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**Legal Mobilization in The Environmental  
Arena:  
A Critique**

A Research Paper presented by:

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# Contents

<b>Abstract</b>	v
<b>Chapter 1. Introduction</b>	
1.1 Contextual Background Research Objectives and Questions	1
1.2 Research Objectives	2
1.3 Research Questions	2
1.4 Methodology and Data Selection	2
1.5 Scope and Limitation	2
1.6 Structure of the Research Paper	3
<b>Chapter 2. The History of Legal Mobilization in Environmental Arena</b>	
2.1 Definition	4
2.2 The Purposes	5
2.3 Early Appearance in Environmental Arena	6
2.4 The Landmark Cases	7
<b>Chapter 3. Legal Mobilization Pro Factors</b>	
3.1 The Causes	8
3.2 The Rights of Nature	12
3.3 The Encourage Factors	13
<b>Chapter 4. The Example Cases of Legal Mobilization</b>	
4.1 Urgenda Case vs. The Netherlands Government	16
4.2 Bhopal Case in India	18
4.3 Ogoni People Movement in Nigeria	19
4.4 Ecuador vs. Texaco-Chevron	20
<b>Chapter 5. The Threat and Barrier</b>	
5.1 Threat	22
5.2 Barrier	23
<b>Chapter 6. Conclusions</b>	25

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## **Abstract**

The Legal mobilization in the environmental arena is encouraged by several factors. The causes of legal mobilization are influenced by the rights of consciousness, organizational resources, political opportunities, and legal opportunities. Legal mobilization aims the indirect effects, which the goal of the indirect effects is sometimes threatened by the SLAPP suits. This paper illustrates the factors that encourage and support the activist to perform legal mobilization; also, the threat and barrier that might be encountered while performing legal mobilization

## **Relevance to Development Studies**

Improving the human being is the goal of development studies. This paper offers the critique of legal mobilization, which aims to contribute to the improvement of the social movement in protecting and defending their fundamental rights, especially in environmental arena.

## **Keywords**

Legal mobilization, climate change litigation, the indirect effects, SLAPPs

# Chapter 1

## Introduction

### 1.1 Contextual Background, Research Objectives and Questions

This research paper aims to investigate and critically analyze the use of legal mobilization in the environmental arena. Nowadays, the global world is facing environmental issues; environmental degradation is happening all over the world. In the last fifty years, the NGOs took place to fight the imbalance power between the polluters and the victims; to put the responsibilities into the polluters and defend people from the environmental degradation impacts. In the 1960s, American NGOs already started to utilize legal action in fighting environmental issues (Cole and Foster 2001: 31); it also marked the beginning of using the law as the tools to defend the environment, since the environment cannot defend on their own (Vanhala 2012: 524).

Henceforth, legal mobilization, including climate change litigation, become a strategic tool to fight the environmental issues. In climate change litigation arena, according to Grantham Research Institute on Climate Change and The Environment (2018: 5), there are over 1.276 court cases regarding climate change all over the world until 2017; and the report indicated that the number of cases has been intensifying since 2007, where over 20 cases have been proceeding to the court every year from that point in time (2017: 13).

The report indicates that the use of legal mobilization in the environmental arena is ascending; Though, the success case is still the minority. According to Meredith Wilensky (2015: vi) in the non-US countries, the success rate of the plaintiff winning the climate change case only achieved under 40%. It is necessary to investigate the reason for the environmental actors, such as NGOs, who still perform legal mobilization despite the low number of success rate.

Besides, as a counteraction against legal mobilization, a strategic litigation against public participation has been used to counter the environmental movement actors. SLAPP suits are claimed as one of the barriers for the environmental movement actors in protecting the environment; according to Murombo and Valentine (2011), SLAPP suits are perceived as the obstacle and intimidate the environmental movement actor in performing legal mobilization.

Thus, this paper will depict a critique against legal mobilization by illustrating the potential factors that support perpetrators of legal mobilization, also the barriers and threats of legal mobilization, such as SLAPP suits and the other factors. Several environmental movement actors showed the example of using legal mobilization; for example, the Bhopal case in India by the International Campaign for Justice in Bhopal (ICJB); the other example of the use of legal mobilization to environment campaign is the Ogoni people movement in Nigeria by Movement for the Survival of the Ogoni People (MOSOP); The Ecuadorians against Chevron is another example of using legal mobilization in defending the environment that performed by Amazon Defense Coalition (ADC). also, in the Netherlands, Urgenda foundation who have won the case against the Dutch government regarding the climate change cases

The various background of the cases shows the different strategies that the social movement organization used in performing legal mobilization. The International Campaign for Justice in Bhopal (ICJB) used political opportunities and transnational movement connection in constituting their cases. On the other hand, Movement for the Survival of the Ogoni People (MOSOP) implemented human rights approach after being granted political asylum from the United States. While the Amazon Defense Coalition (ADC) used the right to nature (*Pachamama*) in building their case.

Those cases example will assist this paper to reveal the background and the supporting factors that encourage the environmental movement to perform legal mobilization; also, the barriers and threats that will be encountered by performing legal mobilization.

## **1.2 Research Objectives**

The objective of this research is to critique the use of legal mobilization in the environmental arena. The critique does not aim to judge the use of legal mobilization whether it is a proper method or otherwise, but to illustrate the pro factors that support the activist who uses legal mobilization and the threats and barriers that might be encountered while doing legal mobilization in the environmental arena. The objectives aim to reveal that the use of legal mobilization has two sides of coins, pro, and contra factors.

## **1.3 Research Questions**

To achieve the paper objectives, the research questions to be addressed are as follows:

1. What factors that encourage/support the perpetrators perform legal mobilization in the environmental arena
2. What threat and barrier that might be encountered by the perpetrators in performing legal mobilization in environmental arena?

## **1.4 Methodology and Data Selection**

Considering the research objectives and questions of this paper, the literature review and interview will be the most feasible method to achieve and address the objectives and questions. The literature review will provide some relevant background that supports this paper to depict the factors which favor the actors of legal mobilization in performing their action; also, the literature review will illustrate the threats and barriers of using legal mobilization in the environmental arena. The analytical and critical approach is applied in this paper when doing the literature review method. In addition, the qualitative interview will be performed to augment the data from the literature review.

## **1.5 Scope and Limitation**

This research is conducted to critique the use of legal mobilization in the environmental arena, including in climate change sphere. This research will provide several factors that favor the perpetrator in performing legal mobilization; also, this paper will show the potential threat and barrier that might be encountered in performing legal mobilization.

This paper faces several limitations; first, due to the time availability, the interview only was done with climate change litigation actors in The Netherlands, though in this paper, the author provides several examples of legal mobilization actions in the environmental arena. Second, the paper lack of the other actors' perspective, for example, business actors or government who majorly being as the defendant in the legal case in the environmental arena.

