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Implementation of Green Constitution in Environmental Protection and Sustainable Development in Indonesia

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Abstract

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This research aims to analyze the implementation of the Green Constitution in environmental protection and sustainable development in Indonesia. This concept is based on Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which affirms the right to a good and healthy environment as well as the principle of environmentally sound development. This research uses a literature study method by examining primary legal sources such as the 1945 Constitution of the Republic of Indonesia, Law Number 32 of 2009, as well as various related regulations, and examining secondary literature from scientific articles, books, and official reports. The results of the study show that although Indonesia already has a strong Green Constitution framework, its implementation still faces obstacles in the form of weak law enforcement, overlapping regulations, lack of supervisory capacity, resistance from industry players, and low public awareness. To optimize its implementation, it is necessary to harmonize policies across sectors, strengthen institutional capacity, increase green investment incentives, and widen community participation. With these steps, the Green Constitution can function as an effective instrument in

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maintaining a balance between economic progress, social justice, and environmental sustainability.

1. Introduction

The global and national environment is currently facing major challenges due to climate change, environmental degradation, and natural resource crises. Climate change, characterized by global warming, has triggered extreme weather phenomena, rising sea levels, and changes in rainfall patterns that have a wide impact on the agriculture, fisheries, health, and human settlements sectors. Environmental degradation, such as deforestation, air pollution, water pollution, and ecosystem damage, further worsens environmental quality and threatens biodiversity sustainability. In addition, the natural resource crisis, including the scarcity of clean water and the reduction of productive land, is a serious problem that requires immediate and integrated handling.

In this context, the concepts of sustainable development and green economy emerged as closely interrelated paradigms and became the answer to these challenges. Sustainable development prioritizes meeting the needs of the current generation without sacrificing the capabilities of future generations, taking into

¹ Insan Ali and Anisur Rahman. "Environmental degradation: causes, effects and solutions." *Int J Multidiscip Res* 6, no. 3 (2024): 1-10.

account the balance between economic, social, and environmental aspects. Meanwhile, the green economy as an integral part of sustainable development focuses on environmentally friendly economic growth, encourages clean technology innovation, and allocates investment in sectors that minimize ecological impacts.²

Indonesia has constitutionally recognized the importance of environmental protection as part of human rights. This is reflected in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which guarantees the right of everyone to live a prosperous life in birth and mind, to live, and to get a good and healthy living environment. Furthermore, Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia regulates the principles of economic democracy which emphasizes togetherness, efficiency, justice, sustainability, environmental insight, independence, and balance in the progress and unity of the national economy. This constitutional provision forms the basis of the concept of the Green Constitution a principle that places environmental protection as a fundamental pillar in the country's basic legal framework.

The implementation of the principles of the Green Constitution in Indonesia was then strengthened through Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). This law regulates systematic and integrated measures to preserve environmental functions, prevent pollution, and address environmental damage. Although normatively it has been aligned with the mandate of the constitution, the implementation of this concept still faces significant

² Suaad Hadi Hassan Al-Taai. "Green economy and sustainable development." In *IOP Conference Series: Earth and Environmental Science*, vol. 779, no. 1, IOP Publishing, (2021): 012007.

challenges, such as weak law enforcement, low environmental awareness, and limited coordination between institutions.

The role of the Green Constitution is becoming increasingly important in driving the transition to an inclusive and sustainable green economy. A constitution that integrates the principles of environmental protection not only provides a strong legal foundation, but also serves as a political and economic signal for business actors and the public to direct investment and innovation to green sectors.³ Furthermore, the Green Constitution has the potential to accommodate the principle of inclusivity, for example by ensuring the active participation of indigenous peoples, farmers, fishermen, and other vulnerable groups in the environmentally friendly development process.

From a human rights perspective, the Green Constitution reinforces the guarantee of the right to a healthy environment as part of the basic rights of citizens.⁴ Thus, the policies and regulations issued by the government must be consistent with the pro-environmental principles mandated by the constitution. This is in line with the principle of generational equality, where natural resources are managed in such a way that they can be used fairly by the current generation without sacrificing the rights of future generations.

This paper aims to examine the role of Green Constitution in encouraging the green economy as a form of inclusive and sustainable development. Through a

³ C. Shan and X. Ji. "Environmental regulation and green technology innovation: an analysis of the government subsidy policy's role in driving corporate green transformation." *Ind. Eng. Innov. Manag* 7 (2024): 39-46.

