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Green Constitutional Paradigm for Sustainable Environmental Development in the Capital of Archipelago: A Comparative Research with France and Ecuadorian Constitution

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ABSTRACT

Green constitution is the solution to various kinds of public concerns related to the decline of environmental functions. Although the 1945 Constitution, attempted to contain articles on the environment, Indonesia was still classified as a country that only regulated it formally. The implication was the inadequate exploration of the National Capital City developed based on the concept of smart forest city. This led to environmental damages in the form of deforestation and lengthy sustainable recovery. Normative methods were adopted to examine the environmental aspects as a state of law. This was further analysed in view of the relevant issues. The 1945 Constitution's accommodation of green constitution was still far behind compared to France and Ecuador, which both constitutionalised environmental law norms. The French constitution, for example, mandated that every draft law produced by its Parliament must follow the provisions and standards stipulated in the Environmental Charter. Additionally, development of National Capital City towards the conditions and threats of environmental sustainability, strengthened the conceptual foundations of related issues.

Introduction

A significant development in environmental protection is the regulation of related rights in the state constitution perceived as a commitment to the management efforts.[1] In line with this perspective, green constitution is the solution to various public concerns regarding the decline in environmental functions. Following development of global issues and the placement in the constitution, the enactment of international environmental law is related to the state's responsibility for protection and management purposes as reported in Article 2 of the 1992 Rio Declaration.[2] This principle outlined that the state based on the UN Charter and international regulations has sovereign rights and not sovereignty.[3]

The enactment process was in line with the international world's awareness of the environmental protection urgency and a conception of the Third Human Rights generation. This was reviewed during the Stockholm Conference, in Sweden, based on the management of the Second World Development Decade (1970-1980), which was analyzed in the 1992 Rio de Janeiro, the 2002 Johannesburg, and the 2012 Rio Conferences. The commitments of these conferences led to sustainable development within the framework, and the need for broader participation in policy formulation, decision-making, and implementation at all levels

[1] Zulkifli Aspan and Ahsan Yunus, "The Right to a Good and Healthy Environment: Revitalizing Green Constitution," in *IOP Conference Series: Earth and Environmental Science*, vol. 343 (IOP Publishing, 2019), p. 12.
[2] Handayani and Gusti Ayu Ketut Rachmi, "Embodying Green Constitution by Applying Good Governance Principle for Maintaining Sustainable Environment," *JL Pol'y & Globalization* 11 (2013), p. 18.
[3] Indah Dwi Qurbani and Ilham Dwi Rafiqi, "Prospective Green Constitution in New and Renewable Energy Regulation," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (2022), p. 68–87.

symmetrical with the obligation of the state. The aim was to ensure that the national protection arrangements responded to environmental degradation[4].

In Indonesia, development regime of national environmental law was initially focused on legal products and enacted during the legislation era. However, after the reform era, marked by the dynamics of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) which was amended four times, the accommodation of human rights in Article 28H paragraph (1) and the guarantee of sustainable environmental development in Article 34 paragraph (4) reflected the concept of Green constitution associated with Ecocracy. Additionally, the constitutionalization of environmental norms, was adopted[5].

The provisions of the environmental norms showed that the state must recognize, respect, and uphold human rights to the environment. Therefore, respect and protection of humans as state entities is inseparable from the sustainability and continuity of the environment. The provisions of the norm are related to the concept of sustainable development based on environmentally sound economic development. Considering the two provisions, it was reflected that juridically the post-amendment of the 1945 Constitution contained green concept paradigm. In addition, green concept should be manifested in all the rules used to legitimize the planning and development of the new capital city.[6]

The existence of the two articles that were explicitly formulated, enabled future development to be perceived as an integral part of the right to the environment. This reflected a prudent attitude, and the effectiveness within the framework of Green Constitution should be explored to support sustainable development.[7] The idea of green constitution paradigm in Indonesia was often overlooked due to the legal sovereignty (nomocracy) and popular sovereignty (democracy) concepts. This concept placed ecological sovereignty or ecocracy as an object that must be protected by the state. Therefore, influence over the environment need to conform with the control of the people, which in practice was greatly considered. The three paradigm concepts must be combined to realize the ideals of the nation as stated in the preambule of the 1945 Constitution [8].

