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Is a Special Environmental Court Necessary for Civil Lawsuits in Indonesia? A Comparative Study of Judicial Decisions in New Zealand and Hawaii

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ABSTRACT

Purpose of the Study: This research aims to analyze the urgency in forming a special environmental court in Indonesia by analyzing judges' legal decisions in the case of civil liability over environmental destruction. This analysis also compares the legal system in Indonesia with environmental justice models in New Zealand and Hawaii to find the best practices in enforcing environmental justice.

Methodology: The method used was the normative legal research with a legal comparison approach. The data used were in the form of secondary data obtained through literary studies, which were qualitatively analyzed through legal reasoning and the comparison of interstate justice systems.

Results: Research results showed that the general court system in Indonesia is still ineffective in handling environmental cases due to the lack of judges' technical understanding and the lack of a special justice institution handling environmental cases. Meanwhile, New Zealand and Hawaii have shown the effectiveness of their environmental justice systems through the strengthening of technical aspects, institutional independence, and the consistent application of civil liability.

Applications of this Study: This research is beneficial as a recommendation to renew the Indonesian justice system to achieve a more responsive environmental justice system.

Novelty/Originality of this Study: This research's novelty is placed on the analysis of the relationship between judges' legal considerations and the urgency in forming an environmental justice system based on interstate comparison.

Keywords: *Civil Responsibility, Environmental Justice, Hawaii, Indonesia, New Zealand.*

ABSTRAK

Tujuan Penelitian*: Penelitian ini bertujuan untuk menganalisis urgensi pembentukan peradilan khusus lingkungan hidup di Indonesia dengan meninjau pertimbangan hukum hakim dalam perkara pertanggungjawaban perdata atas kerusakan lingkungan. Kajian ini juga membandingkan sistem hukum Indonesia dengan model peradilan lingkungan di Selandia Baru dan Hawaii untuk menemukan praktik terbaik dalam penegakan keadilan lingkungan.*

Metode*: Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perbandingan hukum. Data yang digunakan berupa data sekunder yang diperoleh melalui studi kepustakaan yang dianalisis secara kualitatif melalui penalaran hukum dan perbandingan sistem peradilan antarnegara.*

Hasil penelitian*: Hasil penelitian menunjukkan bahwa sistem peradilan umum di Indonesia masih belum efektif dalam menangani perkara lingkungan karena kurangnya pemahaman teknis hakim dan belum adanya lembaga peradilan yang khusus menangani kasus lingkungan. Sebaliknya, Selandia Baru dan Hawaii telah menunjukkan efektivitas peradilan lingkungan melalui penguatan aspek teknis, independensi kelembagaan, dan penerapan pertanggungjawaban perdata yang konsisten.*

Penerapan Penelitian: *Penelitian ini bermanfaat sebagai rekomendasi pembaruan sistem peradilan di Indonesia menuju keadilan lingkungan yang lebih responsif.*

Kebaruan/Orisinalitas: *Kebaruan penelitian ini terletak pada analisis hubungan antara pertimbangan hukum hakim dan urgensi pembentukan peradilan lingkungan hidup berdasarkan perbandingan lintas negara.*

Kata Kunci: *Pertanggungjawaban Perdata, Peradilan Lingkungan, Hawaii, Selandia Baru, Indonesia.*

INTRODUCTION

All countries in the globe are currently faced with the issues of climate change and environmental destruction (Santos & Bakhshoodeh, 2021; Vinata & Kumala, 2023). Many factors cause climate change, such as the increasing population growth and the use of technologies that lack environmental friendliness (Muzayanah et al., 2022; Saha et al., 2021). Governments can overcome these issues by enacting policies through judicial decisions based on the sustainable protection of natural resources. However, the enacted judicial decisions must obtain support in the realm of law enforcement, which is often left ignored. There is a tendency for one-sided support for human beings while neglecting nature. On the other hand, the rights of many people who do not excessively use natural resources are also impacted (Scheidel et al., 2020). Every person has the right to protection from environmental changes and destruction. Unfortunately, these rights have been violated by greedy people who commit ecological monopoly (Islam et al., 2022). In this case, the environmental law has a vital role in protecting the environment.

The development of environmental laws in various countries shows that the resolution of environmental disputes, especially in the civil realm, has a higher demand for the integration of ecological, scientific, and legal aspects (Xu & Idris, 2023). Environmental issues are not only linked to administrative violations, but also regard civil liability, which has implications on the continuity of humans' and nature's survival. In this context, judges have a highly strategic role as the legal considerations written in their decision will determine the direction of environmental protection and the achievement of ecological justice. These two elements are the most important parts in protecting the environment.

There have been many cases of environmental destruction in Indonesia, but the ones that enter the civil realm often end without adequate environmental restoration. One of the examples can be found in the Decision of the District Court of South Jakarta No. 284/Pdt.G/2007/PN.Jkt.Sel on the case of the Indonesian Environmental Forum against the Indonesian government. In this case, judges rejected most of the Plaintiff's argument and did not consider the principle of strict liability that became the basis of the lawsuit. This decision shows that judges have a weak understanding of the absolute liability concept. Thus, the

environmental law enforcement tends to stop at the formal and administrative aspects without touching ecological justice, which should become the main goal. This case simultaneously shows that there is a lack of uniform interpretation of civil liability in the context of environmental protection.

Different from Indonesia, New Zealand has long developed a progressive environmental law system through the formation of the Environment Court (Angstadt & Schink, 2023), a special justice institution that has the authority to handle cases related to the management of environmental resources and sustainable development. One of the important cases that became a milestone in the consideration of environmental law in New Zealand is the Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd [2014] NZSC 38 case. In this case, New Zealand's Supreme Court rejected the proposal for the development of a large commercial salmon pond in Marlborough Sounds, as it was deemed to violate the sustainable management principle regulated in the Resource Management Act 1991 (RMA).

In this case, judges did not only interpret the regulations in a textual manner, but also considered the balance between economic interests and environmental protection. This consideration states that the sustainability principle is not merely a normative discourse, but must concretely be determined to prevent excessive natural resource exploitation. This decision becomes an important reference for the environmental justice system in the world, including for Indonesia, that until now still places environmental sustainability as a secondary issue under economic interests.

