



## RESEARCH ARTICLE

## Enhancing Environmental Law Enforcement in Indonesia: Integrating Climate Justice into Judicial Legal Reasoning

Tri Laksmi Indreswari<sup>1\*</sup>, Anggita Doramia Lumbanraja<sup>2</sup>, Aga Natalis<sup>3</sup><sup>1,2,3</sup>Faculty of Law, Universitas Diponegoro, Central Java, Indonesia

| ARTICLE INFO   | ABSTRACT   |
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| Received: Apr 24, 2024<br>Accepted: June 22, 2024  | This study seeks to investigate the pressing need for incorporating climate justice into the legal reasoning of judicial decisions to enhance the efficacy of climate policy enforcement. This research sheds light on the challenges encountered by Indonesian judges by employing qualitative methods and relying on literature studies within the field of law. The findings demonstrate that Indonesian judges frequently adhere to the prevalent civil law system tradition, which results in rigorous decision-making processes and oversimplification of complex cases. In the context of climate justice, judges must comprehend the interconnectedness of the climate policy system beyond statutory regulations. Therefore, legal reasoning emerges as an indispensable mechanism for incorporating climate justice into judicial decisions. By employing sound legal reasoning, judges can integrate climate justice principles into their arguments, thereby ensuring that their decisions contribute to environmental protection, climate change's effects, and the promotion of social and intergenerational equity. |
| <b>Keywords</b><br>Climate justice<br>Climate policy<br>Legal reasoning<br>Indonesian judges |  |
| <b>*Corresponding Author:</b><br>trilaksmiindreswari@lecturer.undip.ac.id                    |  |

### INTRODUCTION

Forest fires in Kalimantan and Sumatra are especially worrisome because they significantly contribute to environmental degradation and biodiversity loss. These fires, frequently caused by human activities such as land clearing for agriculture or illegal logging, emit immense quantities of carbon dioxide and other greenhouse gases, exacerbating the climate crisis. Moreover, the devastation of forests destroys the habitats of numerous plant and animal species, resulting in a loss of biodiversity and additional ecological imbalances (Natalis et al., 2023).

Despite the advancements that have been achieved in environmental rules, problems such as pollution, the loss of biodiversity, and climate change continue to be a problem. Regarding environmental protection, strict legislation is only sufficient if adequately implemented. Consequently, the human right to a healthy environment has not been satisfied. While international aid has been instrumental in developing over 1,100 environmental agreements and creating numerous environmental framework laws since 1972, international aid and domestic budgeting have yet to successfully establish robust environmental bodies that can enforce laws and regulations effectively (Balsiger & Prys, 2016). Inadequate coordination among government agencies, constraints on institutional capacity, limited access to information, corruption, and hurdles to civil

society engagement are some factors contributing to the inefficient enforcement of environmental legislation.

Law No. 32 of 2009 on Environmental Protection and Management specifically addresses environmental law enforcement under Indonesia's legal framework for environmental law (Faishal, 2022). On the other side, the application of environmental law has revealed substantial areas for improvement, such as the fact that many cases of environmental damage are handled inappropriately in the court system. In 2009 and 2010, most environmental destruction charges brought before the courts resulted in not-guilty convictions, as stated in a report compiled by the Ministry of the Environment (Johar, 2021). During that period, just five cases presented resulted in prison terms, the remaining fourteen resulted in total acquittals, and the remaining case obtained probation. The unusual nature of environmental crimes becomes clear when one examines them through the prism of criminal environmental law. These criminal acts not only jeopardize human lives but also harm property, the environment, and the general public's health. As a result, the treatment that they receive ought to be severe and meticulous (Palarczyk, 2023).

This study tackles one of the environmental concerns relating to climate change, namely the policy dilemma of emphasizing the part that judges play in interpreting legislation based on climate justice. When it comes to dealing with the repercussions of climate change and the steps that can be taken to minimize those effects, climate justice argues for a treatment that is fair and equal for every individual and community. The idea of climate justice is extremely important for both the interpretation and execution of laws that are related to climate change within the context of legal reasoning. While at the same time ensuring that the law is implemented fairly and equally for all individuals and groups, the judicial system must take into account the impact that climate change will have on human rights.

