

## THE RESPONSIBILITIES OF THE GOVERNMENT AND BUSINESS ENTITIES IN COMBATING FOREST AND LAND FIRES IN RIAU

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### Abstrak

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Forest and land fires in Riau Province are a recurring disaster that degrades air quality, harms public health, and causes social and economic losses, even though a multi-layered legal framework is already in place, ranging from the 1945 Constitution, the Environmental, Forestry, and Plantation Acts, Government Regulation No. 4 of 2001, to Riau Provincial Regulation No. 1 of 2019. This study aims to analyze the effectiveness of that framework, to explain the liability patterns of the central government, local governments, and business actors, and to examine legal remedies that can be used to address forest and land fires in Riau. The research employs a normative legal method with statutory and conceptual approaches, using primary and secondary legal materials that are analyzed qualitatively and descriptively. The findings indicate that weak oversight and inconsistent law enforcement render the relatively comprehensive regulations ineffective, while conflicts of economic interest prevent local governments from fulfilling their supervisory role optimally. At the same time, the amendment to Article 88 of the Environmental Protection and Management Act by the Job Creation Act weakens the position of the state and the public in pursuing corporate liability because the phrase “without the need to prove fault” has been removed. The study underscores the need to strengthen monitoring, enforce administrative, civil, and criminal sanctions, and optimize public lawsuits so that forest and land fire control in Riau can become more effective, just, and sustainable.

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## INTRODUCTION

Forests are natural resources that serve vital ecological, social, and economic functions for communities. Every year, forest cover continues to shrink as it is converted into agricultural land. Many companies clear land for plantations by burning forests in open fires to reduce production costs. Therefore, forests must be properly managed, protected, and utilized sustainably for the welfare of the Indonesian people, both now and in the future. The forest and land fires occurring in various locations across Indonesia recently represent an annual disaster that is deeply concerning, necessitating serious action from all parties. One region in Indonesia facing forest fire issues is the Province of Riau. Almost every year, the Riau region faces forest fires that result in smoke and haze. The issue of forest fires, which threatens the sustainability of the ecosystem, is in fact not merely a national issue but has also become a regional crisis tangibly experienced by various regions in Indonesia, one of which is Riau Province.

The capacity of the Riau Provincial government has long been a focus of attention regarding the haze problem caused by forest fires. This issue has also drawn attention from neighboring countries, particularly those near Riau Province. These losses, which transcend geographical and national borders, have persisted unabated since 1998 and have caused negative impacts on social, economic, and ecological aspects of the environment. Land conversion for oil palm plantations has been the primary driver of forest and land fires in Riau. These fires have become increasingly difficult to manage because they frequently occur on peatlands, which are highly flammable and difficult to extinguish. Although the Riau provincial government is well aware of the structure of peatland ecosystems, fires continue to recur.

The conversion of peatlands for oil palm plantations through drainage and the use of fire increases the risk of forest and land fires. The drying out and alteration of peatlands—primarily driven by palm oil production—exacerbates the haze caused by the fires. The Riau Provincial Government claims to have brought forest and land fires—which have thickened the haze and disrupted community activities—under control, yet fires and haze continue to occur.

The forest and land fires in Riau Province have a direct impact on declining air quality. Smoke generated from land burning, particularly on peatlands, causes an increase in the concentration of fine particulate matter (PM<sub>2.5</sub>), which is harmful to public health. ISPU data from Pekanbaru in September 2023 shows that air quality was in the “unhealthy” category due to rising PM<sub>2.5</sub> concentrations from forest and land fires.



Figure 1: Air Quality Conditions in Pekanbaru (ISPU)

(Source: Olivia, L. (2023). Oh My, Pekanbaru’s Air Quality This Afternoon Is Unhealthy. Riau Online)

Figure 1 shows that air quality in Pekanbaru on September 29, 2023, was in the “unhealthy” category with an ISPU value of 124 for PM2.5. ISPU data from the Ministry of Environment and Forestry (KLHK) indicates that the “unhealthy” category falls within the range of 101–200 and can have negative effects on plants and humans. These conditions indicate that forest and land fires in Riau have increased air pollution and are affecting public health. High concentrations of PM2.5 particles make daily activities more difficult. They also increase the risk of respiratory problems for people who have been exposed to haze for a certain period of time. These conditions indicate that efforts to prevent and combat forest and land fires remain insufficient, leading to recurring fires every year. This is because forest and land fires not only affect public health but also impact air quality in the affected areas.

According to the latest data as of May 29, 2026, the Air Quality Index (AQI) for Pekanbaru, Riau, is currently in the “Good” category with an AQI value of 26 according to IQAir, while the PM2.5 concentration measured by the BMKG stands at 17.7  $\mu\text{g}/\text{m}^3$ , which falls into the “Moderate” category. These conditions represent a significant improvement compared to July 2025, when forest and land fires (Karhutla) in Riau caused Pekanbaru’s AQI to reach 132—classified as “unhealthy for sensitive groups”—with a PM2.5 concentration of 48.2  $\mu\text{g}/\text{m}^3$ . Although Pekanbaru’s air quality in 2026 has improved, Riau Province remains vulnerable to forest and land fires during the dry season, necessitating continuous prevention and monitoring efforts.

