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Climate Change Related Litigation in Indonesia: The Dawn of a New Beginning?

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Abstract

Globally, climate change litigation is increasing. This study found that in Indonesia, 112 climate change related litigation cases have been brought to court between 2010 and 2020. This includes all cases using ‘climate change’ as key words in their main claim, argument, evidence, expert witness’ argument, and judgments. Climate change has been cited at all levels (District, Appellate, and Supreme Court) and in areas of law including criminal, civil, and judicial review. According to Peel and Osofsky’s definition, these cases not the ‘core climate change related litigation cases’, nor that they are ‘peripheral climate change related litigation, as these cases are incidental climate change related litigations. However, this study opines that these cases are important in the development of climate change litigation in Indonesia. Thus, this study identifies relevant criminal and civil climate change related litigation cases between 2010 and 2020 in Indonesia, and examines what factors drive climate change related litigation there.

(153 words)

Key words: climate change litigation, climate change related litigation, Indonesia, drivers of climate litigation.

1. Introduction

Globally, climate change related litigation is increasing. Countries have enacted laws and have adopted policies describing national and international responses to climate change. As of January 2020, the total number of climate change cases filed in 38 countries¹ has reached 1,550. The United Nations Environment Programme’s Global Climate Litigation Report 2020 indicates that climate change related litigation cases tend to focus on: (1) climate rights; (2) domestic enforcement; (3) keeping fossil fuels in the ground; (4) corporate liability and responsibility; (5) failure to adapt and the impacts of adaptation; and/or (6) climate disclosures and greenwashing.²

The definition of climate change related litigation varies. Hilson had taken a broad approach and stated that ‘virtually all litigation could be conceived of as [climate change related litigation]’ given that ‘climate change is the consequence of billions of everyday human actions, personal, commercial, and industrial.’³ However, we have seen cases⁴, that have more

¹ UNEP, *Global Climate Litigation Report 2020*, <<https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y>> accessed on 06 March 2022.

² Ibid.

³ Chris Hilson, ‘Climate change related litigation in the UK: An Explanatory Approach (or Bringing Grievance Back In)’ in *Climate Change: La Riposta del Diritto*, edited by Fabrizio Fracchia and Massimo Occhiena (Naples: Editoriale Scientifica, 2010), 421.

⁴ Urgenda Foundation v. State of the Netherlands <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>, Juliana v. United States – 947 F.3rd 1159 (9th Cir. 2020) <https://www.lexisnexis.com/community/casebrief/p/casebrief-juliana-v-united-states>, Asghar Leghari vs. Federation of

direct links to climate change: litigation related to mitigation (e.g., directly addressing greenhouse gas (GHG) emissions) or litigation related to adaptation (e.g., predicted impacts of climate change on ecosystems, communities, and infrastructure).⁵ Litigants in those cases may be seeking to promote climate change regulation, or to oppose existing or proposed regulatory measures.⁶

Climate change can also be raised as a peripheral issue in the litigation. Here, concerns over climate change motivate the lawsuit, at least in part, but are not explicitly raised in the claims or decision. Peel and Osofsky presented their concept of climate change related litigation in a series of concentric circles. The core circle (smallest circle) represents the cases where climate change is brought as the central issue in litigation. The second-smallest circle represents litigation with climate change as peripheral issue, where climate change is raised as issue but not one that is primary in the case. The third-smallest circle represents climate change related litigation in which climate change is one motivator but not an issue raised (e.g., cases against mining brought on environmental grounds). The fourth, largest circle represents litigation with no specific climate change framing but with implications for mitigation or adaptation (e.g., fracking and deforestation cases). Furthermore, Kim Bouwer argued that climate litigation occurs across scales, and smaller cases at lower levels of governance are as important as more high-profile cases, and engage all elements of a good climate response⁷. She basically underlines that if we restrict ourselves to only ‘core cases’ of climate change related litigation, and ignore the peripheral / smaller cases, we would be losing so much lesson learned from those important cases. To take this even further, this study opines that climate change related litigation, or litigation which incidentally mention climate change issues in their dossiers would also have an impact in the development of climate change litigation.

This study aims to show that Indonesia is not a stranger to climate litigation,⁸ and to identify the driving factors of climate change related litigation in Indonesia. Even though some reports have considered Indonesia as not an active country in climate change litigation during the research period of 2010-2020,⁹ there are previous studies which pointed out the typology of climate change related litigation cases in Indonesia¹⁰ and a study on the challenges of climate change related litigation in Indonesia¹¹. This study reveals that Indonesia has had criminal, civil, administrative, and even judicial review cases that include climate change in various

Pakistan <https://leap.unep.org/countries/pk/national-case-law/asghar-leghari-vs-federation-pakistan>, PSB et al v Brazil <https://www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/2022/08/brazilian-supreme-court-recognises-the-paris-agreement-as-a-human-rights-treaty.html>, accessed 13 October 2022.

⁵ Jacqueline Peel and Hari M. Osofsky, ‘Why climate change related litigation matters’ in *Climate change related litigation Regulatory Pathways to Cleaner Energy*, edited by Jacqueline Peel and Hari M. Osofsky (Cambridge: Cambridge University Press, 2015) at. 1-27.

⁶ Ibid.

⁷ Kim Bouwer, *the Unsexy Future of Climate change related litigation*, Journal of Environmental Law, 2018, pg. 483-506.

⁸ Even as early as in 2007, a case was launched “Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures”, 6 July 2007, Submission by Sawitwatch et al. to the Committee on the Elimination of Racial Discrimination, Seventy-First Session, 30 July-18 August 2007. Available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf. This submission focuses mainly on the palm oil plantations that the government has approved all over Indonesia, but especially in Kalimantan, on territories traditionally owned by Indigenous peoples in the area, not on climate change, but the deforestation of the forest’s impacting their ‘very survival’.

Johnstone, ‘Indonesia in the “Redd”: Climate Change, Indigenous Peoples and Global Legal Pluralism’, 110, 113.

⁹ UNEP’s *Global Climate Litigation 2020* report did not include any cases from Indonesia until 2017.

¹⁰ Andri Wibisana and Conrad Cornelius, *Climate change related litigation in Indonesia*, in *Climate change related litigation in the Asia Pacific* edited by Jolene Lin and Douglas Kysar (Cambridge: Cambridge University Press, 2020) at 234-260. This book chapter highlights three different types of lawsuits in Indonesia’s climate change related litigation: lawsuits against the government for failure to meet its obligations; lawsuits related to environmental impact assessment (EIA) documents; and lawsuits related to illegal logging and peatland fires.

¹¹ Agung Wardhana, *Governing through Courts? A Gloomy Picture of Climate Litigation in Indonesia*, Volkerrechtsblog, <https://voelkerrechtsblog.org/governing-through-courts/> accessed on 12 October 2022.

stages of their dossiers. In them, the issue of climate change was mentioned either in an indictment, a party's argument, part of submitted evidence, part of an expert witnesses' argument, judges' considerations, or in the judgments. This study finds that throughout the period of 2010 to 2020, there are 112 litigation cases in Indonesia that qualify as climate change related litigation.

1.1 Methodology

In light of the increasing urgency of climate change, this article gives an overview of the state of climate change related litigation in Indonesia during the period of 2010 to 2020. It does so by (1) detecting criminal and civil climate change related cases that have been brought before the courts between the years 2010 and 2020; (2) analysing examples of case studies; and (3) highlighting the driving factors of climate change related litigation in Indonesia.

This study was done through pinpointing the use of the phrase 'climate change' in all court documents available for criminal and civil cases in Indonesian courts (District courts, Appellate courts, and the Supreme Court) during the period of 2010 to 2020. Data was retrieved from court documents that had been available on the internet, mostly coming from the Supreme Court website. All related cases have been clustered based on their type of case (criminal, civil, administrative, and judicial review), and each type group was further segmented according to the level of the court involved (district, appeal, or supreme courts).

This is a normative and empirical study focusing only on criminal and civil cases¹² of climate change related litigation in Indonesia. In criminal cases, cases were grouped according to who is the defendant had been, type of verdict of the case, the main issue discussed in the case, and where climate change had been discussed during the case. In civil cases, cases were grouped according to the level of court (district, appeal, or supreme court), type of verdict, type of plaintiff (i.e., citizen lawsuit, class action, organization, state, or regular individual claim), and how climate change had been put forth in the case (e.g., as a claim, as a reply, as argument in the appeal, or in the expert witness argument). Data was then corroborated with other sources of literature (books, journal articles, and reports from various organizations) to arrive at the findings and conclusions of this study.

1.2 The Significance of Indonesia in Climate change related litigation

The Republic of Indonesia is the largest archipelagic state in the world, consisting of five major islands and about thirty smaller groups of islands. In total, Indonesia comprises some 17,508 islands,¹³ including 3.1 million km² of sea (62% of the total area), about 2 million km² of land area (38% of the total area), and a shoreline length of 81.000 km.¹⁴ Its forested land also supports extremely high levels of biodiversity, which in turn, support a diverse array of livelihoods and ecosystem services. Indonesia reports 90 million hectares of forest cover, or around half its land area, making it the country with the third-largest area of tropical forest, after Brazil and the Democratic Republic of Congo.¹⁵

¹² Including the judicial review by the Supreme Court of these criminal and civil cases. Judicial review (*Peninjauan Kembali*) in Indonesia is the authority of the Supreme Court over a decided case, both criminal and civil cases.

¹³ The World Bank, 'The World Bank in Indonesia', <<https://www.embassyofindonesia.org/basic-facts/>> accessed 21 April 2022.

¹⁴ Britannica, 'Indonesia', <<https://www.britannica.com/place/Indonesia>>, accessed 21 April 2022. Embassy of Indonesia, 'Basic Facts' <<https://www.embassyofindonesia.org/basic-facts/>> accessed 21 April 2022.

