State Responsibility and International Liability', *International and Comparative Law Quarterly*, 48.4 (1999), 826-55 https://doi.org/10.1017/S0020589300063703; Laely Nurhidayah, Shawkat Alam and Zada Lipman, 'The Influence of International Law upon ASEAN Approaches in Addressing Transboundary Haze Pollution in Southeast Asia', *Contemporary Southeast Asia*, 37.2 (2015), 183-210 https://doi.org/10.1355/cs37-2b.

[19] Andri G. Wibisana, 'The Many Faces of Strict Liability in Indonesia's Wildfire Litigation', *Review of European, Comparative & International Environmental Law*, 28.2 (2019), 185-96 https://doi.org/10.1111/reel.12284; Dona Pratama Jonaidi and Andri G. Wibisana, 'Landasan Doktriner Hak Gugat Pemerintah terhadap Kerugian Lingkungan Hidup di Indonesia', *Jurnal Bina Mulia Hukum*, 5.1 (2020), 156-75 https://doi.org/10.23920/jbmh.v5i1.9.

[20] Hariman Satria, 'Penerapan Pidana Tambahan dalam Pertanggungjawaban Pidana Korporasi pada Tindak Pidana Lingkungan Hidup: Kajian Putusan Nomor 1554 K/PID.SUS/2015', *Jurnal Yudisial*, 10.2 (2017), 155-71 https://doi.org/10.29123/jy.v10i2.18; Fitriani Rahmadia, Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, 'Criminal Liability in Environmental Crimes Committed by Corporations after the Supreme Court Regulation Number 13 of 2016 at Indonesia', *Unram Law Review*, 4.1 (2020), 1-10 https://doi.org/10.29303/ulrev.v4i1.86.

[21] David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver: UBC Press, 2012); James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge: Cambridge University Press, 2015).

[22] Fauzi, pp. 74-78.

as its main limits; it focuses on corporate liability as such rather than on the new Criminal Code, the 2026 season or the state's constitutional obligations.[23]

Four problems remain unresolved. First, the literatures rarely speak to one another: state accountability is analysed as tort or as international responsibility, and corporate liability as a question of criminal doctrine, with little attention to how the constitutional duty to protect should shape criminal enforcement and remedies. Second, this separation produces two opposite risks: describing governmental shortcomings as 'human rights violations' may slide into the vocabulary of guilt without identifying the standard breached, while corporate prosecutions that end with a modest fine may punish without remedying the harm suffered by affected communities. Third, the legal landscape changed on 2 January 2026, when the new Criminal Code (Law No. 1 of 2023), the new Criminal Procedure Code (Law No. 20 of 2025) and Law No. 1 of 2026 on Criminal Adjustment entered into force, codifying corporate fault, introducing deferred prosecution agreements for corporations and recalibrating penalties across sectoral statutes.[24] Fourth, the 2026 fire season is the first in which these codes and the new Presidential Instruction have been applied. In the literature search described in the Method section, the authors have not identified a study that examines this season through the combined lens of constitutional obligations and the new rules on corporate criminal liability.

This article addresses those gaps by focusing on the 2026 season in South Sumatra, Central Kalimantan, Jambi and Riau, four provinces with extensive peatland, a history of recurrent fires and active enforcement in 2026. Its contribution is a dual-track accountability framework that treats state accountability and corporate criminal liability as legally distinct, with different subjects, foundations, procedures and standards of proof, yet functionally connected through four points: supervision, the duty to enforce, victim-centred sanctioning and execution. The article asks three questions. First, how does the Indonesian constitutional framework establish state obligations to protect human rights against the impacts of forest and land fires? Second, how does Indonesian law regulate corporate criminal liability for forest and land fires, and what legal challenges affect its implementation? Third, how can constitutional accountability and corporate criminal liability be integrated into a coherent legal framework that strengthens human rights protection, access to justice and remedies for affected communities?

Method

This study is normative (doctrinal) legal research. It uses three approaches. The statutory approach examines the relevant constitutional provisions and legislation as currently in force, including amendments introduced by the Job Creation legislation and by Law No. 1 of 2026, together with Presidential Instruction No. 11 of 2026. The conceptual approach draws on positive obligations and due diligence in human rights law, corporate fault and organisational liability in criminal law, and the distinction between fault-based and strict liability. The case approach analyses judicial decisions whose numbers, dates and outcomes could be verified through the Supreme Court's decision directory, judicial publications or peer-reviewed commentary. A comparative approach is not used, because the research questions concern the internal coherence of Indonesian law; international instruments are examined only as obligations binding on Indonesia or as interpretive guidance.

Primary legal materials comprise the 1945 Constitution; Laws No. 39 of 1999, No. 41 of 1999, No. 32 of 2009, No. 18 of 2013, No. 39 of 2014, No. 6 of 2023, No. 1 of 2023, No. 20 of 2025 and No. 1 of 2026; Government Regulation No. 22 of 2021; Supreme Court Regulations No. 13 of 2016, No. 2 of 2019 and No. 1 of 2023; Presidential Regulation No. 60 of 2023 and Presidential Instruction No. 11 of 2026; provincial emergency decrees; judicial decisions; and treaties ratified by Indonesia. Secondary materials comprise peer-reviewed articles, scholarly books and authoritative commentary, including the Supreme Court's own judicial media. Facts about the 2026 fire season, which ran until at least mid-October 2026, are drawn from official statements and reputable media reports published

[23] Muh. Ansar Ali and others, 'Batasan Pertanggungjawaban Korporasi atas Kebakaran Lahan Skala Besar', *Jejak Digital: Jurnal Ilmiah Multidisiplin*, 2.4 (2026), 5996-6004 https://doi.org/10.63822/tyhfvx82.

[24] Law No. 1 of 2023 on the Criminal Code, arts 45-50; Law No. 20 of 2025 on the Criminal Procedure Code, arts 326, 328 and 369; Law No. 1 of 2026 on Criminal Adjustment (stipulated and promulgated 2 January 2026).

up to 16 October 2026. They are treated as reported facts, not as judicial findings, and no person or company named in such reports is presumed guilty. The four provinces serve as an illustrative case study of how the law operated in 2026, not as a representative sample of Indonesia; secondary empirical data are used as context and as illustrations of legal application, not as independent proof of the effectiveness or failure of the legal system.

Legal materials were collected through official legislative databases and the Supreme Court decision directory. Secondary literature was identified through searches of general academic search engines, Indonesian journal portals and publisher websites conducted in October 2026, covering publications up to 16 October 2026, using English and Indonesian keywords including 'karhutla', 'forest and land fires', 'corporate criminal liability', 'pertanggungjawaban pidana korporasi', 'strict liability', 'citizen lawsuit' and 'KUHP baru'. Data on the 2026 season were collected up to the same cut-off date; because sources report figures for different dates and with different methods, the date and type of each figure are stated. The materials were analysed through grammatical and systematic interpretation and doctrinal analysis of the elements of liability and procedure. Legal argumentation was then used to identify inconsistencies, enforcement limitations and options for reform. The study involved no interviews, fieldwork or original datasets; statistics are cited from published sources as context. Throughout, the analysis distinguishes positive law (*lex lata*) from proposals for reform (*lex ferenda*).

