



Legal Responsibility of Foreign Investors in the Oil Palm Plantation Sector for Environmental Damage in Indonesia

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ABSTRACT

Foreign Investment (FDI) in the oil palm plantation sector contributes to national economic growth, but on the other hand has the potential to cause environmental damage. This study aims to analyze the regulation of PMA's legal responsibility for environmental damage, examine the forms of liability that can be imposed based on Law Number 25 of 2007 concerning Investment and Law Number 32 of 2009 concerning Environmental Protection and Management, and identify the obstacles to law enforcement and efforts to solve them. This research uses normative legal research methods with laws and regulations, conceptual, and case approaches. The results of the study show that PMA can be held accountable in the form of administrative sanctions, civil liability, and criminal liability. However, the effectiveness of law enforcement is still constrained by regulatory disharmony, the complexity of corporate structures, weak supervision, and the difficulty of proving environmental damage. Therefore, it is necessary to harmonize regulations, strengthen corporate accountability, improve inter-institutional coordination, and optimize environmental recovery mechanisms to realize sustainable and environmentally sound investments.

INTRODUCTION

Foreign investment is one of the important instruments in encouraging national economic growth through capital increases, technology transfer, job creation, and the development of strategic sectors. In Indonesia, the oil palm plantation sector is one of the fields that attracts the most foreign investment because it is supported by the availability of natural resources, adequate land area, and high demand for palm oil in the international market. The contribution of this sector to the country's foreign exchange and economic development makes the government continue to encourage a competitive investment climate through various policies of ease of doing business and protection for investors (Indriawati, 2025).

The expansion of foreign investment in the oil palm plantation sector also raises various increasingly complex environmental problems. Large-scale land clearing, changes in the function of forest areas, biodiversity degradation, water and soil pollution due to plantation waste, and land fires are some of the forms of environmental impacts that are often associated with palm oil industry activities. These conditions not only threaten the sustainability of the ecosystem, but also cause social, economic, and public health losses around the plantation area. Therefore, the success of economic development through investment cannot be separated from the obligation to ensure the protection and sustainable management of the environment (Janice Ser Huay Lee, Sinan Abood, Jaboury Ghazoul, Baba Barus, Krystof Obidzinski, 2014).

The Indonesian legal system has regulated various instruments that require every business actor, including foreign investors, to carry out their business activities based on the principles of sustainable development and environmental responsibility. Law Number 25 of 2007 concerning Investment emphasizes that every investor has the obligation to carry out corporate social responsibility, maintain environmental sustainability, and respect the provisions of laws and regulations. The regulation is strengthened through Law Number 32 of 2009 concerning Environmental Protection and Management as amended through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which regulates various forms of administrative, civil, and criminal responsibility for business actors who cause pollution or environmental damage. In addition, Law Number 39 of 2014 concerning Plantations also requires the implementation of plantation businesses by paying attention to environmental functions and sustainability principles (Rineke Sara, 2024).

Although the regulatory framework has regulated various forms of obligations and sanctions, the implementation of legal responsibility for foreign investors in the oil palm plantation sector still faces various problems. In practice, environmental damage that occurs often involves complex corporate structures, relationships between parent companies and subsidiaries, the use of affiliated companies, and cooperation with local partners that make it difficult to determine who should be held accountable. On the other hand, the environmental law enforcement mechanism still faces challenges in the form of proving the causal relationship between business activities and environmental

damage, inter-institutional coordination, the effectiveness of supervision, and the implementation of decisions that have permanent legal force. As a result, there are not a few cases of environmental damage that have not resulted in optimal environmental restoration or adequate compensation to the affected communities (Abdul Aziz ALSA, F.X. Adji SAMEKTO, 2021).