¹⁵ Interfaith Rainforest Initiative, <https://www.interfaithrainforest.org/indonesia/> accessed 16 August 2022.

As the largest economy in Southeast Asia, Indonesia has charted impressive economic growth since overcoming the Asian financial crisis of the late 1990s.¹⁶ Over the past four decades, its population has been continuously increasing from 119.21 million in 1971 to 252.16 million in 2014, although the annual population growth rate decreased from 1.98% (1980-1990) to 1.38% (2010-2015).¹⁷ The population is projected to reach an estimation of 305 million by 2035. Life expectancy in Indonesia has improved significantly in the past four decades, from only 47.9 years in 1970 to 70.6 years in 2014. The combination of high population density and high levels of biodiversity, together with a staggering 80,000 km of coastline and 17,508 islands, makes Indonesia one of the most vulnerable countries to the impacts of climate change.

1.3 Indonesian Legal Framework for Climate change related litigation

Indonesia is a unitary republic based on the 1945 Constitution (*Undang Undang Dasar* 1945). Indonesia's legal system is derived from the Dutch System and follows the French and German model of Civil Law.¹⁸ The government is head of the Executive branch, organised in a hierarchical structure. As a general rule, the government acts through its ministers, who operate within the sphere of their respective ministries and can issue binding instructions to lower-level administrative bodies, unless prohibited by law. Governmental agencies or institutions are usually classified according to (1) their source of authority of the institutions; or (2) the well the institution functions.¹⁹

The overall hierarchy of regulations in Indonesia starts from the 1945 Constitution, MPR Decree (*Tap MPR*) made by the MPR, Laws (*Undang-Undang*) enacted by DPR or Interim Emergency Regulation (*Peraturan Pemerintah Pengganti Undang-undang*) made by the Presidency, Governmental Regulation (*Peraturan Pemerintah*), Presidential Regulation (*Peraturan Presiden*), Provincial Regulation (*Peraturan Daerah*) made by provincial parliaments, and Municipality/City Regulation.²⁰ Regulations made by other government institutions such as ministries or task forces derive their legal powers from one of these norms or authorities.²¹

In addition to the national political and administrative level, there are also administrative bodies and representative assemblies at the regional level across the 34 provinces (*provinsi*), and at the local level in each of the 548 regencies and cities (*kabupaten* and *kota*). Local self-government is guaranteed by Article 18 (7) of the 1945 Constitution and the Local Government Law No.23 Year 2014.

1.3.1 Indonesian Climate Related Regulations

Indonesia ratified the United Nations Framework Convention on Climate Change (UNFCCC) through Act No. 6 of 1994 concerning the Ratification of UNFCCC. Indonesia ratified the Kyoto Protocol through Act No. 17 of 2004 on the Ratification of Kyoto Protocol to UNFCCC. It then adopted the Doha Amendment to the Kyoto Protocol on 2014.

Prior to the Paris Agreement, Indonesia's regulations on climate refer to the UNFCCC, and results from the Conferences of Parties. Key examples include (1) Presidential Regulation No. 61 of 2011 on National Action Plan for the Reduction of Emissions of Greenhouse Gases (PR

¹⁶ The World Bank (n 9).

¹⁷ International Monetary Fund, 'Indonesia' <<https://www.imf.org/en/Countries/IDN>> accessed on 21 April 2022.

¹⁸ Tim Lindsey, *Indonesia: Law and Society* (Annandale: Federation Press 2008) 12.

¹⁹ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Pasca Reformasi 7*, (SekJen MK RI 2006)17.

²⁰ [Law no. 12 Year 2011 on Development of Laws and Regulations](#) art 7(1).

²¹ *Ibid*, Articles 8(1) & (2).

61/2011); and (2) Presidential Regulation No. 71 of 2011 on the Implementation of a National Inventory of Greenhouse Gases (PR 71/2011).

On 24 October 2016, Indonesia ratified the Paris Agreement through Act No. 16 of 2016 concerning the Ratification of Paris Agreement to UNFCCC. Under the Paris Agreement, Indonesia submitted its Intended Nationally Determined Contributions (INDC) to the Secretariat UNFCCC on 24 September 2015. The INDC was then reformulated into the First of Nationally Determined Contribution (NDC) on 2 October 2016. Indonesia's NDC is to reduce its GHG by twenty-nine per cent independently, and forty-one per cent with international support of the business-as-usual scenario by 2030.²² Indonesia's enhanced NDC, updated in September 2022, increased the independent GHG reduction to thirty one point eighty nine per cent, and forty three point two per cent with international support.²³

To achieve its NDC GHG emissions reduction targets, the government of Indonesia implemented a carbon tax and carbon economic value. These are governed by Law No. 7 of 2021 regarding Harmonized Tax (the Harmonized Tax Law) and Presidential Regulation No. 98 of 2021 regarding Carbon Economic Value (the Carbon Valuation Regulation) respectively. These are in addition to other existing regulations and policies (e.g., Presidential Regulation 61/2011, Presidential Regulation 71/2011) and climate change information systems to monitor and report GHG emissions, such as the National Greenhouse Gases Inventory System and the National Registry System on Climate Change Control. Other existing national regulations and policies for specific sectors – such as energy, industrial processes and product use, agriculture and forestry, and waste – have also been enacted to govern climate matters in Indonesia.

Indonesia does not have a single, overarching law specifically on climate change. At the time period of this study (2010-2020) Indonesia still relied on its environmental laws as the main framework to help mitigate climate change. Cases in this research's population (in the period of 2010-2020) are using the legal framework available at that time. These include Indonesian Penal Code on Law No.1 Year 1946, Law No. 32 of 2009 on Environmental Protection and Management²⁴, and Law No. 41 of 1999 on Forestry. Other regulations in relation to climate change cases, among others, include: Indonesia's Civil and Criminal Codes, Law No. 4 the Year 2009 (Mineral and Coal Mining Act), Law No.18 the Year 2013 (Avoidance of Deforestation and Forest Degradation Act), Law No.39 the Year 2014 (Farming Law), Law No.39 Year 1999 (Human Rights Law), etc.

1.3.2 Indonesian Courts

The Indonesian court system is divided in two: (1) a Supreme Court (*Mahkamah Agung*) to oversee the work of the judiciary and lower courts; and (2) a separate Constitutional Court (*Mahkamah Konstitusi*) tasked with, *inter alia*, interpreting the Constitution, ruling on election and political parties' disputes, and on the distribution of power between State institutions. Most civil and criminal trials are run through the hierarchy of district courts (*pengadilan negeri*), starting from the regency level (*kabupaten*), moving to appeal courts (*pengadilan tinggi*) at the provincial level (*provinsi*), and then obtaining a final cassation from the Supreme Court.

²² United Nations Climate Change, Nationally Determined Contributions Registry, Indonesia, <<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/Updated%20NDC%20Indonesia%202021%20-%20corrected%20version.pdf>> accessed on 21 April 2022.

²³ Ministry of Environment and Forestry Indonesia, DG Climate Change, <http://ditjenppi.menlhk.go.id/berita-ppi/4357-enhanced-ndc-komitmen-indonesia-untuk-makin-berkontribusi-dalam-menjaga-suhu-global.html>, accessed on 13 October 2022.

²⁴ On 2022, Law No. 32 of 2009 on Environmental Protection and Management, and Law No. 41 of 1999 on Forestry, are among the 83 laws amended by Law No. 11 of 2020 on Job Creation.

1.3.2.1. Courts of First Instance: District Court (*Pengadilan Negeri*)

Indonesia has 383 courts of first instance.²⁵ They are known as *Pengadilan Negeri* or District Court and are located in the municipalities and/or cities throughout the country. Based on the Law on General Jurisdiction 1986 and 2004²⁶, District Courts have the authority to examine, try and decide both criminal and civil law cases. A District Court's verdict will take effect and become enforceable as a final judgment within 14 days of the date of its decision, provided that no appeal is submitted to the High Court. The jurisdiction of District Courts includes specialist courts on special areas or issues of law, such as Commercial Court (*Pengadilan Niaga*), Labor Court (*Pengadilan Hubungan Industrial*), Human Rights Court (*Pengadilan Hak Asasi Manusia*), Court for Crime of Corruptions (*Pengadilan Tindak Pidana Korupsi*), and Juvenile Court (*Pengadilan Anak*).

There are also other first instance courts, such as the Religious Courts (*Pengadilan Agama*), the Administrative Courts (*Pengadilan Tata Usaha Negara*), and the Military Court of First Instance (*Pengadilan Militer*). These courts have limited jurisdiction, only over special subject matters. The jurisdictions of Religious Court and Military Court are based on certain personal attribute of the parties: Religious Courts' jurisdiction is limited to Indonesian Muslims disputing on family law, inheritance, *wakaf*, and *shadaqah*;²⁷ while the Military Court has powers only over members of the Indonesian military corps.

Administrative Courts (*Undang-undang Peradilan Tata Usaha Negara*) have jurisdiction over subject matters that are concrete, with regard particular and final decisions of the administrative bodies within the Executive branch. This includes a specialist court on tax, called the Tax Court (*Pengadilan Pajak*)²⁸. The State Administrative Court (*Peradilan Tata Usaha Negara*)²⁹ is the forum to challenge public administrative decrees, which are written decisions issued by a body or official of public administration containing an act of public administration based on the prevailing laws and regulations; it must be concrete (or certain), independent, final, binding with legal consequences upon a person or a civil legal entity.³⁰

The Corruption Courts (*Pengadilan Tindak Pidana Korupsi*) is also part of first instances in Indonesia.³¹ However, in some cases, the District Courts may also try corruption cases if the corruption case dossier is submitted by the Attorney General's office.³²

1.3.2.2 High Courts (*Pengadilan Tinggi*)

The High Courts in Indonesia are the second instance courts. They hear appeals against civil and criminal cases which had been decided by the District Courts. High Courts are normally located in the provincial capital cities. The duties and authorities of the High Courts are regulated under the Law No. 2 Year 1986 as renewed by Law No.49 Year 2009. High Courts

²⁵ Jaringan Dokumentasi Dan Informasi Hukum, <<https://jdih.mahkamahagung.go.id/jdih-pengadilan?filter%5Bname%5D=Pengadilan%20Negeri&page=39>>, accessed on 18 May 18, 2022.

