

## BEYOND THE ABSENCE OF CONSTITUTIONAL RIGHTS: MALAYSIA'S MULTIFACETED FRAMEWORK FOR ENVIRONMENTAL PROTECTION

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### ABSTRACT

The protection of the environment in Malaysia operates within a legal framework characterised by the absence of an explicit constitutional right to a clean and healthy environment. This constitutional silence creates a legal tension between regulatory compliance-based governance and the growing demand for rights-based environmental justice, particularly regarding access to remedies. Unlike jurisdictions that constitutionalise environmental rights, Malaysia relies on statutory regulation, administrative governance, and cautious judicial interpretation to address environmental harm. This article examines how environmental justice functions within Malaysia's legal framework beyond constitutional rights and assesses the legal framework that prioritises regulatory compliance over rights-based claims. Adopting a qualitative doctrinal legal research methodology, the study analyses primary legal sources spanning the Environmental Quality Act 1974 (Act 127) to recent judicial developments, with selected legislation and case law highlighting their significance in shaping environmental governance. The findings demonstrate that Malaysia's framework incorporates multiple mechanisms that indirectly support environmental justice, such as public participation through legal processes and administrative complaint mechanisms, statutory compensation for environmental harm, and limited substantive protection for vulnerable communities. In addition to examining existing strategies, the study develops the concept of "regulatory-embedded environmental justice" to explain how justice is operationalised indirectly through legal processes. Collectively, these strategies enable environmental protection to function despite the absence of explicit constitutional environmental rights. However, their effectiveness depends largely on administrative discretion and enforcement capacity rather than enforceable environmental rights. The article argues that Malaysia represents a distinct regulatory approach in which environmental justice is embedded within statutory frameworks rather than constitutional guarantees. While this approach demonstrates institutional adaptability, it also reveals the confined scope of access to justice in Malaysia. By advancing a conceptual model and identifying structural limitations, this study offers a transferable analytical framework for other jurisdictions operating within a similar system.

## Introduction

The relationship between environmental protection and human rights has become an increasingly prominent theme in international legal discourse over recent decades. Global institutions now widely recognise that environmental quality is closely connected to the enjoyment of fundamental human rights, including life, health, food, water, and human dignity (UNEP, 2019; UNDP, 2022; Hussein et al., 2024). This evolving understanding has encouraged legal systems and international bodies to frame environmental protection not merely as a matter of regulatory control, but also as a question of justice and legal rights (Boer, 2017). Within this broader shift, environmental rights have emerged as a framework through which environmental harm is increasingly viewed in terms of its implications for human well-being and legal accountability (Boyle, 2012; Grear & Kotzé, 2015; Jendroška, 2024; Triana & Izza, 2021).

Alongside this development, environmental justice literature highlights concern about the unequal distribution of ecological burdens, demonstrating that pollution, ecosystem degradation, and climate-related risks are disproportionately endured by marginalised and low-income communities (Holding, 2021). Rather than treating environmental protection solely as a regulatory measure, some scholarship emphasises participation, accountability, and fairness as central pillars of effective environmental governance (Schlosberg, 2013; Walker, 2012; Knox & Morgera, 2022). From this perspective, environmental rights function as legal mechanisms that transform environmental concerns into enforceable claims, enabling affected communities to challenge inequality and vulnerability through legal processes (Boer, 2017; Gonzalez, 2021).

Malaysia presents a contrasting context. Despite possessing extensive environmental legislation and regulatory institutions, the nation does not recognise an explicit constitutional right to a clean or healthy environment (Mohammad, 2011). The Federal Constitution contains no environmental rights, and key legislations such as the Environmental Quality Act 1974 (Act 127) (EQA 1974), together with its subsequent amendments, regulating pollution and environmental impacts without articulating environmental protection as a human right (Mustafa, 2024). This constitutional silence has generated debate on whether environmental protection should be constitutionally entrenched in Malaysia, with early doctrinal analyses exploring possible interpretive approaches (Tan, 2012) and more recent scholarship reassessing these possibilities in light of climate change, sustainability challenges, and evolving human rights discourse (Ramalingam, 2024). However, existing scholarship remains largely anchored in pre-2023 developments and does not sufficiently engage with the legislative, policy, and judicial shifts emerging in the 2023–2024 period (Mustafa, 2025). This creates both a temporal gap, in terms of outdated analytical focus, and a cognitive gap, in understanding how Malaysia's environmental legal system continues to function and deliver justice-related outcomes despite the absence of explicit constitutional environmental rights.

At the same time, Malaysia's legal system illustrates a model of environmental governance that is substantively developed but not anchored in explicit constitutional or statutory environmental rights. Rather than treating this model as a neutral alternative, it warrants critical examination in light of increasing environmental pressures, including climate change, pollution, and resource degradation, which test the limits of administrative-led governance. In the absence of express constitutional text, Malaysian courts have occasionally relied on the constitutional right to life under Article 5(1) of the Federal Constitution as a basis for engaging with environmental concerns. Judicial reasoning has, in limited instances, acknowledged that environmental degradation may affect health, safety, and dignity, thereby intersecting with constitutionally protected interests (Mustafa, 2025). However, such engagement remains cautious and indirect, reflecting a pattern of judicial restraint within Malaysia's constitutional structure (Harding, 2022).

