

Breathing Smoke: Corporate Legal Obligations and Accountabilities Arising from Forest and Land Fires and Transboundary Haze

1 Introduction

The forest and peat fires in Indonesia in 2026 have affected neighbouring countries, including Malaysia and Singapore, renewing concerns about transboundary haze and accountability. The Indonesian Forum for the Environment (Wahana Lingkungan Hidup Indonesia, or WALHI) has reported that approximately 74% of the hotspots it identified in Kalimantan were located within company concessions.¹

This is a recurring crisis. In 2015, fires burned approximately 2.61 million hectares of forests and land across Indonesia.² The resulting haze also affected Malaysia and Singapore. In response, Indonesia pursued administrative sanctions and civil and criminal proceedings³, while Singapore issued notices and launched investigations under its Transboundary Haze Pollution Act⁴.

Recovery has also been limited: Pantau Gambut found that, of the peatlands burned between 2015 and 2019 covered by its assessment, 54% had become monoculture plantations, predominantly oil palm, while

¹ Ahmad Arif, '74 Percent of Hotspots in Kalimantan Are in Concession Areas' *Kompas.id* (29 July 2026) <https://www.kompas.id/artikel/74-percent-of-hotspots-in-kalimantan-are-in-concession-areas>, accessed 17 October 2026.

² Dede Sulaeman and others, 'Can Southeast Asia Achieve a Fire-Free El Niño Season? Part 1 – The Warning Signs Are Here' *WRI Indonesia* (6 October 2026) <https://wri-indonesia.org/en/insights/can-southeast-asia-achieve-fire-free-el-nino-season-part-1-warning-signs-are-here>, accessed 17 October 2026.

³ Mongabay Indonesia, 'Baru 23 Perusahaan Terindikasi Bakar Lahan Kena Sanksi Administrasi' (22 December 2015) <https://mongabay.co.id/2015/12/22/baru-23-perusahaan-terindikasi-bakar-lahan-kena-sanksi-administrasi/>, accessed 22 October 2026.

⁴ National Environment Agency, Environmental Protection Division Annual Report 2015, https://www.nea.gov.sg/docs/default-source/resource/publications/environmental-protection-division-annual-report/epd_areport_2015.pdf?, p. 5.

only 3% had returned to forest.⁵ These findings warrant scrutiny of corporate land management, prevention and restoration, although hotspot locations and subsequent land conversion do not, by themselves, establish liability for individual fires.

Corporate responsibility may arise from deliberate burning, but the legal inquiry also extends to activities that increase fire risks and failures to fulfil prevention and response duties. Holding a valid concession does not remove those duties; equally, a fire within a concession does not automatically establish liability. The evidence and legal requirements must be assessed in each case. Here, we examine corporate duties and accountability under Indonesian law, other regional legal mechanisms, including Singapore's Transboundary Haze Pollution Act, the separate obligations of States under the ASEAN Agreement on Transboundary Haze Pollution, and the jurisdictional requirements for international proceedings.

2 Indonesian Legal Framework

Duty to prevent

Land clearing by burning is prohibited, subject to the limited statutory provision concerning local wisdom.⁶ In peatlands, however, fire risks can develop long before ignition.

Peatlands are naturally waterlogged, but drainage for cultivation lowers the water table and dries the peat, increasing its susceptibility to fire. Once ignited, fire can spread below the surface and become difficult to detect and extinguish.

The legal framework therefore addresses the conditions that create fire risks, as well as burning itself. Creating drainage channels that cause peat to dry out is prohibited, providing a basis for enforcement even where no fire has occurred.⁷ Administrative measures can require the closure of drainage channels, action to stop violations, and restoration of environmental functions, with further sanctions available for continued non-compliance.⁸

Alongside these land-management duties, forest concession holders and plantation operators must maintain the fire-prevention and response capacity required for their operations, including personnel, equipment, detection and communication systems, and water-supply infrastructure according to the applicable standards.⁹ These requirements provide a further basis for checking preparedness and addressing deficiencies before a fire occurs.

