

## **Green Constitution: A Normative Basis for Protecting the Right to a Healthy Environment in Indonesia**

### ***Green Constitution: Landasan Normatif untuk Melindungi Hak atas Lingkungan Hidup yang Sehat di Indonesia***

Adhe Ismail Ananda\*   
Universitas Nusa Cendana, Indonesia

Fitria Nur   
Universitas Andi Djemma, Indonesia

Ivan Ndun   
Universitas Nusa Cendana, Indonesia

Stefanus Kurniadi Janggur   
Universitas Nusa Cendana, Indonesia

\*Corresponding Author: [adhe.ananda@staf.undana.ac.id](mailto:adhe.ananda@staf.undana.ac.id)

#### **Abstract**

The intensifying environmental degradation in Indonesia reveals a gap between the constitutional guarantee of a healthy environment and actual state governance. This discrepancy underscores the urgent need to reinforce the Green Constitution as a normative basis for safeguarding citizens' ecological rights and ensuring sustainable development. This study analyzes the Green Constitution's position within the 1945 Constitution of the Republic of Indonesia and its implications for state responsibility and environmental policy. Employing a normative juridical approach, this research argues that the Green Constitution necessitates reinterpreting state control over natural resources as a constitutional obligation to uphold ecological sustainability and intergenerational justice. However, implementation faces obstacles, including lax law enforcement, the prioritization of economic interests in development policies, and constraints on regional governments' authority. Therefore, this study recommends policy reconstruction through ecological decentralization, enhanced corporate accountability, a proactive role for the Constitutional Court, and the integration of sustainability principles into legislation and national development policies.

Keywords: Eco-constitutionalism; Ecological Rights; Intergenerational Justice.

#### **Abstrak**

*Kerusakan lingkungan yang terus meningkat menunjukkan adanya kesenjangan antara jaminan hak konstitusional atas lingkungan hidup yang sehat dan praktik penyelenggaraan negara di Indonesia. Kondisi tersebut menegaskan urgensi penguatan Green Constitution sebagai landasan normatif, untuk memastikan perlindungan hak ekologis warga negara dan keberlanjutan pembangunan. Penelitian ini bertujuan menganalisis kedudukan Green Constitution dalam UUD NRI 1945 serta implikasinya terhadap tanggung jawab negara dan arah kebijakan lingkungan. Menggunakan pendekatan yuridis normatif, penelitian ini menyatakan Green Constitution menuntut reinterpretasi penguasaan negara atas sumber daya alam sebagai kewajiban konstitusional, untuk menjaga keberlanjutan ekologis dan keadilan antargenerasi. Namun implementasinya terhambat oleh lemahnya penegakan hukum, dominasi kepentingan ekonomi, dan pembatasan peran daerah. Penelitian ini merekomendasikan rekonstruksi kebijakan melalui desentralisasi ekologis, penguatan pertanggungjawaban korporasi, peran progresif Mahkamah Konstitusi, serta integrasi prinsip keberlanjutan dalam seluruh legislasi dan kebijakan pembangunan nasional.*

*Kata Kunci: Eco-constitutionalism; Hak Ekologis; Keadilan Antargenerasi.*

Submitted: 08/07/2025 | Reviewed: 20/10/2025 | Accepted: 28/12/2025

## Introduction

The protection of the environment has, in recent times, emerged as an increasingly significant constitutional issue within modern systems of governance. Numerous states have incorporated ecological values into their constitutions as an expression of the state's responsibility to ensure the sustainability of both human life and the natural world. This concept is known as the Green Constitution, a framework that positions environmental protection as an inherent component of the fundamental principles of the constitution and of human rights.<sup>1</sup> In the Indonesian context, recognition of the right to a good and healthy environment is expressly affirmed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The provision stipulates that every person has the right to live in physical and spiritual prosperity, to have a place of residence, and to obtain a good and healthy environment.<sup>2</sup>

Furthermore, Article 33 paragraphs (3) and (4) of the 1945 Constitution affirm that the land, waters, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people, in accordance with principles of sustainability and environmental stewardship. This formulation indicates that the state not only holds authority over natural resources but also bears a constitutional obligation to manage them in a just and sustainable manner.<sup>3</sup> In this context, the principle of the Green Constitution requires a balance between economic interests and environmental preservation. However, in constitutional practice, this constitutional idealism has not yet been fully implemented in state policies and administrative actions.

Empirical conditions indicate that Indonesia continues to face serious environmental degradation resulting from excessive exploitation of natural resources, particularly in the mining sector. Uncontrolled mining activities frequently lead to ecosystem degradation, water pollution, deforestation, and a decline in the quality of life of communities living in mining areas.<sup>4</sup> Kabaena Island in Bombana Regency, Southeast Sulawesi, for instance, constitutes a tangible example of how extensive nickel mining exploitation has generated

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<sup>1</sup> Febrian Chandra, Diar Adithiya, and Hartati Hartati. "Konstitusi Hijau (Green Constitution) dalam Upaya Pelestarian Lingkungan Hidup yang Berkeadilan." *Jurnal Penelitian Inovatif* 4.3 (2024): 889-896. <https://doi.org/10.54082/jupin.441>

