

# Green constitutionalism for rights of future generations: Advancing intergenerational justice for a sustainable future

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## Abstract

The study examines recurring ecological disasters in Sumatra, including deforestation, peatland degradation, and agrarian conflicts, as symptoms of constitutional failure rather than isolated environmental or administrative lapses. Employing a socio-legal approach based on empirical evidence from Aceh, North Sumatra, and West Sumatra, the research analyzes the gap between Indonesia's constitutional mandates for environmental protection (Articles 28H(1) and 33(4) of the 1945 Constitution) and their implementation. The novelty of this study lies in its reinterpretation of ecological disasters as constitutional warnings and manifestations of intergenerational injustice, a perspective largely overlooked in existing discourse on Green Constitutionalism in Indonesia. The main findings reveal that although constitutional provisions are symbolically acknowledged, their interpretation remains anthropocentric and short-term oriented, thereby transferring ecological risks to future generations without adequate legal safeguards. The article concludes that a paradigmatic shift toward a substantive constitutional approach, embedding principles of precaution, non-regression, and state trusteeship, is essential to prevent the constitution from failing in its role as a guardian of long-term public and ecological interests.

## Keywords

Environmental rights, Future generations, Green constitutionalism, Intergenerational justice

## Introduction

Severe floods and landslides that struck Aceh, North Sumatra, and West Sumatra between 25 and 27 November resulted in grave humanitarian consequences, with 442 fatalities, 402 persons reported missing, and 156,918 individuals forcibly displaced. According to records from the Indonesian Forum for the Environment these disasters cannot be understood merely as natural phenomena. Rather, they are the outcome of escalating ecological vulnerability driven by transformations in critical ecosystem landscapes, particularly forest ecosystems, further aggravated by the impacts of the

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climate crisis. Between 2016 and 2025, approximately 1.4 million hectares of forest across these three provinces were lost to deforestation as a result of the activities of 631 companies operating in the mining, oil palm plantation, forestry, geothermal, and hydropower sectors [1]. This data indicates that the ecological disasters occurring in Sumatra are not merely natural phenomena, but rather the product of structural policy choices and systemic failures in natural resource governance.

The scale and recurring patterns of these disasters underscore that the environmental crisis has evolved into a constitutional issue. The global ecological crisis, characterized by climate change, biodiversity loss, large-scale deforestation, land degradation, and the increasing frequency of disasters, has fundamentally reshaped the relationship between law, the state, and nature. This condition exposes the limitations of conventional legal frameworks that were primarily designed to regulate short-term social relations rather than to manage ecological risks that are cumulative, intergenerational, and often irreversible. Accordingly, the state's failure to prevent ecological disasters reflects a constitutional failure to safeguard long-term public interests [2].

Indonesia has incorporated the idea of environmental protection within its constitutional framework. The fourth amendment to the 1945 Constitution of the Republic of Indonesia introduced Article 28H paragraph (1), which provides that “every person has the right to live in physical and spiritual prosperity, to have a place to live, and to enjoy a good and healthy environment, and has the right to obtain health services.” This provision is frequently regarded as the constitutional foundation for the development of Green Constitutionalism in Indonesia. This guarantee, however, remains largely present-oriented in practice, focusing predominantly on the fulfillment of environmental rights for the current generation [3]. Consequently, long-term ecological risks transmitted to future generations are frequently overlooked in constitutional analysis.

At the theoretical level, these limitations have stimulated the development of Green Constitutionalism as an effort to reorient the function of constitutions from merely serving as power-limiting instruments toward becoming ecological safeguarding frameworks. Kristian Skagen Ekeli, argues that modern democracies exhibit a temporal bias favoring short-term interests, thereby necessitating constitutional mechanisms in the form of “posterity provisions” to secure the interests of future generations [4]. This theoretical foundation has been reinforced by evolving jurisprudence in several jurisdictions. As analyzed by Petra Minnerop, the German Federal Constitutional Court has integrated the principle of intergenerational equity into the protection of fundamental rights through climate litigation, recognizing that inadequate present action may pre-emptively constrain the freedoms of future generations [5]. However, much of this literature is grounded in the experiences of developed countries and has not sufficiently examined how Green Constitutionalism operates within developing states that face recurrent ecological disasters, such as Indonesia.

