

Climate Justice: Challenges and Future Strategies for Courts on Climate Change in Indonesia

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Article Process

Abstract

Submitted:

10-12-2024

Reviewed:

26-12-2024

Accepted:

26-01-2025

Published:

31-01-2025

Climate change has become a global phenomenon characterized by an increase in the earth's average temperature, which is largely caused by human activities. The use of Litigation to resolve climate change issues has more than doubled since 2017 and is still growing. This research aims to explore the challenges and strategies in mainstreaming climate justice in Indonesia through climate change courts. With a doctrinal approach, this research will examine primary legal sources, such as legislation, jurisprudence, and international documents, as well as secondary sources, such as academic literature and organizational reports, to produce evidence-based recommendations for the development of a legal framework for climate justice in Indonesia. The research results show that climate change makes courts an important player in multi-level climate governance, therefore courts must have climate sensitivity and awareness. There is a need for specific material and procedural laws regarding climate and the need to develop the knowledge and skills of judges.

Keywords: climate change, climate justice, court

I. Introduction

Climate change is one of the biggest global challenges of this century, which has a significant impact on various aspects of human life including the economy, health and the environment. Indonesia, as an archipelago country that is vulnerable to the impacts of climate change, such as rising sea levels, extreme weather and natural disasters, faces serious threats to environmental sustainability and the welfare of its people.¹ However, the impacts of climate change are not felt evenly across all levels of society. Vulnerable groups, such as indigenous peoples, small farmers, women and the urban poor, are often those most exposed to risk, even though they contribute the least to greenhouse gas emissions.

Climate change is a global phenomenon characterized by an increase in the Earth's average temperature, which is largely caused by human activities, such as the burning of fossil fuels, deforestation, and intensive agriculture. This phenomenon has a broad impact on various aspects

¹ Antarissubhi, H., et al. *Krisis Iklim Global di Indonesia (Dampak dan Tantangan)*. TOHAR MEDIA, 2023.

of life, including the environment, economy, health and social stability. Since the conclusion of the Paris Agreement, climate litigation has become a global phenomenon, making courts important players in multilevel climate governance. However, most studies of climate litigation focus on court actions in the global North. Transnational climate jurisprudence seeks to make a meaningful contribution to global climate governance, and to ensure equitable outcomes for those most vulnerable to climate.²

Climate change litigation has become an important arena in promoting climate justice, especially through litigation involving state, corporate or individual responsibility for environmental impacts. In Indonesia, several environmental litigation cases have been filed in court, such as lawsuits against forest burning companies or citizens filing lawsuits against the government for failure to protect the environment. However, the effectiveness of the Indonesian justice system in handling climate change cases still faces challenges, including an inadequate legal framework, the lack of technical capacity of judges and prosecutors, and the influence of political and economic pressures.³

Several steps have been taken to realize climate justice. For example, the role of civil society in the clean energy transition in China which is seen from a Confucian perspective. Confucianism is an influential ethical political doctrine with a history of more than 2000 years. An environmental non-governmental organization, Friends of Nature (FON), FON is a pioneering non-governmental organization in China and has been an influential actor in the country's low-carbon energy transition, particularly through its environmental litigation on energy projects. FON's legal actions, which focus on climate and energy sustainability aspects, are embedded in the Confucian understanding of justice, namely justice as the pursuit of collective interests rather than the fair treatment of individuals; justice as harmony between nature and humans and conservation of natural resources for future generations and justice as an important manifestation of Confucian self-cultivation and political obligation.⁴

Environmental courts have also been established in Chile. The judicialization of politics and the creation of new environmental institutions, environmental litigation is now an increasingly common dimension of socio-environmental conflict. Environmental court with a focus on lithium and copper mining litigation on the Atacama salt flats in Antofagasta County. Although the courts are officially open to a wide range of legal complaints, community groups face an uphill battle when using legal mobilization strategies because of the underlying political and economic power of the mining industry in northern Chile. However, environmental litigation is important for the implementation of environmental policies because it can reveal conflicts regarding environmental compliance, highlighting gaps between existing environmental laws and actual practice. In this case, environmental litigation activates environmental regulations and may provide greater leverage for communities to demand stronger enforcement, although the long-term implications of court decisions to address current and past harms remain to be seen.⁵