Results and Discussions

Constitutional Accountability and the State's Duty to Protect Human Rights in Forest Fire Governance

The 2026 fire season provides the factual setting in which the state's obligations must be assessed. Table 1 summarises the situation in the four focus provinces as reported up to 16 October 2026, distinguishing between types of indicator because they are not interchangeable.

Table 1. The 2026 fire season in four focus provinces, by indicator[a]

Province	Status declared	Area indicators	Hotspots, health and enforcement
South Sumatra	Fire alert, 22 April to 30 November 2026	Cumulative burned area: about 1,926 ha (BNPB from SiPongi, 14 Sep) Active fire area: about 3,800 ha (NGO field data, 13 Oct), against 6.9 ha still burning (Governor, 12 Oct)	Hotspots: 22,690 detections inside 81 concessions (NGO count, 1 Sep to 2 Oct)[b] Health: 348,708 acute respiratory infection cases, Jan to Aug (provincial health office), not attributable to haze alone Enforcement: 11 business entities sealed (13 Sep); 16 corporations under police examination (16 Sep); 20 individual suspects (4 Sep)
Central Kalimantan	Emergency response (*tanggap darurat*), 31 August to 29 September 2026 (Governor Decree No. 100.3.3.1/230/2026); provincial alert status reported in effect until 31 October 2026 (decree not identified in the sources)	Cumulative burned area: about 15,830 ha (BNPB from SiPongi, 14 Sep) Cumulative burned area: more than 17,000 ha in 5,848 incidents (provincial command post, 7 Oct)	Fires in Tanjung Puting National Park (12 Oct) Enforcement: 6 business entities sealed (13 Sep); 14 corporations under police examination (16 Sep); 20 individual suspects (4 Sep)

Province	Status declared	Area indicators	Hotspots, health and enforcement
Jambi	Emergency alert since April 2026	Cumulative burned area: about 1,879 ha (BNPB from SiPongi, 14 Sep); about 3,600 ha (provincial task force, 22 Sep) Burned area by independent satellite analysis: about 33,180 ha (25 Sep)	Fires in Berbak Sembilang and Bukit Tigapuluh National Parks Enforcement: 75 cases and 14 suspects (provincial police, 14 Sep); 2 corporations under police examination (16 Sep)
Riau	Emergency alert, 13 February to 30 November 2026	Cumulative burned area: about 19,800 ha (BNPB from SiPongi, 14 Sep) Area covered by police cases: about 3,388 ha (provincial police, 17 Sep)[c]	Enforcement: 58 cases and 61 suspects, none reported to be corporate (17 Sep); 1 business entity sealed (13 Sep); 6 corporations under police examination (16 Sep)

[a] Compiled by the authors from Ridwan (BNPB data drawn from SiPongi, as of 14 September 2026); Hai Kalteng; Monitor Indonesia; JawaPos; Metro TV News (24 April and 15 September 2026); Wijaya; Suara Sumsel; Suprayitno; Sindonews; Okezone (17 September 2026); 'Polda Riau Tetapkan 61 Tersangka dalam 58 Kasus Karhutla', *Tribrata News Polri*, 18 September 2026; and Ministry of State Secretariat, 'Pemerintah Intensifkan Penanganan Karhutla, Operasi Darat dan Udara Terus Dioptimalkan', 12 October 2026 https://setneg.go.id/baca/index/pemerintah_intensifkan_penanganan_karhutla_operasi_darat_dan_udara_terus_dioptimalkan, on the fires in Tanjung Puting National Park. Dates in brackets refer to 2026.
[b] Hotspots are satellite detections of thermal anomalies counted as points, not hectares burned; their location inside a concession does not establish who caused a fire.
[c] Area covered by police reports, not area established by a court as burned by the suspects.

The constitutional basis of the state's obligations rests on three provisions read together. Article 28H(1) establishes the right to a good and healthy environment and to health services; Article 28A protects the right to life; and Article 28I(4) assigns to the state, especially the government, the responsibility to protect, advance, enforce and fulfil these rights. Article 33(4) adds a structural dimension by requiring that economic organisation be sustainable and environmentally sound. Read systematically, these provisions make the protection of people from environmental harm, including harm caused by private economic actors, a constitutional responsibility of government. This reading accords with the comparative literature on environmental constitutionalism, which treats such rights as generating duties to regulate, monitor and remedy rather than merely to abstain.[25]

Statute law gives this duty operational content. The Human Rights Law requires the government to respect, protect, enforce and advance human rights through legal, political, economic, social and cultural measures.[26] The Environment Law recognises the right to a good and healthy environment, guarantees access to environmental information, participation and justice, and equips central and regional governments with supervisory powers and an administrative sanctions regime, including government coercion (*paksaan pemerintah*).[27] The Forestry Law, as amended, requires holders of rights or business permits to take measures to prevent forest fires in their work areas and makes them responsible for forest fires that occur there.[28] Private actors thus carry primary operational duties on their land, while the state carries the duty to set standards, supervise compliance and respond to breaches.

International law reinforces this structure, although instruments differ in legal force. Binding obligations arise from treaties Indonesia has ratified: the right to life under Article 6 of the International Covenant on Civil and Political Rights, the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights, and the ASEAN Agreement on Transboundary Haze Pollution.[29] Other instruments are interpretive rather than binding. General

[25] Boyd; May and Daly.
[26] Law No. 39 of 1999, arts 71-72.
[27] Law No. 32 of 2009, arts 2(a), 65(1)-(2), 71-73 and 76-82, as amended by Law No. 6 of 2023.
[28] Law No. 41 of 1999 on Forestry, art. 49(1)-(2), as amended by Law No. 6 of 2023, art. 36 point 16; 'Hukumnya Membakar Hutan untuk Membuka Lahan', *Hukumonline Klinik*, updated 12 June 2026 https://www.hukumonline.com/klinik/a/hukumnya-membakar-hutan-untuk-membuka-lahan-lt56a70dd6773cd/.
[29] Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights; Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights; Law No. 26 of 2014 on the Ratification of the ASEAN Agreement on Transboundary Haze Pollution.

Assembly Resolution 76/300 and Human Rights Council Resolution 48/13 recognise a human right to a clean, healthy and sustainable environment, and the Framework Principles on Human Rights and the Environment describe states' duties to regulate private actors and provide remedies.[30] In its advisory opinion of 23 July 2025 the International Court of Justice treated a clean, healthy and sustainable environment as a precondition for enjoying many other human rights and affirmed that states must exercise due diligence, including by regulating private actors, to prevent significant environmental harm.[31] The opinion is advisory and concerns climate change; it does not determine Indonesia's responsibility for any fire. It is used here only by doctrinal analogy, for its articulation of due diligence in regulating private actors. The analysis therefore distinguishes three layers: obligations under treaties binding on Indonesia, interpretive guidance on environmental human rights, and analogies drawn from the advisory opinion.