²⁶ Article 25, Paragraph (2) of Law No. 48 of 2009 and Article 50 of Law No. 2 of 1986 Regarding General Jurisdiction (March 8, 1986), as amended by Law No. 8 of 2004 (March 29, 2004)

²⁷ [The Law No. 7/1989](#) as amended by [Law No. 3/2006](#) on Religious Courts (*Undang-undang Peradilan Agama*) governs the jurisdiction, judges, and administration of Religious Court.

²⁸ [Law No. 5/1986](#) as amended by [Law No. 9/2004 on Administrative Court](#).

²⁹ Based on Law No. 8 of 1986 on State Administrative Court, amended by Law No. 51 of 2009.

³⁰ Hauser Global Law School Programme, GlobalLex, 'UPDATE: The Indonesian Legal System and Legal Research' <https://www.nyulawglobal.org/globalex/Indonesia1.html#_Judiciary> 21 April 2022.

³¹ Law No. 46 of 2009 Regarding Criminal Corruption Courts (October 29, 2009) ("Law No. 46 of 2009").

³² Hauser Global Law School Programme (n 29).

exercise judicial powers, supervise District Courts within their respective area(s), carry out administrative functions, and advise governmental institutions within their respective area(s).³³

There are four types of High Courts in Indonesia. Firstly, General High Courts (*Pengadilan Tinggi*) that hear appeals from District Court, and are typically located in every provincial capital and special regions. Secondly, Religious High Courts (*Mahkamah Islam Tinggi*) that hear appeals from Religious Courts. Thirdly, Administrative High Courts (*Pengadilan Tinggi Tata Usaha Negara*) that hear appeals from State Administrative Court. There are four in the whole country, located in Jakarta, East Java, South Sulawesi, and North Sumatra. Fourthly, the Military High Courts (*Pengadilan Militer Tinggi*) located in Jakarta.

1.3.2.3 Supreme Court (*Mahkamah Agung*)

The Supreme Court is the highest judicial institution and the final appellate court in Indonesia for criminal cases, civil cases, religious cases, military cases, state administrative cases and other special courts established by laws enacted by the People's Representative Council (*Dewan Perwakilan Rakyat*).³⁴ The Supreme Court has the power to conduct judicial review of regulations of a lower status than Law (e.g., Presidential Regulation or Ministerial Regulation) to ascertain whether such regulation goes against a particular law.³⁵

The Supreme Court powers are: (a) to hear and decide all final decisions made by appellate courts that have authority over criminal, civil, religious, military and state administrative laws; (b) to review the legality of regulations against a particular Law; (c) to provide legal explanations, recommendations, and advice to state and government institutions; and (d) to provide re-examinations (*peninjauan kembali*) of its final and binding decisions if certain requirements are satisfied. Supreme Court judges are selected by the Judicial Committee, appointed by the People's Representative Council (*Dewan Perwakilan Rakyat*), the legislature, and confirmed by the President. There are sixty Supreme Court justices and one of them serves as Chief Justice.

1.3.2.4. Constitutional Court

The Constitutional Court was first established on 9 November 2001 as a consequence of the third amendment to the Constitution of the Republic Indonesia. The Constitutional Court's decision is final and binding, therefore, it cannot be challenged. The Constitutional Court's power are:³⁶ (a) to review the law made against the Constitution; (b) to resolve disputes between state institution; (c) to resolve dissolution of political parties; (d) to resolve disputes over election results; and (e) to rule on president's impeachment, if there are instances where the President and/or the Vice President are guilty of committing the acts prohibited by the Constitution. The decision on whether to remove the President and/or the Vice President is still under the authority of the People's Consultative Assembly.

There are nine Constitutional Court judges³⁷: three are nominated by the Supreme Court, three are nominated by the House of Representatives, and another three are nominated by the

³³ Indonesia Supreme Court, https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/prosedur_pembentukan_pengadilan_dan_peningkatan_ke_las_pn.pdf, accessed 18 July 2022.

³⁴ 1945 Constitution, the Law No. 14/1985 as amended by Law No. 5/2004 and Law No. 3 of 2009 state the powers and organization of the Supreme Court.

³⁵ Hauser Global Law School Programme (n 29).

³⁶ Indonesian Constitution 1945, Art.24c

³⁷ Law No.24 Year 2003 revised by Law No.8 year 2011 on Constitutional Court

President. All the judges are appointed through a Presidential Decree. The term of office for judges is five years and each of them can be re-elected for a second five-year term.

2. Climate change related litigation in Indonesia (2010 to 2020)

There are certain ways to bring climate change related litigation in Indonesia: through the administrative courts, civil lawsuits, criminal cases, or judicial review.

Table 1: Climate change cases in Indonesia from 2010 to 2020

Type of case	Number of cases
Criminal	80 (71%)
Civil	15 (13%)
Administrative	12 (10%)
Judicial review	5 (4.4%)

Source: compiled from Indonesian courts (kepaniteraan.mahkamahagung.go.id), percentage are rounded to the closest whole number.

For this study, cases were found by searching the key phrase, ‘climate change’, in relevant databases. In total, 112 court cases from 2010 to 2020 from the District, High and Supreme Courts were analysed.³⁸ For criminal cases, the most common type of climate change cases were forest fire cases, and the defendants were generally individuals or individuals representing a company.³⁹ Over forests, there has been longstanding tension between protecting this for its environmental value, including carbon storage, and exploiting it for the production of valuable commodities that generate revenue and employment,⁴⁰ including timber, palm oil, and pulpwood.⁴¹ The result has been decades of unabated deforestation, often carried out by setting large, damaging fires to forests, such as those set during the 2015 El Niño,⁴² which are both environmentally and economically damaging. In some of these deforestation cases, therefore, climate change had been considered by some judges in their deliberation and judgment. For civil cases, a vast majority of cases were resolved in the District Court.⁴³ Out of the twelve civil cases analysed, seven used climate change as their main argument.

For administrative cases, six out of the twelve cases analysed used climate change as their argument, however, only four were accepted by the court. And out of this four, only one case received a favourable decision from the administrative district court, but then revised in the high administrative court. Lastly, none of the four judicial review cases analysed managed to receive favourable results for the defendants. There are many variables to discuss in terms of administrative cases in climate change related litigation, and an independent research is needed to discuss these issues. For these reasons, only criminal and civil cases are elaborated on in the next sections.

2.1 CRIMINAL CASES

³⁸ See Table 1.

³⁹ See Table 2.

⁴⁰ See, for example, McCarthy, John F., and Kathryn Robinson, *Land and Development in Indonesia: Searching for the People’s Sovereignty* (Singapore: ISEAS Publishing, 2016).

⁴¹ Ibid.

⁴² Armida S. Alisjahbana and Jonah M. Busch, ‘Survey of Recent Developments: Forestry, Forest Fires, and Climate Change in Indonesia’, 53(2) *Bulletin of Indonesian Economic Studies* 1099-1118 (2017).

⁴³ See Table 2.

Table 2: Climate Change related Criminal cases in Indonesia from 2010 to 2020

Court	Number of cases
District court	71
Appeal court	4
Supreme court	5
Verdict	
Guilty	76
Not guilty	4
Identity of accused	
Individual	74
Corporation	6
Type of issue	
Forestry and forest fires	42 (52.5%)
Farming	14 (17.5%)
Environment related	12 (15%)
Criminal Code	4 (5%)
Natural Resources related	5 (5%)
Mineral, energy and coal related	2 (2%)
Corruption	2 (2%)
Where climate change argument was made	
Judges' consideration	28 (35%)
Indictment	14 (17.5%)
Expert witness testimony	32 (40%)
Witness testimony	3 (3.75%)
Appeal	3 (3.75%)

Source: compiled from Indonesian courts (kepaniteraan.mahkamahagung.go.id), percentage are rounded to the closest whole number.

Out of all the climate change cases, most (71%) were criminal cases. Most related criminal cases are forestry or forest fires related, and these cases would include matters relating to haze, air pollution, or illegal logging. Climate change was included in the cases, mostly by the expert witness in their testimonies, and also in the judges' considerations. Fourteen cases, in which climate change was used as a theme in the cases' indictment, were also found.

The first key point from this study is that climate change was not used as the first argument, but rather as impact of the first argument. For example, in forestry cases involving forest fires or illegal logging, plaintiffs had argued that if the forested areas are damaged, the microclimate system will be pressured and this will exacerbate global climate change⁴⁴. It was noted that climate change was often mentioned as a 'future' impact without really going into details with the impacts themselves. On the whole, climate change had been considered by judges in their verdicts (twenty-eight cases), were mentioned by experts in their expert witness testimony

⁴⁴ Case 27/PID.B/2013/PN.WTP, Case 94/PID.SUS/2014/PN.TBH, Case 67/PID.B/2015/PN. KLB, Case 102/PID.SUS-LH/2016/PN. WNO, 70/PID.B/LH/2020/PN Spt accessed from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

(thirty-two cases), and were cited in the indictment submitted by the prosecution (fourteen cases).

