

# Judicial activism of Indonesia's constitutional court in advancing environmental constitutionalism

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## Abstract

The article analyzes the role of judicial activism by Indonesia's Constitutional Court in advancing environmental constitutionalism amid persistent regulatory fragmentation and development-oriented governance. Although the 1945 Constitution guarantees the right to a good and healthy environment and embeds sustainability as a foundational economic principle, legislative and executive practices have frequently diluted environmental protection through deregulation and weakened participatory safeguards. Using normative legal research grounded in constitutional interpretation, proportionality analysis, and systematic examination of leading Constitutional Court decisions, this study develops an analytical framework to assess judicial activism across four dimensions: procedural, institutional, legislative, and substantive. Methodologically, the study justifies this approach on the premise that environmental constitutionalism operates not only through textual guarantees but also through judicial construction of enforceable norms and state obligations. The findings demonstrate that the Court has played a transformative role by constitutionalizing meaningful public participation, strengthening environmental governance mechanisms, correcting procedurally defective legislation, and articulating substantive ecological limits on economic development based on strong sustainability and precautionary principles. The article's contribution lies in conceptualizing these rulings as a structured pattern of environmental judicial activism rather than isolated decisions, thereby clarifying the Court's function within Indonesia's constitutional environmental order. However, structural constraints, particularly implementation gaps, fragmented governance, and legitimacy challenges, continue to limit the practical impact of judicial intervention. The article concludes that while judicial activism cannot substitute for comprehensive environmental governance, it operates as a critical constitutional corrective mechanism that reinforces environmental rights, ecological justice, and the supremacy of the Constitution in Indonesia's environmental legal system.

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## Keywords

Constitutional court, Environmental constitutionalism, Green justice, Indonesia, Judicial Activism

## Introduction

Judicial decisions have played a pivotal role in the development of environmental law in Indonesia, particularly through several landmark rulings that have strengthened environmental protection norms amid regulatory gaps and legal ambiguities [1]. Through judicial law-finding (*rechtsvinding*), judges have not merely applied positive law but have also articulated and advanced progressive environmental principles. The legal standing of environmental organizations, for instance, was first affirmed in the WALHI v. Five Government Agencies and PT Inti Indorayon Utama case (1988), long before it was explicitly regulated by statute. The precautionary principle was subsequently introduced through the Mandalawangi decision (2003), marking a significant shift in judicial approach from a reactive to a preventive orientation. Furthermore, decisions such as PT Bumi Konawe Abadi v. Daeng Kadir and Abdul Azis expanded legal protection for citizens advocating for the right to a healthy environment through public participation, while simultaneously reflecting the judiciary's role in advancing substantive environmental justice [2].

These developments cannot be separated from the global trend toward the constitutionalization of environmental protection, in which modern constitutions increasingly incorporate ecological commitments as part of the highest normative order. Indonesia is firmly situated within this trend through the 1945 Constitution, which explicitly guarantees the right to a good and healthy environment under Article 28H(1). It embeds principles of sustainability and environmental awareness as the foundation of the national economy, as outlined in Article 33(4). These constitutional provisions affirm that environmental protection constitutes a constitutional right and a corresponding obligation of the state, rather than a mere matter of policy preference. Nevertheless, such normative recognition has not been fully translated into effective environmental governance, resulting in a persistent gap between constitutional ideals and empirical realities [3].

Over the past decade, particularly during the administration of President Joko Widodo, Indonesia has actively projected itself as a global leader in environmental governance through claims of declining deforestation rates, commitments to net-zero emissions, and ambitious agendas for energy transition and ecosystem restoration. This narrative has gained symbolic legitimacy in various international forums, including COP26 and the G20 [4]. However, beneath these claims lies a series of structural contradictions. Empirical data reveal the loss of millions of hectares of primary forest, the expansion of extractive-based National Strategic Projects, and legislative reforms such as the Job Creation Law (Omnibus Law) and amendments to the Mining Law, which have weakened environmental safeguards through deregulation of licensing, restrictions on

public participation, and the prioritization of investment interests. These developments have exacerbated agrarian conflicts, violations of Indigenous peoples' rights, and the criminalization and violence against environmental defenders, thereby directly threatening fundamental rights to life, health, and human dignity.

