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Climate Rights Litigation and Constitutional Remedies in Southeast Asia

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Abstract

Climate litigation in Southeast Asia is developing through legal systems that differ sharply in constitutional text, standing doctrine, environmental procedure, and remedial technique. This article examines how rights-based climate claims can be translated into judicially manageable remedies through a comparative doctrinal analysis centered on Indonesia and the Philippines, with Malaysia and Singapore used as institutional comparators. The study codes constitutional provisions, environmental statutes, procedural rules, and leading judgments across six variables: rights basis, standing, causal framing, evidentiary pathway, remedial form, and post-judgment supervision. Indonesian doctrine combines Article 28H(1), Article 33(4), environmental legislation, and citizen-suit practice, while Philippine law couples the constitutional right to a balanced and healthful ecology with specialized remedies including the writ of kalikasan and continuing mandamus. The comparison shows that the principal regional constraint is not recognition of environmental interests but the conversion of diffuse climate harm into reviewable governmental duties and enforceable orders. The article proposes a calibrated remedial model linking the intensity of judicial relief to the specificity of the breached legal duty, evidentiary certainty, institutional competence, and the need for continuing supervision.

Keywords: Climate Litigation, Constitutional Remedies, Environmental Rights, Southeast Asia, Judicial Review.



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INTRODUCTION

Climate litigation has become a significant form of environmental governance because courts are increasingly asked to translate climate science, statutory duties, and constitutional commitments into legal consequences. The global docket now includes claims directed at governments, corporations, permitting authorities, and financial actors, but the legal pathways remain highly jurisdiction-specific (United Nations Environment Programme, 2023; Setzer & Higham, 2024). Rights-based claims are especially important because they connect climate harms with established guarantees of life, health, dignity, equality, property, and a healthy environment rather than relying exclusively on climate-specific legislation (Savaresi & Setzer, 2022; Rodríguez-Garavito, 2022). Southeast Asia provides a particularly useful setting for examining this transformation because its jurisdictions share high climate exposure while differing materially in constitutional environmental rights, procedural access, and judicial remedial traditions.

Indonesia provides a comparatively dense normative basis for environmental rights litigation. Article 28H(1) of the 1945 Constitution protects the right to a good and healthy environment, while Article 33(4) constitutionalizes sustainability and environmental insight within the organization of the national economy. Law No. 32 of 2009 on Environmental Protection and Management supplies statutory rights, duties, participation mechanisms, environmental liability, and standing arrangements, while Law No. 16 of 2016 ratifies the Paris Agreement. Indonesian climate-related litigation between 2010 and 2020 was not limited to cases explicitly labelled as climate disputes; Sulistiawati (2024) identified 112 climate-change-related cases, many involving forestry and fires, illustrating how climate adjudication can be embedded in ordinary environmental, criminal, administrative, and civil proceedings.

The Jakarta air-pollution citizen suit demonstrates the remedial significance of this broader architecture. Central Jakarta District Court Decision No. 374/Pdt.G/LH/2019/PN Jkt.Pst imposed legal consequences on public authorities for air-quality governance failures, and the litigation continued through Jakarta High Court Decision No. 549/Pdt/2022/PT DKI and Supreme Court Decision No. 2560 K/Pdt/2023. The case is not a pure greenhouse-gas mitigation action, but it is doctrinally relevant because it shows how diffuse environmental harm, public duties, scientific evidence, and structural relief can be combined within Indonesian civil procedure (Wartini & Dewi, 2026; Prihandono, 2024). Climate-rights litigation in Indonesia therefore emerges from the interaction of constitutional rights, environmental statutes, administrative obligations, and procedural innovations rather than from a single climate cause of action.

The Philippines offers a different but complementary model. Article II, Section 16 of the 1987 Constitution requires the State to protect and advance the right of the people to a balanced and healthful ecology. In *Oposa v. Factoran*, G.R. No. 101083 (1993), the Supreme Court treated that guarantee as judicially meaningful and accepted a claim framed partly through intergenerational responsibility. The Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC (2010), later institutionalized specialized procedural devices including the writ of *kalikasan* and continuing *mandamus*. Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay further illustrates how continuing judicial supervision can be used when an environmental duty requires sustained governmental implementation rather than a one-time order.