<sup>2</sup> Andang Binawan, , and Maria Grasia Sari Soetopo. "Implementasi Hak Atas Lingkungan Hidup Yang Bersih, Sehat, Dan Berkelanjutan Dalam Konteks Hukum Indonesia." *Jurnal Hukum Lingkungan Indonesia* 9.1 (2022): 121-156. <https://doi.org/10.38011/jhli.v9i1.499>

<sup>3</sup> Marthen B Salinding. "Konsep Penguasaan Negara Terhadap Sumber Daya Mineral dan Batubara Yang Berkeadilan." *Borneo Law Review* 6.2 (2022): 219-235. <https://doi.org/10.35334/bolrev.v6i2.3244>

<sup>4</sup> Mawardi Heru Prasetyo, Dewi Wahyuni K. Baderan, and Marini Susanti Hamidu. "Dampak Kerusakan Lingkungan Akibat Eksploitasi Sumber Daya Mineral dari Kegiatan Pertambangan." *Hidroponik: Jurnal Ilmu Pertanian Dan Teknologi Dalam Ilmu Tanaman* 2.2 (2025): 1-11. <https://doi.org/10.62951/hidroponik.v2i2.328>

both ecological and social damage. This phenomenon demonstrates a gap between constitutional principles guaranteeing the right to a healthy environment and the reality of their implementation in practice.<sup>5</sup>

One of the principal causes of the weak implementation of the Green Constitution lies in the ineffectiveness of environmental law enforcement. Many environmental violations are not addressed decisively, due to limited institutional capacity among enforcement bodies, a lack of transparency, and the presence of conflicts of interest between economic objectives and conservation.<sup>6</sup> In many cases, corporations proven to have caused environmental damage instead receive political or administrative protection. This condition eliminates deterrent effects and reinforces a culture of impunity in environmental law violations. Consequently, the state's responsibility to guarantee citizens' constitutional right to a good and healthy environment becomes neglected.

The problem has become more complex with the centralization of authority in the mining sector through Law Number 23 of 2014 on Regional Government and Law Number 3 of 2020 on Mineral and Coal Mining. This policy transfers a substantial portion of licensing and supervisory authority over mining activities from regional governments to the central government.<sup>7</sup> Although intended to strengthen oversight and prevent licensing abuses, the policy indirectly restricts the capacity of regional governments to protect the environment within their territories. In fact, regional authorities are the closest institutions to local communities and possess the most direct understanding of local ecological conditions. This centralization of authority creates a disparity between regional responsibility for environmental sustainability and the limited powers available to them.

From the perspective of the Green Constitution, this condition reflects a contradiction between constitutional ideals and the implementation of sectoral policies. The Constitution requires the state to act proactively in maintaining a balance between development interests and environmental protection. However, in practice, policies that are excessively oriented toward economic growth frequently disregard the principle of ecological sustainability.<sup>8</sup> As a consequence, citizens' constitutional right to a good and

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<sup>5</sup> Ashari Usman, and Aris Suziman. "Dampak Pertambangan Nikel di Pulau Kabaena terhadap Indeks Pembangunan Manusia (IPM) Bidang Pendidikan." *Jurnal Kreatif Online (JKO)* 8.4 (2020): 190-203.

<sup>6</sup> Febrian Chandra, Adithiya Diar, and Fitri Handayani. "Peran Mahkamah Konstitusi dalam Memperkuat Prinsip Konstitusi Hijau di Indonesia." *Limbago: Journal of Constitutional Law* 5.1 (2025): 137-152.

<sup>7</sup> Adhe Ismail Ananda, and Yeni Haerani. "The State's Right to Control and Local Government Authority in the Mining Sector: A Legal-Policy Research." *Administrative and Environmental Law Review* 6.1 (2025): 33-34. <https://doi.org/10.25041/aelr.v6i1.4079>

<sup>8</sup> Moh Akli Suong, and Muhamad Abdi Sabri I. Budahu. "Perlindungan Lingkungan Hidup Sebagai Hak Konstitusional Warga Negara Dalam Pembangunan Berkelanjutan: Environmental Protection as a Constitutional Right of Citizens in Sustainable

healthy environment becomes vulnerable to violation. The state appears to fail in carrying out its constitutional obligation as the guardian of the environment, namely the primary protector of environmental sustainability for the benefit of present and future generations.<sup>9</sup>

Several previous studies have highlighted the urgency of strengthening the right to a good and healthy environment within Indonesia's constitutional system. Butt and Murharjanti (2021), in their article *The Constitutional Right to a Healthy Environment in Indonesia*, demonstrate that although Article 28H paragraph (1) of the 1945 Constitution explicitly guarantees the right to a good and healthy environment, the right is still rarely articulated effectively in legal practice and in the decisions of the Constitutional Court. This is due to the weak normative construction linking environmental rights to concrete judicial and administrative instruments.<sup>10</sup> Similarly, Haryani (2025), in the study *Green Constitution in the Indonesian Constitution and Its Interpretation by the Constitutional Court*, asserts that the principle of sustainability is indeed reflected in several constitutional provisions, particularly Article 33 paragraphs (3) and (4). However, its implementation in national policies has not yet fully internalized the paradigm of eco-constitutionalism, resulting in a continuing gap between constitutional norms and sectoral policies.<sup>11</sup> Meanwhile, Daffa Ladro Kusworo (2024), in the study *Green Constitutional Paradigm for Sustainable Environmental Development*, explains that several countries have successfully embedded the principles of a green constitution within their legal systems. However, the research remains primarily comparative in nature and does not yet provide an applicable theoretical framework for the Indonesian context.<sup>12</sup> Thus, it can be observed that previous studies tend to remain at the conceptual level and have not comprehensively examined the normative foundations capable of realizing the green constitution within national constitutional practice.