These operational duties are complemented by public authorities' obligations to supervise compliance. Within their respective powers, environmental authorities and central and local governments must oversee compliance with applicable environmental requirements, including through inspections and examination of

⁵ Salsabila Khairunisa and others, *A Decade of Peatland Restoration in Indonesia: Political Economic Analysis of Peatland Restoration in Indonesia 2015–2024* (Pantau Gambut, 2 July 2026), https://pantaugambut.id/storage/widget_multiple/engsatu-dekade-restorasi-gambut-v1-fl5Ka.pdf, accessed 17 October 2026.

⁶ Law No. 32 of 2009 on Environmental Protection and Management, as amended by Law No. 6 of 2023, arts 69(1)(h) and 69(2).

⁷ Government Regulation No. 71 of 2014 on the Protection and Management of Peatland Ecosystems, as amended by Government Regulation No. 57 of 2016, art 26.

⁸ Government Regulation No. 71/2014, as amended, arts 40–44.

⁹ Minister of Environment and Forestry Regulation No. P.32/MENLHK/SETJEN/KUM.1/3/2016 on Forest and Land Fire Control, arts 34–38, 51–59; Minister of Agriculture Regulation No. 05/Permentan/KB.410/1/2018 on Land Clearing and/or Cultivation for Plantations without Burning, as amended by Minister of Agriculture Regulation No. 6 of 2025, arts 12, 14–18, 21–22, 25–27 and 30.

relevant records and equipment. Effective prevention therefore depends both on operators fulfilling their duties and on authorities identifying and addressing non-compliance before fires occur.¹⁰

Enforcement and Remedies

Enforcement can address breaches of prevention duties and responsibility for fires and their consequences. Administrative, civil, and criminal proceedings offer different remedies and may be pursued alongside one another.

Administrative Sanction

Administrative enforcement can address breaches of prevention duties before fires occur, stop ongoing violations, and secure remediation after environmental damage. Authorities can impose written warnings, government coercion (*paksaan pemerintah*), administrative fines, and suspension or revocation of business licences.¹¹

These powers allow authorities to address breaches of environmental requirements before a fire occurs. Government coercion can include temporary suspension of activities and corrective or restoration measures. These may be imposed without warning in specified circumstances, including serious threats to people and the environment, risks of greater impacts or environmental losses unless pollution or damage is stopped immediately, or repeated minor violations.¹²

In August 2026, the Ministry of Forestry announced administrative sanctions against six forest concession holders following inspections of their fire-prevention and control obligations. Five received government-coercion orders, while one also had its business licence suspended following extensive and repeated fires. The orders required improvements to fire-control systems and restoration of affected areas.¹³

Enforcement must also extend to implementation. Authorities should monitor compliance with administrative orders, and continued non-compliance can lead to stronger sanctions, including licence revocation. Suspension or revocation does not extinguish outstanding corrective obligations or civil and criminal liability.¹⁴

Civil Liability

Civil claims can seek compensation, measures to stop pollution or restore damaged ecosystems, or both.¹⁵ In fire-related cases, the relief sought may therefore address financial losses as well as restoration of burned land and peatlands.

Affected individuals may sue companies for compensation, specific measures such as stopping pollution or restoring damaged ecosystems, or both, individually or through a class action where its requirements are met. Qualifying environmental organisations may also seek specific measures, but their claims cannot include compensation except for actual costs or expenses incurred.¹⁶

¹⁰ Law No. 32/2009, as amended, arts 71-74.

¹¹ Minister of Environment/Environmental Control Agency Regulation No. 6 of 2026 on Environmental Supervision and Administrative Sanctions, art 38(1).

¹² Ibid, art 40(2)-(4).

¹³ Ministry of Forestry, 'Kemenhut Jatuhkan Sanksi 6 Perusahaan Terkait Karhutla, Hingga Pembekuan Perizinan Berusaha', 25 August 2026, accessed 17 October 2026.