Comparative analysis nevertheless requires caution. A constitutional environmental clause does not automatically produce strong climate remedies, and the absence of an express environmental right does not preclude environmental review under administrative, tort, public-law, or statutory principles. Malaysia and Singapore illustrate systems in which environmental governance rests more heavily on statutory and administrative frameworks, while constitutional environmental claims are more constrained or indirect. The regional question is therefore not whether one constitutional model is superior, but how legal systems construct justiciability across standing, duty, evidence, causation, and remedies (Lin & Kysar, 2020; Wibisana & Cornelius, 2020). This functional approach avoids equating the existence of rights language with effective judicial protection.

Climate litigation also raises an institutional problem of remedy design. Courts may identify unlawful governmental conduct but still face uncertainty over whether to quash a permit, compel a statutory act, require planning, mandate disclosure, set a compliance timetable, or retain supervisory jurisdiction. Overly abstract declarations risk producing little implementation, while excessively detailed orders can displace administrative functions and strain separation-of-powers principles (Parker et al., 2022; Auz, 2022). The most defensible remedial approach therefore depends on the legal specificity of the duty, the quality of the evidentiary record, the availability of administrative expertise, and the degree to which compliance can be assessed through objective benchmarks.

Recent scholarship increasingly treats climate adjudication as an institutional process rather than a sequence of isolated judgments. Southeast Asian studies show that litigation can influence regulatory interpretation, corporate risk, public participation, and the framing of environmental rights even when plaintiffs do not obtain every remedy sought (Putra, 2021; Ismaya & Wafi, 2024; Kumaresan & Franta, 2025). At the same time, the region remains underrepresented in global climate-litigation theory, which has often been built from European, North American, and Latin American cases. The doctrinal diversity of Southeast Asia offers an opportunity to test whether remedial theory can be constructed from shared legal functions without assuming identical constitutional structures.

This article addresses two questions. First, how do Southeast Asian legal systems convert environmental and climate interests into judicially reviewable legal claims? Second, which remedial techniques are most compatible with rights protection, institutional competence, and effective implementation? The article develops a calibrated remedial model from comparative legal materials, with Indonesia and the Philippines as the principal doctrinal cases and Malaysia and Singapore as contextual comparators. Its contribution lies in shifting the focus from the symbolic recognition of climate rights toward the legal architecture that determines whether a judgment can produce an enforceable and institutionally sustainable response.

RESEARCH METHODS

The study adopts normative doctrinal and comparative legal research. Primary materials include the 1945 Constitution of Indonesia; Law No. 32 of 2009; Law No. 16 of 2016; Central Jakarta District Court Decision No. 374/Pdt.G/LH/2019/PN Jkt.Pst; Jakarta High Court Decision No. 549/Pdt/2022/PT DKI; Supreme Court Decision No. 2560 K/Pdt/2023; the 1987 Constitution of the Philippines; *Oposa v. Factoran*; the Rules of Procedure for Environmental Cases; and Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay. Comparative materials from Malaysia and Singapore are used to identify differences in constitutional entrenchment, judicial review, and environmental procedure rather than to claim doctrinal equivalence. International materials include the Paris Agreement, UNEP climate-litigation reports, and selected comparative climate-rights scholarship.

The materials are coded across six variables: rights basis, claimant standing, characterization of governmental duty, causal and evidentiary structure, remedial form, and mechanism of post-judgment implementation. The analysis applies grammatical and systematic interpretation to constitutional and statutory texts, case synthesis to judicial reasoning, and functional comparison to remedies that perform similar institutional tasks under different doctrinal labels. Secondary literature is used to test the coherence of the coding and to distinguish climate-specific doctrine from wider environmental adjudication (Sulistiawati, 2024; Quising, 2023; Lin, 2026). No empirical interviews or private datasets are used; the evidentiary dataset consists of publicly available legal materials and peer-reviewed research.

