

REFLECTION OF POLITICAL LAW ON JOB CREATION IN REALIZING ENVIRONMENTAL JUSTICE

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Abstract

Environmental protection is an important aspect of the state. The regulation of environmental protection and management is currently regulated in Law Number 32 of 2009, and has been amended through the Job Creation Law. The presence of the Job Creation Law has caused polemics in society, some are pro and some are contra, including the issue of the spirit of environmental protection which is in conflict with economic aspects. This study aims to reflect the legal politics of the Job Creation Law in an effort to realize environmental justice. This research uses doctrinal research methods as well as legal and conceptual approaches. The results of this study are first, the 1945 Constitution as the Indonesian constitution has adopted the concept of a green constitution. The constitutionalization of environmental norms provides space for protection in an effort to realize environmental justice. Second, the reflection of the legal politics of the Job Creation Law on the basis of a green constitution towards environmental justice has created the potential for a decrease in environmental protection, this condition on the basis of the green constitution concept requires strengthening at the constitutional level as a foundation. The low commitment to green nuances in the 1945 Constitution has the potential to cause bias in guaranteeing environmental law enforcement and the substance of the law at the green legislation level.

Keywords: *Legal Politics, Job Creation, Green Constitution, Environmental Justice.*

I. INTRODUCTION

Constitutionally, the 1945 Constitution of the Republic of Indonesia (UUD 1945) stipulates that a good and healthy environment is a basic right and constitutional right for every Indonesian citizen. Article 28H paragraph (1) of the 1945 Constitution contains a guarantee of a person's right to a good and healthy environment. Therefore, the Government is obliged to protect and manage the environment in the implementation of development so that the environment can remain a source and support for life for the community and other living creatures.

Sustainable development is one of the manifestations of environmental insight as referred to in the 1945 Constitution. On the other hand, the principle of sustainable development must also be applied in environmentally aware development policies. There is no sustainable development without the environment as its main element, and there is no environmental insight without

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sustainable development.⁴ The use of natural resources in development efforts must be in harmony, in harmony, and in balance with the function of the environment. As a consequence, policies, plans, and/or development programs must be inspired by the obligation to preserve the environment and realize sustainable development goals.

Sutisna explained that in simple terms, sustainable development has four indicators that can be used as a benchmark, including: pro-economic welfare, pro-sustainable environment, pro-social justice and pro-environment.⁵ In the process of sustainable development, it can optimize the benefits of natural resources, human resources, scientific and technological progress by harmonizing these components, so that they can run sustainably, not ignoring one of the others. The environmental aspect is an element that cannot be separated from a sustainable development process.

The current legal developments, especially with the enactment of Law Number 11 of 2020 concerning Job Creation as revoked and replaced by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, and currently stipulated through Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law concerning Job Creation into Law (Job Creation Law) has become a dimension in the journey of environmental protection in Indonesia. This is because the issuance of the Job Creation Law has also changed, removed and added several provisions contained in Law Number 32 of 2009 concerning Environmental Protection and Management.

The dynamics of environmental protection regulations, with the issuance of the Job Creation Law, have an impact on the content of Law Number 32 of 2009 concerning Environmental Protection and Management (Law Number 32 of 2009). The existence of the Job Creation Law has changed at least 27 articles, added 4 articles, and 10 articles were removed from Law Number 32 of 2009.⁶ According to Hario Danang Pambudhi et al., the birth of the Job Creation Law, which has a primary objective in the economic sector, poses a threat to environmental sustainability. The provisions in the Job Creation Law that change the fundamental legal policy regarding the environment include:⁷

- a. simplification of licensing, namely the concept of environmental permits becoming environmental approvals that eliminate administrative lawsuits through the courts in the event of violations, as well as the categorization of risk-

⁴ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Rajawali Press, 2010), p. 134.

⁵ Sutisna, as quoted in Dicky Siswanto Renggi Tay & Sugeng Rusmiwari, "Implementasi Kebijakan Pembangunan Berkelanjutan", *Jurnal Ilmu Sosial dan Ilmu Politik*, Vol. 8, No. 4 (2019): 221.

⁶ Malicia Evendia & Ade Arif Firmansyah, "Environmental Protection Post Establishment of Omnibus Law on Job Creation in The Perspective of Local Government Authority", *Journal Progressive Law Review*, Vol. 5, No. 1 (April 2023).

⁷ Hario Danang Pambudhi & Ega Rammadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam Undang-Undang Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis", *Jurnal Hukum Lingkungan Indonesia*, Vol. 7, No. 2 (2021): 297-322.

based business permits, the implementation of which is currently still weak in Indonesia;

- b. disorientation of strict liability, namely from the definition of absolute liability to liability based on fault and there must be proof of absolute responsibility as stated in Government Regulation Number 22 of 2021 as a derivative regulation of the Job Creation Law;
- c. restrictions on environmental rights, namely those that are limited only to directly affected communities; voting rights in decision-making cannot be ascertained; elimination of the clause on filing objections to the Amdal process; and the unclear position of environmental approvals as objects of State Administrative disputes.

