

# Intersection between Administrative Law and Private Law on Environmental Law Litigation in Indonesia Legal System

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## Abstract

This paper delves into the complex interplay between administrative and private law in environmental litigation within Indonesia's legal framework. Indonesia, rich in natural resources, faces pressing environmental challenges due to rapid industrialization and urbanization. Consequently, disputes often arise over environmental conservation, resource extraction, and pollution control, necessitating legal action to uphold environmental integrity. Administrative law governs governmental bodies responsible for environmental regulation, dictating procedures for permits, inspections, and sanctions. Conversely, private law regulates relationships between individuals and entities, encompassing tort liability, contractual obligations, and property rights. In environmental litigation, these legal domains intersect as plaintiffs seek remedies for harm caused by both public and private actors. The paper examines significant cases where administrative law intersects with private law doctrines, analyzing how



administrative decisions may lead to civil claims under negligence, nuisance, or strict liability theories. It also explores the role of public interest litigation and citizen enforcement mechanisms in ensuring government accountability for environmental stewardship. Additionally, it evaluates the challenges and opportunities in navigating the convergence of administrative and private law, including issues of standing, jurisdiction, evidence, and remedies. Emphasizing judicial interpretation and legal harmonization, the paper underscores the symbiotic relationship between these legal realms in Indonesia's environmental litigation landscape. By shedding light on this intersection, it contributes to understanding environmental governance and access to justice while offering insights into global environmental law reconciling public and private interests.

**KEYWORDS** *Litigation, Strict Liability, Environmental Law Dispute Settlement, Administrative Law, Private Law*

## Introduction

The intersection of administrative law and private law within the Indonesian legal system holds significant implications for environmental law litigation.<sup>1</sup> Indonesia, endowed with abundant natural resources, faces escalating environmental challenges amid rapid industrialization and urbanization. These challenges encompass a spectrum of issues, including environmental degradation, resource depletion, and pollution, necessitating robust legal mechanisms to safeguard environmental integrity.

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<sup>1</sup> Al Fikri, Muhammad Ainurrasyid. "Implementation of strict liability by companies in cases of environmental damage in Indonesia: an overview of state administrative law in Indonesia." *Indonesian State Law Review (ISLRev)* 5.2 (2022): 41-52; Arsyiprimeswari, Natasya, et al. "Environmental Law and Mining Law in the Framework of State Administration Law." *Unnes Law Journal* 7.2 (2021): 347-370; Nicholson, David. "Environmental Litigation in Indonesia." *Asia Pacific Journal of Environmental Law* 6.1 (2001): 47-78.

Administrative law in Indonesia governs the actions of governmental bodies responsible for environmental regulation and enforcement. It establishes procedures for obtaining permits, conducting inspections, and imposing sanctions to ensure compliance with environmental standards.<sup>2</sup> Concurrently, private law regulates relationships between individuals and entities, addressing matters such as tort liability, contractual obligations, and property rights.<sup>3</sup>

The nexus between administrative law and private law becomes particularly evident in the context of environmental litigation. Disputes often arise when environmental harm occurs due to the actions of both public authorities and private entities. Plaintiffs seek redress for damages through legal avenues that intersect administrative decisions with private law doctrines, such as negligence, nuisance, or strict liability.<sup>4</sup>

In the broader context, Indonesia's diverse geological and astronomical features have bestowed upon it a rich array of natural resources. The convergence of tectonic plates has endowed the nation with abundant minerals and volcanoes, while its tropical climate, characterized by high levels of rainfall, has fostered extensive forests and fertile soil. Despite this natural wealth, Indonesia grapples with significant regulatory deficiencies concerning the preservation of environmental diversity and resources.

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<sup>2</sup> Syaprih, Aditia. "Penegakan hukum administrasi lingkungan melalui instrumen pengawasan." *Bina Hukum Lingkungan* 1.1 (2016): 99-113; Hardiman, Dindin M. "Asas Ultimum Remedium Dalam Penegakan Hukum Administrasi Perlindungan Dan Pengelolaan Lingkungan Hidup." *Jurnal Ilmiah Galuh Justisi* 4.2 (2017): 257-271.

<sup>3</sup> Afriansyah, Arie, Anbar Jayadi, and Angela Vania. "Fighting the Giants: Efforts in Holding Corporation Responsible for Environmental Damages in Indonesia." *Hasanuddin Law Review* 4.3 (2019): 325-338; Purwadi, Ari, Cita Yustisia Serfiyani, and Suhandi Suhandi. "The Government's Lawsuit Rights on the Environment Disputes in Indonesia." *International Conference on Science, Technology & Environment (ICoSTE)*. 2019.

<sup>4</sup> Teguh, Pri Pambudi, and Ismail Rumadan. "Execution of environmental civil court decisions in Indonesia." *South Florida Journal of Development* 3.3 (2022): 3286-3301; Wibisana, Andri G. "The many faces of strict liability in Indonesia's wildfire litigation." *Review of European, Comparative & International Environmental Law* 28.2 (2019): 185-196.

Regrettably, the Indonesian government's approach to environmental sustainability often proves inadequate, with regulatory frameworks and governmental practices sometimes exacerbating rather than alleviating environmental degradation. Governmental strategies frequently prioritize short-term economic gains over the long-term preservation of environmental integrity, leading to indiscriminate exploitation and exploration of natural resources. This pragmatic orientation toward economic advancement has frequently resulted in adverse environmental consequences, undermining ecological equilibrium and endangering the welfare of the populace.

Furthermore, governmental acquiescence to unsustainable practices exacerbates the degradation of Indonesia's natural assets.<sup>5</sup> Despite the country's considerable environmental endowment, the absence of effective regulatory measures and enforcement mechanisms poses a grave threat to the conservation of its ecosystems and biodiversity.<sup>6</sup>

In safeguarding Indonesia's diverse natural resources, the government has implemented a range of policies aimed at both mitigating and adapting to environmental damage. Such damage can stem from human activities—referred to as anthropogenic factors—or natural phenomena, often termed as acts of nature, including tectonic earthquakes, volcanic eruptions, and tsunamis. In instances where nature itself is the cause of environmental degradation, humans must adapt and endeavor to preserve their surroundings, with the government assuming a role as facilitator, protector, and provider for its citizens.

Conversely, when environmental harm results from human actions, accountability must be established through legal channels, typically through litigation in court. In these cases, the government is tasked with ensuring legal proceedings are pursued to hold responsible parties accountable for their actions. This legal framework serves as a mechanism

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<sup>5</sup> Alisjahbana, Armida Salsiah, and Arief Anshory Yusuf. "Assessing Indonesia's sustainable development: long-run trend, impact of the crisis, and adjustment during the recovery period." *ASEAN Economic Bulletin* 21.3 (2004): 290-307.