## **1. RESEARCH METHODS**

This study focuses on the concept of climate justice and its significance in improving the enforcement of climate laws by applying legal reasoning. Legal research has the potential to play a significant part in the improvement of the implementation of climate policies by investigating the effects of climate policies on vulnerable groups and advocating for the preservation of the rights of those groups. Qualitative research methods, with a primary emphasis on literature studies, can provide an in-depth analysis of the current legal frameworks and the legal reasoning used in enforcing climate policy. The need for a more robust legal framework that advances the cause of climate justice and shields disadvantaged populations from the harmful effects of climate change is the impetus behind the pressing nature of this research.

## **2. RESULTS AND DISCUSSION**

### **2.1. Climate Change and Challenges for Judges**

The environmental climate catastrophe is becoming more and more serious, and people all over the world are beginning to feel its effects. The many things that fall under this category are severe weather, extended droughts, floods, and increasing sea levels. When it comes to addressing climate-related challenges, concrete efforts are required from every aspect of society on a worldwide scale. When it comes to environmental cases, the choices that the court, and judges in particular, make are significant contributions. There is a continuing effort being made by the Supreme Court of Indonesia and various civil society organizations to improve the knowledge and understanding of judges about handling environmental disputes. Included in the efforts is the organization of training for judges. It

has been acknowledged by the Supreme Court of Indonesia that the world is currently confronted with at least three significant challenges: the extinction of biodiversity, the hazards of pollution, and climate change. In order to prepare for the ever-increasing complexity of the growth of environmental law, there is a pressing need for serious and cooperative efforts to enhance the competence of environmental judges, not only in Indonesia but also on a global scale.

The philosophy known as "*la bouche dela loi*," which may be translated as "judges are merely the mouthpiece of the law," has its roots in the civil law tradition prevalent throughout Continental Europe. According to this maxim, judges are responsible for enforcing laws enacted by the state, which is the highest concrete power. The ethos that underpins this maxim is to support the sovereignty of the law and reject the sovereignty of power. This maxim came into being as a response to the absolute rule that existed in the past, which did not differentiate between legislative, executive, and judicial functions. Because of this, judges' function develops dialectically, and it is inextricably linked to the social order of particular eras and locations. The requirements placed on the responsibilities of judges continue to develop dialectically; the problem that judges face in the modern era is not simply to guarantee legal clarity but also to achieve justice that strikes a balance between the interests of the state and those of its inhabitants. In the present day, the concept of substantial justice is a dilemma for the courts of Indonesia. Therefore, for judges to uphold substantial justice, the notion that "*la bouche dela loi*" needs to be dismantled (Samekto, 2017).

In the context of the legal system, the term "climate change litigation" refers to any case that includes climate as the subject matter. On the other hand, when people talk about climate change mitigation, they typically refer to situations in which they are attempting to utilize litigation to either receive cash for adaptation or to inspire acts to mitigate climate change. Many claims are filed by environmental advocacy organizations or governments that anticipate substantial expenditures associated with climate change adaptation. These entities are looking to recover cash in order to fulfil their requirements (McKenzie et al., 2024).

In the case of *Leghari v. Federation of Pakistan*, which took place in 2015, the Pakistani court made history by recognizing the claim that the petitioner's rights were breached to the extent that the government did not take action to address climate change. The United States of America, the Netherlands, the Philippines, Austria, and South Africa are among the countries that have incorporated human rights grounds into their climate-related litigation. This case is one of several climate-related lawsuits, some of which are still pending or have already been decided. These choices align with the efforts to acknowledge the human rights aspect of climate change, which the Paris Agreement dramatically supports. They are significant landmarks in the litigation about climate change (Peel & Osofsky, 2018).

Challenges arise for judges as a result of their engagement. There are many challenges, one of which is the separation of powers. However, many judges opt to participate in environmental rights advocacy because they know they can play a significant part in the advancement of environmental rights through collaboration with and influence from the private and public sectors, governments, and the legislative branch. Judges do not have the authority to amend laws or enforce their decisions. When interpreting legal documents, such as constitutions or rules, the judiciary frequently goes beyond performing this function. When individuals believe that governments or parliamentarians have failed to fulfil their responsibilities, they decide to take action (Jafry, 2019).

In the case of *M.C. Mehta v. Union of India* (1998), for instance, the court mandated that bus fleet operators must transition their fuel source from gasoline and diesel to compressed natural gas by the 31st of March, 2001. There are instances in which the courts even create and oversee the

implementation of new policies. The Supreme Court of India issued an order in the case of T.N. Godavarman Thirumulpad v. Union of India (1995) that any non-forestry activities that did not have explicit sanction were to cease immediately. Additionally, the court established new regulations about forestry and ordered investigations into various unlawful mining operations. There have been criticisms against these rulings, arguing that they go beyond the scope of authority and replace legislative and executive powers (Jafry, 2019).

