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MIMBAR KEADILAN

Constitutional Justice of the Right to Clean Air in Indonesia: Recognition, Protection, and State Responsibility

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Abstract

Indonesia recognizes the right to a healthy environment, yet explicit constitutional recognition of the right to clean air remains inadequate. This study analyzes the right to clean air in Indonesia through a constitutional justice perspective, emphasizing that environmental protection is not merely a regulatory matter but a manifestation of substantive justice guaranteed by the Constitution. Using normative legal analysis, the article examines the implications of Articles 28H and 33 of the 1945 Constitution and their relationship to the state's obligation to secure air quality as part of human rights protection. The findings show that although Indonesia has enacted various environmental regulations, including the Environmental Protection and Management Law, the absence of explicit recognition of the right to clean air weakens its justiciability and limits the effectiveness of legal protection. As a result, air quality governance often remains reactive and may produce ecological inequality, particularly affecting vulnerable communities. Strengthening constitutional interpretation to affirm the right to clean air, harmonizing sectoral regulations, and reinforcing state accountability are therefore necessary to realize constitutional justice. The article concludes that recognizing the right to clean air as a constitutionally protected right is essential not only for public health and environmental sustainability, but also for ensuring equitable protection of present and future generations in accordance with Indonesia's human rights commitments.

1. Introduction

Air is a vital component of life. Besides oxygen, air contains other substances, such as carbon monoxide, carbon dioxide, formaldehyde, fungi, viruses, and so on.[1] Therefore, clean air is essential to support better health, given the widely recognized detrimental effects of air pollution.[2] Long-term exposure to air pollutants has been shown to reduce quality of life and worsen socioeconomic conditions, particularly in densely populated and industrialized urban areas. The World Health Organization (WHO) confirms that continuous exposure to air pollution has serious impacts on the environment, human health, and well-being.[3][4] Climate change and air quality are closely linked and must be addressed together to protect health, the

[1] Windy Cintya Dewi, Mursid Raharjo, and Nur Endah Wahyuningsih, "Literature Review : Link Between Space Air Quality and Health Interference in Workers," *Jurnal Kesehatan Masyarakat* 8, no. 1 (2021): 2021, https://doi.org/10.31602/ann.v8i1.4815.
[2] Chunrong Jia et al., "Clean Air Benefits and Climate Penalty: A Health Impact Analysis of Mortality Trends in the Mid-South Region, USA," *Climate* 13, no. 3 (2025): 1–13, https://doi.org/10.3390/cli13030045.
[3] Hari Rudijanto Indro Wardono et al., "The Effect of Air Quality Parameter on Respiratory Diseases: A Systematic Literature Review," *Jurnal Info Kesehatan* 22, no. 4 (2024): 844–57, https://doi.org/10.31965/infokes.vol22.iss4.1582.
[4] J. J. Hilly et al., "Review of Scientific Research on Air Quality and Environmental Health Risk and Impact for PICTS," *Science of the Total Environment* 942, no. May (2024): 173628, https://doi.org/10.1016/j.scitotenv.2024.173628.

environment and the economy.[5] The UN stresses that air pollution, both household and outdoor, poses a major threat to people, especially children, and its interaction with climate change triggers a "climate penalty" that exacerbates health risks.[6][7] As a result, billions of people still breathe polluted air which causes millions of premature deaths every year, especially in industrialized countries.[8]

A study by Xiangming Hu et al. (2022) reported that air pollution has a serious impact on public health by increasing the risk of chronic diseases and accelerating cognitive decline. This reduces the quality of life, especially for vulnerable groups such as the elderly, children, and low-income communities. Improving air quality is a crucial step to protect brain health and reduce the medical burden.[9]

Furthermore, quoted from the State of Global Air Report 2024, it was stated that in 2021, air pollution caused 8.1 million global deaths and was the second largest risk factor for death, with nearly 90% related to non-communicable diseases such as heart disease, stroke, diabetes, and lung cancer. More than 700,000 children under the age of five were also victims, representing 15% of all child deaths globally, with countries in South Asia and Africa facing the highest disease burden.[10] The link between the study's findings and global reports shows that the impact of air pollution is not only local, but also poses a massive public health threat at the global level.

These global conditions align with the national situation, where Indonesia also faces serious challenges related to air quality. Based on 2024 IQAir data, air quality in Indonesia shows a worrying condition, with a national average reaching 101 Air Quality Index (AQI) and PM2.5 concentration of 35.54 µg/m³, or approximately 7.1 times higher than the WHO annual guideline value, even placing Indonesia in the 15th position of countries with the worst air quality in the world. Air quality disparities are also visible regionally, with Banten recorded as the most polluted city with an Air Quality Index (AQI) of 155, while Sorong, Papua, is the city with the cleanest air quality with an Air Quality Index (AQI) of 39, confirming that access to clean air is still unequal and requires serious attention from the government.[11]

In response to the poor global air conditions, the World Health Organization (WHO) has established Air Quality Guidelines (AQGs) as a global standard for safe air quality for human health, by determining the concentration thresholds for various major pollutants such as PM2.5, PM10, O_3, NO_2, SO_2, and CO based on scientific evidence of their impact on health.

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[5] UN News, "Air Pollution Is on the Rise – but Not Everywhere, Says UN Weather Agency," 2025, https://news.un.org/en/story/2025/09/1165779.

[6] Jia et al., "Clean Air Benefits and Climate Penalty: A Health Impact Analysis of Mortality Trends in the Mid-South Region, USA."

