

Procedural Environmental Justice and Climate Litigation in Emerging Democracies

¹Nova Bela Dhyta, ²Sulhani, ³Faris bin Mukhtar

¹Faculty of Law, Universitas Jambi, Indonesia

²Faculty of Sharia, UIN Sulthan Thaha Saifuddin Jambi, Indonesia

³Unifield International College Negeri Sembilan, Malaysia

Corresponding author: novabeladhyta@unja.ac.id

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Abstract

The development of climate litigation has significantly strengthened the role of courts in environmental protection and constitutional adjudication within emerging democracies. As climate change increasingly leads to ecological degradation, social vulnerability, and environmental conflicts, courts are becoming central actors in enforcing environmental rights and holding governments accountable. Despite the growing constitutional recognition of environmental rights, procedural inequality continues to limit effective access to environmental justice. This article examines the relationship between climate litigation, environmental constitutionalism, and procedural environmental justice, focusing on judicial approaches, procedural barriers, and constitutional protection in emerging democratic legal systems. The study employs a normative-comparative legal method supported by a socio-legal approach through an analysis of climate adjudication practices in Indonesia, Colombia, India, and Brazil. The findings reveal that the principal obstacles in climate litigation include limited legal standing, evidentiary asymmetry, inadequate public participation, procedural formalism, and unequal access to judicial remedies. The study also identifies divergent judicial approaches ranging from progressive judicial activism and rights-based environmental constitutionalism to procedural restraint and pragmatic constitutional balancing. This article proposes a reconstructed framework of procedural environmental justice emphasizing broader access to justice, evidentiary equality, participatory safeguards, and judicial transparency to strengthen the legitimacy of environmental adjudication and sustainable constitutional governance in emerging democracies.

Keywords: climate litigation; environmental justice; procedural justice; environmental constitutionalism; judicial review.

Abstrak

Perkembangan climate litigation telah secara signifikan memperkuat peran pengadilan dalam perlindungan lingkungan dan adjudikasi konstitusional di negara-negara demokrasi berkembang. Seiring perubahan iklim yang semakin memicu degradasi ekologis, kerentanan sosial, dan konflik lingkungan, pengadilan kini menjadi aktor sentral dalam penegakan hak lingkungan hidup dan akuntabilitas pemerintah. Meskipun pengakuan konstitusional terhadap hak lingkungan hidup terus berkembang, ketimpangan prosedural masih membatasi akses yang efektif terhadap keadilan lingkungan. Artikel ini mengkaji hubungan antara climate litigation, konstitusionalisme lingkungan, dan keadilan lingkungan prosedural dengan menitikberatkan pada pendekatan yudisial, hambatan

prosedural, dan perlindungan konstitusional dalam sistem hukum demokrasi berkembang. Penelitian ini menggunakan metode hukum normatif-komparatif yang didukung pendekatan sosio-legal melalui analisis praktik adjudikasi iklim di Indonesia, Kolombia, India, dan Brasil. Hasil penelitian menunjukkan bahwa hambatan utama dalam climate litigation meliputi keterbatasan legal standing, asimetri pembuktian, partisipasi publik yang tidak memadai, formalisme prosedural, dan ketimpangan akses terhadap pemulihan yudisial. Penelitian ini juga menemukan adanya perbedaan pendekatan peradilan, mulai dari aktivisme yudisial progresif dan konstitusionalisme lingkungan berbasis hak hingga pembatasan prosedural dan penyeimbangan konstitusional pragmatis. Artikel ini menawarkan rekonstruksi kerangka keadilan lingkungan prosedural yang menekankan perluasan akses terhadap keadilan, kesetaraan pembuktian, perlindungan partisipatif, dan transparansi peradilan guna memperkuat legitimasi adjudikasi lingkungan serta tata kelola konstitusional berkelanjutan di negara-negara demokrasi berkembang.

Kata Kunci: litigasi iklim; keadilan lingkungan; keadilan prosedural; konstitusionalisme lingkungan; judicial review.



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Introduction

The global escalation of climate change has fundamentally transformed the orientation of contemporary legal systems, particularly in relation to judicial responsibility for environmental protection and the enforcement of constitutional rights. Climate-related disasters, ecological degradation, biodiversity loss, and the increasing vulnerability of marginalized communities have shifted environmental issues from purely political and administrative domains into matters of constitutional adjudication and procedural justice. In this context, courts are no longer viewed merely as passive interpreters of legislation, but increasingly function as central actors in safeguarding environmental rights and ensuring governmental accountability in climate governance. The emergence of climate litigation across various jurisdictions demonstrates a significant juridification of environmental disputes, where judicial institutions become strategic arenas for contesting ecological harm, state inaction, and procedural inequity in environmental decision-making (Peel & Osofsky, 2015).

The rapid growth of climate litigation has generated a new paradigm commonly referred to as environmental constitutionalism, namely the constitutionalization of environmental protection through judicial interpretation, procedural guarantees, and the recognition of substantive environmental rights. Environmental constitutionalism emphasizes that constitutional frameworks should not only recognize ecological rights normatively, but also provide effective procedural mechanisms enabling citizens and affected communities to access environmental justice before independent courts (Boyd, 2012). In many jurisdictions, courts have begun expanding constitutional doctrines to incorporate principles such as intergenerational equity, sustainable development, ecological proportionality, and procedural environmental rights. Landmark judicial

decisions from countries such as Colombia, India, Brazil, and the Netherlands illustrate how courts increasingly intervene in climate governance through constitutional review, judicial activism, and rights-based environmental adjudication (Setzer & Higham, 2024).