¹⁴ Minister of Environment/Environmental Control Agency Regulation No. 6 of 2026, arts 56-59 and 70-73.

¹⁵ Law No. 32/2009, as amended, art 87(1).

¹⁶ Law No. 32/2009, as amended, arts 87 and 91-92; Supreme Court Regulation No. 1/2023, arts 30, 32 and 34.

To obtain these remedies, the claimant must establish the defendant's civil liability. Strict liability may apply depending on the activities involved, removing the need to prove intent or negligence for activities involving hazardous substances or hazardous waste or posing a serious threat to the environment.¹⁷ The claimant must nevertheless establish the qualifying activity, loss, and causal connection.¹⁸

For peat fires, the relevant activity may include clearing and drainage before ignition. Legal scholarship identifies these practices as potentially "abnormally dangerous" because they significantly increase fire risks,¹⁹ supporting an argument for strict liability where those activities can be linked to the resulting damage.

Companies have sought to avoid liability by blaming third parties or extreme weather. For example, in a civil case brought by the Ministry of Environment and Forestry against PT Waringin Agro Jaya, the company argued that local communities outside its concession had started the fire and that strong winds, drought, and El Niño were beyond its control. The court nevertheless applied strict liability.²⁰

The case illustrates that extreme weather or an external source of ignition does not necessarily relieve a defendant of liability. Article 40 of Supreme Court Regulation No. 1/2023 now expressly sets out the conditions for accepting these defences.

A natural-disaster defence requires an event of extraordinary and unprecedented scale that could not have been predicted using the best available science, with no contribution from the defendant. Blaming a third party is also not enough. The defendant must show that the third party had no employment or contractual relationship with it, that the third party's conduct could not have been predicted, and that the defendant did not allow the harmful activity to occur.²¹

Many civil cases, including the PT Waringin Agro Jaya case, have focused on environmental damage to forests and land, rather than losses caused by exposure to haze. Haze-related claims face a difficulty: smoke from multiple fires mixes together, making it difficult to link a person's illness or other losses to a particular company.

A significant development came in 2023 with the adoption of Supreme Court Regulation No. 1/2023 on Guidelines for Adjudicating Environmental Cases, which includes provisions addressing harm caused by multiple polluters. Based on this regulation, a claimant can sue one company without having to sue every suspected contributor. The defendant may bring other companies into the proceedings through third-party joinder, allowing them to contest the allegations and defend their interests before the court determines their responsibility. In that situation, liability is based on contribution if the harmful acts or substances share the same characteristics or risks and cannot be distinguished, and the defendant has a dominant business capacity and/or contributes significantly to the pollution or damage.²²

Criminal Liability

Companies may face fines and additional penalties or corrective measures, including confiscation of profits obtained from the offence, closure of all or part of their operations, remediation of the damage caused,

¹⁷ Law No. 32/2009, as amended, art 88.

¹⁸ Supreme Court Regulation No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases, art 38(3)(a)–(c).

¹⁹ Andri G. Wibisana, "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation", 2019.

²⁰ *Ministry of Environment and Forestry v PT Waringin Agro Jaya*, South Jakarta District Court, Decision No. 456/Pdt.G-LH/2016/PN.Jkt.Sel; Supreme Court, Decision No. 1561 K/Pdt/2018.

²¹ Supreme Court Regulation No. 1 of 2023, art 40.

²² Supreme Court Regulation No. 1 of 2023, art 46.

performance of neglected obligations, and placement under government supervision for up to three years. Individuals found criminally liable may face imprisonment and fines.²³

The Environmental Protection and Management Law criminalises land clearing by burning, as well as intentional or negligent conduct that causes specified environmental quality standards or damage criteria to be exceeded.²⁴ Criminal liability can therefore extend beyond deliberate ignition. Failures in prevention or response may be relevant to a negligence prosecution, but the statutory elements must be established.²⁵