The concept of green constitutions needs to be understood by all components of the Indonesian nation. First, the condition of environmental sustainability is currently alarming, and it is only appropriate to strengthen the conceptual foundations of related issues and development. Secondly, the 1945 Constitution as the supreme law of the land contains basic ideas about environmental sovereignty and ecocracy, which can also be equated with the concepts of democracy and nomocracy. Environmental law explicitly mandated the submission of all policies in various development sectors. However, several research have been unable to translate the environmental intentions and values contained in the 1945 Constitution.[9]

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[4] Dasim Budimansyah et al., "Green Constitution: Developing Environmental Law Awareness," in *2nd International Conference on Social Sciences Education (ICSSE 2020)* (Atlantis Press, 2021), p. 200–204.
[5] Kristian Skagen Ekeli, "Green Constitutionalism: The Constitutional Protection of Future Generations," *Ratio Juris* 20, no. 3 (2007), p. 378–401.
[6] Nommy Horas Thombang Siahaan, *Hukum Lingkungan Dan Ekologi Pembangunan* (Jakarta: Erlangga, 2004), p. 55.
[7] E Chaidir and M Dela Fudika, "Green Constitution as an Effort to Strengthen Environmental Legal Norms in Indonesia," *Int. J. Innov. Creat. Chang* 10, no. 2 (2019), p. 56–68.
[8] Amalia Diamantina and Devi Yulida, "Reinforcement of Green Constitution: Efforts for Manifesting Ecocracy in Indonesia," in *IOP Conference Series: Earth and Environmental Science*, vol. 1270 (IOP Publishing, 2023), p. 12.
[9] Clare Coffey, "The Draft Constitution for Europe: Maintaining Progress towards a Green Constitution," *Institute for European Environmental Policy, Policy Paper, Brussels: IEEP* (2003).

Following the description above, certain research were against the environmental law, due to the numerous risks, particularly the impact on the surroundings, including the conversion of forests into non-forest lands used as settlements and industries. Moreover, the identity of the Kalimantan island would be destroyed if the surge in migrants continued. The potential for forest fires and deforestation tended to occur because the greater the number of migrants, the more forest land conversion and other human activities. These trigger forest fires which have an impact on climate warming issues, affecting sustainability.[10] Some Kalimantan communities were concerned about the presence of large-scale migration, including socio-economic inequality and environmental damage to forest areas. The concerns arose due to competition in various sectors, resulting in the high possibility of social conflict. In respect to this perspective, both social and environmental conflicts were mainly analyzed in the relocation of IKN.[11] Social conflict refers to a social order including inequality and living structure, including the relationship with the environment which led to potential inequality.[12]

Based on the description above, the sustainable development paradigm model in the NIK should be accompanied by provisions regarding environmental protection and management explicitly included in the constitution.[13] The critical issues and interests regarding the environment due to development activities, is feared to worsen damage and pollution to the environment. As a result, the executive and legislative arm can propose changes to the constitution. This was also in line with Jimly Asshidiqqie's statement that the Constitutionalism of environmental law norms in Indonesia had fairly formal and limited green nuances. This led to the urgency to conduct a comparative research aimed to find the ideal environmental-related constitutional trends in the future. Based on the background, the following research problems were formulated, how does Green Concept serve as a guarantee of the constitutional right to sustainable environmental development in the national capital of the archipelago? How can it be compared to the constitutions of other countries on environmental protection? And what is the ideal constitutional policy model for environmental protection in the future?

Research Methods

The present research adopted normative methods that refer to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) by examining aspects related to the environment as a rule of law, further analyzed with relevant issues. It was also inseparable from comparative analyses between Indonesia and countries that had accommodated the environment in respective constitutions. The review was accompanied by literature research in the form of books, journals, and other supporting articles. The selection of countries relied on the basis of respective constitutions in ideal implementation. This entailed the division into three models that contained constitutionalization norms as an effort to protect the environment. Meanwhile, the current 1945 Constitution was categorized into a model of formal constitutionalization characterized by relatively young green nuances. This implied

[10] Michael Kidd, "Power for the Green People? The Constitution and the Environment," *Indicator South Africa* 13, no. 3 (1996), p. 80–83.
[11] Susan Fitriasari et al., "The Implications of the Green Constitution Movement Program in Creating Law Awareness for River Border Community," *Jurnal Civics: Media Kajian Kewarganegaraan* 19, no. 1 (2022), p. 1–8.
[12] Siti Rohmah and Moh Anas Kholish, *Konstitusi Hijau Dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, Dan Tantangannya Di Indonesia* (Malang: Universitas Brawijaya Press, 2022).
[13] Nilam Firmandayu and Khalid Eltayeb Elfaki, "The Electronic Government Policy-Based Green Constitution towards Good Governance," *J. Sustain. Dev. Regul*, no. 2023 (2023), p. 10–21.

that the constitutionalization of norms to protect the environment in the 1945 Constitution was limited, compared to the initiatives adopted by other countries.