Within this context, the role of the Constitutional Court becomes increasingly critical as the guardian of constitutional supremacy and fundamental rights. However, existing academic scholarship suggests that analyses of this role remain fragmented. Andika Putra and Deka Oktaviana, in their study "Quo Vadis Environmental Participation Rights: A Review of Indonesian Constitutional Court's Decision," examine the protection of public participation as a procedural environmental right in Constitutional Court decisions following the enactment of the Job Creation Law, highlighting both normative regression and judicial efforts to preserve meaningful involvement [5]. While significant, this study primarily focuses on participatory mechanisms and does not elaborate on judicial activism as a broader constitutional phenomenon. Pan Mohamad Faiz conceptualizes environmental protection as a constitutional right under the 1945 Constitution; however, his analysis remains normative and does not sufficiently explore the transformative role of the judiciary [6]. More recently, Febrian Chandra, Hartati, Adithiya Diar, Harmaini, and Fitri Handayani emphasize the strategic role of the Constitutional Court in reinforcing Green Constitution principles through judicial review [7]. Still, their analysis is predominantly centered on institutional functions and policy implications rather than on interpretative dynamics and judicial reasoning that shape judicial activism.

Against this backdrop, this article proceeds from the premise that the failure of political and administrative branches to fulfill constitutional environmental mandates creates space for judicial activism as a corrective constitutional mechanism. Departing from prior studies that are primarily descriptive or sectoral, this article offers a systematic and theory-driven analysis of how the Constitutional Court, through progressive constitutional interpretation, purposive reasoning, and norm creation via judicial decisions, operates as an agent of environmental constitutionalism. By conceptualizing the Indonesian Constitutional Court rulings as instruments of constitutional transformation, this article not only explains how environmental principles are judicially enforced but also critically assesses the extent to which judicial activism can translate abstract constitutional values into concrete state obligations and substantive environmental rights, while situating Indonesia's experience within the broader global debate on judicial activism and comparative ecological constitutionalism. This article contributes by systematizing judicial activism across procedural, institutional, legislative and substantive dimensions.

This Indonesian experience is particularly useful when contrasted with other jurisdictions such as Malaysia, where environmental protection has not been constitutionally provided and where Malaysian courts have traditionally adopted a more restrained approach towards judicial activism in constitutional adjudication.

Environmental disputes are generally framed within statutory and administrative law by the courts rather than a constitutional right discourse. In contrast with Indonesia, this reflects a different constitutional culture and separation of powers sensitivity. Situating Indonesia's Constitutional Court within this comparative context highlights the distinctive role of explicit constitutional environmental guarantees in enabling judicial activism and environmental constitutionalism.

## Method

The study employs normative legal research, treating law as a normative system rather than as empirical social behavior, with a focus on constitutional norms, judicial doctrines, and legal principles governing environmental protection in Indonesia. By situating the jurisprudence of the Indonesian Constitutional Court within the broader framework of constitutional law, the research examines how judicial interpretation contributes to the development of environmental constitutionalism and shapes constitutional meaning as well as state obligations in the environmental domain. To capture the dynamics of judicial activism in environmental adjudication, the study employs a multi-layered analytical approach that combines constitutional interpretation, case law analysis, and conceptual inquiry. Constitutional interpretation is conducted through textual, purposive, and proportionality-based reasoning, analyzing how the Court interprets explicit constitutional provisions, particularly Articles 28H(1) and 33(4) of the 1945 Constitution, as normative foundations for environmental protection, invokes constitutional values such as sustainability, intergenerational justice, and ecological balance to justify expansive readings of environmental rights, and balances environmental interests against competing constitutional objectives, including economic development and state control over natural resources. In parallel, the study undertakes a systematic case law analysis of selected Constitutional Court decisions involving environmental governance, natural resource management, and sustainable development, with cases selected based on their engagement with environmental rights, sustainability principles, and interpretative innovation beyond strict legislative intent, to identify patterns of judicial activism, doctrinal development, and constitutional norm creation. Complementing this doctrinal analysis, a conceptual and theoretical approach is employed to clarify judicial activism as a form of progressive constitutional engagement and environmental constitutionalism as a paradigm integrating ecological protection into fundamental rights and state duties, enabling the assessment of Constitutional Court decisions as instruments of constitutional transformation rather than isolated rulings. The research draws upon primary legal materials, including Constitutional Court decisions, relevant provisions of the 1945 Constitution, and environmental statutes, as well as secondary sources such as peer-reviewed scholarship, academic monographs, and comparative constitutional law literature, which are used selectively to situate Indonesia's experience within global debates. All materials are analyzed using qualitative legal analysis, with particular emphasis on the ratio decidendi, judicial reasoning, and