Previous studies have generally focused on corporate responsibility for environmental pollution, the effectiveness of environmental law enforcement, or the implementation of sustainable development principles in investment activities. Other research focuses more on the governance of the palm oil industry from the perspective of economics, licensing, and *corporate social responsibility*. However, studies that specifically integrate the investment law regime, environmental law, and corporate law in analyzing the legal responsibility of foreign investors for environmental damage due to oil palm plantation activities are still relatively limited. In fact, the characteristics of foreign investment raise its own legal problems, especially related to the determination of the responsible subject, the form of liability that can be imposed, and the effectiveness of law enforcement mechanisms for foreign investors operating through legal entities in Indonesia (Adi Mansar, Rai Rake Setyawan Rai Rake Setyawan, Vania Micha Dwilizadi Vania Micha Dwilizadi, Duma Indah Sari Lubis, 2026).

This research offers a novelty in the form of a reconstruction of the legal accountability model of foreign investors in the oil palm plantation sector through an approach that integrates investment law, environmental law, and *responsible corporate governance* principles. This approach not only places investors as subjects who obtain legal protection in investment activities, but also as parties who have direct responsibility for the prevention, control, recovery, and compensation for environmental damage caused by their business activities.

This study aims to analyze the construction of regulations regarding the legal responsibility of foreign investors in the oil palm plantation sector for environmental damage in Indonesia, identify various problems that hinder the effectiveness of enforcement of these responsibilities, and formulate a legal accountability model that is able to strengthen environmental protection while creating legal certainty for sustainable investment activities.

THEORETICAL REVIEW

Legal Liability Theory

The theory of liability explains that every legal subject who obtains the right to carry out an activity is also burdened with the obligation to bear the legal consequences arising from the implementation of the activity. In the context of business activities, legal liability is a consequence of the relationship between rights, obligations, and risks inherent in every business activity. Therefore, business actors are not only responsible for the economic benefits obtained, but also for the losses caused to the community and the environment due to their business activities (Fuady, 2014).

According to Munir Fuady, legal accountability is a mechanism to place every legal subject on the obligation to recover losses or receive sanctions if their

actions are contrary to the provisions of the law. This liability can be in the form of administrative liability, civil liability, or criminal liability, depending on the form of violation committed and the legal norms violated. In the development of modern law, corporate liability is no longer limited to individual faults, but also includes the responsibility of business entities as legal entities that benefit from business activities.

In this study, the theory of legal liability is used to analyze the form of responsibility of foreign investors in the oil palm plantation sector for environmental damage, both from the perspective of administrative law, civil law, and environmental criminal law. This theory is also used to assess whether the Indonesian legal system has provided an effective accountability mechanism for foreign investors who commit environmental violations (Rahma, 2025).

Sustainable Development Theory

The theory of sustainable development places environmental protection as an integral part of economic development. This theory holds that economic growth must be carried out in a balanced manner with the protection of natural resources so that the needs of the current generation can be met without reducing the ability of future generations to meet their needs. Therefore, investment activities cannot only be measured in terms of economic benefits, but must also consider the sustainability of ecological functions, social justice, and responsibility for the environment (Rahmadi, 2019).

According to Edith Brown Weiss, sustainable development contains the principle of *intergenerational equity*, which is the obligation of each generation to maintain the quality of the environment and natural resources so that they can still be used by the next generation. This principle requires that every development actor, including investors and corporations, carry out their business activities by paying attention to the carrying capacity of the environment, preventing pollution or environmental damage, and making recovery if damage has occurred. Thus, environmental protection is not just a moral obligation, but a legal responsibility inherent in every development activity.

In this study, sustainable development theory is used as the basis for analysis to assess whether the regulation on the legal responsibilities of foreign investors in the oil palm plantation sector has reflected the balance between investment interests, environmental protection, and sustainable use of natural resources. This theory is also the basis for formulating a legal accountability model that is not only oriented towards sanctioning business actors, but also on preventing environmental damage, ecosystem restoration, and realizing sustainable investment governance.