RESULTS AND DISCUSSION

Constitutional and Statutory Gateways for Climate Claims

The first determinant of climate-rights litigation is the legal gateway through which environmental harm becomes a justiciable claim. Indonesia's Article 28H(1) supplies an individual rights formulation, while Article 33(4) embeds sustainability within the constitutional organization of economic policy. Read together with Law No. 32 of 2009, these provisions permit litigants to connect environmental quality with public duties, participation rights, permitting standards, and access to judicial remedies. The constitutional text does not itself resolve causation or remedy, but it provides a normative anchor against which statutory and administrative action can be assessed (Wartini & Dewi, 2026; Sulistiawati, 2024).

Table 1. Comparative Legal Gateways for Environmental and Climate Claims

Jurisdiction	Primary legal basis	Procedural gateway	Principal climate-law significance
Indonesia	1945 Constitution Arts. 28H(1), 33(4); Law 32/2009	Civil, administrative, citizen-suit and environmental standing mechanisms	Express environmental right can be linked to statutory duties and public-law review
Philippines	1987 Constitution Art. II, Sec. 16	Ordinary actions; writ of kalikasan; continuing mandamus	Constitutional ecology right reinforced by specialized environmental procedure
Malaysia	Federal Constitution plus environmental statutes	Judicial review and statutory causes of action	Environmental protection is predominantly statutory/administrative rather than an express constitutional ecology right
Singapore	Constitution plus environmental and planning statutes	Judicial review, statutory enforcement, private-law routes where available	Climate disputes depend primarily on statutory legality and administrative decision-making
International benchmark	Paris Agreement and human-rights norms	Interpretive and contextual use subject to domestic incorporation	Supports interpretation of mitigation, adaptation and rights duties without automatically creating a domestic cause of action

The Philippine model illustrates a more explicit connection between environmental rights and specialized procedure. Oposa established that the constitutional ecology guarantee could support judicial action and articulated intergenerational responsibility as part of the standing analysis (Oposa v. Factoran, 1993; Quising, 2023). The 2010 Rules of Procedure for Environmental Cases then reduced procedural friction by defining environmental actions and creating the writ of *kalikasan* and continuing *mandamus*. These devices do not eliminate the need to prove the legal predicates of relief, but they provide a procedural vocabulary specifically designed for large-scale ecological harm and continuing public duties.

The comparison shows that climate litigation is not dependent on a single doctrinal category. A claim may be framed as constitutional review, administrative illegality, failure to perform a statutory duty, tort, environmental liability, or a specialized public-law remedy. What matters is whether the legal system supplies a reviewable norm and identifies an institution capable of enforcing it. This explains why Indonesian climate-related cases often appear in forestry, fire, licensing, and pollution litigation rather than in actions expressly denominated as climate cases (Sulistiawati, 2024; Sembiring & Baihaqie, 2020).

Table 2. Justiciability Variables in Rights-Based Climate Litigation

Variable	Doctrinal question	Evidence normally required	Remedial consequence
Right protected interest	Is the asserted environmental interest legally protected?	Constitutional text, statute, treaty incorporation, case law	Determines whether review begins from a rights or legality framework
Standing	Is the claimant sufficiently connected to the harm or public interest?	Affected status, statutory standing, organizational purpose, public-interest doctrine	Controls access to merits
Duty	Is the defendant legally required to act or refrain from acting?	Specific statutory/constitutional obligations; permit conditions; plans	Greater specificity supports mandatory relief
Causation	Can the challenged conduct be linked legally to the asserted risk or harm?	Scientific evidence, inventories, risk assessments, regulatory record	Influences liability and scope of relief
Institutional competence	Which decisions remain for the executive/agency?	Legal allocation of functions and technical record	Shapes intensity and detail of judicial order
Reviewability of compliance	Can implementation be measured after judgment?	Timelines, indicators, reporting obligations	Supports supervisory or continuing remedies

A rights-based framework is therefore most effective when it is integrated with statutory precision. General constitutional guarantees establish the protected value, while environmental statutes identify concrete duties relating to standards, permits, assessments, monitoring, disclosure, participation, or pollution control. Putra (2025) and Prihandono (2024) show that Indonesian environmental and climate adjudication increasingly depends on this interaction between broad rights and specific administrative obligations. The result is a layered model of legality in which constitutional rights guide interpretation but statutory duties often determine the exact form of judicial intervention.

