Governing Through Courts? Law and the Political-Economy of Climate Change Litigation in Indonesia

By *Agung Wardana**

Abstract: Despite the global trend, climate change litigation in Southeast Asia has remained underexplored and has been given less attention within scholarly discourse. This article aims to contribute to the debate in the region by taking a critical stand in order to counter-balance the predominantly optimistic view of the efficacy of climate change litigation and to better determine the delimiting factors to climate litigation in addressing the climate crisis. In doing so, it examines three main cases representing climate litigation in Indonesia and argues that, in a country where the government pursues economic development based on a carbon-intensive economic growth model, climate litigation appears to be more challenging as it may pose a challenge to the existing political and economic model – the model that has caused the climate crisis in the first place. In fact, the courts, which are regarded as the last line of environmental defence, have also been influenced by this structural condition and has arguably taken up the role of guardian of this economic model.

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A. Introduction

In April 2022, the Intergovernmental Panel on Climate Change (IPCC) published the Working Group II's contribution to the Sixth Assessment Report (AR6). One of the key findings states that maladaptation to the worsened impacts of climate change has increased, making these impacts more difficult and expensive to address and further exacerbates existing social and economic inequalities, both domestically and globally.[1] In its assessment of the Asia region, Indonesia has been identified several times by the IPCC report as one of the most vulnerable countries in the region. As a mega-biodiversity country, its ecosystem services and biodiversity, which have contributed significantly to the socio-economic and cultural life of Indonesian, have been threatened by the impacts of climate change.[2] The coral reefs have also been affected by the increase in the Earth's temperature, causing

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1 IPCC, Climate Change 2022, Impacts, Adaptation and Vulnerability: Summary for Policymakers, Geneva 2022a, p. SPM-28.

2 IPCC, Climate Change 2022. Impacts, Adaptation and Vulnerability, Geneva 2022b, pp. 10-13.

coral bleaching which in turn affects the ocean and coastal ecosystems and the associated livelihoods.[3] Not to mention the impacts on food security and climate-related disasters, including sea level rise, due to their geographical condition as an archipelagic country comprising of more than 17,000 islands.[4]

Indeed, Indonesia is economically dependent upon carbon-intensive economic growth, so much so that it is the eighth biggest greenhouse gas emitters in the world[5] which can be attributed to the two main industrial sectors of forestry (47.8%) and energy (34.9%).[6] A survey by YouGov in 2020 also found that Indonesia has the highest percentage of climate deniers (21%)[7], leading to a lack of public deliberation on the climate crisis. From the climate policy perspective, like India and Pakistan, Indonesia has no specific law dealing with climate change; rather, it relies heavily on the national action plan and the international commitment. In the Nationally Determined Contribution (NDC), Indonesia pledged to reduce 29% of its emissions unconditionally, and 41% conditionally with international support.[8] The Climate Action Tracker considers the pledge to be "highly insufficient" primarily because coal continues to be the main source of energy and it has even been projected to increase to represent 64% of the total energy mixed by 2030.[9]

More recently, there has been a global trend in climate change litigation as an attempt to address the gap between the pledge at the international level and the actual policy and practice at the domestic level.[10] Despite this, the use of climate litigation in Southeast Asia has remained underexplored and given less attention within the scholarly debates.[11] Peel and Lin observe that such litigation in the region is at "a nascent stage" due to inadequate planning law frameworks, including the EIA system, the constrained access to justice, as

3 IPCC, note 2, pp. 10-30.

4 Government of Indonesia, Indonesia Biodiversity Strategy and Action Plan 2015-2020, Jakarta 2016, p. 23.

5 *Johannes Friedrich / Mengpin Ge / Andrew Pickens / Leandro Vigna,* This Interactive Chart Shows Changes in the World's Top 10 Emitters, https://www.wri.org/insights/interactive-chart-shows-changes-worlds-top-10-emitters (last accessed on 3 July 2022).

6 Republic of Indonesia, Updated Nationally Determined Contribution, Jakarta 2021, p. 6.

7 *Katharina Buchholz*, Where Climate Change Deniers Live, https://www.statista.com/chart/19449/countries-with-biggest-share-of-climate-change-deniers/ (last accessed on 3 July 2022).

8 Republic of Indonesia, note 6, p. 6.

9 Climate Action Tracker, Indonesia, https://climateactiontracker.org/countries/indonesia/ (last accessed on 3 July 2022).

10 See *Joana Setzer / Catherine Higham*, Global Trends in Climate Change Litigation: 2021 Snapshot, London 2021; *Ivano Alogna / Christine Bakker / Jean-Pierre Gauci* (eds.), Climate Change Litigation: Global Perspectives, Leiden 2020.

11 *Daniel Hornung / Douglas Kysar / Jolene Lin*, Introduction, in: Jolene Lin / Douglas Kysar (eds.), Climate Change Litigation in the Asia Pacific, Cambridge 2020, p. 1.

well as the lack of good environmental governance.[12] Those factors, as stated by Mustafa, have contributed to the absence of climate litigation in Malaysia.[13] In fact, climate litigation has been undertaken in the Philippines and Indonesia where environmental NGOs and local communities have demanded the courts play an important role in climate governance.

If the Philippines provides a promising picture, at least on paper, as seen in the most recent decision of the Philippine Human Rights Commission regarding the case of Greenpeace Southeast Asia and others, the outcome of climate litigation in Indonesia has been mixed. In the forestry sector, especially forest/peatland fires and illegal logging, litigation utilising tort law has been successful.[14] However, in the energy sector, especially cases related to coal the use of strategic litigation has been largely failed. This raises the question as to what circumstances have contributed to such a failure. Although Peel and Lin's observation is correct in attributing this to the legal and institutional weaknesses of courts in the Southeast Asia region[15], a structural explanation also deserves attention to provide a deeper understanding beyond the legal and institutional contexts.

To date, the literature on climate litigation has tended to be optimistic on how such a litigation may resolve the climate crisis. This tendency is evidenced by the "selection bias"[16] of winning cases presented in the literature[17]. As Vanhala puts it, selection bias is shown by a tendency of disproportionately "focus on landmark and successful cases and… overlook cases that may be settled out-of-court or fail to result in ground-breaking legal outcomes or the "non-cases"—the problem or people that don't seem to be represented in courts."[18] This article, therefore, takes a critical stand by examining failed cases of climate litigation. This is important in order to balance the view and moderate the expectation on what such litigation can and cannot, offer to address the crisis. Learning from the experience of Indonesia, it will be argued that, despite providing a new common ground

12 *Jacqueline Peel / Jolene Lin*, Climate Change Adaption Litigation: A View from Southeast Asia, in Jolene Lin / Douglas Kysar (eds.), Climate Change Litigation in the Asia Pacific, Cambridge 2020, p. 295.

