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Re-questioning the Principles of Environmental: Based Legislation or Green Legislation in Global Development (Article 44 of Law Number 32 of 2009 concerning Environmental Protection and Management)

Endang Wahyati Yustina*
Faculty of Law and Communication, Universitas Katolik Soegijapranata, Semarang, Indonesia. ORCID iD: https://orcid.org/0009-0002-8996-2478, Email: wahyati@unika.ac.id

Eko Nurmardiansyah

Faculty of Law and Communication, Universitas Katolik Soegijapranata, Semarang, Indonesia.

Sarwo Y. Budi
Faculty of Law and Communication, Universitas Katolik Soegijapranata, Semarang, Indonesia.

Abstract

The Green principle embodies the belief in human stewardship of the environment within a broad spiritual and social philosophy that places humanity in the center of its cosmic relationship with nature. This means streamlining the developmental exercise while keeping its sustainability in the first place. Greening need to be seen as a process than a status, a verb and not just an adjective. This study takes the normative legal research approach especially using the statutory analysis to look at development in global context by the Green Legislation as outlined in the section 44 of the Environmental Protection and Management Law No. 32 of 2009 This prescriptive qualitative research method is where documentation studies are conducted by studying library sources in depth and then qualitatively analysing the data obtained. The idea of ecocracy is an endevour to mainstream the sustainable development of the nations in the current political framework of national development. The ecocracy approach must therefore become a fundamental and steadfast guideline of the state policy-oriented activities, especially as far as the environmental protection and management are concerned. Indonesia follows the idea of ecocracy where the Government actions are in harmony with the ecologically sustainable development principles by now. A green constitution, a set of green legislations, and a green budgeting are the key pillars for the successful implementation of the ecocracy concept within a state administration. This ensures that environmental sustainability is an integrated part of decision making at all levels to ensure that its importance is never forgotten.

Keywords:

Ecological democracy (eco-democracy/eco-cracy); Ecological Intelligence; Green Constitution; Green Legislation; Green Budgeting; Globalization..

Introduction

Ecological crisis as one of the problems that underlies the collapse of civilization in the past and Indonesia is one of the countries that Jared Diamond is worried about in his book "*Collapse: How Societies Choose to Fail or Succeed*" because of the environmental crisis and the incompetence of state actors to manage and protect natural resources in this country. If this nation does not immediately realize its mistake in managing nature and in treating its environment, then this nation's civilization will soon collapse or become extinct. Jared Diamond stated that one of the 5 (five) factors that can destroy humans and their civilization is environmental damage caused by humans. The other four factors are climate change, enemies, mistakes in determining business partners and the economic and political actions of society in responding to change. Some of the factors that cause the collapse of a nation's civilization as mentioned above have become a part that is inherent in human beings for so long. Currently, Indonesia is one of the countries that Jared Diamond is worried about. The environmental crisis and incompetence in managing and protecting natural resources will be the main causes. Jared Diamond gave the example of the extinction of the Norse Vikings in Scandinavia because they accidentally caused erosion and deforestation, destroying their natural resources. Jared Diamond includes Indonesia, in addition to Nepal and Colombia, as a civilization that may be close to collapse.

The sustainable use of natural resources to tackle human growth via development should be implemented in a way that it does not damage the environment. Creation of the link between a better living standard and the right to a clean environment is strong (Zhou, Tang, & Zhang, 2020). This is an important pointer for development efforts to be carried out with the ultimate consideration for the environment thus reducing or eliminating the negative impacts. Both are very difficult to approach separately. This linkage is close link by what is called sustainable development. There is a close link between the right to development. The two are very difficult to approach separately. This linkage is connected (close link) by what is called sustainable development. The right to the environment as part of human rights is based on Principle 1 of the Declaration on the Human Environment, the Stockholm Declaration, and only received recognition at the Human Rights Commission Session in April 2001. In Indonesia, the right to the environment has been adopted in various laws and regulations, both the post-amendment state constitution and the 1945 Constitution mandate the right to the environment in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution. The constitution of Indonesia in articles 28D and 28E expressly gives every citizen of Indonesia the right to a good and healthy environment, and a fundamental entitlement of every citizen to live in a clean and healthy environment is emphasized by these two articles. The enshrinement of the green constitution in the national constitution is a typical constitutional guarantee. The idea of access to a healthy and unpolluted environment is considered a constitutionally protected right and, therefore, the duty of the state, law enforcement, and all institutions to deliver, defend, protect and fulfill the right of every person to life and good health.

Environmental issues are centered around political nature since it the power and authority that are allocated and used. Rachmad K. Dwi Susilo, adequately pointed out that discussions on politics should be made with regards to power dynamics and governance. Political power and policy closely relate in this context, mostly as concerns environmental policy (Rachmad, 2008). According to the argument that is propounded by Chalid Muhammad, the dire environmental problems in the country of Indonesia are mainly due to policy failures of the government rather than acts of ordinary people (Said & Nurhayati, 2020). This shows the importance of state policies, as an influence factor on environment results. Environmental law politics constitute a governing legal framework of environmental issues designed to provide a means of achieving environmental management and protection goals. On the other hand, according to the view of Muhammad Akib the effectiveness of environmental law sometimes is impeded by a general lack of a decent understanding, implementation, and enforcement of such laws (Muhammad, 2011).

International environmental law was born from international agreements as well as declarations and decisions of the International Court of Justice or international arbitration. However, because environmental problems are

global and regional in nature, national environmental law arrangements are also influenced by international level arrangements. Where are the characteristics of global or globalization, namely: Borderless, Transparency, Standardization, Cross - Cultural - Coopetition, New Common Values and New International Trade Order / NITO (New International Trade System).

