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THE GREEN CONSTITUTION CONCEPT IN THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA*

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Abstract

This article aims to analyze the concept of Green Constitution in The Amendment of Constitution of Indonesia. The method used is a normative juridical, with secondary data which analyzed in qualitative. Based on results that Constitution of Indonesia before and after the amendment has accommodated the protection of human and natural resources. Such arrangements outlined in the Preamble and the articles, and sectoral legislation. All policy formulation should be in line with the mandate of Constitution of Indonesia. In the environmental norms into the Constitution, it is expected to minimize environmental damage.

Keywords: constitution of Indonesia, green constitution, Indonesia.

Intisari

Artikel ini bertujuan menganalisis konsep Konstitusi Hijau dalam UUD NRI Tahun 1945. Metode penelitian yang digunakan adalah yuridis normatif, dengan data sekunder yang dianalisis secara kualitatif. Berdasarkan hasil penelitian diperoleh gambaran bahwa UUD 1945 sebelum dan sesudah amandemen telah mengakomodir perlindungan terhadap manusia dan alam sekitarnya. Pengaturan tersebut dijabarkan pada Pembukaan UUD 1945 dan pasal-pasal serta peraturan sektoralnya. Semua perumusan kebijakan harus sejalan dengan amanat dari UUD NRI Tahun 1945. Dinormakannya lingkungan hidup ke dalam UUD NRI Tahun 1945, maka diharapkan akan meminimalisasi terjadinya pencemaran dan atau kerusakan lingkungan hidup.

Kata Kunci: UUD NRI Tahun 1945, konstitusi hijau, Indonesia.

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A. Research Background

A good and healthy environment is the basic right of every Indonesian citizen as mandated in Article 28H Paragraph (1) of the 1945 Indonesian Constitution.¹ Increasing global warming leads to climate change, thus exacerbating the decline in the quality of the environment as it is necessary to do environmental protection and Management.²

The concerns and awareness of the world community about environmental issues and the future of life of planet earth has grown lately. Blur portraits of damage and environmental destruction due to industrial activity, mass consumption, modern lifestyles, and human greed have fueled these ecological concerns and awareness. In the present era, human beings are always anthropocentrism or put human life centered only. The anthropocentrism attitudes that occur in this world are often unaware of adverse effects on future generations, because people with science and technology are vying to exploit and explore natural resources without thinking for future generations.

Lately there are many news about natural disasters occurring in the State of Indonesia, such as flood conditions in the Capital of Jakarta, the eruption of Mount Sinabung natural disaster, even far before many natural disasters that occur due to human activities, such as bare forests, Buyat Bay case, forest fires in Kalimantan carrying smoke impacts to neighboring Malaysia and Singapore, landslides in some areas that actually function as water catchment areas, but switch functions into tall buildings. This happens because of human activity itself. The value of this anthropocentrism makes human beings believe that human beings are the center of everything, so the universe is merely an object for the fulfillment of unlimited human needs.

The State of Indonesia is an agrarian country located on the equator which causes Indonesia to have many natural resources. The natural resources

are the inheritance of life of the present generation or from the ancestors to future generations. The right of everyone to obtain clean, healthy air, water and environment, and the right to protection of other natural resources, which no one should violate. Therefore, the state should (in this case the government) prioritize the protection of natural resources in the country.

The importance of awareness of environmental protection from the threat of pollution and damage, it is proper that an environmental policy regulated in a form of legislation. At the international level, the concerns and awareness of the environment and the future of the earth are manifested in the form of a series of international law, multilateral forum meetings, and various activities that are specifically related to matters and issues about it. At the national level, these concerns and awareness are realized by the government of a country, among others through the ratification of international environmental law, engaging in multilateral and bilateral agreements on the environment, enacting domestic environmental policies, and conducting programs related to the environment.

Indonesia itself has had Law No. 4 of 1982 on Basic Provisions of Environmental Management which became a milestone of modern environmental law in Indonesia. After 15 (fifteen) years, it turns out that Law No. 4 of 1982 has not been able to solve environmental problems in Indonesia, then replaced with the Law no. 23 of 1997 on Environmental Management, and most recently there is Law No. 32 of 2009 on the Protection and Management of the Environment. Not only those three laws alone, but also supported by the Government Regulation in the implementation of management and protection of life protection.