The environment has always been an interesting topic both locally and globally, this is not surprising because environmental protection is an aspect that influences the sustainability of the lives of other living things, including humans. Government policies contained in laws and regulations reflect how high the commitment to protecting the environment is. This is in line with the concept of a green constitution, where the constitutionalization of environmental legal norms plays a very important role.

The existence of a legal policy that has changed the content of Law Number 32 of 2009 through the Job Creation Law, directly or indirectly has changed the legal politics of environmental protection. This article will contain a discourse to see how the legal politics of the Job Creation Law in an effort to realize environmental justice. This is because the change in the legal politics of environmental protection in the Job Creation Law is a reflection of the degree of government commitment to environmental protection against the constitution as the highest legal norm.

II. DISCUSSION

A. *Green Constitution as a Foundation for Realizing Environmental Justice*

Almost all countries in the world have a constitution as the basic law of the state, because the constitution is a very important legal instrument of the state to establish and build sovereignty. Therefore it is important for countries to have a constitution.⁸ Herman Heller stated that the concept of constitution is a formulation of three stages in the process of constitutional development, one of which is that the constitution is understood as a reflection of political life in society as a political and sociological reality and is not yet a legal concept.⁹ However, from a legal perspective, in order to

⁸ M. Agus Santoso, "Perkembangan Konstitusi di Indonesia", *Yustisia*, Vol. 2, No. 3 (2013): 118. As quoted in Ria Casmi Arrsa, et al., "Jaminan Hak Konstitusional Berdasarkan Konsep Green Constitution: Perbandingan Konstitusi Indonesia dan Ekuador", *Jurnal Kajian Konstitusi*, Vol. 4, Issue 1 (2024): 27.

⁹ Moh. Koesnardi, et.al., *Pengantar Hukum Tata Negara Indonesia*, (Jakarta: Pusat Studi Hukum Tata Negara FH-UI, 1988), hlm. 65. As quoted in Maret Priyanta, "Penerapan Konsep Konstitusi Hijau (*Green Constitution*) di Indonesia Sebagai Tanggung Jawab Negara Dalam Perlindungan dan Pengelolaan Lingkungan Hidup", *Jurnal Konstitusi*, Vol. 7, No. 4 (Agustus 2010): 117.

ensure that every policy made can be enforced and implemented, the policy is always stated in a certain legal form. The highest source of law is the constitution.

The constitution acts as a guideline on how state power should be exercised¹⁰ so that the constitution is said to be "the basis of the national legal order". Therefore, everything that is considered fundamental will be regulated in the constitution. Thus, the placement of environmental aspects in the constitution shows a country's serious commitment to the environment.¹¹ This will certainly lead to conditions where if you want to measure how high the commitment to environmental protection is, you can look at the country's constitution.

Fulfillment of the right to a good and healthy environment is a constitutional right that cannot be violated¹² because the right to a good and healthy environment is a constitutional right guaranteed by the constitution as the highest law (*the highest constitutional law*).¹³ The constitution can be said to be a vehicle for institutionalizing government policy norms into a reference system that is binding and enforced with force with the degree of the highest source of law. Therefore, environmental policies are important to be constitutionalized so that they can be described, implemented, and even enforced with the force of operational policies, work programs, activity budgeting, and action in the field.¹⁴

Normatively, the definition of the environment as contained in Article 1 number (1) of Law No. 32 of 2009 is the unity of space with all objects, power, conditions and living creatures, including humans and their behavior, which influence nature itself, the continuity of life and the welfare of humans and other living creatures.¹⁵ The environment consists of two elements or components, namely elements or components of living things (biotic) and elements or components of non-living things (abiotic). Between these elements there is a reciprocal relationship, mutual influence and there is a dependence between each other.¹⁶ Therefore, one of the ideas and developments in environmental protection efforts is to place the regulation of human rights to the environment in the state constitution as a commitment to environmental protection and management. The Green Constitution

¹⁰ A.H.S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara*, (Universitas Indonesia, 1990). As quoted in Dina Rahmasari, et al., "Menemukenali Perwujudan Konstitusi Hijau Yang Bercorak Antroposentrisme Dan Penerapan Demokrasi di Indonesia", *Jurnal Studia Legalia: Jurnal Ilmu Hukum*, Vol. 4, No. 2 (November 2023): p.25.

¹¹ *Ibid.*

¹² Zulkifli Aspan & Ahsan Yunus, "The right to a good and healthy environment: Revitalizing green constitution" terjemahan Nurul Awaliyah Ardini, IOP Conference Series: Earth and Environmental Science, 343, 012067 (2019): 2. As quoted in Ulfa Reskiani, et al., "Optimalisasi Green Constitution: Penguatan Norma Hukum Lingkungan Dalam Sistem Peradilan di Indonesia", *NOMOKRASI: Jurnal LeDHaK Fakultas Hukum Unhas*, Vol. 1, No. 1 (2023): p.42.

¹³ *Ibid.*

¹⁴ Jimly Asshiddiqie, *Green and Blue Constitution: Undang-Undang Dasar Berwawasan Nusantara*, (Depok: PT RajaGrafindo, 2021), p. 37.

