

CONTROLLING ENVIRONMENTAL DAMAGE DUE TO DEVELOPMENT IN THE PERSPECTIVE OF CONSTITUTIONALISM IN THE INDONESIAN LEGAL SYSTEM

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ABSTRACT

Controlling environmental damage due to development is an important issue in the context of the constitutionalism of the Indonesian legal system. With the rapid development, the principles of environmental sustainability are often ignored, resulting in ecosystem degradation and a decrease in the quality of life. From a constitutional point of view, the 1945 Constitution of the Republic of Indonesia places environmental protection as part of human rights and state responsibility. This article examines various legal and policy instruments used in the Indonesian legal system to control environmental damage, including the role of the Constitutional Court in enforcing environmental protection. Furthermore, this analysis highlights the challenges in implementing environmental policies and provides recommendations for strengthening legal enforcement mechanisms to achieve sustainable development. The research method we will use is a normative legal method which we take from literature data and then summarize. In this discussion we have contained information about what kind of development in Indonesia is based on constitutional provisions.

Keywords: Environmental destruction, development, constitutionalism, Indonesian legal system, sustainability, environmental protection.

A. INTRODUCTION

Development serves as a fundamental pillar in our pursuit to enhance community welfare and quality of life. However, despite its advantages, development often results in adverse environmental impacts. Environmental degradation caused by activities such as deforestation, pollution of water and air, and land degradation poses significant threats to ecosystem sustainability and public health. For Indonesia, a nation abundant in natural resources, mitigating environmental damage is of critical importance. Addressing these pressing issues requires a comprehensive and effective legal approach. Constitutionalism, as a cornerstone of the Indonesian legal system, enshrines environmental protection as part of human rights. Article 28H(1) of the 1945 Constitution of the Republic of Indonesia affirms that every individual has the right to physical and spiritual well-being, adequate housing, and a healthy and sustainable environment.

Additionally, Article 33(4) underscores that the national economy is structured based on principles of sustainability and environmental stewardship. Nonetheless, in practice, the enforcement of these constitutional principles encounters numerous challenges. Development policies that neglect environmental considerations, weak enforcement of environmental laws, and conflicts of interest between economic stakeholders and public welfare are significant barriers to addressing environmental degradation. Hence, a thorough examination is required to

assess how constitutional principles can be effectively implemented within the Indonesian legal framework to mitigate environmental harm caused by development activities.

Managing environmental degradation caused by development is a critical issue within Indonesia's legal framework. In recent years, the country has witnessed a significant surge in development projects that pose risks to environmental sustainability. As a cornerstone of Indonesia's legal system, constitutionalism offers a robust mechanism to address these challenges. It emphasizes safeguarding human rights and public welfare while ensuring that legal decisions are guided by principles of fairness and transparency. Environmental preservation must be embedded in the legal decision-making process.

Article 33 of the Indonesian Constitution stipulates that the state holds the authority to regulate and oversee the utilization of natural resources to ensure the greatest benefit for the people. Consequently, environmental protection must be inherently embedded within legal decision-making processes and effectively integrated into the Indonesian legal framework. This study examines the role of constitutionalism as a mechanism for curbing environmental degradation caused by development. It explores the application of constitutional principles within the Indonesian legal system to safeguard the environment and mitigate the adverse impacts of development activities.

Thus, this study aims to contribute to the enhancement of Indonesia's legal framework, ensuring it becomes more effective in safeguarding the environment and preventing environmental degradation caused by development activities.

B. RESEARCH METHODS

This research employs a standard methodology, utilizing normative legal research, which is conducted by examining library resources and secondary data. Normative legal research, often referred to as doctrinal research, involves an analysis of legal norms, principles, and doctrines. As defined by Peter Mahmoud Marzuki, normative legal research is the process of exploring and interpreting legal rules, principles, and doctrines to resolve legal issues. Additionally, this study will utilize secondary data, which is derived from literature. Secondary data refers to primary data that has been processed and presented by the original data collectors or other entities.¹

The objective of utilizing primary data is to gather original information, establish a theoretical or legal foundation, identify constraints, and clarify meaning. Additionally, this research incorporates secondary legal sources. Secondary legal materials are those that elucidate

¹ Pan Mohamad Faiz, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court," *Constitutional Review* 2 (2016): 103–28.

primary legal materials, derived from library research in the form of literature relevant to the research topic. These materials support the legal research process, including the methods used for analyzing primary legal sources, alongside secondary and tertiary legal sources.

C. DELIBERATION ON FINDINGS AND ANALYTICAL EXAMINATION

Pollution occurs when natural elements are contaminated by external substances, leading to the creation of entirely new compounds distinct from the original elements, or when these substances become part of a specific environmental context. This form of pollution constitutes a significant environmental issue, impacting nations on a global scale.

