

Conservation Litigation in Indonesia

AN INTRODUCTION TO ENVIRONMENTAL LIABILITY IN INDONESIA

This brief introduces Conservation Litigation and highlights opportunities for action in Indonesia. It explores how existing environmental liability provisions can be used to protect biodiversity.

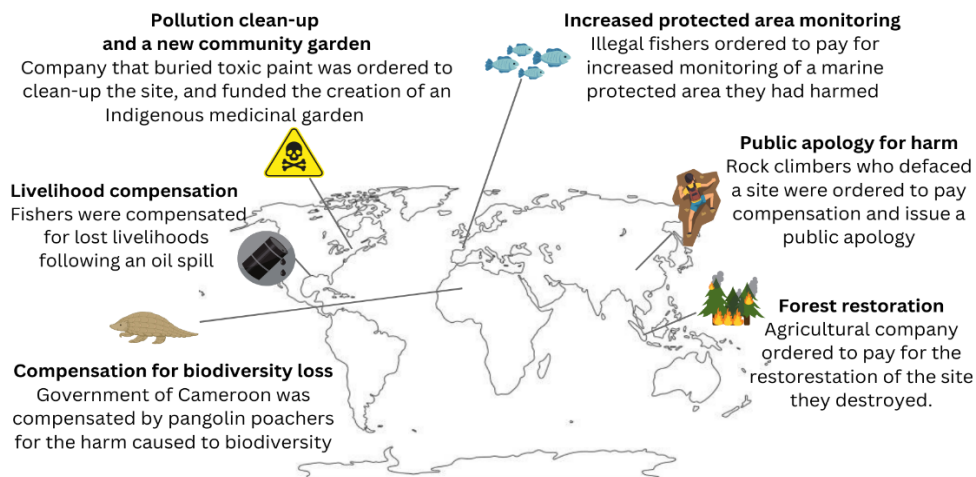
The challenges facing biodiversity

Biodiversity is under growing threat from activities like illegal wildlife trade and deforestation. More than one million species now face extinction, with cascading impacts on ecosystems and human wellbeing. Mainstream conservation enforcement approaches are failing: small fines and imprisonment do not meaningfully reflect the scale of environmental harm, fail to deter offenders, and do little to restore nature.

Opportunities through strategic liability litigation

Conservation Litigation has transformative potential for biodiversity: It uses liability provisions that already exist in the law to hold offenders legally responsible for the harm they cause to biodiversity. Offenders can be required to undertake remedial actions, such as habitat restoration, species conservation, issue public apologies, and pay compensation. Cases serve not only to heal biodiversity, but can also drive new legislation, change practices, and shift social norms. This strategic litigation approach was instrumental in the fights for civil rights and public health against opioids and tobacco. This transformative potential can also serve the conservation sector.

Conservation litigation is already possible in countries around the world, usually based on their existing civil code and environmental laws. However, many people do not know that these legal opportunities exist, how to develop strong cases, or how significant these lawsuits could be. Although cases are still rare in most countries, promising examples are emerging and demonstrate the potential for this type of legal action.



CONSERVATION LITIGATION IN INDONESIA

Indonesia has among the world's most advanced case law on liability litigation for environmental harm. This is based on a strong legal framework that recognises multiple types of environmental harm, including for harm to biodiversity. The Ministry of Environment and Forests (MoEF), civil society organisations and groups of citizens have brought a range of successful suits. These have secured not only injunctions to stop harmful activities and reviews of legislation, but also a number of cases to provide remedies for environmental harm. These have been heavily based on Environmental Protection and Management Law, as well as the country's general Civil Code, which establishes a general obligation that those who cause harm to someone must remedy it.

Indonesia's key liability provisions are found in:

- Law No. 32 Year 2009 on Environmental Protection and Management
- Law No. 41 Year 1999 on Forestry
- Law No. 27 Year 2007 on Coastal and Small Islands Management
- Civil Code Article 1365

What types of cases can secure remedies?

Liability litigation to secure remedies is possible across a broad range of contexts in Indonesia. However, cases must meet three general criteria in order to hold the defendant legally liable for providing remedies:

- **Causation:** Liability is only triggered if the case successfully demonstrates a clear causal relationship between the defendant's purported action and the harm suffered by the plaintiff. Indonesia historically had very strict and narrow interpretations of what constituted causation, but these are evolving and courts are recognising a wide range of relationships, including downstream and future impacts that result from a defendant's actions.
- **Party's Fault:** Harm must have been caused by the defendant's intentional or negligent unlawful act, which is usually the case in many instances of illegal environmental activities such as illegal wildlife trade, deforestation, pollution. In cases that harm results from "inherently dangerous" activities, such as handling hazardous substances and using fire on peatlands, a defendant's liability is automatically triggered, a situation known as strict liability.
- **Specific Environmental Liability Triggers:** In environmental cases, a defendant is only liable if the harm they caused exceeded one of the "standard criteria" defined in legislation. For example, in the case of harm to peatland ecosystems (≤ 3 metres deep), the offender is only liable if the harm resulted in subsidence of $\geq 10\%$. For example, in cases of harm to a coral reef, the offender is only liable if harm reduced vegetation cover to less than 50% of its previous coverage. However, there are many cases where such thresholds have not yet been established; in these cases, plaintiffs can use the latest science and expert testimony to argue to the courts that they have experienced harm.

