

Legal Convergence Related to Environmental Protection Policy with Investment Policy in Constitutional Perspective

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ABSTRACT

This study is to examine the legal convergence related to environmental protection policies with investment policies in a constitutional perspective. The environment has become a supreme power in the constitutional life of Indonesia. The concept of environmental sovereignty is clearly regulated in Article 25A, Article 28H paragraph (1) and Article 33 paragraph (3) and (4). These articles provide green nuances to the 1945 Constitution, so that the implementation of the articles in the 1945 Constitution provides new thinking for lawmakers so that the concept of the environment can be realized in every law made. The problems that will be in this study are How is the Convergence of Law Related to Environmental Protection Policy with Investment Policy in Constitutional Perspective and How can policies be provided by the government in accordance with the constitution related to the convergence of Environmental Protection Policy with Investment Policy. The research method used is a normative research method using a *statute approach* and analyzed using *content analysis*

INTRODUCTION

Environmental problems by not adhering to conventional handling mechanisms as mentioned above. The discussion will use a different perspective and is outside the existing environmental study habits, namely through a constitutional law approach¹. However, this study certainly does not deny that these conventional measures have also produced results. On the contrary, it will be more complete when studies with a constitutional perspective are included in it. Therefore, this paper aims to find and strengthen solutive steps in efforts to deal with environmental issues in Indonesia. The environment is not something abstract, although the impact can be felt vaguely, because it is felt together, with shared responsibility, it can even end in forgetting together.²

The threat to the environment in Indonesia today is not only a pandemic, but also an increasingly aggravating investment regime. The threat to the massive environment can be seen in WALHI's record, that around 61.46% of land is controlled by corporations in the plantation, forestry, mining and oil and gas sectors. This very high inequality is confirmed by the Gini ratio of land tenure of the Central Statistics Agency (BPS) in 2013 which reached 0.68.31. This means that 1% of Indonesia's population controls 68% of the land. Environmental damage is still happening. Instead of fulfilling the rights of the people, the state actually issued policies that actually strengthened corporate control through various regulations issued.³ This environmental problem usually stems from the encouragement to utilize continuously and excess natural resources without considering the carrying capacity of these natural resources. To pursue prosperity, natural resources are seen as factors of production to realize development goals.⁴

The environment is seen as a system made up of subsystems. In ecology also humans are one of the subsystems in the environmental ecosystem. Thus man is an integrated unit with his environment and between them a⁵ functional relationship is established. In this functional relationship between humans and the environment, there is an interdependence and interdependence that will ultimately affect the ecosystem as a whole. To achieve harmony, harmony, and balance between subsystems in the ecosystem, an integrated management system is needed.⁶ As an ecosystem, the environment has social, cultural,

economic and geographical aspects with different patterns and carrying capacities Development politics that focus more on economic growth to pursue the welfare of the people often bring problems in the environmental sector.⁷

Even in economic development, the environment is actually out of context. The market mechanism through demand and supply (*demand-supply*), is never limited by the amount of consumption and supply due to the limited carrying capacity and carrying capacity of nature that produces these goods. Such a way of thinking will always favor investment for economic growth, which brings additional consumption and supply of goods, for example with the growth of factories and the exploitation of natural resources. In other words, such a way of thinking is deceived by an odd narrative in the mind,⁸that the economy must still grow through the size of the pseudo-kine even if it results in environmental damage.⁹ To reinforce this misconception, environmental damage has never been calculated for its monetary value, which is the cost of growing the economy.

THEORETICAL REVIEW

Thus, in many countries, macroeconomic performance is achieved at the expense of the environment, as a result of which political rationality regards it as invisible. As a result, the environment is considered irrelevant to be discussed politically. Weak policies to address spatial planning violations, for example, result in habitual violations by state institutions and institutionalization in community behavior. We also turn a blind eye to the imitation of environmental quality.¹⁰ That ignorance and indifference is certainly taken advantage of by power. Because, the power platform always uses a scientific framework that is realized through all definitions, categorizations, statements on problems, instructions, policies, laws and all institutional aspects that become the medium of its implementation. In many ways, the framework of power filters postulates based on the discourse of the field of science that is in line with the goals of power at hand. At that point, the knowledge-power duality "forgets its essential purpose, because the power behind it is invisible."¹¹

Based on the description above, legal protection is needed for the community to defend their rights related to the environment. Environmental problems due to environmental policy with investment policy are especially studied in the perspective of the constitution. The 1945 Constitution has contained

constitutional norms in an effort to protect the environment. However, these constitutional norms are still positioned as subsidair or supporting factors in the fulfillment of human rights and the national economy. To strengthen environmental protection in the 1945 Constitution, it is necessary to reformulate constitutional norms that place the environment more as basic values in state administration and national economic activities.¹²¹³ Therefore, the problem to be discussed in this study is how is the legal convergence related to environmental protection policy with investment policy in a constitutional perspective.