Despite these developments, significant disparities remain between developed and emerging democracies in terms of procedural access to environmental justice and the effectiveness of climate adjudication. Emerging democracies often face structural limitations including weak institutional capacity, fragmented environmental governance, judicial inconsistency, political interference, and asymmetrical access to litigation resources (Rocha, 2023; Saiger, 2020). These conditions frequently undermine procedural fairness in environmental disputes, particularly for indigenous peoples, rural communities, and environmentally vulnerable populations whose access to courts remains constrained by economic, geographic, and political barriers. Consequently, although many emerging democracies formally recognize environmental rights within constitutional or statutory frameworks, procedural mechanisms for enforcing such rights often remain inadequate or ineffective in practice.

The procedural dimension of environmental justice has therefore become increasingly significant within contemporary legal scholarship. Procedural environmental justice concerns the fairness, inclusiveness, and accessibility of legal processes governing environmental disputes, particularly regarding participation rights, access to information, access to courts, evidentiary standards, and judicial remedies (Garçon, 2013). In climate litigation, procedural justice is not merely a technical aspect of litigation procedure, but constitutes a substantive prerequisite for realizing environmental rights and democratic accountability. Courts play a crucial role in determining whether environmental claims are procedurally admissible, whether affected communities possess legal standing, and whether state institutions have fulfilled their constitutional obligations in environmental governance. Accordingly, climate litigation increasingly reflects broader tensions between procedural formalism and substantive ecological justice.

Within this framework, climate litigation in emerging democracies presents a distinctive socio-legal challenge. Unlike many developed jurisdictions where climate adjudication evolves within relatively stable institutional structures, emerging democracies frequently encounter overlapping legal pluralism, developmental pressures, extractive economic policies, and uneven judicial independence (Rodríguez-Garavito, 2022). These conditions complicate the implementation of procedural environmental rights and often produce inconsistent judicial approaches toward climate disputes. In several cases, courts simultaneously function as guardians of constitutional environmental rights while also operating within political systems heavily dependent on resource exploitation and economic growth. This institutional tension creates

significant uncertainty regarding the role of courts in balancing environmental protection, economic development, and democratic legitimacy.

Existing scholarship on climate litigation has predominantly focused on substantive environmental rights, climate governance, or transnational environmental obligations (Mojska & Mojski, 2025; Tigre & Setzer, 2024). While these studies provide important contributions, comparatively limited attention has been devoted to procedural environmental justice as an independent analytical framework within climate adjudication, particularly in the context of emerging democracies. Moreover, much of the prevailing literature remains heavily centered on Global North experiences, thereby insufficiently addressing the procedural inequalities and institutional complexities characterizing environmental litigation in developing legal systems. Consequently, there remains a substantial theoretical and practical gap concerning how procedural justice principles should be reconstructed to strengthen climate adjudication in emerging democratic states.

This article argues that procedural environmental justice constitutes an essential foundation for the legitimacy and effectiveness of climate litigation in emerging democracies. The article contends that environmental constitutionalism cannot function effectively without robust procedural safeguards ensuring equal access to justice, transparent adjudication, participatory rights, and meaningful judicial remedies in environmental disputes. By examining the interaction between climate litigation, constitutional adjudication, and procedural justice, this study seeks to reconstruct a procedural framework capable of strengthening judicial environmental protection within emerging democratic legal systems.

Methodologically, this article adopts a normative and comparative legal approach supported by socio-legal analysis. The study examines constitutional environmental jurisprudence, climate litigation trends, and procedural environmental rights across selected emerging democracies, including Indonesia, Colombia, India, and Brazil. Through comparative judicial analysis, the article explores how courts interpret procedural environmental justice within differing institutional and constitutional contexts. Ultimately, this article aims to contribute to contemporary judicial law scholarship by positioning procedural environmental justice as a central pillar of climate adjudication and constitutional environmental protection in emerging democracies.

Methodology

This article employs a normative-comparative legal research design supported by a socio-legal analytical approach to examine the development of procedural environmental justice within climate litigation in emerging democracies. The study focuses on the interaction between constitutional environmental rights, judicial adjudication, and procedural safeguards in

environmental disputes, particularly within jurisdictions experiencing institutional transformation, democratic consolidation, and increasing climate vulnerability. The methodological orientation is grounded in contemporary judicial law scholarship that views courts not merely as passive legal institutions, but as active constitutional actors shaping environmental governance and procedural justice through adjudication (Kabir, 2019; Tamanaha, 2021).

Normative legal analysis is utilized to examine constitutional provisions, environmental statutes, judicial doctrines, and international environmental principles relevant to climate litigation and procedural environmental rights. The study particularly analyzes the legal construction of procedural justice in environmental adjudication, including access to courts, standing doctrines, evidentiary standards, public participation, access to environmental information, and judicial remedies. In this context, the article adopts doctrinal legal analysis to evaluate how courts interpret constitutional environmental obligations and procedural safeguards in climate-related disputes (Hutchinson, 2018). The normative approach further enables the examination of judicial reasoning and constitutional interpretation within environmental litigation frameworks.

