

Environmentally Friendly Development through the Green Constitution Concept



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ABSTRACT: The purpose of the Indonesian state, as stated in the Preamble to the Constitution of the Republic of Indonesia in 1945, is to form a government that protects all Indonesian people and natural resources, as well as improving general welfare, national education, and participating in realizing world order based on independence, lasting peace, and social justice. The focus on the general welfare as a key value in a democratic economic system is at the core of the country's goals. During the Reformation Era, the 1945 Constitution of the Republic of Indonesia underwent significant changes, including the addition of articles recognizing the right to a good and healthy environment and the principle of sustainable economic democracy. However, the implementation of the concept of a "Green Constitution" that guarantees the right to sustainable environmental development has not been fully realized. Although supported by active community participation, the ideal legal framework has not been achieved and legal practice is still influenced by political and economic elites that contradict the spirit of the constitution to protect and respect the environment.

KEYWORDS: Green Constitution, Development, Environmental Insight

I. INTRODUCTION

Every country has a purpose stated in its constitution as a legal basis for the administration of the state. The purpose of the Indonesian state, as stated in the Preamble to the Constitution of the Republic of Indonesia in 1945, is to form a government that protects all Indonesian people and natural resources, as well as improving general welfare, national education, and participating in realizing world order based on independence, lasting peace, and social justice. The focus on the general welfare as a key value in a democratic economic system is at the core of the country's goals.¹

Since the start of the Reformation Era, the Indonesian Constitution, represented by the 1945 Constitution of the Republic of Indonesia, has undergone significant changes. The amendment includes fundamental amendments, one of which is the addition of Article 28H paragraph (1), which stipulates that:

"Everyone has the right to live a prosperous life physically and mentally, to live in, and to get a good and healthy living environment and the right to health services."

This provision is a recognition from the state of its citizens' individual rights to a good and healthy environment. Another fundamental change in the 1945 Constitution of the Republic of Indonesia involves the addition of Article 33 paragraph (4) which stipulates that;

"The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining the balance and unity of the national economy."

Recognition of individual rights to the environment, principles of sustainability and environmental care is a pro-environmental aspect in the 1945 Constitution of the Republic of Indonesia, and is a green nuance in the Constitution of the Republic of Indonesia. In this case, the government is expected to have a good understanding and be able to interpret the spirit of the green constitution in all aspects of policy, especially in environmentally sound development policies.

In particular, environmental issues in the current era of globalization have become increasingly complex and are no longer in accordance with traditional doctrinal conceptions of the environment. In the review of environmental law at the national level, the protection and maintenance of the environment or human habitation has become a concept that is regulated firmly and systematically, which is then implemented and complied with by all parties through national legal instruments. This reflects the adoption of environment-oriented law, which is closely related to the regulation of the behavior of legal subjects in natural resource

¹ Alvi Syahrin, Anang Prihantoro, dkk. *Dinamika Hukum Lingkungan: Mengawal Spirit Konstitusi Hijau*, page. V.

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management, while still paying attention to environmental protection and reducing the negative impacts of exploitation of these resources.²

In its development, international awareness of the importance of the environment has become one aspect of the development of the Third Human Rights generation. This was manifested in a series of important conferences such as the Stockholm Conference in 1972, the Rio de Janeiro Conference in 1992, the Johannesburg Conference in 2002 and the Rio+20 Conference in 2012.³ Through commitments at these conferences, efforts to achieve sustainable development in the context of long-term development, while emphasizing the importance of broader participation in policymaking, decision-making, and implementation at all levels. All this is in line with the country's responsibility to develop a national environmental protection regulatory framework in response to the environment.⁴

Indonesia's democratic economic system, reflected in national development efforts, moves dynamically in contexts related to globalization, political, and legal currents. One of these dynamic aspects is the interpretation of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia in relation to the legal framework on which national development is based. The Constitution, as a general principle, became the foundation for the development of national law in the management of all potentials and resources in order to achieve maximum welfare of the people for the whole nation and for an indefinite period of time. Dynamic changes and requests that must be met.

From the background described above, the formulation of the problem raised in this study is as follows. First, what is the regulation regarding the concept of Green Constitution in Indonesia? Second, how is the implementation of the Green Constitution concept in environmentally sound development?