interpretative methods employed by the Court, to evaluate how constitutional norms are developed through adjudication, the extent to which judicial decisions impose substantive environmental obligations on the state, and the broader constitutional implications of judicial activism for democratic governance and environmental protection.

## Results and discussion

### *Conceptualizing Judicial Activism in Environmental Constitutional Adjudication*

Judicial activism in constitutional adjudication has increasingly been acknowledged as a legitimate, indeed, in certain circumstances indispensable, mode of constitutional interpretation, particularly when political and administrative branches fail to discharge their constitutional mandates. Rather than signifying judicial supremacy or institutional overreach, judicial activism in this study is conceptualized as a purposive, value-oriented, and transformative interpretive practice anchored in the supremacy of the Constitution. In the context of environmental adjudication, such activism enables constitutional courts to translate abstract constitutional commitments into enforceable legal standards that can address regulatory gaps, governance failures, and structural environmental injustices [8]. This conceptual framing is essential to situate the environmental jurisprudence of Indonesia's Constitutional Court within the paradigm of constitutional guardianship, rather than as an encroachment upon legislative or executive authority.

A principled distinction must therefore be drawn between judicial activism and judicial overreach. Judicial overreach refers to the exercise of judicial power without a defensible constitutional basis, which can potentially undermine democratic legitimacy and the separation of powers. Judicial activism, by contrast, derives its legitimacy from constitutional text, structure, and values. In the Indonesian context, this legitimacy is firmly rooted in Articles 28H(1) and 33(4) of the 1945 Constitution, which constitutionally guarantee the right to a good and healthy environment and embed sustainability and environmental insight as foundational principles of the national economy [9]. Where legislative or executive actions dilute, neglect, or contradict these constitutional commitments, active judicial intervention operates as a corrective mechanism to restore constitutional coherence and normative supremacy.

As the sole interpreter of the Constitution, the Indonesian Constitutional Court inevitably performs its role through constitutional interpretation. Constitutional norms do not exist in a vacuum; over time, they encounter evolving social realities, ecological crises, and governance challenges that render static interpretation inadequate. The categorizes constitutional interpretation into three major schools: originalism, which adheres to the original intent and historical context of constitutional drafting; contextualism of fundamental values, which emphasizes constitutional morality and

evolving values rather than rigid original intent; and convergent interpretation, which conceives constitutional meaning as an open and participatory process involving not only judges but also broader societal actors. In practice, judicial approaches globally converge into two broad orientations: originalist and non-originalist. The latter recognizes that constitutional meaning must adapt to societal development and contemporary challenges, including environmental degradation and climate change [10].

Within this interpretive landscape, judicial activism historically emerged with a positive connotation, closely associated with the protection of civil rights rather than judicial abuse of authority. Judicial activism is best understood as judicial willingness to invalidate laws or state actions that violate constitutional rights or exceed constitutional limits, particularly where political processes fail to protect minorities or fundamental interests. Judicial activism through principled implications: protection of implicit constitutional rights, safeguarding minority interests, providing effective remedies for constitutional violations, and engaging with international and comparative legal developments. In Indonesia, judicial activism should not extend to the creation of expansive norms in the realm of criminalization [11].