Malaysia's policy framework reinforces this indirect approach. National development instruments such as the Twelfth Malaysia Plan (Economic Planning Unit, 2021) and the revised National Climate Change Policy 2024 (Ministry of Natural Resources and Environmental Sustainability, 2024) consistently frame environmental protection as a development priority rather than as an enforceable legal right. These recent policy developments underscore the urgency of reassessing Malaysia's environmental governance model, particularly in determining whether administrative and regulatory mechanisms alone are sufficient to address contemporary environmental risks without a rights-based foundation. At the regional level,

Malaysia participates actively in the Association of Southeast Asian Nations (ASEAN) environmental cooperation, particularly in relation to transboundary environmental challenges such as haze pollution (Association of Southeast Asian Nations, 2025). These initiatives demonstrate regional commitment to environmental management among ASEAN member states, yet they operate primarily through coordination and consensus-based mechanisms rather than rights-based enforcement (Varkkey & Onn, 2017).

Environmental justice literature suggests that legal systems which do not expressly recognise environmental rights tend to address environmental harm through administrative regulation and statutory enforcement rather than through rights-based litigation (Schlosberg, 2013; Walker, 2012; Knox & Morgera, 2022). This approach does not imply an absence of environmental protection within such frameworks, but it does shape the manner in which environmental grievances are articulated, remedies are accessed, and accountability is distributed (Mustafa, 2020). Accordingly, this article is not merely descriptive of Malaysia's regulatory framework; it is driven by the central inquiry of how an administrative-led system sustains environmental governance and delivers justice outcomes despite the structural limitation of constitutional silence. Against this backdrop, the Malaysian experience illustrates how environmental protection may be managed through statutory regulation, administrative governance, and limited judicial interpretation in the absence of explicit constitutional environmental rights. This article seeks to examine Malaysia's multifaceted system for environmental protection beyond constitutional rights. It situates Malaysia's legal framework within the discourse of environmental justice and evaluates how mechanisms—procedural, substantive, remedial, and preventive—operate to deliver justice outcomes within a non-rights-based governance model. Building on the identified temporal and analytical gaps, this study proposes a “Regulatory-Embedded Environmental Justice Model” to explain how environmental justice outcomes are operationalised within a rights-silent legal system. The model conceptualises environmental justice as embedded within statutory design, administrative processes, and institutional enforcement practices, rather than derived from enforceable constitutional rights.

## Literature Review

The concept of environmental rights has developed in recent years through a range of approaches and models rather than through a single form. Initially, environmental protection and environmental rights were treated as functions of regulatory governance (Grossman & Cole, 1999). Subsequently, some scholarship began to examine these issues within the broader context of human rights law (Boyle, 2012; Grear & Kotzé, 2015; Lo et al., 2020), with more recent literature conceptualising the environment not merely as an object of state regulation but as a precondition for the effective enjoyment of core human rights, including life, health, and human dignity (Knox & Morgera, 2022). Building on this shift, environmental rights are now understood as encompassing both substantive and procedural dimensions. Specifically, the substantive dimension refers to claims to a clean, safe, or healthy environment, while the procedural dimension includes rights of access to information, participation in environmental decision-making, and access to justice (Boer, 2017; Kreilhuber & Kariuki, 2020).

In the context of international law, elements of environmental justice can already be found within international institutions, which frame the environmental rule of law around accountability, enforcement capacity, and the availability of remedies (UNEP, 2019). These elements are increasingly consolidated at the international level, while their translation into domestic legal systems continues to expand, particularly in how environmental rights are recognised and operationalised within national constitutional and statutory frameworks (Lewis, 2025). A growing number of states have incorporated environmental rights into their constitutions as a means of strengthening environmental governance, including countries in Europe such as France and in Asia such as Indonesia, where constitutional or quasi-constitutional provisions recognise the right to a healthy or ecologically balanced environment (Boyd, 2018). These constitutional models reflect an effort to internalise international environmental justice principles within domestic legal orders by elevating environmental protection to the level of fundamental rights (Boer, 2017).

Nevertheless, constitutional recognition is not the only pathway through which environmental protection may be achieved. Statutory and administrative governance frameworks may also generate effective environmental outcomes (Chalabi, 2023). Some theoretical contributions support this position. For example, Biber and Eagle (2015) argue for a flexible model in which environmental rights function as adaptable legal constructs capable of operating across different governance contexts. This perspective cautions against treating constitutionalisation as a universal prerequisite for effective environmental protection and instead highlights the significance of institutional framework, enforcement mechanisms, and access to remedies (Ruhl, 2021). Such insights are particularly relevant in jurisdictions where environmental protection is pursued primarily through regulatory and administrative means rather than explicit constitutional entrenchment.

Alongside rights-based discourse, the literature on environmental justice has emphasised the unequal distribution of environmental harm and the disproportionate exposure of vulnerable and marginalised communities to pollution, resource depletion, biodiversity loss, and climate-related risks (Walker, 2012; Schlosberg, 2013; Holding, 2021). Scholars argue that addressing such inequities requires governance frameworks that ensure meaningful participation, accountability, and equitable access to remedies (Gonzalez, 2021; Akerboom & Craig, 2022). Within the broader field of environmental rights, protection of environmental interests is frequently analysed through several interrelated dimensions: procedural justice (participation and access to information), substantive justice (protection of vulnerable communities), remedial justice (access to compensation and remedies), and preventive governance (institutional oversight and accountability) (Armeni & Lee, 2021; Forst, 2024). While these dimensions are often articulated through rights-based frameworks, some researchers contend that environmental rights may also be applied indirectly through statutory and administrative mechanisms in legal systems that do not constitutionalise such rights (Schlosberg, 2013; Walker, 2012; Primmer, 2019).

Regional perspectives from Southeast Asia reflect a distinct governance trajectory. Specifically, ASEAN lacks a comprehensive regional environmental rights mechanism within its association (Nandy, 2017). Environmental cooperation has instead developed through sector-specific agreements and consensus-based mechanisms (Varkkey & Onn, 2017). A notable example is the ASEAN Agreement on Transboundary Haze Pollution 2002, which represents a significant regional environmental instrument. It focuses on cooperation, information-sharing, and joint monitoring rather than the articulation of enforceable environmental rights (Varkkey et al., 2020).