The PT National Sago Prima case illustrates this approach. The Supreme Court upheld the finding that inadequate fire-prevention facilities led to the company's failure to control fires, supporting its conviction for negligence. It also found the company guilty of conducting plantation activities within a forest area without the required ministerial permit and operating without an environmental permit. The Court imposed a fine of IDR 3 billion for the offences and ordered the company to bring its fire-prevention and suppression facilities into compliance with the applicable standards within one year, under the supervision of the local environmental agency.²⁶

Enforcement Challenges

In civil cases, a major challenge has been turning judgments into actual environmental recovery. A particular obstacle has been the treatment of environmental compensation as non-tax State revenue (PNBP). Once paid into the State treasury, the money is not automatically available to restore the damaged site: accessing it requires a separate lengthy and difficult budgetary process.

Other obstacles include unclear responsibilities for carrying out and supervising restoration, insufficiently detailed restoration plans, and high execution costs. Winning a case or collecting payment therefore does not necessarily mean the damaged ecosystem has been restored.²⁷

However, there have been important regulatory developments. Supreme Court Regulation No. 1/2023 provides more detailed requirements for restoration plans, including recovery standards, timelines, budgets, and monitoring. If the defendant fails to undertake restoration, the claimant may carry it out at the defendant's expense. Restoration costs paid under that mechanism are held and managed in the court registry's account for restoration purposes. The Regulation also provides for a supervisory team and monthly progress reports accessible to the public.

Administrative sanctions have been imposed, but their effectiveness depends on follow-up. On 19 October 2026, the Ministry of Forestry reported sanctions against 32 companies: 19 licence suspensions accompanied by restoration orders, eight restoration orders, and five licence revocations.²⁸ These are positive enforcement steps. Alongside this response, preventive inspections are important to identify and address gaps in fire preparedness and peatland management before fires occur.

In criminal cases, a longstanding problem has been the lack of detailed arrangements for executing restoration orders. Article 120 of the Environmental Protection and Management Law requires prosecutors

²³ Law No. 32/2009, arts 98-99, 108 and 119, read with amendments applicable to the conduct concerned.

²⁴ Law No. 32/2009, arts 69(1)(h), 98, 99 and 108.

²⁵ Law No. 32/2009, art 99(1).

²⁶ Supreme Court, Decision No. 2753 K/PID.SUS.LH/2015, 99-102, 106.

²⁷ Ady Thea DA, 'Upaya Mengatasi Hambatan Eksekusi Perkara Lingkungan Hidup' *Hukumonline* (25 November 2021) <https://www.hukumonline.com/berita/a/upaya-mengatasi-hambatan-eksekusi-perkara-lingkungan-hidup-lt619fb194dd35b/?page=2>, accessed 22 October 2026.

²⁸ Ministry of Forestry, 'Kementerian Kehutanan Kenakan Sanksi Administratif terhadap 32 Perusahaan Terkait Karhutla, Proses Pidana Berjalan terhadap 125 Subjek Hukum' (19 October 2026), <https://www.kehutan.go.id/news/kemenhut-perkuat-penegakan-hukum-karhutla-32-perusahaan-dikenai-sanksi-administratif-dan-125-subjek-hukum-diproses-pidana>, accessed 21 October 2026.

to coordinate with environmental authorities, but this leaves practical questions about who carries out the work, how restoration funds are managed, and how completion is verified. In the PT Adei Plantation and Industry case,²⁹ restoration payments were reportedly treated as non-tax State revenue, creating difficulties in directing the funds towards restoration of the affected site.

Supreme Court Regulation No. 1/2023 addresses part of this problem. Article 70 allows judges to scrutinise and supplement restoration plans and provides for seizure and auction of corporate assets if a restoration sentence is not carried out within three months after the judgment becomes final. However, further operational guidance is needed on inter-agency coordination, management of restoration funds, and verification that restoration has been completed successfully.

3 Cross-Border Accountability

Transboundary haze raises two distinct questions of accountability: (a) whether companies can be held liable for activities in one country that harm people or the environment abroad; and (b) whether States have exercised due diligence to prevent significant transboundary harm from activities within their jurisdiction or control³⁰.