Even though judges are subject to criticism for formulating policies that do not correspond with the objectives of the state's policy planning process and have the potential to generate inconsistency and incoherence, their importance in the battle against climate change to protect the environment must be acknowledged. In addition, the judicial system frequently needs help with implementing orders. Enacting remedial decisions in constitutional environmental cases is particularly difficult. For a variety of reasons, judges face challenges. To begin, orders frequently consist of a multitude of components, making it necessary for many individuals and organizations to work together and take action. Environmental regulations may be perceived as hurting industrialization, economic growth, or urbanization, all commonly considered outcomes of societal aspirations. As a result, defendants, whether they are public or private companies, are unwilling to comply with orders issued by the court (Jafry, 2019).

The desire to strike a balance between the interests of the state and those of its citizens, to have a just government, and to have law enforcement that is honest and brings happiness to the people is growing stronger. This transition from state security to individual security is also taking place in Indonesia, where it is currently. The phenomenon referred to as the shifting of legislative power to judicative power occurs due to growing concerns regarding legislative legal products perceived as being biased and favouring particular interests. As a result, the judicial system becomes the final stronghold in achieving justice. In a similar vein, judges in Indonesia are supposed to contribute to the establishment of a legal system that offers happiness to the people of the country. Given the solid legislative power in lawmaking and the essentially regulatory approach in law enforcement (an impact of the civil law heritage), as well as the solid Austinian positive-empirical approach, this is something that needs to be reaffirmed consistently in the current setting of Indonesia.

As a consequence, regulatory law is enforced by only adhering to what is contained in the text, ignoring the spirit and object of the legislation. Satjipto Rahardjo describes this circumstance by noting that the rule of law is still defined as a state ruled by laws that have been pre-made and provided. The legislative framework and the rule of law are the same. The quality of the rule of law is solely determined by its adherence to the law, while the law itself is suspected of holding hidden agendas that do not benefit the general public. In this sociological viewpoint, Satjipto Rahardjo critiques the prevalent positivist-empirical method that results in a formal rule of law. He argues that this approach tends to steer the law away from substantial truth. This is because formal legal truth is different from substantial legal truth. Regarding the current circumstances, Satjipto Rahardjo thinks that the formal rule of law will not provide contentment to the country's people. Laws have a restricted scope of application and are composed of broad guidelines. There are reasons for this. Should this broad scope be utilized as a guideline for particular instances, the rule of law will be reduced to a state-dependent solely on written material. At this point, judges are the enforcers of the law who can bring law enforcement closer to the substantial truth of applicable laws (Samekto, 2017).

## 2.2. Legal Reasoning and Climate Policies Enforcement

Through the process of amending the Constitution that was written in 1945, the environmental protection provisions in the Indonesian Constitution have been given constitutional status. Both paragraph one of Article 28H and paragraph four of Article 33 of the Constitution of 1945 state that the Indonesian Constitution is a Green Constitution. Every person has the right to a flourishing existence, both physically and psychologically, according to paragraph one of Article 28H, which also includes the right to a pleasant and healthy environment. This right is guaranteed to them. In the context of the national economy, the concepts of togetherness, equitable efficiency, sustainability, and environmental awareness are emphasized in the fourth paragraph of Article 33 (Ardhanariswari & Fauzan, 2019).

To become a reality, a constitution that emphasizes environmental protection must have the backing of all relevant institutions, including the executive branch, the legislature, and the court. To hasten the implementation of effective governance at the regional level and better prepare for the effects of global warming or climate change, the government and the legislative bodies play a critical part in producing environmentally-based regulations or green legislation. In this context, research conducted by Esty and Porter (2005) demonstrates that economic growth bolsters the rule of law and governance institutions that support sustainability and brings environmental advantages.

However, the judicial system in Indonesia plays a crucial role in shaping environmentally friendly laws. Unlike the United States, which follows a common law system influenced by English law, where court decisions are also based on jury verdicts, judges in Indonesia are the primary decision-makers in a case (Khasanah & Lumbanraja, 2022). They hold significant authority in interpreting and applying the law. Although judges do not have legislative powers to create laws, they have the responsibility to ensure that legal norms are adapted to the evolving realities of society. It is essential for judges handling environmental issues to possess a comprehensive understanding of the subject matter and a sufficient level of expertise. Overcoming obstacles, such as the need for judges to acquire these qualifications, is crucial to promoting the fair and practical application of environmental law in Indonesia. By rendering just decisions, the judiciary can contribute positively to enforcing environmental regulations and realizing equal rights for all.