The absence of explicit environmental rights at the ASEAN level does not, however, imply uniformity among ASEAN Member States (ASEAN, 2025). Studies indicate that while ASEAN as a regional organisation adopts a cautious, non-rights-based approach, individual Member States have developed diverse national approaches, including constitutional recognition of environmental rights or enhanced judicial interpretation (Raine & Pluchon, 2019; Ituarte-Lima et al., 2020). Indonesia provides a comparative reference in discussions of environmental justice. Unlike Malaysia, Indonesia expressly recognises environmental rights at the constitutional level (Butt & Murharjanti 2021). Article 28H(1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every person to a good and healthy environment, embedding environmental quality within the constitutional human rights framework. While comparative scholarship frequently presents Indonesia as a model of constitutional environmentalism, it does not adequately explain why Malaysia's administrative-led system—despite lacking constitutional grounding—continues to demonstrate resilience and functional adaptability. This gap highlights the need to move beyond surface-level comparison and to critically examine the internal logic and sustainability of Malaysia's regulatory model as a distinct pathway for environmental governance. This recognition is reinforced through statutory measures, most notably Law No. 32 of 2009 on Environmental Protection and Management, which affirms environmental rights, public participation, and access to remedies within environmental governance (Arumbinang & Satriawan 2025).

According to Putri et al., (2024), Indonesian courts have taken a more active role in giving effect to the Constitution by recognising state responsibility for environmental protection and, in several instances, permitting communities and civil society organisations to bring environmental claims in the public interest. A recent example is the Constitutional Court's ruling in *No. 119/PUU-XXIII/2025*, in which the Court partially granted a judicial review of the explanatory note (elucidation) to Article 66 of Law No. 32 of 2009 on Environmental Protection and Management. In its decision, the Court ruled that the protective

scope of Article 66 extends to all persons engaged in environmental advocacy, including victims, reporters, witnesses, experts, and environmental activists. This strengthened legal safeguards for public participation and reduced the risk of legal intimidation.

As already highlighted, constitutional recognition of environmental rights alone does not guarantee effective environmental protection in practice. Studies of Indonesian environmental governance by Pinilih et al., (2025) and Susanto et al., (2024) emphasise ongoing challenges such as uneven enforcement, institutional capacity constraints, regulatory capture by powerful economic interests, and the difficulty of reconciling developmental priorities with environmental sustainability. These factors reveal a gap between formal rights recognition and practical outcomes, suggesting that even where environmental rights are constitutionally articulated, their realisation depends on the strength of institutions and enforcement mechanisms (Yustianingtyas et al., 2025). This comparative insight further underscores the central research gap: existing literature has not sufficiently explained how a rights-silent system such as Malaysia is able to sustain environmental governance and produce justice-related outcomes through administrative and statutory mechanisms alone. Taken together, these developments suggest that while constitutional and statutory environmental rights can strengthen participation and legal protection, their impact remains closely tied to institutional design and enforcement capacity, a dynamic that mirrors Malaysia's reliance on governance structures rather than rights-based adjudication as the primary vehicle for environmental justice.

Malaysia, by contrast, represents an approach that is substantively developed but not secured through explicit constitutional environmental rights (Mohd. Anuar, 2014). Malaysia practices a distinctive model of environmental governance in which extensive statutory regulation coexists with the absence of an explicit constitutional right to a clean or healthy environment. However, much of the earlier Malaysian scholarship, including Tan (2012) has largely adopted a descriptive approach, focusing on mapping constitutional possibilities and regulatory structures without critically assessing how these frameworks operate in practice. In particular, these studies do not sufficiently engage with recent legal and policy developments between 2023 and 2024, nor do they evaluate how such developments have affected the distribution of power between administrative authorities and affected communities. This reveals a methodological gap in the literature concerning the actual impact of environmental regulation on environmental justice outcomes. The Federal Constitution contains no express environmental provision, reflecting a constitutional framework that emphasises the separation of powers, the federal–state balance, and judicial restraint rather than the direct constitutionalisation of socio-environmental rights (Harding, 2022). Environmental protection is therefore not framed as a matter of constitutional entitlement, but as a field of legislative and administrative competence.

Malaysian legal literature has nevertheless long explored whether environmental protection might be indirectly derived from existing constitutional guarantees, particularly the right to life under Article 5(1), equality before the law under Article 8, and protection of property under Article 13 of the Federal Constitution respectively (Tan, 2012; Md Khalid, R., 2018). These analyses draw on comparative constitutional experiences in which courts have interpreted broadly framed rights to encompass environmental quality. However, scholars emphasise that Malaysia's constitutional structure and judicial approach limit the extent to which such interpretive approaches can be used to develop a meaningful and enforceable platform for environmental rights (Ramalingam, 2024).

More recent scholarship, particularly Mustafa (2025), provides a comprehensive and updated doctrinal account of Malaysia's environmental legal framework, including developments in statutory regulation, institutional governance, and emerging environmental rights discourse. While this work significantly advances the literature by incorporating recent legal developments, it remains primarily doctrinal in focus and does not fully interrogate how these evolving frameworks reshape administrative authority or enhance access to justice for affected communities. This reinforces the need for a more impact-oriented and justice-centred analysis. As a result, constitutional discourse in Malaysia has tended to supplement rather than transform statutory environmental governance, reinforcing a system in which environmental justice is pursued mainly through regulatory framework rather than through constitutional adjudication (Raoul Wallenberg Institute Asia and the Pacific, 2020).