In the Indonesian context, early scholarship has mapped the normative transformation of the Constitution in the post-amendment era in accommodating sustainable development [6]. However, these studies generally remain confined to the paradigmatic dimension and have not explicitly positioned future generations as holders of constitutional rights, nor have they critically examined the effectiveness of Green Constitutionalism in responding to tangible ecological crises. It is this research gap that the present article seeks to address. Employing a normative legal research methodology, this study analyzes ecological disasters in Sumatra as indicators of constitutional failure and assesses the extent to which Green Constitutionalism can function as a normative framework for safeguarding the rights of future generations in Indonesia. Accordingly, this research aims to integrate the concept of intergenerational justice into the discourse of Green Constitutionalism in Indonesia and to propose a reinterpretation of the environmental provisions of the 1945 Constitution to ensure a more long-term constitutional orientation.

## Method

The study employs a qualitative normative legal research design grounded in an integrative doctrinal contextual approach. The primary object of analysis is Indonesia's constitutional framework, particularly Article 28H(1) and Article 33(4) of the 1945 Constitution, together with statutory and regulatory instruments governing natural resource management. The research is limited to examining the constitutional construction of environmental rights and state control over natural resources, focusing on their implications for intergenerational environmental protection. It does not aim to provide a comprehensive empirical environmental assessment, but rather to evaluate the normative coherence between constitutional guarantees and regulatory implementation.

Empirical contextual data, such as documented ecological disasters, deforestation trends, peatland degradation, and socio-environmental conflicts in Sumatra, are incorporated selectively to illustrate how constitutional commitments operate in practice. These data are drawn from official governmental publications, environmental civil society reports, and peer-reviewed scientific studies. Within this framework, empirical materials function as contextual evidence to test the effectiveness and consistency of constitutional norms, rather than as independent quantitative findings. The analytical methods include constitutional interpretation (textual, systematic, and teleological), statutory analysis, and critical policy evaluation. These techniques are employed to identify normative inconsistencies, regulatory fragmentation, and gaps between constitutional principles and their administrative execution. A comparative constitutional perspective is adopted to enhance the analytical depth of the study. Selected foreign jurisprudence and scholarly discourse on green constitutionalism and intergenerational justice are examined not for direct transplantation, but to provide conceptual benchmarks and normative standards against which Indonesia's

constitutional framework can be assessed. This comparative approach is methodologically justified to clarify whether Indonesia's constitutional design possesses sufficient doctrinal capacity to safeguard the environmental rights of future generation.

## Results and Discussion

### *What Legacy Do We Leave to Future Generations? Reframing the Green Constitution as an Intergenerational Obligation*

The existence of green constitutionalism in Indonesia can be identified in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Essentially, this provision affirms that every person has the right to live in physical and spiritual prosperity, to have a place of residence, and to enjoy a good and healthy environment, as well as the right to obtain health services. This article explicitly places the right to a clean and healthy environment within the framework of human rights. The principle of green constitutionalism is further reflected in Article 33 paragraph (4) of the Constitution, which emphasizes that the national economy shall be organized based on economic democracy while adhering to environmentally sound principles. Consequently, national economic development must proceed in tandem with sustainable development, including environmental considerations [7].

These constitutional provisions subsequently gave rise to environmental legislation. Indonesian constitutional history records that environmental laws have undergone several transformations, evolving from the Basic Environmental Management Act to the Environmental Protection and Management Act. The Environmental Protection and Management Act (EPM Act) serves as concrete evidence of the state's commitment to ensuring a sustainable and viable environment. This legislation guarantees the right of every person to a healthy environment while simultaneously imposing obligations on society to preserve environmental functions and prevent pollution arising from environmental exploitation. Article 65 paragraph (1) of the EPM Act explicitly affirms that the right to a good and healthy environment belongs to everyone. Moreover, Article 66 of the same Act provides legal protection to individuals and groups advocating for environmental rights by stipulating that they cannot be subject to criminal or civil liability for such efforts. These provisions collectively demonstrate that the state guarantees both the fulfillment and protection of environmental rights, including through environmental considerations in lawmaking [8]. This commitment is further reinforced by statutory provisions requiring that legislative drafting at both national and regional levels must take environmental protection principles into account.

