

# Environmental and Sustainable Development Policy after Constitutional Reform in Indonesia

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**Abstract.** The constitutional reform in Indonesia provides a policy format or political law for the national economy taking into account the principle of environmental and sustainable insight. This article concern two problems, first, how are environmental arrangements under the constitution? and second, what is the contribution of environmental regulation to natural resource management policies? The research method uses normative legal research by collecting secondary data, namely legislation and literature, while descriptive qualitative data analysis is based on a picture or portrait relating to environmental regulation under the Indonesian constitution, and includes its contribution to natural resource management policies. The results of this study are first, the environmental regulation in the Indonesian Constitution is inseparable from the development of the international environment and the principles of sustainable development formulated in WCED United Nations. second, the contribution of environmental regulation in the Indonesian constitution to natural resource management policies.

**Keywords:** *constitution, environment, sustainable development, natural resources*

## INTRODUCTION

Constitution and the state are inseparable to one another. Every country must have a constitution. For the state and nation, the constitution is very important both long-term independence and those states that just gained their independence. According to "Corpus Juris Secundum" volume 16, is: "A constitution is the original law by which a system of government is created and set up, and to which the branches of government must look for all their power and authority"[1] According to Wirjono Prodjodikoro comes from the verb "constituer" in French which means "to form"; so constitution means formation.[2] In this case, the constitution contains the beginning of all kinds of basic regulations on the state [3]. In practice, the term constitution is often used in several senses. In

Indonesia, besides the term known as the constitution, the term constitution is also known. Likewise, in the Netherlands, besides the term known as "grondwet" (basic law) the term is also known as "constitutie".

The constitutional reform in Indonesia provides a new policy format for the national economy taking into account the principle of environmental and sustainable insight. Concerning the environment, the 1945 Constitution places the state in possession of the right to control and manage natural resources in the context of national economic development by always observing the principles of environmental insight. The state does not only pursue economic growth but how to ensure environmental and sustainable insights remain a consideration and guarantee the right to a good and healthy environment as part of human rights.

## METHOD

This research is using a normative juridical research method. We used secondary data that includes primary The research method used in this paper is normative legal research with secondary data collection, namely legislation and literature, while descriptive qualitative data analysis is based on picture or portrait relating to environmental arrangements in the Indonesian constitution, and includes its contribution to resource management policies.

## RESULT & DISCUSSION

The concept of environmental democracy places Indonesia as a country that is very concerned about environmental issues in every national economic policy and development [4]. The constitutionality of state control over natural resources that takes into account the principle of environmental and sustainable insight is explicitly stated in Article 33 paragraph (4) of the 1945 Constitution: "National economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainable, environmentally sound, independence, and by maintaining the balance,

progress and unity of the national economy". The principles in economic development that are based on Article 33 paragraph (3) of the 1945 Constitution state: "The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people" as a paradigm in mastery, utilization, and management of natural resources that are biased towards the anthropocentric approach, able to be balanced with the principles of economic balance, social justice, and the environment.

As a new development in providing an interpretation of the meaning of "controlled by the state", based on the decision of the Constitutional Court against the review of Law No. 20 of 2002 concerning Electricity (Case Decision number 011-021-021/PUU-I/2003) that the state has authority called *regelendaad*, *bestuursdaad*, *beheersdaad*, and *toezichthoudensdaad*, namely to regulate, administer, manage and supervise. The people collectively constructed by the 1945 Constitution mandated the state to carry out several functions including policy (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for maximum prosperity of the people [5].

In the context of interpreting the right to control the country, if there are problems in carrying out one or more of the functions mentioned above, new problems will emerge, for example, if the management function in issuing permits or revoking licenses is not done properly, there will be violations of territorial boundaries that arise permitted to be managed or not carried out revocation of permits that have been given, even if a violation occurs. Thus the monitoring function that does not run well, will have an impact on the environmental damage that is very severe and the recovery process in a long time, of course, very detrimental to current and future generations. This makes the principle of sustainable development not working, there will be inequality across generations.

The environmental cases that occur imply the weak role and responsibility of the state in environmental protection. The environment is forced to follow the logic of development which is counter-environment. The environment has become an issue under the dominance of the issue of democracy which also does not bring prosperity. Environmental issues are not so "sexy" because the state prefers industrial-based development. The expansion of industrialization in several areas has created environmental problems when the logical footing is only based on management, not balanced with protection and preservation. Coupled with the overlapping of environmental legislation. As a result, the environment solely relies on management aspects. Preservation and sustainability are not given enough attention or even ignored. To cause

environmental damage that has an impact on the lives of humanity. Generally, environmental damage occurs due to two main factors. First, environmental management is only based on economic interests alone, while environmental principles such as sustainability, sustainability, environmentally sound development are ignored. Secondly, inconsistencies between environmental laws and sectoral laws that are also related to the environment; The Mineral and Coal Mining Law, the Oil and Gas Law, the Forestry Law, the Industrial Law, the Spatial Planning Law, the Settlement Zone Law, and others have contributed significantly to environmental damage and pollution; land, water, and air.

Such conditions imply fears of environmental sustainability in Indonesia. So it needs to think about solutions to prevent and overcome these environmental problems. Three environmental laws have been issued; Environmental Law of 1982, Protection of Environmental Law of 1997, and Environmental Law of 2009. However, the law has not been able to overcome the problem of environmental damage that has cross-sectoral dimensions. Environmental Law of 2009 as an improvement and refinement of the two previous laws also clashes with other regulations related to the environment. In the context of the rule of law, it needs to be strengthened top-down through the constitution. It still needs to be refined and backed up constitutionally through the regulation of environmental norms in the constitution. Environmental norms that were previously only regulated in Article 28H paragraph (1) of the 1945 Constitution need to be strengthened or regulated in separate chapters, which are then further elaborated in several articles on the environment. Norms on the environment in the constitution will be the legal umbrella (umbrella act) for the regulations related to the environment below. The environmental norms in the constitution then become a reference for the derived regulations for sectoral laws related to the environment in the context of environmental management, protection, and preservation. so there is harmony between the two.