Currently, the product of environmental legislation, which is expected to be the guidance in every movement and development step undertaken

¹ Sudi Fahmi, "Asas Tanggung Jawab Negara Sebagai Dasar Pelaksanaan Perlindungan dan Pengelolaan Lingkungan Hidup", *Jurnal Hukum*, Vol. 18, No. 2, April 2011, pp. 212-228.

² Johni Najwan, "Perlindungan dan Pengelolaan Lingkungan Hidup dalam Perspektif Hukum Islam", *Inovatif: Jurnal Ilmu Hukum*, Vol. 2, No. 4, 2010, p. 57.

by government and society, has not been enough to force policy makers to abide by and adhere to environmental policies. Currently the interests of the environment are often overtaken by other interests favoring the ruling parties, which favor investment interests rather than environmental safety.

So many laws and regulations governing the resulting environmental policies are inversely related to their effectiveness to prevent pollution and environmental degradation. Given the importance of protecting the environment in living the life of the state, it is felt less if the protection of the environment is only regulated in the existing legal umbrella, therefore the need for the strengthening of environmental policy law umbrella in the constitution as the highest law in a country. Inclusion of environmental policies into the Constitution, the legitimacy will be strong, where every product produced by the legislature should not conflict with the environmental protection policy set forth in the Constitution. Therefore, it is necessary to develop the idea of the constitutionalization of environmental law norms known as the Green Constitution.

Based on the above background, then the problem will be answered in this paper as follows: **First**, how the concept of the Green Constitution in the 1945 Constitution of the Republic of Indonesia?; and **Second**, what is the correlation between the green nuances in the constitution and the protection of the environment in Indonesia?

B. Research Methods

The research method used is normative juridical method, that is putting law as a building of norm system. The system of norms is about the principles, norms, rules of the rule of law.³ This research uses legal and conceptual approach. The specifications used in this study are descriptive-analytical, because this study describes or delineates applicable legislation relating to legal science theories and a particular circumstance or object in factual and accurate, which then analyzes the data

obtained from the research. This study analyzes secondary data, consisting of:

1. Primary legal material, consisting of relevant legislation, such as:
 - a. The 1945 Constitution of the Republic of Indonesia;
 - b. Law Number 32 of 2009 on Environmental Protection and Management;
 - c. Law Number 17 of 2007 on the National Medium Term Development Plan;
 - d. Presidential Regulation Number 5 of 2010 concerning the National Medium Term Development Plan for 2010-2014.
2. Secondary legal materials, namely materials that are the work of scholars and the results of various studies, whether published or not. So the secondary legal material is data obtained from literature materials related to the research to be discussed.

The collecting of secondary data in this research was conducted by Library Study. Then, the data is analyzed by qualitative method so that obtained a clear picture about the problem under study.

C. Research Results and Analysis

1. The Concept of Green Constitution in The 1945 Constitution of the Republic of Indonesia

Sustainable development requires that natural resources be conserved to be enjoyed by present and future generations. The importance of awareness of environmental protection from the threat of pollution and damage, it is proper that an environmental policy regulated in a form of legislation. Currently, the product of environmental legislation, which is expected to be the guidance in every movement and

³ Mukti Fajar and Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, p. 34.

development step undertaken by the government and society is not enough to force policy makers to comply and adhere to environmental policies. Currently the interests of the environment are often overtaken by other interests that benefit the rulers alone for investments, for example, and put aside the interests of the environment. So many laws and regulations governing the resulting environmental policies are inversely proportional to their effectiveness in preventing environmental pollution and destruction.

Seeing the importance of the sovereignty of the environment in running the life of the state, it is felt less if the sovereignty of the environment is only regulated in the existing legal umbrella, therefore the need for the strengthening of environmental policy law umbrella in the constitution as the highest law in a country. With the incorporation of the Environment policy into the Constitution, its legitimacy will be strong. There should be an idea of the constitutionalization of the legal norms of the environment known as the Green Constitution. The Green Constitution, in addition to containing the concept of a democratic legal state, also offers the sovereignty of the environment or ecosystem in which a government bases its government on a consistent basis on the principles of ecologically sustainable development. Implementation of the concept of Green Constitution can not be separated with the concept of sustainable development that is environmentally sound.