⁴ Nicholas Bryner. "A constitutional human right to a healthy environment." In Research Handbook on Fundamental Concepts of Environmental Law, pp. 141-159. Edward Elgar Publishing, 2022.

normative juridical approach with a descriptive analysis method, this article will outline the legal basis, implementation constraints, and potential contribution of the Green Constitution to the achievement of sustainable development goals in Indonesia. The focus of the discussion was directed at the synergy between constitutional norms, environmental policies, and inclusive green economic strategies, in order to provide recommendations to strengthen the role of the constitution in responding to environmental and economic challenges in the future.

2. Literature Review

The concept of Green Constitution refers to the integration of environmental protection principles in a country's constitution, which serves as the highest legal basis to encourage environmentally sound policies. According to Rianta,⁵ the Green Constitution in Indonesia is reflected in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which affirms the right to a good and healthy environment as well as the principle of sustainable economic development. This principle was then operationalized through Law No. 32 of 2009 concerning Environmental Protection and Management (*UUPPLH*), although its implementation has not been optimal. This concept is in line with the idea of ecocracy, which is a government system that prioritizes ecosystem

Muhammad Hakim Rianta, Pradnya Kayla Ali Imron, and Ibrahim Danjuma. "Developing the Framework for a Green Constitution: Strengthening Environmental Protection Initiatives in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 5, no. 4 (2023): 445-472.

sustainability in every development policy.⁶ In the Green Constitution, environmental protection is not only seen as a moral obligation, but as a constitutional right that must be guaranteed and enforced. Countries such as South Africa, Ecuador, and Norway have implemented environment-specific articles in their constitutions, which give strong legitimacy to green economy policies.

Meanwhile, the green economy is defined as an economy that results in improved human welfare and social equality, while significantly reducing environmental risks. The green economy encourages the efficient use of resources, the reduction of carbon emissions, investment in renewable energy, and environmentally friendly technological innovation. The relationship between the Green Constitution and the green economy is synergistic: the constitution provides a legal framework and legitimacy, while the green economy provides an implementation mechanism in the real sector. Knox emphasized that the right to a healthy environment is an integral part of human rights. Therefore, any economic policy must consider its ecological impact, so as not to sacrifice environmental quality for short-term economic growth. This underscores the urgency of incorporating the principles of inclusivity, intergenerational justice, and public participation in green economy policies.

Nany Suryawati. "Environmental Development as the Embodiment of Ecocracy Ideas in Green Constitution through Environmental Aware Culture." *Novateur Publication, India Community Service in the Midst of the Covid-19* (2021): 194-199.

⁷ Suaad Hadi Hassan Al-Taai. "Green economy and sustainable development." In *IOP Conference Series: Earth and Environmental Science*, vol. 779, no. 1, IOP Publishing, (2021): 012007.

⁸ John H. Knox. "Constructing the human right to a healthy environment." *Annual Review of Law and Social Science* 16, no. 1 (2020): 79-95.

Previous studies have shown that the main obstacles to the implementation of the Green Constitution in Indonesia include weak law enforcement, lack of coordination between institutions, and low public awareness of environmental rights. In addition, overlapping regulations between the central and regional governments often hinder the effectiveness of environmental policies. Thus, this literature review shows that the success of the transition to a green economy does not only depend on technical and economic aspects, but also on the existence and implementation of a strong legal framework through the Green Constitution. This constitutional principle can be a strategic instrument to ensure sustainable, inclusive, and environmentally sustainable development.

3. Method

This study uses a descriptive method of analysis with a normative juridical approach. The descriptive method of analysis aims to provide a systematic, factual, and accurate picture of the facts and characteristics of the research object, then analyze them to obtain relevant conclusions. This approach was chosen because the study focuses on the study of applicable legal norms, theoretical concepts, and their relationship with implementation practices in the field, especially related to the role of Green Constitution in encouraging the green economy as an inclusive and sustainable development.

⁹ Ionuț VOICU, and Florentina-Aurelia VASILICĂ. "Description Of Types Of Research." *Journal of Marine Technology* & Environment 1 (2024): 62.

