

ENVIRONMENTAL JUSTICE AND CLIMATE POLICY: ḤIFẒ AL-BĪ'AH AND THE DESIGN OF REGULATORY RESPONSIBILITY

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Info Articles	Abstract
Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Climate policy; Environmental justice; Ḥifẓ al-bī'ah; Precaution; Strict liability.</i> Kata Kunci: <i>Ḥifẓ al-bī'ah; Kebijakan iklim; Keadilan lingkungan; Kehati-hatian; Tanggung jawab mutlak.</i>	Indonesian environmental law contains strong liability and participation instruments, yet recent regulatory reform has reoriented licensing towards investment facilitation while climate policy instruments remain partially deferred, raising the question of who bears the burden of environmental harm and on what principled basis. This study aims to analyse the shift in Indonesia's regulatory architecture from precaution to facilitation, to assess the contribution of Islamic legal doctrine to environmental responsibility, and to formulate criteria for a just allocation of regulatory duty. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by a maqāṣid reading of the protection of the environment, drawing on Indonesian environmental and climate legislation, domestic and foreign judicial decisions, and the environmental justice literature. The findings show that the principal deficits are procedural and executional rather than substantive: participation has been narrowed in the licensing process, favourable judgments in pollution and forest fire litigation encounter persistent execution failure, and the deferral of carbon pricing shifts adjustment costs onto future and marginal populations. Islamic legal doctrine contributes operative rather than rhetorical resources through protected zones, the prohibition of harm, stewardship and the ban on wastefulness. The study recommends restoring precaution in licensing, guaranteeing standing and participation, ensuring execution of environmental judgments, and applying an explicit burden-sharing test to climate instruments.

I. INTRODUCTION

Environmental harm is never distributed evenly. Peat fires burn in one province and the smoke settles over households hundreds of kilometres away; a river receives industrial effluent upstream and the cost is borne by fishing communities downstream; the emissions of one generation are paid for by the next. Environmental justice scholarship exists because these asymmetries are structural

rather than accidental, and because environmental law has historically been better at prohibiting conduct than at allocating its consequences.¹

Indonesian law arrived at this problem with unusually strong instruments. The Environmental Protection and Management Law of 2009 established strict liability for activities involving serious environmental threats, recognised class actions and organisational standing, and protected those who advocate for environmental protection from civil and criminal retaliation.² Courts have applied these provisions in significant forest fire and pollution litigation, and citizen suits over urban air quality have produced judgments imposing obligations on national and regional authorities.³

The ideal condition would combine that substantive strength with procedural openness and reliable execution. The actual trajectory has moved in a different direction. Job creation legislation and its successor restructured environmental licensing into a risk-based approvals system, narrowed the range of activities requiring full impact assessment, and confined participation in assessment to parties directly affected, reducing the role of environmental organisations and concerned communities in the process where decisions are actually made.⁴ The Constitutional Court's finding that the original job creation law was conditionally unconstitutional for defects in its formation, and its insistence on meaningful public participation, framed the problem without resolving its substance.⁵

Climate policy exhibits a parallel pattern. Indonesia ratified the Paris Agreement, established a framework for the economic value of carbon, and legislated a carbon tax whose entry into force has been repeatedly postponed.⁶ Deferral is itself a distributive decision: it preserves present production costs and transfers adjustment burdens to later periods and to populations with the least capacity to adapt.

Three literatures bear on this. Environmental justice scholarship distinguishes distributive, procedural and recognition dimensions of justice, and has shown that procedural exclusion reliably predicts distributive harm. Climate litigation scholarship documents how courts in several jurisdictions have translated diffuse

¹ David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: Oxford University Press, 2007), 45–58.

² Law Number 32 of 2009 concerning Environmental Protection and Management, Articles 66, 88 and 91.

³ Central Jakarta District Court, Decision Number 374/Pdt.G/LH/2019/PN.Jkt.Pst concerning air pollution in the Jakarta metropolitan area.

⁴ Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, amending provisions of Law Number 32 of 2009 concerning environmental approvals.

⁵ Constitutional Court of the Republic of Indonesia, Decision Number 91/PUU-XVIII/2020 concerning the formal review of Law Number 11 of 2020 on Job Creation.

⁶ Law Number 16 of 2016 concerning the Ratification of the Paris Agreement; Presidential Regulation Number 98 of 2021 concerning the Implementation of Carbon Economic Value; Law Number 7 of 2021 concerning the Harmonisation of Tax Regulations, Article 13.

state obligations into enforceable duties of care, most prominently in the Dutch and German decisions requiring more ambitious mitigation on grounds of protection of life and of intergenerational freedom.⁷ Islamic environmental ethics literature has recovered doctrines of stewardship, protected zones and the prohibition of wastefulness as sources of environmental obligation.⁸

These literatures rarely meet. Environmental justice analysis of Indonesia seldom engages Islamic legal doctrine as an operative legal resource rather than as ethical decoration; Islamic environmental ethics rarely descends to the level of licensing procedure, standing and execution of judgments, where outcomes are actually determined. This article joins them. It asks: how has the Indonesian regulatory architecture shifted in its allocation of environmental responsibility; what operative contribution can Islamic legal doctrine make to that allocation; and what criteria should govern a just design of regulatory duty in environmental and climate policy?