Against this theoretical backdrop, the Indonesian Constitutional Court's environmental jurisprudence reveals discernible patterns of judicial activism. First, the Court has progressively expanded ecological protection from a policy aspiration into an enforceable constitutional right. Environmental quality is no longer treated as an ancillary regulatory concern but as a substantive constitutional right intrinsically linked to human dignity, health, and the right to life. This marks a shift from formalistic constitutional interpretation toward a substantive rights-based approach, positioning environmental protection as a prerequisite for the enjoyment of other fundamental rights [12].

Second, the Court has adopted a progressive interpretation of state obligations under Articles 28H(1), 33(3), and 33(4) of the Constitution. Rather than construing these provisions as merely programmatic, the Court has interpreted them as imposing concrete and positive duties on the state to prevent environmental degradation, regulate the sustainable exploitation of natural resources, and ensure that development policies do not undermine ecological integrity or intergenerational equity. This approach aligns with the public trust doctrine, as explicitly recognized in Constitutional Court Decision No. 001-021-022/PUU-I/2003, which conceptualizes the state as a trustee rather than an owner of natural resources, bound to manage them for the most significant benefit of present and future generations [13].

Third, the Court increasingly employs structured judicial reasoning through proportionality analysis and the application of the precautionary principle. Proportionality allows the Court to scrutinize whether environmental sacrifices justified by economic development or investment are constitutionally acceptable and proportionate. Meanwhile, the precautionary principle, recognized both in international

environmental law and Indonesia's Environmental Protection and Management Law, enables judicial intervention even amid scientific uncertainty, reinforcing a preventive rather than reactive model of constitutional ecological protection [14].

These jurisprudential developments cannot be separated from the broader constitutionalization of environmental protection and the emergence of the Green Constitution paradigm. Environmental protection within modern constitutionalism reflects a shift from anthropocentric to ecocentric constitutional thought, recognizing nature not merely as an object of exploitation but as an entity possessing intrinsic value. In Indonesia, this paradigm is constitutionally reflected in Articles 28H(1) and 33(4), which integrate environmental rights, sustainability, and ecological considerations into the constitutional order. The ecological dimension of the Indonesian Constitution remains relatively "thin," creating a persistent gap between constitutional ideals and legislative practice, particularly evident in laws prioritizing investment and resource extraction over environmental safeguards.

In this context, judicial activism functions as a constitutional bridge between normative commitment and practical implementation. By interpreting environmental provisions dynamically and purposively, the Indonesian Constitutional Court positions itself as an agent of environmental constitutionalism and ecological justice. This role is especially significant given the escalating challenges of climate change, biodiversity loss, and environmental inequality, which demand constitutional responses grounded not only in human-centered justice but also in intergenerational and ecological justice.

In contrast to the Indonesian Constitutional Court which inclines more towards purposive constitutionalism, Malaysian courts adopt a more textualist and restraint approach. The Malaysian Federal Courts, which has a similar constitutional role like its counterpart, the Indonesian Constitutional Court, puts an emphasis on constitutional supremacy rather than parliamentary supremacy as provided by Article 4(1) of the Malaysian Federal Constitution. There are no similar provisions like Article 28H(1) or 33(4) of the Indonesian Constitution in the Malaysian Constitution. The closest that Malaysian Constitution has is a general provision on the right to life under Article 5(1). The Malaysian Government's commitment via ratification of several international instruments, like the Stockholm Declaration in 1972, created an obligation to demonstrate to the international community Malaysia's commitment in the protection of environment. Hence, a few federal legislations were enacted such as the Environmental Quality Act 1974, Renewable Energy Act 2011 and Carbon Capture, Utilization and Storage Act 2025.