This research offers novelty by proposing the green constitution as a normative foundation that systematically integrates the principles of sustainability and the right to a good and healthy environment into Indonesia's constitutional legal system. Unlike previous studies that merely emphasize implementation

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Development." *Jurnal Media Hukum* 10.2 (2022): 110-121.  
<https://doi.org/10.59414/jmh.v10i2.525>

<sup>9</sup> Absori, et al. "Legal Policy on Eco-Partnerships To Achieve Sustainable Development." *Diponegoro Law Review* 7.2 (2022): 312-327.  
<https://doi.org/10.14710/dilrev.7.2.2022.312-327>

<sup>10</sup> Simon Butt, and Prayekti Murharjanti. "The Constitutional Right to a Healthy Environment in Indonesia." *Journal of Environmental Law* 33.1 (2021): 33-56.  
<https://doi.org/10.1093/jel/eqaa031>.

<sup>11</sup> Dina Silvia Puteri. "Green Constitution dalam Konstitusi Indonesia dan Pemaknaannya oleh Mahkamah Konstitusi." *Jurnal Kajian Konstitusi* 5.1 (2025): 1-26.  
<https://doi.org/10.19184/j.kk.v5i1.53699>.

<sup>12</sup> Daffa Ladro Kusworo, and Fitra Arsil. "Green Constitutional Paradigm for Sustainable Environmental Development in the Capital of Archipelago: A Comparative Study with France and Ecuadorian Constitution." *Unifikasi: Jurnal Ilmu Hukum* 11.02 (2024): 83-98.  
<https://doi.org/10.25134/unifikasi.v11i02.769>.

aspects or cross-country comparisons, this research focuses on a normative analysis of the 1945 Constitution of the Republic of Indonesia and the need for amendment or reinterpretation of provisions concerning environmental rights in order to align them with the paradigm of eco-constitutionalism. Accordingly, this study seeks to close the previously unresolved conceptual and normative gap while providing direction for strengthening the constitutional basis of environmental policy and law enforcement in Indonesia.

Based on the foregoing discussion, an in-depth normative examination of the Green Constitution as the normative foundation for the protection of human rights to the environment within Indonesia's constitutional system is required. Such a study is essential to reaffirm the state's position as the primary subject responsible for fulfilling citizens' constitutional right to the environment, while simultaneously encouraging a reorientation of natural resource management policies in line with the principle of sustainability. By understanding the Green Constitution both conceptually and normatively, it is expected that an implementation model can be formulated that not only guarantees economic development but also preserves ecosystem integrity and the human dignity that depends upon it.

Therefore, the research method employed in this study is a normative juridical approach, emphasizing the analysis of legal norms governing the protection of human rights to the environment within the framework of the Green Constitution in Indonesia. This approach focuses on the examination of statutory regulations, Constitutional Court decisions, and relevant legal doctrines. The type of data used consists of secondary data, including primary, secondary, and tertiary legal materials. Data collection is conducted through library research on the constitution, environmental laws, and related academic literature. The data are analyzed using a qualitative-descriptive method by interpreting the constitutional meaning of the Green Constitution principle and relating it to the realities of environmental protection implementation. This research aims to identify the gap between norms and practice and to formulate recommendations for strengthening the role of the constitution in guaranteeing the right to a sustainable environment.

### **The Green Constitution as a Normative Basis for the Protection of Human Rights to the Environment**

The concept of the Green Constitution originates from the awareness that a constitution is not merely an instrument of power, but also an ecological contract between the state and its citizens. Within this framework, the constitution is understood as the normative foundation for the exercise of

state authority oriented toward environmental sustainability.<sup>13</sup> In Indonesia, this concept finds its foundation in the 1945 Constitution of the Republic of Indonesia, which embodies the principle of natural resource sustainability and the right of every person to a good and healthy environment. Accordingly, the Green Constitution is oriented toward a constitutional paradigm that integrates ecological justice into the structure of law and public policy. This interpretation positions environmental protection as an inherent component of human rights and constitutional rights that must be guaranteed, respected, and protected by the state.

The concept of the Green Constitution emerged from the aspiration to overcome the limitations of sectoral and reactive approaches to environmental law. Thus far, environmental regulation in Indonesia has often focused primarily on administrative aspects without positioning ecology as the ethical foundation of state governance.<sup>14</sup> The concept of the Green Constitution corrects this by affirming that environmental protection is not merely a technical matter, but a constitutional obligation inherent in a state based on the rule of law (*rechtsstaat*). In this context, the constitution is no longer understood statically, but rather as a living document (living constitution) that must respond to the challenges of the global ecological crisis.<sup>15</sup> Therefore, the incorporation of green principles into the constitution constitutes a manifestation of the state's commitment to present and future generations (intergenerational equity).