Meanwhile, in Hawaii (United States), the strengthening of environmental justice has been carried out through the formation of Environmental Courts in 2015 based on the Hawaii Revised Statutes (HRS §604A). This court strengthens the environmental law with its implementation that focuses on the enforcement of civil liability and the prevention of ecological destruction. One of the important decisions that illustrates judges' role in enforcing environmental responsibility is County of Maui v. Hawaii Wildlife Fund (No. 18–260, decided April 23, 2020). In this decision, the United States Supreme Court declared that the disposal of liquid waste to land that functionally flows to bodies of water is still deemed a violation of the Clean Water Act.

In this case, judges' legal considerations expand the scope of environmental responsibility by confirming the principle of a functionally equivalent standard, that civil liability can be applied even though it causes an indirect causality effect. This approach reflects the commitment towards the precautionary and ecological protection principles in a substantial

manner. Through its integrated environmental justice system, Hawaii has succeeded in building a law enforcement model that combines the scientific, social, and legal aspects in one framework of ecological justice.

These three cases, i.e., Indonesian Environmental Forum against the Indonesian government; Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd; and County of Maui v. Hawaii Wildlife Fund, show basic variations in how judges define legal civil liability over environmental destruction. In Indonesia, judges are still bound to the formal approach and lack a special institution handling environmental cases. Meanwhile, New Zealand and Hawaii have actually placed environmental judges in the frontline in balancing the interests of development and ecosystem protection.

From the legal comparison perspective, these differences lead to the fundamental question on the effectiveness of Indonesia's general court system in guaranteeing the enforcement of environmental justice, especially when faced with the complexity of scientific and multidisciplinary evidence. The fact that Indonesia still does not have a special justice environmental system leads to inconsistencies in judges' legal considerations, where some decisions tend to favor economic and administrative interests as opposed to the principle of environmental responsibility.

Many previous research papers have discussed the issue of civil liability in environmental law, but have not comprehensively reviewed judges' legal considerations in the inter-jurisdiction context. Wibisana (2017) analyzed the environmental law enforcement through instruments of civil liability, but did not touch on the aspect of comparison between the civil law and common law systems. Kowalska (2023) described the role of green courts in building environmental justice in India and New Zealand, but it placed a greater focus on institutional arrangements, rather than on the analysis of judges' legal considerations. Meanwhile, Wright (2023) analyzed the effectiveness of environmental courts in Hawaii and Vermont in enforcing environmental law, but did not consider their relevance to developing countries like Indonesia. Therefore, this research presents novelty in two different ways: *first,* by analyzing judges' legal considerations in environmental civil cases in three different legal systems, and *second,* by assessing the urgency in forming a special environmental justice system in Indonesia based on the best practices in New Zealand and Hawaii.

This research also offers a conceptual contribution towards the strengthening of the environmental justice system in Indonesia through the development of a legal system that is

more adaptive towards climate change and global ecological challenges. The legal comparison approach in this research aims to find a civil liability model that not only emphasizes the compensation aspect but also guarantees environmental remediation as a part of legal liability.

In line with this objective, this research is focused on three main issues, namely: (1) analyzing the forms and characteristics of environmental issues happening in Indonesia, New Zealand, and Hawaii, as well as the legal and policy factors influencing them; (2) analyzing the regulations and application of civil legal liability in the substance of environmental law in these three countries; and (3) comparing civil decisions related to the environment in Indonesia, New Zealand, and Hawaii, as well as their implications towards the development of the environmental justice system.

This research is expected to provide strategic recommendations on the formation of the environmental justice system in Indonesia, especially in strengthening the capacity of judges and justice institutions in handling environmental issues in a more scientific, transparent, and just manner. By studying the practices of environmental justice systems in New Zealand and Hawaii, this research strives to build a justice system model that not only enforces the law but also guarantees the sustainability of the environment as a form of justice for the current and future generations.

RESEARCH METHOD

This was a normative or non-doctrinal research which focused on the analysis of written norms originating from judicial decisions, legal policies, and other written laws (Sudarwanto et al., 2022). This research employed the legal comparison approach between Indonesia, New Zealand, and Hawaii (a state in the United States). It mostly employed secondary data, which were obtained from browsing the internet with the aid of the Publish or Perish software. The obtained data were not directly used as data sources but were firstly selected though criteria tests to select data which were relevant to the theme of the legal research that the authors chose. In conducting data analysis from these data sources, the authors utilized the PRISMA method to ease the process of choosing data.

The choosing of the PRISMA method in displaying data was based on the ethics in writing quantitative research. Even though in legal research, PRISMA is still seldom used, its use may help researchers deliver the chosen data and show the origins of the data. It also allows the display of much data that is included in the inclusion or exclusion criteria from the research theme that the researchers chose.