### *Advancing Environmental Constitutionalism through Constitutional Adjudication*

Environmental constitutionalism has emerged as a distinctive normative framework within contemporary constitutional theory, reflecting a fundamental reorientation of constitutional governance toward ecological sustainability and environmental justice. It

represents a departure from classical constitutional paradigms that relegated ecological protection to the realm of ordinary legislation or policy discretion, toward an understanding of the environment as an integral component of constitutional order, rights protection, and state responsibility. Within this framework, constitutional adjudication assumes a decisive role in translating environmental commitments from abstract constitutional ideals into operational and enforceable legal norms. In Indonesia, this transformation has been significantly shaped by the judicial activism of the Constitutional Court, which has increasingly positioned itself as an institutional agent of environmental constitutionalism, particularly in contexts marked by legislative regression, weak enforcement, and governance failures [15].

At its normative core, environmental constitutionalism rests on the premise that ecological protection is inseparable from the concept of constitutionalism itself. Modern constitutions no longer function solely as instruments for allocating political power or safeguarding civil and political liberties; they also articulate a society's fundamental commitments regarding ecological integrity, sustainability, and intergenerational justice. This evolution reflects a growing recognition that environmental degradation, climate change, and biodiversity loss pose existential threats to fundamental constitutional values, including human dignity, equality, democracy, and the rule of law.

Environmental constitutionalism thus reconceptualizes the environment not merely as an object of regulation, but as a constitutional concern with intrinsic value and structural importance. The protection of ecological systems is understood as a prerequisite for the effective enjoyment of fundamental rights, particularly the rights to life, health, housing, and human dignity, thereby collapsing the traditional divide between environmental policy and constitutional rights discourse. This paradigm challenges the anthropocentric bias of classical constitutionalism by integrating ecological considerations into constitutional reasoning and governance.

In Indonesia, this normative shift is firmly grounded in the 1945 Constitution (UUD 1945). Article 28H(1) guarantees the right of every person to enjoy a good and healthy environment, elevating environmental quality to the status of a constitutional right. Simultaneously, Article 33(4) embeds sustainability, ecological insight, balance, and efficiency as foundational principles of the national economy, thereby constitutionalizing ecological considerations within economic governance and natural resource management. Read together, these provisions construct a constitutional architecture in which environmental protection constitutes both a fundamental right and a structural obligation of the state.

However, the open-ended and programmatic character of these provisions creates interpretive ambiguity. In practice, legislative and executive actions have frequently diluted or contradicted constitutional environmental commitments, particularly through development-oriented laws that prioritize investment and resource extraction. Without active constitutional interpretation, environmental constitutionalism risks

remaining symbolic rather than operative. It is precisely within this normative gap that constitutional adjudication and judicial activism become indispensable.

Judicial activism emerges as a corrective constitutional mechanism where political branches fail to give effect to environmental constitutional mandates. In this study, judicial activism is understood not as judicial supremacy or institutional overreach, but as purposive, value-oriented, and transformative constitutional interpretation aimed at restoring constitutional coherence and normative supremacy. Through constitutional adjudication, abstract environmental principles are translated into enforceable standards that can constrain the discretion of both legislative and executive branches. The Indonesian Constitutional Court's environmental jurisprudence provides a clear illustration of how judicial activism operates as a driver of ecological constitutionalism. Rather than treating Articles 28H(1) and 33(4) as merely declaratory or aspirational, the Court has progressively interpreted them as imposing concrete, justiciable, and enforceable obligations on the state. Environmental protection is no longer framed as a policy choice subject to political discretion, but as a constitutional mandate that limits development-oriented governance [16].

This judicial posture is evident in the Court's approach to procedural environmental rights, particularly in the area of public participation. In *WALHI et al. v. Republic of Indonesia* (Decision No. 32/PUU-VIII/2010), concerning judicial review of the Mineral and Coal Mining Law, the Court rejected a formalistic interpretation of public participation that merely required the government to "consider" public opinion. Instead, the Court constitutionalized meaningful participation as an integral component of environmental rights under Article 28H(1), emphasizing that participation must function as a substantive control mechanism to prevent forced displacement, arbitrary land appropriation, and ecological harm. Through this decision, the Court transformed participation from a procedural formality into a constitutional safeguard, reinforcing environmental democracy and good environmental governance [17].