Courts frequently do not consider environmental factors when resolving environmental conflicts in practice. Consequently, this leads to an inadequate realization of justice for communities in their pursuit of a pleasant and healthy environment. In most cases, judges will continue to employ a traditional approach to the law. They will ignore broader legal concerns, such as the moral and ethical concepts associated with climate justice. In order to ensure that justice is served in environmental conflicts, the judges involved need to have sufficient knowledge and comprehension of environmental science, environmental law, and the social and economic repercussions of their choices. The judges are responsible for considering the potential environmental ramifications of their decisions, consulting with relevant environmental specialists, and analyzing the effects of their decisions over the long term. In addition, judges are required to have sensitivity toward the requirements and viewpoints of communities that have been affected, as well as consideration for the rights of affected populations to participate in the decision-making process.

Both specialized training and access to relevant scientific materials should be made available to judges in the field of environmental law in order to improve their ability to make sound decisions in environmental cases. The expansion of our awareness of environmental challenges, as well as the promotion of decision-making that is founded on reliable information, can be promoted by

collaboration between the judicial system, academic institutions, environmental professionals, and civil society organizations.

Judges can make a significant contribution toward realizing justice, maintaining ecological balance, and safeguarding the rights of community members and their quality of life by prioritizing the environment in resolving environmental disputes. It is possible for judicial decisions to set precedents and develop legal principles that help the conservation of natural resources and the implementation of responsible management practices. It is of the utmost importance that judges are aware of the significant role they play in molding environmental jurisprudence and in preserving an equitable balance between economic growth and environmental safeguards (Shanty Saleh & Spaltani, 2021).

In addition to this, efficient law enforcement is an essential component in the process of protecting the environment. Environmental law's participation significantly aids in accomplishing environmental protection and management objectives. Despite this, implementation of environmental law in Indonesia needs to be improved by several impediments that must be overcome. The inability of the judicial system to resolve environmental conflicts is frequently attributable to the judges' inability to comprehend environmental issues and their lack of experience in environmental law. In resolving environmental conflicts, judges need to adequately exploit higher legal ideas and the living laws throughout society. They tend to adhere to the logic of formal legal norms and processes without considering issues from the outside world that impact society and the environment.

When dealing with environmental concerns, there are also difficulties in acquiring the necessary information and gaining access to the appropriate scientific resources. The judges must understand the complexities of environmental issues and incorporate scientific knowledge into their rulings. However, only so many resources are available, and only some have access to the most recent environmental information. This makes decision-making more difficult (Thorén et al., 2021).

A lack of awareness and commitment from environmental law enforcement authorities is another factor contributing to flaws in the law enforcement system. These flaws can be linked to the same factors as the judges' lack of understanding and knowledge. This includes a need for more human resources and a budget appropriate to supervise and implement environmental law. It will only be easy to effectively carry out attempts to implement environmental law if the government and other relevant institutions provide appropriate support for these efforts.

In order to solve these difficulties, there is a necessity for measures to be undertaken to improve and increase the enforcement of environmental law. The government is responsible for guaranteeing the availability of the necessary financial resources, human resources, and physical infrastructure to enforce environmental laws. In addition, education and training on environmental law should be made available to judges and other members of the legal profession so that they are equipped with a sufficient understanding of how to deal with environmental problems.

In addition, it is essential for the three branches of government—the administration, the legislative body, and the judicial—to work together to improve environmental law enforcement. A close working relationship between these agencies can lead to the development of more integrated and comprehensive environmental protection policies. Monitoring and reporting environmental infractions, as well as supporting efficient law enforcement, both require support from the general public as well as non-governmental organizations.

Legal reasoning is an essential component that must be considered in climate policy implementation. In order to be effective, the enforcement of climate policy needs to be founded on sound reasoning that is rooted in solid legal foundations. In light of the complexity of the problems that must be solved in order to combat climate change, the implementation of climate policy must take into account a variety of pertinent legal factors, adhere to the principles of justice, and place the preservation of the rights of future generations as a top priority.