Accordingly, previous literature characterises environmental protection in Malaysia as a function of statutory enforcement, administrative regulation, and policy-driven governance rather than rights-based adjudication (Saleem, 2005; Masum et al., 2017; Mustafa & Fauzi, 2022). These studies show that Malaysia's environmental legal system is designed primarily to control pollution, regulate industrial activity, and manage environmental risk through licensing, standards, inspections, and enforcement mechanisms embedded in the EQA 1974 and related legislations (Mustafa, 2011). Within this framework, environmental justice is pursued through regulatory strategies and institutional capacity rather than through the recognition of individual or collective environmental rights. Nevertheless, there remains limited analysis of how recent amendments, policy shifts, and judicial developments (particularly in the 2023–2024 period) influence the effectiveness of these regulatory mechanisms in delivering substantive, procedural, and remedial justice. In particular, the extent to which administrative discretion continues to dominate decision-making, and whether this constrains meaningful participation or access to remedies, remains insufficiently examined in existing literature.

Research on environmental governance further emphasises the central role of access to information and public participation as procedural safeguards within this regulatory model (Yaakob & Wook, 2017; Loh et al., 2023). Public participation through mechanisms such as environmental impact assessment (Tan, 2017) is understood as a means of enhancing transparency, accountability, and decision-making quality (Mustafa, 2020), but not as a source of legal standing or entitlement. Constitutional literature similarly highlights the constrained role of rights-based adjudication in this context. While Article 5(1) of the Federal Constitution has been interpreted to include qualitative dimensions of life, health and dignity, its capacity to accommodate environmental concerns remains limited to narrowly framed disputes (Manikam et al., 2022). Judicial decisions such as *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* (1996) 1 MLJ 261 by the Court of Appeal and *John bin Until & Ors (Suing on Behalf of Themselves and the Residents of Kampung Segaliud, Sandakan) v Prolific Yield Sdn Bhd* (2024) 11 MLJ 607 by the High Court illustrate that Malaysian courts are prepared to acknowledge the broader meaning of “life,” yet continue to resolve environmental controversies primarily through statutory interpretation, evidentiary standards, and regulatory compliance rather than through the articulation of environmental rights.

Taken together, the literature demonstrates that environmental protection may be pursued through diverse legal approaches, ranging from explicit constitutional environmental rights to regulatory and administrative governance structures. However, existing Malaysian scholarship tends to treat constitutional discourse, regulatory mechanisms, and environmental justice as separate strands of analysis, rather than examining how these elements interact dynamically within a single legal system. There also remains a limited analysis of jurisdictions that operate without explicit constitutional environmental rights yet maintain extensive environmental regulation and enforcement mechanisms. Malaysian literature has often examined constitutional law, environmental regulation, and environmental justice in isolation, leaving a gap in understanding how these elements collectively function as a multifaceted framework for environmental protection. This gap provides the foundation for the present study and necessitates a conceptual framework capable of explaining how environmental justice operates within non-rights-based systems, a framework developed here as the proposed Regulatory-Embedded Environmental Justice Model.

## Methodology

This study adopts a qualitative doctrinal legal research methodology to examine Malaysia's legal framework for environmental protection in the absence of an explicit constitutional provision on environmental rights. The research is grounded in library-based analysis and focuses on legal materials relevant to environmental governance in Malaysia. Primary sources analysed include the Federal Constitution of Malaysia, environmental legislation, and selected judicial decisions relating to environmental rights and interests. The selection of legal sources is based on doctrinal significance: statutes were chosen for their central role in structuring environmental governance, while judicial decisions were selected for their relevance in illustrating interpretive trends, enforcement limitations, and recent legal developments, particularly within the 2022–2025 period. The analysis prioritises cases that reflect the interaction between administrative discretion and environmental justice outcomes. In addition to primary sources, the study examines documents that shape the application of environmental law, including reports, guidelines, and policy instruments. Secondary sources include authoritative textbooks,

peer-reviewed journal articles, and related materials addressing environmental justice at international, regional, and national levels. The study also employs contextual analysis at a conceptual level, drawing on international and regional literature to assess how environmental protection operates in legal systems that do not constitutionally entrench environmental rights. Overall, the methodology supports a descriptive and analytical inquiry, enabling the study to identify how statutory regulation, administrative practice, and judicial interpretation collectively shape environmental protection and environmental justice in Malaysia beyond constitutional rights.

## Results and Findings

The findings demonstrate that environmental justice in Malaysia is practised primarily through regulatory and administrative mechanisms rather than through enforceable environmental rights. Malaysia's environmental legal framework produces a distinctive form of environmental justice that is based on institutional intervention rather than rights-based adjudication. This is reflected in the way participation, enforcement, compensation and prevention are organised through statutory and administrative approaches, particularly under the EQA 1974, rather than through constitutional claims (Mustafa, 2009; Mustafa, 2025).

From the perspective of sustainable development, Malaysia acknowledges that public participation is a core element of environmental justice because it enables transparency, accountability, and community empowerment by allowing affected persons to engage directly with decision-makers and to influence environmental outcomes (Hezri, 2004, Mustafa, 2018). According to Dola and Mijan (2006), effective public participation facilitates two-way communication between regulators, project proponents, and communities, inculcates responsibility in governing bodies, and integrates local concerns into environmental decision-making processes, thereby transforming environmental protection into a form of democratic governance (Akerboom & Craig, 2022; Armeni & Lee, 2021; Schlosberg, 2013). In Malaysia, this dimension of environmental justice is embedded within the EQA 1974, a federal statute that applies uniformly throughout the Federation and establishes a national framework for pollution control, environmental impact assessment (EIA) and regulatory oversight (Mustafa, 2025).