METHODOLOGY

This study uses a *normative legal research* method with a focus on the analysis of the construction of legal regulations regarding the responsibility of foreign investors in the oil palm plantation sector for environmental damage in Indonesia. This study departs from the view that law is a normative system formed by laws and regulations, legal principles, doctrines, and court decisions

that are the basis for determining the rights, obligations, and forms of accountability of each legal subject (Negara, 2023).

RESULTS AND DISCUSSION

Regulation of Foreign Investment (PMA) Legal Responsibility for Environmental Damage According to Laws and Regulations in Indonesia

The regulation of the legal responsibility of Foreign Investment (PMA) for environmental damage in Indonesia is basically not regulated in a single special law and regulation, but is spread across various interrelated legal regimes, namely investment law, environmental law, plantation law, and provisions on corporate responsibility (Erwin Asmadi, Adi Mansar, 2023). The construction of the regulation shows that foreign investment activities are not only positioned as an instrument of national economic development, but also as activities that must be carried out by paying attention to the principles of environmental protection and sustainable development. Therefore, every foreign investor not only obtains a guarantee of legal certainty in running his business, but is also burdened with legal obligations to prevent, control, and restore environmental damage arising from the business activities he carries out (Kurniadi, Syafrinaldi, Thamrin, 2024).

Law Number 25 of 2007 concerning Investment emphasizes that investors are obliged to apply the principles of good corporate governance, carry out corporate social responsibility, respect the cultural traditions of the surrounding community, and maintain environmental sustainability. These provisions show that protection for investment is not provided absolutely, but is accompanied by legal obligations that must be fulfilled by every investor. Thus, the legal protection provided by the state to foreign investors is always balanced with the responsibility to ensure that investment activities do not have a negative impact on the environment or society (Rayon Sari, Lu Sudirman, 2025).

A more comprehensive regulation regarding liability for environmental damage is regulated in Law Number 32 of 2009 concerning Environmental Protection and Management as amended through Law Number 6 of 2023. The law places every business actor as a legal subject who is responsible for any pollution or environmental damage caused by his business activities. This form of accountability is not only realized through the obligation to meet environmental licensing requirements and environmental management standards, but also through the obligation to prevent, control, counteract, and recover if environmental damage has occurred. Thus, Indonesian environmental law adheres to a preventive and repressive approach in maintaining the sustainability of environmental functions.

Law Number 39 of 2014 concerning Plantations strengthens the obligation of business actors to carry out plantation activities by paying attention to the preservation of environmental functions. Oil palm plantation business is not only aimed at increasing productivity and economic value, but also must consider environmental carrying capacity, natural resource conservation, and ecosystem sustainability. Therefore, plantation companies that clear land in an unaccordance with legal provisions, burn land, pollute the environment, or ignore waste

management obligations can be held accountable in accordance with the provisions of laws and regulations.

Indonesia's legal system has provided several law enforcement instruments that can be applied against foreign investors who cause environmental damage. First, administrative accountability, which is realized through the provision of reprimands, government coercion, administrative fines, freezes, and revocation of business licenses if the company violates environmental obligations. Second, civil liability, in the form of the obligation to pay compensation and take remedial actions against the environment that has experienced pollution or damage. Third, criminal liability, which can be imposed if the actions of business actors meet the elements of environmental crimes as stipulated in laws and regulations. The three forms of liability show that Indonesian law has built a *multi-layered liability system* to ensure business actors' compliance with environmental obligations.

However, the existence of these various arrangements has not fully resulted in an effective accountability mechanism for foreign investors. One of the reasons is the lack of integrated regulations regarding the relationship between the investment law regime and the environmental law regime. The Investment Law regulates more investment guarantees and general obligations of investors, while regulations on the form of liability for environmental damage are scattered in various sectoral regulations. As a result, the determination of the form of legal responsibility for foreign investors often depends on the sectoral approach applied by each agency, thus potentially causing inconsistencies in the law enforcement process.