[7] Our World in Data, "Outdoor Air Pollution," 2024, https://ourworldindata.org/outdoor-air-pollution.

[8] Wardono et al., "The Effect of Air Quality Parameter on Respiratory Diseases: A Systematic Literature Review."

[9] Xiangming Hu et al., "Air Quality Improvement and Cognitive Function Benefit: Insight from Clean Air Action in China," *Environmental Research* 214, no. P4 (2022): 114200, https://doi.org/10.1016/j.envres.2022.114200.

[10] Health Effects Institute, "State of Global Air Report 2024" (Boston, 2024), https://www.stateofglobalair.org/sites/default/files/documents/2024-06/soga-2024-report_0.pdf.

[11] IQ Air, "Kualitas Udara Di Indonesia," 2024, https://www.iqair.com/id/indonesia.

These guidelines demonstrate that protecting clean air is not merely an environmental policy issue, but rather part of a global preventive effort to protect the right to health and human life.[12]

The right to a clean, healthy, and sustainable environment is an important foundation for the protection of human life, well-being, and dignity. This right includes access to clean air, safe water, sustainable food, a stable climate, biodiversity, and healthy ecosystems. In addition, environmental rights also guarantee public participation, access to information, and environmental justice as an integral part of other freedoms and human rights. After decades of debate, the right to a clean, healthy, and sustainable environment was finally recognized by the United Nations as part of human rights, while also encouraging integration into multilateral agreements to address global environmental challenges. This recognition was reinforced by the historic resolution of the UN Human Rights Council on October 8, 2021, through UN General Assembly Resolution No. A/RES/76/300, which established a healthy environment as a right, while encouraging stronger policy changes for the protection of humans and ecosystems.[13][14][15]

In the Indonesian context, the right to a good and healthy environment is explicitly recognized in the constitution (1945 Constitution), specifically through Article 28H paragraph (1) and Article 33 paragraph (4). This recognition is often referred to as a manifestation of the concept of a Green Constitution, namely a constitution that places environmental protection as an integral part of human rights that must be fulfilled by the state.[16] This has even been reinforced by the Constitutional Court in Constitutional Court Decision Number 119/PUU-XXIII/2025, in which the Constitutional Court emphasized that the constitutional right to a healthy environment includes important elements in maintaining environmental quality, both for current and future generations.[17]

However, the Indonesian constitution has not explicitly constructed the "right to clean air" as a separate constitutional right. The provisions of Article 28H and Article 33 of the 1945 Constitution still use the general terminology "the right to a good and healthy environment" without specifically mentioning the right to clean air. As a result, interpretations of this right still depend on general interpretations of environmental rights, so that in legal discourse, the

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[12] World Health Organization, "WHO Global Air Quality Guidelines: Particulate Matter (PM2.5 and PM10), Ozone, Nitrogen Dioxide, Sulfur Dioxide and Carbon Monoxide" (Geneva, 2021), https://www.who.int/publications/i/item/9789240034228.

[13] David R. Boyd, "The Right to a Healthy Environment: A User's Guide," *United Nations Human Rights* (New York, 2024), https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf.

[14] International Union for Conservation of Nature and Natural Resources, "The Right to a Healthy Environment," 2021, https://iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment.

[15] United Nations of General Assembly, "Resolusi Majelis Umum PBB Nomor A/RES/76/300" (New York, 2022), https://digitallibrary.un.org/record/3983329/?v=pdf#files.

[16] I Gede Yusa and Bagus Hermanto, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan," *Jurnal Konstitusi* 15, no. 2 (2018): 306, https://doi.org/10.31078/jk1524.

[17] Mahkamah Konstitusi, "Putusan MK RI Nomor 119/PUU-XVIII/2025" (2025), https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_13093_1756369870.pdf.

right to clean air is more often viewed as part of broader environmental rights, rather than as a separate, explicit constitutional right.[18]

The weak enforcement of environmental law in Indonesia indicates a constitutional void regarding the right to clean air, meaning that the state's responsibility to guarantee air quality has not been clearly formulated. Although the 1945 Constitution recognizes the right to a good and healthy environment, the absence of explicit terminology regarding the "right to clean air" means that legal protection against air pollution still depends on general interpretations.[19] This situation creates an urgency for a more specific constitutional approach, so that the right to clean air can stand as a fundamental right guaranteed by the state, while strengthening legal instruments and public policy in dealing with the air quality crisis.[20]

The recognition of the right to clean air in Indonesia's legal and constitutional system remains an important issue that needs to be further clarified. Explicitly, although the right to a healthy environment is regulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the right to clean air has not been recognized as a separate and specific constitutional right. The question that arises is how the Indonesian legal system regulates the right to clean air and to what extent these regulations reflect the state's commitment to protecting air quality for its citizens. In addition, the constitutional implications of recognizing the right to clean air must also be examined, especially in relation to the state's responsibility to provide and protect acceptable air quality as part of its constitutional obligation to protect human rights.

This study aims to analyze the right to clean air as an integral part of human rights recognized in the Indonesian constitutional context. One of the main objectives of this study is to examine the constitutional basis of the right to clean air in Indonesia, by assessing the provisions in the 1945 Constitution of the Republic of Indonesia and how they are translated into national policy. This study also aims to explain the state's responsibility in fulfilling the right to clean air, which includes not only regulatory aspects but also policy oversight and implementation. Thus, this study is expected to provide a strong conceptual foundation for strengthening the protection of the right to clean air in Indonesia, both in the context of national law and applicable international standards.