II. RESEARCH METHODS

The research is normative juridical, applying statutory, conceptual, case and comparative approaches.⁹ The statutory approach examines environmental, job creation, climate and fiscal legislation together with implementing regulations, focusing on licensing, liability, standing and participation. The conceptual approach reconstructs environmental justice theory, the precautionary and polluter pays principles, intergenerational equity, and the Islamic doctrines of stewardship, protected zones, the prohibition of harm and the prohibition of wastefulness. The case approach analyses domestic environmental and constitutional decisions alongside foreign climate judgments used as comparative reference. The comparative approach is functional, treating foreign duty-of-care rulings as equivalents of domestic citizen suits in the management of diffuse obligations.

Primary materials comprise legislation, regulations, judicial decisions, and international instruments, together with Qur'ānic verses and prophetic reports relied upon in the classical literature on land, water and harm. Secondary materials consist of peer-reviewed scholarship and institutional reports from the last fifteen years. Analysis proceeds through qualitative content analysis of the regulatory shift, doctrinal reconstruction of the Islamic materials, comparative tabulation of judicial techniques, and normative evaluation generating design criteria. The study does not include fieldwork or emissions modelling, and its claims about implementation rest on published data and the findings of other researchers.

⁷ Supreme Court of the Netherlands, *State of the Netherlands v Urgenda Foundation*, ECLI:NL:HR:2019:2007 (20 December 2019); Federal Constitutional Court of Germany, *Neubauer and Others v Germany*, 1 BvR 2656/18 (24 March 2021).

⁸ Yūsuf al-Qaraḍāwī, *Ri'āyat al-Bī'a fī Sharī'at al-Islām* (Cairo: Dār al-Shurūq, 2001), 41–49.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

III. RESULTS AND DISCUSSION

A. From Precaution to Facilitation

The first finding concerns the direction of regulatory change. The 2009 framework treated environmental approval as a condition precedent to business licensing, assessed through impact analysis with participation by affected communities and environmental organisations. The restructured system replaces that architecture with risk-based approvals, in which the depth of assessment follows an administrative classification of risk, and narrows participation to parties directly affected.

The change is defended on grounds of certainty and efficiency for investors, and those are legitimate regulatory goods. The difficulty is that the classification of risk is itself the decision that determines whether scrutiny occurs, and it is taken administratively, before and outside the process in which affected parties could contest it. Procedural justice scholarship indicates that this sequencing reliably produces distributive harm, because those excluded from the framing stage cannot raise the impacts that the framing omits.

Restricting participation to the directly affected compounds the problem in the specific context of diffuse environmental harm. Haze, water contamination and biodiversity loss are precisely the harms whose victims cannot be identified in advance by administrative boundary. A participation rule keyed to demonstrable direct effect therefore excludes participation exactly where the harm is most widely distributed, which inverts the logic of environmental protection.

B. Strong Liability, Weak Execution

The second finding concerns the gap between judgment and remedy. Indonesian courts have imposed substantial liability in forest and peat fire cases using the strict liability provision, and citizen suits have produced orders requiring the improvement of air quality management. Yet recovery and implementation have lagged persistently, whether because of the difficulty of executing large money judgments against corporate defendants, or because orders addressed to public authorities specify duties without timelines, indicators or supervision mechanisms.

This matters theoretically as well as practically. A liability regime that generates unexecuted judgments does not deter; it prices litigation risk. The polluter pays principle operates only where payment actually follows, and a state that cannot execute its own environmental judgments communicates that the cost of harm remains externalised. The deficit here is not doctrinal. It is institutional, located in enforcement capacity and in the absence of supervisory mechanisms attached to structural orders.

C. Islamic Doctrine as an Operative Resource

The third finding is that Islamic legal tradition offers more than ethical encouragement. Four doctrines have direct regulatory analogues. The institution of the protected zone, by which designated areas were withdrawn from private exploitation for communal benefit, functions as a precedent for conservation areas established in the public interest rather than for the sovereign's advantage.¹⁰ The protective easement around wells and watercourses supplies a classical buffer-zone technique directly comparable to riparian setbacks.