Climate litigation is a frequently discussed topic. Around the world, jurisdictions are faced with new legal cases aimed at addressing the devastating impacts of climate change. Domestic, regional and international courts are rising to this challenge, deciding climate-related cases using a variety of approaches. Latin America hosts many climate litigation cases. Some of these claims refer to the protection of biodiversity (e.g. in the Amazon basin), while others refer to the causes of climate change (e.g. air pollution). Additionally, cases with innovative approaches such as

² Paiement, Phillip. "Urgent agenda: How climate litigation builds transnational narratives." *Transnational Environmental Law in the Anthropocene*. Routledge, 2021. 121-143.

³ Cetera, Kenny, and Ardianto Budi Rahmawan. "Prospek Citizen Lawsuit Dalam Sengketa Tata Usaha Negara Terkait Isu Perubahan Iklim Di Indonesia." *Jurnal Yudisial* 15.2 (2022): 145-166.

⁴ Xinxin Wang, Kevin Lo, Civil society, environmental litigation, and Confucian energy justice: A case study of an environmental NGO in China, <https://doi.org/10.1016/j.erss.2022.102831>

⁵ Maria Akchurin, Environmental justice at the environmental courts? Mining, socioenvironmental conflicts, and environmental litigation in northern Chile, <https://doi.org/10.1016/j.exis.2023.101279>

Rights of Nature or Intergenerational Equality also touch on climate governance and the relationship between humans and nature.⁶

The application of climate litigation is also new in Argentina. Climate change is a very new legal issue for litigants and courts in Argentina, with lawsuits only just now developing real climate arguments and without a single decision, let alone a major decision, addressing climate issues. This is a marked difference from other jurisdictions in the region. Climate litigation will continue to grow in Argentina, given the weak political opportunities for climate action and the stronger legal opportunities provided by the broad judicial pipeline, the multitude of grounds that can be used in climate arguments, and the innovative environmental law approaches developed by the Supreme Court.⁷

Previous research that has been conducted by Sulistiawati, it is known that Indonesia does not have laws that are explicitly specific about climate change. Climate litigation is used in Indonesia to hold governments and companies accountable. There were 112 cases found in the years 2010 to 2020 related to climate change that were brought to court.⁸ The success of the Indonesian people in bringing these cases to court is in line with previous research by Ariani (Ariani, 2018), saying that to effectively address climate change through improved regulations and policies based on international commitments and obligations, the Indonesian government must regulate and implement these policies.⁹

Climate change may be litigated through tort, common law, statute/policy, public trust doctrine, or human rights. Although climate change litigation appears to have developed in countries in the Global North, its use is still relatively new in countries in the Global South.¹⁰ Latin America is particularly vulnerable to climate change. From a justice-centered approach, communities have used human rights and constitutional rights as strategies to combat environmental degradation and protect ecosystems in climate litigation.¹¹

Several high-profile cases have diverted attention from other important issues raised in the broader context of climate change. There are four key and interrelated considerations that will inform the conception of future climate change litigation. First, climate change litigation occurs at a variety of scales, and smaller cases at lower levels of government are just as important as more high-profile cases, for a variety of reasons. Second, climate change litigation can involve all elements of a good climate response, not just emissions reductions. Third, the potential contribution of private law tends to be overlooked. Fourth, ignoring 'invisible' climate change cases or invisible issues within these cases can have dangerous consequences for climate change policy. Illuminating the implications of all climate cases at multiple scales is critical for coherent policy. In addition, this broader conception can support strategic choices.¹²

II. Research Problems

1. Why climate change litigation embodies climate justice?
2. What are the challenges of climate change litigation in realizing climate justice?

⁶ Tigre, Maria Antonia et al. "Climate litigation in Latin America: is the region quietly leading a revolution?" *Journal of Human Rights and the Environment* (2023): n. pag.