In Commonwealth jurisdiction like Malaysia, the legal foundation to compel public participation can be found in Section 34A of the Environmental Quality Act 1974 and the Environmental Quality (Prescribed Activities) (EIA) Order 2015. The Malaysian law distinguishes between two levels of projects, each with different requirements for public participation. The first category is the basic projects, like small housing estates, do not have mandatory public participation. Nevertheless, the Director General of Department of Environment has the discretion to request if the project is sensitive. The second category is for high-impact project whereby the developer must follow steps outlined by the Department's guidelines, among others, Public Display of Terms of Reference and Public Comment Period.

Judicial activism is further manifested in the Court's willingness to strengthen enforcement mechanisms for environmental protection. In *Arfiana et al. v. Republic of Indonesia* (Decision No. 15/PUU-XIX/2021), the Court expanded the authority of ecological investigators to investigate money laundering offenses connected to

environmental crimes. By invalidating restrictive statutory interpretations that centralized investigative power, the Court adopted a multidoor enforcement approach, recognizing that ecological destruction is often embedded within complex financial crimes. This decision reflects a form of structural judicial activism, where the Court intervenes not only to protect rights, but also to enhance the institutional capacity of environmental law enforcement as a constitutional obligation derived from environmental rights and sustainability principles [18].

The Court's activism is most visible in its intervention against legislative processes that undermine environmental constitutionalism. In the landmark formal review of the Job Creation Law (Pamungkas et al. v. Republic of Indonesia, Decision No. 91/PUU-XVIII/2020), the Court declared the law conditionally unconstitutional due to procedural defects, including the absence of meaningful public participation. Significantly, the Court articulated constitutional standards for "meaningful participation," requiring the right to be heard, the right for opinions to be considered, and the right to receive explanations. This decision elevates procedural environmental rights to constitutional status and reinforces the notion that ecological constitutionalism encompasses not only substantive outcomes but also democratic processes of lawmaking [19].

Judicial activism in environmental constitutionalism reaches its most advanced articulation in the Court's substantive ecological reasoning. In *PT Gema Kreasi Perdana v. Republic of Indonesia* (2023), concerning the prohibition of mining activities on small islands, the Court adopted a strong sustainability approach under Article 33(4) of the Constitution. By introducing the concept of critical natural capital, the Court recognized specific ecological systems as non-substitutable and essential for sustaining life and biodiversity. Mining on small islands was thus constitutionally impermissible, not merely as a policy choice, but as a violation of precautionary principles, intergenerational justice, and ecological integrity. This decision exemplifies the creation of judicial norms, where constitutional provisions are dynamically interpreted to address contemporary environmental vulnerabilities and climate-related risks [20].

An examination of the Constitutional Court's environmental decisions reveals a discernible and evolving pattern of judicial activism that operates across procedural, institutional, and substantive dimensions of constitutional adjudication. Rather than manifesting as sporadic or reactionary interventions, the Court's jurisprudence demonstrates a structured and purposive engagement with environmental constitutionalism, grounded in constitutional text, values, and systemic governance concerns.

The first identifiable pattern lies in the constitutionalization of procedural environmental rights, particularly in the area of public participation. In *WALHI et al. v. Republic of Indonesia* (Decision No. 32/PUU-VIII/2010), the Court decisively departed from a minimalist and formalistic understanding of participation that merely required the state to "consider" public input. Instead, the Court elevated participation to a substantive constitutional safeguard under Article 28H(1), positioning it as a mechanism

of democratic control capable of preventing environmental harm, forced displacement, and arbitrary land appropriation. This move reflects a classic form of rights-expansive judicial activism, whereby procedural guarantees are transformed into enforceable constitutional standards. Participation is no longer treated as an administrative courtesy but as an intrinsic component of environmental rights and environmental democracy. Through this decision, the Court effectively recalibrated the balance of power between state authorities, corporate interests, and affected communities, reinforcing accountability within ecological governance.