Results and Discussion

1. Amendment of the 1945 Constitution in the field of environment: A Synthesis of Indonesia's Capital Relocation

The amendment of the 1945 Constitution gave birth to new thinking about the environment, which had changed the paradigm in the administration of the state. In this context, the Indonesian state life required returning to this universe and a natural life, in harmony and balance with the environment. The amendment of the 1945 Constitution positioned the environment as possessing the real power in all aspects of life.[14] According to Sri Soemantri, the constitution constituted of three main aspects. First, the guarantee of human and citizen rights, second, the establishment of the contry's constitutional structure which contained fundamentals, and third, the division including limitation of fundamental constitutional duties

Following the description above, Jimly Asshiddiqie stated that the idea of environmental sovereignty, also termed ecocracy in the context of power was constructed in the mechanism of relations between God, Nature and Humans. In modern times, power relations was only viewed as a human problem. The amendment accepted the doctrine of environmental sovereignty as expressly formulated in the initially mentioned articles. This was also evident in the exploration of various laws and implemented provisions on environmental sovereignty which led to an understanding of policies in line with the mandate of the 1945 Constitution. For example, the right to a good and healthy environment as referred to in Article 28H paragraph (1) of the 1945 Constitution provided a deep insight into its fulfillment.

This right implied the need to improve the quality of human life. Moreover, it is crucial to fulfill the right to a good and healthy environment as mandated by the state. Article 28H paragraph (1) of the 1945 Constitution, was modified to Law Number 39 Year 1999 on Human Rights, specifically Article 9 paragraph (3), which stated everyone has the right to a good and healthy environment (although Law No. 39/1999 was enacted before the amendment of the 1945 Constitution). This was further explained in Law Number 32 of 2009 concerning Environmental Protection and Management, specifically in Article 65 paragraph (1) which stated everyone has the right to a good and healthy environment. The existence as specified in Article 28H paragraph (1) of the 1945 Constitution, enabled the protection and fulfillment of human rights in the field of environment. In addition, it simply implied the protection of human rights and the environment.[15]

In view of the above perspective, the right to a healthy environment implies everyone has the right to live in the environment that supports health and well-being. This also included the right to be physically and mentally healthy, as well as protected from pollution, due to the negative impact. For example, upper respiratory tract infections (URTIs) and itching of the skin was often experienced in polluted areas due to smoke from forest fires, or rivers. The right to be free from any interference with one's home and property, showed

[14] Maret Priyanta, "Penerapan Konsep Konstitusi Hijau (Green Constitution) Di Indonesia Sebagai Tanggung Jawab Negara Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Konstitusi* 7, no. 4 (2016), p. 87.
[15] Muhammad Sood, *Hukum Lingkungan Indonesia* (Jakarta: Sinar Grafika, 2021), p. 12.

freedom from environmental obstruction, such as noise pollution, flooding from a dam, and climate change due to polluted river.

The issue of environmentally sound economic development was stipulated in Article 33 paragraph (4) in relation to paragraph (3) of the 1945 Constitution. Meanwhile, the existence of sustainable development started with the 1972 United Nations Conference on the Human Environment in Stockholm, Sweden. The outcome of the conference motivated development of environmental management in Indonesia.[16] The principle of Eco Development formulated during the Stockholm Declaration was integrated into Article 3 of Law Number 4 of 1982 concerning Basic Provisions for Environmental Management. This was based on preserving the ability of a harmonious and balanced environment to support sustainable development for the improvement of human life. Furthermore, international environmental issues continued to develop resulting in the organization of several conferences associated with management efforts. This included the need for a sustainable development pattern as stipulated in Article 33 paragraph (4) of the 1945 Constitution.[17]

This article led to the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management. The law provided guidance in the context of development which must be in harmony with the environment. Additionally, article 2 of Law No. 32 of 2009 concerning environmental protection and management, reported that every development activity must be based on the principles specified. The material regulated in this Law included spatial aspects, comprising human, biological, non-biological and artificial natural resources [18]. It was not fully regulated, due to the requirement for a set of laws with similar directions and characteristics. Therefore, Law No. 32 of 2009 functioned as an umbrella act for the preparation of other regulations on the economy and development related to environmental protection and management including adjustments to existing policies.[19]