⁷ Medici-Colombo, Gastón and María Valeria Berros. "Climate Litigation in Argentina: A Critical and Prospective Analysis." *Chinese Journal of Environmental Law* (2023): n. pag.

⁸ Sulistiawati, L. Y. (2024). Climate change related litigation in Indonesia. *Communications Earth & Environment*, 5(1), 522

⁹ Ariani, D. (2018). The effectiveness of climate change litigation as a venue to uphold state climate change obligations in Indonesia. *Indonesian J. Int'l L.*, 16, 210.

¹⁰ Adigun, Muiyiwa. "A human rights approach to climate litigation before the ECOWAS court." *Environmental Law Review* 26 (2023): 16 - 32.

¹¹ Beckhauser, Elisa Fiorini. "The synergies between human rights and the rights of nature: An ecological dimension from the Latin American climate litigation." *Netherlands Quarterly of Human Rights* 42 (2023): 12 - 34.

¹² Bouwer, Kim. "The unsexy future of climate change litigation." *Journal of Environmental Law* 30.3 (2018): 483-506.

III. Research Methods

This research was conducted qualitatively using secondary data and doctrinal legal study methods. Normative legal research or library legal research is a term used to describe legal research methods that involve examining secondary data or library materials.¹³ Normative legal research in the form of library research is carried out by collecting primary, secondary, and tertiary legal materials related to restorative justice.

There are three sources of legal materials in this research, namely primary, secondary, and tertiary legal materials. First, primary legal materials consist of the 1945 Constitution, Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law), Law Number 16 of 2016 concerning Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change, Second, secondary legal materials consist of literature and papers, scientific works, articles related to the object of research, as well as books related to the research. Third, tertiary legal materials consist of large Indonesian dictionaries, legal dictionaries, and other materials related to the object of research.

Therefore, to address formulated issues, three problem-solving methodologies are employed: the statutory approach, conceptual approach, and comparative approach. This research takes on a descriptive- prescriptive nature and utilizes a literature study technique to gather materials, involving the identification of existing literature on laws and regulations pertinent to the subject under examination.

IV. Result And Discussion

1. Climate Change Litigation Realizes Climate Justice

The dominant public narrative about climate change is that "we are all to blame." Another narrative is that society will inevitably have to rely on fossil fuels in the future. One source of these arguments is fossil fuel industry propaganda. Exxon Mobil's advertisements attempt to shift responsibility for global warming from the fossil fuel industry to consumers. They also say that climate change is a "risk," not a reality, that renewable energy is unreliable, and that the fossil fuel industry offers meaningful leadership on climate change. Much of this rhetoric is similar to that used by the tobacco industry. Warning signs that the fossil fuel industry is using subtle micropolitics in language to downplay its role in the climate crisis and to continue to undermine climate litigation, regulation, and activism.¹⁴

The potential liability for climate change for the Alliance of Small Island States is more than \$570 trillion. It is concluded that as emitters begin to be held accountable for the damage caused by greenhouse gas emissions leading to climate change, a high value for mitigating responsibility will provide a strong additional incentive for the deployment of renewable energy technologies. In many jurisdictions, the rules and procedural arrangements governing court proceedings are not necessarily suited to protecting collective interests, such as the environment. This idea has been voiced by academics and practitioners from various jurisdictions and is one of the reasons for pushing for specific regulations on access to justice in environmental matters. Climate protection adds a new layer of complexity, as it becomes increasingly clear that, even in jurisdictions where a strong rule of law is thought to exist, barriers to access to justice remain.¹⁵

There are several factors that influence climate change, fossil fuel businesses must be held accountable for their role in worsening environmental conditions. Unfortunately, regulatory structures are inadequate, making it difficult to hold fossil fuel companies accountable. There has

¹³ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201-7. <https://doi.org/10.1016/j.sbspro.2016.05.006>

¹⁴ Geoffrey Supran 1 2, Naomi Oreskes 1, Rhetoric and frame analysis of ExxonMobil's climate change communications, <https://doi.org/10.1016/j.oneear.2021.04.014>