13 *Maizatun Mustafa*, Climate Change Litigation: A Possibility for Malaysia, in: Jolene Lin / Douglas Kysar (eds.), Climate Change Litigation in the Asia Pacific, Cambridge 2020, pp. 207-233.

14 *Andri G. Wibisana* / *Conrado M. Cornelius*, Climate Change Litigation Indonesia, in Jolene Lin / Douglas Kysar (eds.), Climate Change Litigation in the Asia Pacific, Cambridge 2020, pp. 234-260.

15 *Peel / Lin*, note 12, p. 327.

16 *Tanja Börzel*, Participation Through Law Enforcement: The Case of the European Union, Comparative Political Studies 29 (2006), p. 129.

17 See IPCC, note 2, pp. 17-56; See also UNEP / Sabin Center for Climate Change Law, Global Climate Litigation Report: 2020 Status Review, Nairobi 2020; Asian Development Bank, Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond, Manila 2020.

18 *Lisa Vanhala*, Why Ideas and Identity Matter in Climate Change Litigation, Open Global Rights, https://www.openglobalrights.org/why-ideas-and-identity-matter-in-climate-change-litigation/ (last accessed on 2 November 2022).

for environmental activists and local communities to join the global struggle for climate justice, in countries that are heavily dependent on a carbon-intensive economic growth model, like Indonesia, climate litigation appears to be challenging because it may question the economic model upon which the existing political and economic structure is built.

B. Climate Change Litigation in Southeast Asia

There are several proposals on how to define "climate change litigation". For Peel and Lin, a universal definition of climate change litigation may exclude the development of such litigation in the Global South that is relatively distinct compared to that of the Global North.[19] Hence, for the working understanding of climate litigation, in this article, following Kim Bouwer, it refers to litigation "in the context of climate change as well as litigation about climate change".[20] In this regard, Peel and Osofsky provide a concentric circles model for differentiating how climate change issues are situated within litigation, namely: (1) "climate change as the central issue"; (2) "climate change as a peripheral issue"; (3) "climate change as one motivation but not raised as an issue"; and (4) "no specific climate change framing".[21]

More recently, climate litigation has not only been celebrated by environmental activists and scholars, but also appreciated by international organisations, including financial institutions. The UNEP, together with the Sabin Center for Climate Change Law, released a report stating that climate litigation "contribute[s] in meaningful ways to compel governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals".[22] The IPCC, in its AR6, stresses the importance of climate litigation in compelling both government and business sectors to respond to the climate crisis.[23] The Asian Development Bank (ADB), despite being criticised as "the second largest multilateral institution funding fossil fuels in Asia"[24], through its series of reports on climate litigation "lauds the advancements that Asia and the Pacific judiciaries have made in environmental and climate justice and sustainable development."[25] Like other "best practice" studies, the ADB report also suffers from "selection bias" by predominantly presenting

19 *Jacqueline Peel / Jolene Lin*, Transnational Climate Litigation: The Contribution of the Global South, American Journal of International Law 113 (2019), pp. 679-726.

20 *Kim Bouwer*, The Unsexy Future of Climate Litigation, Journal of Environmental Law 30 (2018), p. 483.

21 *Jacqueline Peel / Hari M. Osofsky*, Climate Change Litigation, Annual Review of Law and Social Science 16 (2020), p. 24.

22 UNEP / Sabin Center for Climate Change Law, note 17, p. 5.

23 IPCC, note 2, pp. 17-56.

24 Action Aid and others, Open Letter: Asian Development Bank Energy Policy Review, https://actionaid.org.au/resources/asian-development-bank-energy-policy-review/ (last accessed on 3 July 2022).

25 Asian Development Bank, note 17, p. xxx.

court decisions from the Asia Pacific region and beyond that are considered good for climate governance and may potentially hold a universalised character to encourage "cross pollination" in different situated contexts.[26]

However, there is also a tendency for discussions on climate litigation cases to be framed within, what Brennan, Epstein, and Staudt call, a "legal model". Under this model, it is assumed that judges are neutral agents who look to legal materials and doctrines when making a correct legal judgement over a dispute presented before them.[27] Accordingly, good or bad decisions in climate litigation is regarded as a matter of technical and institutional issues, especially the extent to which judges are well-equipped by necessary legal and technical knowledge on climate science. To fill this gap, ADB's report is expected to serve as "a comprehensive benchbook and tool kit for judges, especially from Asia and the Pacific, to facilitate decision-making in this ever-evolving field of law".[28] Conceiving climate litigation as merely legal and institutional issues, studies on climate litigation overlook the structural contexts within which the courts operate. Hence, instead of asking what courts in other countries can learn from the decisions, more attention is required to understand under what circumstances judges may or may not come up with a decision in favour of actions addressing the climate crisis.

This article accepts the invitation by Setzer and Vanhala in their review of 130 publications on climate litigation. They found that "research on climate litigation is still primarily dominated by legal scholars [putting law and the judgements of courts at the centre of their analyses]. The engagement of socio-legal scholars and researchers in political science, sociology, and anthropology should help reveal different angles."[29] Indeed, Setzer and Vanhala offer a trajectory to the non-doctrinal study of climate litigation in order to provide "a deeper understanding of the extent to which litigation is an effective tool to strengthen climate governance."[30] This trajectory of research is particularly important in the Global South where the enforcement of existing legislation, as well as court decisions on environmental matters, tend to be weak.[31] In fact, this article also offers another possible trajectory by looking at how the circumstances under which judges decide a case can influence their lines of legal arguments. For this direction, two levels of analysis are required: the first

26 *Natalie Papanastasiou*, The Politics of Generating Best Practice Knowledge: Epistemic Practice and Rendering Space Technical in a European Commission Working Group on Education Policy, Politics and Space (2020), p. 2.

27 *Thomas Brennan / Lee Epstein / Nancy Staudt*, The Political Economy of Judging, Minnesota Law Review 93 (2009), p. 1509.

28 Preface by Thomas M. Clark, General Counsel of the Asian Development Bank, in: Asian Development Bank, note 17, p. xx.

29 *Joana Setzer / Lisa C. Vanhala*, Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance, WIREs Climate Change 10(3) (2019), p. 13.

30 Ibid, p. 7.

31 *Ivano Alogna / Eleanor Clifford*, Climate Change Litigation: Comparative and International Perspectives, London 2020, p. 5.

involves an internal analysis of the court in order to look at how the issue of climate change is presented by the plaintiffs, responded to by the defendants, and decided by the judges; the second level is an external analysis, where the case is considered within a wider structural context in order to understand how this context shapes, and is potentially shaped, by, the courts' decisions.