The 2026 fires have affected neighbouring countries, including Malaysia and Singapore, illustrating the need for cross-border prevention, cooperation, and accountability.

Claims against Companies: Singapore's Transboundary Haze Pollution Act 2014 and Regional Pathways

Singapore's Transboundary Haze Pollution Act 2014 (THPA) provides a route for persons in Singapore to seek compensation for personal injury, property damage, or economic loss caused by haze from overseas fires. The claim is actionable in Singapore even if the conduct is not actionable in the country where it occurred.³¹ This removes a potential obstacle arising from differences between Singaporean law and the law governing activities at the source of the fires. Thus, where the responsible entity is incorporated in Singapore,³² service and enforcement are more straightforward. Few other jurisdictions offer a comparable statute, and a claim would face significant difficulties unless there are reciprocal arrangements for the enforcement of foreign judgments are in place.

The Act also creates rebuttable presumptions linking overseas fires to the haze in Singapore and landowners or occupiers to contributing conduct, once the statutory conditions are established.³³ To illustrate, if it is proven that entity A participates in managing entity B, and it is established that entity B engaged in conduct contributing to haze pollution in Singapore, then it is *presumed* that entity A also engaged in such conduct.³⁴ Therefore, liability may more easily extend to a parent company that participates in the management of the overseas operator.³⁵ While academics note that it is unclear if these

²⁹ Supreme Court, Decision No. 2042 K/Pid.Sus/2015.

³⁰ The recent ICJ Advisory Opinion on the Obligations of States in respect of Climate Change reaffirmed the duty of States to prevent significant harm to the environment of another State.

³¹ Transboundary Haze Pollution Act 2014 (Singapore), ss 4 and 6(3)-(4).

³² Adeline Chong and Stefanie Schacherer, 'Extra-territorial Liability and Enforcement: Finding Ways to Tackle Haze Pollution in Southeast Asia' (2025) 2(2) *Chinese Journal of Transnational Law*, section IV.C. citing the Supreme Court of Judicature Act 1969, s 16(2) and s 17(1)(c), as well as with Companies Act 1967, s 368 and 376. Service on foreign companies registered in Singapore is a straightforward matter governed by the Companies Act. Registration with the Registrar of Companies is mandatory before any foreign corporation can establish a place of business or begin trading locally. For unregistered foreign companies with no local footprint, jurisdiction relies on the rules for service out of jurisdiction.

³³ Transboundary Haze Pollution Act 2014 (Singapore), ss 8(1)-(2), (4).

³⁴ Ibid, s 8(3).

³⁵ Ibid, ss 3 and 6(2).

presumptions apply to the civil causes of action or only to the criminal cause of action,³⁶ an argument can be made that these presumptions apply to both.³⁷

However, the THPA's extraterritorial scope does not dispense with ordinary requirements for establishing jurisdiction over foreign entities, including service of proceedings abroad where required.³⁸ Access to concession maps and landholding information also remains important: the presumptions cannot exist unless their factual foundations are established.³⁹

Enforcement requires separate consideration. Chong and Schacherer identify Indonesia's general refusal to enforce foreign court judgments directly as a significant obstacle.⁴⁰ The practical viability of a claim therefore depends not only on proving liability, but also on identifying assets in Singapore or another jurisdiction where the judgment can be enforced. The table below summarizes how legal and enforcement considerations vary depending on the forum state. It also details the variations based on the responsible entities (including those with linkages to involved Indonesian companies), the legal basis underpinning each claim, and enforcement considerations.

