Standing, Citizen Suits, and Environmental Protection in Indonesia’s Legal System

Amelia Avis

MPP 2020
Citizen suits play a fundamental role in environmental rights protections across the world. As environmental wrongs are often dispersed among large populations, citizen suits present a unique opportunity to stop environmental injustices and provide recourse for the victims of pollution and degradation. Each country, however, differs widely in its approach to environmental litigation and legal protections. This paper will explore the legal context and history of citizen suits in Indonesia, and assess their potential for protecting citizens from polluters nationwide.

Indonesia’s laws, like most countries, have a hierarchy in which they should be considered. The Constitution of 1945 (Undang-Undang Dasar 1945, which translates to “basic law”) is the dominant law of the nation. It is followed by resolutions of the People’s Representative Council, the lower lawmaking body of the country, and then by ordinary laws (Undang-Undang). Environmental protections are enshrined in all three of these legal actions. To better understand the legal context that determines citizens’ right to defend the environment in the court system, it is necessary to first explore Indonesia’s adoption of constitutional environmental rights (CER).

Constitutional Environmental Rights

Unlike most pieces of legislation, which can be amended or withdrawn to reflect changes in lawmakers’ priorities, a country’s constitutional rights represent those values which are “most enduringly important.” Constitutions can frame the contents of subsequent legislation,

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regulation and litigation, adding a degree of accountability to policymakers who may otherwise neglect the environment in their platforms. ³

Environmental rights are largely categorized as socioeconomic rights, with “positive” entitlements for the right-holder instead of “negative” protections against government intervention. ⁴ However, Boyd (2012) argues that CER carries both negative and positive aspects, providing protection against a negligent government while also entitling the citizen to a degree of health and preservation.

In practice, environmental rights can protect vulnerable populations and create more opportunities for citizens’ participation in democracy. ⁵ Their adoption can lead to the creation of responsible ministries, legislative statutes and regulations, and can lead to the nation’s pursuit of international environmental action such as inclusion in the Paris Climate Agreement. ⁶ CERs fill in language and enforcement gaps for environmental legislation by providing a core path for policymakers to follow, and push a legislature to strengthen environmental legislation (and prevent rollbacks) by solidifying protection as a necessity. ⁷

A 2012 study found that countries with CER provisions enjoy stronger environmental laws and, in half of cases, stronger litigation with regards to environmental protection. ⁸ As a legal tool and a statement of values, it seems clear that a constitutional environmental right can lead to a more comprehensive environmental policy framework and increase the likelihood that

³ Jeffords and Minkler, 2016.
⁸ Ibid.
governments will strive to prevent environmental degradation. Indonesia’s CER provisions make it an interesting case study in environmental law.

**CER in Indonesia**

Indonesia’s Constitution includes two references to environmental protection. The first is in Article 28H, under Section XA (Fundamental Human Rights):

1. Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care.

Elkins’ 2009 Comparative Constitutions Project lists four ways through which environment is protected in constitutions: a duty of the state to protect, a duty of the people to protect, a right of the people to enjoy, or a general reference to the protection of the environment. Indonesia’s primary constitutional environmental rights provision can be soundly categorized as “a right of the people to enjoy.” This type of right carries more legal teeth than a more general reference, in that the government must protect the right of the people to enjoy a healthy environment. Indonesia’s environmental law stems largely from this text, and it also gives way to its citizen suit provisions.

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The second reference to the environment in Indonesia’s constitution is listed under Section XIV, National Economy and Welfare:

(4) The organization of the national economy shall be based on economic democracy that upholds the principles of solidarity, efficiency along with fairness, sustainability, keeping the environment in perspective, self-sufficiency, and that is concerned as well with balanced progress and with the unity of the national economy.

The inclusion of “keeping the environment in perspective” sets Indonesia apart from many other nations. Its foremost legal document mandates, with the use of the binding “shall,” environmental considerations in the national economy. This type of language has the potential to largely shape all economic policies and regulations, and opens the path to legal action if the government fails to adequately consider sustainability and the environment when making decisions.