2. Methods

This study uses a normative juridical method with an emphasis on the analysis of written legal norms, both in the form of legislation, international legal instruments, and policy documents related to the protection of the right to a clean environment and air in Indonesia. This approach aims to examine the construction of the right to clean air as part of human rights

[18] Aris Susanto, Sapto Baralaska, and Aan Jaelani, "Constitutional Rights and Environmental Protection in Indonesia from a Legal and Policy Perspective," *Jurnal Legisci* 2, no. 2 (2024): 121–29, https://doi.org/10.62885/legisci.v2i2.484.

[19] Antono Adhi Susanto, "Reconstruction of the 1945 Constitution for Strengthening the Legal Framework of Indonesia Environmental Law (Rekonstruksi UUD 1945 Menuju Penguatan Hukum Lingkungan Indonesia)," *Jurnal Konstitusi* 21, no. 2 (2024): 183–202, https://doi.org/https://doi.org/10.31078/jk2122.

[20] Andang Binawan and Maria Grasia Sari Soetopo, "Implementasi Hak Atas Lingkungan Hidup Yang Bersih, Sehat, Dan Berkelanjutan Dalam Konteks Hukum Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2023): 121–56, https://doi.org/10.38011/jhli.v9i1.499.

and assess how its recognition and protection are placed within the constitutional legal framework, particularly in relation to the obligations and responsibilities of the state. The analysis focuses on the provisions of the 1945 Constitution of the Republic of Indonesia, particularly Articles 28H and 33, as well as environmental regulations such as Law No. 32 of 2009 and Government Regulation No. 22 of 2021.

The research data sources consist of primary legal materials in the form of constitutions, national regulations, and international instruments such as the 1972 Stockholm Declaration, the 1992 Rio Declaration, International Covenant on Economic, Social and Cultural Rights (ICESCR), and UN Resolution No. 76/300 of 2022. In addition, secondary legal materials in the form of scientific literature, journals, and previous studies were used. The analysis was conducted using systematic and teleological interpretation methods to understand the interrelationship between legal norms and constitutional objectives in protecting the right to a clean environment and air. Thus, this study is expected to provide a comprehensive understanding of the constitutional dimensions of the right to clean air and its implications for the state's responsibility to guarantee its fulfillment for Indonesian citizens.

3. Results and Discussion

3.1. Right to Clean Air as a Fundamental Human Right

Air is one of the fundamental elements that sustains life for all living creatures on earth. Humans can survive without food for weeks and without water for several days, but without clean air, life can only be sustained for minutes.[21] Ironically, however, air quality is often overlooked in legal discourse, human rights, and public policy.[22] It is in this context that this topic is presented as an idea that is not only ecologically important but also urgent to be realized as part of the fundamental rights of every individual.

The right to clean air refers to the right of every individual to breathe air that is free from pollution that is harmful to health and life. This concept is similar to the right to a healthy environment and the right to health. As a universal right, it knows no boundaries of social status, economic status, or nationality.[23] In its implementation, the right to clean air includes the obligation of the state and industry players to control sources of air pollution, develop mitigation policies, and guarantee public access to information on air quality.[24]

From a human rights perspective, the state's obligation regarding the right to clean air cannot be understood in general terms alone, but must be viewed through the framework of the state's obligations to respect, protect, and fulfill human rights.[25] The obligation to respect

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[21] David R. Boyd, "The Human Right to Breathe Clean Air," *Annals of Global Health* 85, no. 1 (2019): 1–2, https://doi.org/10.5334/aogh.2646.

[22] Detania Sukarja, "Revisiting Legal and Ethical Challenges in Fulfilling Human Right to Clean Air in Indonesia," 13 Jurnal HAM § (2022), https://doi.org/10.30641/ham.2022.13.557-580.

[23] Binawan and Soetopo, "Implementasi Hak Atas Lingkungan Hidup Yang Bersih, Sehat, Dan Berkelanjutan Dalam Konteks Hukum Indonesia."

[24] Damar Alam Hari Sudewo Ramadita, "The State's Responsibility for the Right to Clean Air as an Implication of Jakarta Ranking 1st in the World's Worst Air Quality from a Human Rights Perspective," *International Journal of Law, Justice and Jurisprudence* 4, no. 2 (2024): 14–21, https://doi.org/10.22271/2790-0673.2024.v4.i2a.119.

[25] Susana Borràs-pentinat, "The IACtHR Climate Emergency Advisory Opinion : A Legal Analysis of the State Obligations," *Environmental Policy and Law*, 2025, https://doi.org/10.1177/18785395251403470.

requires the state to refrain from adopting policies or taking actions that directly worsen air quality, such as issuing industrial permits that disregard environmental standards.[26] The duty to protect requires the state to prevent third parties—particularly corporations and industrial operators—from causing air pollution through oversight, administrative and criminal law enforcement, and the implementation of ambient air quality standards. Meanwhile, the obligation to fulfill requires the state to take active steps through the establishment of regulations, the provision of a transparent air quality information system, the development of emission control policies, and the provision of effective recovery and compensation mechanisms for communities affected by air pollution.[27] Thus, the right to clean air not only imposes a negative obligation on the state to refrain from damaging the environment, but also a positive obligation to ensure that air quality is suitable for human life.[28]

Referring to the historical development of human rights thinking initiated by Karel Vasak, who developed the concept of the substance of human rights using the term "generation" to classify the substance and scope of rights that are priorities at a given time, so that the classification reflects the development of different generations, divided into three generations.[29] The first generation is civil and political rights that emphasize individual freedom from state interference, such as the right to life, freedom of expression, and the right to a fair trial. The second generation includes economic, social, and cultural rights that demand the active role of the state in realizing welfare, such as the right to education, employment, and health. The third generation is known as solidarity rights or collective rights, which emphasize cooperation between countries and the global community, including the right to development, peace, and a healthy environment.[30] In this context, the question arises: where does the right to clean air fit in if it is positioned as a fundamental human right?