<sup>6</sup> Arsil, F., and Qurrata Ayuni. "Understanding Natural Resources Clause in Indonesia Constitution." *IOP Conference Series: Earth and Environmental Science*. Vol. 940. No. 1. IOP Publishing, 2021.



for justice and restitution, aiming to deter future environmental transgressions and uphold the integrity of Indonesia's natural ecosystems.<sup>7</sup>

In the other side, since the pre-industrial era, global recognition of the worsening impacts of climate change and natural disasters has prompted concerted efforts to mitigate environmental damage. Countries worldwide have committed to slowing the pace of environmental degradation through various international agreements, such as the Paris Convention, alongside the enactment of numerous regulations at both international and national levels. Notable among these efforts are countries including Brazil, China, the Democratic Republic of Congo, members of the European Union, India, Indonesia, Mexico, the Philippines, and the United States.<sup>8</sup>

However, the implementation of these regulations often encounters conflicts stemming from divergent interests, goals, and priorities. Indonesia, as a developing nation aspiring to achieve developed status, faces significant challenges in reconciling its ambition with environmental imperatives.<sup>9</sup> This tension is exemplified by Indonesia's objectives to reduce carbon emissions, halt deforestation, and safeguard its diverse biological and botanical treasures. Striving for economic advancement while simultaneously addressing environmental concerns creates substantial disparities and complexities within Indonesia's regulatory framework.<sup>10</sup>

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<sup>7</sup> Laily, Farah Nur. "Penegakan hukum lingkungan sebagai upaya mengatasi permasalahan lingkungan hidup di Indonesia." *Wacana Paramarta: Jurnal Ilmu Hukum* 21.2 (2022): 17-26; Parsaulian, Baginda. "Analisis kebijakan dalam upaya penegakan hukum lingkungan hidup di Indonesia." *Jurnal Reformasi Administrasi: Jurnal Ilmiah untuk Mewujudkan Masyarakat Madani* 7.1 (2020): 56-62; Fahrudin, Muhammad. "Penegakan hukum lingkungan di Indonesia dalam perspektif Undang-Undang Nomor 32 Tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup." *Veritas* 5.2 (2019): 81-98.

<sup>8</sup> Brenton, Tony. *The greening of Machiavelli: the evolution of international environmental politics*. Routledge, 2019; Chasek, Pamela, and David Downie. *Global environmental politics*. Routledge, 2020.

<sup>9</sup> Smith, Zachary A., and Peter Jacques. *The environmental policy paradox*. Routledge, 2022.

<sup>10</sup> Andriansyah, Andriansyah, Endang Sulastri, and Evi Satispi. "The role of government policies in environmental management." *Research Horizon* 1.3 (2021):

Navigating these discrepancies requires a delicate balance between developmental aspirations and environmental sustainability. Effective governance mechanisms are essential to bridge the gap between competing interests and ensure the protection of Indonesia's natural heritage while advancing its socio-economic goals. Collaborative efforts, both domestically and internationally, are crucial in fostering comprehensive strategies that address environmental challenges while fostering sustainable development in Indonesia and beyond.

Furthermore, amidst the implementation of these regulations, conflicts often arise due to disparities in interests, objectives, and priorities. In this context, Indonesia, a developing nation with aspirations for advancement, faces significant challenges in aligning its developmental ambitions with environmental imperatives. This tension underscores Indonesia's dual commitment to reducing carbon emissions, halting deforestation, and preserving its rich biodiversity. Striking a delicate balance between economic progress and environmental preservation necessitates robust governance mechanisms. Thus, collaborative efforts, both domestically and internationally, are imperative for formulating comprehensive strategies that address environmental concerns while promoting sustainable development in Indonesia and beyond.

The loss of biodiversity resulting from human activities such as deforestation, pollution, and mining has led to ecological, economic, and social repercussions.<sup>11</sup> This has not only spurred calls for stricter regulations and enhanced enforcement but also demands accountability from liable parties for the damage they cause.<sup>12</sup> In the realm of environmental litigation, a comprehensive approach is imperative, aiming not only to compensate affected parties for their losses but also to

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86-93; Maruf, Arifin. "Legal aspects of environment in Indonesia: An efforts to prevent environmental damage and pollution." *Journal of Human Rights, Culture and Legal System* 1.1 (2021).

<sup>11</sup> Eisma-Osorio, Rose-Liza, Elizabeth A. Kirk, and Jessica Steinberg Albin, eds. *The impact of environmental law: stories of the world we want*. Edward Elgar Publishing, 2020.

<sup>12</sup> Phelps, Jacob, et al. "Environmental liability litigation could remedy biodiversity loss." *Conservation Letters* 14.6 (2021): e12821.

rehabilitate and restore environmental conditions to their pre-damage state.

The imposition of strict liability for environmental harm caused by human actions is essential to expedite the resolution of adverse environmental impacts. The approach to addressing environmental issues through administrative law differs from that of private law, each presenting distinct advantages and disadvantages. By examining these differences, similarities, shortcomings, and strengths, we can identify the most effective strategies for environmental litigation. Ultimately, the goal is to establish an operational framework that maximizes the efficacy of environmental litigation efforts and aligns with broader societal objectives.

In the further, the enforcement of environmental law in Indonesia faces significant challenges, characterized by both weak enforcement mechanisms and inadequate legal instruments.<sup>13</sup> This situation creates numerous opportunities for maladministration and unlawful behavior. Maladministration refers to actions taken by public officials or authorities that are inconsistent with established regulations and norms, leading to violations of public service standards. Both governmental institutions and legal entities can be held accountable for maladministration and unlawful acts through legal recourse in court.

The current state of law enforcement in Indonesia is widely perceived as unproductive and fraught with challenges. Former Chief Justice of the Constitutional Court, Mahfud M.D., has highlighted the chronic nature of the judiciary process, emphasizing the infiltration of what he terms the "*judicial mafia*." This nefarious influence allows the judicial mafia to operate with impunity within Indonesia's legal jurisdiction.<sup>14</sup> This

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<sup>13</sup> Muchtar, Syamsuddin, and Ahsan Yunus. "Environmental law enforcement in forestry crime: A disjunction between ideality and reality." *IOP Conference Series: Earth and Environmental Science*. Vol. 343. No. 1. IOP Publishing, 2019; Dekiawati, Erla Sari. "Law Enforcement of Illegal Logging in Indonesia: Problems and Challenges in Present and the Future." *Indonesian Journal of Environmental Law and Sustainable Development* 1.1 (2022): 47-68.

<sup>14</sup> See Zoelva, Hamdan. "The Threat of Judicial Mafia in Indonesia in Discrediting the Principle of the Rule of Law." *International Journal of Criminology and Sociology* 10.5 (2021): 839-844; Romdoni, Muhamad, Santy Fitnawaty WN, and

situation underscores the urgent need for reforms to strengthen legal enforcement mechanisms and uphold the rule of law. Effective measures must be implemented to combat maladministration and unlawful acts, ensuring accountability and promoting justice within Indonesia's legal system. Addressing these systemic issues is essential to fostering public trust in the judiciary and safeguarding the integrity of environmental law enforcement efforts.