¹⁵ Article 1 number (1) Law no. 32 of 2009.

¹⁶ Muhammad Akib, *Hukum Lingkungan*, (Jakarta: Rajawali Pers, 2014), hlm. 2. As quoted in Indah Sari, "Penegakkan Hukum Lingkungan Menuju Tercapainya Keadilan Lingkungan", *Jurnal Mitra Manajemen*, Vol. 8, No. 2 (2016): p.19.

is one of the things that answers various concerns of the community regarding the decline in environmental function.¹⁷

Green Constitution is the implementation of environmental policy (green policy) into the text of the basic law or constitution.¹⁸ Green Constitution refers to the idea of incorporating environmental conservation principles into the draft constitution of the country. The aim is to strengthen legal protection of the environment and affirm the human right to a good and healthy environment.¹⁹ In the green constitution, there is a green commitment that is the foundation for restructuring the relationship between humans and nature. This commitment also underlies the restructuring of all economic, political and cultural relations that in various aspects are certainly related to nature.²⁰

The idea of a green constitution has received attention and has been discussed in various forums. The guarantee of the right to a healthy environment in the Indonesian constitution mandates everyone to be responsible for preserving the environment. Meanwhile, the government has an obligation to provide good and firm regulations so that every citizen as a rights holder can have a healthy environment.²¹ In relation to its realization in Indonesia, there are at least three articles which are considered to reflect it, namely Article 28H paragraph (1) of the 1945 Constitution, Article 33 paragraph (3) of the 1945 Constitution, and Article 33 paragraph (4) of the 1945 Constitution. The existence of these three articles shows that environmental norms have been constitutionalized into the material content of the constitution as the highest law, even though the green nuance is still too young, so that it requires strengthening to become a darker green.²² This is what is then inseparable from the extent to which the legal policy of a law in environmental protection also depends on environmental legal norms in the constitution.

The environment seems simple, but if it is ignored, the negative impact will be large, especially on social conditions when viewed from the aspect of justice.²³ What

¹⁷ Jimly Asshiddiqie, "Kini Saatnya, Membumikan Konstitusi Hijau", public lecture and public discussion entitled "Konstitusi Hijau dan Hak Asasi Manusia", as part of the constitutional rights of citizens in managing the environment and natural resources in Indonesia, *Sarekat Hijau Indonesia (SHI)*, 2009. As quoted in Maret Priyanta, *Op.Cit.*, p. 116.

¹⁸ Eko Nurmardiansyah, "Konsep Hijau: Penerapan Green Constitution dan Green Legislation dalam Rangka Eco-Democracy", *Veritas et Justicia: Jurnal Ilmu Hukum*, Vol. 1, No. 1 (2015): 217.

¹⁹ S. Rohmah & M. A. Kholish, *Konstitusi Hijau Dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, Dan Tantangannya di Indonesia*, (Universitas Brawijaya Press, 2022). As quoted in Febrina Chandra, et al., "Konstitusi Hijau (*Green Constitution*) dalam Upaya Pelestarian Lingkungan Hidup yang Berkeadilan", *Jurnal Penelitian Inovatif (JUPIN)*, Vol.4, No. 3 (Agustus 2024): 890.

²⁰ Eko Nurmardiansyah, "Konsep Hijau: Penerapan Green Constitution dan Green Legislation Dalam Rangka Eco-Democracy", *Jurnal Veritas et Justicia*, Vol. 1, No. 1 (2015): 184. As quoted in Siti Rohmah, et al., *Konstitusi Hijau & Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, dan Tantangannya di Indonesia*, (Malang: UB Press, 2022), pp. 5-6.

²¹ Ulfa Reskiani, *Op.Cit.*, p. 46.

²² S.A.G. Pinilih, "The Green Constitution Concept in the 1945 Constitution of The Republic of Indonesia", *Mimbar Hukum*, Vol. 30, No. 1 (2018): 204. As quoted in Dina Rahmasari, *Op.Cit.*, p. 31.

²³ Kees Bertens, *Pengantar Etika Bisnis*, (Yogyakarta: Kanisius, 2010), hlm. 93. As quoted in Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan", *Mazahib: Jurnal Pemikiran Hukum Islam*, Vol. 15, No. 1 (Juni 2016): 25.

is meant by justice here is whether there is a right for every person to obtain/enjoy good and healthy environmental quality, whether there is a right for every person to maintain the environment so that it is free from destruction and pollution or even extinction, whether citizens are involved in making decisions or policies concerning environmental management, and even whether the community has the right to reject or accept a business activity that can damage the environment.²⁴ Environmental justice is the goal that must be pursued in every policy contained in laws and regulations.