The normative juridical approach is used to examine primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia (especially Article 28H paragraph (1) and Article 33 paragraph (4)) and Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). Secondary legal materials include scientific literature, legal journals, academic books, the results of previous research, and official publications of international institutions such as UNEP. Tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and other supporting information sources that help explain legal terms and concepts. Data analysis is carried out by identifying and grouping the principles of the Green Constitution contained in the provisions of the constitution and related laws and regulations. Furthermore, this principle is compared with the concept of green economy developed by international organizations and practices in other countries. The analysis also includes the identification of implementation barriers in Indonesia, including regulatory weaknesses, law enforcement, and institutional coordination.

In addition to normative analysis, this study also refers to environmental law doctrines such as ecocracy and the principles of sustainable development, which are the basis for strengthening the Green Constitution. The analysis was conducted critically to assess the extent to which the existing legal framework is able to drive transformation towards an inclusive green economy, taking into account aspects of human rights protection, intergenerational justice, and community involvement. The results of normative analysis are then associated with empirical reality through a literature study that contains data on the implementation of environmental policies

and green economy in Indonesia. With this method, the research is expected to be able to produce recommendations that are applicable, which can be used to strengthen the position of the Green Constitution as a strategic instrument for sustainable development in Indonesia.

4. Results

4.1. Constitutional Foundation and Implementation of Green Constitution in Indonesia

Environmental protection in Indonesia has a strong legal foundation embedded in the constitution. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of everyone to live a prosperous life in birth and mind, to live, and to obtain a good and healthy living environment. This right is recognized as part of human rights that are justiciable, meaning that it can be used as a basis for filing a lawsuit when a violation occurs against it. In addition, Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia affirms the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and balance of economic progress. These two provisions are the main foothold for the birth of the concept of Green Constitution, which is a constitution that explicitly contains the principles of environmental protection and places ecological sustainability as a priority that is in line with economic and social interests.

Within the framework of the Green Constitution, every state policy, both in the form of laws and regulations and development programs, must be in line with ecosystem protection.¹⁰ This principle is not only declarative, but demands translation into concrete legal and policy instruments. The implementation of this principle in Indonesia is realized through Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) which regulates pollution prevention measures, environmental law enforcement, and rehabilitation of ecosystem damage. This law provides various instruments such as environmental impact analysis (EIA), environmental permits, and environmental economic instruments as operational tools to achieve the goals of environmental protection and sustainable management.

However, the implementation of the Green Constitution at the practical level still faces various challenges. The gap between legal norms and the reality on the ground can be seen from weak law enforcement, overlapping regulations between the central and regional governments, limited supervisory capacity, and low public awareness of the importance of the environment. Many cases of environmental pollution end up without adequate sanctions, while pressure on infrastructure development and industrial growth often comes at the expense of the preservation of natural resources. This situation creates a paradox in which environmental protection has been strongly regulated normatively, but has not been effectively implemented consistently. Therefore, strengthening is needed which includes harmonizing regulations so that there is no conflict of authority, increasing

¹⁰ Pawan Kumar and Sarvesh Kumar. "Research on environmental protection laws and policies for sustainable green development." *Journal of Law and Sustainable Development* 11, no. 6 (2023): e1189-e1189.

¹¹ Endang Sulastri Taufiqurokhman and Harits Hafiid. "Indonesian Governments Policy on Environmental Law in the Era of Regional Autonomy." *Systematic Reviews in Pharmacy* 11, no. 12 (2020): 1203-1209.

institutional capacity to improve the quality of supervision and law enforcement, and encouraging active public participation in environmental supervision and advocacy. With these measures, the Green Constitution can truly function as an effective instrument in realizing sustainable development that is able to maintain a balance between economic progress, social welfare, and environmental sustainability.

4.2. The Role of the Green Constitution in Encouraging an Inclusive Green Economy

The Green Constitution has a strategic role as a legal basis in the transition to a green economy, namely an economic system that is oriented towards sustainable growth, resource use efficiency, and reduction of negative impacts on the environment. As the highest normative framework, the Green Constitution provides direction and legitimacy for the government to develop pro-environmental economic policies. With a constitutional basis, various policies such as the obligation to use renewable energy, limiting carbon emissions, providing fiscal incentives for environmentally friendly industries, and the promotion of clean technology can be formulated and implemented in a sustainable manner. The existence of this legal umbrella ensures that environmental policies are not only temporary or dependent on political changes, but have binding and long-term legal force.