A sustainable approach to resource use that addresses human needs via development and should be completed in a way that does better to the environment than harm needs to be adopted. The right of people to a clean environment exists a strong relationship with the right of people to development. This gives credence to the argument for development activities should be done in an approach affecting the environment minimally or at least totally (Asshiddiqie, 2010). There are pro-environmental policy elements as Jimly Asshidiqie said that the 1945 Constitution is one of the green constitutions in the world, although the shades of green are still very light (light green constitution). Jimly Asshidiqie explained further about this by stating (Said & Nurhayati, 2020):

"Although the environment has been included in the law (Law No. 32 of 2009 concerning Environmental Protection and Management), but once associated with the Law on Trade, Industry, (even) with the Cooperative Law alone, the Environmental Law will surely lose in practice."

In the current conditions, where the threat of a crisis in the carrying capacity of ecosystems and the environment faced by Indonesia is very real, the constitutionalization of environmental law norms is very necessary in line with our endeavors to strengthen democracy and the rule of law, as well as good governance. Jimly Asshidiqie explained further that the term "green constitution" cannot be separated from the ecocracy concept, because in principle a green constitution is an implementation of the ecocracy concept. The concept of ecocracy is defined as the power of the state or government based on the sovereignty granted by the environment. In this concept, the universe must also be seen as the highest authority in life (Asshiddiqie, 2009).

As revealed in these two provisions, an Indoneisan citizen holds untainted environment and good health as fundamental rights as included within constitutional framework. This constitutional guarantee, being usually called the green constitution, is quite known. A clean and healthy environment as a fundamental human right which all individuals are entitled to implies constitutional level of protection wherein the state and all its apparatus are the primary and supreme custodians of those rights and must do everything within their mandated limits to ensure that such rights are respected and upheld among the general populace. Based on the description above, the writer is interested in conducting research on "Requesting the Principles of Environmentally-Based Legislation or Green Legislation in Global Development (Article 44 of Law Number 32 of 2009 concerning Environmental Protection and Management)."

Based on the description above, in this paper, several problems are formulated and scientifically resolved. The limitations of the issues to be examined re-question the Principles of Environmentally Based Legislation or Green Legislation in Global Development (Article 44 of Law Number 32 of 2009 concerning Environmental Protection and Management).

The aim of the article is to critically analyze legally-based environmental principles, or so-called green legislation, in regard to global development issues, article 44 of Law Number 32 of 2009 on Environmental Protection and Management in Indonesia as an example. The study seeks to investigate the relevance of sustainable development, the impact of political power and governance, the effect of international environmental law, and the use of sustainable approach towards the use of natural resourcesAdditionally, the research seeks to comprehend the notion of the 'green constitution' and its implication to the theory of environmental sustainability and management.

Following are the objectives of this study:

- Implement environmentally-focused legislation or green rule in the sustainable-oriented development or as stipulated in article 44 of law number 32 which related to environmental management and protection in Indonesia.
- To find out the role played by the sustainable development as well as the right to a clean and healthy environment in the wider global development efforts, besides examining the potential effects that may arise from the environment protection and management in this regard.
- To address the two main core perspectives on political authority and environmental governance in policy making and their efficiency, among other elements, is the main theme for this research.
- Investigation of the idea of "the green constitution" and the answer to the problems of environmental protection and management focusing on the Indonesian constitutional framework.

This study is worth mentioning because it aims to increase the principles related to environment-law enforcement or else green legislation within the framework of the law Number. Articles 32 and 200 of the 2009 Act on Environment Protection and Management via studying the crucial meaning of sustainable development and the right for an external clean environment, it can be seen that governance and political power are important in decision-making processes, and international environmental law shape national environmental arrangements.This study is going to attempt to highlight the challenges and opportunities for effective environmental protection and management. Further, this research aims to enrich the discussion on the doctrine of "green constitution" with reference to how it applies to the globe in the area of environmental protection and management as well as governance and sustainable development. Finally, the study objective is to provide useful and important implications and recommendations for the policymakers, researchers, and practitioners involved in environmental protection and management, with the intention of implementing more efficient and sustainable ways of policymaking in environmental governance.

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Literature Review

The Characteristics of Globalization and Its Influence on Environmental Regulations

1. **Borderless**. Borderless in this case does not mean a country without or without territorial boundaries, the identity of each country still has its boundaries, only the non-physical boundaries are almost gone. The clearest example is the European Union with its Five Freedoms, including the Free movement of goods, namely the free circulation of goods among the 12 European Union countries. Previously, there were customs, excise, taxes for goods that entered a country within the European Union, for example, if there is a trans goods subject to excise. Free movement of services. Free circulation of services, for example: British lawyers can practice in Luxembourg. Free movement of persons. People are free to cross borders. For example: Dutch people do not need a visa to France.
1. **Transparency.** Policies within or established by a country can no longer be for the country itself, a country's policies must also be acceptable to other countries.
2. **Standardization.** All kinds of standards must comply with international standards, can not not. For example: vaccines produced by Bio Farma with local standards will not be accepted internationally, Indonesia must apply international standards.
3. **Cross – Cultural – Coopetition.** Cross-cultural, because people are free to cross borders, there is automatic mixing of cultures. In our country there is a culture of non-competition or competition far from our culture, because we know the culture of deliberation, mutual cooperation, and cooperation because of globalization there is a shift. Coopetition is a combination of the words cooperation and competition which means cooperation in competition as well as competition in cooperation. It is no longer possible to cooperate without competition in globalization.
4. **New Common Values.** New shared values are emerging, although in Indonesia they are still few. In this case, for example, the Clinton and Monica cases, the Affair in the US is not a legal case.
5. **New International Trade Order.** New International Trade Order (NITO) or New International Trade Rules. There were 3 (three) external economic developments that affected national and international trade, namely: the Uruguay Round on the GATT with the WTO in 1994, the Bogor Declaration – 1955 which was attended by 18 Asia Pacific countries namely APEC and AFTA in 2003. The three economic developments mentioned above had a great influence on us in global trade, while the EU (European Union) had no effect on us because we are not members.

From the description of the characteristics of globalization above on environmental issues that are global and regional in nature, national environmental law regulations are also influenced by international level arrangements, especially related to the concept of green (green) as a principle of sustainability (sustainability).