Table 1: Claims against Companies in Singapore, Malaysia, and Indonesia

Forum State directly impacted by the fires in Indonesia	Responsible Entity (including those with linkages to involved Indonesian companies)	Legal Basis	Enforcement and other considerations
Singapore	Singapore-registered parent company and other associated entities (e.g., concession holder)	THPA	Enforcement viable because of Singapore presence (assets and officers).
Singapore	Malaysian parent company and other associated entities (e.g., concession holder)	THPA, REJA	Enforcement in Malaysia could be viable because of the Reciprocal Enforcement of Judgments Act 1958 ("REJA"), ⁴¹ which includes Singapore as one of the reciprocating countries. ⁴² There are several preconditions for foreign judgment enforcement under the REJA, including a final, monetary judgment from a superior court.
Singapore	Indonesia parent company and other associated entities (e.g., concession holder)	THPA	Enforcement is an obstacle but could be viable if the company has assets or officers in a country listed under REJA.
Indonesia	Indonesia parent company or concession holder	Indonesian environmental laws, which may result in administrative sanctions, and civil and criminal liabilities as above discussed	As discussed above, administrative, civil and criminal proceedings offer different remedies and may be pursued alongside one another; cause of action must be established independently for the parent company.
Malaysia	Malaysian parent company and other associated entities (e.g., concession holder)	The Environmental Quality Act 1974 has territorial application within Malaysia, although extraterritoriality may be argued on account of direct impact within the country; common law tort	Corporate liability and heavy evidentiary barriers exist for extraterritorial wrongdoing; apart from extraterritorial complications, cause of action must be established independently for the parent company. An associated entity may be a Singapore-registered company or concession holder. However, under Singapore's Reciprocal

³⁶ Khee. 'The 'Haze' Crisis in Southeast Asia: Assessing Singapore's Transboundary Haze Pollution Act 2014' (NUS Working Paper No. 2015/002, February 2015), accessed 24 October 2026.

³⁷ Kuberan Hansraj Kumaresan and Benjamin Franta, 'Opportunities for Corporate Climate Litigation in Southeast Asia' [2025] APJEL 87, 112.

³⁸ Adeline Chong and Stefanie Schacherer, 'Extra-territorial Liability and Enforcement: Finding Ways to Tackle Haze Pollution in Southeast Asia' (2025) 2(2) *Chinese Journal of Transnational Law*, section IV.C.

³⁹ Ibid, s V.

⁴⁰ Ibid, s IV.E.1.

⁴¹ Reciprocal Enforcement of Judgments Act 1958 (Revised 1972) (Act 99) (Malay.)

https://www.commonlii.org/my/legis/consol_act/reoja19581972416/, accessed 27 October 2026.

⁴² Ibid, First Schedule.

			Enforcement of Foreign Judgments Act 1959 (REFJA) which covers Malaysia—a court is only deemed to have acquired jurisdiction over a Singaporean entity under specific rules. ⁴³ If for example the entity has no physical operations in Malaysia or did not submit to its jurisdiction, the Singapore court will set aside the REFJA registration, rendering the Malaysian judgment unenforceable.
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The table above shows that Singapore may be the most promising forum for a cross-border claim for personal injury, property damage, or economic loss caused by haze from overseas fires, given that it has the THPA which reaches conduct abroad regardless of defendant's nationality. Nevertheless, enforceability or the value of the judgment would largely depend on where the defendant and its assets and officers are located. Against a Malaysian company, a Singapore judgment may be enforceable because of REJA, subject to conditions therein. Importantly, such enforcement is likely to face little difficulty, as Malaysian courts will conduct minimal curial review of a Singaporean judgment, given the ethos of reciprocity which underpins the REJA.⁴⁴ However, a claim brought in Malaysia would be harder as the Environmental Quality Act of 1974 is territorial and specifically provides it applies to the “whole of Malaysia” and not for activities outside its borders.⁴⁵ Moreover, the Act does not provide clear routes for civil relief and instead leaves it up to the government to prosecute environmental offences. Malaysia does not yet possess a statute like Singapore's THPA which expressly grants the government extraterritorial jurisdiction to prosecute offences committed in Indonesia that cause the haze in question.⁴⁶

Nevertheless, there are possibilities of a claim in tort under the Malaysian common law for personal injury, property damage, or economic loss. The requirements of the tort of negligence⁴⁷ are well-established and broadly identical to those in other common law jurisdictions, particularly the UK. It is therefore possible that a claim may be brought by Indonesian and/or Malaysian plaintiffs alleging that a Malaysian parent company has been negligent in the management of its Indonesian subsidiaries such that it is liable in tort for the damage caused by that haze. This possibility is made more likely considering the Malaysian courts may conceivably take heed from the developments in the UK, in both *Vedanta*⁴⁸ and *Okpabi*⁴⁹, which make clear that ordinary rules of negligence, rather than uniquely restrictive rules, apply to adjudicate parent company liability.