This paper contains six chapters. The first chapter contains the introduction and the description of the research method, contribution and limitation, and the paper's structure. The second chapter illustrate the history of legal mobilization in the environmental arena, including the definition, the legal mobilization purpose, the early appearance, and recent phenomenon. The third chapter depicts the reason behind of using legal mobilization, including the factors that favor the legal mobilization actors to perform legal mobilization. Chapter four illustrates the example cases of legal mobilization in the environmental arena. The next chapter illustrates the threats and barriers which might be encountered by legal mobilization actors in performing legal mobilization, including the SLAPP suit. The last chapter is the research paper's conclusion.



## Chapter 2

# The History of Legal Mobilization in Environmental Arena

### 1.1 Definition

Legal mobilization is defined as the action by the social movement actors who bring the issue of inequality or oppression into the judicial arena and building their request in court (McCammon and McGrath 2015: 128). This action is one of social movement means in achieving their goals, the trigger of the legal mobilization as McCammon and McGrath argued is stemming from collective complaints and violation of collective people rights (2015: 129), however the collective complaints not always turn into action, they need crucial support such as financial, right direction, solid organization, and strong support from the grassroots (2015: 130).

The legal mobilization has been used by the social movements to balance the inequality, one of the examples is creating the equal employment opportunity by using litigation in the courts (Burstein 1991: 1202). In Paul Burstein work, he showed that the minorities and women in the United States utilized the legal mobilization to seize equal treatment in the workplace (1991: 1202). The race, sex, national origin, and religion discrimination are the trigger factor to the social movements to exercise legal mobilization (1991: 1210). The definition of success in legal mobilization is complex, the simply win, or loss term could not define the legal mobilization success, Paul Burstein argued that “all victories as being for the plaintiffs, even if they did not get all they asked for and even if an outside observer might not interpret the result the same way as the participants” (1991: 1212), the statement imply that the success of legal mobilization does not rely on all the requests are granted by the courts, instead the success relies on the accomplishment of the social movements to bring the issues into the courts.

In other hands, Epp (1998: 18) argued that legal mobilization is only related to litigation process; Epp stated that the legal mobilization is the process which people demand their claims based on the legal rights, filing a lawsuit to protect or develop their rights. However, Ann Southworth has a different perspective regarding Epp’s argument; she argued that legal mobilization is not only related to litigation or court process; the court is not the only forum that able to accommodate the demand of right protection by the social movement (Southworth 2000: 1208). Southworth argument implies that to perform legal mobilization is not merely through the court; Southworth argued that the activist could defend their legal rights before the official government or legislative, or put their legal protest through the mass media, or even on the streets (Southworth 2000: 1208). Though, Southworth does not deny that litigation contributes a significant effort to the individual rights protection (Southworth 2000: 1208).

In addition, Tiffany Grobelski (2016: 23) defined legal mobilization as “any process by which individual or collective actors invoke legal norms or disclosure, including using the formal legal system, in order to enforce rights or enact

change”. Grobelski’s definition is not limiting legal mobilization only through court, but she put legal mobilization in broader sphere; court as the representative of the formal legal system is one of the parts of legal norms.

The definition from the scholars depicts that the legal mobilization process is not always the litigation process, though the litigation plays a salient role in pursuing and protecting the individual rights. Legal mobilization also possible being pursued in the other media outside the court; for example, through the official agency or the lawmaker.

Moreover, legal mobilization is claimed as the means of social movement actor to make social change. Thus, according to Sarat and Scheingold (1998) social change as the impact of legal mobilization depends on legal activist and lawyer, who encourage themselves to put the right protection as the priority to defend; Paul Burstein also argued the similar idea as the author already mentioned in the previous part. Hence, we can identify that the purpose of legal mobilization is to defend the individual rights and make a social change in the society.

## **2.2 The Purposes**

The legal mobilization, including litigation, is used by the activist to put some pressure toward the government and legislative to defend their rights. The litigation, as the part of legal mobilization, contributes several roles; the litigation could connect a constitutional theory into the political arena; to disclose the gap between the ideal condition and the reality; to make people pay attention to the issue and encourage the oppressed community to fight; or putting a pressure to the government or the company to take a specific measure regarding the issues (Lobel 2004: 480).

According to Scott Cummings (2017: 240), legal mobilization is a means to realize the social change; also, it shifts the opinions that only the court could force their mandates directly, it changed to the “indirect effects” (2017: 241). Moreover, Cummings (2017: 241) defined the indirect effects as “the idea that court decisions have an impact on cultural and social psychological outcomes such as mobilizing collective activism, raising publicity and awareness, and changing public attitudes and individual legal consciousness”.

The idea of indirect effects in legal mobilization is to echo the case beyond the case itself. In the litigation arena, Jolene Lin (2012: 38) argued that the indirect effects of litigation refer to the condition when the litigation process attracts or encourage public awareness; also, the litigation maintain the problems as the topic of discussion in the political agenda; last, the indirect effects of litigation influence the other strategies and push the defendant to settle the case outside the court.

In addition, Jules Lobel (2004: 479) argued that the legal process through the court accommodates the interest of the activist in the legal and political agenda. The statements imply that the effects of the legal mobilization not merely depend on the court decision, but beyond the court decision itself; the

indirect effects render an echo effect to the public so that the case able to attract public awareness and sentiment.

According to Aude Lejeune (2017: 240), legal mobilization is the fight by social movement and minorities to balance the inequality; the minorities and the oppressed community use the legal mobilization to defend and protect their rights. Moreover, in her work, she also argued that the purpose of legal mobilization is not limited in forcing the court decision, but also render the activist the opportunity to fight their rights outside the court (2017: 241).

Thus, the basic aims of legal mobilization are to defend and protect the individual right from the oppression through the law channel; both, through the court or outside the court. Besides, obtaining the indirect effects also become the purpose of legal mobilization; the legal mobilization could attract the public sentiment and awareness of the cases, also, legal mobilization able to put the problems into the political arena.

### **2.3 Early Appearance in Environmental Arena**

The United States of America is a legal mobilization pioneer in the environmental arena; according to Jedediah Purdy (2018: 813), in the late 1960s, the Environmental Law Institute was established and followed by the Natural Resources Defense Council in 1970; the establishment is believed as the mark of the environmental justice rise in the USA. Those organizations initiated the movements to defend and protect the environment, including to involve litigation process to achieve their goals (2018: 813).

In the early appearance of legal mobilization in the USA, the activists tend to defend and protect their local territory and interest. According to Purdy (2018: 821) the early movement, the activist aimed to protect and defend their rights in their local community, self-protective, and with promptly reaction against the happening issues.; their report to the official agent was not responded as they expected; thus they initiated the movement to look another solution for the problems.