In this case, development of IKN gave birth to environmental issues which are currently the main concerns of Indonesian citizens. Moreover, several related predictions have the potential for environmental aspects, including the surge of migrants to the Kalimantan island, the disturbance and damage of the natural forests. The presence of migrants led to the pros and cons of the community, considered to create the potential for deforestation. In essence, the IKN Development was carried out by adopting the Forest City concept designed by the government to focus on the eight indicators of the environmental aspect. This included the implementation of green spaces, sustainable urban planning design, application of green buildings (energy friendly), environmentally friendly resources (in the use of transportation), integrated waste management, development of cooperation between the community, private sector, and government in creating green communities, improving urban water quality, and others.

[16] Muhamad Sadi Is, "Kepastian Hukum Terhadap Perlindungan Dan Pengelolaan Lingkungan Hidup Di Indonesia," *Jurnal Yudisial* 13, no. 3 (2021), p. 311–27.
[17] Rodrigo Christopher Rembet, "Pengaturan Hukum Pengelolaan Lingkungan Hidup Menurut Deklarasi Stockholm 1972," *Lex Et Societatis* 8, no. 4 (2020), p. 7.
[18] Sudi Fahmi, "Asas Tanggung Jawab Negara Sebagai Dasar Pelaksanaan Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Hukum Ius Quia Iustum* 18, no. 2 (2011), p. 6.
[19] Satriya Nugraha, "Perwujudan Konstitusi Hijau Dalam Pengelolaan Lahan Non Gambut Bagi Masyarakat Adat Kalimantan Tengah," in *Prosiding Seminar Nasional #Jilid 1 Universitas Palangkaraya* (Palangkaraya: Universitas Palangkaraya, 2020), p. 1–23.

The Forest City concept is related to Green Economy which welcomed sustainable economic growth by focusing on environmental aspects. This included operational standards in sustainable development by implementing a low-carbon economy and prioritizing greening. As a result, the perspective of people who were pro to the displacement of the new IKN attracting many immigrants did not create the potential for deforestation. The reason was the destruction of various efforts to design the IKN development plan which prioritized greening movement. In reality, smart forest city is not a foreign term in the bilingual repertoire of Indonesia.[20]

The state constitution implicitly provided norm legitimacy through the provisions of Articles 28H paragraph (1) and 33 paragraph (4), concerning the right to live in physical and mental prosperity as well as a healthy environment. In addition, economic development centered on the principles of togetherness, justice, sustainability and environmental insight. This allowed the smart forest city paradigm to be used as a frame of reference for development of the new capital. The outcome was in line with the constitution which presented the environment as an object that must be protected by the state. The delineation map of the IKN national strategic area contained in appendix I of Law No. 3 of 2022 has shown that the new capital was located in East Kalimantan Province, a constituent of the island. The mapping of this island was directed towards the preservation of biodiversity and tropical forest vegetation of approximately 45% of the total area.

Based on the current condition, 59.50% of the IKN area consisted of conservation, protected and production forest areas. In addition to having a large forest area, the IKN location also included a protected endemic animal habitat region. From 2006 to 2019 forests in Indonesia had consistently reduced in size from 98 million hectares to 94 million hectares. This issue had continued with the relocation of IKN in Kalimantan leading to potential Deforestation. The plan further enabled the potential for massive migration to affect the expansion of the region and the decline in the quantity of forests without paying attention to environmental protection initiatives. [21]

The relocation of IKN was evident with the recent issuance of Law No. 3 of 2022 concerning IKN (National Capital City). The realization process prompted the government to develop various major infrastructure as the initial target of moving IKN to East Kalimantan. This included the construction and operation of basic facilities, as well as the transfer of ASN with approximately 500 thousand residents provided with residences. According to Bappenas, the construction process cost relatively Rp466.9 trillion with an indication of the IKN allocation in the 2023 state budget totalling between Rp27 trillion to Rp30 trillion. A particular promotion of the IKN Nusantara is Sustainable Forest City.[22] The government proposed the concept of advanced, smart, forest city where 75% constituted green area. This agenda was also included in the city's zero carbon emission plan. However, when related to the implemented paradigm of green constitution in Indonesia, it was often overlooked alongside the legal (nomocracy) and popular sovereignty (democracy) concepts. The