In the 1945 Constitution of the Republic of Indonesia, the principle of the Green Constitution is explicitly reflected in Article 28H paragraph (1), which states that every person has the right to a good and healthy environment. This provision affirms that the right to the environment constitutes an integral part of human rights. Moreover, Article 33 paragraph (3) provides a structural dimension by stipulating that the land, waters, and natural resources are controlled by the state and utilized for the greatest prosperity of the people.<sup>16</sup> These two norms demonstrate a balance between the rights and obligations of the state: the state is obliged to guarantee environmental quality, while the people have the right to enjoy and oversee its management. However, in practice, the meaning of "state control" is often misconstrued as "state

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<sup>13</sup> Zilda Khilmatus Shokhikhah. "Hak Konstitusional Generasi Mendatang Atas Lingkungan Hidup Layak : Kajian Hukum Tata Negara Terhadap Tanggung Jawab Negara Dalam Pembangunan Berkelanjutan". *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4.3 (2025): 175-86. <https://doi.org/10.55606/jurrish.v4i3.5767>

<sup>14</sup> Mochammad Kasman. "Integrasi Hukum Agraria dan Lingkungan: Pendekatan Baru untuk Pembaharuan Kebijakan Sumber Daya Alam." *Locus Journal of Academic Literature Review* 4.3 (2025): 186-196. <https://doi.org/10.56128/ljoalr.v4i3.477>

<sup>15</sup> Atika Thahira. "Penegakan Hukum Administrasi Lingkungan Hidup Ditinjau Dari Konsep Negara Hukum." *JCH (Jurnal Cendekia Hukum)* 5.2 (2020): 260-274. <https://doi.org/10.33760/jch.v5i2.229>

<sup>16</sup> Anggi Permatasari,. "Tanggung Jawab dan Perlindungan Negara Atas Hak-Hak Sosial Ekonomi Pengelolaan Sumber Daya Alam Menurut Undang-Undang Dasar 1945." *Jurnal Kewarganegaraan* 8.1 (2024): 272-289. <https://doi.org/10.31316/jk.v8i1.6114>

ownership,” which in fact opens the door to excessive exploitation of natural resources.

The right to a good and healthy environment is not merely an individual right but also a collective right with an intergenerational character. This view is consistent with the theory of ecological constitutionalism, which positions the Earth and the environment as subjects of constitutional concern.<sup>17</sup> Within this framework, the Green Constitution expands the horizon of human rights by incorporating an ecological dimension into them. The state is not only obliged to respect civil and political rights, but also required to protect the ecological rights of its citizens. This reflects a paradigm shift from an anthropocentric constitution toward an ecocentric constitution, in which nature is no longer regarded merely as an object of exploitation, but as an entity possessing intrinsic value and deserving protection through constitutional instruments.<sup>18</sup>

Within the Indonesian constitutional framework, interpreting the right to the environment as an intergenerational collective right carries juridical consequences: the state must ensure that every natural resource management policy does not undermine the environmental carrying capacity for future generations. This is reflected in the state’s obligation to prevent permanent ecological damage resulting from open-pit mining, deforestation, and long-term environmental pollution.<sup>19</sup> Failure by the state to fulfill this obligation constitutes a denial of the constitutional rights of future generations to a viable environment. Accordingly, the paradigm of an ecocentric constitution requires that every political and legal decision be evaluated not only on the basis of short-term economic benefits, but also on ecological sustainability and intergenerational justice as constitutional values.

The relevance of the Green Constitution becomes increasingly significant amid the threats of climate crisis, deforestation, and ecological degradation resulting from massive natural resource exploitation. Normatively, the 1945 Constitution of the Republic of Indonesia has provided an adequate foundation for environmental protection; however, weak implementation reveals a gap between text and context. In this regard, the Green Constitution functions as an interpretative guideline for legislators and law enforcers, ensuring that every development policy is subject to the principle of sustainability.<sup>20</sup> In other words, every legal instrument must be tested for its

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<sup>17</sup> Dina Silvia Puteri. "Green Constitution dalam Konstitusi Indonesia dan Pemaknaannya oleh Mahkamah Konstitusi." *Jurnal Kajian Konstitusi* 5.1 (2025): 1-26. <https://doi.org/10.19184/j.kk.v5i1.53699>

<sup>18</sup> Muhammad Pasha Nur Fauzan. "Meninjau Ulang Gagasan Green Constitution: Mengungkap Miskonsepsi Dan Kritik." *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 1.1 (2021): 1-21. <https://doi.org/10.23920/litra.v1i1.573>

<sup>19</sup> Adhe Ismail Ananda, et al. "Strengthening Indigenous Peoples'rights: Integrating The Fpic Principle Into Indonesia's Mining Legal Framework." *Cepalo* 10.1 (2026): 1-12. <https://doi.org/10.25041/cepalo.v10no1.4899>

<sup>20</sup> Aditya Prastian Supriyadi. "Reduksi hak partisipasi publik pada aturan analisis mengenai dampak lingkungan untuk perizinan berusaha di Indonesia: perspektif green constitution." *Jurnal HAM* 14.1 (2023): 15-37.

consistency with the principles of the green constitution. This approach affirms that economic development must not be pursued at the expense of the right to the environment, as both constitute an integrated component of the just purposes of the state.