To prevent forest destruction, environmental management efforts are necessary. Environmental management must be carried out in an integrated manner through planning, utilization, control, maintenance, supervision, and law enforcement as stipulated in the Environmental Protection and Management Law (UUPPLH). The term “conservation of biological natural resources” refers to the management of biological natural resources, the utilization of which is carried out wisely to ensure the sustainability of their supply while maintaining and enhancing the quality of their biodiversity and value.

These regulations emphasize that environmental protection is a collective responsibility that must be carried out continuously to prevent environmental damage and to ensure the survival of humanity. In practice, various types of environmental damage often stem from human activities that do not take environmental sustainability into account.

Without realizing it, an individual’s behavior or actions toward nature can have a direct impact on themselves and an indirect effect on future generations. Hijriati and Mardiana (2014) argue that environmental degradation affects not only the current generation but also future generations, who will bear the consequences. This situation underscores that the interaction between humans and the environment—or natural resources—is highly interdependent. As this journal notes, citing Kristanto’s view, the relationship between humans and their ecosystems is circular; every human action, whether small or large, alters the natural environment around them. Therefore, the potential for environmental disasters is closely linked to human activities affecting existing ecosystems or natural resources.

## LITERATURE REVIEW

### Green Constitution as the Constitutional Basis for Environmental Protection

Environmental protection is recognized as a constitutional right of every citizen and serves as the constitutional foundation for sustainable development in Indonesia. Yusa and Hermanto (2018) explain that the concept of a green constitution is reflected in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. These constitutional provisions affirm that the State has a constitutional obligation to guarantee every person's right to a good and healthy environment while ensuring that national development is carried out in accordance with the principles of sustainability and environmental protection.

The concept of a green constitution establishes environmental protection as a constitutional duty of the State. Consequently, the government is not only authorized to formulate environmental policies but is also responsible for ensuring their effective implementation. In the context of forest and land fires, this concept provides the constitutional basis for assessing whether the government has fulfilled its obligations to prevent, control, and restore environmental damage resulting from forest and land fires.

### Previous Research on Forest and Land Fire Mitigation

Previous research indicates that forest and land fires are influenced by ecological conditions, human activities, and governance-related factors. Rosit et al. (2023) explain that land clearing for agricultural and plantation activities remains the primary cause of forest and land fires. Similarly, Qamariyanti, Usman, and Rahmawati (2023) emphasize that weak forest management and the absence of well-planned, integrated, and sustainable policies are significant factors affecting the prevention and mitigation of forest and land fires.

In the context of Riau Province, Meiwanda (2016) found that forest and land fire mitigation continues to face various challenges, including limited institutional capacity, inadequate inter-agency coordination, and limited local government budgets. Meanwhile, Kusmajaya et al. (2019) explain that the characteristics of peatlands in Riau Province allow fires to spread more rapidly and make them more difficult to extinguish, thereby requiring mitigation strategies that differ from those applied in non-peatland areas.

These studies demonstrate that forest and land fires are not solely caused by natural conditions but are also closely associated with weak governance, inadequate oversight of forest land use, and the activities of business entities. Nevertheless, previous research has primarily focused on the causes of forest and land fires and mitigation strategies, while relatively little attention has been paid to the effectiveness of government and corporate liability in addressing forest and land fires.

### Government Liability for Environmental Protection

Studies on government liability in environmental law recognize the government as the primary actor responsible for ensuring the public's right to a good and healthy environment. Sumoked, Soepeno, and Mamahit (2020) explain that the government is responsible for formulating policies, exercising oversight, preventing environmental degradation, enforcing environmental laws, and undertaking environmental restoration when pollution or environmental damage occurs.

On the other hand, Meiwanda (2016) found that local governments in Riau Province continue to encounter significant obstacles in mitigating forest and land fires, particularly

due to limited institutional capacity and a high level of dependence on the plantation sector. Fadhillah (2017) also highlights the importance of government liability in pollution cases arising from forest and land fires, while Hayfa et al. (2026) relate the ineffective mitigation of forest and land fires to Indonesia's responsibility for transboundary haze pollution. These findings indicate that the effectiveness of environmental protection depends not only on the existence of legal regulations but also on the consistency of both the central and local governments in carrying out oversight, prevention, and law enforcement.

