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Green Constitution Policy and its Relevance to Environmental Sustainability Law

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Abstract

The concept of a Green Constitution places environmental protection as a binding constitutional mandate across all branches of state power. In Indonesia, this principle is primarily reflected in Article 28H paragraph (1) of the 1945 Constitution (the right to a good and healthy environment) and Article 33 paragraphs (3)–(4) (state control over natural resources coupled with the principles of sustainability and environmental insight). However, prior legal research has predominantly focused on the conceptual framework of ecocracy without addressing the structural fragmentation within sectoral laws. This study identifies a significant regulatory gap between constitutional green norms and anthropocentric sectoral practices (such as mining and forestry laws). Utilizing a normative legal research methodology, this paper maps the normative foundation of the Green Constitution, analyzes vertical synchronization defects, and provides a strategic framework to optimize environmental sustainability law in Indonesia.

Keywords: Green Constitution, Environmental Protection, UUD 1945, Sustainable Development, Research Gap.

INTRODUCTION

Concerns about environmental degradation, both globally and nationally, are a reality today. These range from global warming and air pollution to degraded soil and diminishing biodiversity (Hardjasoemantri, 2006). Consequently, balancing economic growth with environmental sustainability is a major challenge for Indonesia, a country rich in natural

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resources. Every individual has the basic right to live in a safe and healthy environment, and maintaining this ecosystem is the collective responsibility of both the community and the state (Effendi, 2014). Within the paradigm of contemporary constitutional law, a new framework called the "Green Constitution" has emerged to integrate environmental standards directly into the supreme law of the land (Asshiddiqie, 2010). This political philosophy is often closely linked to ecological democracy or "Ecoracy," which advocates that nature possesses inherent rights independent of human utility (Suntana, 2021).

In the Indonesian context, the norms of a Green Constitution are explicitly enshrined in Article 28H paragraph (1) of the 1945 Constitution (UUD 1945), which guarantees the right to a decent and healthy environment (Akbar, 2022). Furthermore, Article 33 paragraphs (3) and (4) dictate that state control over natural resources must adhere to the principles of sustainability and environmental awareness. Despite these robust constitutional safeguards, their execution remains structurally inadequate, and environmental degradation continues to accelerate due to economic overexploitation (Anwar, 2020).

Research Gap and Contextualization

A meticulous review of existing literature reveals a distinct research gap that this study aims to fulfill. Prior legal scholarship—such as prominent studies by Pinilih (2018), Asshiddiqie (2010), and Chandra et al. (2024)—has extensively analyzed the philosophical underpinnings of the Green Constitution and its formal integration into the 1945 Constitution. However, these studies heavily focus on conceptual, normative, and symbolic acknowledgments rather than operational mechanics. There is a noticeable dearth of analytical depth regarding the vertical synchronization defects between supreme green constitutional values and the highly anthropocentric, short-term economic mandates found within sectoral legislations (such as Law No. 3 of 2020 on Mineral and Coal Mining or changes under the Job Creation Act). Previous research fails to explain why robust constitutional mandates consistently fail to override predatory economic provisions in lower-tier regulations. This study addresses this critical vacuum by evaluating the precise normative disharmony and mapping out the structural hurdles within the judiciary and legislative bodies that stifle the internalization of ecocentric principles in Indonesia.

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METHOD

In examining the Green Constitution Policy and its Relevance to Environmental Sustainability Law, this legal study uses a comprehensive normative legal study methodology along with a normative juridical model (Rahardjo, 2006). This approach emphasizes a systematic analysis of written legal instruments, focusing primarily on Article 28H and Article 33 paragraphs (3) and (4) of the 1945 Constitution as primary legal materials, alongside secondary literature consisting of academic journals and legal doctrines (Sodik, 2016).

The analytical framework comprises two methods:

1. Descriptive analysis: used to systematically and comprehensively describe the concept of the Green Constitution in the 1945 Constitution and key norms in Law No. 32 of 2009 regarding Environmental Protection and Management (UU PPLH).
2. Relevance and synchronization analysis: used to examine the extent to which the principles and norms in the Green Constitution have been adopted (vertical synchronization) into Environmental Sustainability. This analysis uncovers whether there is disharmony, a regulatory gap, or a legal vacuum between the constitution and environmental laws that reduces its effectiveness on the ground.