Within the EQA 1974 framework, public participation is facilitated through the provision of EIA in Section 43A and the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 (EIA Order 2015). Section 43A requires prescribed activities to undergo EIA before approval may be granted, while the EIA Order 2015 determines the categories of projects and procedural requirements for assessment. The current participatory structure represents a significant departure from the earlier regulatory approach reflected in *Kajing Tubek & Ors v Ekran Bhd & Ors* (1996) 2 MLJ 388 by the High Court and *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and Other Appeals* (1997) 3 MLJ 23 by the Court of Appeal, where it was held that affected communities had no legal right to participate in the EIA process under the then-existing framework. According to Nijar (1997), these decisions exposed the democratic deficit of Malaysia's earlier EIA practice, in which environmental decision-making was confined largely to regulators and project proponents.

The EIA Order 2015 marked a procedural shift by explicitly incorporating public participation and disclosure requirements, particularly for detailed EIAs. This reform seeks to overcome the earlier procedural constraint in which public participation was confined to reactive consultation (Loh et al., 2023). Empirical studies by Suaree et al., (2024) show that affected communities are now formally entitled to access EIA reports and to submit objections and comments during the approval process. This reform, which enhances access to participation and decision-making, helps align the EIA procedure under the EQA 1974 with environmental justice principles by recognising the community as a stakeholder in environmental governance (Mustafa, 2018).

Beyond the EIA framework, another form of public participation is practiced in Malaysia through an administrative enforcement mechanism, namely the public complaint system administered by the Department of Environment (DOE) (Department of Environment Malaysia, 2025). In 2024 alone, 14,024 complaints were lodged, with 10,652 investigated under the EQA 1974 and 3,369 referred to other agencies (Department of Environment Malaysia, 2024). While these figures demonstrate a high level of public engagement, they also reveal a significant gap between complaint submission and enforcement outcomes. Of the total complaints investigated, only 333 offences were prosecuted, indicating a relatively

low conversion rate from administrative grievances to formal legal enforcement. This suggests that although the complaint system enhances procedural access and institutional responsiveness, its effectiveness in delivering substantive enforcement outcomes remains constrained by administrative prioritisation and evidentiary thresholds.

Selangor, Johor and Pulau Pinang together accounted for more than half of all complaints, and over 80 per cent concerning air pollution. The DOE's complaint-handling system illustrates how environmental justice in Malaysia is institutionally mediated rather than rights-based. This pattern indicates that environmental governance is highly dependent on administrative filtering processes, where only a small proportion of complaints escalate into prosecutorial action. As a result, the system prioritises regulatory management over rights-based redress, limiting the capacity of affected communities to translate grievances into enforceable outcomes. Under the DOE's Public Complaints Management System (SISPAA) framework, environmental complaints are acknowledged, investigated, monitored, and resolved through a structured administrative process. This includes time-bound investigations, periodic updates to complainants, and possible escalation to the Permanent Committee on Public Complaints where issues are deemed to be of public importance (Department of Environment Malaysia, 2024). This system enhances transparency and accountability by ensuring that complaints are recorded, tracked and subject to DOE's response.

The complaint system further reinforces the structure of environmental enforcement through regulatory investigations. Once a complaint is substantiated by the DOE, any subsequent legal action lies entirely within the discretion of enforcement authorities. In 2024, 333 offences under the EQA 1974 were prosecuted, resulting in RM8.44 million in fines, with most cases involving industrial effluent violations and offences under Section 16 of the Act (Department of Environment Malaysia, 2024). These enforcement outcomes suggest that while regulatory agencies are active, enforcement remains selective and reactive rather than systematically responsive to the full volume of reported environmental harm. This raises questions as to whether current enforcement practices adequately reflect the scale and distribution of environmental grievances reported by the public.

The EQA 1974 seeks to address its lack of remedial justice through Section 46E, which was introduced to extend environmental liability beyond punitive fines by allowing courts to order compensation for loss or damage to property caused by environmental offences (Mustafa, 2009). In theory, this provision represents a significant step towards corrective environmental justice, as it acknowledges that environmental harm produces victims whose losses deserve redress. By linking criminal liability with compensation, Parliament appeared to recognise that pollution is not merely a regulatory breach but a legally cognisable injury. However, the practical operation of Section 46E reveals a much narrower conception of environmental justice. The provision is activated only after a criminal conviction, meaning that access to compensation depends entirely on the success of public prosecution rather than on the existence of harm itself (Mustafa, 2020). The High Court's decision in *SAJ Ranhill Sdn Bhd v SWM Greentech Sdn Bhd & Anor* (2022) MLJU 253 confirms this restrictive design, holding that Section 46E does not create a private right of action and that compounds or administrative penalties are insufficient to trigger compensation. As a result, even where pollution is acknowledged by regulators and financial penalties are imposed, affected communities remain legally barred from recovering losses unless prosecutors choose to pursue and secure a conviction.

From an environmental justice perspective, compensation is transformed from a rights-based remedy into an instrument of regulatory discretion. Victims of pollution are not recognised as rights-holders entitled to redress; instead, they remain dependent on the priorities, resources, and strategic choices of enforcement agencies. More recent judicial developments further reinforce this trend of indirect engagement with environmental justice. In *Pam Bin Yeek (Village Chairman for Tasik Asal Cunex Hulu Air Denlak, Suing on Behalf of Himself and 127 Others as Listed in 'Lampiran A') v Kerajaan Negeri Perak & Ors* (2025) 8 MLJ 919, the High Court reaffirmed the primacy of statutory and administrative control over natural resources, signalling continued judicial reluctance to expand environmental claims into enforceable rights. However, these decisions also suggest an emerging pattern in which courts increasingly acknowledge the broader social and environmental implications of regulatory decisions, even while maintaining doctrinal restraint. This indicates a potential incremental shift in judicial reasoning that may, over time, influence administrative accountability.