Some scholars identify two primary factors contributing to the ineffective functioning of law enforcement in Indonesia. Firstly, existing law enforcement officials have failed to fulfill their role adequately, as evidenced by their lack of adherence to professional ethics. Secondly, there is a widespread lack of awareness among the public regarding the importance of compliance with the law. This is evident in the numerous violations committed by the community, ranging from minor offenses such as littering to more serious transgressions like the use of formaldehyde in food production and drug trafficking.<sup>15</sup>

In the study of law, it becomes apparent that laws are applicable within specific countries and timeframes, a concept referred to as positive law. Positive law derives its authority from legal statutes, customs, and agreements. In the context of environmental justice enforcement in Indonesia, the application of positive law is currently inadequate and incongruent with the country's commitments under international agreements such as the Paris Agreement. This inconsistency underscores the need for alignment between domestic legislation and international

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Rizki Nurdiansyah. "Impact of Political Policy on the Implementation of Law Enforcement." *Mediation: Journal of Law* (2022): 67-74.

- <sup>15</sup> Shavell, Steven. "The optimal structure of law enforcement." *The Journal of Law and Economics* 36.1, Part 2 (1993): 255-287; Swimmer, Eugene. "Measurement of the effectiveness of urban law enforcement: a simultaneous approach." *Southern Economic Journal* (1974): 618-630; Ehrlich, Isaac. "The deterrent effect of criminal law enforcement." *The Journal of Legal Studies* 1.2 (1972): 259-276; Bayley, David H. "Law enforcement and the rule of law: Is there a tradeoff?." *Criminology & Public Policy* 2.1 (2002): 133-154; Jansen, David. "Relations among security and law enforcement institutions in Indonesia." *Contemporary Southeast Asia: a journal of international and strategic affairs* 30.3 (2008): 429-454.

obligations to effectively address environmental challenges and uphold environmental justice principles.

This paper aims to explore the intricacies of this intersection by examining notable cases and jurisprudence within Indonesia's legal landscape. By analyzing how administrative decisions can give rise to civil claims under private law theories, it seeks to shed light on the evolving dynamics of environmental litigation. Furthermore, it will delve into the role of public interest litigation and citizen enforcement mechanisms in holding governmental agencies accountable for environmental stewardship.

Through a comprehensive evaluation of the challenges and opportunities inherent in navigating the convergence of administrative law and private law in environmental disputes, this paper aims to contribute to a deeper understanding of Indonesia's legal framework governing environmental protection. Additionally, it underscores the significance of judicial interpretation and legal harmonization in promoting effective environmental governance and ensuring access to justice for all stakeholders.

## **Environmental Litigation: Theories, Practices and the Challenges in Indonesia**

In society, conflicts or disputes can be addressed through either litigation or non-litigation methods. Litigation involves resolving disputes through the court system, making environmental litigation the process of resolving environmental disputes through legal proceedings. One notable example is the Dutch Urgenda case<sup>16</sup>, which stands out as a unique milestone in the history of environmental litigation.

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<sup>16</sup> The Dutch Urgenda case is a landmark legal proceeding that occurred in the Netherlands, involving the Urgenda Foundation, a Dutch environmental organization, and the Dutch government. Urgenda, along with 886 co-plaintiffs, brought the case to court in 2013, arguing that the Dutch government had a legal obligation to take more ambitious action to mitigate climate change. The crux of the Urgenda case centered on the violation of human rights, specifically the right to life and the right to family life, due to the Dutch government's failure to adequately address climate change. Urgenda argued that the government's climate policies were

Environmental litigation experienced significant growth following World War II, particularly during the 1960s and 1970s. This surge was concurrent with societal shifts from an exploitative approach to industrial growth towards greater recognition of environmental concerns. As society became more aware of the environmental consequences of industrial activities, legal action became an increasingly common method for addressing environmental disputes.

When industrial activities lead to environmental harm and pollution, individuals adversely affected often seek recourse through the legal system to obtain justice. In such instances, the judiciary plays a pivotal role in ensuring that justice is attained through the litigation process. Environmental litigation encompasses various legal mechanisms, with citizen lawsuits and class actions emerging as prominent avenues for seeking redress.

Originating in common law jurisdictions such as the United States, citizen lawsuits have found relevance in Indonesia's legal landscape, particularly within environmental litigation. These lawsuits are initiated by individuals or groups acting on behalf of the broader community, with the overarching aim of advancing the common good. Conversely, class

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insufficient to prevent dangerous climate change, which posed a significant threat to current and future generations. In 2015, the District Court of The Hague ruled in favor of Urgenda, ordering the Dutch government to take more aggressive measures to reduce greenhouse gas emissions. The court mandated that the government cut emissions by at least 25% below 1990 levels by the year 2020, exceeding the government's previous target of 17%. The Urgenda case marked a significant legal victory for climate activists and set a precedent for using human rights arguments to compel governments to take stronger action on climate change. It highlighted the role of the judiciary in holding governments accountable for their environmental policies and underscored the importance of addressing climate change as a human rights issue. The case also spurred similar legal actions in other countries, inspiring a wave of climate litigation worldwide. *See de Graaf, Kars J., and Jan H. Jans. "The Urgenda decision: Netherlands liable for role in causing dangerous global climate change." Journal of Environmental Law 27.3 (2015): 517-527; Burgers, Laura, and Tim Staal. Climate action as positive human rights obligation: The appeals judgment in Urgenda v The Netherlands. TMC Asser Press, 2019; Spier, Jaap. "The "Strongest" Climate Ruling Yet': The Dutch Supreme Court's Urgenda Judgment." Netherlands International Law Review 67.2 (2020): 319-391.*



actions involve legal proceedings initiated by a group of individuals who share similar grievances against a defendant. While citizen lawsuits prioritize the welfare of the broader community, class actions may prioritize the interests of the specific individuals involved.

Indonesia currently lacks specific regulations governing Citizen Lawsuits (CLS). Consequently, in cases where environmental issues arise under CLS, the judiciary typically refers to Supreme Court Decree No. 1 of 2002. The preference for pursuing litigation through CLS, rather than class action, in environmental cases is rooted in its alignment with the overarching goal of serving the public interest. An illustrative example of this legal approach is a recent lawsuit addressing air pollution in Jakarta. Despite the proceedings being at an initial stage, the outcome yielded several significant changes aimed at mitigating air pollution levels within the city.<sup>17</sup>

Within litigation, environmental damage manifests across several distinct categories. Firstly, disputes arise over environmental degradation resulting from deforestation. Secondly, legal actions are pursued in response to the adverse environmental impacts of mining activities. Thirdly, climate change litigation encompasses cases addressing issues such as air pollution, rising temperatures, and escalating sea levels.

These litigation categories are particularly salient in Indonesia, given the nation's unique geographic characteristics. As an archipelagic country boasting expansive landmasses and abundant natural resources, Indonesia grapples with frequent occurrences of the aforementioned environmental challenges. These issues have become increasingly prominent since the onset of the reform era in Indonesia, reflecting heightened awareness and advocacy surrounding environmental preservation and sustainability.