In addition to normative analysis, this article applies a comparative legal method to assess similarities and differences in climate adjudication across selected emerging democracies, namely Indonesia, Colombia, India, and Brazil. These jurisdictions were selected based on three primary considerations. First, all four countries constitutionally recognize environmental rights either explicitly or implicitly within their constitutional frameworks. Second, each jurisdiction demonstrates increasing judicial involvement in climate governance and environmental constitutionalism. Third, these countries represent emerging democratic systems characterized by developmental pressures, environmental conflicts, and varying degrees of judicial activism (Boyd, 2012). Through comparative analysis, the article seeks to identify procedural patterns, judicial approaches, and institutional challenges shaping environmental justice litigation in the Global South.

The comparative framework of this research focuses primarily on procedural dimensions of climate adjudication rather than substantive environmental regulation. Accordingly, the analysis concentrates on several procedural variables, including: (1) legal standing and access to environmental litigation; (2) procedural equality between affected communities and state or corporate actors; (3) judicial interpretation of constitutional environmental rights; (4) evidentiary burdens in climate disputes; and (5) the effectiveness of judicial remedies in enforcing environmental protection. These procedural indicators are examined to evaluate the extent to which climate litigation contributes to procedural environmental justice within emerging democratic legal systems.

This study also incorporates a socio-legal perspective to contextualize climate litigation within broader institutional, political, and social realities. Socio-legal analysis is necessary because environmental adjudication in emerging democracies frequently operates within complex relationships involving state developmentalism, extractive economic policies, indigenous land conflicts, and uneven access to justice (Rodríguez-Garavito, 2020). Consequently, judicial decisions cannot be understood solely through formal legal doctrine, but must also be analyzed in relation to broader structural conditions affecting procedural fairness and environmental governance. The socio-legal approach therefore enables a more critical understanding of how procedural environmental justice is shaped by institutional capacity, political power, and legal culture.

The primary legal materials used in this research consist of constitutional texts, environmental legislation, judicial decisions, international environmental instruments, and climate litigation reports from international legal institutions. The study particularly examines landmark environmental and climate-related judicial decisions from constitutional courts, supreme courts, and other relevant judicial bodies within the selected jurisdictions. Secondary materials include scholarly journal articles, books, institutional reports, and comparative environmental law literature discussing climate litigation, procedural justice, environmental constitutionalism, and judicial governance (Mojska & Mojski, 2025).

Data analysis in this article is conducted qualitatively through interpretative and analytical legal reasoning. Judicial decisions and legal doctrines are analyzed to identify evolving patterns of procedural environmental protection and constitutional environmental adjudication. The comparative findings are then synthesized to formulate a reconstructed framework of procedural environmental justice capable of strengthening climate litigation mechanisms in emerging democracies. Ultimately, this methodological approach seeks to contribute not only to environmental law scholarship, but also to broader debates concerning judicial legitimacy, procedural fairness, and constitutional governance in contemporary legal systems.

Findings and Discussion

The Rise of Climate Litigation and Environmental Constitutionalism in Emerging Democracies

The intensification of climate change has significantly transformed the contemporary role of courts within environmental governance and constitutional adjudication. Climate-related disputes are no longer confined to administrative or policy-oriented arenas, but increasingly emerge as constitutional controversies involving state responsibility, human rights protection, and procedural environmental justice. In recent decades, climate litigation has developed into one of

the most dynamic areas of transnational legal practice, reflecting a broader global movement toward the juridification of environmental governance (Setzer & Higham, 2024). Courts across multiple jurisdictions have become central institutional actors in addressing governmental inaction, ecological degradation, and the failure of public authorities to fulfill environmental obligations. Consequently, climate litigation now represents not merely a legal mechanism for dispute resolution, but also a constitutional instrument for enforcing environmental accountability and democratic governance.

The emergence of environmental constitutionalism has substantially contributed to this judicial transformation. Environmental constitutionalism refers to the incorporation of environmental protection principles within constitutional frameworks, either through explicit constitutional environmental rights or through judicial interpretation connecting environmental protection with existing constitutional guarantees such as the right to life, health, dignity, and equality (Boyd, 2012). This constitutionalization process has expanded judicial authority in environmental adjudication and strengthened the legitimacy of courts in reviewing environmental governance policies. As a result, courts increasingly interpret constitutional norms as imposing affirmative obligations upon states to mitigate climate risks, preserve ecological sustainability, and protect vulnerable communities from environmental harm.

In many emerging democracies, environmental constitutionalism has developed through progressive judicial interpretation rather than solely through formal constitutional amendment. Courts have frequently adopted expansive constitutional reasoning to address environmental degradation and climate-related harms in situations where legislative and executive institutions remain ineffective or politically constrained (Rocha, 2023; Saiger, 2020). This phenomenon illustrates the growing importance of judicial institutions in filling governance gaps within environmentally vulnerable states. Moreover, environmental adjudication increasingly reflects a broader shift from anthropocentric legal paradigms toward ecological constitutionalism, whereby environmental protection is recognized not merely as an economic or developmental issue, but as a constitutional imperative connected to intergenerational justice and collective survival.