METHODOLOGY

The research method used is a normative research method, using a *statute approach* related to legal convergence related to environmental protection policies with investment policies in a constitutional perspective. The¹⁴ *statute approach* is to examine matters concerning legal principles, legal views and doctrines, and laws and regulations related to the meeting point between Environmental Protection Policy and Investment Policy in a Constitutional Perspective, with accurate and accountable data. In addition, an in-depth examination of the legal facts is also held to then seek solutions to the problems that arise in the symptoms concerned.¹⁵¹⁶

RESULTS AND DISCUSSION

Constitution and Environment

After almost fifteen years after the last amendment to the 1945 Constitution in 2002, many parties began to pay attention to constitutional studies that touched on environmental issues. The provisions resulting from the amendment have brought important significance to the availability of constitutional guarantees for environmental sustainability in Indonesia. Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution are key provisions regarding the regulation of environmental norms in the Indonesian Constitution. The article explains that everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services and Article 33 paragraph (4) which explains that The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and

by maintaining a balance of progress and national economic unity. Based on the two articles above, it is clear that the 1945 Constitution has also accommodated *constitutional protection*, both for its citizens to obtain an adequate living environment and guarantees the maintenance of a sustainable environmental order against the negative impacts of national economic activities.¹⁷

This provision contains the understanding that every citizen has the right and obtains *a constitutional guarantee* to live and obtain a good and healthy living environment to grow and develop. The right to live and get a good and healthy living environment.¹⁸ That is, the needs of Indonesian citizens must also be met in accordance with adequate measures both for their health and other matters related to supporting one's life. More broadly, this norm is strengthened by the inclusion of one of the objectives of the state as a state ideal (¹⁹*staatsidee*) in the Fourth Paragraph of the Preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and all Indonesian bloodshed.²⁰

Thus, the right to life and personal liberty in the Indian Constitution are interpreted to also include "*the right to a wholesome environment*".²¹ Furthermore, although the right to live and obtain a good and healthy environment can stand alone, sometimes this right is closely related to other constitutional norms that intersect with the environment, namely the norms of "sustainable development" and "environmentally friendly".²² It is clear that the constitution guarantees environmental protection. Therefore, ideally in investment development or state development aimed at economic development should consider environmental sustainability. Thus, there are 2 (two) concepts related to the idea of ecosystems, namely that the national economy based on economic democracy must contain sustainable principles and environmental insight. That is, in nature it is recognized that there is its own power and human rights that must not be violated by anyone (*inalienable rights*). Nature is recognized as having its own sovereignty. Therefore, in addition to the people as human beings who are considered sovereign, nature is also sovereign. This is what is meant by the principle of environmental sovereignty which is also contained in the 1945 Constitution. Thus, we can say that the 1945 Constitution is also a green *constitution* that is important to realize and uphold in the state.

Convergence of Environmental Problems Due to Investment Development in Constitutional Perspective

In an effort to achieve national goals, national development activities are carried out as a series of sustainable development efforts covering all aspects of the lives of the community, nation and state.²³ These activities allow excessive utilization of resources, resulting in pollution and destruction of the environment globally. In the national legal system based on Pancasila and the 1945 Constitution, each field of law is part of the national system and must be based on Pancasila and the 1945 Constitution. Each area of national law is based on Pancasila, based on the 1945 Constitution and consists of a number of laws and regulations, jurisprudence and customary law including environmental law. By using this pattern or frame of mind we will think systemically, although each area of law can develop according to its own needs. Environmental law in its simplest sense as the law that regulates the environmental order (environment). The environment as a unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affects nature itself, the survival of life, and the welfare of humans and other living things.²⁴

With regard to activities in the utilization of natural resources, it is regulated in Article 33 paragraph (3) which states that Earth, Water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, and this is also a problem because it is used as a basis for sectors to make laws so as to make disharmony and synchronization of laws and regulations in the field of environment. In Indonesia, the concept of Environment as a subject of law develops at the practical level, namely at the level of jurisprudence. The Environment as a subject of law means that the Environment has legal rights and obligations, in this case making a lawsuit or demand in the concept of legal *standing*. There is a problem if the constitution regulates matters that are too technical, this is related to the content of a constitution, but environmental problems are not problems that will be resolved in the legal system in Indonesia.²⁵