The green constitution is present as a response to the increasingly worrying environmental damage. The environmental crisis caused by various human activities has brought significant negative impacts, both for human health, ecosystems, and the sustainability of living things.²⁵ Therefore, the constitutionalization of environmental legal norms is very important. In this case, Achmad Sentosa is of the opinion that there are several levels or categories of constitutionalization of environmental legal norms, namely the category:²⁶

- a. Highest commitment, recognition of legal rights for nature (right for nature) which is equipped with subjective rights and state obligations (the duty of the state) in the field of environmental management, as well as the direction of the development pattern, namely sustainable development in a special environmental charter package.
- b. High commitment, recognition of subjective rights is equipped with the duty of the state in the field of environmental management and the direction of the development pattern, namely sustainable development in a special environmental charter package.
- c. Adequate commitment, recognition of subjective rights with the duty of the state in the field of environmental management in special articles, but does not yet contain the direction of the development pattern.
- d. Medium commitment, recognition of subjective rights without specifically recognizing the duty of state in the field of environmental management, but there is a content of the direction of the sustainable development pattern even though it is not placed in a special article.
- e. Low commitment, a constitution that does not recognize environmental legal norms at all (subjective rights or duty of state), and there is no material on the direction of the development pattern.

According to Jimly Asshidiqie, the Indonesian constitution which contains Article 28H paragraph (1) of the 1945 Constitution is a norm that recognizes subjective rights in environmental management, and the existence of Article 33 paragraph (4) of the 1945 Constitution is a norm that recognizes environmentally aware elements

²⁴ Indah Sari, *Op.Cit.*, p. 20.

²⁵ S. Rohmah & M. A. Kholish, *Konstitusi Hijau Dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, Dan Tantangannya Di Indonesia*, (Universitas Brawijaya Press, 2022). As quoted in Febrian Chandra, *Loc.Cit.*

²⁶ Jimly Asshiddiqie, *Op.Cit.*, p. v.

in the national economy or economic development based on the concept of sustainable development. Indonesia in this case can be categorized in the medium commitment category.²⁷

Provisions on environmental protection and management must be explicitly stated in the constitution considering the issues and interests regarding the critical environment due to development activities will worsen damage and pollution to the environment, with the commitment of the executive and legislative branches, especially Indonesia, can propose changes to the constitution. The provisions in this constitution will be used as the basis for the laws and regulations below it so that all provisions will be based on the constitution which is oriented towards preserving the function of the environment.²⁸ This is inseparable because subjective rights are the most "extensive" form of legal protection. Given that a good and healthy environment is a human right, then in the framework of organizing the state, government and development for the welfare of the Indonesian nation, its existence must be maintained.²⁹

The development of democratic discourse in various parts of the country has made the issue of environmental justice increasingly manifest in the form of concrete actions. From what was initially an abstract idea, it then experienced a synergistic development that began to be understood as the importance of fighting for environmental justice.³⁰ Environmental justice based on the taxonomy of justice is divided into four categories, namely environmental justice as distributive justice, environmental justice as corrective justice, environmental justice as procedural justice and environmental justice as social justice. In environmental justice, there are five basic elements which include:³¹

- 1) the individual right to be protected from pollution;
- 2) a preference for prevention of pollution;
- 3) the burden of proof shifts to those who pollute or discharge waste/emissions (dischargers) or to those who do not provide equal protection to minority groups;
- 4) evidence of discrimination in the environmental context is no longer measured based on the intention to provide different treatment, but based on the differences in environmental impacts felt by society (disparate impacts) and statistical evidence that shows these differences;

²⁷ *Ibid.*

²⁸ Maret Priyanta, *Op.Cit.*, p. 128.

²⁹ Abdul Hasim, "Perlindungan Terhadap Lingkungan Hidup Merupakan Bentuk Penerapan Green Constitution dalam UUD Tahun 1945", *AT-Tanwir Law Review*, Vol. 3, No. 1 (2023): 3.

³⁰ Sonny Keraf, *Etika Lingkungan Hidup*, (Jakarta: Kompas, 2010), hlm. 34-40. As quoted in Ria Casmi Arrsa, *Op.Cit.*, p. 32.

³¹ Robert D. Bullard, "Environmental Justice for All", in Robert D. Bullard, *Environmental Justice and Communities of Color*, (San Fransisco: Sierra Club Books, 1994), hlm. 10. As quoted in Andri G. Wibisana, "Keadilan Dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan", *Mimbar Hukum*, Vol. 29, No. 2 (2017): 294.

- 5) differences in risk sharing are addressed with targeted actions and resources (targeted action and resources).

Environmental justice and the fulfillment of environmental rights are interrelated. The relationship between environmental justice and environmental rights lies at the conceptual and practical levels. Environmental injustice is a real form of violation of environmental rights. In addition, environmental injustice is also a factor that hinders the fulfillment of environmental rights. If explained further, then if there is a violation of environmental rights, that is where environmental injustice occurs, and the fulfillment of environmental rights for the community is hampered. Therefore, the creation of environmental justice is an effective way to realize the fulfillment of ideal environmental rights for the community.³² This must be reflected in the constitution as a foundation for realizing environmental justice. Although in reality not all constitutions that contain environmental norms do not necessarily guarantee environmental justice because it depends on the degree of commitment.