Another problem arises from the characteristics of foreign investment which is generally carried out through Indonesian legal entities, affiliated companies, and complex corporate structures. In practice, environmental damage is often carried out by operational companies that are formally national legal entities, while control of the company lies with foreign investors or holding companies domiciled abroad. This condition raises the question of who should bear legal responsibility for environmental damage, especially if there is a separation between business control, capital ownership, and the implementation of operational activities. As a result, the current accountability mechanism is still more oriented towards the legal entity implementing business activities than on the parties that obtain economic benefits and have control over investment activities.

According to the author, the regulation of the legal responsibilities of foreign investors in Indonesia still needs to be strengthened through harmonization between investment law, environmental law, and corporate law. The regulation should not only focus on the imposition of sanctions after environmental damage occurs, but also build a more effective prevention mechanism through strengthening *environmental due diligence* obligations, transparency of *beneficial ownership*, increased supervision of affiliated companies, and affirmation of the responsibility of the parent company in complex investment structures. Such an approach will strengthen legal certainty while ensuring that foreign investment is truly organized in accordance with the principles of

sustainable development and environmental protection (Dhimas Abie Thoyib, Adi Mansar, 2026).

The Form of Legal Accountability of Foreign Investment (PMA) for Environmental Damage Based on Law Number 25 of 2007 concerning Investment and Law Number 32 of 2009 concerning Environmental Protection and Management

Foreign Investment (FDI) is one of the instruments that has a strategic role in encouraging national economic growth. However, the provision of guarantees and protection for foreign investors does not eliminate the legal obligation to carry out business activities responsibly. In the legal country, the right to invest is always followed by the obligation to comply with the provisions of laws and regulations, including the obligation to preserve the environment. Therefore, if business activities carried out by foreign investment companies cause pollution or environmental damage, then investors and business entities that carry out these activities can be held accountable in accordance with the mechanism that has been determined in the Indonesian legal system (Mia Kinasih, 2026).

Law Number 25 of 2007 concerning Investment does not specifically regulate the form of sanctions for environmental damage, but stipulates that every investor is obliged to apply the principles of *good corporate governance*, carry out corporate social responsibility, maintain environmental sustainability, create safety, health, comfort, and welfare of workers, and comply with all regulatory provisions legislation. The regulation shows that legal protection for foreign investors is not an absolute right, but protection accompanied by the obligation to carry out business activities responsibly for the environment and society. Thus, violations of these obligations are the basis for the state to impose various forms of legal responsibility.

Based on Law Number 25 of 2007 concerning Investment and Law Number 32 of 2009 concerning Environmental Protection and Management, Foreign Investment (PMA) that causes pollution or environmental damage can be subject to several forms of legal liability as follows:

1. Administrative Accountability
 - a. Written reprimands
 - b. Government coercion
 - c. Administrative denda
 - d. Business license freeze
 - e. Revocation of business license
 - f. Aims to stop violations and restore environmental conditions without going through the judicial process
2. Civil Liability
 - a. Lawsuits can be filed by the government or aggrieved parties
 - b. Payment of damages
 - c. Obligation to restore environmental functions
 - d. Oriented towards environmental restoration as well as compensation for losses incurred

Law Number 32 of 2009 also recognizes the application of strict *liability* for business activities that pose serious threats to the environment or use high-risk materials and technologies. Through this principle, business actors can be held accountable for environmental losses without first having to prove the existence of an element of fault. The regulation reflects the development of modern environmental law that prioritizes the protection of the public interest and the effectiveness of environmental restoration over the proof of error as applicable in the civil law regime in general. For foreign investment companies engaged in oil palm plantations, the principle of *strict liability* has an important meaning considering that business activities in this sector have the potential to cause land fires, pollution, and damage to ecosystems that have a wide impact.