Several landmark decisions from emerging democracies demonstrate the evolving role of courts in climate litigation and constitutional environmental protection. In Colombia, the Supreme Court recognized the Colombian Amazon as a subject of rights and emphasized the constitutional responsibility of the state to protect future generations from climate harm (*Future Generations v Ministry of the Environment and Others* STC4360-2018, 2018). Similarly, the Indian judiciary has repeatedly expanded environmental rights through judicial activism by interpreting Article 21 of the Constitution which provides for the right to life to include the right to a healthy environment

(Dwivedi & Kashyap, 2013; Sundar, 2024). Brazilian courts have also increasingly engaged in constitutional environmental review concerning deforestation and state obligations within the Amazon region. These judicial developments indicate that climate litigation in emerging democracies is increasingly characterized by constitutional reasoning, rights-based adjudication, and procedural environmental protection.

Indonesia likewise reflects the gradual expansion of environmental constitutionalism within judicial practice, although significant procedural and institutional limitations remain. The Indonesian Constitution implicitly recognizes environmental rights through Article 28H of the 1945 Constitution, which guarantees the right to a good and healthy environment (Indonesian Constitution of 1945, Art 28H(1), 1945). In practice, however, environmental litigation in Indonesia continues to face substantial challenges, including limited public participation, inconsistent judicial interpretation, evidentiary difficulties, and uneven access to environmental justice. Although courts have occasionally demonstrated progressive environmental reasoning, procedural inconsistencies and institutional fragmentation often undermine the effectiveness of climate adjudication. Consequently, environmental constitutionalism in Indonesia remains partially constrained by structural governance limitations and developmental priorities favoring extractive industries.

The rise of climate litigation in emerging democracies also reflects the increasing interaction between domestic constitutional law and transnational environmental norms. International environmental agreements such as the Paris Agreement, sustainable development principles, and evolving climate accountability frameworks have influenced domestic judicial reasoning in environmental disputes (Mojska & Mojski, 2025; Peel & Osofsky, 2015). Courts increasingly refer to international environmental standards to justify constitutional interpretation, strengthen environmental obligations, and legitimize judicial intervention in climate governance. This transnational judicial dialogue demonstrates that environmental adjudication is becoming progressively interconnected across jurisdictions, particularly regarding procedural environmental rights and state accountability in climate protection.

Nevertheless, the expansion of climate litigation in emerging democracies remains accompanied by significant institutional tensions. Courts frequently operate within political and economic systems heavily dependent upon natural resource extraction, industrial expansion, and developmental agendas that may conflict with environmental protection objectives (Natarajan & Khoday, 2014). Judicial intervention in climate disputes therefore often generates political resistance, questions concerning democratic legitimacy, and concerns regarding judicial overreach. In some jurisdictions, courts are simultaneously expected to protect constitutional environmental

rights while avoiding interference with state development policies and economic governance. This institutional dilemma places climate adjudication within a broader contestation between environmental constitutionalism and developmental constitutionalism.

Despite these tensions, climate litigation has undeniably strengthened the role of courts as guardians of procedural environmental justice in emerging democracies. Through constitutional interpretation, judicial review, and rights-based adjudication, courts increasingly shape the procedural architecture governing environmental disputes. Climate litigation therefore represents more than environmental enforcement; it constitutes an evolving judicial mechanism for redefining the relationship between constitutional rights, procedural fairness, and ecological governance in contemporary democratic systems. The growing prominence of environmental constitutionalism ultimately demonstrates that procedural justice and judicial accountability have become central components of climate governance within emerging democratic legal orders.

Procedural Inequality and Access to Environmental Justice

Although the global expansion of climate litigation has strengthened judicial involvement in environmental governance, significant procedural inequalities continue to obstruct meaningful access to environmental justice, particularly within emerging democracies. Procedural environmental justice requires more than formal recognition of environmental rights; it demands equitable procedural mechanisms enabling affected communities to participate effectively in environmental decision-making and climate adjudication (Garçon, 2013). In practice, however, climate litigation frequently reveals deep asymmetries between state institutions, corporate actors, and environmentally vulnerable communities. These inequalities manifest through restrictive standing doctrines, limited access to legal representation, evidentiary burdens, financial constraints, and institutional barriers that disproportionately disadvantage marginalized populations seeking judicial protection against environmental harm.

One of the most persistent procedural obstacles in environmental litigation concerns legal standing. In many emerging democracies, standing requirements remain narrowly interpreted, thereby restricting the ability of communities, environmental organizations, indigenous groups, and future generations to initiate climate-related claims before courts (Preston, 2016). Traditional standing doctrines often require direct and individualized injury, despite the collective and transboundary nature of climate harm. As a result, courts may reject environmental claims on procedural grounds even where substantial ecological risks exist. This procedural formalism frequently undermines the substantive protection of constitutional environmental rights and weakens judicial accountability in climate governance. By contrast, several progressive jurisdictions have gradually expanded standing doctrines to accommodate public interest litigation and

collective environmental claims, reflecting a broader recognition that climate change affects diffuse and intergenerational interests.

Procedural inequality is also reinforced through disparities in access to scientific and technical evidence within climate adjudication. Climate litigation commonly involves complex environmental data, scientific modeling, ecological risk assessments, and technical causation analysis requiring substantial expertise and financial resources (Peel & Osofsky, 2015). State agencies and corporate defendants often possess superior access to environmental information, scientific experts, and institutional resources compared to local communities and civil society litigants. This imbalance creates what may be described as evidentiary asymmetry within environmental adjudication, where vulnerable groups encounter significant difficulties in proving ecological harm, causation, or governmental negligence. Consequently, procedural fairness in climate litigation cannot be separated from broader questions concerning informational justice and equality of arms in judicial proceedings.