Preventive environmental justice is another strategy applied within the EQA 1974 to regulate environmental pollution, notably through environmental auditing under Section 33A. This provision empowers the Director-General of Environmental Quality to require owners or occupiers of prescribed premises to conduct environmental audits using qualified and registered personnel (Mustafa, 2011). The legal function of these audits is not merely technical; it reflects a regulatory strategy aimed at preventing environmental harm by embedding environmental responsibility within the operational management of industries and facilities. By obliging regulated entities to assess their own compliance with emission standards, waste management requirements, and pollution control systems, Section 33A transforms environmental protection into an ongoing obligation rather than a reactive enforcement response. The DOE's *Environmental Audit Guidance Manual* reinforces this preventive approach by framing audits as instruments to measure environmental performance, identify areas of non-compliance, and encourage continual improvement in environmental management (Department of Environment Malaysia, 2011).

In policy terms, this aligns with Malaysia's commitment to sustainable development under national planning frameworks, including the Twelfth Malaysia Plan and the National Climate Change Policy 2.0, which emphasise risk management, regulatory compliance, and long-term environmental resilience rather than rights-based enforcement (Economic Planning Unit, 2021; Ministry of Natural Resources and Environmental Sustainability, 2024). From an environmental justice perspective, however, the audit requirement reveals a structural tension between prevention and accountability. Although audits strengthen regulatory oversight and improve environmental performance, they are conducted under the authority of the DOE and reported to the regulator, not to the public (Al Raeesi & Abdul Rahim, 2025). Communities affected by pollution cannot demand an audit, access audit reports, or rely on audit findings to initiate legal action (Mustafa, 2011). Preventive justice through environmental auditing under the EQA 1974 is therefore institutional rather than participatory, as affected communities remain excluded from the information and legal leverage generated by audit processes. While preventive mechanisms such as environmental audits strengthen regulatory oversight, their effectiveness remains institutionally confined. The absence of public access to audit findings and the inability of affected communities to trigger or rely on such audits limit their broader accountability function. This suggests that preventive justice mechanisms, although technically robust, do not yet translate into participatory or rights-based environmental governance.

Substantive environmental justice for vulnerable communities in Malaysia is limited in practice (Dong et al., 2022) and delivered primarily through statutory discretion rather than through legally enforceable rights (Hussain et al., 2023). For example, the Orang Asli, or the aborigines, are permitted to extract forest produce and hunt protected wildlife for subsistence under the National Forestry Act 1984 (Act 313) and the Wildlife Conservation Act 2010 (Act 716), reflecting a limited recognition of indigenous dependence on ecological resources (Hussain et al., 2022). These statutory provisions acknowledge that Indigenous livelihoods are inseparable from the natural environment, yet they are framed as regulatory exceptions within the laws rather than as expressions of indigenous environmental rights. This limitation is confirmed by the High Court's decision in *Pam Bin Yeek (Village Chairman for Tasik Asal Cunex Hulu Air Denlak, Suing on Behalf of Himself and 127 Others as Listed in 'Lampiran A') v Kerajaan Negeri Perak & Ors* (2025) 8 MLJ 919, which reaffirmed that land, forestry and natural resources in Peninsular Malaysia remain vested in the State Authority and governed by sectoral legislation such as the National Forestry Act (Act 313), the National Land Code 1965 (Act 56) and conservation statutes. While these laws allow land to be reserved for indigenous occupation and environmental protection, they do so through administrative designation rather than through recognition of inherent or constitutional rights. Indigenous access to land and resources therefore remains conditional upon state approval and can be modified or withdrawn through regulatory processes (Hussain et al., 2022), leaving indigenous environmental security structurally fragile. These examples demonstrate that while Malaysia's legal framework incorporates multiple justice-oriented mechanisms, their operation remains predominantly mediated through administrative discretion rather than enforceable entitlements. Collectively, the findings suggest that the system is effective in maintaining regulatory order and managing environmental risk, but less effective in redistributing power or securing direct legal remedies for affected communities.

A similar pattern is evident in the treatment of farmers and rural communities affected by human–wildlife conflict. Administered by the Department of Wildlife and National Parks Malaysia, the Property and Crop Damage Compensation Assistance Initiative (BKHT) provide one-off financial assistance for losses caused by wildlife attacks on crops, livestock, and property (PERHILITAN, 2025). Although this scheme reflects a policy commitment to sharing the burdens of conservation with rural populations, it operates as an *ex gratia* welfare programme rather than as a legal right. Eligibility depends on administrative verification, reporting procedures, and departmental discretion, and compensation is provided as financial assistance rather than as recognition of a legally enforceable claim to environmental protection or livelihood security. From an environmental justice perspective, these arrangements reveal a system in which vulnerable communities are treated as beneficiaries of state assistance rather than as rights-holders entitled to environmental security (Bulte & Rondeau 2007). Collectively, these findings provide the empirical basis for conceptualising environmental justice as embedded within regulatory structures, as reflected in the proposed model.

## Discussion

These findings demonstrate that Malaysia’s environmental justice framework is rooted in regulatory governance rather than constitutional or rights-based enforcement. Rather than merely reflecting a governance-centred approach, this study conceptualises Malaysia’s model as an emerging “Regulatory Justice Paradigm”, in which environmental justice is operationalised through administrative processes, statutory design, and institutional discretion rather than through enforceable rights. This paradigm highlights how justice outcomes may be embedded within regulatory systems, offering an alternative theoretical framework for jurisdictions operating under similar constitutional constraints. This study further develops Malaysia’s “Regulatory-Embedded Environmental Justice Model”, in which environmental justice is realised through the interaction of statutory frameworks, administrative processes, and institutional enforcement, rather than through enforceable rights. Unlike rights-based models that rely on legal entitlement and judicial enforcement, this model embeds justice outcomes within regulatory design and governance structures. It reflects Malaysia’s historical approach to environmental regulation as a component of development management, industrial control, and public administration, rather than as a subject of rights protection (Mustafa, 2020). The EQA 1974 has long functioned as the main environmental statute, structuring pollution control, licensing, enforcement, and compliance, without prioritising right-based approaches (Mustafa, 2025).