The economic condition in the USA in the 1970s also contributed to the environmental justice development; the issue of economic inequality influenced the activist to commence the movement (Purdy 2018: 815). The massive movements in the late of 1970s, the toxic movements, showed the environmental justice have been developing; the movement was triggered by the disposal of 22.000 barrels of toxic waste, which polluted the soil and water in New York and caused an increased rate of leukemia, miscarriages, and chromosome damage on middle-class labor (2018: 819).

In the climate change arena, the number of climate change litigation case as the part of legal mobilization has been increasing since its first case in 1990. The USA, as one of the most modern country, became the pioneer in commencing climate change litigation. According to Brian Preston (2011: 4), the earliest case of climate change litigation was happening in the USA in 1990; and in the recent time, the court started to accept the climate change case.

However, according to the Grantham Institute report (2017), the first recorded of climate change litigation case was happening in 1994; the report confirming Preston work that the number of climate change litigation has been increasing since the 1990s. The Grantham Institute reported that 253 climate change litigation cases happened since 1994 to 2016 over the world except for the United States; the United States alone recorded more than 600 climate change litigation cases since 1994 to 2016 (2017: 13).

## **2.4 The Landmark Cases**

In order to fight the inequality, in the last few decades, the activist utilizes the law to tackle the environmental issues. The example cases the use of legal mobilization in the environmental arena is the fight of Bhopal people in India, where many Non-Government Organizations struggled to defend Bhopal rights from the impact of the poisonous gas leak and killed more than 4,000 people in Bhopal, India. The activists use legal mobilization to demand fair compensation for the victims; they protect Bhopal people rights from the powerful government and the capitalist company.

The Ogoni people movement is another example of legal mobilization use. The Ogoni land in Nigeria is a wealthy community who possesses oil reservation in their territory. The Shell Petroleum Development Corporation as the oil company who exploit Ogoni land did not grant any benefit to Ogoni people; hence, Ogoni people, who only got the environmental degradation impact, demanded a better compensation from Shell. However, Shell argued they already grant compensation to the Government. Ogoni people movement fight for their human and environment rights using the legal mobilization.

The other example is the Ecuadorian people who fight their rights against the oppression of the oil company in their country. Ecuador encounters the oil conflict since the 1970s and continues to happen until today. Ecuador embedded the rights of nature in their constitution; the rights give special protection for the environment. The latest case of Ecuadorian is between them and Chevron, where the case is still ongoing until today.

In the climate change arena, the recent phenomenon of legal mobilization is the Urgenda case in the Netherlands. The case began when Urgenda was filing a lawsuit against the Netherlands government, demand the government to reduce their greenhouse gas emissions. The legal mobilization is claimed as the first successful case in climate change to order the government to do more action regarding their greenhouse gas emissions reduction program. The case started in 2014, and in 2018 the Appeal Court has favored the Urgenda, ordering the Netherlands government to do more action in reducing their greenhouse gas emissions level as they already committed before. These cases will be further explored in the next chapter.

# Chapter 3

## Legal Mobilization Pro Factors

### Chapter 3. Legal Mobilization Pro Factors

#### 3.1 The Causes

Social movements emerge in response to such an unfair situation. In Porta work (2006: 14), she cited that the social movement definition is “rational, purposeful, organized actions”. Institute of Development Studies (IDS: 19)<sup>1</sup> defined social movements as “forms of collective action that emerge in response to situations of inequality, oppression and/or unmet social, political, economic or cultural demands. Moreover, Porta argued that collective action stems from the benefit-cost analysis that swayed by the organization resources and the strategies options (2006: 14).

Many theories explain the emergence of social movements; in IDS piece of work, the theories are comprised of (IDS: 20): theories of class conflict, this theory argues that the emergence of social movements is triggered by class differentiation, which workers feel marginalized and mobilized them to fight against the oppression; theories of collective behavior, this theory explained that social movements emerge in the rise of fascism in Europe, the social movements emerge as the spontaneous response to the shifting of social structures; theories of resource mobilization, the emergence of the social movements stem from the motivation of seizing the potential rewards, incentive, and cost of participation, thus the success of the social movements is assessed by the ability of generating resources; theories of political process, this theories emerge as the critique of theories of resource mobilization, which take into account the political shifting that influences the opportunities of social movements mobilization; theories of framing, this theory explain that the social movements emerge to assist the existing social struggle and concern, the social movements connect people to identify the problems, thus find the best solution to solve the issues; theories of identity, this theories argue that the social movements emerge in response to the rise of the new concept of identity and belonging that shift the culture and social relations; theories of space and place, this theories explain that the social movements the geographic and spatial locations play a significant role in the mobilization, the development technologies contribute to the success of the social movements in the global sphere.

In relation to the social movements’ action, the collective actions depend on the social movement actors’ treasure, the materials such as money, work, benefit, and services are the most important contributor in assisting the process of collective actions (Porta 2006: 15). Moreover, Porta explains the form of the collective action is divided into two classifications: persuasive and coercive methods (2006: 165). Protest as one of the collective action defined as “sites of contestation in which bodies, symbols, identities, practices, and discourses are used to pursue or prevent changes in institutionalized power relations” (2006:

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<sup>1</sup><http://socialmovements.bridge.ids.ac.uk/sites/socialmovements.bridge.ids.ac.uk/files/07.%20202.%20Social%20Movements.pdf>

165). Protest characterized by the capability to shape public opinion through the nonconventional method with the purpose to influence the decision of the decision-makers (2006: 165). Moreover, Lynette Chua (2011: 1) argued that to defend someone rights from the inequality situations, social movements actors are possible to initiate the actions to fights against the oppressor, the actions such as protests on the streets, creating public opinion by issuing and spreading their stories across the country, or legal mobilization to order the state or other parties of specific request.

Porta also stated that the forms of protest include: lobbying, marches, boycotts, petitions, strikes, and netstrikes (2006: 165). Those form of protest are performed by the social movement actors depend on the strategy that they adopt; the first strategy, they can use physical coercion or threat; they can persuade others; or they can pay others to do what they want them to (Jasper et.al. 2015: 405). At last, their ultimate intention is influencing public opinion; thus, in its development, the protest assert their intention as a movement method that uses indirect persuasion through mass media and capable actors (2006: 167). Jasper et.al. illustrate social movement strategic as the effort to achieve its goal by swaying the others' thought, feelings, and actions, persuasively or coercively (2015: 399).

Another form of action is a legal mobilization; a legal mobilization is defined as the action by the social movement actors who bring the issue of inequality or oppression into the judicial arena and building their request in court (McCammon and McGrath 2015: 128). This action is one of social movement means in achieving their goals, the trigger of the legal mobilization as McCammon and McGrath argued is stemming from collective complaints and violation of collective people rights (2015: 129), however the collective complaints not always turn into action, they need crucial support such as financial, right direction, solid organization, and strong support from the grassroots (2015: 130).