The United States, in comparison, does not include any reference to the environment in its Constitution. U.S. environmental law arose from common law “nuisance” suits, in which private and public entities used the courts to stop polluters from causing them harm. Modern environmental law is enforced through the “commerce clause,” which allows Congress to regulate matters that have to do with interstate commerce (pollution being of an interstate nature). The United States has passed many broad environmental statutes, including the National
Environmental Policy Act (NEPA), but many scholars argue that the lack of CER provisions make the U.S. legal system ill-equipped to protect environmental quality.\(^\text{11}\)

Indonesia’s constitution may afford it the ability (and the duty) to protect the environment in a way the U.S. cannot. But it is necessary to examine its core environmental statutes to learn how the country puts its CER provisions into practice.

**National Environmental Laws**

Indonesia has two key environmental laws that illustrate its legal protections. The first relevant environmental law in Indonesia is Law 41/1999 (Concerning Forestry). The “Forestry Law” takes its authority from the 1945 Constitution’s assertions that the national economy must be managed with sustainability in mind, and that natural resources (including forests) should be controlled by the state “to the greatest benefit of the people.”\(^\text{12}\) The law designates authority to the national and regional governments with regards to forest management and use designation, and lays out conservation goals to be followed by governments in their planning processes.\(^\text{13}\)

Law 32/2009 (Concerning Protection and Management of Environment) is Indonesia’s primary environmental legislation, providing guidance on pollution, environmental protections, and environmental rights.\(^\text{14}\) It is amended from Law 23/1997 (Concerning Environmental


Management), which was in turn an update on Law 4/1982, the first broad environmental law in Indonesia.\(^\text{15}\)

The “Environmental Law” sets out Indonesia’s priorities for environmental protection and pollution control. It designated national bodies, including the Ministry of the Environment, Regional Environmental Management Agency, National Water Resources Board, and the Security and Law Enforcement Center for Environment and Forests, to create and enforce environmental regulations.\(^\text{16}\) The law also set a process for permitting projects that would change the natural environment, exploit a natural resource or cause environmental damage: businesses and entities must file an AMDAL (Analisis Mengenai Dampak Lingkungan) to assess potential environmental impact. This is similar to the Environmental Impact Statement (EIS) requirements under NEPA in the United States, but unlike an EIS, an AMDAL must be filed for actions taken by any public or private entity.

\textit{Environmental Legal Protections and Standing}

Indonesia’s Environmental Law lays out the basics of how polluters should be prosecuted, and victims compensated, for environmental degradation through the court system. Firstly, any citizen in Indonesia has a right to report environmental harm to a local leader, and these reports must then be examined by the police or civil service.\(^\text{17}\) Through the Law of the Administrative Courts, any Indonesian citizen can sue in administrative court over an action by


\(^{17}\) Ibid.
an official that is “concrete, individual, and final and from which legal consequences arise.”\textsuperscript{18} This includes the issuance of any environmental permits. Since the Environmental Law’s transparency clause allows everyone to access AMDAL and environmental permit decisions, groups and citizens can use this to enforce the government’s responsibility to consider the environment in its decisions.

The Environmental Law also gives the benefit of the doubt to a citizen or group suing the government in a pollution case. This “strict liability” provision holds that the party engaging in an activity that deals with hazardous waste or poses a serious threat to the environment is strictly at fault for any damage, without the need for a plaintiff to prove causation.\textsuperscript{19} Because of these provisions, any party that pollutes groundwater or land will have to take action to remedy the damage they caused, or pay a court-mandated fine. The leaders of companies found to have illegally caused environmental damage can also be prosecuted criminally.\textsuperscript{20}

These provisions give Indonesians the power to utilize the court system to protect their communities from environmental harms. Communities suffering air and water pollution, negative health effects, or sea level rise can seek legal remedies—even damage to aesthetics is counted as an environmental harm in Indonesian law, and can be claimed for compensation.\textsuperscript{21} However, an important component of any right to legal remedy is the determination of who can claim that right. The concept of “legal standing” determines who in Indonesia may prosecute polluters and receive compensation for environmental losses.

\textsuperscript{18} Gerungan, Alexandra and Titus, Raditya (2020).
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid.
Standing in Environmental Law

Legal standing, in its simplest form, means the ability of a party to bring its complaint to court. In environmental law, “procedural” rights such as standing can be as important as substantive rights to environmental protection: after all, how can communities fight polluters if they don’t have the right to go to court?