[20] Ibu Kota Negara Indonesia, "Respons Masukan RUU Perubahan Atas UU 3/2022 Tentang IKN | Topik: Jaminan Keberlanjutan, Aspek Lingkungan H. & Good Gov.," *Ikn.Go.Id*.
[21] Yanti Fristikawati, Rainer Alvander, and Verrence Wibowo, "Pengaturan Dan Penerapan Sustainable Development Pada Pembangunan Ibukota Negara Nusantara," *Jurnal Komunitas Yustisia* 5, no. 2 (2022), p. 8.
[22] Richard Waas, "Perlindungan Hukum Terhadap Hak Atas Lingkungan Hidup Ditinjau Dari Perspektif Hukum Internasional Dan Hukum Nasional Indonesia," *Sasi* 20, no. 1 (2014), p. 12.

constitution accommodated the concept of green paradigm which placed ecological sovereignty or ecocracy as an object that must be protected by the state.[23]

The construction of IKN led to a critical issue, because approximately 256 thousand hectares constituted the forest region, and 75% was green area. It implied development process affected deforestation by 30%. According to KLHK records, the ability to rehabilitate 900 hectares of forest land per year was extremely gradual. It was estimated to take approximately 99 years to transform the IKN into a forest again. The result contradicted the 1945 Constitution of the Republic of Indonesia regarding the responsibility of the government towards environmental protection. Green constitution should mandate that development of IKN needs to pay attention to several indicators, namely

a. Stabilization of forest areas and resolution of various land conflicts before development of IKN.
b. Integration of the smart forest city concept into development master plan, including various other urban and regional planning products as well as spatial arrangements.
c. Carrying out development plan by paying attention to areas characterized by ecological and conservation functions. This was realized by focusing on the Ministry of Environment and Forestry's Strategic Plan 2020-2024.[24]

The provisions of the norms were closely related to the concept of sustainable development in line with environmentally sound economic development. Based on the two provisions of the norms, it was reflected that juridically the post-amendment of the 1945 Constitution contained green concept paradigm, manifested in all legitimate rules adopted for the IKN planning and development.

2. Comparative Trends of Constitutions on Environmental Protection between Indonesia with Other Countries

Countries that had included provisions on environmental protection in respective constitutions were divided into three groups. First, constitutions that contained specific provisions on environmental protection. Second, the integration of environmental and human rights provisions. Third, the group that connected the outlines of environmental policies with the duties or responsibilities of certain state institutions to preserve the environment and overcome natural damage. The Indonesian constitution was formally regulated, focusing on the concept of a sustainable forest city. The archipelago is believed to be the first in the world to implement the concept of forest city. Furthermore, Jimly Asshiddiqie, a constitutional law expert was the first to popularize the term Green Constitution in Indonesia. The term was divided into three models containing related norms in an effort to protect the environment, namely

a. Formal Constitutionalization Portugal Model (constitutionalization of citizens' rights)

The 1976 Portuguese Constitution was perceived as the second wave in the enactment of environmental policy, worldwide. It formally constitutionalized environmental policy by incorporating provisions and the idea of sustainable development into the constitutional formulation. Moreover, the 1976 Constitution regulated the right of citizens to a healthy, ecologically balanced environment, and the maintenance obligation. This was the first green constitution in the world to contain environmental law provisions. After France, the Spanish

[23] Anis Farida and Moh. Bagus, "Implementasi Paradigma Green Constitution Dalam Pembangunan Ibu Kota Negara Menuju Smart Forest City," *Prosiding Konferensi Nasional Sosiologi* 1, no. 1 (2023), p. 3.
[24] Karden Eddy Sontang Manik, *Pengelolaan Lingkungan Hidup* (Jakarta: Kencana, 2018, p. 19.

Constitution of 1978 also contained environmental provisions. This was followed by the adoption of life protection policies in the constitutions of several countries, such as those in South America, Eastern European nations namely Poland, including Asia particularly India and Japan .

b. Substantial Constitutionalization French Model (constitutionalization of human rights)

The second wave of development continued to expand with the birth of the Charter for Environment in France in 2004. In view of this perspective, France amended the Preamble of the Constitution by adopting the Charter for Environment in 2006. These changes proved constitutionalization was perceived as formal, and substantial, in the sense that environmental policy was also the essence of the French Constitution. However, since the inclusion of the Charter for Environment in the Preamble of the French Constitution, the nation has initiated a new paradigm or perspective in the vision of the state. Defending human rights, including a good and healthy environment, were regarded as basic issues. The objectives of the charter focused on solidify principles binding the law. This included the incorporation of generally accepted international principles into national law.