Historical Development of Environmental Legislation

The development of environmental laws took place in a complex multifaceted process that progressed through centuries being influenced by different factors like scientific discoveries, technological progress, political movements, and societal attitudes regarding nature (Bhandari, 2023). The idea of environmental protection has very ancient roots, beginning with early civilizations like the Greeks and Romans who had the first primitive environmental laws and regulations (Angelakis, Dercas, & Tzanakakis, 2022; Ducarme & Couvet, 2020), but the current form of the environmental movement as we can all recognize it today should be traced back in the mid-20th century (Burman, 2022). One of the landmarks that paved the way to the emergence of modern environmental regulation was the release in 1962 of Rachel Carson's famous book "Silent Spring." (Maggie, 2023) Carson's book, which emphasized the negative effects of pesticides on the environment and human health, generated a public outcry for a change, and consequently led to the Clean Air Act which was passed in 1963, USA's first environmental legislation (Orford, 2021). This was in turn, followed by the establishment of the Environmental Protection agency (EPA) in 1970 which had responses of enforcing environmental laws and regulations and provide protection to human health and the environment as an operation (Anastas & Zimmerman, 2021; Glicksman et al., 2023).

In the 1970's and 1980's there was a ratification of various environmental laws globally by willing governments following the global recognition of the need for environmental protection and the importance of the environment and its subsequent regulation (Bodansky & van Asselt, 2024; Lazarus, 2023). This period had various movements around the world that led to the eruption of environmental studies. In the US, it happened by enactment of the Clean Water Act in 1972, which was a law that sought to regulate pollutant discharge in the nation's waterways, followed by establishment of the first global agency that specifically concentrated on environment issues- the United Nations Environment Program (UNEP) (Singh, Andaluri, & Pandey, 2022). In the 1990s and 2000s, there was a growing need for even more holistic and interdisciplinary approaches to environmental conservation and also an urgent need to increase the international efforts to solve the global environmental problems (Ide, 2020). This resulted in Rio Declaration on Environment and Development in 1992, which contains principles for sustainable development and promotes the integration of environmental concerns in all area of decision-making (Nkoh, 2023).

In the last few years there has been a tendency to pay more attention to the necessity of a holistic and all-embracing conception of environmental protection through which the interconnectedness of the humanity and the nature is considered. These influenced the adoption of the Sustainable Development Goals (SDGs) in 2015 which are a global framework for tackling environmental issues and promoting sustainable development (Centobelli, Cerchione, & Esposito, 2020; Filho et al., 2021; Rashed & Shah, 2021). In general, the development of environmental laws has been the resultant product of the interplay between scientific, technological,

political and social factors, and has been the subject of a constant process of change, the result of the changes in the understanding of environment and need for more environmental protections.

Green Concept as a Principle of Sustainability

The author will first describe the concept of green as a principle of sustainability (sustainability) bearing in mind that currently many terms are displayed and used by linking the word green, such as "green politics, green party, green banking, greendeen (green religion), green market, green building, green democracy, green constitution, green legislation, green budget, green economic, green bench", even West Java Province now claims to be a green province (a green province, namely an environmentally sound province) or the City of Bandung as a green city (Nurmardiansyah, 2015) (a green city, namely an environmentally sound city).

Environmental problems are inherently political because they entail decision-making and the exercise of control and authority. As Rachmad K. Dwi Susilo concluded appropriately, all politics must remain preoccupied with the intricacies of power relations and government. Polity appears as an intersection of politics and power, and particularly it is relevant in the context of environmental policies. Chalid Muhammad states that the huge environmental degradation in Indonesia is more reported due to the mistakes of the policy makers rather than the unnecessary behavior of normal people. This points to a fact that state policies is very essential in formation of environmental results (Goleman, 2009). Environmental law politics, the politico-legal framework that governs environmental matters, is part of government's overarching efforts to guarantee environmental protection and management. Nevertheless, Muhammad Akib realizes that the effectiveness of environmental law may be constrained by the fact that its principles and rules are not always fairly applied because of lack of understanding, implementation and enforcement. According to Goleman, our present "green" frenzy may be just a transitional stage, characterized by the emerging appreciation of ecological effects per se, but lack of understanding, with no exact prescriptions. He claims that green should be viewed as a dynamic process instead of static state, highlighting the necessity of actions and the search for the optimal results. This view has an effect of driving a more focused path to environmental sustainability (Goleman, 2006).

Thomas L. Friedman also emphasized related to the word "green" in his book, Hot, Flat, and Crowded: Why We Need Green Revolution, the term "green" is no longer just confining its past conception but developing it into an integral framework to development, construction, design, production, labor, and lifestyle (Collins, 2010). Whether it is Thomas L. Friedman or any counter argument to the statement that "green" logo is more than just an symbol, it will be an action of true intention from superficial talk to meaningful action, from optional to essential, trendy to strategic advantage, and impractical to worthwhile chance.

Anything that can be done to implement a green lifestyle according to Thomas L. Friedman will make it stronger, healthier, safer, more innovative, more competitive, and more respected. Thomas Friedman argues that, today, "green" is as much a part of national identity as red, white, and blue flags. This is because to solve many of the global challenges, namely, climate change, and loss of biodiversity, energy poverty, dependence on oil-producing dictatorships, and energy scarcity can present a practical approach. Focusing on the green initiatives, countries can not only address their problems but also help to solve global ones.