In emerging democracies, evidentiary inequality is frequently exacerbated by limited transparency and weak environmental information systems. Access to environmental information remains uneven, particularly regarding industrial emissions, environmental impact assessments, extractive licensing, and climate-related governmental policies (“Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Done at Aarhus, Denmark, on 25 June 1998,” 2023). In some jurisdictions, affected communities encounter administrative opacity, bureaucratic restrictions, and inadequate disclosure mechanisms that hinder effective participation in environmental litigation. Without meaningful access to environmental data, communities face substantial procedural disadvantages in challenging environmentally harmful projects or governmental inaction. Therefore, procedural environmental justice increasingly requires judicial recognition of informational access as an integral component of constitutional environmental protection.

Economic inequality likewise constitutes a significant procedural barrier within climate litigation. Environmental litigation often demands extensive financial resources, prolonged judicial processes, scientific expertise, and legal representation that remain inaccessible for many affected communities (Kotzé & French, 2018). Marginalized groups, including indigenous peoples, rural populations, and economically vulnerable citizens frequently lack the institutional capacity necessary to sustain complex environmental claims against corporations or state authorities. In contrast, economically powerful actors possess greater procedural advantages through access to experienced legal teams, technical consultants, and political influence. This imbalance contributes

to procedural exclusion within environmental adjudication and undermines the democratic legitimacy of climate justice mechanisms.

The procedural marginalization of indigenous and local communities further illustrates the structural inequalities embedded within environmental adjudication systems. Climate-related disputes in emerging democracies often intersect with indigenous land rights, customary resource management systems, and extractive economic policies (Rodríguez-Garavito, 2011). Nevertheless, formal judicial procedures frequently fail to accommodate indigenous legal traditions, communal forms of evidence, or culturally embedded environmental relationships. Courts tend to prioritize formal procedural requirements grounded in state legal systems while marginalizing non-state legal knowledge and community-based ecological governance. As a consequence, environmental adjudication may reproduce legal centralism and procedural exclusion despite formally recognizing environmental rights within constitutional frameworks.

Moreover, procedural inequality within climate litigation is closely linked to broader institutional weaknesses affecting judicial independence and environmental governance in emerging democracies. Courts frequently operate within political environments characterized by developmental pressures, regulatory fragmentation, corruption risks, and state dependence on extractive industries (Gauri & Brinks, 2008). These structural conditions may discourage robust judicial intervention in climate disputes and limit the effectiveness of environmental remedies. In some cases, judicial institutions demonstrate reluctance to confront politically influential actors or to issue expansive environmental rulings that could disrupt economic development agendas. Procedural environmental justice therefore cannot be understood solely as a technical matter of courtroom procedure, but must also be analyzed in relation to institutional power structures and governance dynamics.

Despite these challenges, several emerging democracies have demonstrated progressive judicial efforts to strengthen procedural environmental justice. Courts in India, Colombia, and certain Latin American jurisdictions have gradually expanded public interest standing, recognized intergenerational environmental rights, and adopted more flexible approaches toward environmental evidence and procedural participation (Setzer & Vanhala, 2019). These judicial developments indicate a growing recognition that climate litigation requires adaptive procedural frameworks capable of addressing the collective, transboundary, and scientifically complex nature of environmental harm. Nevertheless, procedural inconsistencies remain substantial, particularly in jurisdictions where environmental adjudication continues to operate within rigid procedural formalism and unequal institutional conditions.

Ultimately, procedural inequality represents one of the most significant barriers to effective climate litigation in emerging democracies. The constitutional recognition of environmental rights alone remains insufficient without accessible procedural mechanisms ensuring meaningful participation, evidentiary equality, judicial transparency, and effective legal remedies. Climate litigation therefore reveals a fundamental tension between formal environmental constitutionalism and the practical realities of unequal access to justice. Addressing this tension requires reconstructing procedural environmental justice not merely as a supplementary aspect of environmental governance, but as a foundational constitutional principle necessary for legitimate and equitable climate adjudication.

Judicial Approaches to Climate Adjudication in Emerging Democracies

The expansion of climate litigation in emerging democracies has generated increasingly diverse judicial approaches toward environmental adjudication and constitutional environmental protection. Courts across different jurisdictions do not respond uniformly to climate disputes; rather, judicial reasoning reflects varying constitutional traditions, institutional capacities, political environments, and conceptions of judicial authority (Patterson et al., 2024; Preston, 2011). Consequently, climate adjudication in emerging democracies reveals a complex spectrum ranging from progressive judicial activism and rights-based environmental constitutionalism to procedural restraint and formalistic adjudication. These variations significantly influence the effectiveness of procedural environmental justice and determine the extent to which courts can function as meaningful actors within climate governance.

One of the most prominent judicial approaches emerging within climate litigation is rights-based constitutional adjudication. Under this approach, courts interpret constitutional rights expansively to incorporate environmental protection and climate-related obligations. Rather than treating environmental issues as purely administrative matters, judges increasingly frame ecological degradation as a constitutional problem involving the protection of life, dignity, health, and intergenerational justice (Boyd, 2012). This approach has become particularly visible in several emerging democracies where constitutional courts and supreme courts actively utilize constitutional interpretation to compensate for weak environmental governance or inadequate legislative responses to climate change.