The Green Constitution is still trapped in an anthropocentric perspective, making it difficult to implement, where humans are considered the center of the universe. This can ignore non-human interests, such as animals and plants. Ontologically, the green constitution has an incoherence between how the concept views the relationship between humans and nature and how the relationship between humans and nature is positioned. In addition, ethically, the green constitution fails to show that the non-anthropocentric interests of nature that are independent of human interests are possible.³³ The defeat of environmental interests in an unequal fight against other interests occurs not only in technical executive forums, but also in political forums in the legislative body. Therefore, in addition to environmental laws that are certainly on the side of the environment, there are also many laws in other fields that are not environmentally friendly. This must be accepted as a reality in the environment of the people's representative body which is the outlet for all types of interests that live and fight each other in society.³⁴

Based on the description, it can be seen that the inclusion of environmental norms in the 1945 Constitution does not guarantee that environmental management carried out by various parties will prioritize environmental sustainability, this is evidenced by the many cases of environmental pollution and damage that occur. Although environmental protection has been regulated in the 1945 Constitution and various laws and regulations, for example in Law Number 32 of 2009 concerning Environmental Protection and Management, environmental

³² Muhamad Agil Aufa Afinnas, "Telaah Taksonomi Keadilan Lingkungan dalam Pemenuhan Hak atas Lingkungan", *Prosiding Seminar Hukum Aktual Problematika Kemudahan Proyek Strategi Nasional: Konflik Norma dan Tantangan Kesejahteraan*, Vol. 1, No. 3 (September 2023): 48.

³³ M. P. N. Fauzan, "Meninjau Ulang Gagasan Green Constitution: Mengungkap Miskonsepsi dan Kritik", *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria*, Vol. 1, No. 1 (2021): 1–21. As quoted in Febrian Chandra, *Loc.Cit.*

³⁴ Jimly Asshiddiqie, *Op.Cit.*, p. 12.

damage cannot be prevented. This can be caused by weak law enforcement for perpetrators of environmental damage and the lack of public knowledge about the importance of the environment for survival.³⁵

The implementation of the Green Constitution in Indonesia, which is still in its early stages, requires a higher level of commitment. The relationship between citizens, the state, and the environment can indeed be described in terms of responsibilities. However, this picture is only part of the complex reality. To understand this relationship comprehensively, it is important to view it from various perspectives and emphasize the balance between rights and obligations³⁶ because in reality, there are still several challenges in implementing the Green Constitution in Indonesia, such as there are still many violations of environmental regulations that are not dealt with firmly, lack of public awareness, and sectoral egos.³⁷ In addition, in handling environmental cases, decisions in environmental cases made by a judge who has a high awareness and commitment to the importance of preserving environmental functions will provide a positive contribution in efforts to realize justice for the environment. The many products of judges' decisions that are biased towards environmental justice and preserving environmental functions will be a positive barometer for environmental law enforcement.³⁸

Thus, the Green Constitution is not an option but a necessity to become a strong legal foundation in efforts to realize environmental justice. The existence of constitutional environmental legal norms provides a foothold that guarantees environmental protection, so that all products of legislation under the constitution and environmental law enforcement can always be in line with the principles of environmental conservation.

B. Legal Politics of the Job Creation Law on Environmental Protection

Etymologically, the term legal politics comes from the Dutch term, namely *rechtspolitiek*. From this term there are two syllables, namely *rechts* which means law, and *law* itself comes from the Arabic word *hukm*, the plural of *ahkam*, which means decision, decree, order, government, power, punishment and so on. In the Dutch dictionary, the word *politiek* means policy. The word *policy* itself in Indonesian means policy. From this etymological understanding, it can be said that legal politics is legal policy. Policy itself in the Great Dictionary of the Indonesian Language is a series of concepts and principles that are the outline and basis of the plan in implementing a job, leadership and how to act. When associated with this understanding, legal politics is a series of concepts and principles that are the

³⁵ Meirina Fajarwati, "Green Constitution Sebagai Upaya Untuk Memperkuat Norma Lingkungan Hidup", *Jurnal RechtsVinding: Media Pembinaan Hukum Nasional*, Vol. 5, No. 1 (2016): 5.

³⁶ R. H. Hasibuan, "Teorema Ekosentris: Konstitusi Hijau", *Innovative: Journal of Social Science Research*, Vol. 4, No. 2 (2024): 6158-6170. As quoted in Febrian Chandra, *Op.Cit.*, pp. 890-891.

³⁷ *Ibid.*

³⁸ Faisal Khofif, "Penemuan Hukum dan Dampak Dari Putusan Hakim Lingkungan", *Jurnal Kepastian Hukum dan Keadilan*, Vol. 5, No. 2 (Desember 2023): 123-124.

outline and basis of the plan in implementing a job, leadership and how to act in the legal field.³⁹ Meanwhile, Moh. Mahfud MD stated the legal policy as follows:

“legal policy that will or has been implemented nationally by the government which includes: First, legal development which is based on the creation and renewal of legal materials so that they can be in accordance with needs; second, the implementation of existing legal provisions including the affirmation of the function of institutions and the development of law enforcers also includes an understanding of how politics influences law by looking at the configuration of power behind the creation and enforcement of the law. From this understanding, legal policy includes the process of creating and implementing laws which can indicate the nature and direction in which the law will be built and enforced”.⁴⁰

Imam Syaukani and A. Ahsin Thohari concluded that legal policy is the basic policy of state administrators in the legal field that will, is and has been in effect, which is based on values that apply in society to achieve the desired state goals. The word policy is related to the existence of a systematic, detailed, and fundamental strategy. In formulating and establishing laws that have been and will be implemented, legal policy hands over legislative authority to state administrators, but still pays attention to the values that apply in society and all of this is directed towards achieving the desired state goals.⁴¹ The use of the concept of legal politics is relevant because it will be the basis for the legitimacy of the basic policies of state administrators, including environmental protection in the regulations of the Job Creation Law.