Safeguarding the legal entitlements of people born in the future is essential to effectively enforcing climate policy. The execution of climate policy needs to acknowledge that our decisions today will have long-term effects on the generations that come after us. The rights of future generations should be a significant consideration in the process of enforcing climate policy. These rights include the right to live in a healthy and sustainable environment, fair access to natural resources, and participation in decision-making that impacts their future. In addition, climate policy enforcement ought to be founded on the principles of climate justice. This principle strongly emphasizes the necessity of considering equity, distributive justice, and involvement in the fight against climate change. Fair enforcement of climate policy ensures that the burdens and benefits of climate mitigation and adaptation efforts are allocated evenly and consider the needs and vulnerabilities of the groups most likely to be negatively affected by climate change.

The enforcement of climate policy requires not only a commitment to reduce emissions of greenhouse gases but also to adapt to the effects of climate change. In this context, the use of legal reasoning is of critical importance in identifying the policies and procedures that must be carried out in order to accomplish these objectives. Informed legal reasoning will consider various legal instruments, such as national and international climate change mitigation and adaptation rules. This involves the establishment of laws and regulations that promote the reduction of emissions, the use of renewable energy sources, increased energy efficiency, and adaptation to the effects of climate change.

The function of judges is essential in the administration of climate policy. The task of interpreting, applying, and enforcing legislation relevant to climate policy falls on the shoulders of judges. They must be adequately aware of climatic issues and the legal principles connected to protecting the environment. The implementation of climate policy by judges ought to be predicated on an investigation that is both exhaustive and objective, taking into consideration scientific facts and pertinent legal concepts (Palmer, 2018). Building a seamless partnership between the judicial system, the government, and civil society is essential to solve the severe challenges climate change presents. This should take place during the process of putting climate policies into effect. Climate regulations can be enforced in a manner that is both fair and successful if an environment encourages close cooperation among the various institutions involved.

The participation of civil society is essential for guaranteeing the successful implementation of climate policy and for accurately reporting any violations that may occur. Civil society, comprised of environmental advocacy groups and other advocacy organizations, is actively monitoring climate policy implementation to hold the responsible parties accountable for their activities. Through their engagement, transparency is maintained, and compliance with environmental rules is encouraged. Concurrently, the government must offer sufficient assistance to the legal system to facilitate the latter's ability to perform its function efficiently. This necessitates allocating sufficient resources, such as suitable human capital and a budget commensurate with the requirements of enforcing climate policy. The government exhibits its dedication to preventing the effects of climate change and highlights the significance of complying with environmental regulations by making the appropriate investments in essential infrastructure.

It is impossible to exaggerate how vital sound legal reasoning is to the successful implementation of climate policy. Because climate change is a complicated and multidimensional phenomenon, the judicial system plays a crucial part in interpreting and applying climate law. The knowledge and awareness of the legal framework that judges possess enable them to ensure that efforts to adapt to and mitigate the effects of climate change are carried out acceptably and equitably. Applying legal reasoning in environmental situations ought to be by tried and true techniques, with the overriding objective of environmental preservation receiving the utmost emphasis. To make judgments that emphasize the protection of the environment, judges may use several different tactics, including legal analogies (*argumentum per analogiam*), *argumentum a contrario*, legal narrowing (*rechtsverfijning*), and legal fiction (Indreswari, 2023). It is necessary to move beyond simply penalizing criminals and shift the focus toward gaining legal advantages that contribute to preserving the environment.

### 3. CONCLUSION

The concept of climate justice extends much beyond the confines of conventional legal structures. Judges must have an in-depth knowledge of the climate policy framework and the integrating processes it utilizes, which go beyond the requirements of legislative rules. The issue of climate change is complicated on multiple levels, including the scientific, economic, and social spheres, and it cannot be fully addressed by relying solely on implementing laws. For this reason, judges need to extend their perspectives and actively engage with knowledge from a variety of fields in order to make judgements that are informed and that support climate justice.

Applying sound legal reasoning is necessary for achieving climate justice in court decisions. It entails interpreting and applying laws in the context of shifting societal norms, evolving public interests, and fundamental rights. Judges can ensure that their decisions contribute to protecting the environment, mitigating the impacts of climate change, and promoting social and intergenerational equity by incorporating principles of climate justice into their legal reasoning. The use of legal reasoning enables judges to take into consideration the broader ramifications of their judgements, which go beyond the immediate context of the law.

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