### **Corporate Liability and the Principle of Strict Liability**

Corporate liability is one of the fundamental instruments of environmental law enforcement, particularly for companies operating in the plantation and forestry sectors. Wibisana and Nurhidayah (2019) explain that the principle of strict liability was developed to provide more effective protection against environmental damage by imposing liability on business entities without requiring prior proof of fault. However, Suparto (2021), Listiyani and Nopliardy (2022), and Mahardika (2022) argue that the amendment to Article 88 of Law No. 32 of 2009 through the Job Creation Act has created legal uncertainty regarding the application of the strict liability principle. The removal of the phrase "without the need to prove fault" has been argued to increase the burden of proof in environmental litigation and may weaken the effectiveness of corporate liability for environmental damage resulting from forest and land fires. Furthermore, Wibisana (2016) argues that environmental crimes committed by corporations require consistent law enforcement to ensure that sanctions produce a deterrent effect and encourage business entities to comply with their environmental protection obligations.

### **Research Gap**

Previous research has examined various aspects of forest and land fires, including the concept of the green constitution, the causes of forest and land fires, fire mitigation, government liability, and corporate liability. However, these studies generally address each issue separately rather than examining their interrelationship within a comprehensive legal framework.

Despite the growing body of literature, only a limited number of studies have comprehensively examined the relationship between the legal framework governing forest and land fire mitigation, government liability, and corporate liability, particularly in the context of Riau Province. In addition, limited attention has been given to the implications of the amendment to Article 88 of Law No. 32 of 2009 for the effectiveness of corporate liability in forest and land fire cases.

Accordingly, this study seeks to address this research gap by comprehensively analyzing the effectiveness of the legal framework, the patterns of liability of the central government, local governments, and business entities, as well as the legal remedies available for addressing forest and land fires in Riau Province.

### **RESEARCH METHOD**

This study is a normative legal research that analyzes the liability of the government and business entities in addressing forest and land fires in Riau Province based on positive legal norms and environmental law doctrine. The approaches used are the statutory approach and the conceptual approach.

The statutory approach involves examining laws and regulations related to the mitigation of forest and land fires, particularly Law No. 32 of 2009, Law No. 41 of 1999, Law No. 18 of 2013, Law No. 39 of 2014, Government Regulation No. 4 of 2001, and Riau Provincial Regulation No. 1 of 2019. The conceptual approach was used by examining the principles of strict liability, *onrechtmatige overheidsdaad*, and corporate liability as developed in environmental law literature.

The legal materials used consist of primary legal sources (laws and regulations), secondary legal sources (books, journal articles, and previous research), and tertiary legal sources (legal dictionaries and encyclopedias). All legal materials were obtained through a literature review and analyzed using descriptive qualitative methods to assess the consistency of regulations and patterns of liability in addressing forest and land fires in Riau.

## RESULT AND DISCUSSION

### Legal Regulations on Forest and Land Fire Mitigation in Riau

Regulations on forest and land fire mitigation in Riau are based on the 1945 Constitution of the Republic of Indonesia (UUD NRI), which serves as the constitutional foundation for environmental protection in Indonesia. Article 28H, paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that every person has the right to a good and healthy environment, while Article 33, paragraph (4) establishes the principles of sustainable and environmentally sound development as the foundation for the management of the national economy. These provisions indicate that environmental protection has become both a constitutional right of citizens and the foundation for national development. In line with this, Yusa and Hermanto (2018) explain that the concept of a “green constitution” in Indonesia is understood as the constitutionalization of environmental legal norms reflected in Article 28H, paragraph (1), and Article 33, paragraph (4), of the 1945 Constitution of the Republic of Indonesia. Thus, the state bears a constitutional responsibility to protect the environment through the establishment of sustainable legal regulations and policies, including measures to combat forest and land fires in Riau Province.

This constitutional mandate is further elaborated in Law No. 32 of 2009 on Environmental Protection and Management (Environmental Protection and Management Law) as the primary legal basis for controlling forest and land fires. Article 69(1)(h) prohibits anyone from clearing land by burning, while Article 69(2) provides limited exceptions based on local community wisdom. The explanatory notes to these articles clarify that land burning is permitted only on a maximum area of 2 hectares per household and must use firebreaks to prevent the fire from spreading to surrounding areas. These provisions indicate that the Environmental Protection and Management Law (UU PPLH) essentially prohibits land burning but still allows limited scope for traditional community practices carried out in a controlled manner. In line with this, Sheebakayla (2024) explains that some communities still clear land by burning because it is considered easier, and the ash from the burning is believed to fertilize the soil. Therefore, the Environmental Protection and Management Law (UU PPLH) restricts the practice of land burning through the requirement of local wisdom to prevent it from escalating into forest and land fires that damage the environment.

In addition to establishing prohibitions and exceptions, the Environmental Protection and Management Law (UU PPLH) also strengthens the control of forest and

land fires through criminal and administrative sanctions as instruments of law enforcement. Article 108 stipulates a prison sentence of at least 3 years and no more than 10 years, as well as a fine of at least Rp3 billion and no more than Rp10 billion for those who burn land, while Articles 76 through 82 stipulate administrative sanctions in the form of written warnings, government coercion, suspension, and revocation of environmental permits. These provisions indicate that the control of forest and land fires is carried out through mechanisms of oversight and law enforcement against environmental violations. In line with this, Edrika (2026) explains that environmental oversight under the Environmental Protection and Management Law (UU PPLH) functions as an instrument of administrative law enforcement that is both preventive and corrective through the requirement for an Environmental Impact Assessment (AMDAL) and the imposition of administrative sanctions, although its implementation in the field remains suboptimal. This indicates that the effectiveness of forest and land fire control depends heavily on the consistency of oversight and the enforcement of sanctions against environmental violations.