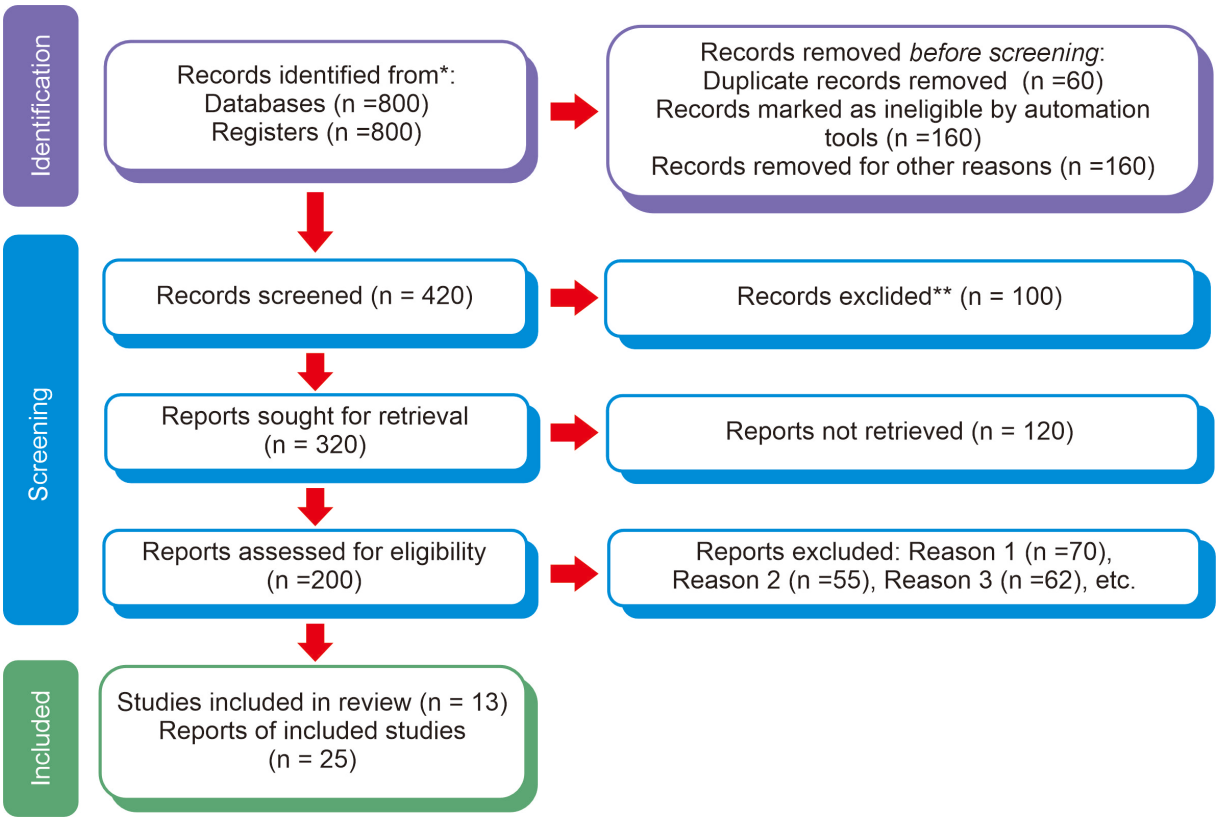

Figure 1. Identification of Studies via Databases and Registers

The data in this study were the results of research conducted by previous researchers related to the relationship between cognitive aspects of a person's behavior toward the environment. In determining the data, the inclusion criteria are shown in Table 1.

Table 1. Aspects and criteria in collecting data

Aspect	Inclusion	Exclusion	Details
Time	From 2012 to 2025	Other	The year range used in searching for articles
Language	English/Indonesian	Other	The language used in the article
Data Type	Quantitative/normative	Other	Data research
Theme	Is a special environmental court necessary for civil lawsuits in Indonesia? An analysis of the comparison of legal systems in Indonesia, New Zealand, and Hawaii	Other	Specific theme considered in data collection

Even though this was normative legal research with a legal comparison approach, the authors tried to explain the process of browsing data and the data sources that become the legal basis for finding the newest legal concept. From the data above, the authors have found articles

linked to the research, which regard whether or not a special environmental court is necessary for civil lawsuits in Indonesia. It was a comparative analysis of legal systems which used the keywords of environment, environmental justice, Indonesia, New Zealand, and Hawaii. From these keywords, the authors found eight hundred relevant articles. Then, the authors chose data based on the inclusion and exclusion criteria and found twenty-five articles, which were then used in building the new legal research concept.

RESULTS & DISCUSSION

1. Environmental Issues in Indonesia, New Zealand, and Hawaii

The shift in the policy dynamics in every country brings impacts towards the fate of that country's inhabitants, including the fate of the environment. Indonesia is one of the countries in Southeast Asia that faces endless environmental issues, which are annually predictable (Lestari et al., 2020). The behavior of neglecting the environment is a serious factor in Indonesia. Indonesian politics that tend to be directed to massive natural resource exploitation is a situation that lacks solutions (Cisneros et al., 2021). A real example of politics that lack environmental friendliness is the massive shifts in forest and land use, turning them into residential areas and oil palm plantations. Even the Indonesian President tends to support such activities. In his speech, the Indonesian president prefers shifting forests into oil palm plantations without caring about the impacts of deforestation.

This is a statement that can be misused by some people to support the existence of the decrease in land composition in the Indonesian territory. It must be known that forests have a crucial role in maintaining life, keeping nature's role, and maintaining balance in the world. Norway's International Climate and Forest Initiative in 2023 released that Indonesia's forests were estimated to experience a decelerating deforestation by 8%. However, even with this deceleration, Indonesia faced a new issue, i.e., the building of a new capital city that eradicates part of the forest area in Kalimantan Island, a project which was then cancelled. The development of infrastructure also threatens the environment of the ecosystem and the endemic habitat of the surrounding area (Kaszta et al., 2024; Spencer et al., 2023). On the other hand, the destruction of Indonesia's forest areas led to the emergence of conflicts between the government and customary communities, such as what happened in Papua. There was a conflict between the Awyu customary community and the Moi tribe against oil palm companies regarding the permits for changes in the function of their forests.

Apart from the issue of deforestation to open new land, other issues that Indonesian people face in the realm of environmental destruction are the issues of illegal mining and river and marine pollution. Illegal mining is an issue that is closely linked to deforestation. Apart from opening land for oil palm plantations, deforestation is also carried out to open new illegal mines. This has happened in several Indonesian islands, such as Kalimantan and Sulawesi, where illegal mining often happens. In Kalimantan, deforestation happens to support the establishment of illegal mining sites. According to Indonesia Statistics, there are fluctuations in the increase in illegal mines in Kalimantan, as shown in Figure 2.

