

CLIMATE CHANGE JUSTICE THROUGH JUDICIAL COLLABORATION: An Indonesian Perspective¹

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INTRODUCTION

One of the most pressing environmental issues attracting global attention is climate change. In general terms, climate change refers to long-term alterations in global climate patterns, particularly temperature, precipitation, and other weather conditions on earth. The primary drivers of climate change today originate from human activities, particularly greenhouse gas emissions caused by the burning of fossil fuels, industrial activities, transportation, and electricity generation; deforestation that reduces the earth's capacity to absorb carbon; and intensive agricultural and livestock practices that produce methane and nitrous oxide.

The impacts of climate change include global temperature rise (global warming), the melting of polar ice and rising sea levels, shifts in extreme weather patterns such as floods, droughts, storms, and heatwaves, food and water crises resulting from ecosystem changes, as well as threats to human health (disease outbreaks, heat stress, and pollution).

Accordingly, the Intergovernmental Panel on Climate Change (IPCC) 2023 Report concluded that the impacts of climate change are inevitable. Therefore, simultaneous and profound mitigation and adaptation efforts, both in the present and in the future, are no longer optional but imperative. Furthermore, the IPCC Sixth Assessment Report (2023) underscored that climate change is closely associated with inequalities, between nations, regions, genders, and age groups. The poor, vulnerable, and marginalized are expected to suffer disproportionately compared to wealthier groups with better economic conditions and access to resources.

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This paper seeks to explore how courts may respond to environmental challenges, particularly climate change, including the potential for collaboration among judicial institutions. It begins with an overview of the concept of climate change in Indonesia, followed by the notion of climate justice, the judicial role that illustrated through landmark decisions from Indonesia, and finally, avenues for judicial collaboration at both regional and global levels.

CLIMATE CHANGE IN INDONESIA

Indonesia has experienced the direct effects of climate change. Global warming manifests in the increasing trends of temperature and relative humidity in the country. Climate change is also reflected in rainfall variability and the growing frequency of extreme weather and climate events. As the world's largest archipelagic state, Indonesia faces significant threats from rising sea levels, with hundreds of islands at risk of submersion in the coming decades. Coastal communities have already been forced to relocate due to inundation, raising concerns of an increase in so-called "climate refugees."

The Indonesian Constitution provides explicit recognition of environmental protection as a constitutional guarantee for the sustainability of the nation's natural environment. This is enshrined in Article 28H paragraph (1) and Article 33 paragraph (4) of the Constitution, which respectively affirm:

Article 28H(1): "Every person shall have the right to live in physical and spiritual prosperity, to reside, and to have a good and healthy environment and to receive health care."

Article 33(4): "The national economy shall be organized on the basis of economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity."

To operationalize these constitutional guarantees, Indonesia has enacted several statutes and regulations, including:

1. Law No. 16 of 2016 ratifying the Paris Agreement;
2. Law No. 32 of 2009 on Environmental Protection and Management, as partially amended by Law No. 6 of 2023 on the Job Creation Law;

3. Law No. 6 of 1994 ratifying the UN Framework Convention on Climate Change;
4. Government Regulation No. 22 of 2021 on Environmental Protection and Management;
and
5. Presidential Regulation No. 33 of 2005 ratifying the Beijing Amendment to the Montreal Protocol.

While these frameworks are significant, climate change is not a problem Indonesia can solve in isolation. It requires global cooperation and collective responsibility.

CLIMATE JUSTICE

In addressing both the causes and consequences of climate change, the concept of climate justice has emerged to integrate considerations of fairness and rights. According to the IPCC, climate justice adopts a rights-based approach, emphasizing equitable sharing of the burdens and benefits of climate action, while safeguarding the rights of vulnerable communities.

The roots of climate justice can be traced to the 1992 UNFCCC. It introduced the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). This principle acknowledges the disproportionate responsibilities and benefits arising from climate change, given the historical emissions of developed nations compared to developing ones.

Climate justice will not be achieved both globally and domestically, when the burdens and benefits of mitigation and adaptation are distributed unfairly, and when vulnerable groups within states bear disproportionate impacts. In this context, four principles underpin climate justice, namely: Recognitional Justice which acknowledging the disproportionate impacts of climate change on vulnerable groups; Procedural Justice which ensuring inclusive participation, especially of vulnerable stakeholders, in climate decision-making; Distributive Justice which ensuring fair allocation of burdens and benefits across individuals, nations, and generations; and Restorative Justice which addressing harm suffered by individuals, communities, and ecosystems.