The legal framework under the Environmental Protection and Management Law (UU PPLH) is further strengthened through sector-specific regulations in the forestry and plantation sectors. Law No. 41 of 1999 on Forestry, in Article 50(3)(d), stipulates that no person shall burn forests, while Article 78(3) prescribes a maximum prison sentence of 15 years and a fine of up to Rp5 billion for those who intentionally set forest fires. These regulations were subsequently reinforced by Law No. 39 of 2014 on Plantations, which, in Article 56(1), prohibits business operators from clearing and/or cultivating land by burning, and establishes criminal penalties and sanctions against corporations in Articles 108 and 113. In relation to on-the-ground practices, Rosit et al. (2023) explain that forest and land fires are largely caused by human activities during agricultural land clearing and occur predominantly in areas of large-scale plantations as well as smallholder plantations. These conditions indicate that regulations in the forestry and plantation sectors were established to limit the practice of land burning, which is still frequently used in land-clearing activities.

Regulations in the forestry and plantation sectors are further reinforced by Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction, which focuses on preventing organized forest destruction and the illegal use of forest areas. Article 17 prohibits the use of forest areas for plantation activities without the Minister's permission, while Article 82 stipulates criminal penalties of up to 20 years in prison and a maximum fine of Rp50 billion for such violations. These regulations demonstrate that the control of forest and land fires is also carried out through oversight of land-clearing activities and the utilization of forest areas. In line with this, Qamariyanti et al. (2023) explain that forest and land fires are influenced by the clearing of land for agriculture and plantations, illegal logging that results in degraded land, and forest encroachment. Therefore, sectoral regulations in the forestry sector are necessary to prevent the illegal use of forest areas, which has the potential to trigger forest and land fires.

To ensure that the various provisions in the aforementioned laws and regulations can be effectively implemented at the operational level, the government issued Government Regulation No. 4 of 2001 on the Control of Environmental Damage and/or Pollution Related to Forest and/or Land Fires as a technical instrument for forest and land fire mitigation. Qamariyanti et al. (2023) explain that disaster management is the responsibility of the central and local governments and must be carried out in a planned,

integrated, coordinated, and comprehensive manner during the pre-disaster, emergency response, and post-disaster phases. In line with this principle, Article 11 prohibits any person from burning forests and/or land, while Article 13 requires every person in charge of businesses in the forestry, plantation, and agricultural sectors to prevent fires from occurring at their business sites. Furthermore, Article 14 regulates the provision of prevention and mitigation facilities; Article 15 regulates mitigation efforts through fire suppression and damage containment; and Article 16 regulates post-fire management through environmental rehabilitation and restoration. Additionally, Article 18(3) mandates that local governments formulate local regulations as technical guidelines for forest and land fire mitigation tailored to local conditions. Thus, Government Regulation No. 4 of 2001 governs the integrated management of forest and land fires, spanning from the prevention stage, through response during active fires, to post-fire recovery.

The provisions in Government Regulation No. 4 of 2001 serve as a crucial foundation for the formulation of technical regulations at the local level. This is because the management of forest and/or land fires cannot rely solely on general national standards but also requires local regulations that are better suited to the conditions of each respective region. In the context of Riau Province, this is implemented through Riau Provincial Regulation No. 1 of 2019 on Technical Guidelines for the Management of Forest and/or Land Fires. According to data from the State Audit Agency (BPK), this regulation was enacted in Pekanbaru on July 4, 2019, promulgated on August 15, 2019, and took effect on the same date. The regulation sets forth technical guidelines for forest and land fire management in Riau, making it relevant as the regional legal basis for this discussion.

The provisions in Government Regulation (PP) No. 4 of 2001 serve as the foundation for local governments to establish technical guidelines for managing forest and/or land fires in accordance with the conditions in their respective regions. In Riau Province, these provisions are implemented through Riau Provincial Regulation No. 1 of 2019, which addresses Technical Guidelines for Combating Forest and/or Land Fires. This regulation comprises 13 chapters and 55 articles governing matters such as general provisions, scope, prevention of forest and land fires, mitigation of forest and land fires, post-fire management, facilities and infrastructure, supervision, institutional framework, community roles, financing, investigations, criminal provisions, and closing provisions. Thus, Riau Regional Regulation No. 1 of 2019 serves not only as a regional legal foundation but also as a technical guide that regulates practical steps for combating forest and land fires in Riau Province.