Two clarifications follow. First, the duty to protect is an obligation of conduct, not of result. The occurrence of fires in 2026 does not in itself establish that the state breached its obligations, since an extreme El Niño year can produce fires despite reasonable measures. A breach arises where the state fails to take measures reasonably available and proportionate to a known risk, for example by licensing fire-prone peat conversion without safeguards, by failing to supervise concession holders or by not sanctioning known violators. Second, obligations to prevent harm must be distinguished from obligations that arise after harm occurs: to respond to emergencies, to investigate and sanction violations, to give affected people access to effective remedies, and to ensure restoration. These layers are summarised in Table 2.

To make constitutional accountability testable rather than merely rhetorical, this article assesses alleged state failures through four questions. First, which legal duty is engaged: prevention, supervision, emergency response, information or remedy? Second, what concrete act or omission can be demonstrated from verifiable material? Third, does that act or omission show a failure to take reasonable and proportionate measures against a risk that was known or should have been known? Fourth, which accountability mechanism is legally available, before which forum, and what remedy can it provide? Only an affirmative answer to the third question indicates a breach; the first, second and fourth questions define what must be shown and where.

Table 2. Layers of state obligation in forest and land fire governance[a]

Obligation	Principal legal anchor	Content in the fire context	Main accountability avenue
Respect	Constitution, arts 28A, 28H(1); Human Rights Law, art. 71	The state does not itself cause or authorise unlawful burning, e.g. through policies or permits that legalise burning-based clearing	Supreme Court review of regulations below statute; Constitutional Court review of statutes; administrative court review of decisions
Protect: prevention	Constitution, arts 28I(4), 33(4); Environment Law, arts 71-73; Forestry Law, art. 49	Risk-based licensing on peat, supervision of fire-prevention infrastructure, early warning, peat rewetting	Administrative oversight; Ombudsman complaints; administrative court claims against specific omissions
Protect: enforcement	Environment Law, arts 76-82 and 90; Criminal Code, arts 45-50	Sealing and sanctions; government civil claims; investigation and prosecution	Administrative, civil and criminal enforcement
Fulfil and inform	Constitution, arts 28F, 28H(1); Environment Law, art. 65(2)	Health services, evacuation and protective equipment during haze; reliable public data on fires and burned areas	Political and administrative accountability; civil claims

[30] UN General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, UN Doc A/RES/76/300 (28 July 2022); UN Human Rights Council, Resolution 48/13, UN Doc A/HRC/RES/48/13 (8 October 2021); John H. Knox, *Framework Principles on Human Rights and the Environment*, UN Doc A/HRC/37/59 (24 January 2018), Principles 10-12.

[31] International Court of Justice, *Obligations of States in respect of Climate Change* (Advisory Opinion, 23 July 2025), para. 280.

Obligation	Principal legal anchor	Content in the fire context	Main accountability avenue
Remedy and restore	Environment Law, arts 54, 87, 90-92 and 119; Criminal Code, art. 120	Compensation for affected persons; restoration of ecological function	Civil judgments; additional criminal penalties; execution

[a] Authors' analysis of the legislation cited in this section.

Table 2 shows that state accountability for fires operates primarily through administrative, civil and political avenues. This is consistent with Indonesian criminal law, in which liability attaches to natural persons and corporations for specific offences proven under criminal procedure. Governmental failure to prevent fires is not, without more, a crime. Individual officials may incur criminal liability only where the elements of a specific offence are proven, for instance corruption in permitting, or, as Presidential Instruction No. 11 of 2026 now emphasises, facilitating or allowing burning where that conduct meets the elements of an offence. The constitutional accountability of the state is therefore best understood as duty-based accountability enforced through review, orders and remedies, rather than punishment.

The 2026 season shows how these duties operate in practice. The emergency declarations in Central Kalimantan and the alert statuses in South Sumatra and Jambi are legal acknowledgements of a known risk; once declared, they mobilise budgets and personnel, and Central Kalimantan reported an unexpected-expenditure (*belanja tidak terduga*) budget of IDR 72 billion that was not subject to budget-efficiency cuts.[32] The declarations show that the risk was known and raise the standard of diligence, since a government that has formally recognised an emergency can less easily argue that harm was unforeseeable. They do not, however, establish a breach by themselves; that would require examining the measures required by law, the resources available, the action actually taken and the results of supervision. At the same time, 2026 exposed a weakness in the information dimension of the duty. In Jambi, the official task force reported about 3,600 hectares burned as of 22 September, while an independent satellite analysis put the figure at about 33,180 hectares three days later. In South Sumatra, the Governor stated on 12 October that only 6.9 hectares remained burning, while an environmental organisation reported about 3,800 hectares of active fire the following day.[33] Burned-area data are not merely technical. They determine the scale of health responses, the targeting of supervision and the evidence available for enforcement. The rights to environmental information and participation under Article 65(2) of the Environment Law and to information under Article 28F of the Constitution suggest that consistent, verifiable and public fire data form part of the state's due diligence. Applied through the four-step test, the 2026 divergences engage the information duty and are demonstrable from published figures. Whether they amount to a failure of reasonable diligence depends on whether the differences stem from timing and method, since cumulative burn scars, active fire area and field counts measure different things, or from the absence of a credible process for reconciling and publishing data, which the available sources do not settle. The available avenues include requests for information under the public information law, complaints to the Ombudsman and, for specific refusals, administrative court proceedings.[34]

Institutional continuity matters as well. Commentators in South Sumatra observed that most peat that burned in 2015 burned again in 2026, and that the peat and mangrove restoration agency had been dissolved in late 2024 while its successor was still being planned in 2026.[35] Because peat rewetting is among the most effective preventive measures, an institutional gap in restoration bears directly on whether prevention was reasonable. Presidential Instruction No. 11 of 2026 is a response to these concerns, but its legal character must be understood correctly. A presidential instruction

[32] Hai Kalteng.

[33] Suprayitno; 'Herman Deru Sebut Karhutla Sumsel Tersisa 6,9 Hektar, Bagaimana dengan 3.800 Hektar Lahan Terbakar', *Suara Sumsel*, 15 October 2026 https://sumsel.suara.com/read/2026/10/15/205702/herman-deru-sebut-karhutla-sumsel-tersisa-69-hektar-bagaimana-dengan-3800-hektar-lahan-terbakar.

[34] Law No. 14 of 2008 on Public Information Disclosure; Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia.