The principle of the Green Constitution is closely intertwined with the internationally recognized concept of sustainable development. Within the national legal context, this principle has been adopted through various statutes, such as Law No. 32 of 2009 on Environmental Protection and Management. However, the normative strength of the Green Constitution lies in its capacity to transcend sectoral boundaries and to establish sustainability as both a moral and legal foundation in every public policy.<sup>21</sup> By positioning the constitution as a source of ecological values, all branches of state power become bound by an ecological responsibility of a constitutional nature. This represents the highest form of protection of human rights to the environment, wherein ecological rights are integrated into the supreme legal system of the state.

The placement of the Green Constitution within the framework of the Indonesian rule-of-law state carries strategic significance in affirming that environmental protection constitutes part of the enforcement of human rights. An ideal rule-of-law state guarantees not only civil and political rights but also economic, social, and cultural rights, including ecological rights. This underscores that economic development must not conflict with the protection of the right to the environment. In practice, however, many government policies remain exploitative and disregard the principle of sustainability. Open-pit mining, illegal logging, and industrial pollution serve as concrete examples of the imbalance between economic interests and the protection of ecological rights. Therefore, the Green Constitution should function as a controlling norm, ensuring that all development policies are oriented toward a balance between growth and sustainability.<sup>22</sup>

Environmental protection within the perspective of the Green Constitution is closely related to the state's responsibility to fulfill the rights of its citizens. The state is obliged to protect the environment as part of its positive obligation to guarantee the right to a decent life. Failure by the state to prevent pollution or environmental degradation constitutes a violation of human rights.<sup>23</sup> In this context, the government cannot shield itself behind arguments of economic

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<sup>21</sup> Desi Rela Bhakti, Niken Wahyuning Retno Mumpuni, and Ahmad Khairun Hamrany. "Perumusan dan Pengaruh Konsepsi Green Constitution dalam Peraturan Daerah sebagai Wujud Komitmen Negara untuk Menjaga Kelestarian Lingkungan Hidup." *Jurnal Global Ilmiah* 1.7 (2024): 505-511. <https://doi.org/10.55324/jgi.v1i7.73>

<sup>22</sup> Auzan Qasthary, et al. "Problematika Hukum Dalam Tata Kelola Sumber Daya Alam Berkelanjutan." *MIKHAYLA: Journal of Advanced Research* 2.2 (2025): 129-137. <https://doi.org/10.61579/mikhayla.v2i2.591>

<sup>23</sup> Ahmad Arif Fadilah, et al. "Konsepsi dan Hak Asasi Manusia Atas Lingkungan Hidup yang Sehat dan Baik." *DIAJAR: Jurnal Pendidikan dan Pembelajaran* 4.1 (2025): 68-75. <https://doi.org/10.54259/diajar.v4i1.2381>

growth or investment. Development without ecological balance will instead generate intergenerational injustice and deteriorate the quality of life of society. At this point, the implementation of the Green Constitution must be translated into public policies grounded in ecological justice, where economic welfare does not sacrifice environmental sustainability as a fundamental right of all citizens.

The involvement of state institutions in enforcing the Green Constitution constitutes an important aspect of this discussion. The executive branch bears responsibility for the formulation of environmental policies, the legislative branch for the enactment of laws oriented toward sustainability, and the judiciary for the effective enforcement of environmental law.<sup>24</sup> Empirically, however, environmentally oriented legislation is sometimes weakened by permissive implementation toward large business actors, while judicial institutions have not been fully consistent in enforcing the principle of environmental justice. This condition indicates that the Green Constitution has not yet been fully internalized as a paradigm of national law. The commitment of all three branches of power in performing their respective duties and functions can enable the Green Constitution to become an effective instrument for enforcing ecological justice and preventing excessive exploitation of natural resources.

The weak ecological awareness among policymakers further exacerbates the gap between the ideals of the Green Constitution and the reality of its implementation. Principles of sustainability are often reduced to mere rhetoric in planning documents without concrete follow-up measures. The spirit of the Green Constitution demands the integration of ecological values into all aspects of policy, from planning and implementation to supervision.<sup>25</sup> In this regard, legal and environmental political education becomes crucial so that every public official understands that environmental protection is not merely a technical duty, but a constitutional mandate. Ecological awareness grounded in constitutional principles will generate policy patterns that are more sustainable and oriented toward long-term welfare.

Comparatively, several countries have adopted the principle of the green constitution within their constitutions as an effort to strengthen the state's ecological responsibility. For example, the Constitution of Ecuador recognizes the rights of nature, allowing the environment to become a legal subject worthy of protection and serving as a basis for judicial action. A study by Oluwabusayo (2025) concludes that although such recognition is progressive,

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<sup>24</sup> D Suhanda, Huda, U. N., & Rosidin, U. (2024). Politik Legislasi: Studi Terhadap Kepentingan Politik Dalam Penetapan Peraturan Di Indonesia. *Qanuniya : Jurnal Ilmu Hukum*, 1(2), 22-33. <https://doi.org/10.15575/qanuniya.v1i2.880>

<sup>25</sup> Tegar Arif Saputra, and Muhammad Muchsin Afriyadi. "Menumbuhkan Kesadaran Ekologis Siswa Sejak Dini: Menjadikan Lingkungan Sebagai Sekolah Kehidupan." *Muallimun: Jurnal Kajian Pendidikan dan Keguruan* 5.1 (2025): 1-21. <https://doi.org/10.23971/muallimun.v5i1.10007>

its operational mechanisms still exhibit shortcomings in representing ecosystems as legal entities.<sup>26</sup> On the other hand, the Constitution of South Africa, through Section 24, guarantees every person the right to live in an environment that is not harmful to health and well-being, and establishes the state's obligation to adopt legislative measures and policies to protect natural resources for present and future generations. Research by Murcott (2023) notes that although the environmental clause is explicitly written, constitutional court interpretation in practice remains limited in making this right consistently operational. These two examples affirm that the paradigm of the green constitution has become a global trend linking human rights with ecological sustainability and demanding a stronger normative construction for effective implementation.