C. Engaging with Climate Change in Litigation

In order to reveal the engagement of parties involved in climate litigation with the climate change issues, this article focuses on cases in Indonesia. To date, in the country, Wibisana and Cornelius classify three typologies of lawsuits related to climate change: (1) "lawsuits against the government failure to meet its obligations related to climate change"; (2) "lawsuits related to the failure of the existing environmental impact assessment (EIA) to take into account the likely impacts of a proposed activity on climate change"; and (3) "lawsuits related to illegal logging and peatland fires".[32] There are several differences between them. In terms of its sector, the third type clearly falls within the forestry sectors while the first and second types may fall within either the energy sectors or the forestry sectors. In addition, unlike the third one which is "brought by the government" especially the Ministry of the Environment and Forestry (MoEF) "against timber or oil plantations for peatland fires or companies allegedly involved in illegal logging"[33], the first and second types are brought by citizens or environmental organisations against the government, including the MoEF. While, to date, the outcomes of the third type appear to be optimistic because the courts tend to be in favour of the plaintiff (the government), the outcomes of the first and second types are rather problematic.

Hence, this section is devoted to examine climate litigation cases in Indonesia that fall within the first and second categories of lawsuit. They are: (1) the Samarinda Accuses Case *(Komari and others v. Mayor of Samarinda and others [2015]*) where, through a Citizen Lawsuit (*actio popularis*), the plaintiffs sued several government bodies at the regional and national level for their failure to control coal mining activities in the region leading to the climate crisis; (2) the Cirebon Case which consists of two related lawsuits, *Dusmad and others v. The Board of Investment of West Java* [*2016*] and *WALHI and Sarjum v. The Board of Investment of West Java* [*2017*], on the construction of a coal power plant in Cirebon, West Java; and (3) the Celukan Bawang Case (*Wijana, Sufarlan, Astawa, & Greenpeace Indonesia v. Governor of Bali* [2018]) where a group of locals, together with Greenpeace Indonesia, filed a lawsuit to the Denpasar Administrative Court against an environmental permit granted to the Celukan Bawang Coal Power Company to construct a plant in Celukan Bawang, Buleleng, Bali Province.

32 *Wibisana / Cornelius*, note 14, p. 234.

33 Ibid.

Those cases are chosen because they represent at least three characteristics. First, those cases fall within Peel and Osofsky's first (climate change as the central issue) and second concentric circles (climate change as a peripheral issue) in order to demonstrate the significance of climate change in the lawsuits. The second is that those cases are in the energy sectors where the nature of conducts challenged by the plaintiffs are not inherently illegal, for instance constructing coal-fired power plants or undertaking coal mining activities. This is an important characteristic to differentiate them with climate litigation cases related to illegal logging and peatland fires as presented by Wibisana and Cornelius where such conducts in concerned are clearly a violation of criminal environmental law. Finally, unlike in the illegal logging and peatland fires cases lawsuits where they were filed by the government, the cases discussed here were brought before the court by citizens or environmental organisations. Taking those characteristics together, examining the first and second category of climate lawsuits will demonstrate a different attitude of the courts in engagement with climate change.

In doing so, the substantive matters of the climate litigation cases are analysed in terms of how climate change is presented by the plaintiffs, responded to by the defendants, and, finally, decided by the judges. Here, it is necessary to look at the degree of parties' engagement with the climate change issues in the litigation. To assess such engagement, Peel and Osofsky's concentric circle model, which categorises the issues of climate change presented only by the plaintiffs or claimants, needs to be combined with how the defendants or respondents respond to the issues. Hence, the possible engagement of the issue of climate change in climate litigation, as shown by Table 1, below, can be simplified from the standpoint of the plaintiffs and the defendants. Following the typologies of Peel and Osofsky, the plaintiff may present climate change as: (a) a central issue; (b) a peripheral issue; (c) a motivation but not raised as an issue; and (d) not specifically framed. Meanwhile, from the standpoint of the defendant, the possible responses are that: (a) the climate change issue is added in a case where such issue is not presented by the plaintiff; (b) the climate change issue presented by the plaintiff is affirmed by the defendant; (c) the climate change issue presented by the plaintiff is qualified (agreed with conditionality, modification, limitation or restriction); and (d) the climate change issue is denied by the defendant.

Table 1 Possible Engagement with Climate Change (CC) in Litigation

Presented by the Plaintiff	Score	Responded by the Defendant	Score
CC as a central issue	4	The issue of CC added	4
CC as a peripheral issue	3	The issue of CC affirmed	3
CC as a motivation but not raised as an issue	2	The issue of CC qualified	2
No specific CC framing	1	The issue of climate change denied	1

In the assessment, each possible scenario is scored from one (1) to four (4) indicating the willingness of the plaintiff and the defendant respectively to take a stance from the lowest to the highest in making climate change an issue in litigation. Following the possible scenario, Table 2 is formulated to present the sum of the willingness scores in each case in order to determine its degree of engagement. If the scores from the plaintiff (p) and the defendant (d) is summed, the result can be classified into: high degree of engagement for cases scoring greater than or equal to seven; middle degree of engagement for cases scoring four to six; and low degree of engagement for cases scoring less than or equal to three (Table 2). Based on this model, the three climate litigation cases in Indonesia are examined to assess their degree of engagement between the plaintiffs and the defendants on climate change issues as shown in Table 3.

Table 2. Score of Engagement with Climate Change

Score	Degree of Engagement
$p+d \geq 7$	High
$4 \geq p+d \leq 6$	Mid
$p+d \leq 3$	Low

Note: p = plaintiff's engagement, d = defendant's engagement

In the Samarinda Accuses Case, climate change has been regarded as one of the central arguments for undertaking the lawsuit. The plaintiffs claim that "[t]he contribution of coal mining in Samarinda Municipality has brought significant climatic changes in East Kalimantan Province, especially Samarinda Municipality."[34] Moreover, the plaintiffs state that "[t]he direct consequences and the indirect consequences of climate change are the increased vulnerability of residents in facing the impacts of climate change. Damage caused by climate change, both direct and indirect, has reduced the environmental viability of Samarinda Municipality."[35] In their responses, the defendants did not deny the connection between coal mining and climate change, but they argued that they had acted responsibly to address climate change. The Governor of East Kalimantan and the Mayor of Samarinda especially mentioned that they had fulfilled the plaintiffs' demands to evaluate the mining permit in the region and, as a result, several permits had been revoked.[36] Thus, the Samarinda Accuses Case can be classified as a case of climate change litigation with a high degree of engagement with the issues of climate change.