Second, based on the court's files for these criminal cases, the understanding of climate change proves to be superficial. This is evidenced by some judgments and indictments⁴⁵, which mention climate change as an impact of illegal logging or forest fires, albeit in the same way that floods, draughts, and landslides are mentioned: merely part of a list of consequences of changing the forest system. These demonstrate an insufficient understanding of precisely how the acts exacerbate climate change, which in turn worsens extreme weather events and ecological breakdown.⁴⁶ Seventy-one cases were settled at the District Court level, while four cases proceeded to the appellate courts and another four cases went to proceeded to the court of cassation. This means that most of the verdicts have already suffice the request for justice for most defendants as they do not apply for appeal. However, the fact that climate change is already included in these criminal cases have shown that Indonesian legal enforcers are familiar with climate change as a disaster caused by human action. While this can be considered a breakthrough in Indonesian criminal cases, there is still a need to empower legal practitioners and judges with education and training on climate change.

Third, out of the eighty cases examined, seventy-six of them received guilty verdict. This means that climate change criminal cases have a high conviction rate. There are judges' certification on environmental law in Indonesia's judicial system, around 425 judges (or 10% of the total judges in Indonesia) received training and certification of environmental law⁴⁷, allow them to handle and adjudicate environmental and climate cases better. However, referring to the second point, the education and training on environmental law issues (including climate issues) needed to be deepened and elaborated.

Fourth, the issue with the highest occurrences (seventy-two cases) was forest fires or other forestry related matters. This reflects how forestry cases are very close to climate change issues and that there are available scientific evidence linking these events. By linking forestry issues with the scientific evidence of climate change in these cases, the chances of prosecution for these cases had been increased.

Furthermore, these cases are also using human rights issues in relation to climate change. Several forest fires and mining cases⁴⁸ highlighted how the local communities lost their access to clean air, clean water, and a good quality of life overall. For example, legal consideration in the Case no.168/PID.B/LH/2018/PN Pbu in Pangkalan Bun District Court between *Prosecutor v Hairil (Hairil)* stated that the defendant purposefully set fire in the farming and forest area, which resulting in the excessive smoke, exceeding the limit of his farming area. Judges of the case in the consideration that physical and environmental biota play a very important role in supporting human livelihood and welfare. Case no. 6/PID.SUS.TPK/2020/PN Gto in Gorontalo District Court between *Prosecutor v Danar Bata (Danar Bata)* where the defendant was found guilty of embezzlement during the development of a water dam project, one of the

⁴⁵ Case 26/PID.B/2014/PT.PLK, Case 143/PID.SUS/2013/PN.Rut, 254/PID.SUS/2017/PN PLW, accessed from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁴⁶ NASA Earth Observatory, 'The Impact of Climate Change on Natural Disasters' (30 March 2005) <https://earthobservatory.nasa.gov/features/RisingCost/rising_cost5.php>, accessed 27 April 2022.

⁴⁷ Indonesia started to train and certified judges on environmental law in 2011. Indonesia Supreme Court <https://badilum.mahkamahagung.go.id/berita/pengumuman-surat-dinas/2895-daftar-hakim-peradilan-umum-yang-telah-memperoleh-sertifikat-lingkungan.html>, accessed 16 August 2022.

⁴⁸ Case No. 168/PID.B/LH/2018/PN.Pbu, Case No. 18/PID.SUS-LH/2016/PN Kik, accessed from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

witness highlighted that the proposed dam was supposed to manage the supply of water to the community in the area to adapt to the pressure of climate change. And the defendant action of embezzlement hampered the dam development, to a point where the local community's right of receiving adequate water supply was hampered. All of these are basic human rights that relates closely to climate change. However, these cases have not directly mentioned legal instruments of human rights which will give them more leverage towards linking the issues of human rights with climate change impacts.

As examples, this study highlighted the cases of *Prosecutor v PT. Surya Panen Subur (PT SPS)* and *Prosecutor v Nur Alam (Nur Alam)*. Both are the 'firsts' of climate litigation criminal cases: *PT. Surya Panen Subur* was the first climate related case against a company, and *Nur Alam* case was the first climate related corruption case, as explained below.

2.1.1 *Prosecutor v PT Surya Panen Subur*

In this criminal case, PT Surya Panen Subur (PT SPS), a palm oil producer, was charged with illegally clearing its palm plantation by burning the land.⁴⁹ From 19 to 24 March 2012, and on 17 June 2012, the company had cleared its palm plantation area in Aceh by setting fire to the land.

The court noted that the forest fires had been planned and intentionally started⁵⁰. This was because about 2,300 hectares of land was burnt, and this figure was in line with the company's land opening plan. PT SPS planned to clear 2,000 hectares of land in 2011, but only 1,200 hectares had been cleared by the end of that year. In 2012, the company wanted to clear 2,300 hectares, but by April 2012, only 188 hectares had been cleared. The judges also accepted expert witness testimony that the forest fire had been intentionally designed.⁵¹ According to expert testimony, the fires did not move freely and were contained within specific areas. Moreover, only old palm trees above 36 months had been present in the burnt areas, and there was no trace of fertilizer in the burnt areas.

Furthermore, it was also proven that the forest fires took place due to a lack of monitoring in the area. Although PT SPS employees had been assigned to monitor the forest fires during the dry season, it was apparent that not enough precautions had been taken. The expert testimony also highlighted that the forest fires had led to an increase in greenhouse gases in the atmosphere, and this would contribute to global warming. The judges agreed with this expert's opinion and highlighted it in the legal consideration. The fact that the expert witness and prosecutor for this case highlighted climate issues and global warming shows how they think involving arguments on climate change related issues will enhance their chances of getting the defendant prosecuted. The fact that the judges also agreed with this argument underlined that the judges grasped the understanding of climate change issues in this case.

Thus, the court ruled that the defendant was guilty of failing to monitor and manage their land. It held that PT SPS, as represented by its director, Teuku Arsul Hadiansyah, had committed a criminal act by clearing land through continuous burning. The court also ordered PT SPS to pay a fine of IDR 3,000,000,00 (US\$205,000).

⁴⁹ Judgement No. 54/PID.SUS/2014/PN.MBO

⁵⁰ Case No. 54/PID.SUS/2014/PN.MBO accessed from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁵¹ Judgement No. 54/PID.SUS/2014/PN.MBO

This case is notable because it was the first Indonesian climate change related litigation case brought against a company. The defendant company subsequently filed a civil suit and won at the District, Appeal and Supreme Courts. However, the Ministry of Environment appealed for judicial review and ultimately won the lawsuit. In its verdict, the civil court ordered the defendant to pay the appellant material compensation of IDR 136,864,142,00 in cash, to stop planting palm trees in the burnt peatland, and to restore all 1,200 hectares of the burnt peatland, the cost of which was estimated to be IDR 302,154,300,00 (US\$2,045,274).

2.1.2 *Prosecutor v Nur Alam*

This is a criminal case on illegal mining licenses that led to environmental degradation and climate deterioration in Buton, Southeast Sulawesi.⁵² The defendant, Nur Alam, was the Governor of Southeast Sulawesi at the time of the offence. He had granted PT Anugerah Harisma Barakah, a mining company, approval for mining area sparing and mining licensing (*Ijin Usaha Pertambangan*) exploration in exchange for a personal profit of IDR 2.78 billion and a profit of IDR 1.59 trillion to his own company, PT Billy Indonesia. Nur Alam was charged with contravening Articles 37(b), 39(1), and 51 of Mineral and Coal Mining Act (No. 4/2009), Article 38(3) of the Basic Forestry Law (No. 41/1999), and Article 17(1) of the Mining Regulations Amendment (No. 75 /2001)⁵³. The Corruption Eradication Commission (KPK) prosecutors sought a sentence of 18 years' imprisonment, citing environmental degradation and climate deterioration in his indictment.

The Jakarta Corruption Court found Nur Alam guilty of misusing his authority to grant mining licenses between 2009 and 2014 to nickel miner, PT Anugerah Harisma Barakah, in which Nur Alam owned a 2% stake under the name of his aide. The court sentenced Nur Alam to 12 years in prison and imposed a fine of IDR 1 billion (US\$72,700). He was also ordered to pay restitution of IDR 2.781 billion, which was the cost of property and land he had received in exchange for granting the licenses. The court also stripped Nur Alam of his political rights for five years.

In its judgment, the court stated that there were mitigating factors behind the verdict, such as the many awards Nur Alam received while serving as governor. The state's actual losses, which amounted to IDR 1.5 trillion, were also far lower than the IDR 4.32 trillion (US\$312 million) estimated by the prosecutors. The panel of judges reasoned that the environmental destruction was not Nur Alam's responsibility, but the company's.

Notably, *Nur Alam* was the first corruption case with a verdict accommodating environmental costs. Subsequently, Nur Alam filed his own lawsuit against Basuki Wasis, an environmental expert from Bogor Agricultural University, who had testified on behalf of the KPK that the former governor's actions had resulted in an environmental loss of IDR 2.7 trillion (US\$1.8 million). However, in December 2018, the Cibinong District Court in Bogor, West Java, rejected this claim and ruled in favour of Basuki Wasis.⁵⁴

PT.SPS and *Nur Alam* showed us that criminal cases of climate litigation are not only done by individuals, but also by company and public officials. Based on our interview⁵⁵ with a district

⁵² Judgement No. 123/Pid.Sus-TPK/2017/PN Jkt.Pst

⁵³ Judgement No. 123/Pid.Sus-TPK/2017/PN Jkt.Pst

⁵⁴ Kharishar Kahfi, 'Court rules in favor of environmental scientist in Buton mining case', *The Jakarta Post*, 13 December 2018, < <https://www.thejakartapost.com/news/2018/12/13/court-rules-in-favor-of-environmental-scientist-in-buton-mining-case.html>> 21 April 2022.

⁵⁵ Interview, 12 October 2022.

court judge, climate related criminal cases are highly profiled and sought for in Indonesia. We can see this in the number of hits (to read the *dossier*) in the court’s website – only second to corruption cases, and publication on the local/national news. Judges are also taking extra cautions in the proceedings of climate and environmental cases due to this high public exposure.