II. RESULTS AND DISCUSSION

A. Regulation of the Green Constitution Concept in Indonesia

1. Green Constitution Concept: Analysis of Several Constitutions in Different Countries

One of the developments in the enforcement of environmental norms is by granting rights to the environment as a subject of constitutional rights. Granting legal status to the environment in this constitution has serious implications. This requires the state to be highly committed not only in the management but also in environmental protection as an entity that has an important role and position in the complex unity between objects, forces, and living things, including humans. This concept marks a significant paradigm shift from the previous view that tended to be anthropocentric towards a new, more progressive paradigm, namely ecocentric. This paradigm led to the emergence of a new concept called ecocracy, which combines aspects of ecology and democracy. Ecocracy emphasizes that democracy must respect the environment, where humans, plants and animals are seen as a harmonious unity in their existence in nature. Thus, the environment also has sovereignty along with the people and law in the context of democracy and the rule of law in the modern era. And even so, until now the concept of ecocracy has not been widely recognized as one of the important developments in the study of legal and political philosophy as well as the concepts of democracy, nomocracy, theocracy and so on.⁵

Ecocentrism criticizes the anthropocentric view that considers humans to stand apart from nature. Regarding the relationship between man and nature, the anthropocentric view places man in a central position and higher than the environment itself. This view views the relationship between humans and the environment as a relationship of subordination. This is considered the root of the problem of environmental damage. More specifically, these views form the basis and give legitimacy to various destructive actions against the environment.

This Green Constitution relates to state sovereignty, both in the context of legal sovereignty (nomocracy) and people's sovereignty (democracy), which if both are combined in the conception of the environment which in this case has its own autonomy and sovereignty, can be referred to as Ecocracy or environmental sovereignty.⁶

² Takdir Rahmadi, *Hukum Lingkungan di Indonesia*, Buku I, Bandung: Binacipta, page. 108.

³ I Putu Cakabawa Landra, et.al., *Buku Ajar dan Klinik Manual Klinik Hukum Lingkungan*, Cetakan Pertama, Denpasar, Udayana University Press, 2015, page. 61-62.

⁴ Jimly Asshiddiqie, *Kini Saatnya, Membumikan Konstitusi Hijau*, Kuliah Umum dan diskusi publik yang bertajuk "Konstitusi Hijau dan Hak Asasi Manusia", sebagai bagian dari hak konstitusional warga negara dalam pengelolaan lingkungan hidup dan kekayaan alam di Indonesia., Sarekat Hijau Indonesia (SHI), page. 3-5.

⁵ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Rajawali Press, 2016, page. 7.

⁶ Jimly Asshiddiqie, *Gagasan Kedaulatan Lingkungan: Demokrasi Versus Ekokrasi, Bunga Rampai*, Saduran dari Buku Green Constitution, Jakarta: Rajawali Grafindo Persada, 2009, hlm. 18-19.

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Robyn Eckersley defines ecocracy as the view that believes that parties who may be affected by ecological hazards and risks should have significant opportunities to participate in environmental policy decision-making, or at least their interests should be adequately represented.⁷

Meanwhile, the Green Constitution is the implementation of the ecocratic view within the framework of a country's constitution. The concept of a Green Constitution emerged in response to the growing problem of environmental destruction. Its existence was triggered by the evolution of understanding of the environmental crisis, which is now not only considered an isolated issue but also has roots in political structures. The resolution of these problems involves the integration of environmental protection characteristics into the political structure.⁸

Integrating aspects of environmental protection into the political structure is done by introducing the principles of ecocentrism into the political framework, known as ecocracy.⁹ Such a political structure can only be realized through the constitutional framework of a democratic state that pays attention to the environment, known as the Green Constitution.

Jimly Asshiddiqie gave several examples of constitutions in various countries that apply the concept of ecocracy in the principles of the Green Constitution. In the Portuguese Constitution of 1976, there are provisions regarding the environment. At the time, despite talk of improving environmental laws to promote environmental awareness, pro-environmental policies in many countries had not yet reached the stage of being stipulated in constitutions as the supreme law. However, the Portuguese Constitution of 1976 has established the responsibility of the state in protecting the environment as well as citizens' rights to the environment and quality of life.

Then in the Spanish Constitution of 1978, stipulated articles relating to human rights and fundamental rights of the state. This constitution is one of the few constitutions in the world that regulates "social rights". In it, there are also consumer rights and environmental protection. Both of these issues in the 1970s were still in their early stages. However, the Spanish Constitution of 1978 included provisions on consumer protection in Article 51, as well as provisions on the environment that only began to be constitutionalized in the early 1980s, contained in Article 45.

