



Scrutinizing The "Green Constitution" Idea in The Amendment of The 1945 Constitution

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Abstract

Environmental degradation has reached an alarming stage with the increasing number of natural disasters in Indonesia and various states. Such conditions at present require the State to take concrete steps to deal with more massive disasters in the future. The primary concrete step the State can take is to include specific environmental protection issues in the state constitution because environmental matters in the existing 1945 Constitution cannot provide maximum environmental protection. This research objective was to provide a juridical conceptual idea based on a study of principles and theories by comparing facts in several other states. Furthermore, the research method was juridical-normative, and the research design was legally dogmatic. This research used secondary data, which was then analyzed and presented qualitatively. The research results showed that environmental regulations in the 1945 Constitution are no longer relevant and can no longer provide environmental protection and preservation. Therefore, in the amendments to the 1945 Constitution concerning the environment, immediate attention must be given to establishing a government agency that explicitly handles environmental preservation with provisions aimed at realizing a green constitution.

1. Introduction

We should realize that the condition of our environment is getting worse and more concerning. The list of damages and disasters that have been caused and the potential that will arise in the future is countless that will threaten the lives of humans and other living things. In essence, the problem of the environment itself is to find out what methods must be implemented to guarantee and make the earth and the surrounding nature a livable space for life (Hakim, 2020. p.45). We, the State and the international community, should instill in us how we are ethical with

the environment, namely, our wisdom in dealing with the environment. Environmental wisdom is needed to carefully consider all actions related to the environment and maintain the environmental balance (Said & Nurhayati, 2020. p. 47).

One of the very relevant theories Prof. Muchsan presented in the State Administrative Law Lecture at Gadjah Mada University underlies the relationship between the State and the people and the environment is Protection Function Theory. It is one of the main functions of the State to protect all that exists within the territory of the State of Indonesia and even outside the territory of The State of Indonesia, which includes all rights and obligations attached to every citizen, State assets, and all rights protected by law, both abstract and concrete, including protecting the environment, natural wealth and even forests as the main element of environmental sustainability and the life support of living things.

At present, the task of protecting the environment is our joint responsibility, especially from the State, in international law, state obligations also do not absolve itself of responsibility for environmental damage (Jawahir Tantowi, 2016. p.211). where this responsibility is carried out by the government as a state institution in the executive field and the holder of authority to form laws and regulations and has the authority to manage and protect the environment within the State's territorial boundaries. Concerning implementing these responsibilities, Kraenburg and Vegting provide direction, namely, with the theory of *fautes personnelles* and *fautes de services* which require accountability of government policies to individuals personally and institutions/agencies/positions (Sugiarta & Widiati, 2020, p.98). In the context of being a state, undoubtedly, the community cannot be held responsible for existing environmental damage, but it is the absolute responsibility of the government.

As the environmental sector's primary controlling institution, the government stipulates laws and regulations as a juridical basis for implementing environmental control policies. This juridical basis will provide direction, footing, and legalism for the government's actions and, in a concrete aspect, will provide an overview and results that we can see and feel. Furthermore, we can analyze the impact of environmental regulations on environmental conditions at present and even predict these conditions in the future. In addition to assessing these environmental policies from an empirical perspective, we can also assess these policies from the aspect of adherence to the principles and theories related to these environmental policies. Therefore, it can be understood whether an environmental policy has a negative or positive impact on the environment. Meanwhile, the current environmental problem is that the declining quality of the environment has threatened the survival of humans and other living things. Thus, it is necessary to protect and manage the environment seriously and consistently with all stakeholders and immediately form a legal order regarding the protection and management of the environment (Pawestri, 2019, p.97).

Juridical analysis of environmental policies can be started by analyzing the articles in the 1945 Constitution as the primary basis for laws and regulations that apply throughout Indonesia. Provisions regarding the environment can be found in Article 28 H (1), which regulates the rights of citizens to obtain a good and healthy environment. A good and healthy environment is also the basis for national development policies, namely environmentally sustainable, directed, and planned

development (Thahira, 2020, 264). In addition, it is regulated in article 33, especially paragraphs 2 and 3, which regulate the authority and rights of the State over the environment. Furthermore, it is strengthened in paragraph 4, which regulates the principles of implementing economic activities. Moreover, the enactment of the 1945 Constitution has been in effect for approximately 77 years with four amendments. Furthermore, the articles of the 1945 Constitution stipulated several laws and regulations governing environmental management. This article sought to discuss the idea of revitalizing environmental regulations in the amendments to the 1945 Constitution in realizing the "Green Constitution."