When referring to the division of human rights generations, the right to clean air falls into this category because it concerns the protection of a clean and healthy environment, which is not only the responsibility of individuals or certain countries, but is in the common interest of humanity.[31] This right is closely related to global issues such as climate change, air pollution, and sustainable development, thus requiring international solidarity and a collective

[26] Johannes Van Aggelen, "State Obligations Under Universal Human Rights Treaties Obligations Imposed by the International Covenants and Other Universal Human Rights Treaties with Regard to the Implementation of Human Rights by Domestic Courts," in *Judging International Human Rights* (Springer, Cham, 2019), 257–78, https://doi.org/https://doi.org/10.1007/978-3-319-94848-5_9.
[27] Human Rights Council, "The State Duty to Protect Human Rights : Foundational Principles (UNGP Principles 1-2)," 2024, 1–25, https://thecpe.org/wp-content/uploads/2024/05/Backer_UNGP-Chp_7-1.pdf.
[28] United Nations Environment Programme (UNEP), "After Landmark UN Declaration, Hope for Cleaner Air," 2022.
[29] Spasimir Domaradzki, Margaryta Khvostova, and David Pupovac, "Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse," *Human Rights Review* 20, no. 4 (2019): 423–43, https://doi.org/10.1007/s12142-019-00565-x.
[30] Tsvety, "The Different Generations of Human Rights: A Legal and Conceptual Analysis," 2025, https://thelawtoknow.com/2025/12/06/generations-of-human-rights/.
[31] See at United Nations General United Nations of General Assembly, "Resolusi Majelis Umum PBB Nomor A/RES/76/300."

approach.[32] Therefore, the right to clean air is part of the third generation of human rights that focuses on environmental rights, development, and peace.[33]

Although the right to clean air is often framed as part of the right to a good and healthy environment, conceptually it can also be viewed as an autonomous constitutional right. This is because clean air is directly linked to the right to life, the right to health, and human dignity.[34] Unlike other environmental elements whose impacts may be indirect, air quality immediately affects human survival because air is the most basic biological necessity.[35] Therefore, the right to clean air can be understood not only as a derivative of environmental rights but also as a fundamental right with its own distinct characteristics that requires specific constitutional protection. From this perspective, the state's failure to ensure adequate air quality is not merely an environmental issue but also a violation of citizens' constitutional right to survive with dignity.[36]

The right to clean air is a concrete manifestation of the right to a good and healthy environment, as guaranteed in various national and international legal instruments.[37] Clean air is one of the most vital elements of the environment for the survival of humans and other living creatures. Air pollution directly impacts human rights, particularly the right to health, the right to life, and the right to a decent environment.[38] In this context, the recognition and protection of the right to clean air is not only the responsibility of the state, but also involves the participation of the community and the business world.[39]

Internationally, the right to a good and healthy environment, including the right to clean air, is recognized in Principle 1 of the 1972 Stockholm Declaration, which states that "Human beings have the fundamental right to freedom, equality, and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being."[40] This principle is reaffirmed in Principle 1 of the 1992 Rio de Janeiro Declaration, which states that "Human beings are at the center of sustainable development and have the right to a healthy and productive life in harmony with nature."[41] In addition, United Nations General Assembly

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[32] United Nations Development Group, "Human Rights and the Environment," 2017, 1–4, https://unsdg.un.org/sites/default/files/2020-03/Human-Rights-and-the-Environment.pdf.

[33] [33] United Nations Human Rights, "The Universal Declaration: A Catalyst for Environmental Human Rights Action," 2022, https://www.ohchr.org/en/get-involved/stories/universal-declaration-catalyst-environmental-human-rights-action.

[34] Sava Jankovic, "Conceptual Problems of the Right to Breathe Clean Air," *German Law Journal* 22, no. 2 (2021): 168–83, https://doi.org/10.1017/glj.2021.1.

[35] Marco Dettori, "From Exposure to Equity : Understanding Air Quality Impacts on Environment and Human Health," *Atmosphere* 16, no. 2 (2025): 1–5, https://doi.org/https://doi.org/10.3390/atmos16121406.

[36] Ramadita, "The State's Responsibility for the Right to Clean Air as an Implication of Jakarta Ranking 1st in the World's Worst Air Quality from a Human Rights Perspective."

[37] Günther Handl, "The Human Right to a Clean Environment and Rights of Nature," *The Cambridge Handbook of New Human Rights*, 2020, 137–53, https://doi.org/10.1017/9781108676106.011.

[38] The Institute for Environmental Research and Education, "Why Is Air Quality Important?," 2025, https://iere.org/why-is-air-quality-important/#google_vignette.

[39] See United Nations of General Assembly, "Resolusi Majelis Umum PBB Nomor A/RES/76/300."

[40] UN, "Report of the United Nations Conference on the Human Environment. A/CONF.48/14/Rev.1" (1972), https://docs.un.org/en/A/CONF.48/14/Rev.1.