Moreover, the happening of legal mobilization also rely on the political factors, and the political sphere is the key which allows the social movement actors could do the legal mobilization or otherwise. The political system offers the opportunities, also constraints, which construct the social movement actors' strategies and tactic when commencing the movements (2015: 130).

According to McCammon and McGrath (2015), there are four factors that triggered the actors perform legal mobilization: right consciousness, organizational resources, political opportunities, and legal opportunities.

According to McCammon and McGrath (2015), there are four factors that triggered the actors perform legal mobilization: right consciousness, organizational resources, political opportunities, and legal opportunities.

### **Right Consciousness**

According to Neal Milner (1986: 105) litigation is also a part of politics but stands in a different shape; a legal expert defines the litigation as a limited and well-established system that involve in the political arena. In order to use litigation as the weapon to defend and protect the individual rights, the activist must

possess a legal rights consciousness (McCammon and McGrath 2015: 129). The activist has to formulate their complaint which emerged from the basic rights violation.

Rights consciousness can be defined in a simple way as the awareness of people whose rights being violated by the oppressor. The awareness triggers the oppressed people to fight their right through the law. Eskridge (2011) argue that the community has an encouraging factor to perform legal mobilization when they share the same oppression experience; the oppression infringes their basic rights. Epp (1990) argued the right consciousness born under the evolution and cleared a legal system; it encourages people to fight their basic rights by performing legal mobilization.

Moreover, Scheingold (2004) argued that the litigation is a strategic method to establish social change, this idea also leads to the rights consciousness in the society. This view emphasizes the idea of legal expertise domination and pushes the litigation as the most proper strategy. Though, Burstein (1991: 1209) argued that the rights consciousness does not always encourage the activist to perform legal mobilization, he argued that performing legal mobilization and basic rights is a complex circumstance. Thus, rights consciousness cannot stand alone to encourage activist performing legal mobilization; according to McCammon and McGrath, it required other factors to build the activist assurance to perform legal mobilization.

### **Organizational Resources**

A community that shared the same gripes do not always perform a collective action; according to McCarthy and Zald (1977), the community must possess organizational resources to push all the member of the community to perform the collective action. Moreover, McCarthy and Zald (1977) also argued that the most important resources such as cash, a good command, a great organization, and community support are required to succeed the collective action.

Legal mobilization is one form of collective action; thus, to be succeeded in performing legal mobilization, the community must possess legal expertise (McCammon and McGrath 2015: 130); also, similar to McCarthy and Zald, Lisa Vanhala (2012: 526) argued that since performing legal mobilization is a long-time process, expensive, and risky, the community who perform legal mobilization have to possess a strong financial cash flow and credible organization. Borzel (2006) added that to increase the success rate, a well-managed organization who possess a great human capital tend to succeed in performing legal mobilization.

### **Political Opportunities**

Besides the awareness and resources, other factors also influence the activist to perform legal mobilization. The opportunities could be a key factor for the activists whether they perform the legal mobilization or otherwise. According to McCammon and McGrath, the opportunities factors are political opportunities and legal opportunities. Political opportunity is one of the circumstances that allow the activist to perform legal mobilization.

The involvement of political actor, political traditions, the voting method could boost the activists to defend their rights through the legal channel (McCammon and McGrath 2015: 130). The open political system could grant more encouragement for the activist to perform legal mobilization rather than a closed political system (Meyer and Staggenborg 1996: 1648). The political system in particular countries also offer different possibilities for the activist to perform legal mobilization; for example, US political system where every state possesses their policy, could encourage the activist to take action and force the court to deny a national policy to be applied in their federal state (Burke 2002).

Grobelski (2016: 34) in her work argued that the state structure system shapes several occasions for the activist to perform legal mobilization; the political actor hegemony limits the activist movement. The activist often encounters the problem to access legal channels when the political actor shows their domination.

### **Legal Opportunities**

The last opportunity factors are legal opportunities. Hilson (2002) defined legal opportunities as the access to legal system and institution by the activist, and how they admit the formal grievance from the activist and proceed the case. Hilson (2002) illustrate that legal opportunity is the circumstance where the legal factors, the legal system, and institution, sway the activist to be able and willing to proceed their case through the legal channels.

Lisa Vanhala (2012: 527) argued that legal opportunities have several forms; “procedural variables, material resources, legal resources or the existing legal stock, judicial receptivity to policy arguments in particular cases, cultural frames, and the presence of allies or counter-mobilizing forces”. However, Vanhala also argued that legal procedural and access to the legal system are the most prominent factors in legal opportunities.

Similar to political opportunities, legal opportunities are a circumstance which makes the activist depends on the external factor to determine whether they proceed the case through legal channels or otherwise. The availability of legal system affects the possibility, ability, and willingness of the activist to perform legal mobilization. For example, the law procedure offers the possibility to the activist to perform legal mobilization to protect and defend their rights as the plaintiff or only play a role as a third party or *amicus curiae* (Vanhala 2012: 527).

However, political opportunities and legal opportunities are interrelated. In the particular country who has an open political system and the legal system but do not offer legal opportunities for the activist performing legal mobilization, the activist could approach the political actor and urge them to modify the legal system so that the activist could proceed their case through legal channels (Andersen 2005). Andersen also argued that the activist when performing legal mobilization always possible to persuade the legislative agent, government agent, or the court to strength or loosen the access into legal channels.



In determining whether the activist perform the legal mobilization or not, there are several factors to be considered by them; the activist must calculate the legal opportunity possibility that lie in legal channels access; also, they have to take into account their legal standing with the case they proceed to the legal channels (McCammon 2015: 131). According to Lisa Vanhala (2012: 526), though the activist has the resources that required to perform legal mobilization, though the court does not automatically perceive the case can proceed under their competency effectively and equitably. Thus, the activist has to measure their legal standing and consider the legal opportunity in their legal system.

### 3.2 The Rights of Nature

Legal opportunities in the environmental arena also influenced by the emerging of the green constitution like *pacha mama* in Ecuador and Bolivia. As Hilson defined (2002) legal opportunities offer access for the social movement or activist into the legal system and judicial agent; also, legal opportunities relate to legal standing. Ecuador has amended their constitution in 2008 and inserted the rights of nature in their constitution, the insertion of the rights of nature in the constitution grant a moral right and legal right to Ecuadorian people to honor their nature and environment.

Ecuador is the first country that embeds the rights of nature into its constitution, it declared as:

“nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary process. All persons, communities, peoples, and nations can call upon public authorities to enforce the rights of nature” (Constitution of the Republic of Ecuador 2008).