[35] Wijaya.

directs officials within the executive; it is not among the types of legislation listed in the statutory hierarchy and cannot amend a statute.[36] Its restriction of the local wisdom exception, which the Instruction reportedly confines to small plots outside peat, excludes from any benefit to corporations and permit holders, and suspends while emergency statuses are in force, is therefore best read as guidance on how officials administer and enforce Article 69(2) of the Environment Law, not as a change to the statutory exception itself.[37]

Several mechanisms give state accountability practical form, each with its own object and forum. Affected communities may bring class actions, environmental organisations meeting statutory criteria may sue for specific measures, and governments may claim damages and restoration costs from polluters.[38] Review of statutes against the Constitution lies with the Constitutional Court, while review of regulations below the level of statute, including regional regulations, against statutes lies with the Supreme Court.[39] A regional regulation purporting to permit burning, of the kind Presidential Instruction No. 11 of 2026 directs regions not to issue, would therefore be challenged before the Supreme Court. Disputes over individual government decisions and factual government actions, including certain omissions, fall within the jurisdiction of the administrative courts, subject to the object, standing and time-limit requirements of the law on government administration; the specific environmental provision on administrative lawsuits concerning permits was removed by the Job Creation legislation.[40] Maladministration in fire prevention and response may also be reported to the Ombudsman.[41] Constitutional review offers a structural avenue as well: in 2017, associations of forestry and palm oil businesses challenged key fire-related provisions, including strict liability and the local wisdom exception, but withdrew the petition before a ruling.[42]

The Central Kalimantan citizen lawsuit illustrates both the potential and the fragility of these avenues, and it concerns one of the very provinces burning again in 2026. The District Court grounded liability in the tort provision of the Civil Code,[43] reading the defendants' failure to prevent and manage fires against their constitutional and statutory duties; commentators categorise the conduct found unlawful into omissions before the fires, such as inadequate supervision and missing implementing regulations, and omissions after them, such as inadequate health supplies and evacuation support.[44] The remedies were regulatory rather than monetary: implementing regulations, a lung hospital free of charge for haze victims, and village-based fire prevention teams, among others.[45] The decision was annulled on case review in 2022; its reasoning was not publicly available when civil society groups commented on it.[46] Because the review decision annulled the earlier judgments, the first-instance reasoning has no continuing force as a precedent; it is used here only as analytical material showing how a court translated constitutional and statutory duties into concrete

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36 Law No. 12 of 2011 on the Formation of Legislation, art. 7(1), as amended.

37 Okezone; Pasardana; Law No. 32 of 2009, art. 69(2) and its elucidation.

38 Law No. 32 of 2009, arts 90-92; Jonaidi and Wibisana.

39 1945 Constitution, arts 24A(1) and 24C(1).

40 Law No. 30 of 2014 on Government Administration; Supreme Court Regulation No. 2 of 2019 on Guidelines for Settling Disputes over Government Actions and Jurisdiction to Adjudicate Unlawful Acts by Government Bodies and/or Officials; Law No. 32 of 2009, art. 93, repealed by the Job Creation legislation, see 'Ini Sejumlah Pasal Bermasalah dalam UU Cipta Kerja', *NU Online* https://nu.or.id/nasional/ini-sejumlah-pasal-bermasalah-dalam-uu-cipta-kerja-ri1jO.

41 Law No. 37 of 2008.

42 Constitutional Court Ruling (*Ketetapan*) No. 25/PUU-XV/2017; 'Akhiri Gugatan, APHI-GAPKI Cabut Uji Materi UU Lingkungan', *Mongabay Indonesia*, 12 June 2017 https://mongabay.co.id/2017/06/12/akhiri-gugatan-aphi-gapki-cabut-uji-materi-uu-lingkungan/.

43 Burgerlijk Wetboek voor Indonesië [Civil Code], art. 1365; Fauzi, pp. 66-70.

44 Fauzi, pp. 70-73.

45 Palangka Raya District Court Decision No. 118/Pdt.G/LH/2016/PN Plk, operative part, Supreme Court decision directory https://putusan3.mahkamahagung.go.id/direktori/putusan/3774c7122216096c43b721a6554b6195.html.

46 'Koalisi: Putusan PK Kasus Karhutla Kalteng 2015 Memprihatinkan', *Hukumonline* https://www.hukumonline.com/berita/a/koalisi--putusan-pk-kasus-karhutla-kalteng-2015-memprihatinkan-lt637b021d858d4. The authors were unable to obtain the full text of Decision No. 980 PK/Pdt/2022; its reasoning should be checked before final publication.

standards of conduct. The recurrence of large fires in Central Kalimantan in 2026 underlines three lessons. Without a statutory standard defining what the state must do, liability depends on courts translating broad constitutional duties into tort standards, an exercise that proved vulnerable on review. The remedies were directed at governance, not at victims or restoration, and the persons who caused the fires were not parties. Fauzi argues that a finding of governmental liability may even weaken the state's own standing to claim damages from polluters;[47] that argument is contestable, since liability for omission and liability for causing harm rest on different foundations, but it highlights the cost of pursuing state and corporate accountability in isolation.

Corporate Criminal Liability and the Enforcement Challenges of Forest and Land Fire Laws

Indonesian law criminalises fire-related conduct in several overlapping statutes. The Environment Law prohibits clearing land by burning and penalises intentionally or negligently causing the ambient air quality standard or the standard criteria for environmental damage to be exceeded.[48] The prohibition on burning is qualified by a local wisdom exception, which the elucidation limits to a maximum of two hectares per household for local crop varieties surrounded by firebreaks, and which by its terms is designed for smallholders, not corporate land clearing.[49] The Forestry Law prohibits burning forests and penalises intentional burning with imprisonment of up to fifteen years, and the Plantation Law prohibits plantation businesses from clearing or cultivating land by burning.[50] Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction may also apply where fires are connected with unlawful plantation activity inside the forest estate, a situation reported in Jambi's production forests and national parks in 2026.[51]

Since 2 January 2026 the penalties in these statutes have been adjusted by Law No. 1 of 2026, which converts fines into the Criminal Code's fine categories and abolishes the special minimum penalties scattered across sectoral statutes.[52] Burning to clear land under Article 108 of the Environment Law, for instance, is now punishable by imprisonment of up to ten years and/or a fine of up to category VI.[53] The abolition of special minimums widens judicial discretion at the lower end of the scale, which makes sentencing guidance and additional penalties more important if deterrence is to be maintained. Because the 2026 fires occurred after the codes entered into force, they constitute the first fire season to which the new rules on corporate liability and procedure apply in full.

The attribution of these offences to corporations rests on two layers of law. Under the Environment Law, an offence committed by, for or on behalf of a business entity may lead to charges against the entity, those who ordered the offence or led the activity, or both; penalties are increased by one third for those who give orders or lead; the entity is represented by its functional management; and courts may impose additional penalties including seizure of profits, closure, repair of the consequences of the offence, performance of neglected obligations and receivership.[54] The new Criminal Code now supplies the general layer. An offence is attributable to a corporation when committed by persons in functional positions acting for or on its behalf, or by those who give orders, exercise control or are beneficial owners outside the formal structure.[55] The corporation is criminally responsible if the offence falls within its business scope, unlawfully benefits it, is accepted as corporate policy, results from the corporation's failure to take the measures necessary to prevent the

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47 Fauzi, pp. 75-78.