[41] United Nations General Assembly, "Report of the United Nations Conference on Environment and Development: A/CONF.151/26 (Vol. I)" (Rio de Janeiro, 1992),

Resolution 76/300 of 2022 explicitly states that the right to a clean, healthy, and sustainable environment is a universal human right that must be protected by UN member states.[42]

In the context of human rights, Article 12 of the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) states that states must take measures to improve all aspects of environmental health, including air pollution control.[43] The right to clean air is also recognized in the Guidelines on the Human Right to a Healthy Environment (UN Special Rapporteur, 2018), which emphasizes that access to clean air is an integral part of the right to a good and healthy environment.[44]

In Indonesia, the recognition of the right to clean air as part of the right to a good and healthy environment is explicitly regulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "Every person shall have the right to live in physical and spiritual prosperity, to have a place to live, and to obtain a good and healthy environment, as well as the right to obtain health services." Furthermore, Law Number 32 of 2009 concerning Environmental Protection and Management emphasizes in Article 65 paragraph (1) that "Everyone has the right to a good and healthy environment as part of their human rights."[45] The right to clean air is also emphasized in Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management (PP 22/2021), including in Article 1 points 49 and 50, which define air pollution and ambient air quality, as well as Article 492, which contains provisions on environmental quality standards for air.[46]

Air is the most essential element in human life. It is a gift from nature and a right of every living creature that must be protected collectively, yet it is often neglected. When polluted, it affects human health, social life, and even the economy. Therefore, the right to clean air, which is a fundamental right upheld by law, human rights, and advocacy, must be fulfilled. In this context, the law serves as the basis for legitimacy. Any violation of the law regarding the right to a good and healthy environment and the right to clean air constitutes a violation of human rights, and advocacy becomes a tool for controlling government policies and legal entities, particularly corporations.

3.2. The Urgency of Recognizing, Protecting, and Fulfilling the Right to Clean Air in Indonesia

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

[42] See at United Nations of General Assembly, "Resolusi Majelis Umum PBB Nomor A/RES/76/300."

[43] International Covenant on Economic Social and Cultural Rights, "The International Covenant on Economic, Social and Cultural Rights," 1966, art. 12, https://www.ohchr.org/sites/default/files/cescr.pdf.

[44] United Nations General Assembly, "Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: A/HRC/37/59," 2018, https://docs.un.org/en/A/HRC/37/59.

[45] Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945). Pasal 28H ayat (1); "Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup" (2009)., Pasal 65 ayat (1).

[46] Presiden Republik Indonesia, "Peraturan Pemerintah Nomor 22 Tahun 2021 Tentang Pedoman Perlindungan Dan Pengelolaan Lingkungan Hidup," *Sekretariat Negara Republik Indonesia*, Pasal 1 angka 49, Pasal 1 angka 50, Pasal 492.

In essence, the right to clean air contains two layers of guarantees: (i) substantive guarantees regarding ambient air quality that is safe for health; and (ii) procedural guarantees in the form of the right to information, participation, and access to justice in environmental cases. Principle 10 of the Rio Declaration (1992) affirms these three "access rights" as pillars of accountable environmental governance, so that citizens can be involved in setting quality standards, issuing emission permits, and monitoring and enforcing the law.[47] Thus, the state has a threefold obligation: to respect (not worsen air quality), protect (regulate and supervise businesses/transportation to reduce emissions), and fulfill (set standards, inventory emissions, develop air quality management plans, and provide effective remedies).

From the perspective of constitutional justice, these two layers of protection must not be understood merely in conceptual terms, but must be developed into legal parameters that can be tested in practice.[48] A substantive violation of the right to clean air can be assessed when ambient air quality consistently exceeds the quality standards set by the state and such conditions pose a real risk to public health. In this context, a rights violation does not necessarily require the existence of direct, provable individual harm, as exposure to air pollution at a certain level inherently constitutes a threat to the right to a healthy and dignified life. Meanwhile, violations of procedural guarantees may occur when the public lacks adequate access to information regarding air quality, is not effectively involved in environmental permitting processes and policy-making, or lacks effective access to complaint mechanisms and environmental justice.[49] Thus, the right to clean air not only demands the outcome of safe air quality but also ensures that environmental policy-making processes are transparent, participatory, and accountable.

The following cases illustrate how weak environmental law enforcement in Indonesia directly impacts citizens' rights to clean air. In 2021, a group of Jakarta residents filed a lawsuit against the Indonesian government for its failure to address worsening air pollution in the capital, triggered by the inability of both the central and regional governments to implement effective policies to reduce harmful emissions even though air quality had reached levels that were hazardous to public health.[50]

In the Central Jakarta District Court Decision Number 374/Pdt.G/LH/2019/PN Jkt.Pst, read on September 16, 2021, the Panel of Judges stated that the government, including the President and relevant officials, had been negligent in fulfilling their constitutional obligation to protect citizens' rights to a healthy environment, with pollutant concentrations such as PM2.5 consistently exceeding safe limits. This case confirms the absence of air pollution control policies and the failure of adequate implementation, so that the government's administrative