This layered model also clarifies the comparative role of jurisdictions without express environmental rights. Courts can still review whether an authority acted within statute, considered mandatory environmental factors, followed procedural duties, or rationally addressed evidence placed before it. The difference lies in the normative starting point and the range of arguments available, not

in the complete presence or absence of environmental adjudication. Functional comparison therefore identifies comparable legal tasks access, legality, evidence, and remedy without treating divergent constitutional texts as interchangeable (Lin & Kysar, 2020; Wibisana & Cornelius, 2020).

Evidence, Causation, and the Translation of Climate Risk

The second challenge is evidentiary translation. Climate science typically concerns cumulative emissions, probabilistic attribution, temporal lag, and system-wide risk, whereas litigation often asks whether a particular defendant breached a legally defined duty. Courts need not resolve the entire causal chain of global climate change in every case; they can instead identify the evidentiary proposition relevant to the pleaded legal rule. A permitting challenge may turn on whether climate effects were lawfully assessed, a rights claim on whether foreseeable harm was addressed, and a statutory-duty claim on whether a required plan or standard was adopted. This disaggregation is consistent with comparative climate-litigation scholarship that distinguishes scientific causation from legal attribution (Savaresi & Setzer, 2022; Rodríguez-Garavito, 2022).

Table 3. Evidentiary Functions in Climate-Rights Adjudication

Evidentiary function	Typical material	Legal use	Primary limitation
Hazard identification	IPCC findings; national climate assessments	Establishes existence and seriousness of climate risk	Does not by itself allocate legal responsibility
Contribution	Emissions inventories; sector data; project emissions	Links activity or policy to emissions/risk	Relative contribution may be small within global totals
Exposure and vulnerability	Health, geographic, livelihood and disaster data	Shows affected populations and foreseeable impacts	Unequal data availability across communities
Administrative knowledge	EIA records; plans; agency reports; consultation records	Tests whether decision-maker considered relevant material	Record may be incomplete or prepared for a different purpose
Feasibility of relief	Technical plans, standards, timelines and budgets	Assists proportional remedy design	Courts should not substitute unsupported technical choices for agencies

Indonesia's air-pollution litigation is instructive because the plaintiffs did not need to convert every atmospheric source into an individual tort calculation before the court could examine public-law obligations. The central legal problem concerned whether public authorities had fulfilled duties relating to air-quality governance and protection. Climate litigation can use the same doctrinal discipline: the evidence should be matched to the legal duty being reviewed. Where the duty is procedural, the record of assessment and reasons may be decisive; where the duty is substantive, emissions trajectories, thresholds, or legally mandated outcomes become more important (Ismaya & Wafi, 2024; Wartini & Dewi, 2026).

The Philippine experience similarly demonstrates how environmental procedure can structure evidentiary burdens. The writ of *kalikasan* is designed for environmental damage of such magnitude as to prejudice life, health, or property across multiple cities or provinces, while continuing *mandamus* addresses unlawful neglect of a specifically enjoined environmental duty (A.M. No. 09-6-8-SC, 2010). These remedies require different forms of proof because one focuses on large-scale environmental injury and the other on an enforceable public duty. Remedy design thus begins before judgment: the legal characterization of the claim determines what evidence must be produced.