2. Methods

This research is a normative legal research accompanied by empirical data. The approach used in this research is a statute approach, namely the basis of existing laws and regulations in the 1945 Constitution which regulates the environment. The legal materials used are primary legal materials in the form of laws and regulations by providing analysis and comparison of several constitutions from other countries, as well as secondary legal materials in the form of textbooks and legal journals containing doctrines related to issues that support this research. The collection of legal materials was obtained through literature study. All existing legal materials are selected, described and analyzed qualitatively in relation to the legislation and then formulated systematically in accordance with the subject matter.

3. Findings and Discussions

3.1 Findings

A breath of fresh air for activists and environmentalists comes from the COP 27 agreement in Egypt, which stated that more than 25 states at the UN COP27 climate conference agreed to launch a group. That group is said to be able to ensure they are mutually accountable for promises to end deforestation by 2030, including announcing financing for the effort (Fajrin, 2022). Furthermore, there is a compensation of Rp. Indonesia received three hundred ten trillion from developed states, which was announced by the President of America at the G-20 Summit in Bali in 2022 to accelerate an environmentally friendly energy transition. Although it is not a new effort in an international level agreement to protect the earth, when faced with the current conditions and the policies of the participating states, the agreement is not just rhetorical. The leaders of international states have started to pay attention to environmental conditions and the elements that support environmental life as if they have realized that environmental health is a significant part of the nation and state's life. Besides, safeguarding the State's territory not only maintains the quantity or integrity of the area but also must maintain the region's quality. This environmental quality can affect climate conditions in the global region, and environmental quality can affect the integrity of the land area. In contrast, territorial integrity does not impact the global climate and other states.

The territory of a state has two meanings, namely, territory in the sense of quantity and quality. The sense of quantity directs us to the concrete form of the territory of a state in the form of land and waters that are within the boundaries of a state where government administration activities are carried out, and activities of citizens are carried out. It is what is studied in constitutional law and state administration. It is about how to maintain and defend and study all efforts that the

State can carry out to defend against all threats aimed at disrupting the territorial integrity of the State. Meanwhile, the sense of quality is related to the good and bad levels of an environment, which can include aspects of environmental health, environmental sustainability, and maintaining the supporting capacity and carrying capacity inherent in the environment, as well as environmental benefits for people's lives both at that time and in the future. The meaning of this quality is the major study of Environmental Law. So, the State is the right holder to control, and the community is obliged to maintain the quality of the environment just as the State maintains the quantity of the State's environment/territory. It is a failure if the State can maintain the territorial integrity of the State and can significantly increase development without being accompanied by maintaining the quality of the region. The success of development so far has not included the parameters of the quality of the human environment, so the implementation of environmental policies and laws as instruments of environmentally sound and sustainable development are still in the formulation and socialization phase. It has not reached its implementation phase (Makhali, 2018, p.303). The 1987 expert group in its report determined that states should be responsible for stopping activities that violate international law in relation to environmental issues and provide compensation for the harm caused (Akib, 2014, p.64).

The environment quality is no less important than the environment quantity, so it is necessary to maintain the quality of the existing environment. The quality of this environment benefits the health and life of humans and other living things without a healthy and good environment. We cannot experience a healthy and good life, so it can be concluded that environmental and human health is directly proportional to environmental health. Human health is like two sides of a railroad that will always be in harmony. Hence, maintaining and preserving the environment quality is more important than maintaining the integrity of the environment itself.

The State's attention to environmental quality from a juridical aspect in the 1945 Constitution can be found in article 28 H paragraph 1 of the 1945 Constitution, which regulates human rights where the State is obliged to create a good and healthy environment for everyone. A clean and healthy environment is urgent, principal, and vital. Thus, it needs extra extraordinary attention from the State. Given the importance of environmental health and the current State of nature which is of great concern, strengthening the position of protection and preservation of the environment in the basic rules of the State/ground norm needs to be implemented immediately. It aims to prevent various threats of natural disasters and a climate increasingly hostile to human life.