Every nation aspires for societal peace and equilibrium, often referred to as "*national stability*." Given the perpetual threats surrounding human

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<sup>17</sup> Fitriana, Ermania Chobelia, and Nabilla Farah Quraisyta. "Juridical Review of Citizen Lawsuit in its Application in Indonesia." *Randwick International of Social Science Journal* 3.2 (2022): 420-426. See also Zulaeha, Mulyani. "Mengatasi kabut asap melalui mekanisme citizen lawsuit." *Jurnal Hukum Lingkungan Indonesia* 3.1 (2016): 87-106; Abrianto, Bagus Oktafian, et al. "Citizen lawsuit as a legal effort on government eco-unfriendly action." *Review of International Geographical Education Online* 11.4 (2021): 208-215.



interests, both individual and collective, the safeguarding of these interests becomes imperative. Societal order is crucial for the protection of human interests, and such order hinges upon a delicate balance within society. However, this equilibrium can be disrupted by various external dangers at any given moment.

The judicial system varies across countries, tailored to suit their respective legal frameworks and societal needs. In Indonesia, the court system is structured into five distinct categories:

1. **Religious Courts:** These courts preside over cases concerning Islamic law, including matters of divorce and inheritance for Muslim citizens.
2. **General Courts:** Cases, whether criminal or civil in nature, are adjudicated in these courts.
3. **State Administrative Courts:** Responsible for hearing lawsuits related to state administration, with two tiers consisting of the State Administrative Court and the High Administrative Court.
4. **Corruption Court:** This specialized court holds exclusive jurisdiction over cases pertaining to corruption, tasked with examining, adjudicating, and deciding such matters.
5. **Military Courts:** These courts exercise judicial authority within the Armed Forces, ensuring the upholding of law and justice while considering the interests of national defense and security.

This diverse array of courts underscores Indonesia's commitment to upholding the rule of law and ensuring access to justice across various legal domains, reflecting the nation's multifaceted societal fabric and legal landscape.

Litigation concerning environmental matters in Indonesia can follow two distinct paths, namely through general courts and state administrative courts. Depending on the nature of the case, it may entail criminal sanctions, civil remedies, or administrative penalties. The direction of the case hinges on its initial entry point into the legal system.

If environmental cases are initially pursued through criminal litigation, subsequent private liability and administrative accountability may not be pursued, and vice versa. The choice of legal route often depends on the timing of case filing and the interests of the litigating parties. This underscores the importance of strategic decision-making and

advocacy in environmental litigation, where the sequence of legal actions can significantly impact the outcome and scope of accountability.

The concept of climate governance is evolving into a multifaceted and intricate framework encompassing decision-making processes and a diverse array of political objectives. Climate governance initiatives often target greenhouse gas (GHG) emissions directly through mitigation measures, which may also address other interconnected issues such as food production, forest management, energy markets, air pollution, transport systems, and technological advancements, with the aim of achieving mitigation or adaptation outcomes.

In the realm of environmental ethics, three normative principles serve as foundational philosophical underpinnings. Firstly, the principle of environmental justice encompasses distributive environmental justice, which prioritizes equitable distribution of benefits and shared responsibilities, as well as participatory environmental justice, which emphasizes inclusive participation in policymaking processes. Secondly, the principle of integrated justice focuses on advocating for freedom, the right to life, and overall well-being. Lastly, the principle of respect for nature underscores the importance of conserving biodiversity and ecosystems.<sup>18</sup> These principles provide ethical guidelines for navigating complex environmental challenges and shaping climate governance strategies that prioritize equity, inclusivity, and environmental conservation.

In Indonesia, the principle of *ultimum remedium* is applied across civil, criminal, and administrative cases, prioritizing non-litigious dispute resolution over litigation in court. However, in environmental law, this principle should not be upheld due to several compelling reasons. Non-litigious dispute resolution methods are susceptible to abuse of authority, particularly in environmental cases where defendants often hold positions of power over plaintiffs.<sup>19</sup> Moreover, these methods may contain loopholes

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<sup>18</sup> Yang, Qing, et al. "Three dimensions of biodiversity: New perspectives and methods." *Ecological Indicators* 130 (2021): 108099.

<sup>19</sup> Naibaho, Nathalina. "Rethinking the *ultimum remedium* principle to support justice and strong law enforcement institutions in environmental crimes." *IOP Conference Series: Earth and Environmental Science*. Vol. 716. No. 1. IOP Publishing, 2021; Firdaus, A., and Jelly Leviza. "Environmental criminal

allowing perpetrators of environmental damage to evade responsibility for rehabilitating the harm caused. Notably, the Environmental Protection and Management Law (UUPPLH) Article 84 emphasizes the prioritization of legal non-litigious efforts in environmental matters.

Environmental law constitutes a functional legal domain encompassing provisions from state administrative, criminal, and civil law. Its primary objective is to regulate environmental governance, ensuring the preservation and proper management of the environment, as it plays a fundamental role in organizing life. To achieve this goal, legal regulations are established, and various mechanisms such as legal litigation, supervisory functions, and checks and balances among authorized institutions are employed.

However, despite the existence of these mechanisms, inconsistencies in their implementation often arise, necessitating firm intervention to ensure the state's continued alignment with environmental objectives.

## Several Environmental Issues in Indonesia

In Indonesia, environmental issues span a wide spectrum, including deforestation, water pollution from industrial waste and sewage, air pollution in urban areas, and smoke and haze from forest fires. International environmental organizations have consistently urged Jakarta to assume environmental responsibility for its territories, monitor pollution in its national territorial waters, and take decisive legal action to safeguard its rainforests.

To address these pressing environmental concerns, the Indonesian government has taken steps since the late 1960s. These measures include establishing resource-management programs, conducting environmental impact analyses, enhancing policy enforcement, and enacting legislation

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responsibility for mining corporation through the *ultimum remedium* principle." *International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)*. Atlantis Press, 2020; Dewi, Dahlia Kusuma, Alvi Syahrin, and M. Hamdan. "The Functionalization of the *Ultimum Remedium* Principle Towards the Implementation of Criminal Actions Environmental License in the Perspective of Environmental Criminal Law in Indonesia." *1st UMGESHIC International Seminar on Health, Social Science and Humanities (UMGESHC-ISHSSH 2020)*. Atlantis Press, 2021.

to empower government officials with the necessary authority. However, despite these efforts, progress has been hindered by challenges such as corruption, overlapping competencies among government departments, and legal ambiguities regarding departmental jurisdictions. These factors have impeded effective environmental governance and slowed down environmental progress in the country.

Indonesia's geographical characteristics render the nation susceptible to a myriad of environmental challenges. These include severe flooding, unpredictable droughts, and attacks by plant pests, as well as volcanic eruptions and earthquakes, occasionally resulting in tidal waves (tsunamis). Additionally, forest degradation stemming from unregulated logging, fires, smoke, and haze, along with erosion, exacerbates environmental concerns.