The Colombian judiciary provides one of the clearest examples of transformative environmental adjudication within emerging democracies. In *Future Generations v Ministry of the Environment*, the Colombian Supreme Court recognized the Amazon rainforest as an entity deserving legal protection and emphasized the constitutional rights of future generations affected by climate change (*Future Generations v Ministry of the Environment and Others* STC4360-2018,

2018). The Court adopted a progressive rights-based framework linking environmental degradation to constitutional guarantees concerning life, health, food security, and ecological sustainability. Importantly, the decision also expanded procedural environmental obligations by requiring coordinated governmental action and participatory environmental governance. Through this reasoning, the Court transformed climate litigation into a constitutional mechanism for enforcing ecological accountability and procedural justice.

Similarly, the Indian judiciary has developed an expansive model of environmental constitutionalism through judicial activism and public interest litigation. Indian courts have repeatedly interpreted Article 21 of the Constitution, the right to life as encompassing the right to a healthy environment and ecological balance (Dwivedi & Kashyap, 2013). This judicial approach enables courts to intervene actively in environmental disputes despite limited legislative specificity regarding climate governance. Public interest litigation has further expanded procedural access to environmental justice by relaxing standing requirements and permitting collective environmental claims. Consequently, Indian environmental adjudication demonstrates how procedural flexibility may strengthen judicial responsiveness to ecological harm and enhance constitutional environmental protection within developing legal systems.

In contrast, other emerging democracies exhibit more restrained or inconsistent judicial approaches toward climate litigation. Brazilian environmental adjudication, for example, reflects institutional tensions between constitutional environmental protection and political-economic dependence on extractive development within the Amazon region (Rajamani, 2024). While Brazilian courts increasingly recognize constitutional environmental obligations, judicial responses often remain fragmented and inconsistent due to political contestation, regulatory complexity, and competing developmental priorities. Similarly, environmental adjudication in Indonesia demonstrates partial judicial recognition of environmental rights but continues to encounter procedural formalism, evidentiary rigidity, and uneven judicial interpretation (Lambila et al., 2024; Ramlan & Fristikawati, 2018). These conditions frequently limit the transformative potential of climate litigation despite the formal existence of constitutional environmental guarantees.

The diversity of judicial approaches across emerging democracies can be understood through three dominant adjudicative models: judicial activism, procedural formalism, and pragmatic constitutional balancing. These approaches significantly affect how courts interpret environmental rights, procedural safeguards, and governmental obligations within climate disputes.

**Table 1. Dominant Judicial Approaches in Climate Adjudication
within Emerging Democracies**

Judicial Approach	Characteristics	Procedural Orientation	Jurisdictional Illustration
Judicial Activism	Expansive constitutional interpretation; proactive judicial intervention	Broad standing; flexible procedure; rights-based remedies	India, Colombia
Procedural Formalism	Strict adherence to procedural requirements and evidentiary rigidity	Restrictive standing; technical procedural barriers	Indonesia (in several environmental disputes)
Pragmatic Constitutional Balancing	Balancing environmental rights against economic and developmental interests	Selective procedural openness; context-dependent adjudication	Brazil

Source: Developed by the author based on comparative analysis of environmental adjudication frameworks adapted from Brian J. Preston (Preston, 2011, 2016), David R. Boyd (Boyd, 2012), and Lavanya Rajamani (Rajamani, 2024).

The table above demonstrates that procedural environmental justice is deeply influenced by broader judicial philosophy and institutional culture. Jurisdictions characterized by judicial activism tend to adopt more inclusive procedural frameworks and broader environmental standing doctrines, thereby facilitating greater access to environmental justice. Conversely, courts operating under procedural formalism frequently prioritize legal certainty and technical procedural compliance over substantive ecological protection (Unger, 1996). As a result, procedural rigidity may unintentionally reinforce environmental inequality by limiting access for marginalized communities lacking financial or institutional resources.

Another important dimension shaping judicial approaches concerns the treatment of scientific uncertainty within climate litigation. Climate disputes often involve complex scientific evidence, probabilistic causation, and long-term ecological risks that challenge conventional evidentiary standards (Peel & Osofsky, 2015; Setzer & Vanhala, 2019). Some courts have adopted precautionary reasoning, allowing judicial intervention despite incomplete scientific certainty regarding climate harm. Others, however, maintain traditional evidentiary standards requiring direct causation and concrete injury, thereby limiting judicial willingness to impose environmental obligations upon state or corporate actors. This divergence reflects an important procedural dilemma within climate adjudication: whether courts should prioritize strict evidentiary certainty or adopt adaptive procedural principles capable of responding to ecological risk and scientific complexity.

The rise of climate adjudication has also expanded judicial engagement with transnational environmental principles and international climate norms. Courts increasingly reference international environmental agreements, soft law principles, and comparative jurisprudence to strengthen constitutional interpretation and justify procedural environmental protections (Mayer, 2021). This transnational judicial dialogue contributes to the gradual emergence of a globalized climate jurisprudence in which domestic courts participate in shaping evolving norms concerning ecological governance, intergenerational justice, and environmental accountability. In emerging democracies, such transnational references often serve to enhance judicial legitimacy and reinforce constitutional obligations in contexts where domestic environmental governance remains politically contested.