2.2 CIVIL CASES

Table 3: Civil cases related to climate change in Indonesia from 2010 to 2020

Court	Number of cases (%)
District court	12 (80 %)
Appeal court	1 (6.6 %)
Supreme court	1 (6.6 %)
Judicial review	1 (6.6 %)
Verdict	
Declined	5 (33.3%)
Accepted	6 (40%)
Rejected	3 (20%)
Plaintiff	
Citizen lawsuit	2 (13.3%)
Class action	1 (6.6%)
Organisation claim	3 (20%)
State claim against corporation	6 (40%)
Regular claim	3 (20%)
Where climate change argument was made	
Claim	7 (46.6%)
Reply	2 (20%)
Appeal	2 (13.3%)
Expert witness testimony	2 (13.3%)

*Note: all percentage figures are rounded off to the nearest whole number.

This study found that twelve climate change related litigation cases were heard in the Indonesian civil courts between 2010 and 2020.

First, the number of climate change related litigation cases in civil law is much smaller than that in criminal law. However, arguments involving climate change were deeper and more meaningful. In these civil cases, climate change was often brought up in arguments either as scientific evidence or in requests to the government to enact or revise regulations in relation to mitigation and adaptation to climate change. For example, in the case of *Ari Rompas and friends v. the Government of Indonesia (Ari Rompas)*, climate change was part of their claim that the Indonesian government failed to fulfil its responsibility to regulate and implement policies on climate change and ozone layer protection.⁵⁶ All the levels of the courts accepted the claims and requested the government to revise and remand the regulations, although recent

⁵⁶ Case No.118/PDT.G/LH/2016/PN Plk from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

development of the case showed that GoI submitted a successful case review (*peninjauan kembali*) which annulled previous decisions.⁵⁷

Second, eighty per cent of the cases were settled in first instance courts, indicating that most litigants had already obtained the justice they desired in the District Court rulings. However, out of the twelve cases, five of them were declined due to various reasons, such as *error in persona* (wrongfully inputting the details of the defendant), legal standing issues (plaintiff were not accepted as having standing for the case), *plurium litis consortium* (claim is lacking of parties, the claim should have included governor and/or head of district as the responsible party), and *obscur libel* (unclear claim)⁵⁸. These reasons do not have anything to do with climate change, but they demonstrate the external factors that influence the process and outcome of climate change related litigation.

Third, the rigidity of legal standing rules has proven to be problematic. There are five types of standing for civil cases in Indonesia: citizen lawsuit, class action, non-governmental organisation (NGO) claim, state (or ministries) claims against company and/or individual, and regular claim.⁵⁹ It is interesting to note that the Ministry of Environment and Forestry was a party in all of these cases, either as plaintiff or as defendant. This is evidence of how involved the Ministry of Environment and Forestry is in climate change related litigation and has shown that they have a good commitment in being involved in the cases and are using climate change related litigation as a resort to resolve climate change disputes. Other stakeholders, such as private businesses and NGOs, were also involved in these climate change related litigation cases.

Fourth, in civil climate changes litigation cases, scientific evidence of climate impacts was often used as the basis of plaintiffs' claims and had also been attested to in expert witness testimonies. Moreover, these elaborations of climate change and its impacts were then linked to the loss of human rights suffered as a result. We see this in the citizen lawsuit claims, such as *Komari v. Mayor of Samarinda (Komari)*⁶⁰ and *Ari Rompas v Government of Indonesia (Ari Rompas)*⁶¹, in claims made by organisations, such as *WALHI v Government of Indonesia (WALHI)*⁶², and even in claims made by the government, such as *Ministry of Environment and Forestry v PT. Palmina Utama*⁶³ and *Ministry of Environment and Forestry v PT. Arjuna Utama Sawit*.⁶⁴

Two climate change related citizen lawsuit cases are taken as examples of civil law climate change related litigation cases for this study. *Komari* had taken place in 2014, while *Ari*

⁵⁷ This case is elaborated in detail as an example in the next section.

⁵⁸ Case No. 2905 K/PDT/2015, Case No. 464/PDT.G/2013/PN.JKT.PST, Case No.125/PDT.G/LH/2016/PN Bjm., Case No.7/PDT.G/2017/PN Bp, Case No.91/PDT.G/2017/PN Sel., from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁵⁹ See Table 3. These points are elaborated on more in the next section.

⁶⁰ Case No. 138/PDT/2015/PT. Smr, *Komari v Mayor of Samarinda (Komari)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁶¹ Case No.118/PDT.G/LH/2016/PN Plk, *Ari Rompas v Government of Indonesia (Ari Rompas)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁶² Case No.464/PDT.G/2013/PN.JKT.PST, *WALHI v Government of Indonesia (WALHI)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁶³ Case No.125/PDT.G/LH/2016/PN Bjm, *Ministry of Environment and Forestry v PT. Palmina Utama (Palmina)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁶⁴ Case No.21./PDT.G/LH/2018/PN Plk, *Ministry of Environment and Forestry v PT. Arjuna Utama Sawit (Arjuna)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

Rompas took place in 2015. Both were cases against the government, involving demands for environmental restoration.

2.2.1 *Komari v Mayor of Samarinda*

Along with eighteen other citizens of Samarinda, Komari filed a civil lawsuit against government authorities: the Mayor of Samarinda, the Ministry of Energy and Mineral Resources, the Governor of East Kalimantan, the Ministry of the Environment and Forestry, and the Regional House of Representatives of Samarinda.⁶⁵ The plaintiffs were part of *Gerakan Samarinda Menggugat* movement, also known as the ‘Samarinda Claims’ movement. Using the citizen law mechanism, they claimed that the mayor wrongfully continued to issue mining licenses, permitting mining activities on seventy per cent of Samarinda territory, despite the harmful effects the mining activities had caused the local citizens. Instead of claiming monetary compensation, the plaintiffs sought action from the government to decontaminate the water sources and provide health services to residents in the area.⁶⁶

On 16 July 2014, the District Court ruled in favour of the plaintiffs and held that the Mayor had been negligent in failing to regulate coal mining activities by continuing to issue the mining licenses, which worsened environmental conditions and increased the risk to the global climate change. The citizens of Samarinda had their right to a good and healthy living environment recognised by the court. The conduct of the Mayor had result in both tangible and intangible loss to the citizen of Samarinda. Therefore, the verdict for this case not only highlighting the importance of climate change impacts, but also the nexus between climate and human right issues. Once the citizen of the City of Samarinda’s right to a good and healthy living environment is being recognized, this means the court also recognize the human rights issues in the case. However, this case met its tragic end, when the Supreme Court decided to overturn the verdict in 2018.⁶⁷

2.2.2 *Ari Rompas v Government of Indonesia*

In 2015, rampant forest fires in Indonesia triggered several lawsuits against the government, including in Central Kalimantan where at least four deaths had resulted from the fires.⁶⁸ These fires also caused a severe haze, increasing incidence of lung infections in the fourteen regencies and districts of central Kalimantan from 11,751 cases in August 2015 to 23,995 cases in September 2015. These fires also led to significant social and economic losses in the region.⁶⁹ As a result, a civil lawsuit was filed by seven residents of Central Kalimantan against the President, cabinet ministers and local governments over their handling of the 2015 forest fires.⁷⁰

The first plaintiff, Ari Rompas, was a central Kalimantan resident and Greenpeace Indonesia campaigner. Together with several other central Kalimantan residents, and with the support of the non-governmental organization Friends of the Earth Indonesia (WALHI), he sued the President, Minister of Environment, Minister of Agriculture, Minister of Agrarian Affairs, Minister of Health, Minister of Home Affairs, Governor of Kalimantan, and the Parliament of

⁶⁵ Judgement No. 55/PDT.G/2013/PN.SMDA, Judgement No. 138/PDT/2015/PT.SMR

⁶⁶ Angela Dewan, “Coal rush ravages Indonesian Borneo,” *The Jakarta Post*, 4 December 2013 <<https://www.thejakartapost.com/news/2013/12/04/coal-rush-ravages-indonesian-borneo.html>> 22 April 2022.

⁶⁷ http://sipp.pn-samarinda.go.id/detil_perkara , 17 February 2023.

⁶⁸ Case No. 118/Pdt.G/LH/2016/PN Plk, *Ari Rompas et.al v the Government of Indonesia (Ari Rompas)* from <https://kepaniteraan.mahkamahagung.go.id/perkara/> accessed 16 August 2022.

⁶⁹ Id.

⁷⁰ Judgement No. 118/Pdt.G/LH/2016/PN Plk

Kalimantan. The plaintiffs argued that the central government had been slow to anticipate the fires, and that there was a lack of coordination between the central and local governments, leading to adverse impacts on the local communities.

The court ruled in favour of the plaintiffs, holding that the government had not acted quickly to stop the forest fires in Indonesia, especially in central Kalimantan, and that their inaction had led to deaths, lung infections, disruption of businesses and the transboundary spread of haze to Singapore and Malaysia. As such, the government was ordered to:⁷¹

1. Review and revise the permits of all palm oil companies, regardless of whether the companies were implicated in the 2015 fires;
2. Actively enforce civil and criminal laws to penalize companies involved in the 2015 fires by issuing regulations providing guidance on compensation for damage in such cases;
3. Publicly name the companies that owned land where the fires broke out, and the amount of each company's environmental guarantee fund;
4. Form an interagency task force for Forest Fire Management consisting of the Ministry of Environment and Forestry, the Ministry of Agriculture and the Ministry of Health; and
5. Build a respiratory hospital to provide free medical treatment for the survivors, and direct other hospitals to do the same.

Ari Rompas is significant as climate change formed the basis of the plaintiff's claim against the defendants. For example, the plaintiffs submitted a 2008 local government report on forest management and climate change mitigation as evidence.