Legal politics is an important study of the development of environmental law in Indonesia, especially regarding specific rules regarding policies and governance of the environment. This is as explained by Mahfud MD, that legal politics or what is called 'legal policy' is a formal legal line (policy) that will be enforced with new laws or by replacing old laws to achieve state goals. Therefore, the study of legal politics is important to ensure that legal development at the national level is in line with the will of the constitution, especially in terms of implementing development and environmental protection based on the concept and principles of global environmental law.⁴²

Environmental protection begins with the regulation of legal substances that favor the environment. In addition, at the highest level, there is also a very important need to include environmental protection regulations as constitutional protection, either in the form of state obligations or as fundamental rights.⁴³ The portrait of the

³⁹ Armen Yasir, *Politik Hukum Indonesia*, (Bandar Lampung: Anugrah Utama Raharja, 2018), p. 3.

⁴⁰ Moh. Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: RajaGrafindo Persada, 2012), p. 7.

⁴¹ Imam Syaukani & A. Ihsan Thohari, *Dasar-Dasar Politik Hukum*, (Jakarta: Rajawali Pers, 2003), p. 32.

⁴² *Ibid.*

⁴³ Rudy, “Dari Putusan Hijau Mahkamah Konstitusi ke Green Constitution (Refleksi Dinamika Putusan MK dan Penguatan Perlindungan Konstitusional dalam UUD 1945)”, in Alvi Syahrin, et al,

top-down legal politics of regulation in the field of natural resources and the environment has been regulated starting from the 1945 Constitution, to the law on environmental protection and management and sectoral natural resource provisions, including forestry. These regulations follow the dynamics and demands of changes in society where sectoral natural resource legislation overlaps with legislation that regulates in general, including environmental protection and management laws, spatial planning laws, regional government laws and basic agrarian laws, which are likely to result in a paradigm shift, related to the principles of sustainable human development in the natural resource sectors.⁴⁴ This is a condition that is very possible to occur because there is no guarantee that one law will be created with the same spirit of environmental protection compared to another law.

In the context of legal politics, there are at least 3 (three) Indonesian legal regulatory regimes that regulate environmental protection in the implementation of development, namely Law Number 4 of 1982 concerning the Principles of Environmental Management, Law Number 23 of 1997 concerning Environmental Management, and Law Number 32 of 2009 concerning Environmental Protection and Management⁴⁵, However, in its current development, the government has established the Job Creation Law, which has a direct impact on several regulations in Law Number 32 of 2009.⁴⁶

The planning process until the ratification of the Job Creation Law turned out to be not in accordance with what the community wanted and not in accordance with the principles of democracy in practice. In several clusters in the Job Creation Law, there are several problems so that it appears that the government does not listen to the aspirations of the people and seems to make laws according to personal desires or interests.⁴⁷ This includes bringing a new discourse on ecological sustainability in Indonesia. The reason is, there is a fundamental change in legal politics regarding environmental protection that leads to exploitation rather than conservation, thus moving away from the principle of environmental justice. Whereas environmental protection as one element of environmental justice is essential as an effort to ensure

Dinamika Hukum Lingkungan: Mengawal Spirit Konstitusi Hijau, (Bandar Lampung: Indepth Publishing, 2015), pp. 65-66.

⁴⁴ Wahyu Nugroho, "Politik Hukum Penataan Regulasi di Bidang Sumber Daya Alam dan Lingkungan Hidup Dalam Kerangka Harmonisasi Hukum", in *Prosiding Konferensi Nasional Hukum Tata Negara Ke-4 "Penataan Regulasi di Indonesia"*, (UPT Penerbitan Universitas Jember, 2017), pp. 393-394. As quoted in Wahyu Nugroho & Erwin Syahrudin, "Politik Hukum Rancangan Undang-Undang Cipta Kerja di Sektor Lingkungan Hidup dan Kehutanan (Suatu Telaah Kritis)", *Jurnal Hukum & Pembangunan*, Vol. 51, No. 3 (2021): 639.

⁴⁵ I Putu Sastra Wibawa, "Politik Hukum Perlindungan Dan Pengelolaan Lingkungan Menuju Ekokrasi Indonesia", *Kanun: Jurnal Ilmu Hukum*, (2016): 51. As quoted in Shafira Arizka Maulidyna, *Op.Cit.*, p. 275.