48 Law No. 32 of 2009, arts 69(1)(h), 98, 99 and 108, as amended.

49 Law No. 32 of 2009, art. 69(2) and its elucidation.

50 Law No. 41 of 1999, arts 50(2)(b) and 78(4), as amended by Law No. 6 of 2023, art. 36 points 17 and 19; Law No. 39 of 2014 on Plantations, arts 56 and 108.

51 Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction; Suprayitno.

52 Law No. 1 of 2026; 'Prabowo Resmi Teken UU Penyesuaian Pidana', *Tirto.id*, 3 January 2026 https://tirto.id/prabowo-resmi-teken-uu-penyesuaian-pidana-hoEN.

53 Law No. 32 of 2009, art. 108 jo. Law No. 1 of 2026, arts I(1) and II(5)(f), as summarised in 'Hukumnya Membakar Hutan untuk Membuka Lahan'; Hengki.

54 Law No. 32 of 2009, arts 116-119.

55 Law No. 1 of 2023, arts 45-47; 'Menilik Korporasi sebagai Subjek Hukum dalam KUHP Baru', *Hukumonline* https://www.hukumonline.com/berita/a/menilik-korporasi-sebagai-subjek-hukum-dalam-kuhp-baru-lt65fe9864a6846/.

offence, mitigate its impact and ensure compliance, or is permitted by the corporation.[56] These criteria largely codify those previously set out in Supreme Court Regulation No. 13 of 2016.[57]

Two features of the Code are especially relevant to fires. The first is the failure-to-prevent criterion in Article 48(d). Fire cases rarely produce evidence of a board decision to burn; more often the question is whether a concession holder maintained the personnel, equipment, water management and patrols needed to prevent and suppress fires. Article 48(d) allows corporate fault to be established through organisational failure of this kind, which matches the preventive duty the Forestry Law imposes on permit holders. The second is the relationship between corporate and individual liability. Article 49, as amended by Law No. 1 of 2026, provides that liability for a corporate offence meeting the criteria in Article 48 is imposed on the corporation and may also be imposed on managers holding functional positions, order-givers, controlling persons and beneficial owners of the corporation.[58] Sentencing must account for considerations specific to corporations, and corporations may receive, in addition to fines, compensation and repair orders, revocation of licences, closure or freezing of activities and dissolution.[59]

Hotspot counts inside a concession, such as those reported for South Sumatra in 2026, are therefore a reason to investigate, not proof of an offence. Applying Article 48(d) in a fire case requires evidence capable of showing organisational failure. Four categories are particularly relevant. The first is the concession holder's records on fire-prevention infrastructure, including trained personnel, equipment, early-warning systems, patrols and peat water management, together with the results of government inspections of that infrastructure. The second is the warnings, administrative sanctions or sealing orders the corporation received and its response to them. The third is the decisions and policies of management, such as budgets, standard operating procedures and land-preparation contracts. The fourth is evidence linking the business activity and the benefit obtained, for example cheaper land preparation, to the failure to prevent the fire. Where such evidence shows that the corporation knew of the risk and did not take the measures reasonably required, the failure-to-prevent criterion can be satisfied without proof that any manager ordered the burning.

Three limits apply to this reasoning. First, Article 48 is a criterion of corporate responsibility, not an offence in itself: it operates only once the elements of a specific offence are established, such as negligently causing the ambient air quality standard or the damage criteria to be exceeded under Article 99 of the Environment Law, or burning to clear land under Article 108. Second, the offence must be attributable to the corporation through the persons and relationships described in Articles 46 and 47, and the failure to prevent must be linked to that offence rather than to fire risk in general. Third, the evidence must be assessed as a whole against the criminal standard of proof; neither a hotspot inside a concession nor deficient fire-fighting equipment proves by itself the cause of a fire or criminal fault. A hypothetical illustrates the method. Suppose that a plantation company's concession contains drained peat; government inspections in two consecutive years recorded that its fire-prevention unit was understaffed and its water pumps inoperable; it received written warnings but made no repairs; field staff were instructed to prepare a new planting block at the lowest possible cost; and a fire started inside that block and spread, causing the ambient air quality standard to be exceeded. If the prosecution proves the elements of the negligence offence under Article 99, the inspection records, warnings, cost instructions and the link between land preparation and the fire could together support a finding under Article 48(b) and (d) that the offence benefited the corporation and resulted from its failure to take the necessary preventive measures. If the evidence instead showed that the company had maintained adequate prevention and that the fire entered from outside despite reasonable suppression efforts, the same criteria would weigh against corporate liability.

Criminal procedure has also changed. The new Criminal Procedure Code contains a chapter on corporations, providing that liability for corporate offences is imposed on the corporation and the

[56] Law No. 1 of 2023, art. 48.

[57] Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations, art. 4(2); Rahmadia, Disemadi and Jaya.

[58] Law No. 1 of 2023, art. 49, as amended by Law No. 1 of 2026, art. VII point 5.

[59] Law No. 1 of 2023, arts 56, 118 and 120; Hengki.

person responsible for it, a formulation that must be read consistently with the Criminal Code's distinction between corporate and individual fault.[60] It also introduces deferred prosecution agreements (DPAs) for corporate offences, subject to court approval; the first was approved by the Serang District Court on 4 May 2026.[61] DPAs are not a guarantee of redress: their outcome depends on the terms agreed, the court's assessment and the corporation's performance. With 95 corporations under police examination in 2026, they could secure faster restoration and compensation, but they also risk converting serious environmental crimes into negotiated settlements unless their terms are tied to remediation, victim redress and transparency.

A recurring source of confusion is strict liability. In its original form, Article 88 of the Environment Law provided that any person whose acts, business or activities use hazardous materials, generate or manage hazardous waste, or pose a serious threat to the environment is absolutely liable for losses that occur 'without the need to prove fault'. As amended by the Job Creation legislation, the provision states that such a person is absolutely liable for losses 'arising from their business and/or activities', and the phrase on proof of fault no longer appears.[62] The legal consequence is not that fault must now be proven, since the term 'absolute liability' remains, but that the express textual basis for dispensing with fault has been removed, so that the burden-of-proof rule must be derived by interpretation. The implementing regulation supplies part of that interpretation: its elucidation explains absolute liability as meaning that the plaintiff need not prove fault as the basis for the payment of compensation.[63] Practitioners note that plaintiffs must in any event still prove the unlawful element of the activity, the loss and the causal link.[64] Critics noted that the drafters' rationale, that every criminal penalty requires proof, misunderstood a provision concerning civil rather than criminal liability.[65] Article 88 thus operates within environmental liability, principally compensation and restoration, and does not relieve prosecutors of proving the elements of an offence and the corporation's fault. The distinction matters for 2026. Public statements that corporations are fully responsible for fires within their concessions, whether through negligence or intent, express a policy position;[66] in criminal law, neither the old nor the new Criminal Code adopts strict liability, and corporate liability under Article 48 remains fault-based, even if fault is organisational.[67] Strict liability belongs to the civil track, where Supreme Court Regulation No. 1 of 2023 now guides its application, the assessment of scientific evidence and the *in dubio pro natura* principle; judicial commentary stresses that the latter cannot displace the presumption of innocence in criminal cases.[68] Wibisana has shown that courts in wildfire cases sometimes merged strict liability

[60] Law No. 20 of 2025, art. 326; 'Pertanggungjawaban Korporasi Pasca-KUHP dan KUHAP Baru', *E-Paper Perpustakaan DPR RI*, 5 February 2026 https://perpustakaan.dpr.go.id/epaper/index/detail/id/20480.