In the 1997 Polish Constitution, it took over the new principles widely accepted by the public about the importance of protecting the environment. The strong environmental movement in Western Europe in the 1980s had a significant impact on the political situation in Eastern European countries that were transitioning from communist regimes to democracies. Poland, for example, became a pioneer in the proposal to incorporate pro-environmental legal norms into the constitution. In particular, the Polish Constitution clearly states the disposition on the environment in Part I, Article 5.

The French constitution revised in 2005 also demonstrates a strong belief in the importance of the environment and sustainable development. In the revision of the constitution, the Charter for Environment of 2004 was included in the Preamble of the Constitution parallel to the Declaration of the Rights of Man and of Citizen of 1789. Thus, the idea of the environment and the principle of sustainable development was given a very high status in the French understanding of the structure of government of the country. However, in the French context, environment-related rights are still seen as part of recent developments in human rights, namely the human right to a healthy environment and the human rights of future generations to a healthy environment.

In the Ecuadorian Constitution of 2008, where it is expressly mentioned that the natural environment can have constitutional rights as legal subjects within the legal framework. In this context, mountains, rivers, forests, oceans, wild animals, and plants are considered to have their own fundamental rights, which are recognized in parallel with existing conceptions of human rights, as formulated in Article 10 of the Ecuadorian Constitution of 2008, Article 71 of the Ecuadorian Constitution of 2008 and Article 72 of the Ecuadorian Constitution of 2008.¹⁰ Environmental rights and powers have a level of importance equivalent to the rights and powers of humans or people. In other words, the environment can be an independent subject of sovereignty. For example, if the highest power possessed by the people is referred to as democracy or people's sovereignty, then the highest power possessed by the environment can be referred to as ecocracy or environmental sovereignty.

2. Green Constitution Concept in Indonesia

"Green Constitution", also known as "Green Constitution", is a new term given to the 1945 Constitution of the Republic of Indonesia after undergoing four changes as a result of the reform process. Prof. Jumly Asshiddique, in one of his works entitled "Green Constitution: Green Nuances of the Constitution of the Republic of Indonesia Year 1945", stated that the Constitution of the Republic of Indonesia Year 1945 can be categorized as an environmentally oriented constitution. This is because the Constitution

⁷ Astriani Nadia. 2020 "Pengaruh Aliran Hukum Alam dalam Pengelolaan Sumber daya Air di Indonesia". Jurnal Poros Hukum Padjadjaran 2(1): 179-197. page. 188

⁸ Eko Nurmardiansyah. 2015. "Konsep Hijau: Penerapan Green Constitution Dan Green Legislation Dalam Rangka Eco-Democracy," Veritas et Justitia 1(1): 183–219. <https://doi.org/10.25123/vej.1422>, page. 188-189

⁹ Robyn Eckersley. 1992. Environmentalism and Political Theory: Towards and Ecocentric Approach. London: UCL Press, hlm. 179.

¹⁰ CD Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*. *Southern California Law Review*, 1972:45:450; W. Kaufmann, Los Altos, 1974, page. 8.

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of the Republic of Indonesia Year 1945 has adopted the principles of sustainable development and affirmed human rights to a good and healthy environment.

After the amendment, the 1945 Constitution of the Republic of Indonesia incorporated the concept of a Green Constitution in Article 28H Paragraph (1), which recognizes collective rights and development, including the right to the environment. Likewise, Article 33 paragraph (4) constitutionally emphasizes sustainable environmental development.

Although the concept of Green Constitution is still new both in the world of practice and in academia, even today there is still little literature that discusses it, but the concept of Green Constitution is important for us to know together.

As a concept, the term green constitution is not unfamiliar. Since the 1970s, the term has often been used to describe the relationship between something and the idea of environmental protection. Implementing environmental policy (green policy) into regulations can also be referred to as environmental legislation (green legislation). If such a legal norm is incorporated into the text of the country's constitution, then it is referred to as a green constitution. In many reviews, the Constitution of Portugal, the Constitution of Spain, the Constitution of Poland, the Constitution of Ecuador are referred to as The Green Constitutions. Then the most recent green constitution is the French Constitution which turned green in 2006 by adopting the Charter for Environment of 2004 to become part of the Preamble of the Prancil Constitution in force.¹¹

Recognition of subjective rights to the environment as well as the principles of sustainability and environmental insight are green nuances in the Constitution of the Republic of Indonesia Year 1945. This green nuance is expected to be reflected in Indonesia's positive legal framework and in various policies taken. Those responsible for state administration are expected to have a deep understanding and be able to interpret green constitutional principles in all policy fields, especially in environmentally sound development policies.