Bolivia followed Ecuador step in implementing the rights of nature in its constitution; in 2009, Bolivia declared in its constitution that they should “protect and defend an adequate environment for the development of living beings (Constitution of the Plurinational State of Bolivia 2009). In 2010, Bolivia released the law of the rights of Mother Earth, which stipulates as follow: “the state and any individual or collective person must respect, protect and guarantee the rights of Mother Earth for the well-being of current and future generations (Bolivia Law of the Rights of Mother Earth 2010).

According to David Humphreys (2017: 461), the root of the rights of nature are from Christopher Stone’s work, “Should Trees Have Standing”. The standing or *locus standi* is defined as “the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party’s participation in the case”. The standing is the circumstances where the claimant able to prove that they have a direct connection or directly harmed with the claim that they made.

The idea of the rights of nature is supported by the failure of the current legal system, which cannot accommodate the environmental problem (Thomas Berry 2006). Moreover, Thomas Berry (2011: 229) argued that nature owns three

rights: “the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community”.

The rights of nature are perceived as legal rights, not only as moral rights. This encourages people in Ecuador to fight and defend their rights against the oil company oppression. It also showed that the rights of nature offer legal opportunities and legal standing for the activist to perform legal mobilization. The acknowledgement of rights of nature in Ecuador and Bolivia is influenced by the dominance of political actor, businessman, and the social movement (Humphreys 2016: 465).

### **3.3 The Encourage Factors**

Tiffany Grobelski (2016: 26) pondered why people are performing legal mobilization if the legal system itself creates inequality? Blomley (2013) argued that the failure of property regime triggers the legal mobilization to tackle environmental problems in the society. According to Nicole Graham (2011) property regime is failed because of the dominance of the human factor or only focus on anthropocentric. Anthropocentric is the idea where the human being is the center of natural life; the anthropocentric idea resulting from the unsustainable relation between humankind and nature (Graham 2011).

The use of legal mobilization does not prioritize to win the case as the main goals; Grobelski (2016: 129) argued that sometimes winning the environmental case might be less important than losing the case; legal mobilization aims to spread out the critical factors of the case to the broader society; the purpose of spreading out the case is to offer access to justice for other activists. Grobelski work is coherent with Lisa Vanhala argument; Vanhala (2012), in her work of the legal mobilization by the environmental movement in the United Kingdom, argued that performing legal mobilization is required a strong resource in financial and organizational; moreover, she argued that performing legal mobilization in the environmental arena often encounter a backfire to the activist because it can ruin the existing legal opportunity structure.

Besides, the successful rate of legal mobilization in the environmental arena is still low; it haunted the activist who suffers from a loss to pay the “loser pays”. Thus, the activist still performs legal mobilization with the goal to assist the other activists from failure when protecting and defending their rights (Vanhala 2012: 525). In addition, Lisa Vanhala argued that “despite substantive losses, many of the cases involve procedural victories and legal and political benefits” (2012: 525).

The legal mobilization allows the activist to assist the other activists in avoiding the losses cases in environmental arena; the legal mobilization continues to be performed in order to gain more experience that can be used to anticipate the problems that might be encountered in the future time.

Osofsky argued that climate change litigation as the part of legal mobilization is important to be performed since it can fix the failure of international and national regulation regarding climate change (2010: 5). Litigation could be the proper solution in filling the gaps between international and national regulation.

Jules Lobel (2004: 480) argued that the litigation offers several role to assist the activist tackle the environmental issues: “to articulate a constitutional theory supporting the aspirations of the political movement, to expose the conflict between the aspirations of law and its grim reality, to draw public attention to the issue and mobilize an oppressed community, or to put public pressure on a recalcitrant government or private institution to take a popular movement grievances seriously”. The utilization of legal mobilization aims to attract public attention; sometimes beyond the case itself. Osofsky argued that climate change litigation able to shift the public opinion regarding climate change issues (2010: 8). Moreover, Osofsky argued that the success case or the little hope case, both cases could assist to change the legal circumstances by forcing legal and moral pressure to the individual, company, or even government (2010: 9). Osofsky provides an example of the unsuccessful case that still able affect the authorized body to take some measure in climate change; the Inuit case able to encourage the Inter-American Commission on Human Rights to hold a hearing regarding the Inuit request, though the Commission denies the Inuit petition (2010: 10).

On the other hands, Jolene Lin (2012) argued that climate change litigation emerges as a response to direct how the state should act to face climate change challenge in the global, regional, and local level. The reason behind the activist perform legal mobilization or climate change litigation, according to Jolene Lin (2012: 37), is because the activists do not have any access to political or government channel to tackle the environmental issues; or the activist expect that the legal channels able to accommodate their interest to official agency or legislature. For example, in the United States of America, tackle the environmental or climate change issue through legal mobilization grant more significant impact, considering that the US Congress acknowledge the US government commitment in greenhouse gas emission target reduction where the developing countries already committed their own greenhouse gas emission target respectively (2012: 37).

Jolene Lin argued that the use of legal mobilization, including climate change litigation, have two effects; a direct effect and indirect effect. These effects become the trigger factor for the activist to perform legal mobilization in the environmental arena. In the direct effect, the activist expects the court decision have directly coerced the official government agency or other related official agency to take special measure and effort in their official decision in regard to solving environmental or climate change issues (Lin 2012: 38).

Though, Lin (2012:38) more argue if the activist has to be conscious that the success rate or the chance to win the case is relatively lower compared to the other cases outside the environmental cases; thus, Lin argued that the activist pursue the second effects of legal mobilization rather than expecting they could win the case and experience the direct effects of legal mobilization; the second effects of legal mobilization is called the indirect effects.

According to Jolene Lin (2012: 38), the indirect effects refer to “the use of litigation to raise public awareness or mobilize public sentiment on an issue, to keep an issue on the political agenda, to create leverage to supplement other strategies and to force the opposition to settle”. Mezey (2000: 5) augment Jolene

Lin argument that even though legal mobilization is not always offering the instant and extensive result, but legal mobilization is the effective tools to obtain political actors attention who will assist to build social change in the society.

Jules Lobel (2004: 479) stated that the legal channels such as the court not only play a role as a referee in private disputes but also play a role as the communicator between political and social movement actors and accommodate the issue that brought by social movement actors into legal and political agenda.