Since the era of independence until now, the State's attention to environmental quality has been very lacking when compared to the State's attention to political, economic, spiritual development, education, and social life, as if the environment has no impact on human life, precisely because of the good quality of the environment for the life of the nation and we can do this together. At that time, we can understand because the main concern at the beginning of the establishment of the State was to build law and politics as well as the people's economy. However, after more than 70 years, the State's attention to the environment can only be found in the fourth amendment to the 1945 Constitution. We can find the environment in Article 28 H, paragraph 1, which basically regulates

human rights. When viewed from the perspective of legal politics, this article is a ratification of the Universal Declaration of Human Rights (UDHR).

3.2 Discussions

Humans influence the main problems in the environment in the utilization of natural resources to meet needs (Khairina et al., 2020, p.157). Given the importance of roles, functions, and long-term benefits for human life and other living things, and the terrible negative impacts that natural disasters can have on a life we can see and feel, environmental protection should be one of the main topics in the 1945 Constitution, as the State regulates the executive, legislative, religious and human rights institutions in the 1945 Constitution. Thus, the government's attention to establishing policies that impact the environment is always based on protecting and preserving the environment. Therefore, the environment is not sidelined, displaced by short-term interests, and not underestimated. It is very ironic if we say that the main destroyer of the environment in the modern era is the State. It is evident that whether it was done consciously or deliberately, the founders of the State did not discuss protection in the legal basis of the State. If the State's incredible attention to environmental protection were carried out since the first establishment of the 1945 Constitution or included in the amendments to the 1945 Constitution, it would undoubtedly influence government behavior and policies in managing the environment, and the impact would be different nowadays.

The main concern for the environment that needs to be included in the 1945 Constitution is strengthening government institutions that handle and manage the environment. The importance of this environmental institution provides two meanings: authority and long-term existence. Regarding structure and authority, it is time to reflect on the Coordinating Ministry for Law and Human Rights, currently led by Prof. Mahfud MD. In the environmental sector, similar matters can also be applied. Therefore, in establishing policies that impact the environment, there is no overlapping of policies and authorities in land use between state agencies with interest in land, such as agriculture/plantation and irrigation, housing, forestry, and mining. On the second point, which relates to the existence of a state institution, environmental protection is an absolute necessity as long as there is a State and life. Rightly, there should be a special institution that protects the environment. The regulation of environmental protection institutions in the 1945 Constitution ensures legality and long-term legal strengthening. Therefore, in the future, no regime will remove environmental institutions from the government system.

Furthermore, the most crucial thing in determining environmental protection in the 1945 Constitution is the content of the articles, including the environment's existence. It states that the environment is a vital object of the State that must be protected and preserved as well as its functions and benefits developed for life in the present and the future and the obligation of the State and society to protect the environment. It also determines what is included in the living environment, such as forests, rivers, lakes, and the built environment. Meanwhile, what is happening at present is efforts to repair and restore the environment, which is not fast compared to the rate of damage and pollution occurring. This condition indicates that environmental issues have not been central to Indonesia's development (Laurensius Arliman S, 2018, p.763).

Furthermore, what needs to be considered in the Constitution regarding the environment is strengthening its philosophical elements, which determine that the environment must be given its right to live and develop. The environment is a deposit for humans from the Creator for the life of all creatures and an unlimited period. Sonny Keraf, in his study of human relations with the current environment, argues with the *Anthropocentric* theory. It is an environmental, ethical theory that views humans as the center of the universe, and only humans have the right to exploit and use nature for the sake of their interests and needs (Yuono, 2019, p.190). This theory dramatically influences human behavior toward the environment so that humans consider themselves rulers of this nature. In its development, the theory receives resistance from *ecocentric* theory, which states that ecosystems are the center of this life.