[61] Law No. 20 of 2025, art. 328; Serang District Court Determination No. 1/Pen.Pid-PPP/2026/PN Srg (4 May 2026), as reported in 'Deferred Prosecution Agreement dalam KUHAP Baru: Siapa Menguji Penolakan Penuntut Umum?', *Hukumonline* https://www.hukumonline.com/berita/a/deferred-prosecution-agreement-dalam-kuhap-baru--siapa-menguji-penolakan-penuntut-umum-lt6a95343fa2074/.

[62] Fauzi, p. 64, reproducing the original wording; '7 Poin Penting Pengaturan Amdal dalam UU Cipta Kerja', *Hukumonline* https://www.hukumonline.com/berita/a/7-poin-penting-pengaturan-amdal-dalam-uu-cipta-kerja-lt60c1ce2e06c83/.

[63] Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management, elucidation of art. 501(1).

[64] '7 Poin Penting Pengaturan Amdal dalam UU Cipta Kerja'.

[65] 'Guru Besar Ini Kritisi Kekeliruan Strict Liability dan Sanksi dalam RUU Cipta Kerja', *Hukumonline* https://www.hukumonline.com/berita/a/guru-besar-ini-kritisi-kekeliruan-strict-liability-dan-sanksi-dalam-ruu-cipta-kerja-lt5f51ea375d783.

[66] Sindonews.

[67] 'Konsep dan Praktik Strict Liability di Indonesia', *Hukumonline Klinik* https://www.hukumonline.com/klinik/a/konsep-dan-praktik-strict-liability-di-indonesia-lt4d089548aabe8/.

[68] Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases; 'In Dubio Pro Natura: Ketika Ketidakpastian Ilmiah Tidak Boleh Menunda Perlindungan Lingkungan', *Dandapala* https://www.dandapala.com/article/detail/in-dubio-pro-natura-ketika-ketidakpastian-ilmiah-tidak-boleh-menunda-perlindungan-lingkungan.

with fault-based reasoning, and argues that strict liability is defensible where the defendant has cleared and drained peatland.[69]

Judicial practice before 2026 illustrates both progress and limits. Table 3 summarises selected decisions, several of which concern the four focus provinces.

Table 3. Selected judicial decisions on forest and land fires[a]

Case	Track	Outcome as reported	Significance
Arie Rompas et al. v Government (PN Palangka Raya 118/Pdt.G/LH/2016/PN Plk; MA 3555 K/Pdt/2018; MA 980 PK/Pdt/2022), Central Kalimantan	Citizen lawsuit	Government found liable for unlawful omissions; upheld in cassation; annulled on case review in 2022	Duty-based state accountability; fragility of the tort route
PT National Sago Prima (PN Jakarta Selatan, 11 August 2016; PT Jakarta, 4 December 2017; MA 3067 K/Pdt/2018; MA 808 PK/Pdt/2020), Riau	Civil (government claim)	IDR 319.17 billion compensation and IDR 753 billion restoration at first instance; reversed on appeal; restored in cassation	Court applied strict liability; partial payment later reported
PT Adei Plantation and Industry (PN Pelalawan 190/Pid.B/LH/2020/PN Plw), Riau	Criminal	Convicted for negligently causing standards to be exceeded; fine of IDR 1 billion and additional penalty of about IDR 2.99 billion to restore 4.16 ha	Restorative additional penalty under the Environment Law
PT Kallista Alam (PN Meulaboh 131/Pid.B/2013/PN.MBO jo. PT Banda Aceh 201/Pid/2014/PT BNA jo. MA 1554 K/Pid.Sus/2015), Aceh	Criminal	Corporation convicted for burning peatland; fine of IDR 3 billion	Early direct corporate conviction
PT Kallista Alam (PN Meulaboh 12/Pdt.G/2012/PN.MBO jo. MA 1 PK/Pdt/2017), Aceh	Civil (government claim)	About IDR 366 billion: IDR 114 billion compensation and IDR 251 billion restoration	Gap between civil exposure and criminal fine for the same fire

[a] Compiled from Hengki; 'Hukumnya Membakar Hutan untuk Membuka Lahan'; Mongabay Indonesia (3 January 2019); Kontan Insight; Fauzi; and the Supreme Court decision directory. Amounts are as reported in these sources.

The Kallista Alam case is often cited as a landmark because the corporation itself was convicted as the principal offender.[70] Yet the IDR 3 billion fine is small against the roughly IDR 366 billion civil liability for the same fires, and Satria's analysis of the cassation judgment notes that no restorative additional penalty was imposed.[71] The Adei case in Riau points in a different direction: in addition to a fine, the Pelalawan District Court ordered the company to pay about IDR 2.99 billion to restore 4.16 hectares, using the additional penalty of repairing the consequences of the offence.[72] That approach integrates restoration into criminal judgment. The civil litigation against PT National Sago Prima, also in Riau, shows how the liability rule affects outcomes: the trial court's award was reversed on appeal and restored in cassation, with the Supreme Court's spokesperson emphasising absolute liability, and the government later reported a partial payment of about IDR 160 billion.[73]

69 Wibisana, pp. 185-96.

70 Hengki; Satria, p. 162.

71 'Hukumnya Membakar Hutan untuk Membuka Lahan'; Satria, pp. 155-71.

72 Pelalawan District Court Decision No. 190/Pid.B/LH/2020/PN Plw, as reported in Hengki.

73 'Mahkamah Agung Menangkan Kementerian Lingkungan, PT NSP Harus Bayar Rp1 Triliun', *Mongabay Indonesia*, 3 January 2019 https://mongabay.co.id/2019/01/03/mahkamah-agung-menangkan-kementerian-lingkungan-pt-nsp-harus-bayar-rp1-triliun/; 'Anak Usaha Sampoerna Agro (SGRO) Pertimbangkan Upaya Hukum PK', *Kontan Insight* https://insight.kontan.co.id/news/anak-usaha-sampoerna-agro-sgro-pertimbangkan-upaya-hukum-pk; Fauzi, p. 78, citing a Ministry of Environment and Forestry press release of 13 July 2024.