The existence of Riau Provincial Regulation No. 1 of 2019 demonstrates that, to address forest and land fires in Riau, it is not enough to rely solely on national regulations. We also need clearer and more specific local regulations. This is because forest and land fires have distinctive characteristics related to geographical conditions, fire-prone areas, land management, the role of local governments, community participation, and oversight of business activities. Nababan's study also states that Riau Province has Regional Regulation No. 1 of 2019, which serves as the legal basis for addressing forest and land fires. This regulation mandates inter-regional cooperation within Riau. Thus, it can be viewed as a bridge between national regulations and the technical implementation needs at the local level.

In terms of its scope, Riau Regional Regulation No. 1 of 2019 regulates the management of forest and land fires in a phased approach. This begins with prevention

efforts, continues with response during the fire, and concludes with post-fire recovery. Such a regulatory framework is crucial because forest and land fires cannot be addressed solely by extinguishing the flames. Management must begin with the prevention phase and continue with recovery efforts after a fire occurs. Qamariyanti, Usman, and Rahmawati argue that to prevent and address peatland and forest fires, the government must establish policies that are well-planned, integrated, coordinated, and comprehensive. This must be implemented at all stages: before a disaster, during a disaster, and after a disaster. Therefore, Riau Regional Regulation No. 1 of 2019 is crucial because it systematically outlines steps for managing forest and land fires, rather than focusing solely on post-fire actions.

In addition to regulating response measures, Riau Regional Regulation No. 1 of 2019 also covers key factors that influence the success of forest and land fire control, such as facilities, oversight, involved agencies, the role of the community, and funding sources. These elements are crucial because controlling forest and land fires requires cooperation across various sectors and cannot be the sole responsibility of a single agency. In a study on forest and land fire management policies in Riau, Sari explained that the implementation of fire management activities in Riau is closely tied to local regulations and operational procedures enforced by the local government. Therefore, provisions regarding institutional frameworks, oversight, and facilities within the regional regulation are crucial to ensure that forest and land fire management can be carried out in a more targeted manner.

At the operational level, forest and land fire management in Riau is also reinforced by administrative policies that declare a state of emergency. In 2026, the Riau Provincial Government announced an emergency alert status for forest and land fires through Riau Governor's Decree No. Kpts.102/II/2026. According to a publication from the Ministry of Forestry, this emergency alert status is in effect from February 2 through November 30, 2026. Meanwhile, InfoPublik also states that this emergency alert status is in effect until November 30, 2026. The establishment of this status indicates that the management of forest and land fires (*karhutla*) is not limited to general regulations but also requires administrative policies that local governments can utilize to enhance preparedness, coordination, and rapid response on the ground.

The Governor's decision holds a distinct position compared to laws or regional regulations. Laws and regional regulations serve as normative and technical foundations, while the governor's decision functions as an administrative and operational basis when addressing specific situations. Therefore, Riau Governor's Decree No. Kpts.102/II/2026 should be viewed as a tool for regional preparedness, not as a basis for discussing criminal liability or penalties for perpetrators. By declaring a state of emergency, the local government has grounds to enhance inter-sectoral coordination, mobilize resources, conduct patrols and firefighting operations, and request assistance from the central government if necessary.

Based on this explanation, the legal framework for combating forest and land fires in Riau can be understood as a multi-layered system. At the national level, these regulations are established through the 1945 Constitution of the Republic of Indonesia, the Law on Environmental Protection and Management, the Forestry Law, the Plantation Law, the Law on the Prevention and Eradication of Forest Destruction, and Government Regulation No. 4 of 2001. At the regional level, these regulations are further elaborated in Riau Provincial Regulation No. 1 of 2019, which contains technical guidelines for

managing forest and land fires. Meanwhile, at the operational level, Riau Governor's Decree No. Kpts.102/II/2026 serves as the administrative basis for declaring a state of emergency. With these multi-layered regulations in place, forest and land fire management in Riau has a more comprehensive legal foundation, covering prevention, response during fires, and post-fire recovery.

## **Legal Responsibilities of the Central Government, Local Governments, and Business Entities in Combating Forest and Land Fires in Riau**

### **Responsibility of the Central Government**

Forest and land fires in Riau demonstrate that the state has not yet fully fulfilled its constitutional responsibility to protect the public's right to a good and healthy environment, as stipulated in Article 28H, paragraph (1) of the 1945 Constitution. From an environmental law perspective, the central government not only acts as a regulator but also bears legal responsibility to prevent, monitor, enforce the law, and restore the environment damaged by forest and land fires.

According to existing regulations, the central government's responsibilities are outlined in Law No. 32 of 2009 on Environmental Protection and Management. Specifically, Article 63 grants the central government the authority to formulate national policies regarding the control of environmental pollution and degradation. However, in reality, the lack of oversight of companies holding permits in the plantation and forestry sectors indicates a failure on the part of the government to implement the principles of environmental governance.