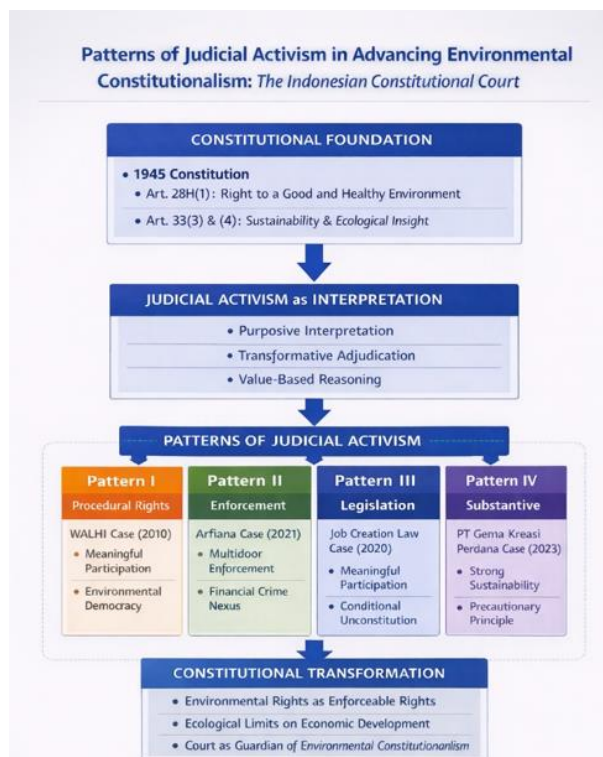
A second pattern of judicial activism emerges through institutional and structural intervention aimed at strengthening environmental law enforcement. In *Arfiana et al. v. Republic of Indonesia* (Decision No. 15/PUU-XIX/2021), the Court invalidated restrictive statutory interpretations that limited the authority of environmental investigators to pursue money laundering offenses linked to environmental crimes. By endorsing a multidoor enforcement approach, the Court acknowledged the structural reality that ecological destruction is often facilitated by complex financial networks rather than isolated regulatory violations. This decision exemplifies structural judicial activism, where the Court moves beyond declaratory rights protection and actively enhances the state's institutional capacity to fulfill its constitutional environmental obligations. The Court's reasoning reflects a systemic understanding of ecological harm and situates law enforcement effectiveness as a constitutional requirement derived from environmental rights and sustainability principles.

The third pattern is evident in the Court's corrective intervention against defective legislative processes that undermine environmental constitutionalism. This approach reached a critical point in the landmark formal review of the Job Creation Law (*Pamungkas et al. v. Republic of Indonesia*, Decision No. 91/PUU-XVIII/2020). Here, the Court did not merely assess the substantive content of the legislation, but scrutinized the democratic quality of the lawmaking process itself. By declaring the law conditionally unconstitutional due to the absence of meaningful public participation, the Court articulated constitutional benchmarks for participatory lawmaking, namely the right to be heard, the right to have opinions considered, and the right to receive explanations. This decision reflects process-oriented judicial activism, reinforcing the notion that environmental constitutionalism encompasses not only substantive ecological outcomes but also procedurally legitimate governance. Environmental protection, in this sense, is inextricably linked to democratic constitutionalism.

The most advanced manifestation of judicial activism appears in the Court's substantive redefinition of sustainability standards. In *PT Gema Kreasi Perdana v. Republic of Indonesia* (2023), the Court adopted a strong sustainability approach under Article 33(4) by introducing the concept of critical natural capital. By recognizing specific ecological systems, tiny islands, as non-substitutable and essential for sustaining life and biodiversity, the Court constitutionalized ecological limits to economic activity. Mining on small islands was deemed constitutionally impermissible not merely as a policy

preference, but as a violation of precautionary principles, intergenerational justice, and ecological integrity. This decision exemplifies the creation of judicial norms, where constitutional provisions are dynamically interpreted to address contemporary environmental vulnerabilities and climate-related risks. The Court thus positioned itself as an active constitutional agent capable of redefining the boundaries of lawful development.