Since the beginning of independence, there have been at least 3 (three) laws that specifically regulate environmental issues in Indonesia, namely Law Number 4 of 1982, Law Number 23 of 1997, and Law Number 32 of 2009.¹²

Specifically in Law Number 32 of 2009 concerning Environmental Protection and Management, the principles and arrangements that reflect the concept of the Green Constitution are embodied in the following sections:

First, in the Considerations section Considering letter a it is stated that, "... A good and healthy environment is the human right of every Indonesian citizen as mandated in Article 28H of the Constitution of the Republic of Indonesia Year 1945".

Second, in the Consideration section Weighing letter b it is stated that:

"... National economic development as mandated by the 1945 Constitution of the Republic of Indonesia is carried out based on the principles of sustainable development and environmentally sound."

Third, in the Consideration section Considering the letter f it is stated that,

"... In order to better ensure legal certainty and provide protection for everyone's right to get a good and healthy environment as part of protecting the entire ecosystem, it is necessary to update Law Number 23 of 1997 concerning Environmental Management."

Fourth, in the provisions of Article 1 point (2) of the 2009 UUPPLH it is stated that:

"Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement."

Fifth, Section 9 of the Environment-Based Laws and Regulations in Article 44 states that:

"Every preparation of laws and regulations at the national and regional levels must pay attention to the protection of environmental functions and the principles of environmental protection and management in accordance with the provisions stipulated in this Law."

Sixth, in the Roman Explanation I. General Number (1) it is stated that:

"The 1945 Constitution of the Republic of Indonesia states that a good and healthy environment is a human right and constitutional right for every Indonesian citizen. Therefore, the state, government, and all stakeholders are obliged to carry out environmental protection and management in the implementation of sustainable development so that the Indonesian environment can remain a source and support for the Indonesian people and other living beings."

Seventh, in the Roman Explanation I. General Number (5) it is stated that,

"... In this regard, it is necessary to develop a clear, firm, and comprehensive legal system of environmental protection and management to ensure legal certainty as a basis for the protection and management of natural resources and other development activities."

In this context, Law Number 32 of 2009 (UUPPLH 2009) leads to a more detailed interpretation of the Green Constitution with a focus on environmental protection and management. This is reflected in the presence of the 2009 UUPPLH in response to the weaknesses of Law Number 23 of 1997 and as a further interpretation of Article 28H paragraph (1) and Article 33 paragraph (4) the 1945 Constitution of the Republic of Indonesia. The Green Constitution is seen as the enforcement of environmental norms which are then described in the law on the Environment. In addition to being explained in the law, in accordance with the provisions of

¹¹ Jimly Asshiddique, *Op. Cit.* page. 60-61.

¹² I Putu Tuni Cakabawa Landra, *Op. Cit.* page. 56-57.

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Article 44 of the 2009 UUPPLH, there is a necessity in the preparation of laws and regulations both at the national and regional levels to consider the protection of environmental functions and the principles of environmental protection and management mandated by the 2009 UUPPLH.

B. Implementation of Green Constitution Concept in Environmentally Friendly Development

1. Environmentally Friendly Development

The concept of ecodevelopment first emerged at the United Nations Conference on the Environment in 1972, with Maurice Strong as its initiator. Later the concept was expanded and popularized by Ignacy Sachs, who presented a definition that describes ecodevelopment as an approach to development that considers the ecological conditions of each region specifically, adopts appropriate solutions to problems specific to the region based on culture and ecology, and takes into account long-term and urgent needs. Therefore, environmentally sound development is carried out by taking into account the criteria related to the situation of each case by adapting to the environment which in this case has an important role in sustainable development.

The goal of sustainable development is to achieve the standard of human welfare on this earth adequately, including the adequacy of clothing, food, shelter, education, health, employment, security, political freedom, freedom from oppression and violence, and freedom to exercise rights as citizens. This welfare standard is championed by maintaining the sustainability of the environment and ensuring that the availability of the necessary natural resources is adequate.