Standing has long been a controversial issue in American environmental law. The U.S. Supreme Court holds that individuals can only bring cases of environmental harm if they demonstrate injury to themselves. Americans do not have standing to sue for the sake of the environment itself, or for the health and well-being of future generations. This poses a challenge for environmental defenders and affected communities in the U.S., who have to go through the process of proving that each plaintiff has faced injury and that their injury is traceable to the defending polluter before they are able to go to court.

Through most of Indonesia’s legal history since the 1945 Constitution, standing has been determined by the doctrine of point d’intérêt, point d’action, or “point of interest, point of action.”22 This doctrine requires anyone suing in court to have a personal interest in the legal matter being disputed, and often a proprietary one.23 This has posed challenges to groups attempting to secure environmental protections. However, Indonesia has loosened its restrictions on standing by providing legal procedural rights to specific groups in its environmental laws.

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In Indonesia, the Environmental Law gives standing to three groups in environmental litigation: the government, environmental organizations, and communities. Environmental organizations, defined as legal entities that specifically work to protect the environment and have been in existence for two years, are given explicit right to bring suits against the government.\(^\text{24}\) This right was first put into effect in Lay 23/1997 and was reiterated in the 2009 Environmental Law.\(^\text{25}\) The right to community standing in environmental law has a more complicated history, and is worth exploring as an example of Indonesia’s changing legal system and of the power of its environmental NGOs.

**Citizen Suits and Community Protections**

“Citizen suits” refer to the ability of members of the public to initiate lawsuits against public or private actors that act illegally.\(^\text{26}\) In the U.S., citizen suit provisions are built directly into the frameworks of most key environmental laws, including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and Endangered Species Act. This was done to recognize the widespread effects of pollution on communities, and the imbalance of power between a large corporation and a single individual.

In Indonesia’s Environmental Law, under Article 91, communities can sue via class action on behalf of themselves, or the people overall, for any losses from pollution and


environmental damage. Under these provisions, some environmental crimes may be eligible for damages (monetary payments to victims or communities), and any breach of environmental law requires an injunction wherein the polluting entity stops the illegal activity. provided by Supreme Court reg 1 of 2002. When suing, plaintiffs can request exemption from liability for court costs, which lowers the barrier of entry for poorer communities.

The citizen suit provisions in Indonesia’s environmental laws provide important protections for its communities and people against polluters. The history of their inclusion is an interesting example of how groundbreaking legal action and environmental campaigns can shape future laws and regulations.

History of Citizen Suits in Indonesia

In 1988, communities on the Asahan River, near Lake Toba in Sumatra, complained that a local paper factory owned by Indorayon was causing environmental harm. The factory had overharvested forests, leading to deforestation and floods, had polluted the river, and had accidentally released thousands of tons of toxic waste from an artificial lagoon. On behalf of the communities, an environmental organization called WALHI, or the Indonesian Forum for the Environment, sued the National Investment Coordinating Board (BKPM), the North Sumatra’s Governor, the Minister of Industry, the Minister for the Environment, the Ministry of Forestry

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27 Gerungan, Alexandra and Titus, Raditya (2020).
28 Ibid.
29 Ibid.
for breaching the requirement for an AMDAL in permitting Indorayon’s harmful activities, and for allowing environmental harm to come to the region against environmental law.\(^{31}\)

In a groundbreaking decision, the Supreme Court allowed WALHI to sue on behalf of the affected communities. The court underlined the public interest in protecting the environment as “common property,” and agreed that WALHI, as an environmental group with no material interest in the decision, could represent the environmental interest. The 1982 Environmental Law stated that community institutions inherently play a supporting role in environmental management, and because under the law every person had the right to protect their environment, WALHI could represent the people in that right.\(^{32}\)

This decision allowed environmental groups and communities a way out of the difficult maze of legal standing, and led to the significant amendments undertaken in the Law 23/1997. This law used the WALHI case to afford the right of standing to any environmental organization, provided that they do not seek monetary damages.\(^{33}\)

Law 23/1997 also included the first provision for class action citizen suits. Under Article 37, members of the public were given the right to file legal action against a polluter as representatives of the wider public.\(^{34}\) The Forestry Law followed suit in 1999, stating that “the public shall be entitled to lodge a representative lawsuit” against damage to the forest that “severely affects people’s lives.”\(^{35}\)

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\(^{34}\) Ibid.