Taken together, these norms suggest that Indonesia has adopted elements of green constitutionalism. However, such commitments are more explicitly articulated in statutory environmental laws than in the 1945 Constitution itself, which functions as the supreme legal norm and the primary guide for subsequent legislation. The limited

constitutional protection of the environment is evident in Article 28H paragraph (1), which does not provide a distinct environmental provision but instead incorporates environmental rights alongside other fundamental rights [9]. As a result, the Constitution tends to conceptualize the environment as a supplementary element of human life rather than as an autonomous constitutional value. This reflects an anthropocentric paradigm that places humans at the center of the natural system, treating nature primarily as a means to satisfy human needs. Persistent violations of environmental regulations and inadequate compliance with environmental obligations illustrate the consequences of this paradigm, exacerbated by regulatory fragmentation and overlapping environmental norms.

The inadequacy of environmental protection in Indonesia is empirically reflected in the Environmental Performance Index Report 2022, which ranked Indonesia 164th out of 180 countries. The report identified prioritization of economic growth over environmental sustainability as a major contributing factor. Political considerations play a decisive role in shaping economic policy, underscoring the importance of strengthening environmental commitments at the constitutional level. Embedding environmental protection within the Constitution would signal a stronger and more durable commitment to ecological sustainability.

In contemporary constitutional democracies, constitutional law is distinguished from ordinary legislation in two principal respects. First, from a legal standpoint, constitutional law constitutes *lex superior*, meaning that in the event of conflict, constitutional provisions prevail over ordinary statutes. Second, from a political standpoint, constitutions are significantly more difficult to amend than ordinary laws. While ordinary legislation may be enacted through a simple parliamentary majority, constitutional amendments typically require special and more demanding procedures. These mechanisms often include supermajority requirements, temporal delays, referenda, federal ratification processes, or the absolute entrenchment of specific constitutional provisions.

Because of this rigidity, constitutions can serve as powerful instruments for shaping future political trajectories. Their resistance to frequent change constrains both legislative and executive authority, binding present decision-makers to the choices of past constitutional framers. Constitutional provisions thereby remove certain decisions from the immediate control of current political majorities, making them particularly suitable for safeguarding long-term interests, including those of future generations. Environmental constitutional provisions can thus function as tools to guide future political and legal decision-making in a manner that protects intergenerational interests. However, the practical effectiveness of such provisions depends on the availability of judicial review mechanisms that allow courts to assess legislation, regulations, and administrative actions against constitutional environmental norms.

Over the past three decades, numerous states have incorporated substantive and procedural environmental provisions into their constitutions. Substantive

environmental provisions typically aim to ensure a certain level of environmental quality, such as clean air and water, ecological balance, or sustainable development. Yet the effectiveness of constitutional protection for future generations depends on our capacity to anticipate future interests and to assess how present actions may affect them. Critics argue that such protection is inherently problematic due to uncertainty regarding future technological developments and resource needs. From this perspective, ignorance of future conditions undermines the moral and legal basis for intergenerational obligations.

Nevertheless, this argument does not fully negate intergenerational responsibility. While future conditions are uncertain, certain human needs, particularly physiological needs such as access to clean water, adequate nutrition, breathable air, and protection from life-threatening environmental hazards, are likely to remain constant. These needs are rooted in human biological and physical constitution and are therefore reasonably predictable. On the basis of scientific knowledge, it is possible to identify critical natural resources essential to fulfilling these needs. Actions that cause irreversible or severe damage to such resources can thus be reasonably anticipated to harm future generations, rendering present decision-makers morally and legally accountable.