[47] *Deklarasi Rio tentang Lingkungan dan Pembangunan 1992,* Prinsip 10: hak atas informasi, partisipasi, dan akses keadilan di bidang lingkungan (teks resmi PBB).
[48] Maya Shaffina Putri, "Rule of Law and Legal Pluralism in Indonesia : Constitutional Transformation , Regulatory Governance , and Rights Protection in a Decentralized State Rule of Law and Legal Pluralism in Indonesia : Constitutional," *Indonesian Journal of Law, Governance, and Regulation* 1, no. 1 (2026): 0–12, https://www.journal.privietlab.org/index.php/IJLGR/article/view/1885.
[49] United Nations Environment Programme (UNEP), *UNEP Guide Ambient Air Quality Legislation* (Nairobi, 2023), https://wedocs.unep.org/items/1ed450e4-8f00-4133-9248-a9f2cb4a4666.
[50] [50] IQ Air, "Pengadilan Indonesia Menemukan Presiden Lalai Dalam Setelan Kualitas Udara," 2021.

and legal negligence has contributed to an increase in serious health problems such as respiratory disorders and heart disease due to exposure to air pollution.[5152]

This subsequent case shows how the Ministry of Environment and Forestry (KLHK) monitored hundreds of companies in Greater Jakarta that were suspected of contributing to the decline in air quality, with the results of inspections of 51 companies and the suspension of operations of 11 of them due to proven violations of environmental regulations, such as open burning of hazardous waste and illegal waste disposal. This decisive action is intended as law enforcement and a deterrent, while also affirming the KLHK's commitment to improving air quality through the application of administrative and criminal sanctions in accordance with the Environmental Protection and Management Law. However, although these actions demonstrate the government's seriousness, this case also reflects weaknesses in prevention and control from the outset, and can therefore be seen as a response to weak policies and a lack of control that allowed violations to occur.[53]

Furthermore, the issue of air pollution in Indonesia cannot be viewed merely as an environmental or public health issue, but rather as a matter of constitutional urgency. The absence of explicit constitutional recognition of the right to clean air creates a normative vacuum that results in weak legal protection, limited state accountability, and suboptimal redress mechanisms for citizens affected by air pollution.[54] This situation creates a constitutional vulnerability because citizens lack a clear legal basis to demand protection of their right to decent air quality. Consequently, the state tends to fulfill its environmental obligations administratively and reactively, rather than as a constitutional duty that must be actively and sustainably fulfilled.[55] From a constitutional justice perspective, the state's failure to ensure safe air quality is, in essence, a failure to protect citizens' constitutional right to a healthy, dignified life and to a decent living environment.

Based on the above cases, it is clear that the weak enforcement of laws and policies on air pollution control in Indonesia stems from the lack of explicit recognition of the right to clean air, both in terms of regulations and constitutional concepts. As a result, protection and fulfillment by the state tend to be suboptimal, so that the measures taken are often reactive after violations or crises occur, rather than preventive measures that guarantee air quality from the outset. This condition demonstrates the urgency of establishing the right to clean air as a

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[51] Lihat pada "Putusan PN JAKARTA PUSAT Nomor 374/Pdt.G/LH/2019/PN Jkt.Pst," 2019, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec2b0d732a5e24a30f313033353330.html.

[52] Muhammad Haris Makarim, "Pasca Putusan Pencemaran Udara Di Jakarta: Dialektika Politik Hukum Dan Hak Asasi Manusia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 2 (2025): 425–55, https://doi.org/10.38011/jhli.v9i2.719.

[53] Kementerian Lingkungan Hidup dan Kehutanan, "KLHK Hentikan 11 Kegiatan Perusahaan Yang Langgar Ketentuan Hingga Sebabkan Polusi Udara," 2024, https://mediaindonesia.com/humaniora/694685/klhk-hentikan-11-kegiatan-perusahaan-yang-langgar-ketentuan-hingga-sebabkan-polusi-udara.

[54] Eric Koons, "Tracking Air Pollution in Indonesia and the Policies Changing It," Climate Impacts Tracker Asia, 2025, https://www.climateimpactstracker.com/air-pollution-indonesia/.

[55] Surbhi Bhardwaj, "Obvious but Untenable: Fuel Quality Reforms for Jakarta's Air Pollution Crisis," Harvard Kennedy School, 2025, https://studentreview.hks.harvard.edu/obvious-but-untenable-fuel-quality-reforms-for-jakartas-air-pollution-crisis/.

fundamental right that is explicitly recognized, so that the state has a stronger legal obligation to protect the health and quality of life of the community.

Recognizing clean air as a right also means recognizing a shared responsibility to protect it. The state has the primary obligation to guarantee this right, through industrial oversight, the formulation of clean energy policies, and the promotion of sustainable transportation.[56] However, the community also plays an important role in reducing air pollution, for example through the use of environmentally friendly vehicles, reducing open burning of waste, and participating in urban greening movements.[57] On the other hand, the private sector, especially industry and transportation companies, also has a moral and legal obligation to ensure that their business activities do not pollute the air excessively. The precautionary principle, the polluter pays principle, and the principle of sustainable development should be the foundation of environmentally responsible business practices.[58]

The biggest challenge in guaranteeing the right to clean air lies in low public awareness, weak law enforcement, and the dominance of short-term economic interests that often ignore the long-term impact on health and the environment. In many large cities, air quality is deteriorating due to the growth of motor vehicles and uncontrolled industrial activities. This is directly proportional to the increase in respiratory diseases, especially among children and other vulnerable groups.[59][60]

The right to clean air is inherent and inseparable from the right to a decent life. Clean air is not a luxury, but a basic need that must be guaranteed by the state and protected by law.[61] Realizing this right is not only a matter of creating regulations, but also of building a collective awareness that maintaining air quality is part of preserving human civilization itself. In an increasingly urbanized world affected by climate change, the right to clean air is the foundation of a sustainable and just future for all.