¹⁵ Medici-Colombo, Gastón and Thays Ricarte. "The Escazú Agreement Contribution to Environmental Justice in Latin America: An Exploratory Empirical Inquiry through the Lens of Climate Litigation." *Journal of Human Rights Practice* (2023): n. pag.

been a significant increase in lawsuits against fossil fuel companies to hold them accountable for their pollution. Thomas Hobbes's Social Contract Theory is used to describe how business can be held accountable in the contemporary global economic system by re-engaging in the social contract between citizens and government. The need for convergence between the legal and ethical responsibilities of fossil fuel companies to achieve true emissions reductions through negotiating a new social contract.¹⁶ Litigants have been shown to develop ideas about the urgency of national climate policy with the help of symbols and discourse—including pathways, crossroads, milestones, thresholds, and carbon budgets to attach meaning to complex future climate models and state responsibility to limit warming global in the future.¹⁷

In 2015, there was a historic momentum for the development of International Environmental Law because 195 countries agreed to the Paris Agreement as a new regulation in dealing with environmental issues related to climate change and committed to sustainable and low-carbon development. The purpose of the Paris Agreement is, among others, to suppress and limit the rate of global warming below 2° C or strive for a better 1.5° C compared to pre-industrial times. In achieving this climate goal, countries around the world hope to peak greenhouse gas emissions as soon as possible in order to achieve climate neutrality by mid-century.¹⁸

The Pakistani court in *Leghari v. Federation of Pakistan* made history by accepting the argument that the government's failure to adequately address climate change violated the rights of the petitioners. The case is part of a number of pending or decided climate change-related lawsuits that incorporate rights-based arguments in several countries, including the Netherlands, the Philippines, Austria, South Africa and the United States. The decisions are in line with efforts to recognise the human rights dimensions of climate change that have received important support in the Paris Agreement. The decisions also represent an important milestone in climate change litigation. While there have been hundreds of climate-based cases around the world over the past two decades especially in the United States, most of the ongoing litigation has focused on the legal interpretation track. Previous attempts to bring human rights cases have also failed to achieve formal success. These new cases show an increasing trend for petitioners to use human rights claims in climate change lawsuits, as well as increasing court acceptance of this framing. This 'rights shift' may serve as a model or inspiration for rights-based litigation in other jurisdictions, particularly those with similar laws and court access.¹⁹

In Latin America, as in other countries, environmental rights and participatory rights have developed. Environmental impact assessments have become an important part of these efforts. Litigation against environmental impact assessments has increased as communities turn to the courts to exercise these rights, raising concerns among developers that the costs associated with environmental impact assessments and the resulting litigation are too expensive and a barrier to economic growth. In many jurisdictions, including Chile and Colombia, these concerns have prompted reforms to streamline environmental impact assessment procedures. Litigation is a fundamental tool for civil society organisations seeking to protect environmental and participatory rights, although the number of cases asserting these rights remains small compared to other causes. Practices in Chile and Colombia differ in terms of the types of cases filed by individuals and the degree of court acceptance of cases filed by civil society organisations.

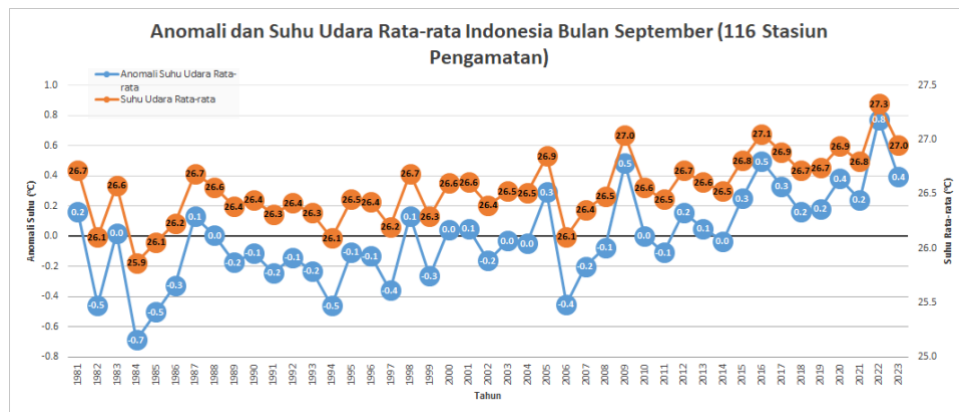
¹⁶ M. Deva Prasad, Salamah Ansari, Legal and ethical accountability of fossil fuel corporations: Need for a new social contract, <https://doi.org/10.1016/j.jclepro.2023.138830>