Who can bring cases?

Indonesia allows many different types of actors to bring liability suits to seek remedies for environmental harm:

- **State:** The State is the primary legal caretaker of the environment, and has a duty to enforce the law — including bringing legal action to those who harm the environment. Both central and local governments can litigate to claim remedies for environmental harm, and the state is usually represented by The Ministry of Environment and Forestry (MoEF), with cases handled by its Law Enforcement Directorate. They have undertaken at least 31 cases since 2009, almost all involving forest and land fires. The Public Prosecutor is also entitled to request remedies in cases of criminal offences listed in the Environmental Management Law, which includes a wide range of drivers of environmental harm, though broadly excludes many related to wildlife conservation.
- **Individuals:** Individuals can bring claims for remedies in cases where they suffered personal harms, such as economic loss, property loss and personal injury. They can also litigate to request remedies that involve restoration actions such as restoration. Individual can litigate either individually, or collectively through class action lawsuits. Moreover, Indigenous Communities can also claim for remedies for harm to their collective, including harm to their culture resulting from environmental harm, though this has not been tried in court.
- **Public Interest Litigation (PIL):** Indonesia grants a wide range of plaintiffs the right to take legal action to serve the broader public interest. This includes environmental civil society organisations who can represent the environment in court and make claims that require offenders to remedy environmental harm. They can also claim monetary compensation for the expenses they incurred while remedying environmental harm in the public interest. Citizens can also take legal action in the public interest, in cases related to government action or inaction (citizen lawsuit).

What types of remedies are possible?

Liability litigation can provide several different types of remedies:

- **Injunctions against harmful actions:** Injunction can require a party to undertake or to refrain from doing a specific act, usually as a temporary measure to avoid imminent harm. Indonesia has had a number of successful injunctions, especially via its administrative courts, postponing the implementation of a disputed administrative decisions, such as the granting of permits for new development projects that could cause harm.
- **Requests to correct, update, or enforce a policy:** Litigation can be used to order government agencies to act in ways that meet their legal commitments. These are typically sought via Public Interest Lawsuits brought by civil society organisations, or by citizens using a Citizen Lawsuit, and have been used to order government agencies to improve enforcement, review and develop new legislation, and conduct actions such as force the revocation of permits

- **Orders to remedy harm:** Indonesia's legal framework provides a number of opportunities to request that offenders remedy the harm they caused. These must be reasonable, adequate, and clearly redress the harm proved in the case, and the law provides some guidance of how the MoEF should develop its cases, though these are very expansive. Civil society groups, communities and individuals also enjoy broad rights, and can make claims that order a defendant to undertake or fund restorative action (e.g., clean-up, reforestation); provide monetary compensation for out-of-pocket expenses (e.g., cost to rescue animals), and monetary compensation for private economic losses (e.g., harm to property). Over the past 20 years, claims for environmental remedies have become increasingly substantial, exploring a broader range of remedies, including public apologies, habitat restoration, species conservation actions, and animal rehabilitation.

*Case Example: Liability for illegal fire to clear agricultural land
(Supreme Court Decision No. 1 PK/Pdt/2017, MoEF Vs. PT. Kalista Alam)*

Since 2009, there have been at least 31 environmental lawsuits filed by the MoEF, most against agricultural companies that have illegally used fire to clear agricultural land. This includes the precedent-setting civil litigation MoEF Vs. PT. Kalista Alam, in which the ministry sought remedies from a palm oil company for the harm caused by land clearing using fire. The MoEF argued that the defendant had drained the peatland leading to fire inside the concession area, and had failed to provide prevention tools to avoid fires at the site. This resulted in the destruction of a forested peatland in a high biodiversity area, and extensive haze to the surrounding area. The MoEF demanded compensation of IDR 114 billion (approx. US\$7.5 million) for ecological loss, and habitat restoration actions estimated to cost IDR 250 billion (approx. US\$16.6 million). The Court granted all of the MoEF claims.

Indonesia has comparatively advanced case law on liability litigation for environmental harm, with positive verdicts ordering remedial actions. This reflects not only a strong legal framework, but also engaged government, judges and civil society. The MoEF has a demonstrated interest in liability and restoration-oriented approaches, having used them in forest fire, illegal logging and pollution cases, and the MoEF has now expressed interest in using the approach in other contexts, such as to address illegal wildlife trade. There is clear scope to strengthen both practice and legislation, based on lesson-learning from the existing experience. Strategic use of liability litigation could help address some of the country's leading drivers of biodiversity loss.



Conservation-Litigation.org is an international network of lawyers, scientists and conservationists. We support strategic liability litigation as a creative legal response to the biodiversity crisis. We do this by providing novel legal analyses to reduce the technical barriers for action, by supporting novel litigation cases around the world, and by empowering others to litigate for biodiversity.

More information

For a full analysis of Indonesia's environmental liability laws and how they can help biodiversity, see Fajrini, R., Rodriguez, M., Phelps, J. 2023. Legal remedies for harm to biodiversity: An analysis of Indonesia's environmental liability legislation. Conservation-Litigation.org.



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