Sustainable development should be followed by efforts to build a progressive legal system with the development of juridical instruments aimed at achieving development goals, as well as protecting the environment for the sustainability of future generations. This is in accordance with the mandate of the Constitution of the Republic of Indonesia Year 1945 which affirms that the country's legal politics in carrying out development must be based on the principles of economic democracy, efficiency, equity, environmental sustainability, independence and the principle of proportionality, by maintaining progressive balance and national economic unity.¹³

Article 1 of Law Number 23 of 1997 explains that the environment is a unity of space that includes all elements, conditions, and living things, including humans and their behavior, which have an impact on the survival and welfare of humans and other living things.

Meanwhile, according to Law Number 32 of 2009 concerning Environmental Protection and Management, the Environment is a unity that includes all elements such as objects, forces, conditions and living things including humans and their actions, which in this case have an impact on nature itself, the survival and welfare of humans and other living things (Article 1 paragraph (1)).

Environmentally sound development is a type of sustainable development that maximizes the use of natural resources and human resources by aligning human activities with the capacity of natural resources that support such development.

Environmentally sound development requires a different approach from conventional strategies that involve universal elements such as capital, labor, investment and others. Unlike conventional strategies, environmentally sound development strategies must involve more specific elements, such as certain groups of people with special cultural values, living in certain areas of course with unique natural resources in each region. Therefore, the purpose of environmentally sound development is to increase the development of these special conditions, not just create economic growth.

The meaning of "development" is much more inclusive than simply improving various aspects of well-being with quantitative and qualitative improvements. In achieving this prosperity, various dimensions are not always fulfilled through market mechanisms.

2. Implementation of Green Constitution Concept

Environmental sustainability in Indonesia is considered a necessity to support the survival of humans and other living things, is a basic element in the concept of sustainable development which has been legally formulated in Article 28H paragraph (1) and Article 33 paragraph (4) of the Constitution of the Republic of Indonesia Year 1945. This principle is a strong basis in the implementation of sustainable development in Indonesia, has been constitutionally regulated in the 1945 Constitution of the Republic of Indonesia and implemented in the main law related to the environment in Indonesia, namely Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH 2009). The concept of Green Constitution in the 2009 UUPPLH is reflected in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia as well as in various articles and explanations of the 2009 UUPPLH. However, the principle of the Green Constitution which is in line with the ecocracy, namely the emphasis on sustainable development oriented to the environment in the context of development politics, has not been specifically included in certain articles, but has been integrated with fundamental rights, such as rights to natural resources, development rights, minority rights, and environmental rights, which should be regulated in separate articles in the UUPPLH. In addition, recognition of the Green Constitution is still limited, only through the mandate of Article 44 of the 2009 UUPPLH which emphasizes the importance of environmental protection and management in the preparation of laws and regulations at the national and regional levels.

¹³ Shafira Arizka Maulidyna. Politik Hukum Lingkungan Dalam Kebijakan Pembangunan Berkelanjutan Berwawasan Lingkungan Di Indonesia. page. 266.

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The implementation of the green constitution which includes the guarantee of the right to sustainable environmental development has not been fully realized, only supported by active community participation, but has not been supported by an ideal legal framework as mandated by Article 2 letter k and Article 44 of the 2009 UUPPLH, as well as legal practices that have not been completely free from economic and political influences from some elites that are contrary to the spirit of the 1945 Constitution of the Republic of Indonesia and UUPPLH 2009 to apply the green constitution in the context of environmental protection and respect both at the national and regional levels.

SUGGESTION

"Green Constitution" is a new term given to the 1945 Constitution of the Republic of Indonesia after undergoing four changes as a result of the reform process. The implementation of the green constitution, which guarantees the right to sustainable environmental development, has not yet been fully realized. Community participation is active, but the ideal legal framework mandated by the 2009 UUPPLH has not been achieved. The practice of law has also not been free from the influence of political and economic elites which is contrary to the spirit of the 1945 Constitution of the Republic of Indonesia and the 2009 UUPPLH to protect and respect the environment. There needs to be efforts to strengthen and perfect the existing legal framework, so that it is clearer and firmer in regulating and guaranteeing the right to a sustainable environment in accordance with the 2009 UUPPLH.

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