Moreover, water pollution caused by industrial waste and sewage, as well as air pollution resulting from emissions from motor vehicles and industrial activities in urban areas, further compound environmental issues. The widespread occurrence of smoke and haze, often stemming from forest fires, adds to the pollution burden. Furthermore, human activities pose threats to biodiversity, endangering rare plant and animal species. These environmental challenges underscore the urgent need for comprehensive strategies and proactive measures to mitigate their impact and ensure the sustainability of Indonesia's natural resources and ecosystems.

In the late twentieth and early twenty-first centuries, Indonesia witnessed a rapid transformation in centuries-old patterns of resource exploitation. Traditional practices such as rice cultivation by peasant farmers have undergone significant changes due to mechanization, increased fertilizer use, and agricultural intensification. Similarly, the coastal commercial sector has been altered by overfishing and the adoption of new technologies for interisland commerce. Additionally, traditional upland forest swidden farming communities are facing displacement due to industrial logging activities.

In recent decades, the cumulative impact of factors such as population growth, urbanization, intensified agriculture, resource extraction, and manufacturing has exerted profound pressures on the Indonesian environment. Despite being home to the world's largest reef

system, vast expanses of rainforest, and some of the planet's richest biodiversity hotspots, Indonesia is currently grappling with severe environmental degradation.

In the realm of state administrative law, particularly within the domain of environmental law, two significant principles have emerged: the "Strict Liability Principle" and the "Reversed Evidence Principle." These principles are instrumental in enforcing environmental regulations, holding perpetrators of environmental pollution or damage accountable for their actions.

Under the Strict Liability Principle, individuals or entities responsible for environmental pollution or damage are held liable for their actions immediately upon occurrence, without the need to establish guilt beforehand. Additionally, the Reversed Evidence Principle places the burden of proof on the perpetrators of environmental pollution or damage (the defendants). They are required to demonstrate that they are not responsible for the losses incurred. In this context, fault is presumed to exist unless the defendant can provide compelling evidence to the contrary. These principles serve to streamline the legal process and ensure swifter and more effective enforcement of environmental laws.<sup>20</sup>

In the realm of environmental law enforcement, particularly in the pursuit of compensation for environmental pollution, significant obstacles persist. Despite the existence of numerous government regulations aimed at managing environmental issues, practical challenges often impede the effective resolution of disputes, particularly regarding the determination of

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<sup>20</sup> See Praja, Chrisna Bagus Edhita, et al. "Strict Liability Sebagai Instrumen Penegakan Hukum Lingkungan." *Varia Justicia* 12.1 (2016): 42-62; Rezeki, Septya Sri. "Pertanggungjawaban Korporasi Terhadap Penerapan Prinsip Strict Liability Dalam Kasus Kerusakan Lingkungan Hidup." *Al-Jinayah: Jurnal Hukum Pidana Islam* 1.1 (2015): 224-235; Riswanti, Ade Risha, N. A. Martana, and I. Nyoman Satyayudha Dananjaya. "Tanggung Jawab Mutlak (Strict Liability) Dalam Penegakan Hukum Perdata Lingkungan Di Indonesia." *Kertha Wicara: Journal Ilmu Hukum* 1.3 (2013): 1-5; Imamulhadi, Mr. "Perkembangan Prinsip Strict Liability Dan Precautionary Dalam Penyelesaian Sengketa Lingkungan Hidup Di Pengadilan." *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 25.3 (2013): 416-432; Al Amruzi, M. Fahmi. "Upaya penegakan hukum lingkungan melalui penerapan asas strict liability." *Masalah-Masalah Hukum* 40.4 (2011): 454-460.

appropriate compensation amounts and forms. Furthermore, enforcing administrative law within the context of environmental management can be complex, especially when confronted with decisions such as the revocation of business licenses. Such decisions, which can have profound economic and sociological implications, may trigger pressure from the public or Non-Governmental Organizations (NGOs) to escalate pollution and destruction cases to court hearings.

Bringing environmental cases to court poses another set of formidable challenges, with evidence and testimony often presenting significant hurdles. Legal proof is crucial to establishing that an environmental crime has occurred, as outlined in the Criminal Procedure Code. However, obtaining such evidence necessitates a comprehensive approach to environmental issues. Expert testimony and laboratory analysis results, supported by additional evidence, typically dominate the proof of environmental crimes. However, problems may arise if the judge questions the validity of laboratory analysis results. In such instances, a re-examination may be ordered, potentially leading to differing outcomes. Disparities in laboratory facilities and natural occurrences, such as rainwater dilution of pollutant substances, may contribute to these differences.

Addressing these obstacles requires a multi-faceted approach. Strengthening legal frameworks, enhancing laboratory standards, and fostering collaboration between scientific experts and legal practitioners are essential steps to ensure robust evidence-based outcomes in environmental litigation.

Furthermore, The Environmental Agency's role as an institution responsible for controlling environmental impact remains suboptimal due to its legal attachment to sectoral agencies. This limits its authority to supervise and mandate environmental audits when irregularities in environmental management are suspected. As a result, the agency's effectiveness in enforcing environmental regulations is compromised.

Dispute resolution in environmental matters often faces challenges stemming from differences of opinion between polluters and claimants. Polluters may justify their actions based on temporary rules or societal norms, while claimants seek recourse based on legal principles and environmental standards. This discrepancy in perspectives, shaped by



societal values and practices, contributes to divergent demands and capabilities between the parties involved (Samaludin, 2019). As a consequence, achieving consensus and resolution in environmental disputes becomes arduous and complex.

## **Administrative Law Approach on Environmental Litigation**

Administrative law enforcement constitutes a vital aspect of the executive function of state governance. In Indonesia, the legal system operates under a decentralized framework, granting local government officials the authority to make and implement policies. This decentralization of authority is governed by Law No. 32 of 2004, which delineates the powers of regional governments.

Under this regulation, regional governments are empowered to manage various aspects of local governance, including the regulation and administration of their own affairs, the election of regional leaders, the management of regional personnel, the stewardship of regional resources, the imposition of regional taxes and levies, and the allocation of revenues generated from the exploitation of natural resources and other sources within their jurisdiction. Additionally, regional governments have the prerogative to regulate and issue permits for mining or environmental exploration and exploitation activities in their respective areas.

However, the issuance of permits by regional authorities sometimes lacks transparency and adherence to established regulations, leading to pragmatic and arbitrary decisions that may ultimately harm local communities. This underscores the need for greater oversight and accountability mechanisms to ensure that administrative decisions align with legal standards and serve the best interests of the populace.

An administrative law approach is often deemed the most effective means of addressing various environmental issues due to its distinct mitigating characteristics, which differ from civil or criminal approaches primarily focused on punishment. Administrative sanctions can be directly imposed by either the regional or central government without the necessity of judicial proceedings. These sanctions may take various forms, including temporary suspension of production processes, revocation of permits,



confiscation of production equipment, or issuance of warning letters to offending businesses.