Nevertheless, judicial intervention in climate governance continues to generate debates concerning democratic legitimacy and judicial overreach. Critics argue that expansive environmental adjudication may undermine democratic policymaking by transferring climate governance decisions from elected institutions to courts (Levine, 2004). Supporters, however, contend that judicial intervention becomes necessary where political institutions fail to protect constitutional environmental rights or where vulnerable communities lack effective political representation. This debate illustrates the increasingly central position of courts within contemporary environmental governance and demonstrates how climate litigation reshapes the boundaries between law, politics, and constitutional accountability.

Ultimately, the diversity of judicial approaches within emerging democracies demonstrates that climate adjudication is not merely a technical application of environmental law, but a broader constitutional process involving procedural justice, institutional legitimacy, and ecological governance. Judicial interpretation increasingly determines who may access environmental justice, what forms of environmental evidence are recognized, and how constitutional environmental obligations are enforced. Consequently, procedural environmental justice depends not only upon formal constitutional guarantees, but also upon the willingness of courts to adopt adaptive, participatory, and rights-oriented adjudicative approaches capable of addressing the structural complexities of climate change litigation.

Reconstructing Procedural Environmental Justice in Climate Litigation

The preceding discussion demonstrates that climate litigation in emerging democracies is shaped not only by substantive environmental rights, but fundamentally by the procedural architecture governing access to environmental justice and constitutional adjudication. Although many emerging democratic states formally recognize environmental rights within constitutional or statutory frameworks, procedural inequalities continue to undermine the effectiveness of climate

litigation and limit meaningful judicial protection for environmentally vulnerable communities. Consequently, the future development of climate adjudication requires a reconstructed model of procedural environmental justice capable of responding to the structural, institutional, and ecological complexities characterizing contemporary environmental disputes.

This article argues that procedural environmental justice should be understood as a constitutional procedural framework integrating access to justice, participatory rights, evidentiary equality, judicial accountability, and ecological constitutionalism within climate adjudication. Procedural environmental justice therefore extends beyond traditional procedural due process by recognizing that environmental disputes involve collective, intergenerational, scientifically complex, and transboundary harms that cannot be adequately addressed through rigid procedural formalism (Kotzé, 2020). Within this framework, courts are required not merely to apply procedural rules mechanically, but to ensure that environmental adjudication remains substantively accessible, participatory, transparent, and responsive to ecological vulnerability.

One of the central elements requiring reconstruction concerns legal standing within climate litigation. Conventional standing doctrines grounded in individualized injury frequently fail to accommodate the diffuse and collective nature of climate harm (Preston, 2016). As climate change affects broader ecological systems and future generations, restrictive standing requirements often operate as procedural barriers preventing meaningful environmental accountability. Emerging democracies therefore require more adaptive standing frameworks capable of recognizing public interest litigation, intergenerational claims, indigenous environmental rights, and collective ecological interests. Expanding standing doctrines would strengthen procedural inclusiveness and reinforce the constitutional function of courts in protecting environmental rights and ecological sustainability.

A second crucial dimension involves evidentiary equality within environmental adjudication. Climate disputes frequently involve asymmetrical access to scientific expertise, environmental data, and technical resources between communities and state or corporate actors (Peel & Osofsky, 2015). This evidentiary imbalance undermines equality of arms and weakens procedural fairness within climate litigation. Accordingly, procedural environmental justice requires courts to adopt more flexible evidentiary approaches capable of addressing scientific uncertainty and informational inequality. Judicial recognition of precautionary principles, reversed burdens of proof in certain environmental disputes, and expanded access to environmental information may significantly strengthen procedural fairness in climate adjudication. Such procedural adaptations are particularly important in emerging democracies where vulnerable communities often lack institutional resources necessary to sustain complex environmental litigation.

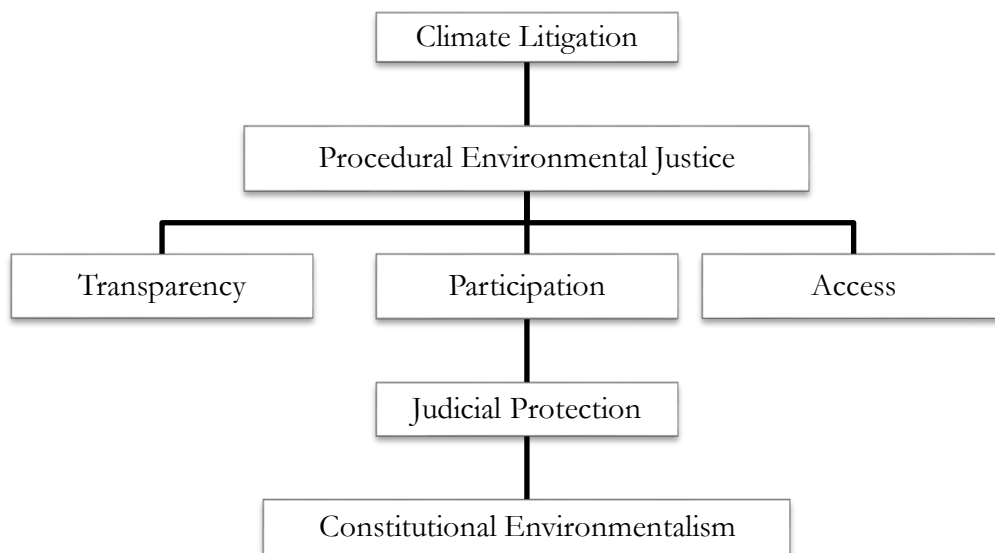
Participatory procedural rights likewise constitute an essential component of reconstructed environmental justice. Climate governance decisions frequently affect indigenous communities, rural populations, and environmentally vulnerable groups whose voices remain marginalized within formal legal processes (Rodríguez-Garavito, 2022). Procedural environmental justice therefore requires judicial recognition of meaningful public participation as a constitutional environmental safeguard rather than a merely administrative formality. Courts should increasingly ensure that affected communities possess adequate opportunities to access environmental information, challenge environmentally harmful decisions, and participate effectively in environmental adjudication processes. In this regard, procedural participation functions not only as a democratic principle, but also as a mechanism for strengthening judicial legitimacy and ecological accountability.