In addition to being the foundation of policy, the Green Constitution also acts as a positive signal for the market and business actors to allocate investment to

¹² Inesa Mikhno, Viktor Koval, Galyna Shvets, Oksana Garmatiuk, and Rima Tamošiūnienė. "Green economy in sustainable development and improvement of resource efficiency." *Central European Business Review 10*, no.1 (2021) 99-113.

green sectors. The legal certainty contained in it provides guarantees to investors that projects in the fields of renewable energy, waste management, and low-carbon industries will receive full support from the state, both in the form of regulatory protection and ease of access to funding. This is in line with global economic trends that increasingly emphasize decarbonization and sustainable innovation, so as to increase Indonesia's competitiveness at the international level.

Another important role is as an instrument of social inclusion. The Green Constitution emphasizes that the benefits of green economic development must be felt by all levels of society, including vulnerable groups such as indigenous peoples, farmers, and fishermen.¹³ This approach ensures that the transformation towards a green economy not only benefits a handful of parties or large corporations, but is also able to improve people's welfare equally. This principle of social justice is key to creating broad public support for green policies, while minimizing the potential for social conflict due to inequality in access to resources.

The integration between the Green Constitution and the green economy is also closely related to the achievement of the Sustainable Development Goals (SDGs), especially the 7th goal on clean and affordable energy, the 12th goal on responsible consumption and production, the 13th goal on handling climate change, and the 15th goal on the protection of terrestrial ecosystems. ¹⁴ By linking constitutional principles to these global targets, Indonesia not only strengthens its

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N. P. Hariram, K. B. Mekha, Vipinraj Suganthan, and K. Sudhakar. "Sustainalism: An integrated socio-economic-environmental model to address sustainable development and sustainability." Sustainability 15, no. 13 (2023): 10682.

Mieczysław Adamowicz. "Green deal, green growth and green economy as a means of support for attaining the sustainable development goals." Sustainability 14, no. 10 (2022): 5901.

bargaining position in international forums, but also ensures that national economic development runs in line with the global sustainability agenda. Thus, the Green Constitution is an important foundation that is able to direct policies, encourage investment, and ensure social justice on the way to an inclusive and sustainable green economy.

4.3. Challenges and Opportunities for Strengthening Implementation

The results of the analysis show that the implementation of the Green Constitution in Indonesia still faces various complex challenges. One of the main obstacles is the limited integration of policies across sectors, where the environmental, energy, and economic sectors tend to run independently without adequate coordination. This condition makes synergy in realizing sustainable development difficult to achieve. In addition, the weakness of coordination between the central and regional governments is also a significant obstacle. It is not uncommon for development policies at the regional level to conflict with the national agenda for environmental protection, both due to differences in priorities and limited understanding of the principles of sustainable development.

Another challenge arises from the resistance of industry players to the transition to green technology. Many business actors view the initial costs needed to switch to environmentally friendly technology as relatively high, so they are reluctant to invest without adequate support or incentives from the government. On the other hand, policy instruments that can provide incentives such as tax exemptions,

¹⁵ Shanty Saleh, Indah Nur, and Bita Gadsia Spaltani. "Environmental judge certification in an effort to realize the green legislation concept in Indonesia." *Law and Justice* 6, no. 1 (2021): 1-18.

subsidies, or ease of licensing for green innovation are still minimal and have not become a strategic priority in national economic policy. ¹⁶ Low public participation also exacerbates the situation, as the lack of community involvement in monitoring and advocacy makes the implementation of environmental policies often run without effective social control.

However, the potential to strengthen the implementation of the Green Constitution in Indonesia is still wide open. One of the efforts that can be made is to strengthen environmental articles in the constitution or even form special articles that explicitly regulate sustainable development. Environmental law enforcement also needs to be improved, with the imposition of strict, transparent, and consistent sanctions against violators. At the policy level, cross-sectoral integration is needed through the establishment of a national coordinating body that has strong authority to harmonize environmental, energy, and economic policies.

In addition, the government needs to expand incentives for green investment, both in fiscal forms such as tax exemptions and non-fiscal ones such as ease of access to technology and funding. This step will drive industrial transformation towards a more environmentally friendly business model. No less important, public education on environmental rights must be strengthened so that people have the awareness and capacity to actively participate in environmental monitoring, advocacy, and initiatives. Through the combination of these measures, the Green Constitution will not only become a legal document, but also serve as a real

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¹⁶ Long Tengfei and Ahsaan Ullah. "Impact of fiscal policies and green financing on firm innovation and firm value for green economic recovery." *Heliyon* 10, no. 9 (2024).

instrument in driving the transformation towards an inclusive, fair, and sustainable green economy in Indonesia.