Linkage of Green Concept with Green Democracy (green democracy) or Ecological Democracy (eco-democracy)

The terms "green" and "green democracy" or "ecological democracy"(ecodemocracy) are conceptually connected notions. The name green democracy or eco-democracy goes back in the Brundtland Report, where the term "ecocracy" finds its basis and is included in several green constitutions in different countries. Ecocracy (eco-democracy, eco-democracy, or eco-governance), is a shorten word for "nature" or "environment" and the acknowledgement that they have an intrinsic value (Wicaksono & Hantoro, 2023). Moreover, it implies the comprehension of balancing the environment's carrying capacity and the need for ecological stability, hence opposing the kind of action that could cause the environment to degrade and impact in an unforeseen manner. This explanation consorts with that of ecocracy which was imparted by Henryk Skolimowski via his eco-philosophy that highlights the linkages between people and their surroundings (Niedek, 2022). Thus, ecocracy is another manifestation of democracy which is not limited to the boundaries of the country's territory solely, but ecocracy has a broader meaning because it has interconnection with the earth and nature in a broad sense. Ecocracy is a form of democracy that does not injure nature and the earth and harm the country or the region around us. In fact, even further Jacqueline Aloisi de Larderel. UNEP (2000) argues that ecocracy can be viewed from the perspective of an activity system that has 'environmental protection' parameters through comprehensive international standards (UNEP, 2000). The earth, the natural surroundings which contain humans, animals and plants are perceived as an integrative unit in what is referred to as friendliness towards nature.

Indonesian-style deliberative democracy which contains the vision of "deliberative democracy" has anticipatory power against contemporary developments related to the ecological crisis. As advocates of “ecological democracy” (eco-democracy) often remind us, environmental crises, such as those in the form of global warming, are not just environmental problems, but also involve the complexities of democracy and issues of justice. For example, the greenhouse effect is more of a problem caused by the wealthy minority among the world's citizens. Based on per capita income, some countries produce emissions that contribute to global warming on a scale of hundreds or even thousands of times than poor countries. Even within the country itself, those who live in excess are often

the biggest donors of emissions than their compatriots living below the poverty line. The ecological crisis is a reflection of the impasse of economic democracy (Latif et al., 2011).

For that we need a political structure that is friendly to the environment. This environmentally friendly political structure in turn requires the appreciation of "green values" among the elements within the structure. Therefore, Robyn Eckersley (Eckersley, 2023).

Concludes that the key to green political transformation is the dissemination and appreciation of an ecocentric culture (pivot on ecology), on top of a political structure that is also green. This is a democracy that rejects the either/or approach but embraces both/and approaches in procedural debate – substance – encompassing both structure and values, so that ecological democracy is a democracy that came out of previous democratic theories when democracy was only concerned with human relations. According to John S. Dryzek, ecological democracy is a democracy that seeks to rethink anthropocentrism arrogance (pivot on humans) as a result of awareness of the existence of an ecological crisis (Dryzek, 2002).

Methodology

This study has been conducted based on a descriptive nature in which the study has only addressed the questions that what are the green constitution and environmentally based legislation without focusing on the phenomenon and reasoning (as it is the basic nature of description). In this domain, the research has targeted a legislative aspect as main center of investigation and explored all the documents and using a document and content analysis on the available information on the selected area, the study has compiled its results.

Results and Discussion

Green Constitution and Environmentally Based Legislation (Green Legislation)

Provisions regarding the environment are formulated in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution. Article 28H paragraph (1) of the 1945 Constitution clearly states, "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to receive a good and healthy environment and has the right to obtain health services." Preservation of a pollution-free environment and granting everyone the right to access quality healthcare services represents a bedrock of human rights. In such a manner, the 1945 Indonesian Constitution stands as an epitome to pro-environmental policies nullifying it to the term "green constitution".

If the state presolves the existence of universal human rights, the state must manage the equal fulfillment of every individual's right to clean and healthy environment, subfields of human rights. This is a right of all the

people and also, they have a reciprocal obligation to respect the rights of others for a clean and healthy environment. Basically, there is a mutual recognition of the fact that each person has an inalienable right to a clean and healthy environment and that every person on earth is bound by a duty to safeguard the rights of others against any form of violation as well as respecting their right to access and enjoy environmental benefits. In the same way, besides the fact that the authority guarantees that the environment is clean and safe, the individuals are also have the right to claim or demand respect from others. If there is a need state will take its responsibility to put restrictions on which activity may damage the environment or pollute as well. With the provisions of Article 28H paragraph (1) of the 1945 Constitution, it means that environmental norms have been constitutionalized to become constitutional content material as the highest law. Thus, all government and development policies and actions must comply with the provisions regarding human rights to a good and healthy environment. There may no longer be policies contained in the form of laws or regulations under laws that conflict with these pro-environmental constitutional provisions.

In the Evolution of Environmental Policy: Moving from Anthropocentrism to Ecocentrism presented by Jimly Asshiddiqie (Wicaksono & Hantoro, 2023), two distinct stages of the development of environmental policy can be seen. Coming to the phenomenon of formation of environmental policies by the national governments, in response to the rising environmental awareness worldwide, the policies started in the form of national laws. This period was characterized by conservatism in the legislation of environmental policy laws. Nevertheless, the significant amount of legislation has led to many of the laws being ineffective in controlling pollution and environmental degradation. As a result of this dissatisfaction, there was an upsurge of an opinion about the inclusion of the environmental policy into national constitutions, which are considered the supreme legal source. Thus, this evolution process constitutes a second wave or stage of environmental policy, where the environmental policies are included in the framework of national constitutions. Environmental issues are often seen as only one of the important sectors, but other sectors whose policy decisions are not within the area of responsibility of the Minister of Environment must also be considered important. In this inter-sectoral and inter-agency battle, environmental interests in practice are always defeated or defeated by other fields, sectors or policies of other agencies, such as the fields of mining and energy, forestry and plantations, investment, tourism, and so on.