34 *Komari and others v. Major of Samarinda and others,* Decision No. 138/PDT/2015/PT.SMR [2015], pp. 25-26

35 Ibid, p. 31.

36 *Yustinus S. Hardjanto*, Gerakan Samarinda Menggugat: Perjuangan Panjang Menuntut Pemerintah Yang Lalai, https://www.mongabay.co.id/2015/01/26/gerakan-samarinda-menggugat-perjuangan-panjang-menuntut-pemerintah-yang-lalai/ (last accessed on 9 June 2022).

Table 3. Degree of Engagement of Climate Litigation Cases in Indonesia

No	Cases	Plaintiff"s Score	Defendant's Score	Score of Engagement	Degree
1	The Samarinda Accuses Case	4	3	7	High
2	The Cirebon Case				
	a.Lawsuit I	1	1	2	Low
	b.Lawsuit II	3	1	4	Mid
3	The Celukan Bawang Case	4	1	5	Mid

In the Cirebon Case, the first lawsuit can be considered to fall within category 4 of Peel and Osofsky's concentric circles of climate litigation in which "no specific climate change framing" is evident in the claim.[37] This is because it primarily focuses on the impacts of the construction to human health and the local environment, and the defendants also did not mention issues of climate change. Although not central to the case, in the second lawsuit, the issues of climate change caused by coal burning were explicitly used as one of the grounds for rejecting the plant. The plaintiffs claim that "the business and/or activities of coal-fired power plants are one of the significant sources of pollutants, especially . . . contributing significantly to climate change."[38] However, the defendant did not respond to such claims and even justified the construction of the coal power plant, stating it is a "vital electricity infrastructure project whose implementation must be encouraged and accelerated...to increase the fulfilment of people's electricity needs fairly and evenly and encourage economic growth...as mandated by President of Republic of Indonesia through his regulations."[39] Accordingly, the second lawsuit can be considered as climate change litigation with a middle degree of engagement.

In the Celukan Bawang Case, climate change is one of the central issues raised by the plaintiffs, especially Greenpeace who was concerned with the impacts of the coal-fired plant on the general climate, air pollution and the local ecosystems. The claim clearly states that the permit to construct a new coal-fired power plant in Celukan Bawang violates the UNFCCC and Indonesia's Nationally Determined Contribution (NDC) because it may release approximately 200 million CO2 emission during its 30 years in operation.[40] However, the Governor of Bali as the defendant did not respond to the claim whatsoever. Instead, he stated that the impacts of the plant were merely a prediction and no law had been

37 *Peel / Osofsky*, note 21, p. 8.4.

38 *WALHI and Sarjum v. the Board of Investment and Integrated Permits Service and the Cirebon Energi Prasarana,* Decision No: 148/G/LH/2017/PTUN-BDG [2017], p. 14.

39 Ibid, p. 121.

40 *Wijana, Sufarlan, Astawa, & Greenpeace Indonesia v. Governor of Bali & Celukan Bawang Coal Power Plant,* Decision No. 2/G/LH/2018/PTUN/Dps. [2018], pp. 17-20.

violated for burning coal.[41] Hence, this case can be categorised as having a middle degree of engagement with climate change issues.

The question then is how the degree of engagement is relevant for examining climate change litigation. As mentioned earlier, in the literature, climate litigation is predominantly discussed by utilising a "legal model" whereby a judge is a neutral agent presiding over legal issues brought by the plaintiffs and debated by the defendants.[42] Based on this model, the hypothesis is that the higher the degree of parties' engagement with climate change issues, the higher the compulsion for judges to respond to the issues and, thus, the more likely climate jurisprudence produced by the court. However, the three cases examined here demonstrate that this hypothesis is incorrect: despite relatively high and mid degrees of climate change engagement in the cases, none of the final decisions demonstrates the courts' meaningful production of climate jurisprudence. Thus, this demonstrates that the attitude of the courts in climate change litigation in Indonesia could not be predicted merely based on legal issues, materials and doctrines presented and responded by the parties during the proceeding. Hence, it is safe to say that their decisions have been shaped also by factors beyond the court room, as discussed in the next section

An interesting observation can be made, particularly for the Samarinda Accuses Case as the only high degree of engagement case. Through a Citizen Lawsuit (*actio popularis*) the plaintiffs sued the Mayor of Samarinda, the Ministry of Energy and Natural Resources, the Governor of East Kalimantan, the Ministry of the Environment, and the Regional House of People's Representative, for their failure to control coal mining activities in the region. Based on such engagement, the District Court of Samarinda decided, inter alia: "2. Declaring that the Defendants were negligent in carrying out their obligations to create a good and healthy environment, which triggered global warming and exacerbated the impact of climate change in Samarinda Municipality, East Kalimantan; 3. Declaring that the Defendants have been negligent in causing material and immaterial losses to all residents of Samarinda Municipality who have been affected by climate change."[43] This decision produced positive climate jurisprudence on the connection between the rights to a good and healthy environment and the loss and damage resulting from climate change at the national level. This decision was also upheld by the High Court of Samarinda in the appeal procedure.

In Cassation, however, the Supreme Court took a different stance, overruling the previous decisions based on purely procedural reasons. Instead, the Supreme Court rejected the citizen lawsuit because two of the six defendants, namely the Ministry of the Environment and the Regional House of People's Representative of Samarinda Municipality, were not notified by the plaintiffs before filing the lawsuit. Indeed, Citizen Lawsuit (CLS) in Indonesia requires potential defendants be notified before the plaintiffs file a claim to the court in

41 Ibid, p. 42.

42 *Brennan / Epstein / Staudt*, note 27, p. 1509.