Subsequently, the defendants appealed the decision twice, albeit unsuccessfully. In August 2018, the Palangkaraya High Court upheld the lower court decision and found that the government had been negligent in dealing with 2015 the forest fires.⁷² This was affirmed by the Supreme Court in July 2019, during which they rejected the defendants' appeal and upheld the rulings from the Palangkaraya District Court and the Palangkaraya High Court.⁷³ In response to the Supreme Court ruling, the government expressed its intention to file for a case review on the basis that the 2015 fires were a result of decades of mismanagement by previous governments.⁷⁴ However, in 2022, a case review was filed by GoI and the Supreme Court decided to grant GoI and annulled all previous decision on this *Ari Rompas* case.⁷⁵

Both cases, the *Komari* and *Ari Rompas*, showed how climate change arguments are used in civil climate litigation cases in Indonesia. They are not simple and easy, and sometimes the

⁷¹ "Court declares Jokowi liable for suffering inflicted on thousands by forest fires in 2015," *the Jakarta Post*, July 22, 2019, <https://www.thejakartapost.com/news/2019/07/22/court-declares-jokowi-liable-for-suffering-inflicted-on-thousands-by-forest-fires-in-2015.html>

Michael Taylor, "Indonesians hope 'milestone' ruling will dampen haze-fire risks," *Reuters*, 23 July 2019, <<https://www.reuters.com/article/us-indonesia-forest-haze/indonesians-hope-milestone-ruling-will-dampen-haze-fire-risks-idUSKCN1UI1DB>> accessed on 12 October 2022.

⁷² Ahmad Faiz, 'Court Verdict: Jokowi Guilty in Kalimantan Forest Fire', *Tempo*, 25 August 2018, <<https://en.tempo.co/read/921098/court-verdict-jokowi-guilty-in-kalimantan-forest-fire>> accessed on 12 October 2022.

⁷³ Friski Riana, 'Court Rejects Jokowi's Cassation in Kalimantan Forest Fire', 19 July 2019, <<https://en.tempo.co/read/1226407/court-rejects-jokowis-cassation-in-kalimantan-forest-fire>> accessed on 12 October 2022.

⁷⁴ Hans Nicholas Jong, 'Top court holds Indonesian government liable over 2015 forest fires', *Mongabay*, 23 July 2019, <<https://news.mongabay.com/2019/07/top-court-holds-indonesian-government-liable-over-2015-forest-fires/>> 22 April 2022.

⁷⁵ <https://sippnpalangkaraya.go.id> accessed on 17 February 2023.

case would need years to advance. But even if the case did not result in favourable for the plaintiff, there are other signs of changes of attitude (such as support of the government) as we've seen in *Komari* and *Ari Rompas*. Although recent developments show how this 'victory' is very short as the GoI decided to filed case review and managed to get the decisions annulled. This is among the things we discuss in the next section, on the driving factors of climate change related litigation in Indonesia.

3. Driving factors of Climate change related litigation in Indonesia

In general, aside from the criminal cases, all environmental cases in Indonesia come under the purview of Environmental Protection and Management Law 2009. Article 84 Paragraph 3 of this law states that a lawsuit can only be brought before any court if all other alternative dispute resolution methods have been declared unsuccessful by one or all disputing parties. Thus, it is possible that the numbers of cases identified in this study is only a small part of the total numbers of climate change disputes that were settled through alternative dispute resolution processes prior to court proceedings.

This section discusses the major factors that motivate the growth of climate change related litigation Indonesia.

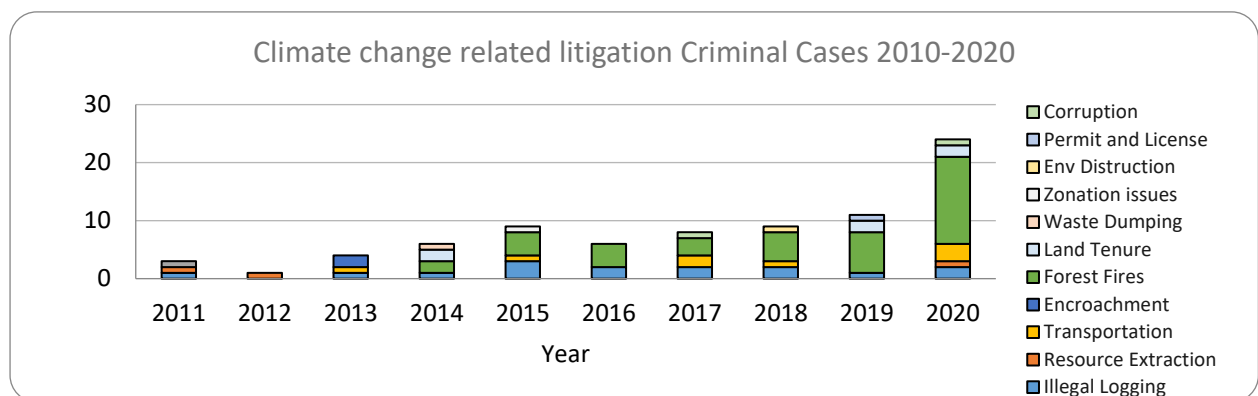


Figure 1

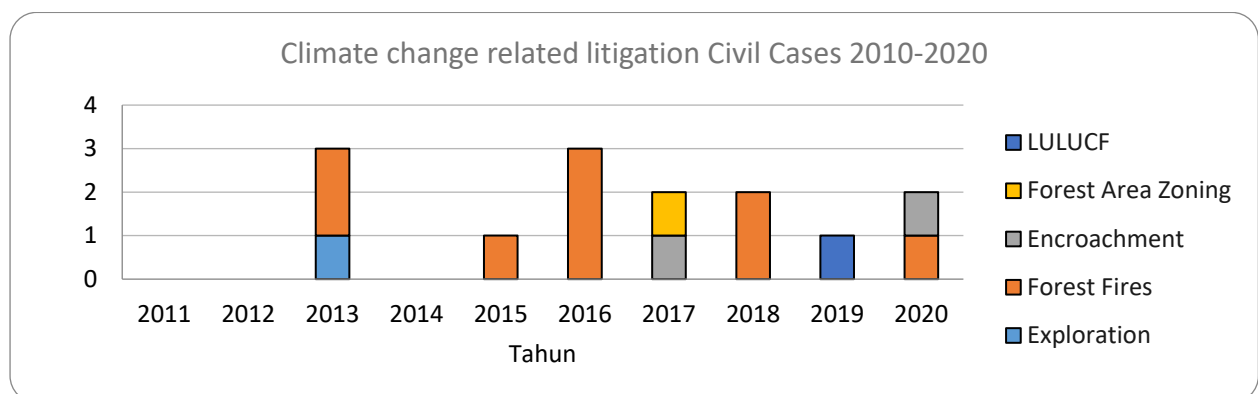


Figure 2

Climate change related cases within the period of 2010 to 2020 are shown in the graphs above. Criminal climate change related litigation cases had multiplied rapidly from 2017 to 2020. The key issues include forest fires and other forestry issues, land zoning, resource extraction,

farming, and corruption. In comparison, civil climate change related litigation cases have not increased as much, although forest fires and land-related cases (zoning, encroachments, and land use and land use change and forestry) are also the main issues being disputed in these cases.

Even though these cases are incidental cases on climate change, or climate change related cases, but they opened up a discussion on climate change in the Indonesian court of law. Litigants, law enforcers, and the Courts are familiarized with the issues because of these cases. Litigants are using climate change as a claim with some hope that it will benefit them. These understanding and awareness of climate change as a legal issue is something that cannot be taught in school or through books. These cases shown that through the years, the inclusion of climate change as a claim increases the confident of the litigants and possibly providing benefits toward the cases.

We discovered that this increasing trend is attributable to several driving factors: (1) the development of science in climate change issues, so that litigants can use them as grounds for their claims; (2) the development of nexus between human rights and climate change, as litigants can use the link between their human rights to climate change impacts; (3) the comprehensiveness of legal standing for environmental cases in Indonesia, with its many challenges; (4) judges training and certification on environmental law, so they know how to proceed with environmental cases; and (5) increased transparency and public pressures on climate change court cases; (6) government support and political will and for climate change related litigation.

3.1 Development of Science in Climate Change Issues

The significant role that human activities have played in causing climate change has been widely researched and accepted as a fact. In the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), published in 2022, it was stated that the annual average of emission during the decade 2010–2019 was 56 ± 6.0 GtCO₂-eq, 9.1 GtCO₂-eq yr⁻¹ higher than in 2000- 2009. This is the highest increase in average decadal emissions on record. The average annual rate of growth slowed from 2.1% yr⁻¹ between 2000 and 2009 to 1.3% yr⁻¹ between 2010 and 2019.⁷⁶

In 2021, the global average temperature was 1.1°C above the pre-industrial baseline, according to the provisional WMO report on the State of the Global Climate.⁷⁷ As long as human-induced emissions continue to rise, global temperatures will also continue to rise. Alongside that, our oceans will continue to become warmer and more acidic, causing sea ice and glaciers to melt and increase global sea levels. Weather events will also become more extreme.⁷⁸

Based on these developments and facts, Burger et.al. argue that attribution science is central to recent climate litigation as it informs discussions of responsibility for climate change.⁷⁹ Consistent with Burger's argument, we have seen how climate change related litigation cases in Indonesia have been using attribution science by (1) introducing expert scientific testimonies

⁷⁶ IPCC, 'Sixth Assessment Report: Summary for Policymakers' (2022)

<https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf> 14 May 2022.

⁷⁷ UNFCCC, '50:50 Chance of Global Temperature Temporarily Reaching 1.5°C Threshold in Next 5 Years', External Press Release, 10 May 2022 <<https://unfccc.int/news/5050-chance-of-global-temperature-temporarily-reaching-15degc-threshold-in-next-5-years>> 14 May 2022.

⁷⁸ Ibid.