¹⁷ Paiement, Phillip. "Urgent agenda: How climate litigation builds transnational narratives." *Transnational Environmental Law in the Anthropocene*. Routledge, 2021. 121-143.

¹⁸ Aryanto, Wahyu Setyo. *Tanggung Jawab Negara Peratifikasi Paris Agreement Terhadap Negara Kecil Yang Terdampak Perubahan Iklim*. Diss. Wijaya Kusuma Surabaya University, 2024.

¹⁹ Peel, Jacqueline, and Hari M. Osofsky. "A rights turn in climate change litigation?." *Transnational Environmental Law* 7.1 (2018): 37-67.

Figure 1. Data average temperature in Indonesia every September (1981-2023)



Source: Meteorology, Climatology, and Geophysical Agency of the Republic of Indonesia

Climate change has recently become a hot topic of discussion in national and international forums. As a form of contribution to addressing climate change and the fulfilment of the rights of its citizens, the Indonesian government issued various policies related to efforts to create a good environment. Furthermore, Indonesia has also ratified various international regulations related to climate change. Often the actions taken by the Indonesian government in addressing climate change are less effective and efficient. Therefore, the state is expected to take more progressive actions in addressing climate change as a form of fulfilment of the rights of its citizens to obtain a decent environment.

In Indonesia, the last few years have seen a significant development trend. The increasing awareness of various parties towards efforts to reduce greenhouse gas emissions for the realisation of a healthy and sustainable environment. Awareness of this issue is increasingly showing evidence of its seriousness through various climate change litigation lawsuits, both lawsuits brought by citizens/communities, environmental organisations and the government/Ministry of Environment and Forestry (MoEF), all of which include the Mandalawangi case, Banjarmasin Flood, Samarinda CLS, Palangkaraya CLS, Jakarta Air CLS, Walhi v. Governor of Bali, Walhi v. West Java PTSP Office, Indonesia Youths et al v. Indonesia, MoEF v. PT Rambang Agro Jaya (RAJ), PT Rambang Agro Jaya (RAJ), PT Rambang Agro Jaya (RAJ), and PT Rambang Agro Jaya (RAJ). Indonesia, MoEF v PT Rambang Agro Jaya (RAJ), MoEF v PT Asia Palem Lestari (APL), MoEF v PT Arjuna Utama Sawit (AUS), MoEF v PT Palmina Utama (PU), MoEF v PT Jatim Jaya Perkasa (JJP), Indonesian Greenpeace et al v. Governor of Bali Province, MoEF v. PT Kallista Allam (KA), MoEF v. PT Bummi Mekkar Hijjau (BMH), MoEF v. PT Selatnasik Indokwarsa (SI) and PT Simpang Pesak Indokwarsa (SPI), MoEF v. PT Merbau Pelalawan Lestari (MPL). All of the cases mentioned above can be declared as climate change litigation given the issues, motivations, implications of the lawsuit that lead directly or indirectly to efforts to reduce and adapt to the impacts of climate change. The overall background of the case, sorted, then identified into several groups of climate change litigation, which include: first, climate change litigation as the main issue, second, climate change litigation as a peripheral issue, third, climate change litigation as a motivation but not an issue, fourth, climate change litigation is not a motivation for litigation/lawsuit, but has implications for mitigation and adaptation.²⁰