In this context, governmental authorities hold the power to grant environmental permits and conduct oversight functions, with responsibilities divided between local and central government levels. This two-tier supervisory mechanism ensures comprehensive monitoring and enforcement of environmental regulations. Should the local government fail to address environmental violations adequately, the central government, represented by the Minister of Environment, possesses the authority to intervene and facilitate the resolution process.

By employing an administrative law framework, environmental governance benefits from its proactive and preventive nature, focusing on regulatory compliance and corrective measures to mitigate environmental harm. Additionally, the administrative approach offers flexibility in tailoring sanctions to specific circumstances, promoting efficiency and effectiveness in addressing environmental challenges while upholding the rule of law.

Losses incurred by the community due to policies enacted by either local or central government bodies can be addressed through litigation at the State Administrative Court (PTUN). The State Administrative Court is entrusted with the duty and authority to examine, adjudicate, and resolve State Administrative Disputes at the initial level.

State Administrative Disputes, as defined in Article 1 number 10 of Law Number 51 of 2009, refer to conflicts arising within the realm of state administration between individuals or legal entities and State Administrative Agencies or Officials. These disputes may occur at both the central and regional levels and stem from the issuance of State Administration Decrees, including employment disputes governed by applicable laws and regulations.

Traditional energy sources like oil, coal, and natural gas have historically been pivotal for sustaining life and driving economic growth in many countries. While numerous nations are transitioning towards sustainable energy alternatives to reduce dependence on traditional energy sectors, Indonesia continues to exploit its abundant coal resources to meet escalating energy demands. However, this reliance on coal extraction and

utilization is increasingly posing environmental threats as it contributes to environmental degradation and pollution.

Nevertheless, it would be unjust to solely highlight government actions that harm the environment without acknowledging efforts to mitigate environmental impact. Indonesia has taken steps to address carbon emissions, notably through participation in carbon trading mechanisms. With the world's most extensive forest cover, Indonesia possesses significant natural capital for carbon trading initiatives. While the primary objective of carbon trading may be profit-driven, the environmental benefits are noteworthy.

Indonesia's vast forested areas, totaling 86.9 million hectares, serve as a critical carbon sink, capable of absorbing approximately 5.5 gigatons of carbon dioxide (2022). This potential for carbon trading presents a promising avenue for environmental conservation and climate mitigation efforts. Associations such as the Association of Forest Entrepreneurs in Indonesia (APHI) underscore the significant role of Indonesian forests in carbon sequestration. Acknowledging these efforts underscores the importance of balancing economic development with environmental sustainability.

Indonesia's commitment to reducing Greenhouse Gas (GHG) emissions is encapsulated in its Nationally Determined Contribution (NDC), a document outlining climate action plans determined by the country and communicated to the global community through the United Nations Framework Convention on Climate Change (UNFCCC). In a significant move, Indonesia updated its NDC on September 23, 2022, presenting revised GHG emission targets. With its own capabilities, Indonesia increased its emission reduction target from 29% to 31.89%, and with international assistance, the target rose from 41% to 43.20%.

This updated NDC demonstrates Indonesia's proactive stance towards climate mitigation. The positive environmental impact of these commitments is evident in data from the Ministry of Environment and Forestry, which shows a notable decrease in deforestation. Between 2019 and 2020, deforestation decreased by 75.03%, with a forest area loss of 115.46 thousand hectares. This represents a substantial improvement compared to the previous period of 2018-2019, during which

deforestation was significantly higher, with a loss of 462.46 thousand hectares.

The realization of these positive changes underscores the government's concerted efforts, which include the implementation of various instruments such as regulatory tightening and the establishment of new organizations and institutions tasked with supervisory functions. Through such measures, Indonesia is actively working towards achieving its climate goals and contributing to global efforts in combating climate change.

The Climate Urgenda case against the Dutch Government stands as a landmark in climate change litigation, capturing global attention. It represents the first instance where citizens successfully asserted that their government has a legal obligation to avert dangerous climate change. On June 24, 2015, the Hague District Court delivered a historic ruling mandating that the government must reduce greenhouse gas emissions by at least 25% by the end of 2020, compared to 1990 levels. This decision compels the government to undertake more robust and immediate action to address climate change challenges.

The significance of this ruling extends beyond national borders, serving as a catalyst for climate justice initiatives worldwide. The Urgenda case has inspired other nations to intensify their efforts in mitigating greenhouse gas emissions, signaling a growing global momentum towards climate action. By holding governments accountable for their environmental commitments, this case exemplifies the power of litigation in advancing climate justice and fostering collective action to combat climate change.

## **Private Law Approach on Environmental Litigation**

In private law litigation, the focus typically revolves around losses and compensation. Individuals or entities pursuing civil cases often seek restitution or financial recompense for harm they've suffered. In the context of environmental litigation, civil law proceedings are commonly initiated by community groups or independent institutions dedicated to environmental protection, such as the Indonesian Forum for the

Environment (WALHI). This is because government agencies or private corporations, whether legal entities or otherwise, are frequently involved in environmental disputes, either in their official capacity or as private entities subject to legal proceedings.

Political stability, security, and societal order hinge on effective law enforcement. The interplay of politics and bureaucracy significantly influences various permits, including those related to environmental activities. Objective licensing processes are often impeded by the presence of money politics, posing challenges to fair and transparent decision-making. While economic growth is undoubtedly crucial, the benefits of large-scale environmental exploitation projects often accrue to a select few, exacerbating social and economic disparities. As a result, these issues contribute to worsening social and economic challenges within society.

Despite the Indonesian government's efforts to anticipate the projected demographic surge between 2030 and 2040 by creating opportunities for productive employment, certain policies may inadvertently clash with environmental conservation objectives. The facilitation of job creation through streamlined investment procedures and environmental permits, as stipulated in labor copyright laws, presents a significant divergence from the principles outlined in international agreements such as the Paris Convention on climate change, which Indonesia has ratified.

Indonesia's commitment to the Paris Agreement, enshrined in Law Number 16 of 2016, obliges the government to contribute to global efforts in reducing greenhouse gas emissions. The agreement sets national targets aimed at limiting the rise in global average temperatures to well below 2°C above pre-industrial levels, with a further aspiration to limit it to 1.5°C. However, the pursuit of job creation through policies that potentially compromise environmental sustainability raises concerns about the country's ability to fulfill its climate obligations while accommodating economic growth.

Since the signing of the Paris Agreement, a growing number of countries have realigned their development strategies to prioritize emissions reduction, aiming for a collective transition toward a "zero carbon, zero emissions society." However, the Indonesian government's tangible efforts to curb carbon emissions, as mandated by Law No. 16 of

2016 and Presidential Decree No. 98 of 2021, remain largely inconspicuous. In fact, inconsistencies and contradictions within legislation are apparent, exemplified by the Job Creation Law.