⁴⁶ *Ibid.*

⁴⁷ Diva Sharni Munali, et al., "Politik Hukum Pembentukan Undang-Undang Cipta Kerja: Menyoal Proses Legislasi Dalam Pembentukannya", *Amsir Law Journal*, Vol. 5, No. 1 (Oktober 2023): 9.

the distribution of rights and the quality of a good and healthy environment for the current and future generations.⁴⁸

Some consider the Job Creation Law in various studies and criticisms to have ignored the principle of environmental protection. This can be seen from the large tendency of decline in the regulation and application of ecologically sustainable development principles in various development policies implemented by the government,⁴⁹ especially after the enactment of the Job Creation Law and all its derivative regulations. Since it was still in the draft, the Job Creation Law has reduced the authority of regional governments over environmental protection and management, which can have implications for more severe environmental damage and pollution in areas. The environment and forestry become commodities with a tempting economy to the point where environmental damage or pollution is getting worse.⁵⁰

In fact, the presence of the Job Creation Law is an effort to overhaul the articles in various laws through 1 (one) law, with the ability to reach across sectors that are under the affairs of various agencies or ministries. This concept or method is known as the omnibus law. The purpose of the omnibus law concept or method through the Job Creation Law is to accelerate the consolidation of conflicting regulations simultaneously, and to become a reference for all regulations for related sectors.⁵¹ The concept of omnibus law which is usually applied in countries that adhere to the common law legal system, in the scope of countries that use the civil law legal system is still very rarely used in the process of forming legislation. Actually, the concept of omnibus law is good, but unfortunately the smuggling of articles in the Job Creation Law is detrimental to the community, thus causing opposition, especially from those who feel disadvantaged by the enactment of the Job Creation Law.⁵²

Instead of achieving its noble goals, the Job Creation Law contains regulations that tend to threaten environmental sustainability. Some of them are about the simplification of licensing, namely related to the concept of environmental permits becoming environmental approvals that eliminate administrative lawsuits through the courts if violations occur,⁵³ then the disorientation of strict liability which almost changes the definition of absolute responsibility (strict liability) into liability based on fault which has the potential to weaken justice for the community, which

⁴⁸ Hario Danang Pambudhi & Ega Ramadayanti, *Op.Cit.*, p. 297.

⁴⁹ ICEL, "Berbagai Problematika Dalam UU Cipta Kerja Sektor Lingkungan dan Sumber Daya Alam", *Indonesian Center for Environmental Law*, (Oktober 2020): 6-7. As quoted in Shafira Arizka Maulidyna, *Op.Cit.*, p. 269.

⁵⁰ Wahyu Nugroho & Erwin Syahrudin, *Op.Cit.*, p. 640.

⁵¹ Jaja Ahmad Jayus, "Konsep Sistem Hukum Investasi Dalam Menjamin Adanya Kepastian Hukum," *Jurnal Litigasi*, Vol. 16, No. 2 (2015): 29–38. As quoted in Dewi Sukma Kristianti, "Prinsip Kebersamaan Dalam Hukum Investasi Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Politik Hukum Kepentingan Investasi Ataupun Kesejahteraan Masyarakat", *PAMALI: Pattimura MagisterLaw Review*, Vol. 1, No. 2 (2021): 92.

⁵² Diva Sharni Munali, *Loc.Cit.*

⁵³ Sigit Riyanto, et al., *Kertas Kebijakan Catatan Kritis terhadap UU No. 11 Tahun 2020 tentang Cipta Kerja*, (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2020), p. 6. As quoted in Hario Danang Pambudhi & Ega Ramadayanti, " *Op.Cit.*, hlm. 298.

is exacerbated by the reduction of community participation in decision making regarding the environment, namely limited only to the community directly affected.⁵⁴ Therefore, this causes restrictions on environmental rights related to provisions that regulate compliance and enforcement of environmental law in order to fulfill environmental rights, both procedurally and substantively. In fact, the constitution guarantees environmental rights as something that is upheld by the state according to Article 28H paragraph (1) of the 1945 Constitution. If environmental issues are allowed to continue, it is feared that they will have a negative impact on ecological sustainability.⁵⁵ In addition, the problem regarding environmental protection is exacerbated by the absence of provisions on criminal sanctions for environmental crimes,⁵⁶ which is actually regulated in Law Number 32 of 2009.

Meanwhile, environmental law enforcement must be implemented immediately in the form of prevention, supervision, protection, management, implementation of strict regulations, resolution of environmental disputes and providing severe sanctions for anyone who violates the provisions of the law, because this is the true meaning of environmental law enforcement which is not only providing strict sanctions but also making prevention efforts before environmental damage and pollution occurs.⁵⁷ Environmental law enforcement is an inseparable part of environmental protection efforts, although enforcement also depends on statutory regulations.

This reality, if we reflect it with the concept of the Green Constitution, becomes a variable of influence on the green legislation contained in the form of the law. The green nuances that are still thin in the 1945 Constitution provide space that can weaken the spirit of the green constitution. Although on the other hand, the environment can be protected through efforts through: (i) the judicial process against violations of the law committed by polluters, namely through ordinary courts; (ii) the constitutional judicial control mechanism over policies contained in laws and regulations below them; or (iii) the judicial control mechanism over concrete actions by state administrators that pollute and damage the balance of the ecosystem.⁵⁸ This is what the community has also done by conducting a judicial review of the Job Creation Law at the Constitutional Court.