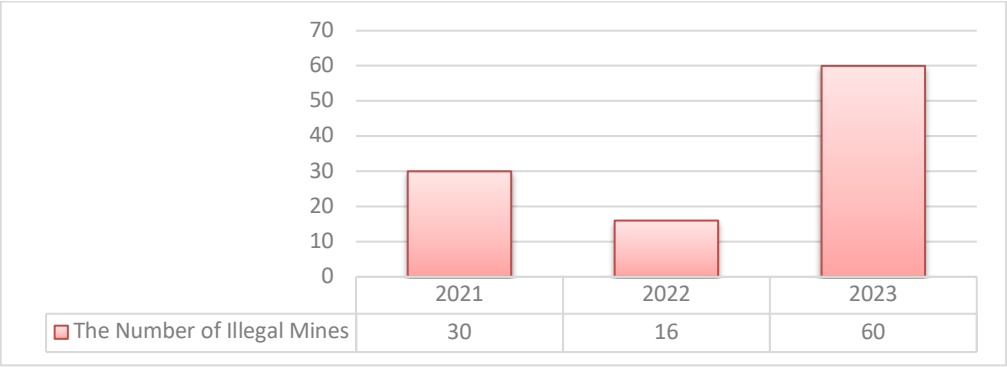

Figure 2. The Number of Illegal Mines in East Kalimantan

The rampant occurrence of illegal mining sites cannot be separated from the weak law enforcement that fails to have a deterrent effect in cases of illegal mining, bringing devastating impacts to many parties. Destruction due to illegal mining is part of the "Routine Activity Theory" scheme, which explains that illegal mining happens due to the support of competent perpetrators, accurate targets, and the lack of competent law enforcing apparatuses. These three reasons are closely linked to the crime of illegal mining in Indonesia in general.

Apart from that, another form of environmental destruction is the case of river pollution in some parts of Indonesia. An example of this is the river pollution case in the Bengawan Solo River (East Java and Central Java Provinces), which has a medium level of pollution. The situation is always the same: in the dry season, the river is polluted by the domestic waste from micro, small, and medium enterprises which produce beach fabric. Then, in the rainy season, it is polluted by domestic waste from farms and alcohol companies. The routine pollution of the Bengawan Solo River has obtained special attention from the regional government and the central government, considering that the Bengawan Solo River is one of the ancient rivers in

Indonesia that supports the life of many creatures. It is even one of the supporters of water springs in East Java and Central Java Provinces. However, people's lack of awareness of domestic waste processing and the minimum availability of wastewater processing installations leads to the disposal of waste to the streams of the Bengawan Solo River.

Indonesia and New Zealand have different conditions, including in the aspects of climate and natural conditions. Even so, both of these countries are archipelagos located in the Pacific Ocean. The environmental condition of New Zealand is starkly different from that of Indonesia, but New Zealand has also issued warnings on the environmental conditions that pose a vulnerability towards the human health. In 2016, the New Zealand government found public health issues caused by air pollution from motorized vehicles and smoke from residential housing. Due to this, the New Zealand government issued a policy to overcome it by supporting electric vehicles to decrease air pollution, especially to decrease the CO_2 emission by up to 80% (Reguyal et al., 2023). Another issue linked to the environment regards the issue of pollution, which originates from plastic waste, which then produces microplastics. Even though research in 2021 found that microplastics in some New Zealand waters have not been significantly identified, various parties have tried to eradicate them. The microplastics in New Zealand originate from the indiscriminate disposal of plastic waste and plastic waste originating from marine areas (Peryman et al., 2024).

Hawaii has similar environment-related issues as those in Indonesia and New Zealand, i.e., the issue of indiscriminate plastic waste disposal. Currie and Stack (2021) state that one of the environmental dangers that can threaten Hawaii is cigarette filters, as they cannot be directly recycled by nature and needs the help of human beings (Currie & Stack, 2021). Apart from that, there are pros and cons regarding the controversy of artificial aquariums which were made solely for economic profits and were not for the sustainable preservation of natural resources (Schaar, 2021).

Another issue that is currently being faced in New Zealand and Hawaii is climate change that brings detrimental effects towards the threats of environmental destruction (Macinnis-Ng et al., 2021). The effect of climate change can be strongly felt in several areas in New Zealand, such as strong winds, land slides, large floods, and river floods. As a consequence, the New Zealand government keeps on conducting evaluation to all elements that cause climate change. Among the factors causing climate change are greenhouse gases and emissions from the agricultural sector (Government of New Zealand 2023). Hawaii faces challenges on forest

management that can be used to buffer climate change (Barton et al., 2021), but the forest management in Hawaii faces challenges linked to changes of its paradigm.

2. Civil Legal Liability in Environmental Legal Substance in Indonesia, Hawaii, and New Zealand

Indonesia and New Zealand both have civil liability to overcome environmental destruction due to companies' unwise actions. Even so, these two countries show different approaches. The long history of environmental protection in Indonesia is marked by the birth of Law No. 4 of 1982 on the Environment. This regulation was the starting point where Indonesia started to seriously manage and protect the environment in its territory, even though, in its trajectory, the Environmental Law has experienced several amendments. This was because of annual changes in the pattern of environmental crimes. Apart from that, policies of the Indonesian government that are always influenced by immature politicians led to the creation of regulations that only function as a tool of legitimacy.

Among the substance of the environmental law is sanctions which aim to file a lawsuit, ask for compensation over losses, revoke permits, and apply criminal sanctions. At the empirical level, some environmental disputes that entered the courts include civil liability, where these lawsuits emphasize a compensation effect due to the actions carried out by a company that committed an element of intentional error. The pattern of civil liability/strict liability was first known in Indonesia through an international convention, namely the Civil Liability Convention for Oil Pollution Damage in 1969, which was then taken and ratified into the Decision of the President No. 18 of 1978.

In Indonesia, absolute civil liability is part of the legal instrument that is always present in the Law on the Environment and several other regulations. Its meaning must be described into two discussions, namely law-violating actions and strict liability. In its trajectory, the application of these two principles leads to confusion, because in several lawsuits and decisions in court, law-violating actions and strict liability are often used interchangeably. This includes those included in the lawsuit or those in judicial decisions that have the characteristic of accepting or rejecting. Further, the evidencing process of the strict liability element in Indonesia must enter the part on law-violating actions. This assumption is a different thing when one compares the term *strict liability* in several countries that apply the common law or the civil law systems. Without having to enter the element of law violating actions, strict liability can carry out its role in supporting civil lawsuits in environmental cases without having to fulfill

the element of law-violating actions. It is crucial to interpret the substance in civil lawsuits to anticipate a multi-interpretation of different arguments. In the civil lawsuit of environmental cases, strict liability is a powerful instrument when interpreted in a good and correct manner. Defining strict liability is the same as sensing that in absolute responsibility, a person who gives compensation does not need to give evidence over the element of error, as in the form of law-violating action. It is enough to narrate the facts of the situation of destruction or harm experienced by strengthening the existence of a clause on the causality relationship.