Strengthening the opinion described above, Ton Dietz divides the environmental movement into eco-fascism, eco-developmentalism, and eco-populism (Supardi, 2018, p.5). At the implementation stage, the *ecofascism* movement is a movement for conservation and environmental sustainability as well as environmental restoration for the environment itself. In this movement, humans are not involved in ecofascism but are outside the system. This movement focuses on natural or independent restoration of the environment. Therefore, the environment is given independence and allowed to develop based on the potential that exists in itself. It can be presumed that this situation is in line with the Anthropocene concept popularized by Paul J. Crutzen, which emphasizes the central role of humanity in geology and ecology, where human activities have fundamentally impacted the global environment and permanently destabilized the earth (Astuti, 2019, p.169). Humans are the leading cause of environmental damage, so it is a logical consequence that humans are kept away from managing the environment and allowing the environment to reshape itself. Furthermore, the Eco-developmentalism movement produced the idea of sustainable development, namely the development movement of the State, especially industries based on sustainable environmental awareness.

The emergence of this movement is inseparable from the era of industrial development 4.0, which focuses on development in the machinery and digitalization industry. Indeed, in the industrial sector, there will be much demand for natural resources as raw materials, especially metals contained in the environment/earth. This eco-development inspired the 2009 Stockholm Declaration 1972 and then accommodated in Law no. 4 of 1982 concerning Main Provisions for Environmental Management, especially in article 3, which states that development is based on preserving the environment's capacity. The next movement is eco-populism, an environmentally conscious movement based on community interests. In environmental management, the people's interests are always prioritized, especially those around the area. This movement has influenced Indonesia's forestry policy with a program issued by the government, namely Community Plantation Forests (HTR), which very intensely involves local communities. In other words, community involvement in forest management is a must (Irwan Sukri Banuwa, Rahmat Safe'i, 2018, p.29). However, it is deplorable that this movement is basically to improve the people's economy by utilizing forest areas that have been damaged (transfer of function). Hence, forest areas are used as short-term

production areas that are not more than 10 years, so forest areas only function as economic production and do not function as natural forest.

If we look at the constitutions of several other states, such as France, which amended the Constitution in 2006, environmental matters were immediately included in the preamble, not only in the body (Budimansyah et al., 2021, p.201). Spain: This State, through the Spanish Constitution 1978 section 45 Chapter III on the "Governing Principles of Economic and Social Policy," regulates the right of everyone to enjoy a suitable environment for their development and is obliged to preserve it. The government is obliged to monitor the use of natural resources, natural resources, protect and improve the quality of natural resources, to protect and improve the quality of life of its people. The application of the Green Constitution by Portugal is also quite popular. The Green Constitution in this State regulates a proper and healthy environment which is part of human rights. a proper and healthy environment is part of human rights. The Portuguese Portuguese Constitution of 1976 has established the State's obligation to protect the environment and the State to protect the environment and quality of life. France made a constitutional amendment in 2006. Then the environmental Constitution was immediately included in the Preamble, not just in the South African Constitution's body. Environmental protection regulated in Chapter 2 of the Environment section states that everyone has the right: 1) In a not harmful environment to their health or well-being; and 2) For the protected environment, for the benefit of present and future generations, through legislative actions and other reasonable actions;

1. Preventing pollution and ecological degradation;
2. Promoting conservation; and
3. Ensuring ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Suppose we conclude from some of these constitutions. In that case, we can find several main principles for protecting the environment, which are more advanced than the Indonesian state constitution. The principles of environmental protection that we can find in the Constitution are; *First*, Protected environment. *Second*, Environmental protection is oriented toward public health and welfare. *Third*, Not a harmful environment. *Fourth*, Interests between generations, and *Fifth*, Preventing pollution and ecological degradation. *Sixth*, The principle of Conservation; and *Seventh*, Guaranteeing the development and use of sustainable natural resources. Accommodating the matter of environmental protection in a constitution by the founding fathers of the State can be seen as a strong commitment from the founding fathers of the State to protect the quality of the environment/territory. Undoubtedly, the drafters of the state constitution assume that the environment is part of the State's vital objects that must be protected, like protect Basic Human Rights.