However, these provisions came with a caveat. Article 39 of Law 23/1997 stated that the procedure for filing a class action suit would refer to “the prevailing civil law.” However, no prevailing civil law had previously addressed class action procedures. The earliest attempt at a class action environmental lawsuit in Indonesia had come in 1989, when 602 residents of northern Aceh sued a liquid natural gas facility for health impacts from the factory’s release of poisonous fumes. The Court, however, threw out the suit, asserting that the grievances of each of the victims could not be combines into one claim. This instance made it clear that procedure had to be clarified in order to give the right to class action any legal teeth.

This clarification came in the form of Supreme Court Regulation 1 of 2002 (Concerning Class Action Procedure). Drawing from the Law 14/1970 Concerning Judicial Power, the Supreme Court invoked the requirement that court proceedings should be “simple, quick and inexpensive” in justifying class action suits. Their regulation clarified the meaning of a class action suit, and laid out the requirements for any such suit to be valid. Class action suits in Indonesia must follow the principles of numerosity, meaning that there must be enough plaintiffs named in the suit that it would be unreasonable to settle each claim individually; commonality, meaning that the legal question and type of claim must be common among all plaintiffs; and adequacy of representation, meaning that the actual representatives of the group in court must adequately represent the affected community at large.

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39 Ibid.
Indonesia’s legal landscape has changed drastically since the 1980s, and because of the efforts of environmental groups like WALHI, its legal system is better equipped than ever before to handle community complaints and protect the environmental rights laid out in its Constitution. More recent case studies reveal some of the successes of these new regulations, and shed light on the ongoing challenges for environmental groups in the country.

**Case Study in Citizen Suits: Kalimantan Fires**

Forest fires in 2017 burned throughout Kalimantan, leading to dangerous smoke inhalation, respiratory illness and property destruction throughout the region. In response, communities filed a class action suit against the national government, claiming it was not adequately addressing the disaster. The District Court held that disaster management is the responsibility of the government, and that the plaintiffs had the right to sue to force the government’s hand.

As a result of this ruling, President Widodo was ordered to implement regulations under the Environmental Law to increase public participation in forest fire management, and to create a joint team to handle environmental issues. The Governor of Kalimantan also had to put in place local task forces to prevent forest fires. Appeals by the government were rejected by the High Court and the Supreme Court.41

This decision was a marked success in environmental law. As disasters increase due to warming and flooding, the government can be held accountable for inaction. Environmental groups and communities continue to explore the limits of environmental rights in the court system as they fight polluters across the archipelago.

**Ongoing Challenges: Federalism in Environmental Litigation**

41 Gerungan, Alexandra and Titus, Raditya (2020).
The division between national and regional responsibilities represents a significant complication in environmental litigation. Under the Environmental Law, the national, regional and local governments are responsible for their own planning with regards to the environment and often have separate ministries and administrative bodies to address environmental issues. This can cause duplicity in some cases, and negligence in others, as the two levels of government struggle to share and split responsibilities. The HAkA Foundation’s recent attempt at a class action lawsuit demonstrates this difficulty.

The Leuser Ecosystem, which spans the Indonesian provinces of Aceh and North Sumatra, is the only place where rhinoceroses, elephants, tigers and orangutans live side by side. The ecosystem provides crucial water resources for the region, and is the basis for many of the communities’ livelihoods. In 2013, the Government of Aceh released its Spatial Land Use Plan detailing its zoning recommendations for publicly owned land. Despite the designation of the Leuser ecosystem as “protected” by the national government, the Aceh plan left out Leuser in its conservation zoning, opening the region to more development and road-building. The national government ordered Aceh to revise its plan in 2014, but in 2016, the plan was left unchanged.