Law Number 32 of 2009 mandates that through an environmental protection and management plan (hereinafter referred to as RPPLH), which includes ecoregion maps and an inventory of environmental data (environmental carrying capacity/accommodation), all development plans should use RPPLH as a reference. RPPLH as a new legal instrument in the field of planning for environmental protection and management, the preparation of RPPLH is regulated in Article 9, Article 10 and Article 11 of

Law Number 32 of 2009. RPPLH is a written plan that contains potential, environmental issues, as well as efforts to protect and manage it within a certain period of time as mandated in Article 1 point 4. RPPLH as a planning instrument has an important function to align environmental policies both those made by agencies that carry out government affairs in the field of environmental protection and management as well as other agencies that carry out their duties related to protection and environmental management. Harmonization of these policies is important, so that the actions taken by the government do not overlap with each other, do not claim to be the most authoritative institution, and do not shift responsibility to one another if environmental problems occur. With the RPPLH it is hoped that there will be no such MP3EI documents that suddenly enter into the national medium-term development plan. Don't just look at the economy, but also the social and environmental sustainability side. Development without considering the carrying capacity of the environment reaps disaster. Floods, landslides, droughts, and pollution are proof that they are not just natural factors. Forests were cleared, limestone hills storing water reserves were split, and industry dumped waste into rivers and land.

The loss of environmental interests in an unequal battle against other interests occurs not only in executive technical forums, but also in political forums, within the legislature. Therefore, apart from existing laws in the environmental sector which are of course pro-environmental, there are also many laws in other fields which are not environmentally friendly. Of course, this must be accepted as a reality in the people's representative institutions which are the estuary of all kinds of interests that live and fight each other in society.

Of course, decisions in political forums like this apply to the majoritarian principle, namely whoever has the most number makes the decision. Therefore, what is more important in democratic decision-making in parliamentary forums is the quantity of supporters, not the quality of the ideas that need to be supported. Because the supporters of these environmental ideas are far fewer in number and far from decisive political positions, when faced with a variety of other rational interests, pro-environmental policies sometimes lose their voice.

Because of this, the idea emerged to raise the degree of environmental protection norms to the level of the Constitution. In other words, the idea is developing to adopt environmental law norms into the formulation of the articles of the Constitution so that their position is stronger. The presence of environmental principles within the Constitution act as a tool to make sure that all bills of the legislature are in line with the drastic principles of the Constitution. Debates that take place at parliamentary level are often biased towards different interests which are counter poised to suit the needs of the citizens that are diverse and minority groups. The Constitution is the highest authority of law that supersedes any deliberations therein. This emerging understanding and acknowledgement of the need to incorporate environmental law into the constitutional

framework is a symptom of constitutionalization as explained by Jimly Asshiddiqie, or the constitutionalization of environmental policies. This is the second wave in the evolution of environmental policy which has come out as a shift towards a more comprehensive and legally binding regime of environmental protection.

In Indonesia, the right to the environment has been adopted in various laws and regulations, both the post-amendment state constitution and laws. Article 28H paragraph (1) of the 1945 Constitution states: ''Every person has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy environment, the right to obtain health services.'' And further regulated in Article 65 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as Law Number 32 of 2009), which states: ''Everyone has the same rights to a good and healthy environment.'' Then in Article 65 paragraph (2) of Law Number 32 of 2009 states: "Every person has the right to... access to justice in fulfilling the right to a good and healthy environment." In the provisions of Article 33 paragraph (4) of the 1945 Constitution which states:

''The national economy is organized based on economic democracy with the principles of togetherness, efficiency-justice, sustainability, environmental perspective, independence, and by maintaining a balance of progress and national economic unity.''

There are two ideas related to the ecosystem, as well as they have relevance to the concept of economic democracy. Primarily, the national economy should be directed by economic democracy that is for this purpose, obey to sustainable and environmentally friendly concepts. The ecological system, as defined in article (3) of the Constitution of 1945 and subsequently detailed in the environmental laws, should be maintained under form of development and environmental consciousness, as discussed in article (4) of the Constitution of 1945. This aspiration for ecologically friendly policies, however, is a symbol of a green or "green constitution" idea, as it was evidenced during the events of August 10, 2002. In the midst of the growing climate of democracy in various countries, including in Indonesia, the issue of environmental justice, according to Sonny Keraf, has transformed from an idea that seems abstract to something that must be fought for and can be fought for, even justice must be won (Keraf, 2010).

Based on the description above, with the provisions of Article 28H paragraph (1) and Article 33 paragraph (1) of the 1945 Constitution, it means that environmental norms have undergone constitutionalization to become constitutional content material as the highest law (green constitution). Thus, the enactment of every governmental or developmental action and its execution must match with the provisions of the laws that attend to the human rights of a clean and healthy environment. Any policy, which may be in form of law or regulation, that contradicts the provision of this constitution in favor of nature (green

legislation) is henceforth not allowed. In other words, the policies that carry an environmental or administrative aspect must be an integral part of any legislation (green legislation), as provided for in Article 44 of Law No. 32 of 2009, which reads: "Every drafting of laws and regulations at the national and regional levels is obliged to pay attention to the protection of environmental functions and the principles of environmental protection and management in accordance with the provisions regulated in this Law." Environmentally based laws and regulations (green legislation) are of course strengthened by environmental norms which are constitutionalized in the 1945 Constitution (green constitution) as mandated in Article 28H and Article 33 paragraph (4) of the 1945 Constitution.

The demands for reform in 1998 with one of the agendas, namely amendments to the 4th amendment to the 1945 Constitution, resulted in many formulations of new articles, especially those related to human rights. Environmental issues eventually became one of the Human Rights listed in Article 28H paragraph (1) of the 1945 Constitution which affirms: "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services." This certainly has a positive impact in that indirectly the state is obliged to truly preserve a good and healthy environment to fulfill the rights of its citizens. In addition to Article 28H paragraph (1) of the 1945 Constitution, Article 33 paragraph (1) of the 1945 Constitution also emphasizes: "The economy is structured as a joint effort based on the principle of kinship." Also added to the provisions of Article 33 paragraph (4) of the 1945 Constitution which states:

"The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity" (PP, 2002).