In addition to administrative and civil liability, foreign investment business actors can also be subject to criminal liability if they meet the elements of environmental crimes as stipulated in Law Number 32 of 2009. Criminal liability can be imposed on corporations as legal subjects as well as on administrators or parties who give orders, have decision-making authority, or benefit from environmental crimes. This concept shows that Indonesian environmental law has recognized the existence of corporations as subjects who can be held criminally accountable so that law enforcement does not only stop at individual perpetrators in the field, but can also reach out to those behind corporate decision-making.

Although normatively the three forms of accountability are available, their implementation still faces various obstacles. One of the main problems is the complexity of the structure of foreign investment companies that often use subsidiaries, affiliated companies, or special purpose *vehicles* as executors of business activities in Indonesia. This condition causes law enforcement to be directed more towards operational legal entities, while foreign investors or holding companies that have economic control are often untouched by accountability mechanisms. In addition, proving the causal relationship between company activities and environmental damage, assessing the magnitude of ecological losses, and implementing environmental restoration decisions are still challenges in law enforcement practices.

According to the author, the effectiveness of legal accountability for PMA is not enough to rely solely on the application of administrative, civil, or criminal sanctions separately. A more integrated approach is needed through harmonization between the Investment Law and the Environmental Protection and Management Law so that the obligations of foreign investors are not only understood as administrative obligations in running a business, but also as inherent legal responsibilities for any environmental impacts caused. In addition, it is necessary to strengthen regulations regarding parent *company liability*, transparency of beneficial *ownership*, and the implementation of *environmental due diligence* as a prerequisite for investment, so that law enforcement does not stop at the implementing company, but can also reach parties who actually control business activities and obtain economic benefits from these activities.

Thus, the form of legal accountability for environmental damage in the Indonesian legal system has basically included administrative, civil, and criminal instruments. However, its effectiveness still requires strengthening through

regulatory synchronization, expansion of the subject of accountability, and the development of law enforcement mechanisms that are able to follow the characteristics of foreign investment and modern corporate structures. This approach will create a balance between investment protection and environmental protection as part of the implementation of sustainable development principles.

Obstacles in Enforcing Legal Responsibility for Foreign Investment (PMA) That Causes Environmental Damage in Indonesia and Efforts to Overcome It

Enforcement of legal responsibility for Foreign Investment (FDI) that causes environmental damage is one of the challenges in implementing sustainable investment in Indonesia. Although the regulatory framework has regulated the obligations of investors to maintain environmental sustainability through Law Number 25 of 2007 concerning Investment and Law Number 32 of 2009 concerning Environmental Protection and Management, its implementation is still not running optimally. These problems are not only caused by legal substance factors, but are also influenced by institutional aspects, characteristics of multinational corporations, evidentiary mechanisms, and coordination in law enforcement. As a result, various cases of environmental damage involving foreign investment companies have not been fully resolved through effective legal accountability mechanisms (Fajar Dian Aryani, 2026).

One of the main obstacles is that optimal harmonization has not been realized between the investment law regime and environmental law. The Investment Law focuses more on creating a conducive investment climate and providing legal certainty for investors, while the Environmental Protection and Management Law prioritizes aspects of pollution prevention, damage control, and environmental restoration. This difference in orientation causes the regulation of investors' environmental responsibility to be spread out in various sectoral regulations so that it often causes differences in interpretation in practice. This condition has implications for the absence of a fully integrated mechanism to determine the form of legal liability of foreign investors when environmental damage occurs.

The next obstacle is related to the increasingly complex institutional structure of foreign investment companies. In practice, foreign investors generally carry out business activities through subsidiaries, affiliated companies, or joint ventures incorporated under Indonesian law. Such a pattern causes more legal responsibility to be placed on operational companies, while holding companies or capital owners who control strategic policies are often beyond the reach of national law enforcement. The complexity of the corporate relationship makes it difficult to determine who should be responsible for environmental damage, especially when decision-making is made by a parent company domiciled outside the jurisdiction of Indonesia.