Table 4. Case-Based Comparison of Environmental Remedy Structures

Authority	Core legal issue	Judicial technique	Climate-litigation lesson
Oposa v. Factoran (Philippines, 1993)	Forest depletion and constitutional ecology right	Recognition of justiciable environmental right and intergenerational standing	Rights can open the courthouse but still require a legally cognizable duty and remedy
MMDA v. Concerned Residents of Manila Bay	Continuing statutory duties for rehabilitation	Continuing mandamus and reporting	Supervision is strongest where duties are specific and continuing
PN Jakarta Pusat 374/Pdt.G/LH/2019	Air-quality governance and public duties	Citizen-suit structural orders	Diffuse environmental harm can be adjudicated through duties of public authorities
PT DKI 549/Pdt/2022 and MA 2560 K/Pdt/2023	Appellate review of structural environmental relief	Appellate confirmation/refinement	Durable remedies require clear legal grounding capable of surviving review
Climate litigation	Adequacy of climate consideration in administrative decisions	Quashing, remittal or reconsideration	Administrative record can provide a judicially manageable climate pathway

The causation debate should therefore be separated into at least three questions: scientific contribution, legal responsibility, and remedial nexus. Scientific evidence may establish that a policy contributes to risk; legal doctrine determines whether the contribution breaches a duty; and remedial analysis asks whether the requested order addresses that breach. These questions overlap but are not identical. Conflating them can produce either excessive demands for individualized climate causation or overly broad relief unsupported by the precise legal violation (Parker et al., 2022; Auz, 2022).

The evidentiary implication is a preference for traceable, decision-specific records. Courts are institutionally best placed when climate evidence is tied to documents that an agency was required to consider, targets it was required to formulate, standards it was required to enforce, or rights it was required to protect. This does not eliminate scientific complexity, but it narrows the legal inquiry to propositions that can be tested against existing public-law standards. The approach also reduces the risk that climate litigation becomes a generalized review of policy wisdom rather than adjudication of legal obligation (Putra, 2021; Lin, 2026).

Remedial Design and Post-Judgment Institutional Control

The third challenge concerns the form and intensity of relief. Environmental judgments can be declaratory, prohibitory, mandatory, supervisory, compensatory, or remittal-based. A calibrated model begins with the proposition that stronger remedies require stronger legal predicates. A court can more readily order an authority to perform a duty expressly imposed by statute than prescribe the detailed content of a climate policy where the law leaves substantial discretion. This distinction protects both rights and institutional competence because it connects judicial intensity to the determinacy of the legal obligation (Auz, 2022; Parker et al., 2022).

Table 5. Climate-Remedy Calibration Matrix

Type of legal defect	Typical remedy	Conditions supporting relief	Institutional risk to control
Failure to disclose or consult	Declaration; disclosure order; renewed procedure	Clear procedural duty and material omission	Avoid treating participation as automatic substantive veto
Failure to consider mandatory climate factor	Quashing/remittal; reasoned reconsideration	Statutory relevance of factor and inadequate record	Court should not predetermine technical outcome
Failure to perform specific statutory duty	Mandamus/mandatory order with deadline	Duty is mandatory, sufficiently precise and outstanding	Order should track statutory language
Continuing systemic non-compliance	Periodic reporting; supervisory jurisdiction where procedure permits	Repeated breach and measurable compliance indicators	Supervision should have defined benchmarks and exit criteria
Unlawful rights interference	Declaration plus proportionate corrective order	Rights violation established with adequate evidentiary nexus	Remedy must remain connected to proved violation
Private-law harm	Damages, injunction or restorative relief where elements are met	Duty, breach, causation and recognized damage	Climate contribution must satisfy applicable private-law standards

Continuing mandamus is particularly significant because climate governance often involves implementation over time. The Philippine rules demonstrate that continuing supervision can be doctrinally contained: the court orders performance of an existing legal duty and can require periodic reports until compliance. The technique is more legitimate when benchmarks already arise from legislation or an administrative plan than when the court must invent policy metrics. Indonesian citizen-suit practice can perform a related structural function, although the doctrinal basis and supervisory mechanics differ (Quising, 2023; Prihandono, 2024).

Remittal is another important but underappreciated remedy. Where an environmental assessment, permit, or policy decision is legally defective, a court may set aside or return the decision for reconsideration under correct legal standards. This preserves administrative responsibility while ensuring that climate evidence and rights are not ignored. In jurisdictions where courts exercise restrained public-law review, remittal can be more institutionally sustainable than direct judicial specification of policy content, especially when the record contains competing technical pathways (Lin & Kysar, 2020; Wibisana & Cornelius, 2020).