Based on the data, the conditions and disasters caused by environmental damage in Indonesia are not as bad as the environmental damage in Europe. Historical facts of environmental damage on the European Blue Continent occurred in the 18th century, since the start of the industrial revolution. The European industrial revolution was the starting point for changing the classic era to modern with the many inventions of modern equipment that used engine drives. Therefore, many resources were needed as raw materials and fuel obtained from nature

through mining, so European states competed in exploiting the environment to extract metal materials, oil raw materials, and forest products as raw materials for driving the industrial revolution. After this period lasted a century, awareness began to emerge about the destruction of their environment, climate and soil changes, reduced reserves of clean water in them, and various natural disasters that hit the European region, such as floods, landslides, and droughts. The destruction of the European region's environment did not make them stop industrialization, but they started looking for new natural resources, even between continents, Africa, Asia, America, and even Australia.

The fulfillment of these needs is undoubtedly the leading cause of environmental problems and damage, which occur almost worldwide. According to a Swiss expert, Prof. Mattias Finger, the current global environmental crisis is caused by several factors, namely wrong and failed policies in the current global environmental crisis caused by several factors, namely wrong and failed policies in environmental management and conservation which are wrong and failed; the use of inefficient and unfriendly technology is not environmentally friendly; low political and ideological awareness that harms the environment; the culture of consumerism and individualism which is increasing in the global era so that the awareness of love for the environment is fading; and the weak role of power holders in terms of enforcing environmental law and increasing environmental law enforcement and increasing public awareness of the environment (Nur Amalia, 2021, p.525).

Based on this opinion, environmental damage is based on state regulations and policies. State regulation originates from the Constitution as a fundamental norm that becomes the foundation for all the rules under it. Therefore, it is time for the nation, through Indonesian leaders, to revitalize environmental law policies in Indonesian territory by strengthening the juridical basis of the 1945 Constitution, which is oriented towards an eco-constitution. The Constitution is now understood to be no longer just a dead document. However, more than that, the Constitution has materialized and functions as the fundamental principle in the administration of a state which must always live up to the times (Mohamad Faiz, 2016, p.768). Many environmental and legal experts have echoed this idea. Even Prof. Jimly Ashsiddiqi campaigned for eco-cracy ideas so that they could be in line with democracy. This idea is certainly very relevant today as a practical and relevant instrument to protect and prevent more massive environmental damage, as in Europe in the 1800s.

Efforts to realize an eco-constitution or green Constitution are basically in line with the State's function as a protector (Protection Function). It is such an environmental perspective to protect the environment's carrying capacity between generations, so that future generations of the Indonesian nation can feel it. Furthermore, it functions as the most vital preventive instrument with the commitment of state administrators to prioritize environmental interests above individual or group interests or even the interests of the course of government. There is an understanding that environmental damage will disrupt and threaten life, and life will not go well if the environment where the activities are carried out is disturbed, damaged, and threatened the safety of living things.

Eco-constitution is a real effort that aims to harmonize human life and other living things with existing environmental conditions. Therefore, in utilizing the environment while maintaining the quality of the environment, humans, as users of

the environment and as the main contributors to waste on earth, must know and understand to maintain the carrying capacity of the environment to sustain human life. Efforts to harmonize human life with environmental capabilities, which are very weak, is an urgent matter considering the decline in environmental conditions is felt every decade, increasing earth temperatures, extreme climate change, which causes the melting of ice in the North Pole and causes sea levels to rise, increased rainfall, desertification of forests, landslides, and floods. These disasters indicate that the natural environmental system is in a bad state.

To tackle various forms of environmental degradation, the eco-constitution idea is one of the ideas for changing state policies which will undoubtedly affect the overall policy system in government sectors or agencies, especially in aspects of government policy orientation which must always lead to environmental preservation. However, from the positive side, there will be policy synchronization between government agencies/state ministries, especially government agencies that use the environment, especially on the mainland. In other words, the land will decrease in the future, and the need for land will increase. There will be no misoriented between government agencies that need land to carry out their policies.