Accordingly, courts tasked with enforcing intergenerational environmental provisions must determine which natural resources are critical within their jurisdictions. Although such determinations may be complex and context-dependent, certain resources, such as water, fertile land, and key ecosystems supporting food production, are clear candidates. Despite inevitable uncertainty, constitutional provisions protecting critical natural resources offer clearer judicial standards than broader, more abstract environmental clauses [10].

The recognition of environmental rights as human rights emerged internationally with the 1972 Stockholm Conference on the Human Environment. This was followed by the 1992 Rio Earth Summit, which produced the Rio Declaration and Agenda 21, establishing normative principles linking human rights and environmental protection. In 1994, the UN Special Rapporteur on Human Rights and the Environment concluded that environmental degradation significantly undermines the enjoyment of human rights. Formal recognition came in 2001, when the UN High Commissioner for Human Rights affirmed that everyone has the right to live in a world free from toxic pollution and environmental degradation, framing environmental harm as a violation of the right to life. This interpretation was further elaborated in General Comment No. 36 (2018), which emphasized that the right to life encompasses conditions necessary for a dignified existence.

International human rights instruments further support this interpretation. Article 1(2) of the International Covenant on Economic, Social and Cultural Rights recognizes peoples' rights to freely dispose of their natural resources. UN General Assembly Resolution 1803 (XVII) on permanent sovereignty over natural resources and Resolution 3281 (XXIX) further reinforce the principle that environmental protection is integral to

human dignity and development. At the regional level, the African Charter on Human and Peoples' Rights explicitly recognizes environmental rights, while ASEAN has adopted multiple regional environmental declarations and agreements.

Environmental crime refers to acts by individuals, groups, or corporations that cause pollution or environmental destruction. Unlike conventional crimes, environmental crimes are often corporate in nature and may involve state complicity. Their scale and persistence have led scholars to classify severe cases as ecocide, systematic and large-scale destruction of ecosystems threatening all forms of life. Patriarchal development paradigms have further exacerbated environmental harm, marginalizing local communities and disproportionately affecting women. Women's experiences, roles in social reproduction, and environmental knowledge are frequently ignored, leaving them particularly vulnerable to the consequences of resource exploitation and ecological degradation. Indonesian environmental law reflects these concerns through both material and formal offenses under the Environmental Protection and Management Act of 2009. Material offenses criminalize acts causing pollution or environmental damage resulting in injury or death, while formal offenses penalize regulatory violations such as operating without environmental permits, illegal waste disposal, and obstructing environmental enforcement [11].

The Philippine Supreme Court's landmark *Minors Oposa* decision exemplifies judicial recognition of intergenerational responsibility, although its practical impact has been limited. Other constitutional approaches include fiscal sustainability provisions and institutional mechanisms such as Israel's former Commission for Future Generations [12]. Utilitarian theory, as articulated by Jeremy Bentham, posits that law should aim to maximize collective happiness. Applied to environmental governance, this principle supports policies that promote long-term societal welfare rather than short-term gains. The evolution from anthropocentric to ecocentric perspectives reflects growing recognition that human well-being is inseparable from ecological integrity. Green constitutionalism embodies this shift by embedding environmental protection and sustainability within the highest legal framework [13].

Green Constitutionalism represents a transformative evolution in constitutional thought, reorienting constitutions toward ecological sustainability and intergenerational justice. By recognizing future generations as constitutional stakeholders and imposing positive environmental obligations on the state, it challenges the short-termism inherent in democratic governance. Through principles such as precaution, non-regression, and ecological stewardship, Green Constitutionalism positions the constitution as a critical instrument for preventing ecological debt and ensuring the long-term viability of both human societies and the natural world.