2. Challenges and Future Strategies for Courts on Climate Change in Indonesia

Conference of the Parties (COP) 21 in the United Nations Framework Convention on Climate Change (UNFCCC) held on 30 November to 12 December 2015 in Paris is a new milestone in efforts to address climate change issues by countries in the world. The Paris Agreement agreed at COP 21 provides hope for countries in the world in an effort to fulfil

²⁰ Sugiarto, Laga, et al. "Litigasi Perubahan Iklim Di Indonesia: Identifikasi Isu Dan Perbuatan Melawan Hukum." *Masalah-Masalah Hukum* 52.1: 74-85. <https://doi.org/10.14710/mmh.52.1.2023.74-85>

commitments to reduce world emission levels that pose a threat to international security due to global warming and climate change. The involvement of the world's largest emitters such as Indonesia and the US gives hope in efforts to prevent the earth's temperature rise so that it remains below 2 degrees centigrade. It is estimated that the period 2050-2100 will be a terrible climate crisis, after which 2100 will be called the century of hell.²¹

Indonesia ratified the Paris Agreement into a legal governing document in 2016 and committed to reduce emissions before 2030. Indonesia's emission reduction commitment under the Paris Agreement is 29 per cent by its own efforts and 41 per cent with assistance from external parties such as international organisations and other UNFCCC member countries. Through the Paris Agreement, Indonesia seeks to reduce greenhouse gas emissions through the implementation of sustainable economic policies.²² The agreement also allows developed countries to assist developing countries in climate change mitigation and adaptation efforts. The long-term goals of the Paris Agreement include (1) to significantly reduce global greenhouse gas emissions and seek to limit global temperature rise to 2 degrees Celsius this century, while seeking to limit further increases to 1.5 degrees Celsius; (2) to review and strengthen each country's commitments every five years; (3) to provide climate change mitigation finance to developing countries to build climate resilience and improve their ability to adapt to climate impacts; (4) to provide climate change mitigation finance to developing countries to build climate resilience and improve their ability to adapt to climate impacts; and (5) to provide climate change mitigation finance to developing countries.²³

The condition of the earth's ecosystem that is not bound by an administrative boundary and the relationship between current conditions and projected future climate conditions makes the concept of environmental justice focus on 2 (two) main concepts, namely intergenerational justice and justice within one generation. There are 2 (two) important relevance in the discussion of intergenerational justice expressed by thinkers in the field of human ecology, namely the relationship between humans and other species of living things and the relationship between humans and the environmental system that humans are in. The creation of environmental justice in general in the trajectory of philosophical thought requires neutrality as the main basis. Therefore, the discussion of intergenerational justice does not only dwell on the fact of protecting future generations to get the right to a proper environment, but also touches on the discussion of proportional earth conditions as a basic moral principle.²⁴

This global trend in climate change litigation charts developments over the period May 2021 to May 2022, and draws on a number of recent case studies from around the world. Legal practitioners may use the law to advance climate action, or, less commonly, seek to challenge the way in which climate policies are designed or implemented or to dissuade policymakers from implementing stricter measures against private parties responsible for greenhouse gas emissions.²⁵

Courts are playing an increasingly influential climate governance role and that they need to be recognised as an Anthropocene institution within the earth system law paradigm. With reference to a number of prominent climate cases, we discuss five interrelated domains relevant to earth system law and where the potential influence of courts can be seen: building accountability, redefining power relations, redressing vulnerability and injustice, increasing the

²¹ David Wallace Wells, *Bumi Yang Tak Dapat Dihuni*, (The *Uninhabitable Earth*), Jakarta, PT Gramedia Pustaka, Hlm. 12

²² Aisya, Naila. "Dilema Posisi Indonesia dalam Persetujuan Paris tentang Perubahan Iklim." *Indonesian Perspective*, vol. 4, no. 2, 24 Nov. 2019, pp. 118-132, <https://doi.org/10.14710/ip.v4i2.26698>. Accessed 7 Dec. 2024.

²³ Azizi MJ, N. ., A. . Kurnia Putra, and B. Sipahutar. "Perdagangan Karbon: Mendorong Mitigasi Perubahan Iklim Diantara Mekanisme Pasar Dan Prosedur Hukum". *Jurnal Selat*, vol. 10, no. 2, May 2023, pp. 91-107, doi:10.31629/selat.v10i2.4853.