Taking into account the articles previously referred to, Indonesia seems to be doing what ecocracy (ecologically sovereign space or ecosystems designed to be governed by the principles of sustainable ecological development) claims. Ecocracy phenomenon reflects a bar of green economy with an ecological vision among the structure of national development planning. Nevertheless, unlike Indonesia's reference of the the right or duty of the state, the country lacks the framework and guidance of a specific direction for sustainable development as provided in specific articles of the Constitution. Thus, they have been included into the foundations or mixed with the other fundamental rights.As Indonesia is founded on Pancasila and the 1945 Constitution, the ways of living in the social, national and state sectors as encompassed in the principles of governance are guided by law. To put this law into practice, a new law, the Law Number 12 of 2011 concerning the Formation of Legislation (Law Number 12 of 2011), was enacted on August 12, 2011, which replaced the previous law, the Law Number 10 of 2004 concerning the Formation of Legislation, bill is a cornerstone of preserving law and order because it would provide a legal framework for the creation of statutory regulations.

For the very reason to create proper laws and regulations, which is a prerequisite for enactment of norms, principles, and procedures for development, and a science of implementation outlined in the General Explanation of Law No. 12 on 2011, it is necessary for us to have a good understanding of the systems, principles, procedures for preparation and discussion, and techniques for implementation. That is why the good norms (fundamental concepts or norms) and principles (good processes) need to be observed which will also ensure that the processes of regulation preparation are clear (the processes involved in regulation preparation need to be clear).

In line with Law 12 of Year 2011, a process of mapping sound laws and regulations requires compliance with the provisions such as those outlined in Law 12 of 2004. This principle covers the procedural rules for the formation of the regulations of a statute; the substantive principles that govern the content a statute; and other principles, relevant to the area in which the law of a statute is to be applied.

Principles for Formation of Legislation are set down in Article 5 of Law No. 121 of 2011, pointing out the need of making sound law. This also comprise of providing clarity in the purpose of the law, choosing the right institution or organ for framing, being consistent between forms, hierarchy, and content materials, achieving the ideals of usability and effectiveness, clarity in presentation, and promoting the transparency.

Legislation does not only create Legislations in accordance with the principle of forming legislative regulations in accordance with litera (1) of Article 6 of Law No. 12 of 2011, but also is material principle in the content of legislative regulations, which consist of protection, humanity, statehood, relatedness, archipelagic, diversity, justice, equality before law and government, order, legal Furthermore, the fourteen subsection (2) of the 2011 law states that rules that come from other principles can be included in other statutory rules based on the legal field that they belong to.

For environmental protection and management as set out in the Law Number 32 in the year 2009, the promulgation of the laws and regulations, whether at the central or regional level, applying Article 5 of the Law Number 12 for the year 2011 have to fulfill the principles of forming statutory regulations as aforesaid, along with the principle of the scope of content for the Moreover, they should comply to the principles stipulated by Law 32 of 2009 which incorporates state responsibility, preservation and sustainability as well as an accountable governance.

However, Law Number 32 of 2009 also mandates that any formulation or formulation of laws and regulations both at the national and regional levels must pay attention to 2 (two) things, namely (1) protection of environmental functions and (2) the principle of protection and management of the environment as stipulated in Article 44 which states: "Every drafting of laws and regulations at the national and regional levels must pay attention to the protection of environmental functions and the

principles of protection and management of the living environment in accordance with the provisions stipulated in this Law." Based on the provisions of Article 44 Law Number 32 of 2009 mandates the pouring of environmental policies (green policies) into every law and regulation, not only in laws and regulations related to environmental protection and management but also in all laws and regulations. The pouring of environmental policy (green policy) into every statutory regulation is usually translated into English with green legislation, or can be translated into green legislation. Green legislation (green legislation) based on Article 44 of Law Number 32 of 2009 must pay attention to 2 (two) things, namely (1) protection of environmental functions and (2) principles of environmental protection and management as described above.

The application of Article 44 of Law Number 32 of 2009 the author tries to point out in terms of the Government's authority in protecting and managing the environment as described in Article 63 paragraph (1) of Law Number 32 of 2009 is carried out and/or coordinated by the Minister as mandated in Article 64 of Law Number 32 of 2009 which states: "The duties and authorities of the Government ... are carried out and/or coordinated by the Minister. The minister in this case is the minister who administers government affairs in the field of environmental protection and management as mandated in Article 1 number 39 of Law Number 32 of 2009.

The General Explanation of number 9 of Law Number 32 of 2009 reaffirms the authority of the Minister in environmental protection and management that Law Number 32 of 2009 gives broad authority to the Minister to carry out all government authorities in the field of environmental protection and management and to coordinate with other agencies. ... . Therefore, it is not enough for an institution that has a workload based on Law Number 32 of 2009 to be just an organization that determines and coordinates the implementation of policies, but an organization with a portfolio of establishing, implementing and supervising environmental protection and management policies is needed. In addition, this institution is also expected to have the scope of authority to supervise natural resources for conservation purposes. To guarantee the implementation of the main tasks and functions of the institution, adequate funding support from the state revenue and expenditure budget is needed for the Government.

Article 28H and Article 33 paragraph (4) of the 1945 Constitution are emphasized by Law Number 32 of 2009 which gives broad authority to the Minister of the Environment to carry out all government authorities in the field of environmental protection and management and to coordinate with other agencies. Therefore, based on Law Number 32 of 2009, it is not enough for the Ministry of Environment to be just an organization that determines and coordinates the implementation of policies (the Ministry of Environment according to Law 39 of 2008 only has authority in government affairs in the framework of sharpening, coordinating and synchronizing government programs), but an organization with a portfolio of establishing, implementing and overseeing environmental protection

and management policies is needed. In addition, it is hoped that the Ministry of Environment will also have the scope of authority to oversee natural resources for conservation purposes.