This governance-centred measure of environmental justice is reinforced by Malaysia’s national development and sustainability policies. The Twelfth Malaysia Plan (2021–2025) positions environmental protection as a core pillar of sustainable development, climate resilience, and the achievement of the Sustainable Development Goals, integrating environmental objectives into economic planning, industrial policy, and infrastructure development (Economic Planning Unit, 2021). However, the Plan frames environmental protection as a matter of strategic national management, through regulatory standards, green growth initiatives, and institutional coordination, rather than as a set of enforceable rights held by individuals or communities. Similarly, the National Policy on the Environment articulates environmental stewardship, sustainable resource management, and intergenerational equity as guiding principles for governance, but operationalises these principles through administrative coordination, regulatory integration, and policy instruments rather than through legal rights or judicially enforceable standards (Department of Environment Malaysia, 2002). The National Climate Change Policy 2.0 further consolidates this approach by embedding climate mitigation, adaptation, and a just transition within national governance structures, emphasising coordinated institutional action, regulatory reform, and policy implementation across sectors (Ministry of Natural Resources and Environmental Sustainability, 2024).

While the policy explicitly recognises social equity and vulnerability in the context of climate change, it frames justice as something to be delivered through government-led legal and administrative mechanisms rather than as a constitutional or statutory right enforceable by affected communities. Taken together, these policy instruments illustrate that environmental justice in Malaysia is conceived primarily as a governance challenge to be addressed through regulation and institutional coordination, rather than as a rights-based measure. From a theoretical perspective, this reinforces the positioning of Malaysia’s system within a broader regulatory justice framework, where legitimacy is derived from institutional performance

and administrative coordination rather than from legal entitlement. While effective in maintaining regulatory order, this approach raises critical questions about the depth of accountability and the distribution of legal power between the state and affected communities. It strengthens environmental protection in practice but also entrenches a legal approach in which environmental well-being depends on statutory instruments rather than on enforceable claims by individuals or communities.

Judicial interpretation of Article 5(1) of the Federal Constitution has created a limited constitutional opening by construing the right to life as extending beyond mere physical survival to include dignity, health, and quality of life. This interpretive approach, seen in cases such as *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* (1996) 1 MLJ 261 by the Court of Appeal, has allowed Malaysian courts, in principle, to acknowledge that serious environmental degradation may implicate constitutionally protected interests. By linking environmental harm to life, health, and human dignity, Article 5(1) provides a doctrinal basis for framing pollution, ecological destruction, and environmental risk as matters of constitutional concern rather than merely regulatory infractions. However, this constitutional pathway remains structurally weak as a measure for environmental justice. Malaysian courts have treated Article 5(1) as an interpretive tool rather than as the foundation for a substantive right to a clean or healthy environment. Claims must be tightly framed within individualised facts, and courts have avoided recognising intergenerational or ecosystem-based interests (Tan, 2012). As a result, Article 5(1) has not developed into a coherent doctrine of environmental rights capable of supporting broad or community-based claims, such as challenges to large-scale pollution, climate risk, or cumulative environmental harm (Ramalingam, 2024).

The EQA 1974, as the principal legislation on environmental protection, continues to be amended to incorporate strategies aligned with environmental justice, such as the amendment of the EIA provisions, which now allow for public participation. However, despite this shift, participation remains procedurally constrained in practice. According to Loh et al., (2023), issues such as technical complexity of EIA documentation, limited periods for public comment, and restricted dissemination of information significantly reduce the capacity of communities to shape outcomes, preventing participation from becoming meaningful co-decision-making. As regards the complaint system under the DOE, despite its importance in allowing access to justice, the legal significance of a complaint ends once it is submitted. A complaint does not create legal standing, trigger a duty to prosecute, or give the complainant any control over outcomes under the EQA 1974 (Mustafa, 2020). From that point onward, regulatory discretion exercised by the DOE determines whether investigations, enforcement action, or prosecution will follow. Environmental harm is therefore translated into administrative information processed by the regulatory agency rather than into a legally enforceable claim. This approach reflects a form of procedural environmental justice that provides voice and transparency, but not legal power, leaving communities dependent on bureaucratic responsiveness rather than on rights-based access to courts. Even when a complaint is acted upon, it reveals a narrow legal pathway through which environmental harm is addressed under the EQA 1974. Sanctions are imposed almost exclusively through criminal proceedings initiated by the DOE, rather than through civil or community-based claims. From an environmental justice perspective, this means accountability for pollution is filtered through prosecutorial priorities rather than through the ability of communities to assert rights or seek remedies directly.

The operation of Section 46E of the EQA 1974 provides a clear illustration of how Malaysia's governance-centred environmental model constrains access to remedies. Although the provision appears to recognise that environmental harm produces compensable loss, its design fundamentally ties remedial justice to criminal enforcement. As confirmed by the High Court in *SAJ Ranhill Sdn Bhd v SWM Greentech Sdn Bhd & Anor* (2022) MLJU 253, Section 46E does not create a private right of action and can only be invoked after a successful criminal conviction. In that case, despite repeated pollution of a river that disrupted water supply and caused economic loss to downstream users, no compensation was available because prosecution had not been pursued to conviction. This outcome reveals that the injustice did not arise from the absence of legal norms but from the way Malaysian environmental law allocates authority and standing. The statute places control over access to remedies in the hands of regulatory agencies, which alone can decide whether to prosecute. Victims of environmental harm, even when their losses are real and documented, cannot initiate proceedings or compel enforcement. Their access to justice is therefore mediated entirely by institutional capacity and prosecutorial discretion.