Thus, the Green Constitution is not merely a normative concept but also a constitutional ideology that must be realized in state policy and conduct. It functions as a moral compass for every governmental action and as a basis of legitimacy for citizens to demand protection of their ecological rights. The implementation of green constitutional principles requires a paradigm shift: from exploitative to preservative approaches, and from quantitative growth to qualitative sustainability. Within the human rights framework, the Green Constitution serves as a bridge between social justice and ecological justice. It ensures that the right to a good and healthy environment is not merely a legal entitlement, but a right to life inherent in human dignity and in the interests of future generations that must be safeguarded by the state.

## **Problems of Implementation and Reconstruction of Green Constitution Principles in Environmental Policy**

The implementation of the Green Constitution in Indonesia faces significant challenges, particularly at the level of environmental law enforcement. Although, normatively, the right to a good and healthy environment has been guaranteed by the constitution and statutory regulations, its execution is often weak. Many cases of pollution and environmental destruction are not addressed proportionately by law enforcement authorities. Environmental law enforcement remains selective and tends to prioritize economic interests over ecological protection. This condition reveals a disparity between the rule in the book and the rule in action.<sup>27</sup> The Green Constitution should serve as both a moral and legal foundation to ensure that every violation against the

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<sup>26</sup> Oluwabusayo Wuraola. "Rights of Nature in Action: An Analysis of Laws in Ecuador." *Ecuadorian Science Journal* 9.2 (2025): 1-13. <https://doi.org/10.46480/esj.9.2.218>.

<sup>27</sup> Anggiat Pardamean Simamora. "Peran aparat penegak hukum (pidana) dalam melindungi lingkungan hidup: Suatu kajian perspektif keadilan ekologis." *MARAS: Jurnal Penelitian Multidisiplin* 2.3 (2024): 1353-1362. <https://doi.org/10.60126/maras.v2i3.395>

environment constitutes a violation of the constitution. Weak commitment among legal institutions reflects an ecological crisis rooted in a crisis of law enforcement.

One of the causes of weak environmental law enforcement is the absence of effective corporate accountability in cases of ecological damage. Many mining or large industrial companies involved in pollution and environmental destruction evade legal sanctions due to their economic and political influence. Mechanisms of corporate legal liability in environmental cases are often ineffective, whether in terms of evidentiary standards, enforcement, or the execution of sanctions.<sup>28</sup> Within the framework of the Green Constitution, corporations must be regarded as legal subjects that also bear constitutional responsibility in preserving environmental sustainability. The state's inability to enforce corporate ecological responsibility results in human rights violations against affected communities. From a constitutional perspective, failure to uphold ecological justice signifies the state's neglect of the mandate of Article 28H of the 1945 Constitution concerning the right to a good and healthy environment.<sup>29</sup>

The phenomenon of excessive natural resource exploitation constitutes clear evidence of the weak internalization of Green Constitution principles in national development policies. Mining activities, deforestation, and reclamation are carried out in the name of economic growth without considering environmental carrying capacity. Development that should be oriented toward sustainability instead produces ecological and social inequality. Uncontrolled exploitation leads to ecosystem degradation, loss of biodiversity, and a decline in the quality of life of communities surrounding industrial and mining areas.<sup>30</sup> The principle of the Green Constitution requires that natural resource management be not only economically beneficial but also intergenerationally just. In reality, however, development is still understood in materialistic and short-term terms.

One factor that exacerbates natural resource exploitation is the centralization of mining authority, which limits the role of regional governments in environmental supervision. Since the enactment of Law Number 3 of 2020 amending the Mineral and Coal Mining Law, mining licensing authority has been transferred to the central government. Normatively, this policy aims to create uniform governance; however, in practice, it reduces regional capacity

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<sup>28</sup> Novy Yandari Nurlaily,, and Agus Supriyo. "Pertanggungjawaban Korporasi dalam Kasus Pencemaran Lingkungan Hidup." *Media of Law and Sharia* 3.3 (2022): 255-269. <https://doi.org/10.18196/mls.v3i3.14384>

<sup>29</sup> Lusi Puspita Sari,. "Konstitusionalisasi dan Implementasi Konsep Hijau Dalam UUD 1945." *PROSIDING SERINA* 2.1 (2022): 815-824. <https://doi.org/10.24912/pserina.v2i1.20075>

<sup>30</sup> Nugraha Ramadhany. "Laju Deforestasi Hutan Akibat Aktivitas Pertambangan di Provinsi Kalimantan Timur." *Rekayasa Hijau: Jurnal Teknologi Ramah Lingkungan* 7.1 (2023): 10-19. <https://doi.org/10.26760/jrh.v7i1.10-19>

to control mining activities within their territories.<sup>31</sup> The case of ecological damage on Kabaena Island serves as an example illustrating the consequences of weakened regional supervisory functions. Local governments no longer possess the authority to act against mining violations that damage forests and coastal areas. This centralization of authority contradicts the spirit of the Green Constitution, which emphasizes the participation of regional authorities and communities in preserving environmental sustainability in accordance with the principle of ecological decentralization.