Apart from strict liability, civil liability that is part of environmental protection is a law-violating action. The law-violating action is adopted into environmental protection because the description of law-violating action in the Civil Code states that, “Every action that violates the law and leads to harm to other people obliges the people who cause that harm to give compensation due to their errors causing that harm”. This phrase is often used by society to carry out actions characterized by environmental protection. There are many types of environmental crimes in Indonesia. However, the existence of the description on law-violating actions gives society an alternative to demand their rights, considering that environmental crimes in various areas in Indonesia have a similarity, namely the issue of the intentional disposal of industrial waste to rivers or public spaces, which then leads to great long-term harm.

Emphasizing compensation is a realistic method, even though the Law on Environmental Protection and Management regulates alternative sanctions, including revocation of permits or criminal sanctions. However, if one uses the sanction of permit revocation and criminal sanctions, the responsibility for the impacts of environmental destruction is no longer in the hands of the perpetrators. For instance, there are cases where perpetrators of illegal mining leave the excavated soil without conducting reclamation to return it to its original state. These large mines become quarries, which led to casualties, especially local children who drown when playing in the ex-mining area. Civil liability has a great role if it is truly carried out by defendants, and if law enforcers carry out a serious emphasis on the implementation of these sanctions.

Civil liability is also implemented in New Zealand and its implementation is regulated in several laws related to the causality relationship. This includes environmental cases, hazardous waste cases, construction cases, and health protection cases. The history of civil liability started when New Zealand becomes a country which separates itself from British rule, building its own government, and then creating its own constitution. New Zealand is a country that applies the common law system. A special characteristic of countries with the common law system is that

they were previously commonwealths of the British Empire. Several regulations that have been used or are being used that contain civil liability are:

A. Resource Management Act 1991 (RMA);
B. Natural and Built Environment Act 2023 (NBA);
C. Environmental Reporting Act 2015;
D. Emissions Trading Scheme;
E. Heritage New Zealand Pouhere Taonga Act 2014; and
F. Conservation Act 1987.

In their application, the six regulations above have different functions and scopes. However, the content of regulations on civil liability has the same function, namely a lawsuit, which is directed to compensation due to the element of intent or the element of neglect in carrying out a particular action. An example of the new regulation that amends the Resource Management Act 1991 (RMA) is the Natural and Built Environment Act, which focuses on environmental management and protection. It includes the simplification of permits, the integration of artificial and existing nature, community participation, and responsibility for environmental changes. Changes happen because New Zealand's needs have changed. These changes occurred due to an increase in population and an increase in the population density level. New Zealand is one of the countries that pays the most attention to biodiversity. Its goal is to maintain the environmental sustainability that becomes a source of this country's income. In New Zealand, civil liability has the function to give society room for participation in supporting environmental protection, considering that there are many issues or violations due to industrial activities that are excessive in their operations.

The environmental law system in the state of Hawaii, the United States, shows a normative configuration that explicitly opens room for civil liability over environmental destruction. This concept is in line with the orientation of Hawaii's environmental policies, which emphasize the protection of vulnerable land and marine ecosystems, as well as reflecting respect over the cultural values of Native Hawaiians who historically have spiritual and ecological relationships with nature.

Since the implementation of the Environmental Courts based on Hawaii Revised Statutes (HRS) §604A in 2015 (Wright, 2023), the Hawaii court jurisdiction has experienced a specialization in the handling of civil and criminal environmental cases. This court handles a wide spectrum of cases, including water resource pollution, the violation against spatial and

land usage regulations, as well as the disposal of hazardous substances or waste to the environment (Judiciary, 2021).

In the framework of the civil law, the existence of stipulations in the HRS §128D and §128E gives a strong normative basis for the state to sue legal subjects causing environmental degradation. This form of liability encompasses the obligation to bear the burden of remediation costs, the payment of administrative fines, as well as the potential of additional civil sanctions (punitive damages) in cases where violations are intentionally carried out (wilful misconduct) or through gross negligence. As an illustration, HRS §128D-8 regulates that every party that fails to comply with the administrative orders of environmental authorities can be imposed with sanctions in the form of fines amounting to three times the total needed cost for environmental recovery.

Interestingly, in the context of the joint and several liability principles, Hawaii still maintains its application in a limited manner, including in environmental cases. Based on stipulations of HRS §663-10.9, this principle allows plaintiffs (both individuals and the government) to fully sue one or more defendants for all losses without having to calculate the proportion to each party's contribution of the incurred losses.

An important precedent in the development of the jurisprudence on environmental responsibility can be seen in the Court Decision (Number 18–260, Argued November 6, 2019, Decided April 23, 2020) of County of Maui v. Hawaii Wildlife Fund. In this decision in 2020, the United States' Supreme Court stated that the disposal of wastewater to land is functionally equivalent to direct disposal to bodies of water and still requires permits based on the Clean Water Act. This decision widens the scope of federal legal instruments in regulating and acting upon indirect pollution that brings significant impacts to the marine environment (Supreme Court, 2020).

Further, the lawsuit of the City and County of Honolulu against some large oil companies over the preliminary assumption of their contribution towards the climate crisis becomes an important milestone in the articulation of climate-change-based civil liability. In the Decision of the Supreme Court No. 153 Hawai‘i 326, 537 P.3d 1173 (Haw. Oct 31 2023) of 2024, it is stated that in the definition of environmental law, greenhouse gas emissions can be categorized as pollutants. Thus, it allows the application of civil lawsuit instruments based on common law torts, such as public nuisance and the failure to warn. This decision not only expands the scope of civil liability on industrial actors but also confirms the active role of the state court in acting upon the complexity of global environmental issues (Supreme Court, 2024).

In New Zealand's environmental justice system, civil lawsuits have also been filed several times. One of the environmental issue lawsuits in the civil scope is Smith vs Fontera. This case's issue of dispute started with the existence of activities that are deemed to threaten the occurrence of climate change. This lawsuit was filed by Mile Smith and was directed to seven companies which were deemed to produce greenhouse gas emissions. These seven companies were deemed negligent, harming public interests. Interestingly, even though this lawsuit was in the end rejected, it was filed in the environmental justice system rather than the common justice system (Bookman, 2025).