Regarding the authority of the Central Government in protecting and managing the environment, this has been reaffirmed, particularly in relation to the preparation of the Draft Government Regulation on the Implementation of Strategic Environmental Studies (KLHS), Head of UKP4 (Presidential Work Unit for Development Supervision and Control) through Letter Number B-143/UKP-PPP/01/2014 dated 24 January 2014, Subject: Follow-up to the Draft Government Regulation on Strategic Environmental Studies, addressed to the Coordinating Minister for People's Welfare and Minister of the Environment. From the letter it was stated that according to UKP4 it was important to be part of the PP for the Implementation of KLHS, namely (Nurmardiansyah, 2015):

1. A strong external oversight function in the preparation of an KLHS for a KRP is urgently needed. In this case, KLH is tasked by Law 32/2009 (General Explanation Point 9) to establish, implement, and supervise environmental protection and management policies, including KLHS. In other words, in PP KLHS, KLH should be given the obligation to carry out supervisory duties to ensure that the KLHS that is prepared is correct and appropriate in substance and process.
2. In this regard, Law 32/2009 (Article 17) states that not only does the KLHS have to be the basis for preparing the KRP, but the KLHS is also an evaluation instrument for the ongoing KRP. In this case, if the results of the KLHS study show that the carrying capacity and capacity have been exceeded in the ongoing PPP, then the PPP must be repaired and must be stopped (cannot be continued). If the KLHS is carried out by Ministries/Institutions/Local Governments which are also the initiators of the KRP, there will certainly be a conflict of interest in the implementation of the evaluation. In this case, the existing rules in the current RPP which give authority to the KRP initiator as well as the drafter, quality assurance and supervision of the KLHS have the potential to violate Law 32/2009 due to a conflict of interest so that it does not guarantee the objectivity of the KLHS produced.

General Explanation of Point 9 Law Number 32 of 2009 as stated in the Letter of the Head of UKP-PPP Number B-143/UKP-PPP/01/2014 gives broad authority to the Minister to carry out all government authorities in the field of environmental protection and management and to coordinate with other agencies. Also through Law Number 32 of 2009, the Government gives very broad authority to local governments in protecting and managing the environment in their respective regions.

According to Asep Warlan Yusuf, there are legal facts (legal evidence) that cannot be denied, that the environment is about to be seriously regulated, there are 7 (seven) legal facts (legal evidence) that strengthen this. *First, Article 33 paragraph (4) of the 1945 Constitution. Second, the Considering Preamble letter b of Law Number 32 of 2009 which states: "that national*

economic development as mandated by the 1945 Constitution of the Republic of Indonesia is carried out based on the principles of sustainable and environmentally sound development." Third, Article 15 paragraph (1) of Law Number 32 of 2009 which states: "The government and regional governments are obliged to make a KLHS to ensure that the principles of sustainable development have become the basis and integrated in the development of an area and/or policies, plans and/or programs." Fourth, General Elucidation point 3 of Law Number 32 of 2009 states: "...requires the Government and local governments to make a strategic environmental assessment (KLHS) to ensure that the principles of sustainable development have become the basis and integrated in the development of an area and/or development policies, plans and/or programs in an area. ... so that there are no more KRPs that don't have an KLHS. Has interpretive power." Fifth, Article 63 paragraph (1) letter d and Article 64 that the Minister of the Environment has the obligation to implement and coordinate the KLHS." This is equivalent and in line with the command to make RPPLH. Sixth, the General Explanation of point 9 of Law Number 32 of 2009 which states: "...to carry out all government authorities in the field of environmental protection and management and to coordinate with other agencies... an organization with a portfolio of establishing, implementing and supervising policies on environmental protection and management is needed." Dengan fakta-fakta hukum seperti itu sebetulnya tidak ada hal lain kecuali melaksanakan amanat tersebut yaitu ada 2 (dua) hal: Pertama, wacana, dinormakan dan ada instrumen penjaminannya. Kedua, yang perlu diatur, KLH agak ragu dan kurang "percaya diri". Ketiga, memastikan bahwa pembangunan berkelanjutan sudah terintegrasikan ke dalam KRP.

Environmental Based Budgeting (Green Budgeting)

The idea of "Green budgeting" emerged in the later part of the 1990s concurrent to the global arrival of sustainable development as the guiding prism through which we are supposedly emerging. Green budgets and green budgeting are the pragmatic implementation of the principles of sustainable development in the budgetary process, as enunciated in a policy document rooted in sustainability. In this case, although green budgeting is part of economic policy, in practice green budgeting will also have non-economical policy impacts.

Green Budgeting is a concept that has been invented recently in Indonesia and may be seen as a paradigm shift regarding budgetary processes management. As Wilkinson states, Green Budgeting is a budgetary framework characterised by an emphasis on sustainability aspects of environmental in the plans, implementation, monitoring and evaluation of government expenditures and revenue streams supporting them. In particular, all of the budget preparation and taxation process are tailored to follow the principles of environmental sustainability.

In the Law of the Republic of Indonesia Number 32 of 2009, green budgeting is adopted in the Articles 45 and 46. Article 45 of Law Number 32 of 2009 mandates:

Green budgeting is also incorporated in the Law of the Republic of Indonesia Number 32 of 2009 on the Environmental Protection and Management. In accordance with the provisions outlined in Article 45 and 46. Article 45 requires the Government, the People's Representative Council of the Republic of Indonesia, regional governments, and the Regional People's Representative Council to budget sufficient financial resources to support environmental protection and management efforts:

a. Environmental management and protection activities.
b. Environmentally sound development programs.

It is the responsibility of the government to ensure that it sets aside a budget based on its special environmental funding management to those areas that have demonstrated an excellent performance in environmental protection and management.

Providing allocated proportional budget in the finance of environmental protection and management activities and the development of environmentally sound programs as it is demand in Article 45 (1) of Law No. 32 of 2009 is different from what is expected in other laws. Examples of legislation include but also are not limited to Law Number 20 of 2003 regarding National Education System – section 49 of subsection 1, the legislation states that at least 20% of the National Budget (APBN) and the Regional Budget (APBD) should be designated for educational purposes, while Law Number 36 Year 2009 regarding Health – section 171 as well as dictating that at least 5% of the National APBN (excluding salaries) must be used for health initiatives, it also specifies that at least 10% of the Regional APBD (excluding salaries) must be used for health initiatives.

a. Total population.
b. The community and complexity activities which have an influence on the environment.
c. The effect or influence of pollution and/or damage to the health and safety of citizens.
d. Recovery capacity as a result of pollution and/or damage.
e. Another important challenge is the lack of public legal awareness of the importance of environmental issues.