⁷⁹ Michael Burger, Jessica Wentz & Radley Horton, 'The Law and Science of Climate Change Attribution', 45 Columbia Journal of Environmental Law (2019).

and reports as evidence in criminal and civil cases; and (2) challenging government failures to regulate GHG emissions in civil cases.

Expert witness testimony has an important role to play in climate change related litigation cases in Indonesia. In criminal cases, thirty nine out of eighty cases have expert witness testimonies elaborating on the climate change implications of forest-related incidents. Here, we see how scientific evidence of climate change impacts are the key linkage between the action and climate catastrophe. In civil cases, two out of fifteen cases studied had climate change featuring in an expert witness testimony. This number is small but it is indicative of the broader implication that judges take into consideration climate science when adjudicating. Moreover, in the civil cases, the rest of the cases (thirteen cases) featured climate change in their claims.

Out of fifteen civil cases studied, seven cases challenge the government on the basis of their failure to regulate GHG emissions. Both local and national governments were involved: requests were made to the local leaders (mayor or governor) or the Minister of Environment and Forestry to revise or revoke current regulations and any implementation efforts thereunder. In three cases, such requests were even aimed at the President of Indonesia. This shows how plaintiffs in these cases understand how climate change are related to GHG emission reduction, and that enacting and implementing relevant regulations are the government's responsibility.

3.2 Development of Nexus between Human Rights and Climate Change

The IPCC has explicitly highlighted that climate change impacts are dangerous and a threat to human life.⁸⁰ Climate change will result in more extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector borne diseases, malnutrition and air pollution. These affects necessarily compromise humans' right to life, right to adequate food, right to the enjoyment of highest attainable standard of physical and mental health, right to adequate housing, right to self-determination, right to safe drinking water and sanitation, right to work and the right to development.⁸¹

In terms of international agreement, the nexus between human rights and climate change has been increasingly acknowledged. The preamble of the Paris Agreement specifies that parties 'should when taking actions to address climate change, respect, promote and consider their respective obligations on human rights',⁸² and the UN Human Rights Council had adopted eleven resolutions on human rights and climate change.⁸³ The United Nations General Assembly on July 28, 2022, declared a universal human right to a healthy, sustainable environment.⁸⁴ These developments help national and sub national actors to easily link the effect of climate change to the fulfilment of human rights in climate change cases.

In the cases examined in this article, we have seen efforts in several cases in highlighting how the environmental damages would lead to a deterioration of the quality of life of the people living in the those areas. In deforestation cases, the argument most used in relation to the impact of climate change on human rights was that deforestation caused the forest to lose its water retaining capacity, which in the end would endanger human to have clean water and/or good

⁸⁰ IPCC, Assessment Report 6, Working Group 3: Mitigation, <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/> 22 August 2022.

⁸¹ Ibid.

⁸² UNFCCC, Paris Agreement (2015), <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> 25 March 2022.

⁸³ See A/HRC/Res/7/23 (2008); A/HRC/Res/10/4 (2009); A/HRC/Res/18/22 (2011); A/HRC/Res/26/27 (2014); A/HRC/Res/29/15 (2015); A/HRC/RES/32/33 (2016); A/HRC/34/20 (2017); A/HRC/RES/38/4 (2018); A/HRC/42/21 (2019); A/HRC/Res/44/7 (2020); A/HRC/Res/47/24 (2021).

⁸⁴ The United Nations Digital Library, <https://digitallibrary.un.org/record/3982659?ln=en> 24 August 2022.

quality of living. Although these links might seem obvious and simple, there is potential to explore their nuances and implications. Therefore, it is expected that as climate change related litigation continues to grow, so too will the nexus between human rights and climate change.

3.3 Legal standing

Standing (*locus standi*) refers to the right that one has to file or participate in a lawsuit as a party. The requirements are prescribed by legislation, court rules and precedent. It is form of good practice to make it as broad and open as possible, indeed to open standing to ‘any person’ to raise an environmental issue, including public interest litigation, citizen suits and class actions.⁸⁵ Otherwise, as is the case now in numerous jurisdictions that prescribe a narrow definition of standing, standing will remain the most significant barrier to accessing justice.

Current requirements for standing in environmental cases in Indonesia had been inspired by the publication of ‘Should Trees Have Standing? Law, Morality, and the Environment’,⁸⁶ which triggered worldwide debate on the basic nature of legal rights. Inspired by Stone and the global environmental movement happening at that time, Indonesia enacted her Environmental Protection and Management Law in 1997, followed by the Environmental Protection and Management Law in 2009, the latter recognising the right to a good and healthy environment as a human right. Some scholars, like Koesnadi Hardjosoemantri, have even opined that the environment and natural resources are legal persons with rights,⁸⁷ and in turn, fulfilling these rights is the responsibility of mankind. According to argument, we have a responsibility to act on behalf of and for the benefit of the environment and natural resources.⁸⁸

The legal requirements for standing in environmental cases (including climate change cases) are comprehensive. The Environmental Protection and Management Law acknowledges legal standing for:⁸⁹ (1) Individual legal standing;⁹⁰ (2) Class action;⁹¹ (3) Government;⁹² and (4) Environmental Organisation.⁹³ However, in practice, filing a lawsuit proves complicated for environmental organisations. Article 92 of that Law states that in order for an environmental organisation to bring a lawsuit for the sake of the environmental conservation, it must (a) be incorporated;⁹⁴ (b) have asserted in its statute that the organisation was founded for the sake of environment conservation;⁹⁵ and (c) have undertaken concrete activities in accordance with its statute of at least two years.⁹⁶ Furthermore, the right to bring this lawsuit is limited to the demands to perform certain actions without any claim for compensation, except for the costs or real expenses.⁹⁷ As such, we can see that while establishing legal standing for environmental cases is possible, the scope and impact are still limited.

⁸⁵ Parvez Hasan, Azim Azfar, Securing Environmental Rights Through Public Interest Litigation in South Asia, Virginia Environmental Law Journal, Vol.22, No.3 (2004).

⁸⁶ Christopher Stone, Should Trees Have Standing? Law, Morality, and the Environment, Oxford: Oxford University Press, 1972.

⁸⁷ Kusnadi Hardjosoemantri, Hukum Tata Lingkungan / Environmental Law, 8th ed, Yogyakarta: Gadjah Mada University Press, 2017.

⁸⁸ Ibid.

⁸⁹ Environmental Protection and Management Law 2009.

⁹⁰ Article 84 paragraph 1.

⁹¹ Article 91.

⁹² Article 90.

⁹³ Article 92.

⁹⁴ Article 92 (3).

⁹⁵ Article 92 (3).

⁹⁶ Article 92 (3).

⁹⁷ Article 92(2).

3.4. Judges Training and Certification on Environmental Law

Climate change related litigation cases involve complex interactions between law, science, health, socio-economics, even security sectors. This demands that judges who adjudicate environmental cases have a strong grasp on relevant areas of knowledge and expertise. If the judges are lacking such expertise, there is a risk that key environmental issues in a case may be overlooked due to a lack of judicial awareness,⁹⁸ creating adverse consequences for environmental jurisprudence.

In countries with environmental courts or tribunals (ECTs), there are more judges with prior experience in environmental matters generally than those who have scientific training.⁹⁹ However, not all countries have ECTs. In countries without ECTs, like Indonesia, environmental cases are solved in general courts. Haba *et al.* (2020) indicated that Indonesia was going to establish an environmental court system,¹⁰⁰ but decided to install ‘green judges’ or ‘green benches’ in the general courts instead.¹⁰¹ The National Judges Training Body under the Supreme Court (*Badan Litbang Diklat Hukum dan Peradilan Mahkamah Agung RI*) structures the curriculum, providing comprehensive training schedules, trainers and materials; selecting the judges to be trained; and determining the duration of the training.¹⁰² This demonstrates Indonesia’s aspiration to have regular court judges who are proficient in environmental issues. Judges who have been trained in environmental issues are given an ‘environmental judges certification’ to certify their expertise in handling environmental issues.¹⁰³ Furthermore, all environmental cases are tried with at least one certified judge.¹⁰⁴

An environmental court or tribunal has not been established in Indonesia because of mounting political challenges and capacity constraints, leading to the environmental training and certification alternative.¹⁰⁵ The increasing trend of climate change related litigation in Indonesia could also be, in part, a reflection of increased public confidence in the green judges of Indonesia.¹⁰⁶

3.5. Transparency and Public Pressures

The Indonesian Supreme Court had started to website started to publish all court documents on their website in 2017.¹⁰⁷ This increases the transparency of court cases and give complete access to information for the public. As such, environmental cases can be accessed, read, and analysed by the public. Moreover, a new service has also been added to the court website: an ‘e-Court’ wherein plaintiffs can register, get an e-summon, engage in e-litigation, receive an e-copy of the verdict, and e-sign documents.¹⁰⁸ Furthermore, Law No. 14 of 2008 on Public Information Disclosure obliges the Government to provide accurate information in timely manner to the public. Fulfilling this obligation thus requires the Government to provide

⁹⁸ UNEP, ‘Environmental Courts and Tribunals: Guidelines for Policy makers 2021’ (2021).

⁹⁹ Ibid.

¹⁰⁰ Haba, M.R., Yunus, A. and Risal, M.C. (2020). Environmental law enforcement through environmental judge certification in Indonesia. *Journal of Critical Review* 7(19), 874-878. https://www.researchgate.net/publication/343222349_ENVIRONMENTAL_LAW_ENFORCEMENT_THROUGH_ENVIRONMENTAL_JUDGE_CERTIFICATION_IN_INDONESIA., accessed 22 August 2022.

¹⁰¹ UNEP, ‘Environmental Courts and Tribunals: Guidelines for Policy makers 2021’ (2021).

¹⁰² Mulyono, B.H. (2021), <<https://bldk.mahkamahagung.go.id/id/>> 22 August 2022.