The maxim prohibiting the infliction of harm and its reciprocation operates in classical practice as a substantive constraint on the use of property, permitting the restraint of an activity that causes harm to neighbours even where the activity is otherwise lawful.¹¹ Functionally this is a precautionary rule: it permits intervention on the basis of anticipated harm rather than proven damage, which is the same structure as the precautionary principle in international environmental law.¹²

Stewardship and the prohibition of wastefulness supply the intergenerational dimension. If human authority over natural resources is held in trust rather than in absolute ownership, the trustee's duty extends to those who will inherit the trust, which is the doctrinal equivalent of the intergenerational equity principle developed in international environmental law.¹³ Contemporary maqāṣid scholarship has accordingly argued for recognising the protection of the environment as an objective in its own right rather than as a derivative of the protection of life and property.¹⁴

The significance of this reconstruction is methodological. It shows that a legislature in a Muslim-majority jurisdiction defending precaution, buffer zones and intergenerational duty is not importing foreign concepts but operationalising doctrines already present in its own legal heritage. That matters politically, because environmental regulation is frequently opposed as an external constraint on development, and the opposition is harder to sustain when the constraint has indigenous doctrinal standing.

¹⁰ Othman Abd-ar-Rahman Llewellyn, "The Basis for a Discipline of Islamic Environmental Law," in *Islam and Ecology: A Bestowed Trust*, ed. Richard C. Foltz, Frederick M. Denny, and Azizah Baharuddin (Cambridge: Harvard University Press, 2003), 185–247.

¹¹ Aḥmad b. Muḥammad al-Zarqā, *Sharḥ al-Qawā'id al-Fiqhiyya*, 2nd ed. (Damascus: Dār al-Qalam, 1989), 165–170.

¹² Rio Declaration on Environment and Development (1992), Principle 15.

¹³ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University, 1989), 17–26.

¹⁴ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 248–252.

D. Comparative Judicial Techniques

Table 1. Judicial Techniques for Allocating Environmental Responsibility

Jurisdiction	Technique	Basis relied upon	Limit
Indonesia	Citizen suit and strict liability actions	Statutory strict liability and environmental rights	Execution and supervision of judgments
Netherlands	Duty of care requiring a minimum mitigation target	Rights to life and private life	Target setting remains politically contested
Germany	Intertemporal review of emission budgets	Fundamental freedoms of future periods	Requires a quantified statutory budget
European Court of Human Rights	Positive obligation to adopt adequate climate measures	Right to respect for private and family life	Enforcement depends on domestic follow-through

Source: Processed from judicial decisions and comparative literature, 2026.

The comparison suggests that the Indonesian citizen suit is functionally equivalent to the foreign duty-of-care technique but operates without two features that give those judgments traction: a quantified statutory benchmark against which adequacy can be assessed, and a supervisory mechanism attached to the order. Adding both would strengthen domestic environmental adjudication without any doctrinal innovation, since the citizen suit already exists.

E. Criteria for a Just Allocation of Regulatory Duty

Five criteria follow. First, restore precaution at the framing stage: the classification determining the depth of environmental assessment should itself be contestable, with reasons published. Second, guarantee participation and standing for environmental organisations and potentially affected communities, recognising that diffuse harm cannot be identified by administrative proximity. Third, ensure execution: environmental judgments should carry implementation timelines, indicators and a supervising authority, and the state should establish a dedicated mechanism for recovery of environmental damages. Fourth, apply an explicit burden-sharing test to climate instruments, stating who bears the cost of each measure and each deferral, since postponement is a distributive choice that currently escapes justification. Fifth, adopt a quantified emissions benchmark in legislation, which converts climate commitments from policy aspiration into a standard against which conduct can be reviewed.

IV. CONCLUSION

Indonesia's environmental deficits are principally procedural and executorial rather than substantive. The substantive instruments of the 2009 framework, strict liability, organisational standing, citizen suits and protection from retaliation, remain formidable. What has weakened is the process through which decisions are framed, the participation of those who bear diffuse harm, and the execution of judgments once obtained. Climate policy reproduces the pattern, with deferral

operating as an unexamined transfer of burden to later periods and vulnerable populations.

Islamic legal doctrine contributes operative resources to this field: protected zones as a precedent for conservation in the public interest, protective easements as buffer-zone technique, the prohibition of harm as a precautionary rule permitting intervention before damage is proven, and stewardship together with the prohibition of wastefulness as the doctrinal form of intergenerational duty. These give environmental regulation indigenous standing rather than the appearance of an imported constraint.

The study recommends restoring contestability at the framing stage of licensing, guaranteeing participation and standing against diffuse harm, attaching implementation timelines and supervision to environmental judgments, subjecting every climate instrument and every deferral to an explicit burden-sharing justification, and legislating a quantified emissions benchmark. Further research should examine execution rates in environmental judgments empirically, since the gap between judgment and remedy is the point at which the entire architecture of environmental responsibility currently fails.

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