One of the environmental problems is deforestation that occurred in India; according to Ashwin Ravikumar's report (Ravikumar et al., 2018, p.1438), "One of the causes of rampant deforestation in a state was the lack of coordination between ministry sectors," which is one of the causes of the high rate of deforestation in a state is the lack of coordination between state ministries. Furthermore, he added, for example, that the ministry of agriculture campaigned for the development of food extraction and the development of large-scale investments using productive forest land that leads to deforestation because the agricultural investment would be difficult to carry out on dead or unproductive land. Meanwhile, the policies of the ministry of forestry were struggling and oriented towards efficiency in the utilization of forest products, policy effectiveness on sustainable development, production between generations, conservation, and climate change mitigation, as well as international rainforest preservation policies. It is because the ministry is given the authority to use productive land such as forests. At the same time, the legal rules above it are not oriented towards protecting and preserving the environment, or the concept of environmental management is still abstract. Hence, policymakers related to the environment are only oriented toward *How to use the environment*, not toward *how to save the environment for the future* or *How to Protect the environment*.

Strengthening the values and commitment to environmental protection in the state constitution will positively impact Indonesia in the international community. Indonesia's positive international view on protecting and preserving the environment as a climate change mitigation and reduction of international carbon emissions will increase. This positive outlook or trend is expected to attract more investors in the field of renewable technologies or even low-carbon emission technologies to invest in Indonesia. Modern states have understood how difficult it is for a state to change policies on the sources of state revenue, which are mainly derived from mining products or so-called state revenues based on environmental management, into state revenues based on environmental preservation, namely by managing the environment without destroying it and developing existing resources

in the environment so that they can be utilized in the future. The existence of this transfer of state revenue will certainly reduce state revenue. International states realize it. Therefore, in implementing the G-20 precedence in Bali, Indonesia will receive compensation for the availability of environmentally friendly energy conversion from developed states members of the G-20. However, the compensation is relatively small when compared to the costs incurred.

New Zealand also made a breakthrough in environmental law in March 2017, establishing the Te Awa Tupua Law, which recognizes the existence of the Whanganui River in the Aotearoa region of the Maori tribe by determining the river as a legal subject and ending the struggle of indigenous peoples (Kramm, 2020, p.307). Besides New Zealand, India has designated two rivers as legal subjects. In addition, the Government of Bangladesh has made a breakthrough in environmental law by designating all rivers in the State as legal subjects and holding legal rights like people or humans.

Changes in the status of a river/environment as an autonomous legal subject which was previously a legal object protected by the State will undoubtedly impact theoretical aspects of the science of law. The most important thing is the determination of the rights attached to the environment as a subject at the highest level, namely with recognition from the international community through the United Nations organization. Environmental rights can be defined as equal to human rights (HAM) or even included in the *ius cogens* category. Thus, the existence of humans as the most vital legal subject in the legal system will be parallel to the environment so that the position of humans as the *main subject in the law* will be reduced in terms of the utilization of environmental resources.

Determination of the environment as a legal subject can be said as our respect for the environment in which we live and meet the needs of daily life. It is the central part of the law dominated by humans or legal entities as legal subjects. This stipulation is, of course, a new paradigm in law that must be initiated and strengthened in the content of articles in the state constitution so that its power (The Power Of Effect) will be more significant when compared to the stipulation in the law or regulations under it. One example of an object for the community's basic needs is water, which is regulated in Law 17 of 2019 concerning Water Resources in article 7, which regulates the control of water that cannot be controlled or owned by anyone. Nowadays, many drinking water companies with private status, CVs, or PTs control specific water sources in part or whole. Even the surrounding community cannot enjoy the existing water sources as in the past. They must buy for agricultural/irrigation purposes, even for their basic needs. It is taken from water sources around their village. It is very detrimental to the surrounding community. Firstly, the expenses for water consumption are higher. Secondly, it affects agricultural productivity, resulting in reduced income for farmers because there are no other sources of income.

Efforts to designate environmental elements as legal subjects are not new in the world of environmental law. Including protection aspects in the world of law is a very positive development. However, if environmental protection and preservation aspects are included in a state constitution, it can be said that this is a spectacular legal breakthrough. Suppose environmental matters enter the realm of law. In that case, it means that it has fulfilled the scientific elements of the law to be protected and has the support of environmental and legal experts. Even though it is very

different if environmental protection is included in the State's Constitution, it means that environmental preservation has received the highest place in the legal order and has received approval from all parties, bearing in mind that establishing one article will undoubtedly have an impact on all the main aspects of supporting the life of the State, namely the government in power as the stakeholder and executors of rules regarding aspects of direct society and the people's interests represented by representative bodies related to the ability to formulate populist rules. The three aspects of state finances might be disrupted because of several sources of state revenue from the environment, political interests, aspects of industrial ecosystems that support social and economic life, aspects of private companies and state-owned companies, and the thousands of workers in them. These are all challenges that the State must face to determine policies that can benefit all parties, especially the environment and life.