Forest and land fires in Riau cannot be viewed merely as natural disasters but also as a sign of poor environmental management. The central government typically focuses more on taking decisive action after fires occur, rather than strengthening preventive measures such as environmental compliance inspections, peatland restoration, and business permit assessments based on environmental risk. This situation indicates that the government more often reacts after problems arise, rather than taking preventive steps beforehand.

Furthermore, inconsistencies in law enforcement against companies also point to serious issues regarding the central government's accountability. Some companies whose lands have burned are still able to operate, despite having caused large-scale environmental damage and adverse health impacts on the public. Criticism has arisen because environmental law enforcement in Indonesia remains influenced by economic and investment interests. As a result, the principle of "ultimum remedium" in environmental law is often misused to avoid criminal liability for companies. Conversely, the central government's inability to address forest and land fires also impacts Indonesia's international responsibilities due to smoke pollution that crosses national borders. As a signatory to the ASEAN Agreement on Transboundary Haze Pollution, Indonesia bears an international responsibility to prevent and reduce haze pollution that could affect other countries. The government's failure to address forest and land fires in Riau demonstrates that the implementation of these obligations remains weak.

### **Responsibility of Local Governments**

Local governments play a crucial role because they are the institutions closest to where forest and land fires occur. In accordance with Law No. 23 of 2014 on Regional Government, local governments have the authority to oversee the environment, control environmental damage, and manage disasters within their jurisdictions. However, in reality, local governments in Riau are often seen as failing to effectively carry out their

oversight duties regarding the activities of plantation and forestry companies.

This weakness is evident in the continued widespread use of slash-and-burn land clearing, the lack of oversight in peatland areas, and the local government's slow response in declaring a state of emergency for forest and land fires. These conditions indicate that local governments have not adequately applied the precautionary principle in environmental policy. In fact, the precautionary principle is a fundamental principle in current environmental law that requires the government to take preventive measures before greater environmental damage occurs.

In addition to limited institutional capacity, another issue lies in the economic and political ties between local governments and companies. It cannot be denied that the palm oil industry contributes significantly to local revenue. Consequently, oversight of companies is often not enforced rigorously. As a result, there is a tendency to turn a blind eye to environmental violations committed by companies holding concessions. This situation highlights a conflict between the focus on local economic development and efforts to protect the environment.

Under administrative law, if a local government fails to prevent forest and land fires (karhutla), this can be considered maladministration. This occurs when the government fails to fulfill its duty to provide public services in the area of environmental protection. In some cases, lawsuits filed by citizens regarding forest and land fires (karhutla) have shown that the government is deemed by the authorities to have acted unlawfully by failing to protect the public's right to clean air and a healthy environment.

Therefore, the responsibility of local governments is not only administrative and political in nature but can also become a legal liability if such negligence is proven to have caused harm to the community and the environment.

### **Liability of Business Entities**

Business entities are the most influential parties in the occurrence of forest and land fires (karhutla) in Riau, particularly companies engaged in oil palm plantations and forestry that operate in peatland areas. Land fires often occur within company concession areas, raising suspicions that these companies are failing to fulfill their responsibility to protect the environment.

From an environmental law perspective, companies cannot hide behind the excuse that the fires were started by local communities. This is because Article 88 of Law No. 11 of 2020 on Job Creation, under the Environmental Protection cluster, stipulates that any individual who takes action, conducts business, and/or engages in activities involving hazardous substances (B3), generates and/or manages hazardous waste (B3), and poses a serious risk to the environment, shall be fully liable for any damages arising from such business and/or activities. This article clearly removes the phrase "without the need to prove an element of fault" found in Law No. 32 of 2009 on Environmental Protection and Management, which essentially reflects the core of the principle of strict liability.

The consequence of removing the element "without having to prove fault" is that sanctions are treated as a last resort. Treating sanctions as a last resort is a logical implication of the concept of administrative criminal law adopted in the Job Creation Law. However, this makes the process of proving fault by companies in cases of environmental crimes increasingly complex. It is well known that most environmental violations are committed by companies. Furthermore, as a factor that must be considered, the increasing difficulty in holding companies accountable as perpetrators of environmental crimes makes the state more vulnerable to losses resulting from

environmental damage. This occurs because environmental crimes fall under the category of economic crimes, where the scope of criminal activity and environmental violations is broader than that of other conventional crimes. As for the consequences of the removal of the element “without the need to prove fault,” some of them are as follows:

First, it makes criminal law a last resort in addressing crimes against the environment. This provision arises from the characteristics of the Job Creation Law, which classifies criminal law as special external criminal law—or what is more commonly known as administrative criminal law. Administrative criminal law is defined as “an offense consisting of a violation of administrative rules and carrying criminal sanctions.” One of the defining characteristics of administrative criminal law is its nature as an *ultimum remedium*, meaning that criminal law is invoked as a last resort when other legal systems are unable to enforce the rules. Furthermore, this makes proving the element of corporate culpability more challenging. This is because, according to the theory of criminal law explained by Vos, culpability has three components: first, the capacity to be held accountable; second, the internal state of mind of the individual acting intentionally or negligently; and third, the absence of any grounds that could negate the capacity to be held accountable. It becomes difficult to assess the mental state of a corporation, which is a non-living legal entity. The concept of liability is a crucial factor, in this case, as it relates to environmental crimes. Issues of environmental pollution or damage can arise from business activities involving many individuals with varying levels of duties and responsibilities.