The 1945 Constitution regulates environmental issues to ensure that the state controls over natural resources takes into account the environment and applies the principle of sustainable development, and cannot be separated from the history of international environmental development relating to the principle of sustainable development. The 1945 Constitution which is based on the principle of sustainable development in international law through WCED United Nations, then gave birth sustainable development concept in the legal system by formulated in Environmental Protection and Management Law of 2009 as a "conscious and planned effort that combines aspects of environmental, social and economic aspects into development strategies to ensure the integrity of the

environment and the safety, capability, welfare, and quality of life of present and future generations".

The ideas of the green constitution inspire by two objectives, among other "the first is to encourage state authorities to make more future-oriented deliberations and decisions, the second is to create more public awareness and improve the process of public deliberation about issues affecting near and remote future generations" [6]. Article 33 paragraph (3) of the 1945 Constitution as a constitutional basis in natural anthropocentric resource management policies, so it must be balanced with the principles of environmental insight and sustainability as stated in Article 33 paragraph (4) of the 1945 Constitution. The two paragraphs cannot be interpreted, understood, and interpreted separately, but understood and interpreted holistically and integrally. The state controls concept is the main will so natural resources provide the greatest prosperity to the people. This will be obtained if the control of natural resources is used properly and correctly.

Mastery and exploitation are of the unity of actions/activities that are interconnected between the two [7]. The meaning of under controlled by the state limits the actions and relations carried out by the state. The state has an impact on people's prosperity, thus control by the state must be of good quality or connected and oriented towards prosperity. The control is carried out by the state, but if the control does not provide the prosperity, then violated authority mandated in Article 33 of the 1945 Constitution. Article 33 of the 1945 Constitution, specifically paragraph (4) provides a constitutional contribution that in every state administration through its legal policies or politics for the management of natural resources, paying attention to efficiency, transparency, sustainability, and environmental insight as to its guidelines [8].

The exploitation of natural resources is not only in the interest of economic commodities to achieve state revenue, but social and environmental aspects are an inseparable part of the exploitation of natural resources. It is not only the principle of exploitation of natural resources, but environmental aspects are included in the business process that must be fulfilled by business actors, for example, environmental administration instruments, namely environmental permits such as environmental impact analysis, environmental permit, Environmental Management Efforts - Environmental Monitoring Efforts [9]. Also, an important instrument is the Strategic Environmental Assessment, to ensure that the principles of sustainable development have become the basis and integrated into regional development and policies, plans and programs, in the regime of environmental protection and management arrangements.

Environmental constitutionality will be a real contribution in the framework of providing a balance between national development utilizing natural

resources with a balance in environmental preservation, as well as a variety of investments both nationally and regionally that have a direct impact on the environment. This matter is urgent because it is related to the commitment of state administrators and business actors in implementing the principles of efficiency with justice, sustainability, and environmental.

The right to the environment becomes part of human rights, which is also reflected in the constitution, namely article 28H paragraph (1) of the 1945 Constitution, states: "every person has the right to live in physical and spiritual prosperity, to live, and obtain a good and healthy environment and entitled to receive health services." State control in natural resource management that does not reflect the principles of environmental insight, sustainability, and social justice, only to pursue economic growth, infrastructure, investment, and local revenue, will result in environmental damage, and end in violation of rights possessed by the citizens to get a good and healthy environment as part of human rights.

The commitment of the state through the central government in implementing the environmental constitution is then also followed by the regional government based on the principle of regional autonomy and Regional Government Law of 2014. In the case of natural resource and environmental management which results in damage and no effort is made to repair it, which ends up causing floods, forest fires, landslides, or other natural disasters that violate the law and morality in their management. It is fitting that in terms of natural resource management and the environment is not merely pursuing success targets, but also at the same time paying attention to future generations. Justice for future generations demands the just saving principles, that is, bequeathing natural resources and a good environment for future generations not to inherit the state of the environment which was destroyed because of being exploited by the present generation. Instead, there must be a policy to refrain from overexploitation, especially of renewable natural resources, to guarantee the interests of future generations.

## CONCLUSION

This article concluded that environmental regulation in the Indonesian Constitution is inseparable from the development of the international environment and the principles of sustainable development formulated in WCED United Nations. Economic constitution through Article 33 paragraph (3) of the 1945 Constitution still tends to be the anthropocentric approach, so it must be balanced and correlated to paragraph (4) in this provision which is characterized by a green constitution through the principles of togetherness,

fair efficiency, sustainability, environmental insight, independence, and by maintaining the balance, progress and national economic unity. On the other hand the contribution of environmental regulation in the Indonesian constitution to natural resource management policies. To control and exploit it is not only the interests of economic commodities to achieve state revenue alone, but also consider environmental and sustainable insights, thus it becomes an integral part of the exploitation of natural resources.

Environmental constitutionality contributes significantly in providing a balance between national development utilizing natural resources with a balance in environmental preservation, as well as a variety of investments both nationally and regionally that have a direct impact on the environment. The state will be judged to violate the constitution and the right to a good and healthy environment of citizens if it is inconsistent and not being consequent in carrying out the constitution of the environment in every policy on the control and management of natural resources. Finally, it is necessary to formulate a "Package of Environmental Laws" into the National Legislation Program to regulate the management, protection, and preservation of the environment. This package of environmental laws includes environmental laws as well as sectoral laws related to the environment which are discussed in one package to harmonize environmental regulatory norms.

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