Table 6. Proposed Southeast Asian Climate-Remedy Sequence

Stage	Judicial question	Required legal anchor	Possible output
1. Gateway	Is there a protected right, interest, or reviewable statutory duty?	Constitution, statute, procedural rule	Standing accepted or claim dismissed/refined
2. Legality	What exact duty or prohibition governs the defendant?	Text, structure, precedent	Finding of compliance or breach

Stage	Judicial question	Required legal anchor	Possible output
3. Evidence	What factual proposition must be proved for that duty?	Scientific/administrative record	Evidence accepted, supplemented, or found insufficient
4. Nexus	How does the proved breach relate to the requested relief?	Remedial doctrine and proportionality	Scope of corrective order defined
5. Institutional fit	Which matters remain within administrative discretion?	Allocation of powers and expertise	Remittal, bounded mandatory order, or declaration
6. Compliance	Can performance be objectively monitored?	Statutory indicators, deadlines, reporting duties	One-time order or continuing supervision with exit criteria

The sequence in Table 6 offers a regional framework without assuming a uniform constitutional doctrine. It can operate in Indonesia through constitutional and environmental-law guarantees, in the Philippines through constitutional ecology rights and specialized environmental remedies, and in more statute-centered systems through administrative legality. Its core requirement is traceability: each element of relief must be tied to a proved legal defect. This prevents remedial ambition from outrunning doctrinal authority while still allowing courts to respond to continuing environmental violations (Savaresi & Setzer, 2022; Sulyok, 2024).

Corporate climate litigation further reinforces the importance of remedial differentiation. Emerging Southeast Asian scholarship identifies opportunities to use company, disclosure, tort, and consumer-law doctrines against corporate climate conduct, but the applicable remedies differ from those available against public authorities (Kumaresan & Franta, 2025). The same calibrated logic nevertheless applies: disclosure claims support corrective information, misleading-representation claims may support injunctions or consumer remedies, and tort claims require private-law proof of duty and causation. Rights-based climate litigation is therefore best understood as a family of legal pathways whose effectiveness depends on matching the remedy to the doctrinal source of obligation.

The broader implication is that judicial contribution to climate governance need not be measured by whether courts dictate emissions policy. Courts can strengthen climate legality by requiring reasons, enforcing statutory duties, protecting access to information and participation, correcting unlawful administrative decisions, and supervising performance where the law authorizes continuing relief. These functions are compatible with institutional restraint when remedies remain anchored in law. Southeast Asian climate jurisprudence can therefore develop through incremental doctrinal precision as much as through landmark constitutional declarations.

CONCLUSION

Climate-rights litigation in Southeast Asia is structured by the interaction of constitutional text, environmental statutes, procedural access, evidence, and remedial doctrine. Indonesia demonstrates how an express constitutional environmental right can work together with Article 33(4), Law No. 32 of 2009, citizen-suit practice, and administrative legality; the Philippines demonstrates how a constitutional ecology guarantee can be reinforced by specialized procedural remedies such as the writ of *kalikasan* and continuing *mandamus*. Malaysia and Singapore show why regional analysis cannot be reduced to the presence or absence of explicit environmental-rights language. Across these systems, the decisive issue is whether a claimant can identify a reviewable legal duty, match climate evidence to that duty, and request relief that a court can justify within its institutional authority.

The proposed remedial model therefore calibrates judicial intervention according to legal specificity, evidentiary certainty, remedial nexus, and compliance measurability. Declaratory, remittal, mandatory, supervisory, and compensatory remedies perform different legal functions and should not be treated as interchangeable responses to climate harm. The model offers a doctrinal pathway for courts to enforce environmental rights and statutory duties without converting adjudication into open-ended climate administration. Future research can extend the framework through a larger case dataset across ASEAN jurisdictions and test how post-judgment compliance, corporate climate claims, and

transnational climate obligations alter the relationship between rights recognition and effective environmental protection.

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