Theoretical Framework

1. Constitutionalism and the Environment: Modern constitutionalism functions not only to limit state power but also to ensure the fulfillment of human rights, such as the right to a good and healthy environment. This right is considered a third-generation right (solidarity rights), which emphasizes the importance of intergenerational justice (May & Daly, 2014).
2. Utilitarian Theory: Grounded in Jeremy Bentham's utility principle, actions are deemed just if they maximize collective happiness. In an environmental context, this requires non-discriminatory welfare distribution across generations, giving equal weight to future populations (Wibisana, 2017).
3. Sustainable Development Theory: This framework mandates that meeting current socio-economic needs must not compromise the capacity of future generations to satisfy theirs (Boyd, 2012). It heavily aligns with the economic-environmental balance mandated by Article 33 paragraph (4) of the UUD 1945.

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RESULTS AND DISCUSSION

Constitutional Foundations and the Concept of a Green Constitution

Article 28H paragraph (1) of the 1945 Constitution encompasses environmental constitutionalization as the supreme law. This principle is used to ensure that the government does not violate regulations regarding development, policies, and activities that could harm the environment or public health (Faiz, 2016). Historically, environmental law in Indonesia progressed through two waves: the first wave relied heavily on standard statutory legislation to curb pollution—which largely failed on the ground—while the second wave successfully embedded these ecological norms directly into the text of the Constitution during its post-1998 amendments (Bedner, 2010). Integrating these principles ensures that environmental preservation is no longer just a policy option, but a binding moral and legal obligation for all state apparatuses (Muhtadi, 2019).

The Relevance and Synchronization of the Green Constitution in Sectoral Law

While the normative recognition of environmental human rights under Article 28H paragraph (1) is absolute, its implementation remains visibly fractured (Shelton, 2015). The dynamic nature of Indonesian sectoral laws frequently leans toward economic pragmatism, generating widespread ecological injustice. To resolve this, a robust judicial mechanism is vital. Currently, the judiciary often renders verdicts that side with corporate extraction over community-led preservation, showing that ecocentric values have not been fully internalized by judicial actors (Santosa, 2014).

The core tenets of environmental democracy are laid down in Article 33 paragraph (4), but practical policies remain highly anthropocentric—prioritizing immediate human economic gains over ecosystem equilibrium (Nurjaya, 2011). Nevertheless, constitutionalizing these norms provides a powerful legal mechanism for public advocacy. The Constitutional Court (MK) holds a strategic mandate to perform judicial reviews on sectoral laws that directly undermine environmental sustainability, thereby serving as an instrument for ecological justice (Faiz, 2016).

Challenges and Opportunities for Implementing the Green Constitution in Indonesia

The primary barrier to executing a green constitution is the aggressive friction between immediate state economic interests and long-term sustainability goals, particularly within the mining, infrastructure, and energy sectors (Suwitra, 2019). This is worsened by a fragmented

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legislative structure where overlapping sectoral regulations (such as forestry and mining codes) actively weaken environmental enforcement (Anwar, 2020).

Conversely, significant opportunities exist through the progressive legal interpretations of the Constitutional Court. Furthermore, international frameworks—such as the UN Human Rights Council's formal recognition of the right to a clean, healthy, and sustainable environment—provide Indonesia with substantial leverage to harmonize its domestic laws with global ecocentric benchmarks (Knox, 2018; Cima, 2022). Empowering public participation within the Environmental Impact Assessment (EIA/AMDAL) process can operationalize these lofty constitutional values into concrete environmental protection (Ruhl, 2010; Kotzé, 2023).

Table 1. Vertical Synchronization Mapping

Constitutional Norm (UUD 1945)	Sectoral Reality / Statutory Instrument	Identified Synchronization Gap
Article 28H (1): Right to a good and healthy environment.	UU PPLH (No. 32/2009) & Job Creation Act adjustments.	Weakened public enforcement and restricted EIA/AMDAL participation pathways.
Article 33 (4): Economic development with environmental awareness and sustainability.	Sectoral Mining and Forestry Laws (e.g., UU Minerba).	Overly anthropocentric; permits priority exploitation without adequate cross-generational resource calculations.

CONCLUSION

The Indonesian Green Constitution establishes a profound constitutional obligation to protect and manage the environment sustainably, as clear from Article 28H paragraph (1) and Article 33 paragraph (4). It represents a paradigm shift from an anthropocentric view to an ecocentric framework. However, severe gaps persist due to weak enforcement, legislative disharmony, and the dominance of short-term economic interests. To bridge the identified research gap, future legislative actions must structurally align sectoral laws with constitutional

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green mandates, transforming the Green Constitution from a symbolic document into an active national development ideology.

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