²⁴ Prihatiningtyas, W., S. Wijoyo, I. Wahyuni, and Z. M. Fitriana. "Perspektif Keadilan Dalam Kebijakan Perdagangan Karbon (Carbon Trading) Di Indonesia Sebagai Upaya Mengatasi Perubahan Iklim". *Refleksi Hukum: Jurnal Ilmu Hukum*, vol. 7, no. 2, Aug. 2023, pp. 163-86, doi:10.24246/jrh.2023.v7.i2.p163-186

²⁵ Setzer, Joana, and Catherine Higham. "Global trends in climate change litigation: 2022 snapshot." (2022).

reach and impact of international climate law, and applying climate science to adjudicate legal disputes.²⁶

The obligation to provide intergenerational justice as well as the implementation of climate justice, is a homework for policy makers and legal practitioners to take clear and directed steps. First, they should update and strengthen the legal framework by integrating climate justice principles in existing regulations, such as the Environmental Protection and Climate Change Act, building a more responsive environmental justice system. These laws and regulations will serve as an umbrella as the basis and reference in national policy making.

Second, build a more responsive environmental justice system. It is important to improve the technical competence of judges, prosecutors and lawyers through ongoing training programs on climate change and environmental law. Third, provide access to justice for vulnerable groups by establishing specialized legal service centers and providing free legal aid. Fourth, maintaining the independence of the courts by reducing the influence of political and economic pressures, and strengthening oversight mechanisms for conflicts of interest in handling environmental cases. With these measures, Indonesia's legal system has the potential to become an effective instrument in protecting the rights of vulnerable groups and ensuring accountability for environmental damage due to climate change.

Climate change litigation seeks to apply legal rights to influence outcomes that will mitigate or may even result in better alternatives to climate change. Environmental and human protection through climate change litigation can be witnessed in various countries around the world especially Australia, the United States, Canada and the United Kingdom. Courts are becoming an important part of climate change where climate change conflicts are resolved. Judicial intervention in protecting the environment and humans from climate change through climate change litigation.²⁷

The concept of climate justice by relying on 2 (two) main concepts, namely intergenerational justice and intra-generational justice in the current concept can be used as a framework that promotes a better climate life. The weak process of accommodation of the concept of climate justice both contained in soft law and hard law in international legal sources today can be said to be a form of failure of legal institutions and instruments to be able to act autonomously and put forward the concept of justice that is not only based on a framework of certainty alone.²⁸

Climate change lawsuits can be brought against corporations as defendants for their activities that contribute to climate change. One example of a successful lawsuit can be seen in the *Milieudefensie v. Shell* case, where the activities of the Royal Dutch Shell company were proven to contribute to climate change and was penalised for reducing greenhouse gas emissions in all of its production. There are two key points in the *Milieudefensie v. Shell* case, namely the use of human rights arguments and the corporate duty of care, which contributed to the plaintiff's victory in the case. In addition, this paper shows that human rights-based arguments can be used in climate change litigation cases against corporations in Indonesia due to the recognition of substantial and procedural rights in regulations. However, there are also challenges, such as procedural law uncertainty and legal lacunae in the imposition of sanctions.²⁹

The aspect of justice is one aspect of the three objectives of law besides certainty and expediency. Law as a bearer of the value of justice, according to Gustav Radbruch, is a measure of the fairness of the legal system. Not only that, the meaning of justice is also the basis of law as law. Thus, justice has a normative and constitutive nature for law. Justice is the basis for every dignified positive law. Furthermore, Gustav Radbruch said that law is the bearer of the value of

²⁶ Kotzé, Louis J. et al. "Courts, climate litigation and the evolution of earth system law." *Global Policy* (2023): n. pag.

²⁷ Okonkwo, Theodore. "Protecting the environment and people from climate change through climate change litigation." *J. Pol. & L.* 10 (2017): 66.