This can be overcome by making enough budget for environmental protection and control of environment related problems and also by making awareness of the public regarding the importance of environmental issues and also importance of the enforcement of existing laws relating to environment and other laws relates other preferences like species, soil, and plants of the country.

a. Preparation of RPPLH;
b. Preparation of KLHS;
c. Licensing;'
d. Supervision;
e. Capacity building of PPLHD/PPNS;

f. Community empowerment; And
g. Development and dissemination of laws and policies in the environmental sector;
h. Law enforcement; and/or
i. Activities and other programs in the framework of environmental protection and management and development programs with an environmental perspective.

The performance criteria for environmental protection and management as mandated in Article 45 of Law paragraph (2) of Law Number 32 of 2009 explain that the performance criteria for environmental protection and management include, among other things, performance to maintain conservation areas and reduce levels of environmental pollution and/or damage. Whereas Article 46 of Law Number 32 of 2009 mandates by stating:

"In addition to the provisions referred to in Article 45, in the framework of restoring environmental conditions whose quality has been polluted and/or damaged at the time this law was enacted, the Government and regional governments are obliged to allocate budgets for environmental restoration."

In the system mechanism, budgeting is the planning of government activities expressed in financial terms. Budgeting creates a budget that plays an important role in planning, controlling, and making government decisions. This budget is able to improve coordination and communication between related institutions. The budget is a concrete manifestation of the government's commitment to overcoming various problems in society. When the government wants environmental sustainability, this government commitment is reflected in the environmental budget. This has been mandated in the General Explanation point 9 of Law Number 32 of 2009 which states:

"This law gives broad authority to the Minister to carry out all government authorities in the field of environmental protection and management as well as to coordinate with other agencies. Also through this Law, the Government gives very broad authority to regional governments in protecting and managing the environment in their respective regions which is not regulated in Law Number 23 of 1997 concerning Environmental Management.

Therefore, it is not enough to have entity only perform its duty on adopting policy creation and coordinating. But it is a must to have the organization which within this law conducted to have comprehensive authorities to create, executive and control the policy of environmental protection and improvement, possess the authority of natural resources utilization with the purpose of conservation, and have budget supports promptly and adequately budgeted from the national revenue and expenditure budget of the government and/or the regional revenue and expenditure budget of the regional government which is appropriate with the substance thereof

to allow the organization to commence the duty, as the primary duties and authorities. Correspondingly, the requisite financial support would need to be forthcoming from the national revenue and expenditure budgets of the central government and the regional revenue and expenditure budgets of regional governments, for governmental entities responsible for environmental protection and management.

Conclusion

The green principle is the concept of worldwide ecolistical care as its very fundamental part that has become an integral part of a broader ideology of human orientation towards the environment. This purpose is focused on promoting the efficiency of development activities and preserving environmental sustainability at the same time. For highlighting its legislative insights, the study has utilized a qualitative research with a descriptive nature and has explored all the documents and legislative material that has described the environmental legislations. The study has used a descriptive exploration and has compiled its findings. In results, the research has found that Article 28H paragraph (1) and Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the constitutionalization of environmental principles as indicated and this means that human rights to a clean and healthy environment are fundamental constitutional principles within the highest legal framework often referred as the "green constitution." This therefore means, all governmental policies, developmental actions must be consistent with the provisions on guaranteeing Here the Constitution shall not enact and set any laws or regulations that can contradict these pro-environmental provisions (green legislations). At the core, all statutory legislations implemented must have green or environmental consequences as laid out in the provision number 44 of law number 32 of 2009. The requirement is further set based upon the judicial review of the regulation on the environmental management, which had been incorporated in the 1945 Constitution of the Republic of Indonesia, as stated in the Articles 28H and 33 paragraph (4).

Significance of the Research

This study has made an initial effort to highlight the importance of the green legislation from the aspect of Indonesia and has contributed many significant contributions to the empirical literature and practical field. First, the researcher has contributed to the empirical body of knowledge by indicating the highest law prevalence of the green legislation in the Republic of Indonesia. Moreover, the research has indicated that the articles and constitutions of Indonesia have supported the environmental supporting legislations. This study has also implied the prevalence and legal support of the environmental concerns that they must be recognized and incorporated at every level and further indicated the legal identity of human environmental cleanliness rights from the legal aspect. In the bottom line, the study has contributed that is legally known, the study has

highlighted that human rights are very important and are environmentally linked and the legal support of the environment should be implied by the policymakers and practitioners.

Limitations of the Research and Future Directions

The limitations of this add more value to the potential areas for future research. In the limitations, the article has addressed only a documented analysis and evaluated the legislative content in exploring the green and environmental legislation but has not described any verified findings from the viewpoints of practitioners. In addition to this, the study has only targeted the constitution of the Republic of Indonesia for investigating the green constitution and has not targeted any global comparison of legislation in the content and qualitative research. Using these limitations, the future researchers and potential scholars can use them as suggestions for extending the contributions and extent of the research. First, the upcoming research can explore the green constitution under any other republic state acts and legislations to provide a more generalized review of the legislative perspective for environmental and green policies or regulations. Future studies can also pay attention using a mixed-method approach by using the dame study's topic by first conducting a documented analysis followed by the approval or confirmation of the practice of the extracted information from the documents to contribute more supported and polished highlights. Next, this study targeted only one article under investigation for environmental legislation, future researchers can prevail this idea by counting more articles and other regulations under observation to indicate the legal support for the environmental sustainability. Lastly, this study was conducted within the legislative context of Indonesia, further studies can add value to the environmental legislations by extending other different geographical locations.

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