Singapore's record in implementing the THPA has been administrative rather than judicial. As of 23 October 2026, the National Environment Agency (NEA) has issued legal notices to ten companies in Indonesia under Section 9 (preventive measures) of the THPA, requesting among others, that the companies discontinue burning activities, and submit to the NEA any plan of action to extinguish any fire or to prevent its recurrence. It also issued notices to ten Singapore-registered palm oil and forestry companies with Indonesian land concessions under Section 10, requiring the disclosure of corporate

⁴³ Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 Rev Ed) s 5, <https://sso.agc.gov.sg/Act/REFJA1959?WholeDoc=1#pr3->, accessed 27 October 2026.

⁴⁴ *ING Bank NV & Anor v Tumpuan Megah Development Sdn Bhd* [2025] 8 CLJ, [318]

⁴⁵ Laws of Malaysia. (2001). Environmental Quality Act 1974 (Act 127), incorporating latest amendment - Act A1102/2001, https://www.doe.gov.my/wp-content/uploads/2022/11/Environmental_Quality_Act_1974_-_ACT_127.pdf, accessed 24 October 2026.

⁴⁶ Although Malaysia is considering a similar law of its own: New Straits Times, 'Malaysia may introduce transboundary haze law, says deputy minister' (21 October 2026), <https://www.nst.com.my/news/nation/2026/10/1560504/malaysia-may-introduce-transboundary-haze-law-says-deputy-minister>, accessed 24 October 2026.

⁴⁷ *The President of Majlis Perbandaran Tawau v Amiruddin bin Rasake & 245 Ors and another appeal* [2017] 3 MLJ 778, [18].

⁴⁸ *Vedanta Resources PLC v Lungowe* [2019] UKSC 20, [54].

⁴⁹ *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3, [143] – [149].

linkages, concession locations, and fire prevention measures, among others.⁵⁰ The NEA previously issued such notices against six companies in 2015 but only two of those cases have been resolved.⁵¹ This route, while administrative and largely preventive, is faster and does not depend on proving liability in court and enforcing judgment abroad. Nonetheless, the efficacy of this mechanism as a preventive measure is doubtful, given that a significant proportion of notice recipients, specifically three out of six entities served by the NEA in 2015, are repeat offenders in 2026.

State Responsibility

At the regional and international levels, accountability concerns the obligations of States. The ASEAN Agreement on Transboundary Haze Pollution (AATHP) establishes specific duties to prevent and address transboundary haze, while any proceedings before the International Court of Justice (ICJ) would require a separate jurisdictional basis.

At the regional level, AATHP establishes obligations between States, rather than a mechanism for bringing claims directly against companies. The AATHP requires States Parties to monitor fire risks, strengthen firefighting capacity, and take measures to prevent land clearing using fire.⁵² Assessing Indonesia's compliance therefore requires examining how these measures have been implemented.

Affected States may seek information and consultations, to which the State where the haze originates must respond promptly.⁵³ This provides a basis for examining implementation, but AATHP establishes neither compulsory adjudication nor an individual compensation procedure. Article 27 requires disputes to be settled through consultation or negotiation.⁵⁴

Article 26 preserves rights and obligations under other international agreements but does not itself confer jurisdiction on another court.⁵⁵ Proceedings before the ICJ would require a separate basis of State consent covering the dispute: an applicable treaty clause, reciprocal declarations accepting compulsory jurisdiction, or a special agreement to submit the case.⁵⁶ The AATHP supplies none of these. A claim against Indonesia would therefore require both a substantive basis for responsibility and an independently established jurisdictional basis. Consultation and negotiation remain the routes expressly provided by the AATHP.