The disharmony between economic policy and ecological protection constitutes a central irony in the implementation of the Green Constitution. The government frequently prioritizes investment and economic growth under the pretext of increasing national revenue, while environmental policy becomes merely an administrative complement. Such a development approach reflects a developmentalist paradigm that contradicts the values of the green constitution. Within the logic of the Green Constitution, economy and ecology should not be in opposition but mutually reinforcing. Ecological sustainability is, in fact, a prerequisite for long-term economic growth. However, in Indonesia, environmental regulations are often weakened to facilitate investment.<sup>32</sup> Ultimately, ecological justice is neglected, and the human rights of communities to a healthy environment are sacrificed. Political courage and policy reconstruction are required so that the balance between the economy and ecology is genuinely reflected in governmental practice.

The involvement of state institutions in enforcing the Green Constitution constitutes an important aspect in this context. The Constitutional Court (MK) and the House of Representatives (DPR) hold strategic roles as agents of green constitutionalism. Through its function of judicial review of statutes against the 1945 Constitution, the Constitutional Court can progressively interpret Article 28H paragraph (1) and Article 33 paragraphs (3)–(4) as the basis for strengthening the constitutional right to a good and healthy environment. Through decisions such as Constitutional Court Decision No. 85/PUU-XI/2013 concerning Mineral and Coal Mining and Constitutional Court Decision No. 18/PUU-XVII/2019 concerning Environmental Protection, the Court has the potential to affirm that violations of environmental rights constitute violations of the constitution.<sup>33</sup> Meanwhile, the House of Representatives (DPR), as the legislative body, bears a constitutional responsibility to translate the principles of the Green Constitution into

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<sup>31</sup> Adhe Ismail Ananda, and Yeni Haerani. "The State's Right to Control and Local Government Authority in the Mining Sector: A Legal-Policy Research." *Administrative and Environmental Law Review* 6.1 (2025): 33-34. <https://doi.org/10.25041/aelr.v6i1.4079>

<sup>32</sup> Tumpal Martua H Purba. "Tantangan dalam Regulasi Hukum Investasi di Indonesia untuk Mendorong Pertumbuhan Ekonomi." *Innovative: Journal Of Social Science Research* 4.6 (2024): 5327-5333. <https://doi.org/10.31004/innovative.v4i6.17118>

<sup>33</sup> Andika Putra, and Deka Oktaviana. "Quo Vadis Environmental Participation Rights: A Review of Indonesian Constitutional Court's Decision." *Jurnal Konstitusi* 22.2 (2025): 229-259. <https://doi.org/10.31078/jk2222>.

legislative products that are responsive to the ecological crisis.<sup>34</sup> Environmental legislation must incorporate a sustainability clause as a general norm in every sector of development. Accordingly, functional collaboration between the Constitutional Court and the House of Representatives will strengthen the constitutionalization of ecological values from the normative level to the practical level, ensuring that the principles of the Green Constitution truly operate within the national legal and policy system.

The reconstruction of environmental policy based on the Green Constitution must begin with the reformulation of authority between the central and regional governments. Ecological decentralization becomes a key concept to ensure that regional governments possess real capacity in environmental supervision and law enforcement. Regional authorities are more familiar with the geographical, social, and cultural conditions of their territories, making them more adaptive in formulating environmental protection policies. The delegation of authority does not weaken the central government; rather, it strengthens the synergy between both levels of government in maintaining ecosystem sustainability.<sup>35</sup> Accordingly, the implementation of the Green Constitution will become more contextual and responsive to the needs of local communities. This reconstruction affirms that environmental protection cannot be carried out solely through centralized mechanisms, but must involve actors at the local level as an integral part of the national environmental governance system.

In addition to decentralizing authority, strengthening environmental law enforcement is a primary prerequisite for realizing the effectiveness of the Green Constitution. Law enforcement must extend beyond administrative or civil measures to include criminal sanctions that produce deterrent effects. Law enforcement officials must be equipped with capacity, independence, and political courage in handling environmental cases, particularly those involving large corporations. Sanctions against perpetrators of environmental crimes should reflect the values of the green constitution by prioritizing ecological interests over economic interests. Furthermore, transparency in legal processes and protection for whistleblowers or environmental activists must be guaranteed by the state. Without firm enforcement, the Green Constitution will remain merely an ideal norm lacking transformative social force.<sup>36</sup>

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<sup>34</sup> Titis Thoriquttyas, and Nita Rohmawati. "Green Legislation, Green Financial Crime, And Indonesia Constitutional Law: A Perspective From Environmental Justice's Theory." *Domus Legis Cogitatio* 2.2 (2025): 113-130. <https://doi.org/10.24002/dlc.v2i2.9888>.