### *Ecological Disasters in Sumatra as a Constitutional Failure: Reassessing Indonesia's Green Constitutional Commitments*

Recurring and widespread ecological disasters in Sumatra, ranging from flash floods, landslides, and massive forest and land fires to water and air pollution, can no longer be understood as isolated natural phenomena. Instead, these events reveal a systematic, structured, and sustained pattern of environmental degradation. Empirical data from regions such as Aceh, North Sumatra, and West Sumatra demonstrate that Sumatra's ecological crisis is the outcome of flawed environmental governance and policy choices. The loss of 119,626 hectares of forest across Sumatra and the burning of 141,522 hectares of peatland in 2023 alone represent merely the most visible manifestations of a long-standing and deeply entrenched process of ecological degradation [14].

In this context, Sumatra's ecological crisis cannot be reduced to administrative failure or weak environmental law enforcement. Rather, it constitutes a profound constitutional failure. A widening gap is evident between the normative promise of Indonesia's Green Constitution, as enshrined in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution, and the reality of policy-making and implementation on the ground. Development paradigms remain predominantly anthropocentric, extractive, and oriented toward short-term economic gain [15]. Consequently, ecological disasters must be understood as constitutional warnings and as manifestations of intergenerational injustice, whereby the environmental burdens of today's policies are systematically transferred to future generations who have no political voice in determining their ecological fate.

Conditions in Aceh provide a stark illustration of how environmental governance failure intertwines with the erosion of regional autonomy and the neglect of community rights. With an annual deforestation rate of 14,527 hectares and a reforestation capacity of only 785 hectares per year, Aceh would require approximately 171 years to restore its forests, assuming no further degradation occurs. The direct consequences are evident in the critical status of twenty river basins, including the Singkil watershed, which has lost 66 percent of its forest cover, and the Peusangan watershed, where only 75 percent remains. These conditions have triggered recurrent annual flooding. The crisis has been exacerbated by state policies that disregard Aceh's special autonomy, particularly through Minister of Energy and Mineral Resources Decree No. 86 of 2022, which designates approximately 84 percent of Aceh's land area as mining zones. Of this area, 53 percent lies within forest zones and 84 percent overlaps with wildlife corridors. This policy not only contravenes the Law on the Governance of Aceh but also reflects a modern form of *domein verklaring* that dispossesses local communities of their living space. As a result, disaster-related losses from floods, landslides, and tornadoes reached IDR 430 billion in 2023, accompanied by widespread damage to public infrastructure and agriculture. Human, elephant conflict in the Krueng Peusangan watershed further threatens food security, while recurring hydrogen sulfide gas poisoning linked to PT

Medco E&P Malaka underscores the state's negligence in corporate oversight and environmental law enforcement [14].

In North Sumatra, environmental governance failure manifests through agrarian conflicts, the legalization of environmental crimes, and a false narrative of energy transition. Social forestry programs intended to empower communities have instead been exploited by investors, triggering tenure conflicts covering approximately 7,322 hectares and leading to the criminalization of local residents. Simultaneously, the legalization of illegal oil palm plantations through the Job Creation Law has effectively legitimized 157,054 hectares of plantations previously located within forest areas. This policy exemplifies the subordination of environmental law to short-term economic interests. Serious threats also loom over the Batang Toru ecosystem, the critical habitat of the Tapanuli orangutan, where approximately 80 percent of the area has been allocated for geothermal and mining projects. Infrastructure projects framed as part of the energy transition, such as the Batang Toru Hydropower Plant, have instead generated social conflict and ignored principles of social and ecological justice [14].

In West Sumatra, the practice of *domein verklaring* has expanded to an even more extreme degree. The unilateral designation of 54.43 percent of West Sumatra as forest area has resulted in approximately 81.97 percent of nagari being located within or adjacent to forest zones. This condition effectively positions the state as an agent of impoverishment, as illustrated in Nagari Air Bangis, where forest claims have been used to criminalize residents and dispossess approximately 1,000 hectares of community-managed plantation land. This situation is further aggravated by the planned National Strategic Project of PT Abaco Pasifik Indonesia, covering 30,162 hectares, 68.47 percent of the nagari's territory, and potentially converting 20,000 hectares of forest. At the same time, so-called green development schemes have failed to mitigate ecological crises. Geothermal projects in Solok and South Solok have generated social conflict and are alleged to have caused water scarcity and crop failure. A bamboo-based biomass power project in Mentawai collapsed entirely. Meanwhile, the impacts of climate change have become increasingly tangible, including coffee crop failures of up to 45 percent and coastal abrasion in Padang City reaching 50 meters [14].