The 1945 Constitution is a basic law (constitution) that only implicitly implements the environment or determines certain human rights guarantees can be used for the protection of the environment in practice. The concept of the Green Constitution is reflected only on the notion of power and human rights and economic concepts. Sovereignty is in the hands of the people reflected in the concept of human rights to a healthy environment as referred to in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia

“Everyone has the right to live a prosperous and spiritual life, to live and to have a good and healthy and eligible for health care”.

Green Constitution is also reflected in the concept of democracy related to the principle of sustainable development and environmental insight, which is expressly stipulated in Article 33 Paragraph (4) of the 1945 Constitution. Article 33 paragraph (4) states that, “The national economy is organized based on economic democracy with the principle of togetherness, fair, environmentally sustainable, self-sustaining and maintaining a balance of progress and national economic unity. Based on the above explanation it can be said that the 1945 Constitution is already nuanced green, but still too thin. The green is still very young, so it still needs reinforcement to be an older green.

The existence of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia indicates that the environmental norm has been constitutionalized into constitution content material as the supreme law, so that all development policies made by the government shall be subject to the provisions concerning human rights on a good and healthy. The state must guarantee the fulfillment of the right of every person to obtain a healthy environment. Any policy contained in the form of laws or regulations under the law may not conflict with this pro-environment constitutional provision. Every product produced by the legislature must comply with the environmental protection policy set forth in the Constitution. This is a necessity because it sees the fact that Indonesia is an archipelagic country that is very vulnerable and vulnerable to the threat of pollution and/or environmental damage, so that if government development undermines the existing ecosystem in Indonesia, then there will be environmental damage that will harming the State of Indonesia itself.⁴

Article 25A of the 1945 Constitution of the Republic of Indonesia determines: “The Unitary State of the Republic of Indonesia is an archipelagic

⁴ Jimly Assididqie, 2009, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Rajawali Pers, Jakarta, pp. 90-91.

country characterized by archipelago with territories whose boundaries and rights are established by law". The characteristics of the archipelago here illustrate the existence of a series of islands and territorial waters and seas among the islands, including all the contents contained in the water, land and air above it. The whole mechanism of the relationship between God's created creatures in the living space of the Unitary State of the Republic of Indonesia is referred to as an ecosystem inherited from generation to generation.⁵

In addition, Article 33 Paragraph (3) of the 1945 Constitution before and after the amendment determines also: "The earth and the water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The characteristics of the archipelago as referred to in Article 25A and the meaning of "earth and water and natural resources contained therein" referred to in Article 33 paragraph (3) shall be interpreted broadly, which not only concerns "the earth and water and the natural resources contained therein" "Only, as if the air/space need not be protected, but it must be interpreted that includes air and airspace and all the natural wealth contained therein. It is necessary to think broadly because the environment (ecosystem) is a unity, so that in the protection of the ecosystem should also be holistic protection, not partial protection, only half.

In fact, in the Preamble to the 1945 Constitution it has been stated that "the State protects all nations and all the blood of Indonesia". According to the authors, the protection of the nation can be interpreted as a protection against humans, and the protection of the blood is interpreted as protection against the homeland, in this case including the protection of plants, animals and other resources. This illustrates that the 1945 Constitution has accommodated the protection of people and the natural surroundings. Guarantees to humans and the environment has long been regulated in the

Preamble to the 1945 Constitution so that it has become the goal of the state and the state's goal that the state has the duty of one of them is to provide protection to human and natural resources owned by the State of Indonesia.

In addition, the regulation on the protection of human and natural resources in Article 33 Paragraph (3) of the 1945 Constitution before amendment has also been handed down in the Guidelines of State Policy (GBHN) which was then made in the form of the Five-Year Development Plan (REPELITA) as the elaboration of the strategy in the GBHN. The GBHN outlines that the policy on the management of natural resources and the environment must be carried out thoroughly, taking into account other relevant aspects.⁶ Environmentally sound development begins to gain a place in GBHN in PELITA II, so that every national development policy made by the government must take care of the environment so that in the future it will not damage the environment in Indonesia. A country's development covers all aspects of life aimed at improving the living standard of a better society.