Another important dimension concerns judicial transparency and accountability in environmental adjudication. In several emerging democracies, climate litigation remains affected by inconsistent judicial reasoning, procedural opacity, and fragmented environmental governance structures (Gauri & Brinks, 2008). These conditions weaken public trust in environmental adjudication and create uncertainty regarding the enforcement of constitutional environmental obligations. Consequently, reconstructed procedural environmental justice requires clearer judicial standards concerning environmental rights, procedural safeguards, evidentiary assessment, and remedies within climate disputes. Consistent judicial reasoning and transparent adjudicative frameworks are essential for strengthening legal certainty and ensuring effective environmental constitutionalism.

The reconstruction of procedural environmental justice also requires greater integration between domestic constitutional adjudication and transnational environmental principles. Climate change constitutes a transboundary ecological crisis that cannot be adequately addressed through isolated national legal frameworks alone (Mayer, 2021). Courts in emerging democracies increasingly operate within a globalized legal environment shaped by international environmental agreements, comparative jurisprudence, and evolving climate governance norms. Accordingly, environmental adjudication should adopt a more dialogical constitutional approach that incorporates international environmental principles, intergenerational justice, and ecological sustainability into domestic procedural frameworks. Such transnational judicial engagement may strengthen both the legitimacy and effectiveness of climate litigation in environmentally vulnerable jurisdictions.

To conceptualize this reconstruction more systematically, the article proposes the following framework of procedural environmental justice within climate litigation:

Figure 1. Procedural Environmental Justice Framework in Climate Adjudication



Source: Developed by the author based on comparative analysis of procedural environmental justice theories, environmental constitutionalism, and climate adjudication practices in emerging democracies.

The framework above demonstrates that procedural environmental justice must function as an integrated constitutional adjudicative model rather than merely a supplementary procedural mechanism. Each procedural component is interconnected and collectively shapes the effectiveness of climate litigation within emerging democracies. Without expanded procedural access, evidentiary equality, and participatory safeguards, constitutional environmental rights risk becoming symbolic guarantees lacking practical enforceability. Conversely, adaptive procedural frameworks may significantly strengthen the capacity of courts to function as legitimate guardians of environmental rights and ecological accountability.

Ultimately, reconstructing procedural environmental justice is essential for addressing the structural limitations currently affecting climate litigation in emerging democracies. Courts increasingly occupy a central position within contemporary environmental governance, particularly where political institutions fail to respond adequately to climate crises and ecological degradation. Nevertheless, judicial legitimacy in climate adjudication depends upon the existence of procedural systems capable of ensuring fairness, inclusiveness, transparency, and effective constitutional protection. Procedural environmental justice therefore represents not only a legal necessity, but also a constitutional imperative for strengthening democratic environmental governance and ecological sustainability in the era of climate change.

Conclusion

The expansion of climate litigation has fundamentally transformed the role of courts within environmental governance and constitutional adjudication in emerging democracies. This study demonstrates that environmental constitutionalism increasingly positions judicial institutions as central actors in addressing ecological degradation, governmental accountability, and the protection of environmental rights. Nevertheless, the effectiveness of climate adjudication remains significantly constrained by persistent procedural inequalities, including restrictive legal standing, evidentiary asymmetry, limited public participation, procedural formalism, and unequal access to judicial remedies. These structural barriers indicate that constitutional recognition of environmental rights alone is insufficient without adaptive procedural mechanisms capable of ensuring meaningful access to environmental justice.

The comparative analysis of Indonesia, Colombia, India, and Brazil further reveals divergent judicial approaches toward climate adjudication, ranging from progressive judicial activism and rights-based environmental constitutionalism to pragmatic constitutional balancing and procedural restraint. Such differences demonstrate that procedural environmental justice is closely influenced by broader institutional capacity, judicial philosophy, and constitutional culture within emerging democratic systems. In this context, courts play a crucial role not only in interpreting environmental rights, but also in shaping the procedural architecture governing climate disputes and ecological accountability.

This article argues that procedural environmental justice should be reconstructed as an integrated constitutional framework emphasizing expanded access to justice, evidentiary equality, participatory safeguards, adaptive procedural principles, and judicial transparency. Strengthening these procedural dimensions is essential for enhancing the legitimacy and effectiveness of climate litigation in emerging democracies. Ultimately, procedural environmental justice constitutes not merely a procedural requirement, but a constitutional imperative for achieving sustainable environmental governance, democratic accountability, and ecological protection in the era of climate change.

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