5. Discussion

The results of the study show that the Green Constitution in Indonesia has a fairly strong normative foundation, especially through Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Constitution is not only the highest legal norm, but also a manifestation of the state's commitment to the principle of sustainability. Within the framework of modern environmental law theory, the existence of these articles fulfills the principle of constitutional environmentalism, namely the placement of environmental protection as an integral part of human rights and development policies.

The first sub-chapter emphasizes the gap between norms and implementation. This phenomenon has been discussed by Zahroh,¹⁷ who considers that the main problem of environmental law in Indonesia is not the lack of rules, but the weak enforcement. Weak central-regional coordination, low institutional capacity, and resistance from short-term economic interests often hinder policy effectiveness. This reinforces Roscoe Pound's view of law in action, that the success of law depends not only on norms, but also on their applicability in the field.

The second sub-chapter highlights the role of the Green Constitution in encouraging an inclusive green economy. This is in line with the inclusive green

¹⁷ Ummi A'zizah Zahroh, and Fatma Ulfatun Najicha. "Problems and challenges on environmental law enforcement in Indonesia: AMDAL in the context of administrative law." *Indonesian State Law Review (ISLRev)* 5, no. 2 (2022): 53-66.

growth framework adopted by the World Bank, where economic growth must minimize environmental degradation while ensuring equitable distribution of benefits. Research by the OECD shows that a clear legal foundation can provide policy certainty, which is an important factor for the entry of green investments. In Indonesia, this opportunity can be seen in the increasing interest of investors in renewable energy projects and waste management, although regulatory and bureaucratic obstacles remain obstacles.

The third sub chapter identifies implementation challenges, which include policy fragmentation, industry resistance, and a lack of green incentives This perspective emphasizes that achieving a green economy requires supportive conditions such as adequate fiscal policies, environmentally friendly regulations, and continuous technological innovation. These challenges also show the need for a whole of government and whole of society approach, where environmental policy is not only the affair of the Ministry of Environment, but also integrated in the energy, industry, agriculture, and education sectors. Theoretically, strengthening the Green Constitution can strengthen the rule of law in the environmental sector. However, as stated by Heinen¹⁸ in the theory of polycentric governance, the success of environmental governance requires multi level collaboration between the central government, the regions, the private sector, and civil society. Therefore, policies

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¹⁸ Deborah Heinen, Alessandro Arlati, and Jörg Knieling. "Five dimensions of climate governance: a framework for empirical research based on polycentric and multi-level governance perspectives." *Environmental policy and governance* 32, no. 1 (2022): 56-68.

should encourage broader public participation, including indigenous peoples who have local knowledge in natural resource management.

In addition, global pressure on reducing carbon emissions and fulfilling Paris Agreement commitments provides an important momentum for Indonesia to accelerate the implementation of the Green Constitution. The integration of constitutional principles with the green development agenda can be a competitive advantage in international trade, given the trend of carbon border adjustment in various countries. Thus, this discussion shows that the Green Constitution is not only a legal framework, but also a strategic instrument that can direct Indonesia towards an inclusive green economy. However, its success is largely determined by political consistency, cross-sectoral regulatory support, green investment incentives, and community participation in policy oversight and implementation.

6. Conclusion

This study confirms that the Green Constitution in Indonesia, which is reflected in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, provides a strong normative foundation for environmental protection and sustainable development. This constitution not only contains the right of every citizen to get a good and healthy environment, but also affirms the principles of sustainability, justice, and environmental considerations in the national economy. Implementably, the implementation of the Green Constitution faces a number of obstacles, including weak law enforcement, intersectoral policy fragmentation, resistance from industry players, and lack of incentives

to encourage green investment. Nevertheless, the Green Constitution has great potential to be a strategic instrument in encouraging transformation towards an inclusive green economy, where economic growth is in line with environmental sustainability and equitable distribution of benefits for all people.

To optimize the role of the Green Constitution, consistent political commitment, strengthening cross-sectoral regulations, increasing institutional capacity, and implementing fiscal and non-fiscal incentives for environmentally friendly practices are needed. The active participation of communities, including indigenous peoples, is also an important factor in realizing effective and equitable environmental governance. With the integration of constitutional legal frameworks, green development policies, and multi-stakeholder collaboration, Indonesia has a great opportunity to achieve sustainable development that not only meets the needs of the current generation, but also preserves natural resources for future generations.

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