43 *Komari and others v. Major of Samarinda and others,* note 34, p. 35.

order to give an opportunity for the defendants to address the demands from the plaintiffs within 60 days.[44]

The Celukan Bawang and the Cirebon Coal cases were also dismissed by the courts based on procedural grounds. However, unlike the Samarinda Accuses Case dismissal due to failure to notify, they were dismissed on the grounds of legal standing (*locus standi)*, and the doctrine of *ne bis in idem* (the prohibition against double jeopardy), respectively. In the three cases, there have been inconsistencies in interpreting the doctrine of legal standing. In the Cirebon Case, one court accepted the potential impacts suffered by the plaintiffs as a legitimate standing to sue, whereas in the Celukan Bawang Case the Administrative Court of Denpasar did not consider the forebrought potential impacts to be legitimate standing to sue because they had not yet suffered any losses.[45]

With regard to the doctrine of *ne bis in idem*, there are jurisprudences on how to assess its criteria. The first is the 102K/Sip/1972 which stresses the similarity of the subject stating that "if in the new case the parties are different from the parties in the case that has been decided earlier, then there is no '*ne bis in idem.*"[46] The second is the 1226K/Pdt/2001 which emphasises the similarity of the object, stating that "[e]ven though the position of the subject is different, but the object is the same as the case that has been decided first and has permanent legal force, the lawsuit is declared *ne bis in idem*".[47]

In the Cirebon Case, the court used neither of these jurisprudences in the second lawsuit. In the first lawsuit, Dusmand and five other members of a fishing community sued the Board of Investment of West Java before the Administrative Court of Bandung for granting an environmental permit (EP 660/2016) to the Cirebon Energi Prasarana Company to construct a coal-fired power plant across the two subdistricts of Astanajapura and Mundu. The plaintiffs argued that such construction would negatively affect the livelihood of the fishing and coastal communities. The court decided in favour of the plaintiffs, stating that the EP 660/2016 violated the spatial planning regulation for the Cirebon District because, in the regulation, the Mundu Subdistrict was not designated as a location for the construction.

Following the court decision, the defendant appealed, submitting a request for an amendment of the EP 660/2016 on the basis that the national government had revised the National Spatial Planning Regulation. A new provision, Article 114a, was inserted stating that "(1) in the case, if a national strategic project has not yet been designated in the provincial and district spatial planning regulations, the space for the project can still be utilised in accordance to this national regulation; (2) in granting a permit for utilising such

44 Supreme Court of Indonesia, The Chief Justice Decision No. 36/2013 concerning the Application of the Guidance Procedure for Environmental Cases, p. 22.

45 *Wijana & others v. Governor of Bali,* note 40, p. 151.

46 *Kasrin and others v. Siti Mas'um,* Decision No. 102K/Sip/1972 [1973], p. 205.

47 S*aleha Kasmini v. Lukman Handowijaya and Deddy M. Saad,* Decision No. 1226K/Pdt/2001 [2021]), p. 20.

space, the Minister can issue a recommendation for its utilisation."[48] The company claimed that the Cirebon Coal Power Plant must be considered as a national strategic project[49] under Article 114a. Based on the request, in July 2017, the Board of Investment of West Java granted a new environmental permit (EP 660/2017) to the company.

As a response, the Indonesian Forum for the Environment (WALHI/Friends of the Earth Indonesia) together with a local fisherman, filed a lawsuit against the new permit arguing that it was unlawful because the entire environmental impact assessment (EIA) process had been voided by the previous court decision. However, the court eventually dismissed the second lawsuit arguing against the principle of *ne bis in idem* stating that there was no legally sound reasoning to support the claim that the EP 660/2017 and the EP 660/2016 should be treated as a similar document despite their different year and legal basis of the issuance. Putting the three cases together, it can be argued that by dismissing them on procedural grounds the Indonesian courts have demonstrated a tendency to avoid a meaningful engagement with complex issues relating to the climate crisis. Consequently, the court has not produced any climate jurisprudence or a solid legal doctrine for addressing climate crisis in the country from the energy sectors.

D. Situating Climate Litigation within a wider Context

In several countries, climate litigation has been appreciated for its potential to progress climate change law and policies. In the UK, it has been regarded as "a tool to pressure government action on tackling climate change."[50] Similarly, in India and Pakistan "important aspects of climate change law can be progressed by the actions of the judiciary."[51] In Indonesia, however, such litigation has achieved very little. The most frequent explanation for this failure is the general weakness of the Indonesian courts in handling environmental cases, specifically due to the judges' lack of expertise in environmental law[52], despite being certified as environmental law judges. This account, however, overlooks the external factors that may influence how the court works such that a different explanation is required. Thomas Brennan, Lee Epstein, and Nancy Staudt developed a framework to understand the political economy of judicial reasoning. They challenge two dominant approaches in

48 Government Regulation No. 13 on the Revision of National Spatial Plan 2017, Article 114a.

49 National Strategic Project is a list of infrastructure projects that are prioritised by the government due to their significant contribution to economic growth and job creation in the country. Those projects are proposed by government agencies or private enterprises. Once a project is listed as a national strategic project it will receive a set of privileges, including a prompted process of gaining permits and land acquisition, a guarantee that it will be implemented regardless a changing in government administration, as well as tax incentives from the government.

50 *Alogna / Clifford*, note 31, p. 6.

51 Ibid, p. 9.

52 *Yulia Savitri / Ibnu Aqil*, Government Bemoans Lack of Environmental Expertise in Justice System, https://www.thejakartapost.com/news/2020/03/18/government-bemoans-lack-of-environmental-expertise-in-justice-system.html (last accessed on 30 June 2022).

explaining adjudication, namely the legal model and the political model[53], by proposing an economic model in which macroeconomic factors, such as GDP, inflation, or unemployment, determine whether or not the court "cooperates" with the other state institutions to improve the economy.[54]

In Indonesia, through a historical and political economy analysis, Daniel S. Lev has demonstrated how the judiciary has evolved through struggles over power and resources.[55] In this context, to understand climate change litigation as the current politics of courts in the country, it is necessary to look beyond both the legal model (focusing on the doctrinal analysis of the decision) and the political model (seeking to reveal the personal motives of the judges). Rather, a law and political-economy model is required to analyse climate litigation by situating the courts within wider networks of power that have shaped the politics of courts in the country.[56] Indeed, climate change issues are deeply embedded within the political-economic structure of the country. In the context of the energy sectors, for instance, Indonesia is the seventh biggest coal-producing countries in the world, with China, Japan, India, and South Korea as the export markets.[57] As Nangoy and Suroyo put it, "[w]ith nearly 39 billion tonnes of reserves, coal remains the economic backbone" and the coal industry is "among the biggest taxpayers"[58]. The industry's biggest players are companies controlled by coal oligarchs and high-profile politicians, several of them being part of President Jokowi's administration serving as ministers.[59] Hence, any attempt

53 This model embraces that the court decisions represent judges' personal values. See *Brennan / Epstein / Staudt,* note 27, p. 1512.

54 Ibid, p. 1531.

55 *Daniel S. Lev*, Judicial Authority and the Struggle for an Indonesian Rechtsstaat, Law and Society Review 13 (1978), pp. 37-71.

56 *Melissa Crouch*, The Challenges for Court Reform After Authoritarian Rule: The Role of Specialized Courts in Indonesia, Constitutional Review 7 (2021), p. 2.

57 Indonesia Investments, Coal, https://www.indonesia-investments.com/business/commodities/coal/item236 (last accessed on 3 July 2022).