²⁸ Ardiansyah, Andri Noor. "Perspektif Geografi Dalam Memahami Konteks Perubahan Iklim." *Sosio-Didaktika: Social Science Education Journal* 2.1 (2015): 67-75.

²⁹ Mangara, Gerhard, et al. "Peluang Dan Tantangan Replikasi Gugatan Iklim Kepada Korporasi Dengan Argumen HAM Di Indonesia". *Jurnal Hukum Lingkungan Indonesia*, vol. 9, no. 1, Jan. 2023, pp. 53-76, doi:10.38011/jhli.v9i1.452

justice, justice has normative and constitutive properties for law. It is normative because it is to justice that positive law is based. Constitutive because justice must be an absolute element for the law, without justice, a rule does not deserve to be law.³⁰

Courts are playing an increasingly influential climate governance role and that they need to be recognised as Anthropocene institutions within the paradigm of earth system law. With reference to a number of prominent climate cases, we discuss five interrelated domains relevant to earth system law and where the potential influence of courts can be seen: building accountability, redefining power relations, redressing vulnerability and injustice, increasing the reach and impact of international climate law, and applying climate science to adjudicate legal disputes. We suggest that their innovative work in these domains can be the basis for positioning courts as actors of planetary climate governance. Courts have significant power in raising awareness of climate impacts and establishing rights and responsibilities for plaintiffs and defendants. In April 2022, the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report noted in detail how climate litigation shapes climate governance.³¹

Courts have been asked to declare unlawful government decisions that violate human rights and legal or constitutional protection of the environment. When presented with scientific evidence of habitat destruction in judicial review cases, courts can examine whether the decisions are unlawful and/or irrational. This 'Paradox Test' will ask: (1) whether the decision will result in the destruction of human habitat; and (2) if so, is the decision justified on basic needs? It is proposed that decisions that fail this test would be unlawful and irrational because they conflict with the most fundamental law of nature: the survival of the species.³²

V. Conclusion

Climate justice is a concept underlying global efforts to ensure a fair distribution of the burdens and benefits of climate change, especially for vulnerable groups. In Indonesia, even though there are regulations related to the environment and climate change, the implementation of the principles of climate justice still faces various challenges. The Indonesian justice system is faced with a number of obstacles, such as: (1) Inadequate legal framework, which has not fully integrated the principles of climate justice (2) Limited technical capabilities of judges, prosecutors and lawyers in handling complex climate change litigation and multidimensional (3) Limited access to justice, especially for vulnerable groups, who face obstacles in filing legal claims related to climate change. (4) The influence of economic and political pressure, which can reduce the independence of the courts in deciding cases related to environmental interests. The role of the courts in fighting for climate justice in Indonesia is very important to address the impacts of climate change in a fair and sustainable manner. With a well-planned strategy, the Indonesian legal system has the potential to be an effective tool in ensuring the protection of the rights of vulnerable groups while holding accountable actors who contribute to environmental damage.

To overcome barriers to climate justice implementation, policymakers and legal practitioners need to take clear and targeted steps. First, they should update and strengthen the legal framework by integrating climate justice principles in existing regulations, such as the Law on Environmental Protection and Climate Change, and build a more responsive environmental justice system. Second, it is important to improve the technical competence of judges, prosecutors and lawyers through ongoing training programs on climate change and environmental law. Third, provide access to justice for vulnerable groups by establishing specialized legal service centers and providing free legal aid. Fourth, maintaining the independence of the courts by reducing the influence of political and economic pressures, and strengthening oversight mechanisms for conflicts of interest in handling environmental cases. With these measures,

³⁰ Bernard L Tanya dkk, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, 2013, hlm 117

³¹ Wadiwala, Zunaida Moosa. "Rights-Based Climate Litigation in South Africa and the Netherlands." *Chinese Journal of Environmental Law* (2023)

³² Parr, Adam. "The Paradox Test in Climate Litigation." *Oxford Open Climate Change* (2023).

Indonesia's legal system has the potential to become an effective instrument in protecting the rights of vulnerable groups and ensuring accountability for environmental damage due to climate change.

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