The Job Creation Law introduces changes to Law No. 32 of 2009, notably easing Environmental Impact Assessment (EIA) permit procedures for both exploitation and exploration activities. Additionally, Article 22 of the Job Creation Law eliminates the public's right to lodge objections to AMDAL, potentially exacerbating atmospheric carbon emissions. While simplification of investment regulations in the Copyright Law aims to bolster Indonesia's economic ecosystem, preparing for the anticipated demographic boom in 2030, the country's economic strategy still leans heavily on environmentally detrimental practices, particularly within the mining sector.

Despite Indonesia's commitment to reduce carbon emissions by 29% with domestic resources and an additional 12% with external assistance, the government's current methods and plans fail to align with this pledge. Consequently, there remains a significant disjunction between Indonesia's stated emission reduction goals and its policy actions, raising concerns about the nation's ability to fulfill its climate obligations effectively.

Furthermore, for decades, traditional energy sources such as oil, coal, and natural gas have been instrumental in driving economic growth in Indonesia. While many nations are transitioning towards sustainable energy sources to reduce dependence on the traditional energy sector, Indonesia continues to harness the potential of coal. This reliance on coal aligns with the increasing demand for energy worldwide. However, the extensive exploitation and exploration of coal pose significant environmental risks.

Despite its vital role in meeting energy demands, coal remains the largest contributor to carbon dioxide emissions among fossil fuels. This reality underscores the urgent need for transitioning to cleaner energy alternatives. As Indonesia continues to prioritize coal as a primary energy source, it inadvertently exacerbates environmental degradation and contributes to climate change. This highlights the imperative for the nation to reconsider its energy strategy and accelerate the adoption of sustainable energy solutions to mitigate environmental impact and curb carbon emissions.

Navigating the intersection of the environment and the economy presents a complex challenge for Indonesia. The country finds itself in a transitional phase, moving from a brown economy, heavily reliant on environmentally damaging activities such as fossil fuel extraction, towards a more sustainable green economy. However, this transition demands significant investments in both manpower and financial resources.

The brown economy, characterized by its dependence on activities detrimental to the environment, has long been entrenched in Indonesia's economic landscape. Fossil fuels like coal, oil, and gas have been lucrative sectors for decades, benefiting oligarchs and bureaucratic elites. Consequently, relinquishing this established system poses substantial obstacles to the transition towards a greener economy.

The reluctance to embrace the green economy stems from vested interests and entrenched power dynamics within the economic and political spheres. This resistance further complicates the transition process, creating a challenging landscape marked by contradictions between economic and environmental regulations.

Nevertheless, achieving a balance between economic growth and environmental preservation is paramount. By ensuring equal enforcement of economic and environmental regulations, Indonesia can strive towards a harmonious convergence where economic prosperity coexists with environmental sustainability.

## **Public Preferences in Environmental Litigation: From Global into Indonesian Context**

Since its inception in 1986, the phenomenon of climate change litigation has burgeoned, culminating in 1587 recorded cases globally by the year 2020. This legal pursuit implicates numerous defendants. Setzer and Byrnes, in their comprehensive study, document that 75% of these cases target governmental entities as the primary culpable parties. The proliferation of such litigation, particularly evident post-2000s, has prompted experts and scholars to delineate precise definitions and classifications of climate change litigation. Peel and Lin underscore the significance of this definitional clarity, as it ensures the inclusion of



lawsuits where climate change arguments are not merely ancillary but central to the legal discourse.<sup>21</sup>

Environmental liability litigation is a complex legal arena where the focus lies on recognizing, assessing, and remedying harm caused to the environment. Phelps et.al highlight the multifaceted nature of this process, which involves not only identifying environmental harm but also proposing remedies that align with existing laws and the disposition of courts.<sup>22</sup> However, within this framework, both governmental entities and the public often exhibit a pragmatic orientation, primarily concerned with financial considerations and profitability. Consequently, instances of environmental damage perpetrated by governments may go unaddressed or receive lenient treatment, especially when such actions serve governmental interests.

It is crucial to acknowledge that while environmental litigation ostensibly aims to advocate for environmental protection and accountability, the motivations of claimants may vary. Many individuals seeking damages for environmental harm may not be driven solely by a desire for legal advocacy aimed at compelling governmental action and policy reform favoring the environment. Rather, their primary objective may revolve around seeking financial compensation for losses incurred. This reality underscores the nuanced dynamics at play within environmental liability litigation, where the pursuit of material wealth often intersects with broader environmental concerns.

Since the advent of the industrial revolution, human activities have relentlessly emitted greenhouse gases, exacerbating the Earth's

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<sup>21</sup> Sembiring, Zefanya Albrena, and Audi Gusti Baihaqie. "Litigasi perubahan iklim privat di Indonesia: Prospek dan permasalahannya." *Jurnal Hukum Lingkungan Indonesia* 7.1 (2020): 118-140.

<sup>22</sup> Phelps, Jacob, et al. "Environmental liability litigation could remedy biodiversity loss." *Conservation Letters* 14.6 (2021): e12821. See also Fajrini, Rika, Rebecca M. Nichols, and Jacob Phelps. "Poacher pays? Judges' liability decisions in a mock trial about environmental harm caused by illegal wildlife trade." *Biological Conservation* 266 (2022): 109445; Rodríguez-Garavito, César, and David R. Boyd. "A Rights Turn in Biodiversity Litigation?." *Transnational Environmental Law* 12.3 (2023): 498-536; Natarajan, Usha, and Kishan Khoday. "Locating nature: Making and unmaking international law." *Leiden Journal of International Law* 27.3 (2014): 573-593.



environmental degradation with each passing day. This phenomenon has led to alarming consequences, such as the rising sea levels poised to inundate numerous low-lying islands worldwide, including Jakarta, a pivotal hub of industry and commerce on the island of Java. Moreover, the pervasive air pollution resulting from these emissions has precipitated severe public health concerns, particularly affecting vulnerable populations such as infants, thereby portending a potential decline in life expectancy for future generations compared to their predecessors.

Despite mounting evidence of the detrimental impacts of continued reliance on conventional practices, there persists a stubborn adherence to traditional methods that do more harm than good. Smith emphasizes that the inertia in transitioning to sustainable practices is deeply concerning. We're witnessing a paradoxical situation where the imperative for economic growth often overrides the imperative for environmental preservation, especially in developing countries like Indonesia.<sup>23</sup>

Acknowledging the pressing need for economic development in countries like Indonesia, it becomes imperative to explore avenues where economic progress aligns harmoniously with environmental conservation. Fortunately, the contemporary landscape of industry offers promising alternatives, with a notable shift from fossil fuel-based energy sources to renewable and environmentally friendly options. The emergence of innovative solutions such as Tesla's electric vehicles serves as a compelling testament to the viability of the green economy. López-Gamero asserts that the success of companies like Tesla underscores the immense potential for economic prosperity within the green economy sector. This transition not only mitigates environmental degradation but also fosters innovation and creates new avenues for economic growth.<sup>24</sup>

The imperative to shift from a brown economy to a green economy is urgent and necessitates immediate policy implementation. However, the transition process has encountered persistent challenges. Business entities,

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<sup>23</sup> Smith, Richard John. "A social worker's report from the United Nations Conference on Sustainable Development (Rio+ 20)." *Social work* 58.4 (2013): 369-372.