In response, nine plaintiffs from Aceh filed a class action suit, asking the national government to enforce its legal authority to protect the Leuser ecosystem. They argued that Aceh’s government had failed to legitimately consult the public, and receive the national government’s approval, before adopting the plan. The case was the first of its kind to be filed in

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42 Gerungan, Alexandra and Titus, Raditya (2020).
Aceh, a region known for conflict and harsh sharia law. However, the Aceh government claimed that its “special status,” awarded after the 2004 peace deal that ended the region’s long civil war, exempted it from federal land designations. In November 2016, the District Court ruled against the plaintiffs. The court held that because Leuser was already federally designated, it did not need to be included in a provincial plan—despite the evidence that the province operated under its own designations. The court also asserted that class action lawsuits could not be filed to challenge provincial zoning laws, because those laws were in a different court’s jurisdiction.46

This decision illustrates the lack of clarity with regard to the federal-provincial division in environmental permitting. Indonesia’s provinces vary widely in their cultural identities, legal traditions, and societal values. The robustness of the citizen suit provisions is also threatened by their lack of enforceability in provincial questions. Contradictory policies open up the possibility for localities and provinces to exploit resources at an unsustainable rate, without a possibility of national intervention. A lack of enforcement capacity and a culture of corruption at all levels of government further complicates the legal landscape.

**Ongoing Challenges: Enforcement and Corruption**

Indonesia’s legal framework lays out a promising path for citizens to protect their environmental rights. However, day to day, the rampant deforestation, forest burning, and pollution present a very different picture. The country’s capacity and willingness to enforce environmental law lags behind its growing need to protect its resources, and an “undercurrent of corruption” stops legal enforcement at the community level.

46 Mongabay (2016).
Evidence suggests that the Indonesian government lacks the resources to enforce its environmental regulations. A 2019 Greenpeace report highlighted that none of the large palm oil companies that were sanctioned as a result of 2015 forest fire scandals had been punished by the national government, and just $5.5 million of the $223 million in fines have been paid.\textsuperscript{47} Most of those same companies were responsible for the huge swaths of forest fires in 2019.\textsuperscript{48} The Ministry of Environment and Forestry has cited a lack of understanding and resources in its law enforcement divisions as an obstacle to enforcement and legal capacity.\textsuperscript{49}

Corruption is a commonly cited problem in Indonesian governmental affairs, and the natural resource sector is particularly vulnerable. From 2017 to 2019, a project called “Indonesia for Sale” investigated corruption in Indonesia’s land use sector. The results found that district chiefs (\textit{bupatis}) across the country were being bribed by palm oil plantations, filing away millions in offshore accounts masked by shell companies in exchange for illegally pushing through permits for forest development. Palm companies would do financial favors for district chiefs’ families and friends, and would finance the election campaigns of corrupt politicians.\textsuperscript{50} This widespread corruption in localities across the country has made environmental protection almost impossible in Indonesia.

The Court system in Indonesia also suffers from corruption. Indonesians rank the courts as the most highly corrupt sector of the government, citing high unofficial costs and permit

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\textsuperscript{48} Ibid.
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delays. Two Constitutional Court judges were convicted of accepting bribes in 2014 and 2017, demonstrating corruption at even the highest judicial level.\textsuperscript{51} Conservationists involved in the HAkA case cited suspicions that the national government was covering for its own interests in deciding the Leuser case.\textsuperscript{52} Corruption throughout the levels of government threatens Indonesians’ ability to enforce their rights and protect themselves from environmental harms.

\textit{Conclusion}

Environmental law in Indonesia faces an uncertain future due to changing priorities of the national government. The October 2019 re-election of President Joko Widodo indicated a renewed focus on development, promising a “simplification of the bureaucracy” and possible rollbacks of environmental laws.\textsuperscript{53} With ongoing corruption and a lack of progress in protecting valuable peatland and forest ecosystems, it is not certain that Indonesia will be able to improve its environmental quality.

However, citizen suits have created new opportunities for communities to take ownership of their environmental rights. Indonesia’s laws provide ample room for nonprofit groups and towns to defend their resources and push for government action. Even losses like HAkA’s leave citizens hopeful—Farwiza Farhan, chairwoman of the HAkA Foundation and one of the nine plaintiffs in the case, stated that the plaintiffs involved felt mystified that their legal action did not attract the ire of local cronies, and emboldened to take further action.\textsuperscript{54} In a country where

\textsuperscript{52} Rogers, Cory (2016).
\textsuperscript{54} Farwiza Farhan (2020). personal testimony.
many citizens feel powerless at the hand of large corporations and corrupt officials, citizen suits give power back to the people most affected by environmental harms.

Works Cited