## Chapter 4

# The Examples Cases of Legal Mobilization

### Urgenda case vs. the Netherlands Government

The indirect effects also encourage one of the example cases in this research paper, Urgenda foundation vs. the Netherlands government. In the Netherlands context Urgenda foundation (Urgenda) has argued that the Netherlands state policies regarding the greenhouse gas emission reduction are not satisfying. Urgenda is a non-governmental organization that intends to “stimulate and accelerate the transition to a sustainable society, starting in the Netherlands” (Urgenda summons 2014: 22). Urgenda established in 2007 as an initiative of the Dutch Research Institute for Transition at the Erasmus University Rotterdam. The main goal of Urgenda is mitigating of climate change by reducing carbon dioxide emissions. In response to the Netherlands climate change policies, Urgenda in 2012 sent a letter to the Prime Minister and the Netherlands cabinet to request the Netherlands’ commitment in reducing carbon dioxide emissions to 40 percent below 1990 levels before 2020. The letter could be perceived as the first action by Urgenda in ordering the Netherlands to have more action regarding the carbon dioxide emissions reduction.

However, the Netherlands responded to the letter by stating that they agree on the necessity of the emissions reduction, and also acknowledge that the insufficient of a global effort in reducing the carbon dioxide emissions are happening. Yet, Urgenda claimed that the Netherlands statements on the responded letter are not fulfilling the demands; Thus, following the Netherlands response and action after the letter, Urgenda argued that the amicable method could not achieve their goals regarding the emissions reduction; therefore, they decided to file a lawsuit against the Netherlands (Urgenda summons: 28).

In 2013 Urgenda together with 886 Dutch citizens filed a lawsuit against the Netherlands state; the district court of The Hague was the authorized court to proceed the lawsuit. The inadequate of the Netherlands actions against climate change mitigation was the ground of the lawsuit; there are three issues that Urgenda raised in the lawsuit: the Netherlands’ failure of performing duty to protect; the climate change impacts threaten the right to life, the right to respect for private and family life; the violation of a duty of care (Lin 2015: 70).

Urgenda built the case from an unlawful act or tort; they claimed that the current level of the Netherlands’ carbon dioxide emissions is unlawful (Urgenda summons: 93). Urgenda claimed that the Netherlands’ level of carbon dioxide reduction, based on a scientific standard, neglected to the wellbeing of the environment and human life (Slattery 2017: 247).

In June 2015, the district court of The Hague decided to order the Netherlands to limit their annual greenhouse gas emissions by at least 25 percent compared to 1990 level by 2020 and reject the other claims (Urgenda case decision translation 2015: 53-54). However, the Netherlands filed an appeal against the decision, the appeal hearing was held on 28 May 2018, and the Court Appeal

decision favour Urgenda and once again ordered the Netherlands government to take more action to reduce its greenhouse gas emissions.

According to Urgenda legal counsel, they aware that the chance of winning the case in climate change litigation is low, but the indirect effects of climate change litigation encourage them to perform legal mobilization still. Urgenda argued that climate change problems are necessary to be solved by the people who contribute to the greenhouse gas emissions. Urgenda argued that is necessary to commence the real action to solve climate change issues, though Urgenda claimed that the political actors for very long time already recognized the required action but have not to act sufficiently.

Thus, to shift the political actor paradigm, Urgenda argued that legal mobilization is the most proper way. Quoting Jolene Lin definition on indirect effects, to keep the environmental issues in the political agenda is the main priority of Urgenda foundation since Urgenda claimed that political system in the Netherlands was not taking into account the climate change issues. To maintain the climate change issues in the political arena is expected to be a significant step to solve the problems.

Urgenda claimed that legal mobilization is one of the tools that can be used in campaigning climate change; it is an essential tool, but definitely not the only tool to solve climate change issues. Urgenda argued that in the end, the ultimate action to solve the climate change issues depends on the political actor who needs to act the necessary action.

Based on the interview with Urgenda legal counsel and Public Interest Litigation Project (PILP) legal director, they argued that the goal of climate change litigation is not only to establish the government legal responsibilities but indeed to put the climate change topic in the political arena; climate change litigation is argued as the essential tool in campaigning climate change, though it is not the only tool. Since, in the end, it is the politician who needs to act the necessary action to achieve the GHG emissions target reduction.

Urgenda claimed that the climate change debate in the political arena is completely transformed; climate change was not an alienated topic anymore in Dutch political arena, and even become a high-level topic discussion in the political agenda. PILP added that, currently, climate change is “a sexy subject” to be discussed in the Dutch political arena. Urgenda claimed that after its case, the politician and the public realize that climate change impacts are dangerous; thus, the political system and the Dutch government should act more to tackle the issue.

Urgenda also claimed that the impact of the case is not just to order the government to do more action, but also change the way people discuss the climate change topic.

To triangulate Urgenda claimed, the author investigates the Dutch government action regarding the climate change and the legislative product as the manifestation of the Dutch political system. In the finding, the author found four products of the executive that relate to climate change, which released after 2015 (Urgenda case decision). The products are as follows:

1. National Climate Adaptation Strategy 2016 (December 2016); this strategy is made to depict the Netherlands formal plan for implementing and adopting European Adaptation Strategy 2013; this adaptation strategy identifies the most significant impacts of climate change that entail the prompt action to mitigate; also, this adaptation strategy illustrates the method needed to avoid the Netherlands from negative climate change impacts.
2. Energy Agenda: Towards a Low-Carbon Energy Supply (March 2017); this agenda explains the Dutch government plan to have an energy source transition to a low-carbon energy source; thus, the ultimate purpose of this agenda is reducing CO<sub>2</sub> to meet the target set; this agenda set out the schedule of the energy source transition
3. National Energy Efficiency Action Plan (April 2017); this action plan describes the measurement by the Netherlands government to promote energy efficiency, including the potential savings by using energy efficiency. The purpose of this action plans is to contribute to the reduction of CO<sub>2</sub> emissions and reduces the energy bills of citizens and companies by performing energy saving.
4. Offshore Wind Energy Roadmap 2030 (March 2018); this action aims to promote the establishment of offshore wind generation in the country by 2030; the government set out the additional capacity of the wind energy power plant to 4.5 GW by 2023, and gradually increase to achieve 7 GW by 2030. This agenda aims to reduce the GHG emissions from the coal energy power plant.

Besides the executive products, the author also found that seven Dutch political parties in June 2018, who represent a large majority in the Dutch Parliament, initiate a new climate law with the target of GHG reduction to the level of 49% by 2030, 95% by 2050, and 100% carbon-neutral electricity in 2050. Currently, the law is being discussed in the Dutch Lower Chamber and waiting to be voted, which later will be further processed in the Dutch Upper Chamber. The bill is targeted to be enacted in 2019.<sup>2</sup>

Those action plans and roadmap and the new law initiative are the evidence of Urgenda claimed that their case successfully transform the public perspective and political order agenda regarding the climate change; the climate change litigation is not merely about winning the case on the court as the objective; though, the ultimate goals achieve is putting the climate change issues as the main priority to be solved.

