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

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Mustafa, Maizatun [a] ; Yusoff, Rahmawati Mohd [b] ; Wibisana, Andri Gunawan [c]

[a] Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, Jln Gombak, Kuala Lumpur, 53100, Malaysia

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Abstract

The protection of the environment in Malaysia operates within a legal framework characterised by the absence of an explicit constitutional right to a clean and healthy environment. This constitutional silence creates a legal tension between regulatory compliance-based governance and the growing demand for rights-based environmental justice, particularly regarding access to remedies. Unlike jurisdictions that constitutionalise environmental rights, Malaysia relies on

statutory regulation, administrative governance, and cautious judicial interpretation to address environmental harm. This article examines how environmental justice functions within Malaysia's legal framework beyond constitutional rights and assesses the legal framework that prioritises regulatory compliance over rights-based claims. Adopting a qualitative doctrinal legal research methodology, the study analyses primary legal sources spanning the Environmental Quality Act 1974 (Act 127) to recent judicial developments, with selected legislation and case law highlighting their significance in shaping environmental governance. The findings demonstrate that Malaysia's framework incorporates multiple mechanisms that indirectly support environmental justice, such as public participation through legal processes and administrative complaint mechanisms, statutory compensation for environmental harm, and limited substantive protection for vulnerable communities. In addition to examining existing strategies, the study develops the concept of "regulatory-embedded environmental justice" to explain how justice is operationalised indirectly through legal processes. Collectively, these strategies enable environmental protection to function despite the absence of explicit constitutional environmental rights. However, their effectiveness depends largely on administrative discretion and enforcement capacity rather than enforceable environmental rights. The article argues that Malaysia represents a distinct regulatory approach in which environmental justice is embedded within statutory frameworks rather than constitutional guarantees. While this approach demonstrates institutional adaptability, it also reveals the confined scope of access to justice in Malaysia. By advancing a conceptual model and identifying structural limitations, this study offers a transferable analytical framework for other jurisdictions operating within a similar system. © The authors (2026).

Author keywords

Environmental justice; Environmental Quality Act 1974; environmental rights; legal framework; Malaysia

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Corresponding authors

Corresponding author	M. Mustafa
Affiliation	Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, Jln Gombak, Kuala Lumpur, 53100, Malaysia
Email address	maizatun@iium.edu.my

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