58 *Fransiska Nangoy / Gayatri Surono*, Indonesia Clings to Coal Despite Green Vision for Economy, https://www.reuters.com/business/energy/indonesia-clings-coal-despite-green-vision-economy-2021-09-20/ (last accessed 10 November 2022).

59 *Viriya Singgih*, Unearthing Indonesia's 10 Biggest Coal Oligarchs, https://projectmultatuli.org/en/unearthing-indonesias-10-biggest-coal-oligarchs/ (last accessed on 3 July 2022).

to destabilise this political-economic structure will be neutralised by any means, including coercion if necessary.[60]

From the standpoint of environmental movements, climate litigation is conceived not only as a means of demanding necessary measures for adaptation and mitigation to climate change, but also as a new strategy to challenge the status quo contributing to the climate crisis. Through climate litigation, environmental movements struggle directly and indirectly against the powerful coal industry. In the Samarinda Accuses Case, the plaintiffs challenged the industry in its production cycle while in the Cirebon Case and the Celukan Bawang Case, the plaintiffs challenged the consumption of coal as part of the government's national energy strategic projects. To date, however, such struggles utilizing climate litigation have been largely unsuccessful due to the paramount national interest toward economic growth in which the coal industry has played an essential role. In fact, during the global Covid-19 pandemic, the coal industry was even given favourable economic measures by the government via a revision of the Mineral and Coal Mining Law under the banner of "boosting economic growth."[61] More recently, the Indonesian government has also enacted the Omnibus Law concerning Job Creation in order to accelerate economic growth by regressing environmental safeguards with a similar objective for providing a favourable business climate to investors.[62]

Indeed, in Indonesia the economic growth remains the overriding government agenda. This confirms Katharina Pistor's observation in *The Code of Capital* that the success or failure of an elected government no longer lies on the ability to distribute wealth and increase human development, but rather on the ability to maintain or even increase the rate of economic growth.[63] This attitude to prioritise economic growth is also evident even within the Ministry of the Environment and Forestry that is supposed to be about protecting the environment and addressing climate change. In her response to the COP 26

60 In the 2009 Mineral and Coal Mining Law, a draconian article is. That is Article 162 which stipulates that "any person who obstructs or interferes with the activities of mining activities with mining permits…shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)." This article has been used as a legal means to intimidate and punish anti-mining activists across the country. In fact, the article also has been a subject of a constitutional review brought several times by the victims and environmental organisations before the Constitutional Court, but the Court decided that it does not violate any constitutional provisions and the article is considered necessary in providing legal certainty to mining investors. See the Constitutional Court Decisions No. 15/PUU/VIII/2020; No. 30/PUU-VIII/2010: No. 32/PUU-VIII/2010; and the most recent one No. 64/PUU-XVIII/2020 concerning Constitutional Review on the Mineral and Coal Mining Law.

61 *Hans N. Jong*, With New Law, Indonesia Gives Miners More Power and Fewer Obligations, https://news.mongabay.com/2020/05/indonesia-mining-law-minerba-environment-pollution-coal/ (last accessed on 3 July 2022).

62 *Agung Wardana*, The Indonesian Paradox in the Anthropocene, Asia Pacific Journal of Environmental Law 24 (2021), p. 245.

63 *Katharina Pistor*, The Code of Capital: How the Law Creates Wealth and Inequality, Princeton 2019, p. 20.

of UNFCCC, Siti Nurbaya, the Minister of the Environment and Forestry, explicitly states that Indonesia's national agenda to pursue development "should not be stopped for the sake of reducing carbon emissions or deforestation."[64] The use of economic parameters as the basis of legitimacy has not exclusively been practiced by elected bodies of the state, the executive and the legislative, but there has been attempts to use this as currency within the judiciary body. President Jokowi, for instance, explicitly expects that the Supreme Court should "undertake strategic attempts in reducing legal barriers to accelerate economic development."[65] In a similar tone, the Chief Justice of Indonesia's Supreme Court, Hatta Ali, also frames the Court's annual report by stating that "law is one of the most important factors in economic growth. To create spaces for economic growth, the Supreme Court has taken a role in resolving many legal barriers for pursuing people's welfare". This has been undertaken by, among others, settling disputes concerning the government's national strategic projects.[66]

As evidenced in the aforementioned climate litigation cases it seems that the framing from the top has been followed by the subordinate courts. In the Celukan Bawang and Cirebon cases, the courts' decisions largely favour national strategic projects because they were considered to have an important role to meet government's development target of constructing a total of 35,000 megawatt energy infrastructures across the archipelago. In the Celukan Bawang case, the court considered to retain the permit due to available technology that might make it possible for a coal-fired plant to reduce its emission by 37-38 per cent.[67] However, this consideration was not elaborated further to demonstrate whether such technology would be used in the project and its impacts had been analysed in the environmental impact assessment (EIA). Moreover, in the Cirebon Case, the panel of judges even reasoned that "law should not be anti-development and law should not hinder development; on the contrary, law should stand at the front to open the path of development and to provide a direction for development."[68]

One may argue that the notion of "development" in the decision does not contradict the commitment to comply with international climate change treaties. The UNFCCC, for instance, stipulates in its Article 2 "Objective" that the stabilisation of greenhouse gas con-

64 *Ibny Aqil,* Environmentalist Decry Indonesia's Unclear Stance on Key Deforestation Pledge, https://www.thejakartapost.com/indonesia/2021/11/08/environmentalists-decry-indonesias-unclear-stance-on-key-deforestation-pledge.html (last accessed on 3 July 2022).

65 Supreme Court of Indonesia, Presiden Jokowi: Semangat Transformasi di Tubuh Mahkamah Agung Selaras Dengan Semangat Transformasi Indonesia, https://www.mahkamahagung.go.id/id/berita/5101/presiden-jokowi-semangat-transformasi-di-tubuh-mahkamah-agung-selaras-dengan-semangat-transformasi-indonesia (last accessed on 10 November 2022).

66 Supreme Court of Indonesia, Mahkamah Agung Berperan Dalam Pertumbuhan Ekonomi Negara, https://www.mahkamahagung.go.id/id/berita/4026/mahkamah-agung- (last accessed on 3 July 2022).

67 *Wibisana / Cornelius*, note 14, p. 239.