There needs to be a guidance that can maintain/direct the development in accordance with the duty and dignity of the human/society of the State. It needs a plan in which it contains the purpose and purpose to improve the standard of living and welfare of its people. The Constitution of 1945 and GBHN is the control of juridical and political policy in planning, both economic planning and government administration planning and development aimed at improving the welfare of the Indonesian people.

After the 1945 Constitution was amended, which erased the MPR's authority to create GBHN, the GBHN which was then made in REPELITA was abolished as well. Now, the government's development plan is outlined in the form of RPJMN (National Medium Term Development Plan) and RPJMPN (National Long Term Development Plan).

⁵ *Ibid.*

⁶ Marhaeni Ria Siombo, "Arah Politik Hukum Lingkungan di Indonesia", *Jurnal Masalah-masalah Hukum*, Edition 42, No. 3, July 2013, p. 386.

RPJMN I stated in the form of Law no. 17 of 2007 on the National Medium Term Development Plan. In the law there is a provision that discusses the development of the environment. In the RPJMN II as outlined in Presidential Regulation no. 5 Year 2010 on the National Medium-Term Development Plan of 2010-2014 has also included environmental development. RPJMN III for the period 2015 to 5 years future unknown rules in what form, whether in the form of laws or other legislation. The existence of such RPJMN which contains the provisions on the development of the environment, it has been described that the development undertaken by the State of Indonesia should be environmentally friendly development, should not be a destructive development of the ecosystem.

The environmentally-friendly development plan is a mandate of Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which reads: "The national economy is organized on the basis of economic democracy with the principle of togetherness, efficient, equitable, environmentally sustainable, self-reliance and balancing progress and unity national economy". Based on the formulation of Article 33 paragraph (4) there are two concepts related to the idea of ecosystem, namely that the national economy based on economic democracy must contain the intention: (1) sustainable, (2) environmentally sound.⁷ The ecosystem must be well managed for the sake of development based on sustainable development principles and environmentally friendly as mandated by Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Sufficient reason to mention that the 1945 Constitution after amendment is already green or pro environment. The regulation of the environment in the legislation under the 1945 Constitution already exists.

If it is necessary to make the Indonesian Constitution greener, there is a strict and separate regulation on the right which is owned by the

environment as the subject of the law on the 5th Amendment of the 1945 Constitution. In connection with Article 28H of the 1945 Constitution of the Republic of Indonesia, his/her rights are individuals/individuals as legal subjects. There needs to be a separate arrangement on human rights that are owned by the environment as legal subjects, so that the environment can act law (legal standing) if there are citizens/communities that pollute and even damage the environment.

Granting status as a separate legal subject to the environment raises debate in the academic world. The foundation of the idea of environmental rights first came from the writings of Christopher Stone in 1972. In his writings, Stone proposed to give legal rights to forests, oceans, rivers and other natural objects in the environment, and of course to the environment as a whole. It is not a futile thing to say that the natural environment has its legal rights, so that no one can cut a tree if it does not have permission to do so. According to Stone, it would be unwise to not grant legal rights to rivers and forests simply because rivers and forests can not speak. Corporations, countries, children still in the womb, minors, towns or universities also can not speak but are granted rights by law, whereby lawyers will act to represent their interests. The environment also needs to be given legal protection of its own interests.

The idea of granting rights to the environment was rejected by McCloskey.⁸ According to Closkey, only beings possessing self-autonomous or self-determining capacities can have rights. Human beings have the capacity of self-autonomy or self-determination so that human beings are eligible to have rights. The environment does not have the capacity of self-autonomy or self-determination so that it has no rights. Problem solving of human behavior tendencies undermines and pollutes the environment not by building the concept of rights for the environment, but by formulating human

⁷ Jawade Hafidz, "Ekologi Konstitusional (*Green Constitutional*) dan Kedaulatan Wilayah di Indonesia", *Jurnal Hukum Fakultas Hukum UNISSULA*, Vol. XXVI, No. 2, August 2011, p. 535.