Collectively, these decisions demonstrate that judicial activism in Indonesia operates through multiple, interrelated dimensions: the constitutionalization of procedural environmental rights, the strengthening of enforcement structures, the correction of defective legislative processes, and the substantive redefinition of sustainability standards. Far from episodic or ad hoc, this body of jurisprudence reveals a coherent pattern of constitutional transformation driven by purposive interpretation and value-based reasoning. Through these interventions, the Constitutional Court has progressively translated abstract constitutional commitments into operational legal norms, reinforcing the normative force of environmental rights and sustainability principles within Indonesia's constitutional order. The judicial activism and environmental constitutionalism in Indonesia presented in [Figure 1](#).



**Figure 1.** Judicial activism and environmental constitutionalism in Indonesia (Author analysis)

Despite its transformative potential, however, judicial activism in advancing environmental constitutionalism remains constrained by institutional and structural limitations. As a constitutional court, the Indonesian Constitutional Court primarily functions as a negative legislator, lacking direct authority to ensure compliance with its rulings. Progressive constitutional interpretations frequently encounter resistance at the implementation stage, particularly when they conflict with entrenched economic

interests and development-oriented policy agendas. These tensions are further exacerbated by governance fragmentation, as environmental regulation in Indonesia involves overlapping authorities across national and subnational levels, creating coordination problems that judicial decisions alone cannot resolve. Consequently, a persistent gap often remains between constitutional jurisprudence and empirical environmental outcomes.

Judicial activism also raises enduring concerns regarding consistency, predictability, and democratic legitimacy. Variations in judicial reasoning across cases risk weakening the normative coherence of environmental constitutionalism, while activist adjudication is frequently criticized as encroaching upon legislative prerogatives. These critiques underscore the necessity for transparent, principled, and constitutionally grounded reasoning to sustain judicial legitimacy and public trust. Ultimately, judicial activism cannot substitute for comprehensive environmental governance. While constitutional adjudication plays a crucial role in correcting constitutional violations and articulating normative benchmarks, the realization of ecological constitutionalism depends on a sustained commitment from the political and administrative branches. Judicial activism thus functions not as a replacement for democratic environmental governance but as a constitutional corrective and catalyst, bridging the gap between constitutional ideals and governance realities in the pursuit of ecological sustainability and justice.

## Conclusion

The study demonstrates that judicial activism of Indonesia's Constitutional Court has played a transformative role in advancing environmental constitutionalism by converting constitutional environmental guarantees into enforceable rights and binding state obligations. Through purposive and value-oriented interpretation of Articles 28H(1) and 33(4) of the 1945 Constitution, the Court has progressively strengthened procedural participation, enhanced enforcement capacity, corrected flawed legislative processes, and articulated substantive ecological limits on development grounded in sustainability, precaution, and intergenerational justice. These jurisprudential developments position the Court as a constitutional guardian responding to governance failures and legislative regression in environmental protection. Nevertheless, judicial activism remains constrained by implementation deficits, institutional fragmentation, and ongoing debates over democratic legitimacy. Accordingly, judicial intervention should be understood not as a substitute for political and administrative responsibility, but as a constitutional corrective and catalyst. The advancement of environmental constitutionalism ultimately depends on sustained alignment between judicial interpretation, legislative commitment, and executive enforcement to ensure ecological sustainability and constitutional justice in practice.

From a comparative constitutional law perspective, Indonesia's experience illustrates how clear constitutional guarantees on environmental protection can empower and strengthened the courts' function as agents of environmental constitutionalism – an

experience that stands in contrast to jurisdictions like Malaysia, where absence of constitutional environmental rights has put a restraint the judiciary's ability to adopt similarly transformative approaches. Indonesian judicial activism demonstrates an effective check and balance role played by the judiciary upon the executive's power in safeguarding people's life and the environment.

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