c. Structural Constitutionalization Ecuador Model (constitutionalization of basic environmental rights)

The Ecuadorian Constitution, ratified on April 10, 2008, was the most current Green Constitution. Regarding the description, the constitution drove the environmental paradigm from an object to a subject of human rights, as well as its logical inference. This led to the establishment of the environment as a separate legal subject structure alongside humans. The constitution was the first to acknowledge the rights of nature as a subject in human existence. According to Title II on Fundamental Rights, Article of Rights Entitlement, everyone has basic rights guaranteed by the constitution and the structure of international law. Nature is a subject structurally believed to be entitled to all constitutionally protected rights.

a. Ecuador

In comparison, the Republic of Ecuador is dedicated to environmental protection and management. Its constitution ratified by the Constitutional Assembly on April 10, 2008 and enforced after popular approval through a referendum, was the first to affirm the existence of natural rights as legal subjects in human life. Title II of the Fundamental Right, Article of Right Entitlement stated that people possessed fundamental rights enshrined in this constitution and the international human rights instrument.

Building on the description above, nature is subject to the rights granted by the constitution and law. Therefore, every citizen in Ecuador has fundamental rights guaranteed by the constitution and international instruments. The Ecuadorian constitution's regulation of environmental rights, was compared with the arrangements in Indonesia, as follows

1) Nature, as a place to live, grow and reproduce, has own human rights, as stipulated in Article 1 of the Chapter. Indonesia included both human and environmental rights in Article 28 H of the 1945 Constitution of the Second Amendment of 2000 which stipulated everyone has the right to a healthy environment
2) The right to nature must be recognized before the law and government as mandated in Article 2 of the Chapter. The regulation was with regards to every person, community, or nation. However, Indonesia does not expressly regulate the policy by the constitution, rather it is scattered in various laws related to the field of environmental management.

3) The State should motivate both the people and legal entities to protect nature, including promoting an attitude of respect for all elements in a unified ecosystem as stipulated in Article 3 of the Chapter. Based on this viewpoint, Indonesia does not expressly regulate the policy in the preamble of the 1945 Constitution which stipulated the state protects all citizens as mandated in various Environmental Management laws.
4) The State must exercise precautionary principle, imposing restrictions on all activities that may cause the extermination of species, ecosystems destruction or irreversible changes in the natural cycle as stipulated in Article 4 of the Chapter. This was also mandated in laws and government regulations.
5) Every individual, community, group and nation shall benefit from nature, through the cultivation of natural resources. The surrounding must not be destroyed or its carrying capacity and function reduced as stipulated in Article 5 of the Chapter. Additionally, the activities associated with the use of natural resources mandated in Article 33 paragraph (3) stipulated that the earth, water and natural resources were controlled by the state and adopted for the greatest prosperity of the people.[25]

In accordance with the provision of the right to nature, Ecuador implemented an ideal green constitution. Indonesia and Ecuador were both unitary republics, and in 1998, these countries experienced economic crisis that caused domestic turmoil and changes to the respective constitutions. Public distrust of the government led to the alteration of several provisions in the respective constitutions including the hastening of elections. With regard to human and environmental rights, Indonesia enacted Article 28 H of the 1945 Constitution of the Second Amendment of 2000. The article stipulated that everyone has the right to a healthy environment, but this regulation was perceived as abstract during the implementation process compared to Article 1 of the Chapter Right of Nature of the Ecuadorian constitution.[26]

Indonesia further elaborated on these provisions in the form Law No. 32 of 2009 concerning Environmental Protection and Management. This was based on the fact that policy on the need to motivate every person and legal entity to protect nature, as well as promote an attitude of respect for all elements in a unified ecosystem was not expressly regulated in the preamble of the 1945 Constitution. Regarding the perspection, the constitution stipulated that the protection of the entire homeland was also regulated in various Environmental Management laws. The execution of precautionary principle, including the imposition of restrictions on all activities that resulted in species extinction, ecosystems destructions or permanent changes to the natural cycle, was technically regulated by the Law. This included provisions regarding the obligation for business activities to conduct the environmental impact analysis (AMDAL).