It can be seen that Indonesia, New Zealand, and Hawaii have different legal systems. Interestingly, all of them use the system of a lawsuit for losses or civil liability. Environmental damages do require reclamation to protect the future of human beings and the environment. This is because consciously or not, the lives of human beings 100% depend on a good environment. Environmental damages will disturb the life of human beings, including in their daily lives and survival, as their food resilience depends on it (Hernanda et al., 2025).

3. A Comparison of Environmental Decisions in Indonesia, New Zealand, and Hawaii and Their Implications on the Development of Environmental Justice

Some countries in the world are already familiar with and have applied the environmental justice system, such as India, Australia, New Zealand, Brazil, and Scotland. These countries have their own reasons for building legal systems that are sustainable for the environment. For instance, Scotland argues that it aims to develop environmental protection; provide free consultation regarding environmental protection to individuals, groups, and communities; as well as provide certainty to society that the state cares for the environment.

The next country is New Zealand. Its aim in establishing the environmental justice system is to provide several perspectives: (1) appeals, (2) listening, and (3) law enforcement. New Zealand started to build its environmental justice system in 1996. New Zealand's environmental justice system operates by facilitating society in filing their cases in several cities, such as Auckland, Christchurch, and Wellington. Just like Indonesia, after filing a lawsuit, to have their cases processed, New Zealand citizens must wait for their turn. The trial will be organized in the place that is closest to the location where the community lives.

In the current era, the environmental justice system in New Zealand has a total of ten judges, consisting of the Main Judge of the Environmental Justice, seven Environmental Judges, and two Alternative Environmental Judges. Apart from that, there are fifteen Environmental

Commissiaries, which consist of twelve Commissiaries and three Deputy Commissiaries. These justice systems carry out the functions of justice and technical expertises as they consist of individuals who have special knowledge in their fields (Kowalska, 2023).

After consulting with the Minister of Environment and the Minister of Maori Affairs, Environmental Judges are appointed by the General Governor based on the recommendation of the Attorney General. Environmental Judges have a life-long serving period until they reach the age of compulsory retirement. This life-long serving period is deemed an important principle in the legal sector to maintain the independence and integrity of judges. Meanwhile, Environmental Commissiaries who also have a position in the court assembly are appointed for a serving period for a maximum of five years. However, they can be reappointed after their serving period ends. The characteristic of environmental justice in New Zealand is that it regulates the implementation process of cases that are deemed according to its authority, except for cases that are regulated outside of its authority according to the RMA. This explains that the specialty of a court is crucial to yield a judicial decision that provides both parties with justice (Kowalska, 2023).

The Environmental Court of New Zealand have accepted various lawsuits, starting from permits to problematic natural resources, developmental projects that violate zonations, and administrative permits from companies that violate the environment. Seeing the scope of the authority and the procedural method in the environmental court, New Zealand proves that the urgency to form a special environmental court is crucial to be carried out. New Zealand has biodiversity, just like Indonesia. Thus, its government realizes the importance of biodiversity that must be protected for the interest of the future (Varshney et al., 2024).

On the other hand, in the case of civil liability lawsuit of a special law on the environment, namely RMA, it has provided a special room by containing a special article in section 340, which explains the issues which can be filed using the civil lawsuit through the strict liability in sections 9 (Restrictions on use of land), 11 (Restrictions on subdivision of land), 12 (Restrictions on use of coastal marine area), 13 (Restriction on certain uses of beds of lakes and rivers), 14 (Restrictions relating to water), and 15 (Discharge of contaminants into environment). Even though there have been pros and cons in New Zealand regarding the issue of civil liability lawsuits between Smith vs Fonterra, in that case, the New Zealand court system gives an opportunity for its people to file a civil lawsuit. In this case, it can be concluded that New Zealand citizens have a high participation rate in building a clean environment, which is also supported by the government by giving room to its people. In the realm of environmental

protection, this type of lawsuit is not a new thing. Indonesia adopts this method in carrying out environmental reclamation to protect it from destruction. New Zealand's interest in giving room to civil liability lets it push polluters to take an active role in becoming responsible for what they have done. The New Zealand government can create justice through the environmental court. Civil liability is an instrument that plaintiffs use to ask perpetrators to be responsible for the destruction that they caused. If perpetrators of environmental damage are only imposed with criminal sanctions, who will be responsible for restoring them?

The previous discussion has described the issue of the rejection of Mr Smith's lawsuit against seven companies. However, if one refers to the lawsuit filed by Mr Smith with the registration number CIV-2019-404-001730 [2020] NZHC 419, it is a correct action. The lawsuit material of Mr Smith sues activities which leads to the increase in greenhouse gases and climate change, which is difficult to be recovered due to global warming, especially with the fact that it has been agreed upon that the Net Zero Carbon program must be achieved by 2030. The filed lawsuit also contains the element of compensation to seven companies. Even though that lawsuit was rejected, the authors believe that this lawsuit was a correct action. It is appropriate for a citizen to demand his rights, and it has been filed to the correct place, namely, the environmental justice.

When comparing this to the Decision of the District Court of South Jakarta with the Registration No. 284/Pdt.G/2007/PN Jaksel, in the material of the lawsuit, the Indonesian Environmental Forum sued using the law-violating action and strict liability principles. But the judges' final decision did not touch the foundation of the plaintiff's lawsuit on strict liability (Wibisana, 2017).

The criminal justice in Hawaii did not stand as a separated entity, but it is a court in the unified court system which is given a special jurisdiction to decide upon environmental cases. This jurisdiction encompasses both civil and criminal cases, including violations against the law on waste management, the water and air quality, land usage, the protection of wildlife, as well as violations against zoning and environmental permit policies. The environmental justice system in Hawaii started in 2015 (Hawai'i State Judiciary, 2017).

One of the advantages of this system is the existence of a concentration on a holistic approach in handling environmental cases. Judges who handle these cases are specially appointed and trained to understand the technical and scientific characteristics of ecological issues, such as the impacts of waste disposal, changes in land usage, or coastal habitat pollution.

Therefore, the environmental justice system in Hawaii allows the application of the ecological justice and restorative justice principles in dispute resolution.