The environment and the use of natural resources have a close relationship with economic factors so that many sectors are interested, causing disharmony in the formation and dissynchronization in its implementation. So there is nothing wrong that a constitution regulates rights regarding the Environment in it so that it has more attention, considering the Environment as a *common heritage of mankind* and it is the responsibility of the state to

preserve and maintain it for the benefit of the present and the future. The constitution in Indonesia is understood as a written, supreme and valid text and is used as a basis for state administration. It is a positive thing if the constitution mentions matters and rights related to environmental management in the constitution.²⁶ Affirmation of the right to the environment will prevent overlapping laws and regulations and make laws and regulations harmonious because they come directly to the constitution. Provisions regarding environmental protection and management must be expressly included in the constitution considering that critical environmental issues and interests due to development activities will increase the damage and pollution to the environment, with executive and legislative commitments, especially Indonesia, can propose constitutional amendments. The arrangements in this constitution will be used as the basis for the laws and regulations under it so that all provisions will be sourced to the constitution oriented towards preserving environmental functions.

To strengthen environmental protection, especially from a constitutional perspective, there are several steps that can be taken. First, although the 1945 Constitution has included several provisions related to the environment, when compared to the constitutions of other world countries, Indonesia can still be said to be a country that does not too firmly regulate the constitutionalization of environmental principles in its constitution. In the event of the fifth amendment to the 1945 Constitution, it is necessary to formulate stronger norms of environmental protection and human rights with negative reasons and impacts on environmental problems.²⁷²⁸

In fact, the constitutionalization of environmental norms in the constitution should be made separately and no longer combined with other parts that suggest the environment is a subsidair factor under economic factors or simply to be exploited for profit and economic growth. Protection of the environment should be read from a human rights perspective. Since the issue of environmental problems is a common issue and is in the common interest of all citizens, it is appropriate for the strengthening of environmental norms in the constitution to gain a central position, because it does not contain the political-pragmatic interests of ²⁹ certain groups or groups. Second, the mechanism for testing constitutionality in the Indonesian legal and constitutional system is only limited to the product of law. Against the products of legislation under the law there is no mechanism to test its

constitutionality. Thus, it is unfortunate if the constitutionalization of norms is successfully strengthened, but in reality the mechanism of testing the constitutionality of laws and regulations is still half-hearted.³⁰

In the future, it is also necessary to consider placing the authority to test the constitutionality of all laws and regulations under one roof in order to create vertical-tiered integration of the legislative system in line with the 1945 Constitution. The absence of a³¹ *constitutional complaint* mechanism in the Indonesian legal system can also be an obstacle when there is a citizen or group of citizens who want to come to court to defend their constitutional rights due to environmental damage caused by the actions or decisions of government officials. Third, socialization of the constitutionalization of environmental norms is very important to always do. At least increased knowledge of the environmental constitution can be given to state policy makers at every level of government, including judges. Moreover, state and government officials have vowed to carry out the contents of the constitution conscientiously. With increasing ecological *awareness* among policy makers, it is hoped that they can help enlighten citizens gradually and comprehensively. Thus, when there is a clash between the interests of environmental sustainability and the interests of economic growth, policymakers can consciously choose the interests of environmental sustainability as their priority

Therefore, the constitution has very clearly guaranteed that economic development must be environmentally sound and not damage the environment. Sustainable *Development* or Sustainable development is a pattern of economic growth where resources are used to meet human needs while preserving the environment, so that these needs can be met not only in the present, but also for future generations. Development means taking, cultivating, and transforming resources of natural origin. Thoughts that are only profit-oriented, cause humans to forget the importance of sustainable development and override the balance of nature that has a wider impact. By ignoring the greater effect, the work of development has been able to realize the aspired goals but sacrifice the heavier ones

CONCLUSION

Based on the description above, it can be concluded that the Convergence of Law Related to Environmental Protection Policy with Investment Policy in the Constitutional Perspective can be seen that the government is currently very massive in building The economy that will have an impact on the environment

in fact the constitution has stipulated that the country's economic development must consider environmental aspects and sustainability. Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution are key provisions regarding the regulation of environmental norms in the Indonesian Constitution. Article 28H paragraph (1) explains that everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services and Article 33 paragraph (4) which explains that The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. Based on the two articles above, it is clear that the 1945 Constitution has also accommodated *constitutional protection*, both for its citizens to obtain an adequate living environment and guarantees the maintenance of a sustainable environmental order against the negative impacts of national economic activities.

ADVANCED RESEARCH

This research still has limitations so that further research is still needed on this topic.

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