⁸ *Ibid.*, p. 193.

obligations to nature.

Despite the academic debate over the granting of legal rights to the environment, the author tries to suggest that the State of Indonesia can imitate countries that have incorporated environmental rights in their Constitution, such as the Ecuador State. If there is debate in the academic level, Ecuador has formulated environmental rights in its 2008 Constitution. In the 2008 Ecuadorian Constitution, it is expressly stated that nature and the environment have their own constitutional rights. Rivers, mountains, oceans, air, water, land, landscapes, etc. are deemed to have their own rights and obligations as subjects in the traffic of the law. The environment, just as individuals and legal entities (legal person, *rechtspersoon*) also hold certain rights and obligations in legal traffic, and this is guaranteed by the Constitution.⁹ Nature also has the right to be repaired and it is a state obligation, individual, or legal entity. Everyone, communities, and public authorities are obliged to uphold the rights of nature. For that reason, if the idea to enforce environmental rights can be included in the 5th Amendment of the 1945 Constitution, given the increasingly complex environmental issues, the idea of constitutionalization of environmental law norms should be developed.

It should be remembered also that in understanding the spirit of the 1945 Constitution of the Republic of Indonesia, it should not be seen from only one chapter text. The 1945 Constitution must be understood as the living Constitution. As a living Constitution, its meaning remains actual so that it can always remain the basis of the management of the state, nation, and society. Restoring the matter to the 1945 Constitution is not merely a juridical claim, but as finding a fundamental solution that is related to the overall foundations of the building and the ideals of the state. Ensure the Constitution as the living Constitution¹⁰, among others, is done by interpreting the Constitution in accordance with

various realities or new demands. Constitutional interpretation as the living Constitution must be done within the bounds of the foundation and ideals of the state. In the context of the 1945 Constitution, the interpretation should not deviate from the foundations of democracy, the rule of law, the principles of Indonesia, and the purpose of the state (welfare state on the basis of social justice).

The Constitution contains agreements between the state and its citizens. The first agreement deals with the agreement between the state and its citizens to live together in a community of the country, and of course has a common goal or ideals. These shared ideals reflect a common interest among fellow citizens who in reality must live in the midst of pluralism. Therefore, in a society to guarantee togetherness within the framework of state life, it is necessary to formulate the common goals or ideals commonly referred to as the state philosophy or *staatsidee* (state ideals). In Indonesia, these philosophical grounds are commonly referred to as Pancasila, which means five precepts or five basic principles for achieving or realizing the four goals of the Indonesian state as set forth in the fourth paragraph of the Preamble to the 1945 Constitution.¹¹

The Constitution plays an important role in the life of the state. Constitution becomes the bow of the state. The bow is defined as a guideline or direction of the road, so that the state guidance is a guide or direction for the implementation of the state. The course of the country here can be in various fields, whether economic, political, cultural or legal. However, all the directives that should be used as guidance in the administration of the state are directives as stipulated in certain legal form, namely in the form of laws and regulations that apply to the public.

All forms of binding legislation for the public also contain guidelines, guidelines, and normative grip that should be used as a reference in the process

⁹ Jimly Asshiddiqie, *Op.cit.*, p. 26.

¹⁰ Bagir Manan, 2014, *Memahami Konstitusi: Makna dan Aktualisasi*, RajaGrafindo Persada, Bandung, p. 164.

¹¹ Zulkarnaen and Beni Ahmad Saebani, 2012, *Hukum Konstitusi*, Pustaka Setia, Bandung, p. 39.

of organizing state power, both in the legislative, executive, and judiciary. Any such legislation must contain the content of general norms and abstract norms as termed by Hans Kelsen. All of that, in terms of its form referred to as legislation, while its contents can be named as the bow of the state and the direction of government. In fact, the direction of government (policy) in the form of programs, guides, instructions, circulars, such as guidelines on implementation (technical guidelines), technical guidelines (juknis), circulars, and more, made an important grip in the administration of any government must also be in line with the formulation of the constitution. All the directives of the state in various fields of life was its normative source culminated in the constitution or called the Constitution.