In its practice, Environmental Courts in Hawaii handle cases based on the legal stipulations of the state, such as HRS §128D (Hawaii Environmental Response Law) and §128E (State Emergency Response Law), as well as apply the general principles of civil and criminal law. This court also often interacts with federal legal stipulations, such as the Clean Water Act and Clean Air Act, especially in the case of conflicts of jusrisdiction or overlap between state and federal authority (Wilson, 2015).

A case in Hawaii, which was decided by the Environmental Court, was the case of Kaupiko v. Board of Land and Natural Resources, with the Docket Number (Supreme Court Hawai‘i): SCAP-22-0000557 and Number in the circuit court (First Circuit Environmental Court): 1CCV-21-0000892. In that case, this decision contains an end decision in the Environmental Court (Circuit Court Hawai‘i), which gives a summary of judgment to the plaintiffs, stating that the permit is invalid as it does not fulfill the requirements of HEPA. Unfortunately, in that decision, there is no decision that imposes civil compensation. However, the existence of Environmental Courts can give a perspective on the importance of Environmental Courts. Judges also show how the mechanism of civil-administrative litigation may be used to enforce the obligations of environmental law and inhibit projects that violate legal procedures.

The comparison of these three decisions can represent the fact that the materials of civil lawsuit in the realm of environmental destruction has not been understood by judges who are not accustomed to handling environmental cases. Even though the case of Mr Smith Vs Fonterra was rejected, in 2024, the New Zealand Supreme Court stated that the lawsuit material of Mr Smith has fulfilled the element of neglect and disturbance; thus, the lawsuit must be processed. This also happens in the case of Kaupiko v. Board of Land and Natural Resources, which was decided by the Environmental Courts, where there have not been any decision materials related to civil liability. However, if the decision was not complied with, judges give plaintiffs the room to follow it up with a compensation lawsuit.

Cases of environmental recovery in Indonesia, New Zealand, and Hawaii have led to various problems. The instrument of civil liability and the role of the Environmental Court are hoped to decrease the impact of these damages. It is also hoped that the existence of the environmental justice system may ease society in filing a civil lawsuit against environmental damages.

The formation of the environmental justice system in Indonesia will aid the special handling of environmental cases, just like in New Zealand and Hawaii, namely judges' understanding towards environmental issues can become an answer in building environment-based justice. Justice systems with a special status have existed since a long time in Indonesia, including the military justice system, taxation justice system, trade justice system, etc. Thus, the formation of a special justice system for the environment is highly awaited. The formation of a special justice system on the environment is an expectation that has long been awaited by environmental activists and academicians who work in the environmental sector. The problems of inappropriate sanctions, such as the application of civil liability sanctions, can be applied in a correct and good manner by judges who specially understand the substance of the environmental law, civil law, and the environmental justice system.

CONCLUSION

Civil liability has a crucial role in enforcing environmental law, but its application in Indonesia is still weak due to the lack of a special justice system on the environment. This is seen from the Decision of the District Court of South Jakarta No. 284/Pdt.G/2007/PN.Jkt.Sel (the case of the Indonesian Environmental Forum vs the Indonesian government), where the principle of strict liability was not applied in a consistent manner. Meanwhile, New Zealand, through the case of Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd [2014] NZSC 38 and Hawaii, through the County of Maui v. Hawaii Wildlife Fund (2020), show the success in applying the ecological justice principle through the special environmental justice system. Based in this comparison, the formation of the environmental justice system in Indonesia becomes a strategic step to strengthen the application of civil liability, increase ecological justice, and guarantee the sustainable recovery of the environment for the sake of future generations.

REFERENCES

Angstadt, J. M., & Schink, M. S. (2023). Specialist environmental courts and tribunals : A systematic literature review and case for earth system governance analysis. *Earth System Governance*, *18*(August), 100192. https://doi.org/10.1016/j.esg.2023.100192

Barton, K. E., Westerband, A., Ostertag, R., Stacy, E., Winter, K., Drake, D. R., Fortini, L. B., Litton, C. M., Cordell, S., Krushelnycky, P., Kawelo, K., Feliciano, K., Bennett, G., & Knight, T. (2021). Hawai'i forest review: Synthesizing the ecology, evolution, and conservation of a model system. *Perspectives in Plant Ecology, Evolution and Systematics*,

52, 125631. https://doi.org/10.1016/j.ppees.2021.125631

Bookman, S. (2025). Smith v Fonterra and the Climatisation of Tort Law. *The Modern Law Review*, *88*(1), 192–204. https://doi.org/10.1111/1468-2230.12908

Cisneros, E., Kis-Katos, K., & Nuryartono, N. (2021). Palm oil and the politics of deforestation in Indonesia. *Journal of Environmental Economics and Management*, *108*, 102453. https://doi.org/10.1016/j.jeem.2021.102453

Currie, J. J., & Stack, S. H. (2021). Getting butts off the beach: Policy alone is not effective at reducing cigarette filter litter on beaches in Maui, Hawai'i. *Marine Pollution Bulletin*, *173*(PA), 112937. https://doi.org/10.1016/j.marpolbul.2021.112937

Goverment Newzealand. (2023). *Air quality*. Www.Tewhatuora.Govt.Nz. https://www.tewhatuora.govt.nz/health-services-and-programmes/environmental-health/built-environment/air-quality

Hawai'i State Judiciary. (2017). *Environmental Court Hawai*. Hawai'i State Judiciary. https://www.courts.state.hi.us/special_projects/environmental_court

Hernanda, T., Setiawan, S., Nugroho, P., Wahyudin, W. C., Nuriyatman, E., Izzati, T. I., Nisa, F. K., & Info, A. (2025). IOT- Based Legal Policy In Co_2 Emission Safety Control To Support. *Jurnal Ilmiah Ilmu TerapanUniversitas Jambi*, *9*(4), 1434–1443. https://doi.org/DOI. 10.22437/jiituj.v9i4.48755

Islam, M. S., Samreth, S., Islam, A. H. M. S., & Sato, M. (2022). Climate change, climatic extremes, and households' food consumption in Bangladesh: A longitudinal data analysis. *Environmental Challenges*, *7*, 100495. https://doi.org/https://doi.org/10.1016/j.envc.2022.100495

Judiciary, H. S. (2021). *Hawai'i State Judiciary Annual Report FY 2020-2021.* Judiciary, Hawai'i State. https://www.courts.state.hi.us/special_projects/environmental_court

Kaszta, Z, Cushman, S. A., Hearn, A., Sloan, S., Laurenc, W. F., Haidi, I. A., & Macdonald, D. W. (2024). Projected development in Borneo and Sumatra will greatly reduce connectivity for an apex carnivore. *Science of The Total Environment*, *918*.