As an entity, inflictions on the environment must be considered moral in terms of what is good and bad. The problem that then arises is how to ascertain what is good and bad for the environment? This concept plays an essential role, because when the environment is protected in the constitution as an interest holder, the violation of that interest must be clear. The kind of acts against the environment, brought before the courts also depends on the

[25] Louis J Kotzé and Paola Villavicencio Calzadilla, "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador," *Transnational Environmental Law* 6, no. 3 (2017), p. 1–33.
[26] Maria Akchurin, "Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador," *Law & Social Inquiry* 40, no. 4 (2015), p. 937–68.

issue. Although, to a greater extent the problem was centered on environmental damage.[27] For example, in the Ecuadorian Constitution, every citizen has the opportunity to sue individuals responsible for environmental damage regardless of whether the representative party has suffered losses. This was due to the adoption of the environmental legal standing based on the preservation, existence, and evolutionary cycle rights.

b. France

France was among the pioneering nations in the struggle for freedom, democracy and human rights in the world, as reflected in the 1789 Declaration of the Rights of Man and Citizens. This was commonly referred to as the Constitution of the Fifth Republic, which replaced the Fourth Republic that took effect on October 27, 1946. Subsequently, the 1958 constitution or the Fifth Republic was amended in July 2008. The French Constitution adhered to a parliamentary or cabinet system of government, although the position of the president is extremely firm. The Constitution also stipulated the existence of institutions that perform judicial functions, namely the Cour de Cassation, Conseil d'Etat, and Conseil Constitutionnel.

The First Republic started with the ratification of the constitution on October 10, 1793 which marked the first change from monarchy to republic. On June 24, 1793, the Montagnard Constitution was ratified, marking the end of the monarchy in France. On August 22, 1795 the Constitution of the Year III or Fructidor was valid until the 7th year. It continued with The Constitution of the Year VIlI which was passed on December 24, 1799 leading to the establishment of the consulate. Subsequently, The Constitution of the Year 10 (The Constitution of the Year X) made further revisions to the Consulate provisions. The monarchical system was restored and revived with the signing and ratification of the Charter of 1814 on June 4, of the same year. This period of the Second Republic ended with the passing of the Constitution of 1852 which marked the formation of the Second French Imperium, on January 14, 1852. In 1940, the French Constitution established a World War II government in collaboration with Nazi Germany. After World War II, the 1945 Constitution led to the establishment of a provisional government, responsible for enacting the 1946 Constitution on October 27, marking the period of the Fourth Republic. This was replaced by the 1958 Constitution enforced on October 4, which prevails till date and is known as the Constitution of the Fifth Republic.

The content of the 1958 Constitution was altered in 2006, where the preamble was amended by adding the Environmental Charter which was in line with the 1798 Declaration of Rights of Man and Citizens. With this fundamental change, France became the first western or developed country in the world to adopt the idea of a healthy environment and the principle of sustainable development in the constitution. On June 1, 2004, the French National Assembly passed the Environment Charter, which was approved by the French Senate on June 24, of the same year. Officially, it is known as the Environment Charter of 2004. The first paragraph was in line with the 1789 Declaration of the Rights of Man and Citizen. France was the first country to place the whole idea of its constitution in favor of the environment.[28]

[27] Mary Elizabeth Whittemore, "The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite," *Pac. Rim L. & Pol'y J.* 20 (2011), p. 659.
[28] Christopher R Green, "This Constitution: Constitutional Indexicals as a Basis for Textualist Semi-Originalism," *Notre Dame L. Rev.* 84 (2008), p. 16.

The development of an eco-industry, promoted the growth of energy sources that regulated the emission of greenhouse gases, and clean transportation. The French citizens are trying to shift the focus of the economy towards future activities while protecting the environment. Considering the perspective, the Environment Charter is an integral part of the Preamble of the French Constitution. Since 2006, the French Constitution has been fundamentally transformed into Green Constitution. The Charter also introduced the precautionary principle as an embodied standard in the constitution. This principle was designed to anticipate and respond to concerns arising from possible harmful effects of technologies that pollute or endanger the environment. In addition, the charter also introduced the polluterpayer principle into the constitution.

After President Jacques Chirac was succeeded by President Nicolas Sarkozy, the original Ministry of Ecology and Environment was changed to the Ministry of Environment and Sustamable Development. The mission of this parastatal became more extensive, with stronger authority. Additionally, the French Constitution formed a council dealing with economic, social and environmental matters, termed The Economic, Social and Environmental Council. The Republic of France is among the exemplary countries in terms of its determination, commitment and earnestness in addressing environmental pollution and implementing the principles of sustainable development in official policies. The Preamble of the French Constitution, containing the Environmental Charter, was the greenest worldwide. Liu Jiangging, stated that the French Constitution should serve as an example for China in dealing with serious environmental problems. However, in practice, the various laws were ineffective. The French Environmental Charter was elevated to the content material of the basic law. This was because the constitutionalized environmental law, had become stronger and enforceable, overcoming all policies that does not support the idea of environmental protection.