2. Correlation between the Green Nuance in the Constitution and the Protection of the Environment in Indonesia

In general, environmental problems occurring in developing countries with those occurring in developed countries are different, because the state of the country is different. Environmental problems in developed countries, such as pollution on natural resources land, water and air due to industrial progress (in the broad sense). In contrast to developed countries, the environmental problems occurring in the country of Indonesia, as well as other developing countries, are caused by developmental backwardness. Development activities that pay little attention to the mutual relationship between development activities, as well as the prevailing balance and which need to be maintained within the environment itself. In this regard, all policies, laws and programs implemented by the state, relating to economic growth, social change and cultural development must also take into account environmental sustainability. Required under the Indonesian state's basic law (the 1945 Constitution of the Republic of Indonesia) regulates the environment to protect the rules under it.

Agree or not that the Constitution of the

State of Indonesia has placed the environment an important part of everyday life to be upheld for the sake of future generations. Not enough with Article 28 alone, Article 33 Paragraph (4) reaffirms the principle of sustainability, which reads: "The national economy is organized on economic democracy with the principle of togetherness, efficiency, fairness, sustainability, environmental insight, independence, and by maintaining balance, and national economic unity ". Sustainable (sustainable) is closely related to the insight of maintenance, preservation, and protection of a healthy environment. Indonesia becomes part of the world's countries which also has long-term vision by applying sustainable principles by applying environmentally sound development.

The word sustainable development was introduced by Rachel Carson through her first published book *Silent Spring* in 1962 with the concept that the development or development process is expected to meet the needs of the present without harming the ability of future generations to meet their needs in harnessing the potential of natural resources for life. If you look at the current development conditions in Indonesia that are only concerned with short-term interests for a moment's profit, then the action potentially damages the potential and carrying capacity of the environment for future generations. If this is reflected in the formulation of the policy, it can be said to be contradictory to the Constitution of the State of Indonesia, namely the 1945 Constitution. In essence, Indonesia has many principles of sustainable and pro-environment development, as in the Law on PLH which has been replaced by PPLH Law, No. IV/MPR/1999 on the Guidelines of State Policy, and several laws and regulations that have been pro to the environment.

From the above explanation it is clear that sustainable development and environmentally sound as a principle in the framework of economic democracy as the implementation of national economic democracy. It should be highlighted that the Green Constitution comes as a necessity for the importance of the environment for the

sustainability of life to come. Concepts on the subject are embodied in various aspects through formal legal policy, either implied or explicit, as in other countries such as Poland, France, Portugal and Spain. Indonesia became a part of it. Therefore, to go green Indonesia the maturation process of the implementation of the constitution must be prudently so that the long journey of the nation's history into a sovereign state in the environment for the future generation remains on the right path. It is time for Indonesia to be parallel to the countries that implement Green Constitution with all its shortcomings and advantages.

The development of thoughts and regulatory movements concerning the environment actually also hit the world, including Indonesia. In 1982, Indonesia drafted its own law on environmental policy, namely Law No. 4 of 1982 on Environmental Management. This is the first legal product owned by Indonesia that specifically regulate the environment, after previously established the Office of the Ministry of Environment in Cabinet III during the period of 1978-1983. Since then there are various regulations that regulate environmental issues.

All legislation that emerges after the issuance of the Environmental Management Act is deemed insufficient to compel policy makers to comply and adhere to environmental policies. Often environmental issues are considered only as one of the most important sectors, but other sectors whose policy determination is not within the responsibility of the Minister of the Environment should also be considered important, so that environmental issues are not viewed and solved on a sectoral basis. Based on these reasons, there is a thought to raise the degree of all environmental protection to the level of the Constitution. Developing ideas to adopt environmental law norms that exist in the law into the constitutional law norms so that its position is stronger. Included in the Constitution, then the position of environmental norms that will be strong and have the ability to bind to the norms of existing laws under it. Article in the 1945 Constitution which

regulates the environment inlah which should be a reference for policy-making and legislation pro-environment.