From an environmental justice perspective, Section 46E's structure has significant consequences: environmental harm is not treated as a legal wrong because it infringes the rights of affected communities, but only when regulatory authorities decide to investigate, prosecute, or otherwise pursue the matter under their enforcement powers. From the perspective of legal entitlement, conditioning compensation on successful criminal conviction fundamentally alters the relationship between the citizen and the state. Access to remedies is not grounded in the existence of harm or injury but is contingent upon prosecutorial discretion and state-led enforcement priorities. This transforms environmental harm from a justiciable claim into a regulatory concern, where affected individuals are positioned as passive beneficiaries rather than rights-holders. This dependency raises deeper jurisprudential concerns. It suggests that legal standing and entitlement are effectively displaced by institutional control, thereby limiting the development of a rights-conscious environmental legal culture. In this sense, the Malaysian model prioritises administrative authority over individual legal agency, which may constrain the evolution of environmental accountability in the long term.

Environmental audits reinforce the same governance-centred pattern. Although they improve regulatory compliance and environmental performance by requiring industries to systematically assess their environmental management systems and pollution controls (Mustafa, 2011; Department of Environment Malaysia, 2011), their legal dimension limits their capacity to advance environmental justice. Audit reports are submitted to the DOE and used for regulatory supervision, not for public scrutiny or community action. Affected populations cannot demand audits, access findings, or rely on audit results to challenge polluters or regulators. Information that could support accountability is therefore absorbed into bureaucratic processes rather than shared with those who bear the environmental risks, reinforcing a system in which oversight is exercised vertically by the state rather than horizontally by the public. Indigenous and rural protections operate in a similar manner. Statutory permissions for Orang Asli resource use and compensation schemes such as BKHT provide material relief and recognise vulnerability, but they are administered through discretionary, conditional, and revocable mechanisms rather than through enforceable legal rights (Hussain et al., 2022; *Pam Bin Yeek* (2025) 8 MLJ 919; PERHILITAN, 2025). While these schemes mitigate hardship, they do not address the underlying distribution of environmental risks and costs, nor do they empower affected communities to demand preventive measures or long-term protection (Xin et al., 2024). These arrangements treat environmental security as a matter of state benevolence rather than as a matter of justice, leaving communities dependent on policy continuity, administrative goodwill, and shifting priorities rather than on legal entitlements.

Malaysia therefore demonstrates a model of environmental justice beyond constitutional rights, in which environmental protection is institutionally embedded yet fundamentally facilitated through governance structures rather than through rights. Law operates primarily as a tool of enforcement, not as a measure for asserting environmental claims. This enables environmental regulation to function practically within a development-oriented government, but it also creates structural vulnerability. For example, when institutions fail, enforcement weakens, or priorities shift, affected communities have no independent legal pathways to vindicate environmental harm, seek remedies, or demand prevention (Nurse, 2022). Conceptualised through the *Regulatory Justice Paradigm*, Malaysia's approach offers both insight and caution. It demonstrates that environmental governance can function effectively without constitutional rights but also reveals the structural limitations of systems where justice is mediated through administrative discretion rather than enforceable legal claims. This dual character positions Malaysia as a valuable case study for global environmental jurisprudence, particularly for jurisdictions seeking alternative pathways to environmental protection in rights-silent constitutional frameworks.

## Conclusion

This article has examined how environmental justice is structured within Malaysia's legal system in the absence of an explicit constitutional right to a clean and healthy environment. Rather than being organised around rights, environmental protection is produced through statutory regulation, administrative practice, and policy-driven governance. Public participation, regulatory enforcement, compensation mechanisms, environmental auditing, and sectoral protections together create a system of environmental management, but one that remains institution-based rather than rights-based.

Judicial interpretation of Article 5(1) of the Federal Constitution has provided an important but limited constitutional bridge by linking environmental degradation to life, health, and human dignity. However, this jurisprudence has not evolved into a coherent doctrine of environmental rights capable of addressing collective, cumulative, or intergenerational harm. Environmental justice therefore continues to depend primarily on institutional performance, regulatory discretion, and policy commitment rather than on direct constitutional or statutory rights. The analysis shows that participation and access to environmental processes are provided primarily through statutory measures such as EIA and complaint mechanisms, which enhance transparency and regulatory responsiveness but do not confer legal standing over outcomes. Remedies for environmental harm are recognised but structurally constrained, particularly where compensation depends on criminal prosecution. Preventive mechanisms such as environmental audits strengthen regulatory compliance yet remain shielded from public scrutiny. Substantive protections for indigenous peoples and rural communities acknowledge environmental dependence and vulnerability but operate through discretionary statutory and policy frameworks rather than through enforceable legal rights.

Malaysia's experience reveals the broader challenge of achieving environmental justice in legal systems that rely mainly on regulatory and administrative governance rather than on enforceable rights. While Malaysia has developed a comprehensive framework of environmental management that supports sustainability and pollution control, the absence of a rights-based foundation limits the capacity of law to secure consistent, participatory, and long-term protection for individuals or affected communities. The Malaysian case thus illustrates how environmental justice can be pursued through governance and institutional measures, but also why the absence of legal entitlements constrains the potential of environmental law in addressing vulnerability or inequality in the pursuit of sustainable development. This study contributes to environmental legal scholarship by advancing the *Regulatory-Embedded Environmental Justice Model* as a conceptual framework for understanding how environmental justice can be achieved in rights-silent legal systems. The Malaysian experience demonstrates that while such systems can deliver functional environmental governance, their reliance on administrative discretion raises important questions regarding accountability, legal entitlement, and long-term justice outcomes.

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