Kowalska, S. (2023). The role of 'green'courts in shaping environmental justice in India and New Zealand. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, *85*(3), 13–26. https://doi.org/10.14746/rpeis.2023.85.3.02

Lestari, P., Trihadiningrum, Y., Wijaya, B. A., Yunus, K. A., & Firdaus, M. (2020). Distribution of microplastics in Surabaya river, Indonesia. *Science of the Total Environment*, *726*, 138560. https://doi.org/10.1016/j.scitotenv.2020.138560

Macinnis-Ng, C., Mcintosh, A. R., Monks, J. M., Waipara, N., White, R. S. A., Boudjelas, S., Clark, C. D., Clearwater, M. J., Curran, T. J., & Dickinson, K. J. M. (2021). Climate-change impacts exacerbate conservation threats in island systems: New Zealand as a case study. *Frontiers in Ecology and the Environment*, *19*(4), 216–224. https://doi.org/10.1002/fee.2285

Wright, M. (2023). Specialized State Environmental Courts in the U.S.: The Experience of Vermont and Hawai'i. In *Environmental Law Before Courts*. Springer US. https://doi.org/10.1007/978-3-031-41527-2

Muzayanah, I. F. U., Lean, H. H., Hartono, D., Indraswari, K. D., & Partama, R. (2022). Population density and energy consumption: A study in Indonesian provinces. *Heliyon*,

8(9), e10634. https://doi.org/10.1016/j.heliyon.2022.e10634

Peryman, M., Cumming, R., Ngata, T., Farrelly, T. A., Fuller, S., & Borrelle, S. B. (2024). Plastic pollution as waste colonialism in Aotearoa (New Zealand). *Marine Policy*, *163*(January), 106078. https://doi.org/10.1016/j.marpol.2024.106078

Reguyal, F., Wang, K., & Sarmah, A. K. (2023). Electrification of New Zealand transport: Environmental impacts and role of renewable energy. *Science of the Total Environment*, *894*(June), 164936. https://doi.org/10.1016/j.scitotenv.2023.164936

Saha, L., Kumar, V., Tiwari, J., & Rawat, S. (2021). Environmental Technology & Innovation Electronic waste and their leachates impact on human health and environment : Global ecological threat and management. *Environmental Technology & Innovation*, *24*, 102049. https://doi.org/10.1016/j.eti.2021.102049

Santos, R. M., & Bakhshoodeh, R. (2021). Heliyon Climate change / global warming / climate emergency versus general climate research : comparative bibliometric trends of publications. *Heliyon*, *7*(September), 1–15. https://doi.org/10.1016/j.heliyon.2021.e08219

Scheidel, A., Bene, D. Del, Liu, J., Navas, G., Mingorría, S., Demaria, F., Avila, S., Roy, B., Ertör, I., Temper, L., Martínez-alier, J., Ciència, I. De, & Barcelona, U. A. De. (2020). Environmental conflicts and defenders : A global overview. *Global Environmental Change*, *63*(January). https://doi.org/10.1016/j.gloenvcha.2020.102104

Siena I. Schaar, L. J. C. (2021). The future for Hawai‘i’s marine aquarium fishery: A cost benefit analysis compared to an environmental impact assessment. *Marine Policy*, *121*. https://doi.org/10.1016/j.marpol.2021.104429

Spencer, K. L., Deere, N. J., Aini, M., Avriandy, R., Campbell-Smith, G., Cheyne, S. M., Gaveau, D. L. A., Humle, T., Hutabarat, J., & Loken, B. (2023). Implications of large-scale infrastructure development for biodiversity in Indonesian Borneo. *Science of the Total Environment*, *866*, 161075. https://doi.org/10.1016/j.scitotenv.2022.161075

Sudarwanto, A. S., Karjoko, L., Handayani, I. G. A. K. R., Ma’aruf, A., & Glaser, H. (2022). The Policy on Illegal Oil Palm Plantation Reform in Forest Area during Jokowi’s Presidency. *Hasanuddin Law Review*, *8*(2), 171–185. https://doi.org/10.20956/halrev.v8i2.3566

Supreme Court. (2020). *County of Maui, Hawaii v. Hawaii Wildlife Fund et al.* Supreme Court Of United States. https://doi.org/10.4337/9781839105609.supreme.court.united.states

Supreme Court. (2024). *Sunoco LP, et al., Petitioners v. City and County of Honolulu, Hawaii, et al.* Supreme Court. https://www.supremecourt.gov/docket/docketfiles/html/public/23-947.html

Varshney, K., Mackinnon, M., Pedersen, M., Shanahan, D., Woolley, C., Freeman, C., & Heezik, Y. Van. (2024). Urban Forestry & Urban Greening Biodiverse residential development : A review of New Zealand policies and strategies for urban biodiversity. *Urban Forestry & Urban Greening*, *94*(February), 128276. https://doi.org/10.1016/j.ufug.2024.128276

Vinata, R. T., & Kumala, Masitha Tismananda, C. Y. S. (2023). Climate change and reconstruction of Indonesia’s geographic basepoints: Reconfiguration of baselines and Indonesian Archipelagic Sea lanes. *Marine Policy*, *148*.

https://doi.org/10.1016/j.marpol.2022.105443

Wibisana, A. G. (2017). *Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata*. Badan Penerbit UI.

Wilson, M. D. (2015). The Hawaii Environmental Court: A New Judicial Tool to Enforce Hawaii's Environmental Laws. *HAW. BAR J.*, *19*.

Xu, Q., & Idris, M. (2023). Heliyon Reflections on the environmental damage compensation regime in Chinese civil legislations. *Heliyon*, *9*(4), e15154. https://doi.org/10.1016/j.heliyon.2023.e15154