The 2026 season adds a new layer of evidence on how the law is applied. Enforcement has so far been weighted toward individuals. As of 4 September, police data showed 113 suspects nationally, with 42 in Riau, 20 each in South Sumatra and Central Kalimantan and 8 in Jambi, and a senior Bareskrim official stated that suspects were dominated by individuals.[74] In Riau, the provincial police reported 58 cases and 61 suspects by mid-September, without reported corporate defendants.[75] By 30 September, as noted, 196 individuals but only four corporations had been named as suspects nationally, although reports against corporations covered most of the hectares under police examination.[76] The Jambi experience is instructive. Two elderly residents were arrested for allegedly burning land inside a timber concession, and the head of BNPB stated that they had allegedly been paid IDR 500,000 to do so.[77] If that allegation is substantiated, the persons who lit the fire are only the last link in a chain. The Criminal Code's provisions on order-givers, controllers and beneficial owners, together with the benefit and failure-to-prevent criteria in Article 48, require investigators to ask who paid, who controlled the land and who benefited. Riau investigators publicly stated that they examine land status, control, purpose and benefit, not only who lit the fire, an approach consistent with the Code.[78] Civil society organisations in Jambi cautioned that residents in land conflict areas should not be presumed responsible merely because they live there.[79]

Taken together, the legislation, the case law and the 2026 experience reveal five implementation challenges. First, attribution and causation are difficult: peat fires spread underground and across boundaries, and defendants commonly argue that fires began outside their concessions or were set by third parties. The failure-to-prevent criterion helps, because the question becomes whether the corporation maintained adequate prevention measures, not whether it lit the fire. Second, proof depends on scientific evidence, including hotspot data, satellite imagery, burn-scar mapping and laboratory analysis, and the divergent burned-area figures of 2026 show how contestable such evidence can be. Third, sanctions have often been modest relative to harm, and the abolition of special minimums may widen that gap unless additional penalties are used systematically. Fourth, execution remains weak; civil society reported in 2019 that eleven civil fire judgments worth IDR 19.3 trillion had not been executed.[80] Fifth, enforcement operates in a political economy in which patronage can shield well-connected actors.[81] These challenges concern the state's capacity and willingness to enforce, which returns the analysis to constitutional accountability.

Integrating Constitutional Accountability and Corporate Criminal Liability for Effective Human Rights Protection

The two tracks fail for complementary reasons. State accountability, pursued through tort, lacks a precise standard and does not reach the actors who cause harm. Corporate criminal liability reaches those actors, but its effectiveness depends on investigation, prosecution and execution, which are state functions, and its sanctions have not been systematically linked to the people harmed. This article therefore proposes a dual-track accountability framework premised on two principles: the two forms of accountability must remain legally distinct, and they must be functionally connected. The framework is the authors' normative construction: it organises duties that already exist in positive law, proposes how they should interact, and remains to be tested against cases as they arise.

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74 Irfan Fathurohman, '113 Orang Jadi Tersangka Karhutla, Terbanyak di Riau', *IDN Times*, 6 September 2026 https://www.idntimes.com/news/indonesia/113-orang-jadi-tersangka-karhutla-terbanyak-di-riau-00-vdzm7-5hcjcd.

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76 iNews via RCTI+.

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78 'Polda Riau Tetapkan 61 Tersangka dalam 58 Kasus Karhutla'.

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80 'Penegakan Hukum Karhutla Dinilai Tidak Serius', *Hukumonline* https://www.hukumonline.com/berita/a/penegakan-hukum-karhutla-dinilai-tidak-serius-lt5d820f159bc20.

81 Varkkey; Purnomo and others.

Legal distinctness is the first principle. State accountability and corporate criminal liability differ in subject, legal basis, standard, procedure and remedy, as Table 4 summarises. Keeping them distinct prevents the state from being described as criminally 'guilty' merely because fires occurred, and prevents corporations from being convicted on a lower civil or administrative standard. It also means that a finding against the state does not excuse a corporation, and a corporate conviction does not discharge the state's duty to remedy and restore.

Table 4. The dual-track accountability framework[a]

Dimension	Track A: state accountability	Track B: corporate criminal liability	Connecting point
Subject	Central and regional governments and their organs	Corporations, managers, order-givers, controllers and beneficial owners	Supervision: the state supervises, the corporation complies
Legal basis	Constitution, arts 28F, 28H(1), 28I(4), 33(4); Human Rights Law, arts 71-72; Environment Law	Environment, Forestry and Plantation Laws; Criminal Code, arts 45-50 and 118-120	Constitutional duty to protect requires effective enforcement
Standard	Due diligence: reasonable and proportionate measures against known risk	Elements of a specific offence and corporate fault under art. 48, proven under criminal procedure	Supervisory records as structured evidence of organisational fault
Forum	Administrative courts (decisions and actions); Supreme Court (regulations below statute); Constitutional Court (statutes); civil courts; Ombudsman; political oversight	Criminal courts; pretrial review (praperadilan) of termination of investigation or prosecution; court approval of DPAs	Coordinated administrative, civil and criminal enforcement
Remedy	Orders to regulate, supervise, inform and provide services	Fines and additional penalties: compensation, repair, licence revocation	Victim-centred sanctioning; public register of execution
Limits of the link	A corporate conviction does not discharge the state's duty to protect, inform and remedy	Evidence of supervisory failure by the state does not by itself prove corporate fault	The links are evidential and functional; liability is not transferred between tracks

Functional connection is the second principle, and it operates at four points. The first is supervision. The state's supervisory duty under the Environment and Forestry Laws generates records on whether concession holders maintain fire-prevention infrastructure, and such records may already ground administrative sanctions and government civil claims.[82] The framework proposes that they be compiled also as structured evidence for the failure-to-prevent criterion in Article 48(d). In 2026, the sealing of eleven business entities in South Sumatra and six in Central Kalimantan, and hotspot concentrations inside concessions documented by civil society, provide exactly the kind of material that should feed directly into criminal files. Rigorous supervision thus discharges the state's duty of prevention and simultaneously builds the evidential foundation for corporate accountability.

The second point is the duty to enforce. In human rights law, the duty to protect has a procedural dimension: where credible evidence of serious harm exists, the state must investigate and, where warranted, sanction. Read with Article 28I(4) of the Constitution and Articles 71-72 of the Human Rights Law, this suggests that an unexplained gap between the hectares covered by reports against corporations and the number of corporate suspects, as observed in September 2026, calls for reasoned public explanation. The avenues for testing enforcement decisions must, however, be identified precisely. Decisions of investigators and prosecutors are governed by criminal procedure: the termination of an investigation or prosecution has been reviewable through pretrial review (*praperadilan*), a mechanism retained in the 2025 Criminal Procedure Code, and is not a matter for the

[82] Law No. 32 of 2009, arts 71-72 (supervision), 76-82 (administrative sanctions) and 90 (claims by the government), as amended by Law No. 6 of 2023.

administrative courts.[83] By contrast, an environmental authority's failure to exercise its administrative powers, for example by not imposing sanctions on a concession holder after documented violations, may be challenged before the administrative courts, subject to the object, standing and time-limit requirements of the law on government administration, or reported to the Ombudsman. The framework does not deny prosecutorial discretion; it implies that discretion in serious fire cases should be reasoned and open to the review mechanisms the law actually provides.