In Riau, land and forest fires frequently occur within the concession areas of palm oil plantation and forestry companies, leading to speculation regarding the companies’ weak oversight and lack of accountability for their operational areas. Following the amendment to Article 88 of the Law on Environmental Protection and Management through the Job Creation Law, the process of holding companies accountable has become more complex because law enforcement agencies must first prove the existence of fault or negligence on the part of the company before taking further action. This situation allows companies greater leeway to evade legal responsibility for environmental damage occurring within their concession areas. Furthermore, the weakness of law enforcement against companies risks causing the recurrence of forest and land fires every year in Riau, which results in environmental damage, public health issues due to smoke, economic losses for the state, and disruptions to educational and aviation activities. Therefore, environmental law enforcement against businesses should prioritize the principles of environmental prudence and justice, thereby serving as a deterrent to companies that neglect the maintenance of their concession areas.

### **Legal Measures That Can Be Taken**

Every year, forest and land fires in Riau Province remain a recurring environmental problem that causes significant harm to the community. Environmental damage is not the only consequence; haze causes health problems, financial losses, and disrupts community activities. Therefore, to maximize efforts to combat forest and land fires, strict law enforcement is necessary against both the government and business operators. The protection of the right to a good and healthy environment can be achieved through various legal measures, including administrative, civil, and criminal actions, as well as class-action lawsuits.

Administrative sanctions against companies proven to have engaged in land burning are one of the legal measures that can be taken. According to Article 76 of Law

No. 32 of 2009 on Environmental Protection and Management, the government has the authority to take legal actions such as issuing written warnings, imposing administrative enforcement, suspending environmental permits, or revoking environmental permits. Furthermore, Article 56 of Law No. 39 of 2014 on Plantations mandates that business operators must not clear or cultivate land in a manner that involves burning. As stipulated in Article 108 of the Plantation Law, companies may be subject to imprisonment and fines if they violate this prohibition.

In addition to administrative penalties, the government may also file a lawsuit against companies that cause fires. A lawsuit may include claims for damages and an obligation to restore the environment damaged by the fire. Article 87(1) of the Law on Environmental Protection and Management stipulates that any business operator responsible for environmental pollution or damage is required to take environmental restoration measures and pay compensation. In the event of a civil lawsuit, the company is not only penalized but is also required to remedy the environmental damage it has caused.

According to Article 88 of Law No. 32 of 2009 on Environmental Protection and Management, the system of strict liability fundamentally operates under a different burden of proof than conventional tort claims governed by Article 1365 of the Civil Code. Prior to its amendment, Article 88 explicitly stated that business operators whose activities involve the use of hazardous and toxic substances or pose a serious threat to the environment bear strict liability for any resulting damages without the need to prove fault; thus, the plaintiff was only required to prove two key elements, namely that the defendant's business activities fall within the category of activities posing a serious threat to the environment and that such activities factually caused identifiable damages. Once these two elements are satisfied, the burden of proof shifts to the corporation to demonstrate that the damages did not stem from its activities by invoking defenses of force majeure, third-party fault, or verified compliance with all standards of due care (duty of care).

However, the enactment of Law No. 11 of 2020 on Job Creation, which removed the phrase “without the need to prove the element of fault” from the wording of Article 88, has eliminated the explicit affirmation of this reversal of the burden of proof mechanism, thereby opening the door for corporations to reject the application of strict liability and require plaintiffs to prove the element of fault as in ordinary civil lawsuits. This situation significantly weakens the legal position of both the government and the public in holding corporations accountable for forest and land fires in Riau Province, given that proving causation in forest and land fire cases involving peatlands—with their complex fire spread patterns—is already a challenge in itself without the added burden of having to prove corporate negligence, therefore, the effectiveness of Article 88 as an environmental protection instrument now heavily depends on the judges' courage to interpret the provision teleologically, prioritizing the spirit of environmental protection that underlies its enactment.

Criminal law also addresses environmental protection and management; for instance, according to Article 98(1) of the Law on Environmental Protection and Management, anyone who intentionally causes environmental pollution or damage is subject to imprisonment for a minimum of three years and a maximum of ten years, as well as a fine of billions of rupiah. In addition, Article 99 stipulates criminal penalties for those who, through negligence, cause environmental pollution or damage. According to

Article 98(1) of the Law on Environmental Protection and Management, anyone who intentionally causes environmental pollution or damage may be sentenced to imprisonment for a minimum of three years and a maximum of ten years, as well as fined billions of rupiah. Furthermore, Article 99 establishes criminal penalties for those who, through negligence, cause environmental pollution or damage.