<sup>35</sup> Wirazilmustaan. "Dimensi Desentralisasi Analisa Pola Hubungan Kewenangan Dalam Pengelolaan Pertambangan." *PROGRESIF: Jurnal Hukum* 15.2 (2021): 197-212. <https://doi.org/10.33019/progresif.v16i2.2713>

<sup>36</sup> Ahmad Ainur Ridlo, and Imroatin Arsali. "Dinamika Penegakkan Hukum Lingkungan Di Indonesia Dalam Menghadapi Problematika Lingkungan Hidup: Dynamics Of Environmental Law Enforcement In Indonesia In Dealing With Environmental

The reconstruction of policies based on the Green Constitution must also position public participation as a constitutional element. The right of the public to be involved in decision-making concerning the environment is guaranteed by various international and national legal instruments, including Law Number 32 of 2009.<sup>37</sup> Within the framework of the green constitution, public participation constitutes a manifestation of ecological democracy, in which citizens are not merely recipients of policy but also supervisors and active participants in safeguarding environmental sustainability. Mechanisms for public consultation, access to environmental information, and the involvement of indigenous communities must be strengthened to ensure that resulting policies are more just and contextual. Meaningful public participation will create a system of social oversight that complements the role of the state in realizing genuine ecological justice.<sup>38</sup>

The Green Constitution approach requires a paradigm shift in public policy from an economic orientation toward ecological sustainability. This can be realized through the integration of environmental principles at every stage of development, from planning to evaluation.<sup>39</sup> Instruments such as the environmental impact assessment (AMDAL) must be positioned not merely as administrative requirements, but as constitutional tools to ensure that every policy aligns with the mandates of Articles 28H and 33 of the 1945 Constitution. In addition, indicators of development success should be expanded to include improvements in environmental quality and the ecological well-being of society. This approach will redirect national development toward greater justice, participation, and long-term orientation in accordance with the ideals of the Green Constitution.<sup>40</sup>

Institutional strengthening also constitutes an important component of reconstructing environmental policy based on the Green Constitution. Oversight bodies such as the Ministry of Environment and Forestry, the Ombudsman, and the National Human Rights Commission must establish strong coordination mechanisms to safeguard the right to the environment.<sup>41</sup>

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Problems." *Journal Presumption of Law* 6.2 (2024): 140-157. <https://doi.org/10.31949/jpl.v6i2.8788>

<sup>37</sup> Absori, et al. "Environmental health-based post-coal mine policy in east borneo." *Open Access Macedonian Journal of Medical Sciences* 9.E (2021): 740-744. <https://doi.org/10.3889/oamjms.2021.6431>

<sup>38</sup> Febrian Chandra. "Pengelolaan Kehutanan Berbasis Masyarakat Hukum Adat dalam Kerangka Konstitusi Hijau di Indonesia." *Adagium: Jurnal Ilmiah Hukum* 3.1 (2025): 104-119. <https://doi.org/10.70308/adagium.v3i1.67>

<sup>39</sup> Ilham Dwi Rafiqi. "Pembaruan Politik Hukum Pembentukan Perundang-Undangan di Bidang Pengelolaan Sumber Daya Alam Perspektif Hukum Progresif." *Bina Hukum Lingkungan* 5.2 (2021): 319-339.

<sup>40</sup> Ahmad Royhan Bustomi, Derrel Azhar Sugianto, and Fardan Zidane Juniawan. "Politik Hukum dalam Pengelolaan Sumber Daya Alam: Antara Kepentingan Negara dan Hak Masyarakat Adat." *Hutanasyah: Jurnal Hukum Tata Negara* 4.1 (2025): 89-100. <https://doi.org/10.37092/hutanasyah.v4i1.1191>

<sup>41</sup> Nailizza Weni Bhamatika, et al. "Dari Regulasi ke Implementasi: Problematika Pengawasan dalam Menghadapi Ancaman Lingkungan Hidup di Indonesia." *PESHUM: Jurnal*

In addition, a cross-sectoral institution focused on ecological justice is required to prevent overlapping authority. Technology-based monitoring, transparency of environmental data, and the integration of public complaint systems can enhance accountability. In this context, the government needs to establish a Green Governance System that positions the principles of the green constitution as the ethical foundation of bureaucracy and the direction of development. State institutions must act as protectors of citizens' ecological rights, rather than merely administrative implementers subordinate to economic interests.

Thus, policy reconstruction based on the Green Constitution does not concern merely legal reform, but also moral, political, and social transformation. The protection of human rights to the environment must become a concrete constitutional agenda through policies of ecological decentralization, strong law enforcement, and meaningful public participation. The central and regional governments must work synergistically to build an environmental governance system that is just and sustainable. The implementation of the green constitution requires the courage to reject exploitative development paradigms and to prioritize the principle of balance between humans and nature. If realized, the Green Constitution will no longer remain merely a normative concept, but will become a constitutional pillar that upholds human rights, preserves the Earth, and ensures the sustainability of life for future generations.

## **Conclusion**

The Green Constitution essentially constitutes an important normative foundation for the protection of human rights to the environment in Indonesia. However, its implementation still faces serious challenges due to weak law enforcement, excessive exploitation of natural resources, and the centralization of mining authority that marginalizes regional roles. This condition demonstrates a gap between constitutional ideals and empirical reality in environmental governance. To realize the aspirations of the Green Constitution, policy reconstruction is required through the decentralization of environmental authority, the strengthening of an accountable ecological legal system, and the involvement of society in oversight based on constitutional rights. In this way, the green constitution will not merely remain a normative text, but will also serve as an ethical and political guide in achieving sustainable development that is just, civilized, and respectful of the human right to a healthy environment.

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