Efforts to protect and preserve water resources, particularly in controlling water pollution, are of critical importance. One of the legal frameworks addressing water pollution prevention is Government Regulation Number 82 of 2001 concerning Water Quality Management and Control, which replaced the earlier Government Regulation Number 20 of 1990. This regulation emphasizes that water quality and management must be conducted based on ecosystem principles, ensuring that environmental aspects are taken into account comprehensively and holistically (integrally and comprehensively).²

The Law of the Republic of Indonesia concerning Environmental Protection and Management (UUPLH), enacted on January 32, 2009, establishes regulations aimed at the prevention and control of health risks associated with environmental health. These regulations encompass prevention, control, and mitigation measures. The responsibility for the implementation of these measures lies with the government, local authorities, and health professionals. Environmental protection refers to the condition of the environment that safeguards against the introduction of hazardous or harmful factors, which are not effectively managed in accordance with their designated functions. The challenges encountered to date primarily stem from human activities related to entrepreneurial endeavors, leading to the ineffective functioning of environmental labels. Such activities result in residual impacts that adversely affect the environment.³ Accordingly, three fundamental aspects concerning environmental pollution can be identified:

1. The substances that enter and/or are present within the environment,
2. The quality of the environment and/or the degradation thereof, and
3. The designation or role of the environment.

In the Indonesian legal framework, constitutionalism significantly contributes to the limitation of environmental harm resulting from development activities. The Indonesian

² H.M. Erham Amin, *Proses Penegakan Hukum Dan Upaya Pengendalian Masalah Lingkungan Hidup*, n.d.

³ Ali Darwin dan Barhamudin, *Pengaturan Hukum Indonesia Tentang Pemanfaatan Lingkungan Untuk Kesejahteraan Masyarakat*, n.d.

Constitution, specifically the 1945 Constitution, encompasses principles of environmental protection and the sustainable management of natural resources. Consequently, measures aimed at addressing environmental damage must be grounded in the principles of constitutionalism and the environmental law currently in effect in Indonesia.

Firstly, while the 1945 Constitution of Indonesia implemented various provisions concerning environmental protection that distinguish it from the constitutions of other nations, Indonesia continues to struggle with consistently upholding environmental principles. Amendments to the 1945 Constitution necessitate a reevaluation and reinforcement of environmental standards and human rights, which may result in stricter regulations that could adversely affect the environment.

Environmental standards should not solely rely on the subsidy aspect within the economy, or on the development of resources and economic growth. Instead, environmental protection ought to be addressed from a human rights standpoint, recognizing that environmental issues are collective challenges that concern all nations equally. Consequently, environmental standards should be prioritized in constitutional frameworks, as they are not influenced by the political or practical interests of specific groups or factions.

Secondly, the mechanism for constitutional complaints within the Indonesian legal framework can be utilized to compel the government or governmental bodies to adhere to constitutional rights in cases of environmental infringements resulting from governmental decisions and actions.

Thirdly, the incorporation of socialist principles concerning environmental standards is vital for the realization of this objective. An enhanced understanding of environmental law will aid in shaping policies across all tiers of government, thereby serving the interests of both the state and the populace. Elevating environmental consciousness among policymakers will enable them to make well-informed decisions and place greater emphasis on environmental concerns.⁴

Fourth, governance theory posits that nation-states are required to collaborate with governmental actors in order to fulfill their objectives. This necessitates a comprehension of the global context in which states must engage with multinational corporations and non-governmental organizations. Within the domains of politics and international relations, states in the contemporary global era must enhance their performance through the refinement of their governance systems.

Optimal collaboration among governmental stakeholders should be attained through a structured government hierarchy and a hybrid governance system, ensuring that no specific

⁴ I Gusti Ayu Ketut Rachmi Handayani, "Green Constitution Sebagai Penguatan Norma Hukum Lingkungan Dan Pedoman Legal Drafting Peraturan Perundang-Undangan Di Indonesia," *Yustisia* 82 (2011): 75–82.

government department is granted undue authority. This approach aligns with what Williamson (1996) subsequently termed a governance mechanism.⁵

To effectively address environmental degradation resulting from development within the Indonesian legal framework, it is essential to uphold the constitution as the fundamental legal instrument that safeguards human rights, including the right to justice and the right to a healthy environment. The following measures may be implemented:

1. **Monitoring and Control:** It is imperative that governmental and legal authorities oversee and regulate development projects to safeguard environmental integrity and uphold community rights. The Indonesian Constitution enshrines the government's duty to protect the environment and conserve natural resources, as articulated in Article 33, paragraph (3) of the 1945 Constitution.
2. The development and periodic updating of legislation is essential to encompass environmental considerations and safeguard the rights of citizens. For instance, Law Number 32 of 2009 concerning Environmental Protection and Management mandates that the government has a duty to safeguard the environment and maintain the integrity of natural resources.
3. Community participation is essential in the decision-making processes concerning development to safeguard environmental interests and civil rights. The Constitution of Indonesia affirms the right of citizens to engage in decision-making at both national and state levels, as articulated in Article 28, paragraph (2) of the 1945 Constitution.
4. **Monitoring and Complaints:** It is imperative for laws and governmental agencies to monitor and supervise the execution of decisions related to development in order to safeguard citizens' rights. The Indonesian Constitution explicitly affirms that citizens possess the right to lodge complaints in the event of rights violations, as articulated in Article 28, Paragraph 3 of the 1945 Constitution.⁶

Controlling environmental damage resulting from development through the lens of constitutionalism within the Indonesian legal framework can be analyzed from various perspectives.

- a. The 1945 Constitution of the Republic of Indonesia ensures the right of individuals to exist within a harmonious and sustainable environment. Article 28D, paragraph (1) of the 1945 Constitution asserts, "Every individual is entitled to live in a balanced and sustainable environment."

⁵ Oliver E. Williamson, *The Mechanism of Governance* (New York-Oxford: Oxford University Press, 1996).

⁶ Delfina Gusman, "Keadilan Dalam Perspektif Konstitusionalisme," *Unes Journal of Swara Justisia* 7 (2023).

- b. The Environmental Protection Law Number 32 of 2009 underscores the significance of sustainable management of the environment. Article 1 of Law Number 32 of 2009 defines "the environment" as an essential aspect of life that requires protection and preservation for the benefit of both current and future generations.
- c. Article 28H(1) and Article 33(4) of the 1945 Constitution of Indonesia serve as critical provisions pertaining to environmental standards within the nation's constitutional framework. The following clauses are delineated as follows: Article 28H Paragraph (1): "Every individual is entitled to both physical and spiritual well-being, adequate housing, and a quality of life that is good and healthy." Article 33 Paragraph (4): "The national economy is predicated on economic democracy, adhering to principles such as integrity, equitable efficiency, sustainability, environmental sensitivity, self-reliance, and balance, thereby fostering a 'Standard of Progress' and promoting national economic unity."⁷
- d. Environmental damage control in relation to development within the framework of the Indonesian legal system can be illustrated through various examples. Indonesian courts have ruled in multiple cases that the government bears a responsibility to safeguard the environment and mitigate environmental harm resulting from developmental activities. The establishment of the sustainable development concept necessitates comprehensive planning for environmental damage, the mitigation of adverse environmental impacts through environmental impact assessments, and addressing issues related to air, water, and land. This includes enhancing environmental sustainability and implementing waste management strategies to combat environmental threats. Furthermore, environmental protection is achieved through the promotion of environmental improvements, the formulation of effective environmental policies, and the active participation of communities and local stakeholders in environmental management. Additionally, robust enforcement of environmental laws is essential to safeguard the environment and promote domestic cooperation in environmental protection efforts.⁸

In the Indonesian legal framework, environmental development holds significant importance across various dimensions, including the constitutional safeguarding of the state's right to a healthy and safe environment, the necessity for a balance between developmental pursuits and environmental needs, and the enforcement and implementation of relevant laws and regulations. The constitutional perspective underscores that development should not compromise the environmental systems and ecosystems that future generations will rely upon. Moreover, law enforcement and legal certainty are critical elements in the advancement of

⁷ MH Dr. Moh. Fadli, SH., MH., Mukhlis, SH., MH., Mustafa lutfi, S.Pd., SH., *Hukum Dan Kebijakan Lingkungan* (Malang, 2016).

⁸ Pan Mohamad Faiz, *Perlindungan Terhadap Lingkungan Dalam Perspektif Konstitusi*, n.d.

Indonesia's legal and constitutional system to uphold ecological equilibrium in the face of all transformations, as prioritizing harmony is essential. This perspective also highlights the importance of transparency and accountability in decision-making processes, focusing on environmental considerations, project execution, and environmental impact assessments. Consequently, both governmental bodies and economic stakeholders are required to take into account the environmental repercussions of their actions.⁹ In the framework of constitutionalism, the government is empowered to exercise this authority.

D. CONCLUSION

Based on our previous discussions and research, we conclude that Indonesia must reassess the continuity of its constitution in relation to the governance of the nation. It is essential to consider the national structure in accordance with the constitution currently in effect in Indonesia. Development aims to enhance the quality of life for local communities; however, if development is not executed effectively, achieving this objective will be challenging. Consequently, the law must be prepared to address these considerations, as there are several aspects that require legal scrutiny.

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⁹ sabrina zidni fhadilla Dede Kurniawan, Wawan hermawan, isep sunandi, *Pendekatan Hukum Terhadap Isu Isu Lingkungan Dalam Pembangunan Berkelanjutan Tantangan Dan Prospek*, 2021.

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