At the global level, at least three particularly urgent issues demand attention: Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC); (2) Loss and

Damage; and (3) Fixed Maritime Boundaries (FMB). These challenges highlight the essential role of cross-border judicial collaboration in advancing climate justice.

THE ROLE OF COURTS

Courts play a pivotal role in resolving disputes, including those involving environmental issues. Judicial decisions not only ensure justice but also uphold legal certainty and serve broader societal benefits. To adjudicate environmental disputes effectively, judges must be equipped with deep knowledge of environmental principles and sustainable development.

Since climate change transcends national boundaries, courts should also consider comparative jurisprudence from foreign jurisdictions. Even when not binding, foreign case law can offer valuable perspectives for judges in shaping domestic rulings.

In Indonesia, the Constitutional Court frequently draws on comparative judicial practices to enrich its reasoning. Through judicial review, the Court has annulled or interpreted statutes inconsistent with the constitutional right to a healthy environment, thus reinforcing sustainability principles, human rights, and alignment of government policies with environmental protection.

IMPORTANT DECISIONS

Although not always directly on climate change, several Constitutional Court decisions illustrate a consistent commitment to environmental protection and sustainable development

1. Decision No. 002/PUU-I/2003 (21 December 2004): affirmed that natural resource exploitation must preserve the environment, with the State exercising regulatory, administrative, managerial, and supervisory functions;
2. Decisions No. 058-059-060-063/PUU-II/2004 and No. 008/PUU-III/2005 (13 July 2005): underscored the State's duty to respect, protect, and fulfill human rights, including the intergenerational right to water resources.
3. Decision No. 013/PUU-III/2005 (13 September 2005): emphasized State control over natural resources to ensure sustainable development, with shared responsibility among State, society, and corporations.

4. Decision No. 3/PUU-VIII/2010 (16 June 2011): recognized coastal and small island resources as part of State-controlled assets for the greatest benefit of the people across generations.
5. Decision No. 85/PUU-XI/2013 (18 February 2015): annulled the Water Resources Law (Law No. 7/2004), ruling that water utilization for foreign interests is impermissible unless domestic needs are fully met.
6. Decision No. 35/PUU-XXI/2023 (21 March 2024): provided a constitutional interpretation of Article 33(4), mandating a strong sustainability approach in national development.

These cases demonstrate the Court's role in embedding environmental sustainability into constitutional interpretation.

JUDICIAL COLLABORATION

Indonesia's Constitutional Court serves as the Permanent Secretariat for Planning and Coordination of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), a forum of 21 member states facilitating dialogue and experience-sharing among judges.

Similar associations exist in other regions, such as: Conference of Constitutional Jurisdictions of Africa (CCJA), Ibero-American Conference of Constitutional Justice (CIJC), Conference of European Constitutional Courts (CECC), and Association of Francophone Constitutional Courts (ACCPUF).

Climate change justice can be integrated into the agendas of these associations. Judges may exchange landmark rulings for comparative insights, engage in training programs, and conduct dialogues on transboundary issues to identify mutually beneficial solutions.

At the regional level, cooperation is already evident, for instance, in the MoU between AACC (Asia) and CCJA (Africa). At the global level, the forthcoming 6th Congress of the World Conference on Constitutional Justice (WCCJ), to be held in Madrid on 28–30 October 2025 under the theme “Human Rights of Future Generations,” provides another opportunity to integrate climate change justice into judicial discourse.

CONCLUSION

Climate change is not a local issue but a global crisis whose consequences extend beyond current generations to future ones. Addressing it requires not only national action but also cross-border judicial collaboration.

While governments have long spearheaded international cooperation, it is time for judiciaries to play a more active role. Courts can safeguard the implementation of international climate commitments, ensure proportional contributions from states, and strengthen the voice of climate justice.

Judicial collaboration is therefore indispensable. The Judiciary 20 (J20 Summit) in Johannesburg may serve as a historic milestone for fostering global judicial cooperation in advancing climate change justice for the benefit of present and future generations.