Another problem that is often faced is the difficulty in proving a causal relationship between the company's activities and environmental damage. In contrast to conventional criminal acts, environmental cases require scientific proof of the source of pollution, the level of environmental damage, and the causal

relationship between business activities and the impacts caused. The proof process requires the support of scientific research results, laboratory tests, expert analysis, and other technical data which often takes time and large costs. Under certain conditions, environmental damage also occurs due to the accumulation of various business activities, making it more difficult to determine who must be held accountable.

The effectiveness of law enforcement is also influenced by the suboptimal function of government supervision of foreign investment activities. Supervision of the company's compliance in fulfilling environmental obligations still faces limitations in the number of supervisors, technical capabilities, and supporting facilities. This condition has caused various violations to be known after causing extensive environmental damage. In addition, coordination between ministries in charge of investment, environment, plantations, local governments, and law enforcement officials has not been fully integrated. Differences in authority and coordination mechanisms often hinder the process of taking action and implementing sanctions against companies that are proven to have committed violations.

In addition to these various obstacles, the orientation of law enforcement, which still focuses on imposing sanctions, is also a problem in itself. In many cases, the success of law enforcement is often measured by the imposition of administrative, civil, or criminal sanctions on business actors, while the environmental restoration aspect has not received balanced attention. In fact, the main purpose of environmental law is not only to punish the perpetrators, but also to restore the environmental function that has been damaged. As a result, not a few court decisions have permanent legal force, but the implementation of environmental rehabilitation and restoration has not been carried out effectively.

These various obstacles show that strengthening the enforcement of legal responsibility for PMA requires comprehensive improvement steps. Harmonization between regulations in the field of investment and environmental protection needs to be carried out in order to form a more integrated accountability system and provide legal certainty. In addition, the regulation on corporate liability needs to be expanded so that it not only reaches operational companies, but also parent companies and parties that actually control business activities through the concepts of *parent company liability* and *beneficial ownership*. This approach is important to prevent the abuse of corporate structures as a means of avoiding legal liability.

Strengthening institutional capacity is also a factor that cannot be ignored. The government needs to improve the quality of supervision through the use of information technology, digital-based environmental monitoring systems, periodic environmental audits, and increasing the competence of law enforcement officials in handling environmental cases involving multinational corporations. In addition, inter-agency coordination needs to be strengthened through data exchange mechanisms, integrated supervision, and integrated case resolution so that every violation can be acted upon more quickly and effectively.

According to the authors, the reform of enforcing legal responsibility for foreign investment is not enough to be carried out through the addition of types of

sanctions or increasing the threat of punishment. What is more urgent is to build a law enforcement system that is able to integrate investment interests with environmental protection through mechanisms of prevention, supervision, law enforcement, and environmental restoration that run continuously. With this approach, foreign investment not only provides economic benefits for the country, but also remains in line with the principles of sustainable development, environmental protection, and justice for the affected communities.

CONCLUSIONS AND RECOMMENDATIONS

Regulations regarding the legal responsibility of Foreign Investment (PMA) for environmental damage in Indonesia have been regulated through various laws and regulations, especially Law Number 25 of 2007 concerning Investment and Law Number 32 of 2009 concerning Environmental Protection and Management and its implementing regulations. The two regulations affirm that every foreign investor not only obtains a guarantee of legal certainty in carrying out its business activities, but also has an obligation to maintain environmental sustainability and be responsible for any pollution or damage caused. The forms of liability that can be imposed include administrative, civil, and criminal liability, each of which is directed to ensure compliance with environmental regulations, provide recovery for damage that occurs, and create a deterrent effect for business actors who violate the law.

The effectiveness of enforcing legal responsibility for FDI still faces various obstacles. These problems include the lack of optimal harmonization between the investment law regime and environmental law, the complexity of the structure of foreign investment corporations, the difficulty of proving the causal relationship between business activities and environmental damage, weak supervision, and ineffective inter-agency coordination in the law enforcement process. This condition results in the legal accountability mechanism not being fully able to provide optimal environmental protection.

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