These empirical realities do not exist in a legal vacuum but are the product of problematic interpretations and implementations of Indonesia's constitutional framework. The constitutional right to a good and healthy environment guaranteed under Article 28H paragraph (1) of the 1945 Constitution has been narrowly construed in practice. Violations are recognized only when pollution or environmental damage produces immediate and direct harm to individuals, while cumulative and long-term ecological degradation is largely ignored. This present-oriented interpretation marginalizes the rights of future generations and legitimizes policies that are formally lawful yet substantively unjust. A similar distortion affects Article 33 paragraph (4), where sustainable development is reduced to a discretionary policy consideration rather than treated as a binding constitutional norm. Decisions such as the expansive mining

designation in Aceh and the legalization of illegal oil palm plantations in North Sumatra demonstrate the failure of the Constitution to function as a *lex superior* capable of restraining state and corporate exploitation of natural resources.

The absence of explicit constitutional recognition of the rights of future generations further exacerbates this condition. Within an electoral democracy oriented toward short political cycles, the interests of unborn generations are systematically marginalized. Sumatra's ecological crisis reflects the accumulation of ecological debt imposed on future generations, who will inherit a degraded environment, heightened disaster vulnerability, and depleted natural resources. This condition is intensified by weak mechanisms of constitutional enforcement and accountability. Although Indonesia has a Constitutional Court, jurisprudence that decisively invalidates legislation or policies for violating environmental principles and intergenerational justice remains limited. Consequently, responsibility for cumulative and systemic environmental damage becomes diffuse, allowing the state to evade constitutional accountability.

The Sumatra's ecological crisis demonstrates that the mere inclusion of environmental clauses in constitutional text does not automatically translate into effective environmental protection in practice. What has emerged is a symbolic rather than substantive form of green constitutionalism. Addressing this failure requires a paradigm shift toward an intergenerational justice, based constitutional interpretation that incorporates the precautionary principle, the non-regression principle, and the state's role as trustee for future generations. Predictable disasters should be understood as constitutional violations. Strengthening checks and balances, including legislative oversight and public participation through strategic litigation, is essential to ensure that all development policies are rigorously evaluated based on their long-term and cross-generational impacts. The government must also pursue bold policy reforms, including revoking problematic mining policies, ending the legalization of illegal oil palm plantations, and reassessing infrastructure and energy projects that are spatially intensive and socially and ecologically destructive. Saving Sumatra from ecological collapse is therefore not merely the responsibility of environmental ministries but a fundamental test of Indonesia's constitutional order as a whole. To honor the Constitution is to ensure that present development does not deprive future generations of their right to live in a good and healthy environment. Without such a transformation, the Constitution risks becoming a hollow normative document, silent witness to the ecological collapse of the nation itself.

## Conclusion

The study concludes that recurring ecological disasters in Sumatra expose a structural failure in the implementation of Indonesia's green constitutional commitments, where environmental protection remains largely symbolic and subordinated to short-term economic imperatives. The prevailing anthropocentric and present-oriented interpretation of Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945

Constitution has proven inadequate to address cumulative, systemic, and intergenerational environmental harm. The absence of explicit constitutional recognition of future generations as rights-holders, coupled with weak mechanisms of constitutional enforcement and accountability, has allowed environmentally destructive policies to persist without meaningful constitutional scrutiny. Accordingly, the article argues that Green Constitutionalism in Indonesia must be reoriented toward a substantive and enforceable framework grounded in intergenerational justice, incorporating the precautionary principle, the non-regression principle, and the conception of the state as a constitutional trustee of natural resources. Such a reorientation is essential to ensure that constitutional environmental rights function as binding legal constraints on state action and that present development policies do not compromise the ecological foundations necessary for the survival, dignity, and rights of future generations.

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