68 *WALHI and Sarjum v. the Board of Investment and Integrated Permits Service and the Cirebon Energi Prasarana,* note 38, p. 346.

centrations in the atmosphere should be at such a level as "to enable economic development to proceed in a sustainable manner." Similarly, Article 2 of the Paris Agreement states that the global response to the threat of climate change is taken "in the context of sustainable development." However, such an argument overlooks what Jorge Viñuales describes as "the deliberate vagueness" of sustainable development as a concept "which lends itself to far too many (mis-)interpretations."[69] In India, as observed by Ohdedar, sustainable development is pursued through the concept of "co-benefit", meaning to "maintain a space for climate action, while not sacrificing India's position of being able to pursue (carbon-intensive) economic development."[70] Such interpretation is also embraced by the Indonesian government through its prioritisation of economic growth over social development and environmental protection. However, in a country like Indonesia, where the national economy is dominated by oligarchies, it is precisely the political-economic elites who benefit most from this understanding that the notion of "development" is measured (only) by economic growth. This leads to the perpetuation of socio-economic inequalities and uneven distribution of negative environmental impacts resulting from such development which also include the impacts of climate change that are unevenly distributed following the inequality lines.

The instrumentalist view of the law in relation to economic development is not a new phenomenon in Indonesia. It has its roots in the authoritarian regime of Suharto (1967–1998), where US-educated law professor, Mochtar Kusumaatmadja, developed his own version of Indonesia's law and development (*Hukum dan Pembangunan*) doctrine which was based on the basic tenets of the law and development movement and Roscoe Pound's Sociological Jurisprudence. This doctrine has served as a theoretical underpinning on utilizing law as a tool for imposing *developmentalism*. He proposed that

> *"law is a means of societal renewal based on an assumption that regularity or order in pursuing development and reform is something that is expected or considered (absolutely) necessary. Another assumption included in the conception of law as a means of reform is that law in terms of legal rules or norms could indeed be utilised as a tool (of control) or instrument for development in directing human activities to the direction desired by development and reform."*[71]

Based on the doctrine, the role of judges should align with the objective of the nation. As what constitutes "the objective of the nation" is defined by the government, as shown by the cases above, there has been a tendency where the court is more likely be in favour of the government. Hence, although the court is in theory independence but in its

69 *Jorge E. Viñuales*, Sustainable Development, in: Lavanya Rajamani / Jacqueline Peel (eds.), The Oxford Handbook of International Environmental Law, Oxford 2021, p. 285.

70 *Birsha Ohdedar*, Climate Change Litigation in India and Pakistan: Analyzing Opportunities and Challenges, in: Ivano Alogna / Christine Bakker / Jean-Pierre Gauci (eds.), Climate Change Litigation: Global Perspective, Leiden 2021, p. 111.

71 *Mochtar Kusumaatmadja*, Hukum Masyarakat dan Pembinaan Hukum Nasional, Bandung 1995, p. 13.

practice, especially in a dispute between citizens or civil society organisations and the government concerning a development project, the influence from the government appears to be unavoidable. This also may be seen as the ways in which the Indonesian judiciary body attempts to maintain a good relationship to the executive body.

In the context of climate change, comparing cases related to illegal logging and peatland fires to the cases related to the coal energy discussed above, it demonstrates that there has been a different attitude of the Indonesian courts toward climate change litigation. In the cases of illegal logging and peatland fires, the courts have been very supportive to the claim from the government as the plaintiff that climate change is an important issue that may bring economic losses for the government from ecological damage and the cost to restore the damage.[72] In the cases on the coal energy, however, the attitude of the court tends to be sceptical to the claims related to climate change. As evidenced in Celukan Bawang case, the panel of judges even appears to be closer to that of climate denial, arguing that "the impact or potential for pollution to the environment as argued by the plaintiffs, is only an estimate or assumption (possibility) in the absence of scientific evidence from experts, and the potential loss is very possible to be prevented."[73] In fact, during the proceeding, a Greenpeace senior coal campaigner and air pollution researcher, Lauri Myllyvirta, who had planned on giving an expert opinion before the court to explain the modelling study on the impacts of coal-fired in Celukan Bawang to air pollution and climate change, was refused by the panel of judges due to his citizenship status as a foreigner who did not hold a working visa to deliver "professional" advice. It was not the plaintiffs who failed to provide expert scientific evidence but rather the court itself preventing the scientific evidence to be presented during the proceeding.

Despite the different attitude toward climate change litigation, there has been a common feature related to the macroeconomic reasoning either explicitly or implicitly stated in decision. In climate litigation on the coal energy, the courts explicitly supported the construction of coal power plants as a national strategic project assuming that they would contribute to economic development. In the illegal logging and peatland fires (forestry) cases where the courts were in favour of climate change issues, the reasoning is rather implicit. In those forestry cases the court ruled the companies to pay compensation to the government calculated not only from ecological damage but also the cost of emission reduction due to the carbon release by illegal logging and peatland fires.[74] In the *Ministry for the Environment v. the Kalista Alam Case,* for instance, the court ruled the company to pay compensation around 7 million Euro for the damage and around 16 million Euro for the

72 *Ministry for the Environment and Forestry v. the Bumi Mekar Hijau Case,* District Court Decision, Decision No. 12/PDT.G/2012/PN.MBO, p. 25; *Ministry for the Environment and Forestry v. the Bumi Mekar Hijau Case,* High Court Decision, Decision No. 51/PDT/2016/PT.PLG, p. 177.

73 *Wijana & others v. Governor of Bali,*, note 40, p 149.

74 *Wibisana / Cornelius*, note 14.

cost of restoration.[75] Similarly, in *the Ministry for the Environment and Forestry v. the Bumi Mekar Hijau Case*, the court ruled the company to pay compensation around 4,9 million Euro for the damage.[76]

There are two interrelated, underlying assumptions for paying compensation to the government. They are: (1) the state, represented by the government, suffers economic and ecological losses because the environment is under the state's guardianship; (2) the state through the government is responsible to restore the ecological damage caused by illegal logging and peatland fires.[77] Accordingly, compensation as the outcome of climate change litigation ruled by the court should be paid to the state treasury as non-tax revenues for the government, creating a cynical view that climate litigation brought by the government appears to be a strategy to balance the state budget, rather than to address climate change. This is because as a non-tax revenue the compensation will not necessarily be used for ecological restoration programs, instead it will be spent as a state budget, including for financing national strategic projects. As a result, Wibisana and Cornelius admit that although several companies have paid the compensation, including the Bumi Mekar Hijau, "no real restoration has been conducted by the government" utilising the compensation received from the companies.[78] Hence, the positive effect of this type of litigation to address the climate crisis remains questionable, not to mentioned leading to "more ambitious climate change mitigation and adaptation goals"[79]. In fact, the type of climate litigation brought by government against forestry companies that once is considered "novel and unique" may have a negative effect because it is used as a result of illegal conducts or wrongdoings.[80] This may confirms the assumption that the climate crisis is caused a behavioural problem of several bad companies instead of being a product of the dominant economic system.[81] In this view, the companies become liable to climate change once they commit illegal conducts; otherwise, as long as they do not commit any illegal conducts, they may continue their business as usual practices, a practice that has contributed to the climate crisis in the first place.