The rejection and problems caused by the Job Creation Law, especially when Law No. 11 of 2020 was still being enacted, encouraged the public to file a judicial review, the legal reasoning of which was also diverse, not limited to environmental protection. The high number of judicial review applications against the Job Creation Law indicates that the public considers the provisions in the Job Creation Law

⁵⁴ *Ibid.*

⁵⁵ Elly Kristiani Purwendah, "Merekonstruksi Ilmu Hukum ...", *Prosiding Seminar Nasional Hukum dan Ilmu Sosial Ke -2*, (2018): 45. As quoted in *Ibid.*, pp. 298-299.

⁵⁶ Sigit Riyanto, et al., *Kertas Kebijakan: Catatan Kritis dan Rekomendasi terhadap RUU Cipta Kerja*, (Fakultas Hukum Universitas Gadjah Mada, 2020), p. 16. As quoted in Shafira Arizka Maulidyna, *Op.Cit.*, p. 270.

⁵⁷ Indah Sari, *Loc.Cit.*

⁵⁸ Jimly Asshiddiqie, *Op.Cit.*, p. 27.

and/or the process of forming the Job Creation Law to be inconsistent with the constitution. The following is a table of data on judicial review applications at the Constitutional Court against Law Number 11 of 2020, as follows:

Table 1. Summary of Judicial Review Cases of Law Number 11 of 2020

No.	Case Number	Subject Matter of Testing	Verdict/Status
1	9/PUU-XIX/2021	Material	Withdrawn
2	109/PUU-XVIII/2020	Material	Not acceptable
3	30/PUU-XIX/2021	Material	Withdrawn
4	91/PUU-XVIII/2020	Material	Partially Granted
5	107/PUU-XVIII/2020	Formal	Not acceptable
6	6/PUU-XIX/2021	Formal	Not acceptable
7	103/PUU-XVIII/2020	Formal and Material	Not acceptable
8	105/PUU-XVIII/2020	Formal and Material	Not acceptable
9	4/PUU-XIX/2021	Formal and Material	Not acceptable
10	87/PUU-XVIII/2020	Material	Not acceptable
11	101/PUU-XVIII/2020	Material	Not acceptable
12	108/PUU-XVIII/2020	Material	Not acceptable
13	3/PUU-XIX/2021	Material	Not acceptable
14	5/PUU-XIX/2021	Material	Not acceptable
15	55/PUU-XIX/2021	Material	Not acceptable
16	46/PUU-XIX/2021	Material	Not acceptable
17	64/PUU-XIX/2021	Material	Not acceptable
18	10/PUU-XX/2022	Material	Not acceptable
19	45/PUU-XX/2022	Material	Withdrawn
20	90/PUU-XX/2022	Material	Withdrawn

Source: Processed Data, website: mkri.id

The following is a table of judicial review applications for the Job Creation Law when it was replaced and enacted through Law No. 6 of 2023, as follows:

Table 2. Summary of Judicial Review Cases of Law Number 6 of 2023

No.	Case Number	Subject Matter of Testing	Verdict/Status
1	54/PUU-XXI/2023	Formal	Reject All
2	40/PUU-XXI/2023	Formal and Material	Reject All
3	41/PUU-XXI/2023	Formal	Reject All
4	46/PUU-XXI/2023	Formal	Reject All
5	50/PUU-XXI/2023	Formal	Reject All
6	49/PUU-XXI/2023	Material	Withdrawn

Source: Processed Data, website: mkri.id

Based on the existing data, the reality is that the community has made efforts by conducting a constitutional test of the Job Creation Law, with all its various perspectives and dimensions. Although, apart from Decision 91/PUU-XVIII/2020 on

the formal test, the verdict of which was partially granted, others have not yet produced the expected results.

This condition indicates that in the perspective of the position of legal norms, efforts need to be made to ensure environmental justice, namely by increasing the level of commitment to the green constitution. The formulation of environmental legal norms in the constitution needs to be emphasized and strengthened, so that it can minimize the potential for making any policies (green legislation) that are not in line with the principles of environmental protection. This is because the constitution as the highest legal basis must of course be a reference for policy makers, not limited to environmental laws but also other sectoral regulations (laws).

III. CONCLUSION

Based on the analysis and discussion that has been described, it can be concluded that: first, the Green Constitution is a strong legal basis in efforts to realize environmental justice. The existence of constitutional environmental legal norms provides a foothold that guarantees environmental protection, so that all products of laws and regulations under the constitution can always be in line with the principles of environmental conservation. Second, the legal politics of the Job Creation Law on environmental protection have shifted which has the potential for increasing environmental pollution. The legal substance of environmental protection contained in the Job Creation Law has coherence with the green nuances of the constitution which also has a level of commitment. The higher the commitment to the constitutionalization of environmental legal norms, the more guaranteed environmental protection will be. The 1945 Constitution as a Green Constitution in realizing environmental justice still needs to be strengthened so that all government policies and actions are not biased in environmental protection.

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