However, as an effort by the State and society to protect the environment, it is time for the idea of establishing environmental protection in the state constitution to be revitalized and realized to protect, preserve, restore, and rehabilitate environmental conditions. Several states have provided particular space for environmental preservation in their state constitutions.

Efforts to revitalize protection in the state constitution are basically efforts to strengthen environmental provisions in the existing Constitution, namely in Article 28 paragraph 1 and Article 33 paragraph 3 of the 1945 Constitution. Both of these articles can be said that a clean and healthy environment is a community right that is strengthened in Article 33, paragraph 3, which states that basically, the State has power with "State Control over the environment" as one aspect of the State's right to control to realize the goal of a clean and healthy environment. However, it can be seen that, at present, the State's right to control has negatively impacted the existing environmental conditions. However, if the environment becomes a separate part of the State's Constitution, the position of the environment will be different in law. If humans first have the right to a clean and healthy environment, it will change to "environment has the right" to good and healthy conditions. It significantly affects the government in determining policies that impact environmental damage. One example of a policy that has an impact on the environment is mining, in the opinion of George W. (Rock) Pring: "Mining is inherent (inseparable) with environmental degradation. No mining activity is environmentally friendly (Listiyani, 2017, p.78). Although the positive impact on the State's financial sector is enormous, we can feel the negative impact on the environment and the health of residents, and the global climate. Given the implementation of the State's right to control, environmental issues have not been at the center of Indonesia's development. The main cause is that the level of decision-making at the central and regional levels often ignores the interests of environmental preservation (Laurensius Arliman S, 2018, p.769). One aspect of the State's right to control is to regulate legal relations and legal actions between people and the earth, water, and space environment. If looking at the historical aspect, Triana's opinion is quoted by Rahmat Trijono, adding that the principle of the right to control by the State had the spirit of replacing the principle of '*domein verklaring*,' which was in effect during the Dutch colonial period, which turned out to only provide benefits to the Dutch colonial government at that time (Trijono, 2015, p.3). The word domain in state administration refers to aspects of legal positivism

that are synonymous with legal documents/data as a result of decisions or decrees from the government in power at that time, and this was very minimal to be shown by indigenous people, both individuals or indigenous peoples so that in the absence of a letter With this the Dutch could easily take over ownership of the land.

The State's right to control, which is reflected in Article 33, paragraph 3 of the 1945 Constitution, basically has implemented the highest aspect of the law, namely the social aspect or the aspect of public interest. However, if this aspect of public interest intersects with aspects of environmental preservation and protection, it will have different implications in its implementation. Where aspects of the public interest in the environment are oriented towards taking benefits or resources that lead to environmental exploitation, and aspects of environmental protection are oriented towards environmental preservation. In Spain, when social functions come into contact with the concept of protection of natural resources (environment), the Constitution also recognizes property rights related to social functions. The existence of unity between the social functions of property rights and their scope is of concern. On the other hand, the protection, preservation, and utilization of natural resources (Akhmadi Yusran, 2021, p.221). It means that implementing these social functions must also pay attention to aspects of environmental preservation, where there is a balance between the environment's carrying capacity and human needs. Compared with the Indonesian legal system, Spain places aspects of environmental preservation parallel to aspects of social interest. In Indonesia, the right to control the State, the aspect of public/social interest, is higher than the aspect of environmental preservation.

4. Conclusion

Currently, environmental damage in the national and international scope is accurate, and we can clearly feel it in our lives with various forms of natural disasters. To overcome these impacts, the State must carry out its function as well as possible as the front guard in protecting and preserving the environment. In carrying out this state function, it must start from the legal aspect, namely by revitalizing and establishing environmental issues in the 1945 Constitution on the agenda for future amendment episodes, as has been implemented by many states worldwide. It must be done because the environmental regulations in the 1945 Constitution and existing regulations cannot provide maximum environmental sustainability protection.

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