The third point is victim-centred sanctioning. The Criminal Code and the Environment Law already allow courts to order compensation and repair as additional penalties.[84] In fire cases arising in 2026, prosecutors should routinely seek such penalties, quantified with expert evidence and directed to identified communities, such as residents of Palembang and the haze-affected villages of Jambi, and to restoration of burned peat. The same logic should govern DPAs: an agreement concerning a fire offence should be approved only if it contains enforceable restoration and compensation obligations, independent monitoring and publication of its terms. This aligns criminal enforcement with the access-to-remedy pillar of the United Nations Guiding Principles on Business and Human Rights, which Indonesia has incorporated into its National Strategy on Business and Human Rights.[85]

The fourth point is execution, information and coordination. A consolidated public register of fire-related sealing orders, administrative sanctions, civil judgments and criminal judgments, showing the status of payment and restoration for each, would make the state's performance measurable. A single verified burned-area dataset per province, reconciling official and independent figures, would serve the right to information, the targeting of health responses and the evidentiary needs of enforcement. Coordination across the environment and forestry ministries, police, prosecutors and the four provincial governments would reduce the risk that the same fire is handled inconsistently in parallel proceedings.

Several reform proposals follow. They are *lex ferenda* and distinct from the positive law described above. First, the legislature should restore an explicit statement that civil strict liability under Article 88 of the Environment Law does not require proof of fault, and clarify that clearing and draining peatland is an activity posing a serious threat to the environment. Second, the Attorney General's Office and the Supreme Court should issue guidance on corporate fire offences specifying the prevention measures relevant to Article 48(d), the use of supervisory records as evidence, the investigation of order-givers and beneficiaries where individuals are paid to burn, and the quantification of restorative penalties. Third, guidelines for DPAs in environmental cases should require measurable ecological restoration; compensation or restitution grounded in law and in proven loss; a timetable and an independent monitoring mechanism; the involvement of victims and affected communities to the extent the law allows; publication of the terms; and clear legal consequences, including resumption of prosecution, if the corporation fails to perform. Fourth, the restrictions on the local wisdom exception announced in Presidential Instruction No. 11 of 2026 should, if they are to bind beyond the executive, be enacted through an amendment to the Environment Law. Fifth, concession maps, hotspot data, burned-area figures and enforcement records should be publicly accessible.

The framework has broader significance. Debates on environmental human rights often focus on whether a right to a healthy environment exists and is justiciable against the state; debates on corporate criminal liability focus on how organisational fault is attributed. Indonesia's 2026 experience shows that the two debates meet at the point of enforcement. A constitutional right becomes effective against private harm largely through the state's willingness to investigate, sanction and secure remedies, while corporate criminal liability becomes meaningful for victims only when it

[83] Law No. 8 of 1981 on Criminal Procedure (repealed with effect from 2 January 2026), art. 77; Law No. 20 of 2025, art. 158, which includes among the objects of pretrial review the lawfulness of terminating an investigation or prosecution; 'Objek Praperadilan menurut KUHAP Baru', *Hukumonline Klinik*, 6 February 2026 https://www.hukumonline.com/klinik/a/objek-praperadilan-menurut-kuhap-baru-lt51fa663e47431.

[84] Law No. 1 of 2023, art. 120; Law No. 32 of 2009, art. 119.

[85] UN Human Rights Council, *Guiding Principles on Business and Human Rights*, UN Doc A/HRC/17/31 (21 March 2011); Presidential Regulation No. 60 of 2023 on the National Strategy on Business and Human Rights.

is tied to restoration and redress. The codification of organisational fault in the 2023 Criminal Code, including failure to prevent, offers a concrete device through which the state's due diligence obligation can be translated into corporate accountability.

Conclusion

The 2026 fire season in South Sumatra, Central Kalimantan, Jambi and Riau shows that Indonesia's legal capacity to address forest and land fires has grown faster than its practice. In answer to the first question, the 1945 Constitution, read with the Human Rights Law and the Environment Law, imposes on the state a positive obligation of due diligence covering prevention, supervision, enforcement, emergency response, public information and remedy. The obligation does not make the state criminally liable whenever fires occur; breach must be shown through the duty engaged, a demonstrable act or omission, a failure of reasonable diligence against a known risk and an available forum, and it is enforced mainly through administrative, civil, constitutional and political avenues. The 2026 emergency declarations heightened that duty, while conflicting official and independent burned-area figures revealed a gap in its information dimension.

In answer to the second question, the legal basis for corporate criminal liability is firmer in three concrete respects: corporate attribution, including order-givers and beneficial owners, is now codified in the general part of the Criminal Code rather than only in sectoral statutes; the failure-to-prevent criterion, previously set out in a Supreme Court regulation, now has statutory force; and the Criminal Procedure Code provides a dedicated corporate procedure, including deferred prosecution agreements. That criterion operates only together with the elements of a specific offence and the rules of attribution. Implementation in 2026, however, remained weighted toward individuals, and corporate enforcement continues to face difficulties of attribution and proof, modest sanctions, limited use of restorative penalties and weak execution. Strict liability remains a civil, not a criminal, rule, and the Job Creation legislation made its statutory formulation less explicit by removing the express reference to liability without proof of fault.

In answer to the third question, the dual-track accountability framework keeps state and corporate liability legally distinct while connecting them through supervision, the duty to enforce, victim-centred sanctioning and execution. Its principal contribution is to show that the state's constitutional duty and the corporation's criminal liability are interdependent: supervision produces the evidence of corporate fault, enforcement gives the constitutional right practical effect, and restorative sanctions turn punishment into remedy. For the provinces that burned in 2026, this means building corporate cases from supervisory records, tracing payment and benefit behind individual arsonists, directing penalties to affected communities and burned peat, and publishing verified data on fires and enforcement outcomes.

Ethics approval

"Not required." This study is doctrinal legal research based on published legal materials and did not involve human participants or personal data.

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Declaration of Artificial Intelligence Use

Scopus AI was used to identify and explore relevant academic literature and references indexed in Scopus related to the research topic. Grammarly was used to refine English grammar, spelling, and language clarity. All substantive research, legal analysis, interpretation of legal sources, arguments, and conclusions were developed by the authors. The authors independently reviewed and verified the relevance and accuracy of the references and critically assessed all AI-assisted suggestions. The authors take full responsibility for the originality, accuracy, and integrity of the article.

We confirm that all AI-assisted processes were critically reviewed by the authors to ensure the integrity and reliability of the research. The final decisions, legal interpretations, and conclusions presented in this article were made solely by the authors.

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