3. The Ideal Formulation of Green Constitution in the Future

The political structure built by the 1945 Constitution viewed the connection between humans and nature as a subordinate relationship in which humans were at the center. This certainly does not reflect ecocracy, with opinions that viewed the 1945 Constitution as green often compared to France and Ecuador. Following the discourse, both nations constitutionalized environmental legal norms.[29] The use of these two constitutions as a reference for the concept of green constitution, showed the 1945 Constitution was still lagging behind.[30] In the French constitution, for example, environmental protection was regulated in the 2004 Environmental Charter. This contained the right to a decent surrounding, adequate information, and decision-making regarding environmental impacts. The Charter also centered on the obligation to maintain and improve the environment, as well as education and training, associated with application of the precautionary principle in every French policy. All these provisions were explicitly stated as the basis and reference for determining French state policy. Every draft law produced by the French Parliament must follow the provisions and standards mandated in the Environmental Charter as part of its constitution.[31]

[29] Christopher R Green, "Constitutional Truthmakers," *Notre Dame JL Ethics & Pub. Pol'y* 32 (2018, p. 497.
[30] Aditya Prastian Supriyadi, "The Undermining of the Right to Public Participation in the Environmental Impact Analysis Regulation for a Business Permit in Indonesia: A Green Constitution Perspective," *Jurnal HAM* 14 (2023): p. 15.
[31] Fletcher Melvin Green, *Constitutional Development in the South Atlantic States, 1776-1860: A Study in the Evolution of Democracy* (The Lawbook Exchange, Ltd., 2008).

Supposing a draft law did not adhere to the mandated provisions and standards, it would be declared unconstitutional by the Constitutional Council as the body responsible for conducting judicial preview. The French Constitutional Council Decision No. 2012- QPC 262 dated July 13, 2012 is a typical example of a case where a bill was not passed due to conflict with the Environmental Charter. In addition, the decision previewed Article L.5125 of the Environmental Code, failed to formulate a provision guaranteeing public participation as a condition for certain installations. Article 7 of the French Environmental Charter guaranteed that every citizen had the right to participate in any decision-making associated with environmental impact. According to the French Constitutional Council, the article failed to meet set standards. This led to the formulation of regulations governing the technical engagement of the public in accordance with the policy guaranteed by the constitution.[45] Building on the analysis, the Ecuadorian Constitution recognized the environment as a legal subject with own rights. The effectiveness of such a normative construction was properly tested in the case of Wheeler Vs. Director de la Procuraduría General Del Estado de Loja (Wheeler Case). This was possible because in the Ecuadorian Constitution, the environment had an intrinsic value, rather than instrumental.

Conclusion

In conclusion, the provisions regarding environmental protection and management must be expressly included in the constitution. This was based on the issues and interests concerning the critical environment due to development activities known to cause severe damage and pollution. The committed executive and legislature, specifically in Indonesia, proposed changes to the constitution. Certain policies served as the basis for the enacted laws, enabling all provisions to be sourced from the constitution, which was oriented towards preserving environmental functions. Meanwhile, the relocation of the National Capital City (IKN) was carried out by several other countries for various reasons, including Indonesia. Reviewing the perspective of the state during the implementation process showed the relocation of the National Capital City had several expectations for development to the welfare of citizens, specifically in the environmental aspect associated with potential deforestation and degradation. Development of IKN against the conditions and threats of environmental sustainability, strengthened the conceptual foundations of these issues.

Suggestion

Environmental sustainability would always be protected regardless of whether the damage had a negative impact on humans. Considering the existing legal construction in Indonesia, this lawsuit lacked legal standing since the environment had an instrumental value. The statement simply implied the environment was only valuable as long as it benefitted humans. Environmental damage without any impact on humans would be difficult to gain legal standing in terms of bringing a lawsuit in court. Therefore, presuming the 1945 Constitution was green by comparing it to the two constitutions because both contained environmental legal norms was not a strong justification. Apart from the fact that the 1945 Constitution developed an anthropocentric political structure, it lacked the environmental protection strongly outlined in the French and Ecuadorian Constitutions.

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