## 4.2 Bhopal Case in India

The other examples of the use of legal mobilization are the Bhopal case in India. The case of gas leak in Bhopal, India which killed almost 4000 people and injured the other several thousands of people; the case through a long story of the legal process, Government of India is the authorized body that represents all the victims, hence, all the compensation settlement is done by the government and the Union Carbide India Limited (UCC) (Bisht 2018: 22). In 1989, the Supreme Court of India announced that UCC have to pay USD 470 million to the government for the compensation; however, the victims or their relatives are not involved in the negotiation, and the government is not accommodating their grievances; moreover, to obtain the compensation, the victims have to provide

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<sup>2</sup> <https://nltimes.nl/2018/06/28/agreement-reached-netherlands-climate-law>

their proof of injuries before the Bhopal special courts (2018: 22). The government's action reaped many protests from the victims and their relatives, one of the protesters is the International Campaign for Justice in Bhopal (ICJB), ICJB tries to maximize the political opportunities in regard to challenge the localizing scale-frame that imposed by the judicial settlement (2018: 25). ICJB mobilize the new scale-frame of the second/ongoing poisoning, this new frame allows the ICJB to constitute the new narrative that depicts the connection between the first disaster and the second/ongoing disaster (2018: 25). Based on the second/ongoing disaster frame, ICJB successfully initiated legal action against UCC in US courts in the multiple events of cases, in 1999, 2004, and 2007 for environmental harm caused by groundwater contamination (2018: 26).

### **Ogoni People Movement in Nigeria**

The other example of the use of legal mobilization to environment campaign is the Ogoni people movement. The case was commenced when the indigenous people of Ogoni being marginalized by Shell Petroleum Development Corporation (SPDC) in Ogoni land; SPDC in 1956 started to extract the oil in Nigeria and obtained full supported from the Nigerian government. In 1994, SPDC admitted that they already lifted the oil with the value of about USD 30 billion from the Ogoni land, however the Ogoni people did not benefit from the oil extraction, the oil business adversely impacted the Ogoni people, for example, there have been many cases of oil spills which heavily contaminated the water sources, the plants were harmed by the oil pollution, and people affected by petroleum hydrocarbons (Jain & Meyersfeld 2014: 432). In response to the SPDC activities, the Movement for the Survival of the Ogoni People (MOSOP) was emerged to defend human rights and environment justices, MOSOP protested the human rights and environmental degradation that done by SPDC; as consequences, MOSOP experienced the cruel and repressive response from SPDC together with Nigerian government (2014: 432). Realizing that MOSOP could not rely on the Nigerian Government, they performed self-determination by engaging a non-violent struggle, in accordance with the self-determination principle, MOSOP launched the Ogoni Bill of Rights, which illustrated their loyalty to Nigerian nation, asserted the self-determination, and demand the justice for their environment, social, and economic (Boele et.al. 2001: 79).

MOSOP tried to attract international public' attention, the very first effort was when their leader, Ken Saro-Wiwa, delivered the international speech before the United Nations Working Group on Indigenous Populations, and afterwards, the international actors started to pay attention to MOSOP demands (2001: 79). In 1992, MOSOP delivered a demand notice to Shell, the Nigerian National Petroleum Corporation, and Chevron, ordered them to respond their list of demand, including compensation payment; the company ignored the MOSOP demands, and as a result MOSOP declared persona non- grata to the company from Ogoni lands (2001: 79). The physical clashes began, Nigerian army attacked and opened fire on MOSOP protester and killed Ogoni people (2001: 80). The violence continued, and the climax was when the leader and eight other Ogoni activists were arrested and sentenced to death by Nigerian Government in 1995 (Osha 2006: 26).



A group of Ogoni people successfully managed to escape from Ogoni land and obtained political asylum in the US; they created petition and filed a lawsuit against Shell regarding company money contribution to Nigerian Government in responding Ogoni people protest, Ogoni people filed a lawsuit in the court of the United States to avoid the problem of fairness and openness in Nigeria judicial system (2014: 433). In the petition, Ogoni people argued that Nigerian Government was committing crimes as follows: extrajudicial killings; crimes against humanity; torture and cruel treatment; arbitrary arrest and detention; violations of the rights to life, liberty, security and association; forced exile; and property destruction (*Kiobel vs Royal Dutch*: 2013). However, the Alien Tort Statute which claimed by Ogoni people as the legal ground in filing the case in the US Court was rejected by the US Court, made the court has no interest in deciding the case (2013: 3).

#### 4.4 Ecuador vs. Texaco-Chevron

The Ecuadorians against Chevron is another example of using legal mobilization in defending the environment. Oil conflict has been occurring since 1972 in Ecuador; it was marked by the first oil pipeline on the edge of the Amazon (Widener 2007: 84). The oil conflict continued to emerge, the root of the problems is the indigenous rights violation by the oil company, including the extraction process that leads environmental degradation (2007: 85). Ecuador is one of the countries that incorporated the rights of nature (*Pachamama*) into their constitution; in 2008, Ecuador include *pachamama* in their constitution *and* defined as “where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and evolutionary processes” (Ruhs & Jones 2016: 9). The legal mobilization in Ecuador commenced in 1993, at that time groups of plaintiffs brought the case against Texaco before federal district courts of the United States, with the allegation of environmental damage in Ecuador and Peru, however the case was dismissed by the judge. In 2011, the remarkable decision by Ecuadorian judge has prevailed, Judge Nicolas Zambrano Lozada ordered Chevron to compensate USD 9,4 billion in regards of the inadequate environmental practices by Chevron, the evidence show that Chevron activities created a toxic contamination in the environment and caused extensive environmental damage in Ecuador environment, furthermore, the impact of environmental damage is impacting the human health, including the increasing number of cancer in the surrounding area of the damage; the Amazon Defense Coalition initiated the case. (Joseph 2012: 78)

The example case of using legal mobilization in the previous part shows that the mobilization was commenced by NGOs as a part of social movement organization. The various background of the cases also shows the different strategies that the social movement organization used in performing legal mobilization. The International Campaign for Justice in Bhopal (ICJB) used political opportunities and transnational movement connection in constituting their cases. On the other hand, Movement for the Survival of the Ogoni People (MOSOP) implemented human rights approach after being granted political asylum from the United States. While the Amazon Defense Coalition (ADC) used the right to nature (*Pachamama*) in building their case

However, the use of legal mobilization encounters the counterreaction from the party who being sued by the activist. Also, the legal mobilization in the environmental arena seems not to be the final and ultimate solution to tackle the environmental issues. The Next chapter illustrate the threat and barrier that might be encountered by the activist in performing legal mobilization.

## Chapter 5

### The Threat and Barrier

Legal mobilization always used by the activist to protect and defend the basic rights of the minority community or the oppressed people. The legal mobilization goal to balance the inequality that exists in the society. However, the legal mobilization action sometimes provokes the activist's opponent to counter the lawsuit. Strategic Lawsuits Against Public Participation (SLAPPs) defined as "a meritless lawsuit that some individuals and businesses use as weapons against those who speak out on public issues or petition their government" (Brown and Goldowitz 2010: 3).