Local governments also play a significant role in combating forest and land fires. They can oversee plantation and forestry companies in their regions, establish task forces to combat forest and land fires, and declare a state of emergency if the number of hotspots increases. In the case of the fires in Riau, local governments, together with the Regional Disaster Management Agency (BPBD), the Indonesian National Armed Forces (TNI), the Indonesian National Police (Polri), and the community, frequently conduct patrols and carry out direct firefighting operations at the fire sites to prevent the fires from spreading. Furthermore, since fires still frequently occur in some areas, local governments must also inform the public not to clear land by burning. If members of the public suffer losses due to forest and land fires, they also have the right to take legal action. The public can file either a class-action lawsuit or a citizen lawsuit against the government or companies deemed to have failed to take action to prevent fires. These lawsuits may be filed if the public suffers health hazards, economic losses, and environmental damage due to the haze caused by forest and land fires. Since combating forest and land fires is not solely the government's responsibility, public participation in environmental monitoring is crucial.

Indonesian law actually contains exceptions that permit the burning of forests and land based on local wisdom (Hendra Eriant Dikser, 2017). Article 69(2) of Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management states that every individual is prohibited from clearing land by burning, as stipulated in Article 69(1)(h) of that law, and must fully respect local wisdom in their respective regions.

The Riau Provincial Government's capacity to address forest and land fires has not been fully optimized because its focus is limited to fire suppression efforts in burned areas, aimed at preventing the emergence of haze. To date, the Riau Provincial Government has not been able to identify an effective method to stop the forest and land fires that occur annually. Furthermore, the funds allocated for addressing forest and land fires are very limited, forcing the Riau Provincial Government to rely on financial assistance and technical equipment from the central government. Given the vast extent of its forests and peatlands, the Riau Provincial Government should allocate a larger budget toward forest and land fire prevention efforts, particularly during the dry season. (Geovani Meiwanda, 2016).

Environmental law enforcement is the final stage in the series of environmental policy planning regulations, which consists of the following steps: Legislation, Standard-setting, Permitting, Implementation, and Law Enforcement. Mertokusumo argues that if the focus of law enforcement is solely on legal certainty, other aspects will be neglected. The same applies if only utility is prioritized; legal certainty and justice will be neglected. Thus, the three aspects—certainty, utility, and justice—must be prioritized in environmental law enforcement. This means that all three must be considered in a balanced and proportional manner in handling cases, although in practice this is often difficult to implement. Meanwhile, M. Daud Silalahi explains that environmental law enforcement encompasses compliance and enforcement involving administrative law, civil law, and aspects of criminal law.

Gustav Radbruch, in his view, acknowledged that legal certainty does not always have to be the primary concern. However, in the context of law enforcement regarding land and forest fires, clarity of regulations is crucial for identifying the liability of the corporations and individuals involved. This lack of clarity can be one reason why law enforcement agencies struggle to identify the perpetrators.

Without sufficient provisions in regulations governing corporate liability, the law enforcement process is hindered. Therefore, efforts are needed to revise and amend regulations to provide the necessary legal clarity, so that law enforcement officials can carry out their duties effectively. Thus, legal certainty is a crucial element in addressing the issue of forest and land burning in that area.

## CONCLUSION

The legal framework for combating forest and land fires in Riau is structured in layers, ranging from the 1945 Constitution of the Republic of Indonesia, the Environmental Protection and Management Law, the Forestry Law, the Plantation Law, Government Regulation No. 4 of 2001, to Riau Provincial Regulation No. 1 of 2019 as a technical guideline for local governments that systematically regulates the handling of forest and land fires from the prevention stage through post-fire recovery. Although this legal framework is relatively comprehensive, its effectiveness on the ground remains far from optimal due to weak oversight and inconsistent law enforcement that persist year after year.

These weaknesses are also reflected in the patterns of legal accountability among the parties involved. The central government tends to adopt a reactive stance and has not prioritized preventive measures, while local governments are caught in a conflict of interest between revenue from the palm oil industry and their environmental oversight obligations. On the part of businesses, the legal standing of the state and the public in holding corporations accountable has weakened further after the Job Creation Law removed the phrase “without the need to prove fault” from Article 88 of the Environmental Protection and Management Law (PPLH), thereby giving companies greater leeway to avoid legal liability for environmental damage within their concession areas.

This situation underscores the importance of optimizing available legal avenues, whether through administrative, civil, or criminal channels, as well as public lawsuits in the form of class actions and citizen lawsuits. The effectiveness of all these legal avenues depends heavily on the consistency of law enforcement officials in applying the principles of environmental prudence and justice. Therefore, regulatory reforms are needed to clarify corporate liability, strengthen the oversight capacity of local governments, and increase public participation as an instrument of external oversight so that forest and land fire mitigation in Riau can proceed more effectively, fairly, and sustainably.

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