3.3. Constitutional Justice of the Right to Clean Air in Indonesia: Legal Foundations and Human Rights Implications

The 1945 Constitution of the Republic of Indonesia provides a fundamental basis for the obligations of the state and the rights of citizens, so that the state has constitutional legal

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[56] Jeane Neltje Saly and Cherya Metriska, "Kebijakan Pemerintah Dalam Pengendalian Pencemaran Udara Di Indonesia," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 1642–48, https://journal.upy.ac.id/index.php/pkn/article/view/5405/3206).

[57] Badan Pengendalian Lingkungan Hidup, "Peningkatan Kualitas Udara Melalui Pengendalian Lingkungan," 2025, https://bplh.or.id/cara-badan-pengendalian-lingkungan-hidup-meningkatkan-kualitas-udara/

[58] Muhamad Muhdar, "Eksistensi Polluter Pays Principle Dalam Pengaturan Hukum Lingkungan Di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2012): 67, https://doi.org/10.22146/jmh.16247.

[59] Sheila Maharani, "Analisis Dampak Pencemaran Udara Terhadap Kesehatan Pernapasan Masyarakat Perkotaan," *Journal of Medical and Health Sciences* 1, no. 1 (2025): 10–15, https://doi.org/10.71094/jmhs.v1i1.108.

[60] Farhatun Haya et al., "Dampak Polusi Udara Terhadap Kesehatan Manusia," *WISSEN : Jurnal Ilmu Sosial Dan Humaniora* 3, no. 2 (2025): 180–90, https://doi.org/10.62383/wissen.v3i2.753.

[61] Ginevra Le Moli, "The Human Rights Committee, Environmental Protection and the Right to Life," *International and Comparative Law Quarterly* 69, no. 3 (2020): 735–52, https://doi.org/10.1017/S0020589320000123.

consequences in implementing the 1945 Constitution.[62] From the perspective of constitutional justice, the constitution is not only understood as a normative document, but as an instrument of justice that guarantees equal distribution of rights and protection for all citizens.[63] As stipulated in various international legal instruments, environmental cleanliness and health (including clean air) are fundamental human rights, so that states have an obligation to realize environmental justice through pollution prevention and air quality protection.[64]

In this article, the concept of constitutional justice is understood as a form of justice realized through the constitution in ensuring the distribution of rights, equal protection, and the fair limitation of state power.[65] This concept relates not only to procedural justice but also to substantive justice as developed in John Rawls's theory of distributive justice, particularly regarding the protection of the most affected and vulnerable groups.[66] In the Indonesian context, constitutional justice is also linked to the value of social justice in Pancasila and the constitutional morality that positions the state as the entity responsible for protecting human dignity and the common good. Therefore, constitutional justice regarding the right to clean air requires the state not only to establish formal regulations but also to ensure a fair distribution of environmental quality and effective protection of citizens from the impacts of air pollution.

This prosperity is reflected in Article 28H paragraph (1), which states that "every person shall have the right to live in physical and spiritual prosperity, to have a place to live and to obtain a good and healthy environment, and to obtain health services" must be interpreted as a manifestation of constitutional justice. In this case, a good and healthy environment is the right of every person, so that the protection of the constitutional rights of citizens to obtain clean, healthy, and quality air is one of the obligations of the state. This article indicates that the state is obliged to ensure that the rights of every person are fulfilled by taking into account certain matters so as not to damage the environment in Indonesia's national development. Thus, protection of the right to clean air is a real manifestation of the principle of justice inherent in the constitution.

As recognized internationally, the right to a clean and healthy environment is a human right, therefore the state is obliged to protect and provide a decent environment for its citizens. Article 28 I paragraph (4) states that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. Within the framework of constitutional justice, this responsibility requires the state to maintain a neutral stance regarding air quality disparities that impact vulnerable groups. The state must ensure

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[62] Ainur Rofiq et al., "Analisis Hak Dan Kewajiban Warga Negara Yang Terkandung Dalam Uud Negara Republik Indonesia Tahun 1945," *Jurnal Harmoni Nusa Bangsa* 2, no. 1 (2024): 89–98, https://ejournal.stipram.ac.id/index.php/JHNB/index.

[63] Febriani Mustikasari, "Analisis Peran Konstitusi Dalam Menjamin Hak Asasi Manusia Dan Keadilan Sosial : Studi Kasus Negara Indonesia Dalam Konteks Dinamika Politik Kontemporer," *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 558–65, https://doi.org/10.5281/zenodo.12730331.

[64] Sayyidatiihayaa Afra Geubrina Raseukiy, "Membaca Kebijakan Hukum Dalam Pemenuhan Hak Atas Lingkungan Yang Bersih, Sehat, Dan Berkelanjutan Sebagai Hak Asasi Manusia Universal," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2023): 1–24, https://doi.org/10.38011/jhli.v9i1.508.

[65] T. R. S. Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press, 2003), https://doi.org/https://doi.org/10.1093/acprof:oso/9780199267880.001.0001.

[66] "John Rawls' Theory of Justice: Foundation for Liberty and Self-Determination," PolSci.Institute, 2025, https://polsci.institute/political-theory-concepts-debates/john-rawls-theory-of-justice/.

that development policies implemented do not result in ecological injustice that disproportionately burdens certain communities.