<sup>24</sup> López-Gamero, María D., et al. "Sustainable development and intangibles: building sustainable intellectual capital." *Business Strategy and the Environment* 20.1 (2011): 18-37.

particularly those vested in industries reliant on fossil fuels or natural resource extraction, exhibit reluctance to relinquish their established practices. Despite the mounting evidence of ecological devastation, they persist in exploiting resources heedlessly, disregarding the finite capacity of the Earth and exacerbating environmental degradation.<sup>25</sup>

The repercussions of these actions disproportionately affect vulnerable populations, such as elderly individuals residing in rural areas, who are acutely impacted by erratic weather patterns induced by climate change. Their livelihoods, often tied to agricultural pursuits like potato cultivation, are jeopardized by unpredictable weather conditions, leaving them vulnerable to financial instability and food insecurity.

Moreover, the broader ramifications of climate change extend beyond individual hardships, permeating societal structures and disrupting established norms. The reliability of weather forecasts, essential for planning and resource management, is increasingly compromised as climate variability renders traditional forecasting methods obsolete.

O'Shaughnessy et al. elucidate the indiscriminate exploitation of natural resources and the resultant climate upheavals have ushered in an era of uncertainty, where even the most resilient communities struggle to adapt to the unpredictability of weather patterns.<sup>26</sup> Therefore, the imperative for transitioning to a green economy is not merely a matter of environmental stewardship but a fundamental necessity for safeguarding the well-being of present and future generations. By embracing sustainable practices and prioritizing the preservation of natural resources, societies can mitigate the adverse effects of climate change and forge a path towards a more equitable and resilient future.

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<sup>25</sup> Svendsen, Gert Tinggaard. "Environmental reviews and case studies: From a brown to a green economy: How should green industries be promoted?." *Environmental Practice* 15.1 (2013): 72-78; Brown, Ed, et al. "Green growth or ecological commodification: debating the green economy in the global south." *Geografiska Annaler: Series B, Human Geography* 96.3 (2014): 245-259; Patunru, Arianto A. "The political economy of environmental policy in Indonesia." *The Environments of the Poor in Southeast Asia, East Asia and the Pacific* (2013): 203.

<sup>26</sup> O'Shaughnessy, Eric, et al. "Empowered communities: The rise of community choice aggregation in the United States." *Energy Policy* 132 (2019): 1110-1119.

The burden of environmental degradation has disproportionately fallen on the shoulders of the lower class, while the oligarchs responsible for significant ecological harm often evade accountability. While individuals from marginalized communities may occasionally contribute to pollution through small-scale actions such as littering, the lion's share of environmental damage is perpetrated by large corporations and governmental bodies. These entities, including both private enterprises and the state, collectively emit gigatons of carbon dioxide into the atmosphere daily, posing grave risks to public health. The Indonesian government's inadequate response to this crisis has left its citizens vulnerable to respiratory illnesses caused by polluted air, reflecting a stark failure to prioritize environmental stewardship and public well-being.<sup>27</sup>

Despite the urgent need to safeguard the environment, the Indonesian government has pursued policies that prioritize economic growth at the expense of ecological integrity. Initiatives such as the expansion of coal mining operations and the construction of coal-fired power plants not only exacerbate environmental degradation but also disregard the concerns raised by environmental activists. Moreover, recent regulatory changes, such as the enactment of Job Creation Law No. 11 of 2020, have streamlined the process for investment approval, facilitating economic development but simultaneously weakening environmental protections.<sup>28</sup> This deregulatory approach increases the likelihood of unchecked exploitation of natural resources and environmental

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<sup>27</sup> Melnick, Don. *Environment and human well-being: a practical strategy*. Earthscan, 2005; Maddock, Rowland. "Environmental politics and policies in the Asia-Pacific." *Governance in the Asia-Pacific*. Routledge, 2005. 223-249.

<sup>28</sup> Rahmah, Aulya Noor, Muhammad Rasyid Ridha, and Nurul Kamriani. "The impact of job creation act against the participatory principle in environmental law." *International Journal of Law, Environment, and Natural Resources* 1.1 (2021): 22-28; Sembiring, Raynaldo, Isna Fatimah, and Grita Anindarini Widyarningsih. "Indonesia's omnibus bill on job creation: a setback for environmental law?." *Chinese Journal of Environmental Law* 4.1 (2020): 97-109; Rohmy, Atikah Mardhiya, H. Setiyono, and Supriyadi Supriyadi. "Corporate Criminal Sanction in Omnibus Law for Forest Destruction in Indonesia: Review of Law Number 11 of 2020 on Job Creation." *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21.1 (2021).

degradation, as stringent oversight mechanisms are sidelined in favor of rapid economic expansion.

In addition, Higgins underscores the perilous consequences of prioritizing economic interests over environmental sustainability, that the Indonesian government's fixation on economic growth without due consideration for environmental consequences is shortsighted and unsustainable. By neglecting to enact robust environmental safeguards, policymakers risk perpetuating a cycle of environmental degradation that will ultimately compromise the well-being of both current and future generations.<sup>29</sup>

## Conclusion

In the realm of litigation, whether approached through state administrative law or private law channels, there exists a nexus of interconnected points. In Indonesia, the landscape of environmental litigation is rapidly evolving, marked by a surge in environmental lawsuits—an encouraging sign of heightened societal concern for environmental preservation. Despite this trend, the efficacy of legal mechanisms in enforcing environmental justice remains a point of contention. While there has been a notable increase in the utilization of legal instruments to address environmental grievances, the enforcement aspect has encountered stagnation and impasse, often failing to impose effective sanctions on environmental offenders.

In cases of environmental disputes, recourse is provided by Law Number 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH). Article 1, Point 25 of the UUPPLH defines environmental disputes as conflicts arising from activities with potential environmental impact. Furthermore, Article 84 of the UUPPLH delineates the avenues for resolving environmental disputes, offering both judicial and extrajudicial options. Parties involved may voluntarily opt for either court-mediated resolution or out-of-court settlement, with litigation being pursued only after unsuccessful attempts at extrajudicial resolution.

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<sup>29</sup> Higgins, Karen L. *Economic growth and sustainability: Systems thinking for a complex world*. Academic Press, 2014.

However, resorting to environmental dispute settlement through litigation represents a last resort under the law. This poses a significant concern, as it may lead aggrieved parties to seek compensation through court proceedings—a course of action deemed inadequate when the harm inflicted on the environment transcends mere monetary restitution. Consequently, the author advocates for the adjudication of environmental disputes in the Administrative Court (PTUN), where judges possess the authority to issue administrative sanctions against environmental offenders, thereby facilitating environmental rehabilitation and fostering accountability. This approach ensures that the resolution of environmental disputes aligns with the overarching goal of safeguarding environmental integrity and promoting sustainable development.

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