75 The case is concerning peatland fires committed by the Kalista Alam, a palm oil company, that burned the forest in Aceh. The Ministry for the Environment filed a civil lawsuit against the company and won the case in which. See *Ministry for the Environment and Forestry v. the Bumi Mekar Hijau Case,* District Court Decision*,* note 72.

76 The case is concerning peatland fires committed by the Bumi Mekar Hijau, a logging company in South Sumatera, in clearing up their concession before replanting. The Ministry of the Environment and Forestry filed a civil lawsuit against the company utilising tort law. See *Ministry for the Environment and Forestry v. the Bumi Mekar Hijau Case,* High Court Decision, note 72.

77 *Dona Pratama Jonaidi / Andri Wibisana*, Konsep Gugatan Pemerintah atas Pencemaran Lingkungan: Komparasi Antara Indonesia dan Amerika Serikat, Arena Hukum 14 (2021), pp. 268-292.

78 *Wibisana / Cornelius*, note 14, p. 253, See also *Jonaidi / Wibisana*, note 77.

79 UNEP / Sabin Center for Climate Change Law, note 17, p. 5.

80 *Wibisana / Cornelius*, note 14, p. 248.

81 *Ryan Gunderson / Claiton Fyock*, The Political Economy of Climate Change Litigation: Is There a Point to Suing Fossil Fuel Companies?, New Political Economy 27 (2022), pp. 441-454.

E. Conclusion

This article contributes to literature on climate litigation which predominantly employs the legal model in presenting climate litigation cases. Consequently, there has been a tendency to leave out the structural context within which a particular court decides a climate litigation case. The analysis provided by the legal model tends to focus on how legal doctrines have developed progressively in the context of climate change and in turn to bring a sense of optimism to resolve the climate crisis by a means of adjudication. Indeed, globally there have been many courts decisions on the issues can be regarded as a progressive development of climate jurisprudence. However, unless such decisions can be translated into a means of pursuing a structural change that has caused the climate crisis in the first place, the impacts of such decisions "may remain removed from the daily lives and struggles" of people whose livelihoods have been affected by the crisis.[82]

In Indonesia, following a global trend in addressing the gap between the pledge at the international level and the actual policy and practice at the domestic level through climate litigation, environmental NGOs and local communities have also attempted to use a similar strategy. They demand that courts play an important role in climate governance, especially when the state appears to be reluctant to take necessary measures required for addressing the climate crisis. Indeed, climate litigation becomes a new strategy of "environmentalism of the poor"[83] where their immediate interests in defending livelihoods from encroachment of carbon-intensive development projects meet with the global common concern about the future of the planet. Given the structural constrains, it remains to be seen how such a strategy would meaningfully deliver social and climate justice to the most vulnerable communities.

Postscript

During the revision process of this article, there was a climate change litigation case in Indonesian in which the court decision was in favour of the plaintiffs, the Tanjung Jati A Case. Decided by the Administrative Court of Bandung, West Java, in October 2022, this case was concerning environmental permit of the Tanjung Jati A Coal Power Plant that was claimed by the plaintiffs, WALHI and several members of affected communities, to be problematic on two grounds: (1) the coal power plant would emit a significant amount of greenhouse gas emission to the atmosphere which might contradict Indonesia' Nationally Determined Contribution; (2) the plant would burden the state budget because according the power purchase agreement (PPA) between the Tanjung Jati Power Company as an independent power producer and the State Electricity Company (the PLN), a state-owned enterprise focusing on electricity, the electricity generated by the producing company has

82 *Ohdedar*, note 70, p. 112.

83 *Joan Martinez-Alier*, The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation, Cheltenham 2002, p. 14.

to be bought by the PLN on a "take or pay" scheme. In fact, the PLN has been facing an oversupply of electricity in the region while the demand has been relatively stagnant which in turn has caused economic loss for the PLN which has relied from the state budgets to cover the loss.[84] The court decided to annul the permit based on the consideration that it violated the precautionary principle because analysis on climate change was absence in Environmental Impact Assessment (EIA).[85]

Although this case shares several similar features in common with the Celukan Bawang Case and the Cirebon Case in terms of its sector (the coal-energy) and its typology (a mid degree of engagement with climate change issues), there are several notable differences. First of all, unlike in the Celukan Bawang Case and the Cirebon Case where the energy producing companies were participating in the proceeding as the intervening defendant (*tergugat intervensi*), in the Tanjung Jati A Case, the company did not get involved as an intervening defendant. The involvement of the companies in the proceeding would have played an important role to back-up the main defendant (the government bodies who granted the environmental permit) in countering the plaintiffs' claims. Secondly, unlike the Celukan Bawang Case and the Cirebon Case where the project proponents had been able to secure the financial source to implement their projects, in the Tanjung Jati A Case the company had not secured the financial source to fund the project.[86] Even before the court proceeding, the PLN had announced to cancel the plan because of the financial issue.[87] It is plausible to assume that this uncertain financial condition that defines the future of the project has also contributed to the reluctance of the company to get involved the proceeding which might have to bear the cost. Recently, the Government of West Java decided to accept the decision by not bringing it to the court of appeal.[88] Despite this acceptance, this case affirms the need to examine climate change litigation beyond the court room including by looking at how the structural conditions shape the court decision.

84 Decision No. 52/G/LH/2022/PTUN.Bdg [2022] pp. 34-39.

85 Ibid, p. 192.

86 Since April 2020, the company has planned to issue bond to fund the power plant. However, it remains unsuccessful. See IDN Financial, Bankrie & Brothers & YTL Corporation Will Issue Sukuk with a Total Value of US$ 2.2 billion, https://www.idnfinancials.com/news/33107/bakrie-brothers-ytl-corporation-issue-sukuk-total (last accessed 11 November 2022).

87 *Kairul Anam*, Mau Trasisi Ogah Rugi, https://majalah.tempo.co/read/ekonomi-dan-bisnis/166474/apa-strategi-pln-dalam-transisi-energi (last accessed 11 November 2022).

88 *Rifat Alhamadi*, Pemprov Jabar Tak Bisa Langsung Cabut Izin PLTU Tanjung Jadi A Cirebon, https://www.detik.com/jabar/berita/d-6385850/pemprov-jabar-tak-bisa-langsung-cabut-izin-pltu-tanjung-jati-a-cirebon (last accessed 11 November 2022).