In Murombo work, he quoted Wright-Pegs to define SLAPPs; SLAPPs defined as "a meritless case mounted to discourage a party from pursuing or vindicating their rights, often with the intention not necessarily to win the case, but simply to waste the resources and time of the other party until they bow out" (2011: 84). In addition, Murombo added that SLAPPs are "frequently brought as defamation claims, abuse of process, malicious prosecution, or delictual liability cases" (2011: 84).

The meritless lawsuits often perceived as the most effective method to suppress the activist who performs legal mobilization against them. According to Brown (2010: 3), SLAPPs aims to block public awareness toward the issues, and displace the issue from public attention into private courtroom. The function of SLAPPs strategy is to counter the indirect effects of legal mobilization, which aims to maintain the issues in public discussion or even mobilize public attention to the issues. In the USA, SLAPPs is used to threaten and stump the activist who perform legal mobilization (Shapiro 2010: 14).

According to Shapiro (2010: 15), SLAPPs often found in the environmental arena, the party who against the environmental improvement frequently stump the environmental activist by suing them for speaking out on environmental issues. The initial SLAPPs began in the USA, when American people being sued by their government because they criticize the US government in the corruption allegation (2010: 15). In Australia, SLAPPs is illustrated as "a threat to the fundamental democratic right of protest which has underpinned much of modern Australian society and that of other Western democracies (Giles and Murphy 2016: 45).

SLAPPs is perceived as the threats to the environmental activist in South Africa (Murombo and Valentine 2011: 83). In South Africa, environmental activist often fights for the access to information regarding the environment and participate in drafting environment policy; though, both subjects are under SLAPPs threat. SLAPPs aim to frustrate the environmental activist when fighting to defend and protect their rights. The SLAPPs could aggravate the environmental conflict in the society (2011: 84).

The most identified SLAPPs cases are founded in the construction project, such as building a highway, plantation, or dam; the local people who oppressed with the construction work, filing their grievances to the government, and the

construction developer counter the complaint by suing back the local people (2011: 85).

The aim of the SLAPP suit is not to defeat the environmental activist, but to make the activist's plate full so that, the activist could not manage the initial case that brings them being sued (2011: 93). Murombo quoted Beder work that "the conceptual thread that binds (SLAPPs) is that they are suits without substantial merit that are brought by private interest to stop citizens from exercising their political rights or punishing them for having done so. The longer the litigation can be stretched out, the more litigation can be churned, the greater the expense that is inflicted and the closer the SLAPP filer moves to success. The purpose of such gamesmanship ranges from simple retribution for past activism to discouraging future activism" (2011: 93).

Murombo (2011: 93) took the *Tosco Corporation vs. Communities for a Better Environment* as the well-known example of SLAPPs case. the case began when Communities for a Better Environment filing a lawsuit against Tosco Corporation in the US court; CBE claimed that Tosco corporation violate the environmental pollution policy; after the court decision ordering Tosco corporation to clean up their pollutant, Tosco perform a counter lawsuit to CBE; Tosco claimed CBE maliciously filing a lawsuit and defaming them; though, the court identified Tosco's lawsuit as SLAPPs and applied the Californian state anti-SLAPP regulation.

The SLAPPs suit also happened with Ecuador, the country where experience a long history of oil conflict. Texaco, in 2001 Chevron take over the ownership of Texaco, has been exploiting oil in Ecuador since 1964. In 1966, Texaco signed a 25 years concession in Ecuador, this means Texaco will exploit Ecuadorian oil for 25 years. The Ecuadorian indigenous people claimed that Texaco polluted their water resources, besides the environmental pollution that Texaco produced also trigger cancer.

Thus, in 1993, Lago Agrio play a role as the plaintiff, they file a lawsuit against Texaco in the New York district court, they represent the Indigenous people filing a lawsuit for the soil and water pollution, which increase the cancer rate among the people in the society. However, Texaco claimed that they have no responsibility for the pollution, because Texaco already signed an agreement that releases them for any responsibility that incurs from environmental degradation by paying USD 45 million for remedy.

In 1996, Ecuador government played a role as *Amicus Curiae* in the US court, they argued that only the Ecuador government who have a right to sue Texaco. In 1998, Texaco fully paid the remediation cost of USD 45 million. The progressive action commenced when Rafael Correa elected as the President of Ecuador; in 2009, two years after Rafael Correa became the president, Texaco played offensively; they filed Bilateral Investment Treaty arbitration against Ecuador, alleging Ecuador indicate denial of justice.

The conflict continued, in 2011 Ecuador Provincial Court ordered Texaco to pay USD 9,5 billion to compensate their oil pollution; however, in 2018 the international tribunal in The Hague favor Chevron; the tribunal claimed that the

Ecuador Supreme Court that ordered Texaco to pay 9,5 billion was not through the proper process, the Tribunal claimed that the process through fraud, bribery, and corruption court<sup>3</sup>

The example cases show that legal mobilization faces the threat of SLAPP suits by the party who is sued in the first place. SLAPP suits aim to threat and stump the environmental activist, besides the SLAPP suits also aims to distract public awareness and attention regarding the environmental issues and secure the initial suits in the courtroom without any attention from the public.

Besides the threat, legal mobilization also faces the barrier. According to David Markell (2012: 1), climate change litigation as the part of legal mobilization does not provide any new jurisprudence to be used as the precedence decision; Markell argued that the court only does the “judicial business as usual”. Legal mobilization still could not be the only solution and widely used to solve the environmental problems, since the court still not provide any judicial precedence to be used in the next environmental cases.

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<sup>3</sup> <https://www.cnn.com/2018/09/07/reuters-america-update-1-international-tribunal-rules-in-favor-of-chevron-in-ecuador-case.html> accessed 08 October 2018.

## Chapter 6 conclusion

Legal mobilization, including climate change litigation, is one of the tools that can be used to protect and defend people from oppression and basic rights violation. Several factors encourage the activist to perform legal mobilization in the environmental arena; including, the indirect effects of legal mobilization. In performing the legal mobilization, the activist depends on the legal consciousness, organizational resources, political opportunities, and legal opportunities. The indirect effects tend to be one of the reasons that legal mobilization still be performed by the activist, despite the low of the success rate and the extensive and expensive legal process.

However, to perform legal mobilization, the activist encounters the threat and barrier. SLAPP suits threat and stump the activist in protecting and defending their rights; SLAPP suits also distract public awareness and attention regarding the issues. Besides, the court's decision who handle the environment case often only do the judicial business as usual, the court does not offer any decision that could be a jurisprudence for the next environmental cases.

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