In accordance with the hierarchical theory of legislation contained in Law no. 12 Year 2011 on the Establishment of Laws and Regulations, then in making the legislation must be in accordance with the rules above it and should not conflict with the rules above it. The Government of Indonesia shall comply with all laws and regulations in Indonesia to be a sustainable and environmentally sound regulation, and the laws and regulations shall not be contradictory to the 1945 Constitution.

If such development policies as outlined in the form of legislation are contradictory to the 1945 Constitution, then the testing mechanism may be imposed. If the development policy is set forth in the form of legislation under the Act, then the Supreme Court may examine the legislation. If the development policy as outlined in the form of legislation is contradictory to the 1945 Constitution or constitutional rights/authority, then it can be the object of examination from the Constitutional Court. This regulatory norm testing mechanism is important to ensure that the established policies are actually implemented in practice, so as to minimize environmental pollution and damage.

Now, Indonesia already has Law No. 32 of 2009 on Environmental Protection and Management as a positive law in Indonesia that regulates environmental protection. Sectoral laws and regulations must also comply with this Law No. 32 of 2009 on Environmental Protection and Management. Law No. 32 of 2009 on Environmental Protection and Management is elaboration of Article 28 H of the 1945 Constitution of the Republic of Indonesia. Law No. 32 of 2009 on Environmental Protection and Management is certainly still a lot of adjustments to be made. The technical implementation of the law in the Government Regulation and the Presidential Regulation should also be adjusted to the PPLH Law in order to avoid a conflict of law as it still refers to the previous environmental law.

It is also regulated in Article 44 Law No. 32 of 2009 on Environmental Protection and Management that, “Any preparation of legislation at the national and local levels shall take into account the protection of environmental functions, and the principles of environmental protection and management in accordance with the provisions set forth in the Law No. 32 Of 2009 on Environmental Protection and Management.” It has been clearly stipulated that the products of the Law made by the House of Representatives shall pay attention to the preservation of the environment, which of course shall not be contradictory to the above laws, especially the 1945 Constitution of the Republic of Indonesia as the basic/highest law in the State of Indonesia.

This is where the importance of regulation on the environment in the 1945 Constitution of the Republic of Indonesia, so it is expected to reduce the environmental problems in Indonesia. The Constitution as the Supreme Law of the Land basically contains a basic idea of the sovereignty of the environment and the economic equality of values with the concept of democracy and democracy. Therefore, the norms of environmental law in it, will be “force” for the legislation and policies in various development sectors to be obedient and submissive to him. The formulation of the provisions on the environment within the Constitution is a form of responsibility of the State of Indonesia in protecting Indonesian citizens and natural resources.

D. Conclusion

The conclusions that can be drawn based on the above discussion, as follows: **Fisrt**, the concept of the green constitution in the 1945 Constitution

has been regulated, both in the Preamble of the 1945 Constitution and in its articles. Guarantees to humans and their environment have been regulated in the Preamble of the 1945 Constitution so that it has become the goal of the state and the state’s goal that the state has the duty of one of them is to provide protection to human and natural resources owned by the State of Indonesia. The arrangements in the Preamble to the 1945 Constitution are translated into articles, namely Article 25A, Article 28H, Article 33 paragraph (3) and paragraph (4). The regulation of the 1945 Constitution on the environment is further regulated in its sectoral rules. There needs to be a separate regulation on human rights that is owned by the environment as the subject of law, so that the environment can act law (legal standing) if there are citizens/communities that pollute and even damage the environment, because in Article 28H guaranteed human rights are people/individuals as legal subjects, not their environment.

The correlation of green nuance in the 1945 Constitution with the protection of the environment that the green nuance in the 1945 Constitution comes as a necessity for the importance of the environment for the sustainability of life to come. If you look at the current development conditions in Indonesia that are only concerned with short-term interests for a moment’s profit, then the action potentially damages the potential and carrying capacity of the environment for future generations. Therefore, if it is reflected in the formulation of policies, especially the formulation of legislation can be said to be contradictory to the 1945 Constitution. The environmental degradation into the 1945 Constitution, then the position of environmental norms will be strong and have the binding power to the norms of legislation which is underneath.

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