The AATHP also establishes the ASEAN Transboundary Haze Pollution Control Fund to support implementation, but contributions from States Parties are voluntary.⁵⁷ This provides a cooperation mechanism rather than a procedure for compensating victims or determining liability.

Diplomatic engagement continues alongside domestic enforcement. In October 2026, Singapore's environment minister reported direct contact with her Indonesian counterpart and an offer of assistance.

⁵⁰ NEA. 'NEA Issues Additional Notices Under The Transboundary Haze Pollution Act' (19 Oct. 2026), www.nea.gov.sg/media/news/news/index/nea-issues-additional-notices-under-the-transboundary-haze-pollution-act; 'NEA Serves Notices to 10 Singapore-Based Companies' (Oct. 23, 2026), <https://www.nea.gov.sg/media/news/news/index/nea-serves-notices-to-10-singapore-based-companies>, accessed 24 October 2026.

⁵¹ According to the NEA, investigations are still active for the remaining four companies: Bumi Andalas Permai, Bumi Mekar Hijau, Sebangun Bumi Andalas Woods Industries, and Rimba Hutani Mas. The first three companies have since been served fresh legal notices.

⁵² ASEAN Agreement on Transboundary Haze Pollution (signed 10 June 2002, entered into force 25 November 2003), arts 4, 7 and 9.

⁵³ *Ibid.*, art 4(2).

⁵⁴ *Ibid.*, art 27.

⁵⁵ *Ibid.*, art 26.

⁵⁶ Statute of the International Court of Justice, art 36(1)-(2).

⁵⁷ ASEAN Agreement on Transboundary Haze Pollution, art 20(1)-(5).

Similarly, Malaysia has announced its intention to use diplomatic channels to address the haze.⁵⁸ Such engagement could support more specific commitments on prevention, information sharing and follow-up.⁵⁹

Priorities for Action

The analysis points to three practical priorities. **First, authorities should use existing prevention powers to identify and correct non-compliance before fires occur.** Inspections in fire-prone concessions should examine peat hydrology, personnel, equipment and water availability, with clear deadlines and follow-up checks for corrective action.

Second, the restoration mechanisms provided for under Supreme Court Regulation No. 1/2023 should be implemented more effectively. In civil cases, this includes setting out proposed restoration measures in claims, ensuring that restoration orders can be implemented, and developing detailed restoration plans during the enforcement process where required. Environmental authorities should supervise implementation as provided for in the court's order. In criminal cases, further operational guidance could clarify how prosecutors and environmental authorities coordinate restoration and how restoration funds are managed and used. Across both routes, restoration should be monitored against the applicable recovery standards.

Third, navigating jurisdictional hurdles for cross-border action requires better evidence sharing and early assessment of enforceability. Authorities should improve access to concession boundaries, corporate-control information and fire-monitoring records. Potential claims should be assessed against evidence of exposure, actual loss and causation, alongside the location of the defendant's assets and the availability of reciprocal enforcement agreements. ASEAN consultations could support specific commitments on information sharing, prevention and implementation reporting, backed by more predictable contributions to the Haze Fund, while member states explore bilateral enforcement agreements and craft stronger transboundary haze laws.

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⁵⁸ The Star, 'Malaysia has no plans to take legal action or to issue diplomatic note over haze, says Tok Mat' (15 October 2026), <https://www.thestar.com.my/news/nation/2026/10/15/malaysia-has-no-plans-to-take-legal-action-or-issue-diplomatic-note-over-haze-says-tok-mat>, accessed 24 October 2026

⁵⁹ Singapore Ministry of Sustainability and the Environment, 'Media Soundbite on Current Haze Conditions and WOG Efforts—Ms Grace Fu' (10 October 2026), <https://www.mse.gov.sg/latest-news/media-soundbite-on-current-haze-conditions-and-wog-efforts---ms-grace-fu/> accessed 22 October 2026.