¹⁰³ UNEP, ‘Environmental Courts and Tribunals: Guidelines for Policy makers 2021’ (2021).

¹⁰⁴ Based on Indonesia Supreme Court Chief Justice Decision no. 134/KMA/SK/IX/2011 on Environmental Judges Certification, Article 21.

¹⁰⁵ UNEP, ‘Environmental Courts and Tribunals: Guidelines for Policy makers 2021’ (2021).

¹⁰⁶ Figure 1 and 2.

¹⁰⁷ Indonesia Supreme Court, <https://kepaniteraan.mahkamahagung.go.id/perkara/>

¹⁰⁸ Indonesia Supreme Court, <https://ecourt.mahkamahagung.go.id/>

facilities such as buildings or rooms for complaints, a complaint desk, and an online complaint network.

On top of that, public pressures from the civil society and environmental NGOs in Indonesia have been increasing. The number of environmental NGOs in Indonesia has grown immensely: there were 8,720 in 1990 and this grew to 13,400 in 2000.¹⁰⁹ Although there have been criticisms on the effectivity and transparency of these environmental NGOs, in general, these NGOs are generally recognised and relied upon as watchdogs who monitor the government and court activities in relation to the environment and climate changes.¹¹⁰

These factors, coupled with the power of free press, have managed to keep transparency and public pressure alive in Indonesia. For example, in the *PT Surya* case, the defendant is sued for causing forest fires in their palm oil plantation. In the argument of the Plaintiff, it clearly submitted GHG releases to the atmosphere and potentially harm the climate, but did not being examined carefully in the first and appeal courts. Plaintiff lost in the first court and the judges' verdict was "*environmental damages did not happen in the burnt area, and the peat land can still be planted with palm trees*".¹¹¹ The courts' decisions (first, appeal, and cassation) grossly failed to consider the Environmental Protection and Management Law, which had been completely ignored alongside with other laws and implementing regulations. When NGOs and the media started to publicly discuss the issue, support for the Government to push for judicial review increased. During judicial review in the Supreme Court, judges were urged to look at the case using precautionary principle and the principle of *in dubio pro natura*.¹¹² Mounting pressure from the civil society and media, as well as the judges' acknowledgement of the environmental aspects of the case, strongly influenced the judicial review verdict. The defendant was ordered to pay damages and restore the damaged peat forest.

3.6. Government's Support and Political Will

Support from the government and other stakeholders are crucial for the success of environmental and climate change related litigation. The support can be in the form of moral and political support, where governments confer the courts with legal authority to work independently, provide sufficient budget, infrastructure, human resources, and security.¹¹³ In criminal and civil climate change cases during the study period in Indonesia, we saw that the government, especially the Ministry of Environment and Forestry (MoEF), does in fact get involved with climate change related litigation. In the criminal cases, we saw that the

¹⁰⁹ Otokritik LSM Lingkungan, detik.com, <https://news.detik.com/kolom/d-4908863/otokritik-lsm-lingkungan>, accessed 22 August 2022.

¹¹⁰ Hans Antlöv, Rustam Ibrahim, Peter van Tuijl, NGO Governance and Accountability in Indonesia: Challenges in a Newly Democratizing Country, 2005, https://www.icnl.org/wp-content/uploads/Indonesia_Peter_NGO-accountability-in-Indonesia-July-05-version.pdf, accessed on 14 July 2022.

¹¹¹ <https://www.environmentaldefender.com/2019/10/klhk-menang-ptsps-melanggar-hukum.html>

¹¹² <https://www.mongabay.co.id/2016/11/24/kala-mahkamah-agung-patahkan-gugatan-rp439-miliar-klhk-ke-perusahaan-sawit-bakar-lahan/>; *in dubio pro natura* literally translated to 'when in doubt, in favor of nature' is essentially underlining the precautionary principle, a principle which says that unacceptable environment risk should be anticipated, and they out to be forestalled before the damage comes to fruition even is scientific understanding of the risk is inadequate. M.Ahteensuu, In Dubio Pro Natura? A Philosophical Analysis of the Precautionary Principle in Environmental and Health Risk Governance, June 2008, <https://www.semanticscholar.org/paper/IN-DUBIO-PRO-NATURA-A-Philosophical-Analysis-of-the-Ahteensuu/13fb561af9e5650e26325bbd1e0283a643f97159>, accessed 18 July, 2022.

¹¹³ For example, Indonesia's judiciary's sector budget is budgeted every year under the State Budget (*Anggaran Pendapatan dan Belanja Negara*) which is enacted in the annual Law of State Budget. The Draft of State Budget, annually has to be approved by the President and Parliament in order to be enacted as the State Budget of that year. This judiciary sector budget is then given to the Supreme Court to be allocated to the courts under its supervision (High and District Courts). Without the approval from the President and the Parliament, it will be hard for the judiciary body of Indonesia to receive adequate facility and budgetary support.

prosecutors often referred to the MoEF's reports and/or permits for evidence, or as expert witness providing testimony for the cases; and in civil cases the MoEF were directly involved as litigants, even though through the two study civil cases we saw how the GoI is very adamant to keep its stand and pushing for the verdicts' annulment through cassation and case review (*peninjauan kembali*).

In terms of political will, environment and disaster resilience was listed as priority under Agenda 9 of the National Development Medium Term Plan (*Rencana Pembangunan Nasional Jangka Menengah*, RPJM) 2009-2014.¹¹⁴ The RPJM 2015-2019 listed not only environmental and disaster resilience, but also mainstreams the climate change issues into the cross-sectoral development plan.¹¹⁵ The latest RPJM 2020-2024 builds on the previous RPJMs and lists climate change as a priority and includes low carbon development within the agenda.¹¹⁶

In addition, it should be noted that each RPJM explicitly highlights the development of equity and justice within the courts of Indonesia. Each of the RPJMs would list accomplishments of the last RPJM and include more ambitious goals, just like what we have seen with climate change issues. For example, abatement of forest fires is under priority agenda of disaster and climate resilient of RPJM 2015-2019. As a result, Indonesia's annual forest fires had been reduced by seventy-five per cent from 1990 levels in 2020.¹¹⁷

These points demonstrate shows how climate change issues have been gaining importance over multiple years of development in Indonesia. This recognition is strengthened by Indonesia's international commitments, especially to the Paris Agreement in 2015, steadily increasing political will and government support of climate change issues and litigation.

These driving factors are not only paving the way for climate change related litigation in Indonesia possible, but also increasing the access to justice and knowledge of climate litigation for the Indonesian public at large. The governmental support and political will, climate knowledge of judges, legal standing, transparency and public support gives us hope that climate litigation in Indonesia might bring us closer to realize our GHG emission targets, and hence, better living environment.

4. Conclusion

In conclusion, climate change is a significant issue in Indonesia, and its importance is attested to by its growing presence in Indonesian litigation. In this study, a total of 112 court cases from 2010 to 2020 at the District, Appeal and Supreme Courts were analysed. For criminal cases, the most common type of climate change cases were forest fire cases, and the defendants were generally individuals or individuals representing a company. Climate change was also used in the judges' legal consideration in some of the cases. For both criminal and civil cases, a vast majority of cases were resolved in the District Court. Out of the twelve civil cases analysed, seven used climate change within their main argument.

¹¹⁴ Peraturan Presiden Republik Indonesia No.5 Tahun 2010, <https://setjen.kemenkeu.go.id/api/Medias/4d1295a5-716a-401e-a252-801e54ee9bd2>, accessed 22 August 2022.

¹¹⁵ Lampiran Peraturan Presiden Republik Indonesia No.2 Tahun 2015, https://perpustakaan.bappenas.go.id/e-library/file_upload/koleksi/migrasi-data-publikasi/file/RP_RKP/RPJMN%202015%20-%202019/BUKU%20II%20RPJMN%202015-2019.pdf, accessed 22 August 2022.

¹¹⁶ Rencana Pembangunan Jangka Menengah Nasional – RPJM Tahun 2020-2024 <https://jdih.bappenas.go.id/peraturan/detailperaturan/1037>, accessed 22 August 2022.

¹¹⁷ Hans Nicholas Jong, 'Deforestation in Indonesia hits record low, but experts fear a rebound', *Mongabay*, 9 March 2021, <<https://news.mongabay.com/2021/03/2021-deforestation-in-indonesia-hits-record-low-but-experts-fear-a-rebound/>> 22 August 2022.

Overall, these results demonstrate the complexity of climate change related cases in Indonesia. Nevertheless, there is improvement from the fact that law enforcers and litigants are using climate change as a basis for their claims. This shows that the issue of climate change has been accepted as increasingly important, to the extent that it is accepted as an argument in court, and possibly beneficial to use by litigants. Driving factors for this are among others the development of science in climate change issues, the development of nexus between human rights and climate change, flexibility of legal standing in Indonesia climate change related litigation, transparency, and public pressures towards climate change cases, and political will and government's support. As for the courts, the increased numbers of climate change related litigation cases we have seen in Indonesian court might be related to the fact that Indonesia since 2012 have given environmental training to the general court judges to handle environmental cases. Most courts in Indonesia have already adopted green benches, and this helps the understanding of climate change, its importance, and how to deal with climate change issues.

Additionally, the role of the government in climate change adjudication is crucial. As seen in the above discussion, the Ministry of Environment and Forestry has been named plaintiff and defendant in different cases. This shows that, in relation to climate change, Indonesians are fully aware of their own rights and obligations, and understand that it is the responsibility of the state to protect these rights, including their human right of being safe from the threats posed by climate change. The fact that law enforcers and community at large are using climate change as claim or argument in court cases is indicative of a huge improvement in Indonesia. This shows that climate change issue is accepted as one of peril, but also part of the solution. This might be the dawn of the new beginning of climate change related litigation in Indonesia, when cases of climate change litigation start to appear in front of Indonesian judiciary.