The right to clean air, which is not explicitly mentioned in the 1945 Constitution of the Republic of Indonesia, is one of the factors contributing to the weak fulfillment of and violations of the right to clean air. This vacuum has created a space of normative injustice, where the protection of clean air often hinges on a common interpretation of environmental rights. Therefore, a constitutional justice approach is necessary to strengthen the recognition, protection, and fulfillment of the right to clean air as an integral part of citizens' constitutional rights.

First, what can be done is to constitutionally affirm the right to clean air in the 1945 Constitution by interpreting Article 28H paragraph (1) of the 1945 Constitution (the right to a good and healthy environment) as including the right to clean air. The phrase "a good and healthy environment" covers all components of the environment, including air, water, soil, and ecosystems that support life. Since air is an essential element for human life, the right to a good and healthy environment implicitly includes the right to clean and unpolluted air. Without clean air, the environment cannot be categorized as "good and healthy." From a constitutional justice perspective, this interpretation is important to ensure that the right to clean air is not an abstract right, but rather exists as a real right that can be enforced and felt directly by every citizen (justiciable right).

As a justiciable right, the right to clean air must be enforceable through legal and judicial mechanisms. Citizens who suffer harm due to air pollution, in principle, have legal standing to file lawsuits against the state or private parties responsible for degrading air quality.[67] In Indonesian legal practice, such protection can be sought through several mechanisms, including citizen lawsuits, lawsuits against the government for unlawful acts, environmental lawsuits under the Law on Environmental Protection and Management, and judicial review of regulations if there are regulations that conflict with the constitutional right to a good and healthy environment.[68] Furthermore, although the mechanism of a constitutional complaint is not yet explicitly regulated within Indonesia's constitutional system, the concept is relevant for development as a means of constitutional protection when state actions or omissions result in violations of the right to clean air. Thus, the recognition of the right to clean air as a constitutional right must be accompanied by the availability of effective legal remedies so that this right does not remain merely a normative declaration.[69]

After constitutionally affirming the right to clean air through constitutional interpretation, harmonization, and strengthening of national law are the next steps in realizing

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[67] Winfried Huck et al., "The Right to Breathe Clean Air and Access to Justice Legal State of Play in International , European and National Law," n.d., https://www.academia.edu/50459990/The_Right_to_Breathe_Clean_Air_and_Access_to_Justice_Legal_State_of_Play_in_International_European_and_National_Law.

[68] Galang Syafta Arsitama S H et al., "Reconstruction of Citizen Lawsuits in Indonesia in Realising Justice," *Scholars International Journal of Law, Crime and Justice* 8, no. 10 (2025): 253–60, https://doi.org/https://doi.org/10.36348/sijlcj.2025.v08i10.003.

[69] Elly Kristiani Purwendah et al., "Public Participation in Environmental Protection : Citizen Law Suits in the Indonesian Civil Justice System Public Participation in Environmental Protection : Citizen Law Suits in the Indonesian Civil Justice System," *IOP Conf. Series: Earth and Environmental Science*, 2022, https://doi.org/10.1088/1755-1315/1030/1/012022.

regulatory justice. This step is taken through vertical and horizontal harmonization of laws and regulations so that policies in the fields of environment, health, industry, transportation, and investment do not lower air quality protection standards. Meanwhile, the strengthening of laws is carried out by clarifying the recognition of the right to clean air in national law.

The recognition of the right to clean air in national law has consequences for stronger demands for the state to guarantee the protection of the right to clean air. The state not only protects in terms of regulations but also has obligations that must be fulfilled, such as maintaining air quality, providing information on health quality, and restoring air quality. The protection of the right to clean air goes hand in hand with the state's obligation to fulfill this right. This is in line with the fundamental concept of human rights that the state's obligations are to respect, protect, and fulfill the right to clean air.

The right to clean air encompasses two main dimensions: distributional justice and intergenerational justice. From a distributional perspective, every citizen has the right to enjoy equal air quality without discrimination based on region, social class, or economic condition. When pollution disproportionately impacts the poor or densely populated areas, it reflects ecological injustice that contradicts the principles of constitutional justice. Meanwhile, from an intergenerational perspective, the right to clean air also means safeguarding the rights of our children and grandchildren, as air quality today will determine their quality of life in the future. Therefore, recognizing this right is not merely an environmental issue, but a concrete manifestation of the state's commitment to social justice and the sustainability of constitutional values.

4. Conclusions

The right to clean air in Indonesia has a strong constitutional basis even though it has not been explicitly formulated as a separate right in the 1945 Constitution of the Republic of Indonesia. From the perspective of constitutional justice, this right is not merely understood as an administrative part of environmental policy, but as a guarantee of substantive justice inherent in Article 28H paragraph (1) of the 1945 Constitution, because systematically and teleologically the right to a good and healthy environment includes the right to air quality that is suitable for human health, welfare, and survival. Although the state has built a regulatory framework through various regulations regarding air quality standards, emission control, and environmental supervision, this study shows that this protection does not fully reflect constitutional justice, because normative recognition of the right to clean air is still implicit and its implementation tends to be reactive, thus potentially causing ecological injustice, especially for vulnerable groups and areas with high levels of pollution.

Therefore, strengthening constitutional justice for the right to clean air is an urgent need. This can be achieved through more progressive interpretations by the judiciary to affirm the fairness of this right, harmonization and refinement of cross-sectoral regulations, and increased state accountability in controlling and restoring air quality. Therefore, recognizing and strengthening the right to clean air is not merely a matter of legal certainty but also a manifestation of the state's commitment to social justice and the protection of human rights while ensuring a fair and sustainable distribution of air quality for present and future generations.

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