



## ENVIRONMENTAL REGULATION IN THE 1945 CONSTITUTION: LEGISLATION, POLICIES, AND PRACTICES

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### Abstract

*This research aims to examine the regulation of the environment in the 1945 Constitution, both from a normative and empirical perspective. The study employs a normative legal research method by collecting and analyzing primary and secondary data related to the environmental regulation in Indonesian Constitution. The findings reveal that the 1945 Constitution has regulated the environment in two dimensions: the dimension of human rights and the dimension of the national economy. The research also identifies both positive and negative implications of the regulation of the environment in the 1945 Constitution on legislation, policies, and practices related to the environment in Indonesia. Several recommendations are provided to address the negative implications and strengthen the positive implications of the regulation of the environment in the 1945 Constitution. This research is expected to contribute to the development of legal science, particularly environmental law in Indonesia, and provide input and recommendations for the government, society, and relevant parties in the protection and management of the environment in Indonesia.*

**Keywords:** Environment, 1945 Constitution, Human Rights, National Economy

### INTRODUCTION

The environment is one of the essential aspects of human life. The environment influences well-being, health, and human rights (Corvalan et al., 2005; Goldenberg et al., 2018; Silva et al., 2018). Therefore, the protection and management of the environment are a shared responsibility among the state, society, and individuals. One way to protect and manage the environment is by regulating legal norms related to the environment. These legal norms can take the form of laws, government regulations, regional regulations, or other regulations that govern rights and obligations related to the environment.

In Indonesia, legal norms for the environment are embodied in various laws and regulations, ranging from the constitutional level to implementing regulations. The constitution serves as the fundamental law governing the system of government, people's sovereignty, human rights, and other fundamental matters related to the state (Praptini et al., 2019; Ishak et al., 2022). The constitution in Indonesia is the 1945 Constitution of the Republic of Indonesia (UUD 1945).

UUD 1945 is the highest legal source in Indonesia, binding all other legislation (Hardini, 2016; Gunawan et al., 2020; Pitriyanti & Astariyani, 2021). It contains legal norms for the environment that serve as the basis for further regulations on the environment in Indonesia. The environmental legal norms in UUD 1945 include crucial provisions. Article 28H, paragraph (1), asserts the right of every person to live prosperously physically and mentally, including the right to have a good and healthy environment and to receive health services. Meanwhile, Article 33, paragraph (3), establishes that the earth, water, and natural resources contained therein are state property that must be utilized to the fullest for the prosperity of the people. Similarly, Article 33, paragraph (4), emphasizes the organization of the national economy based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental awareness, self-reliance, and maintaining the balance of progress and the unity of the national economy. Thus, UUD 1945 provides a strong legal foundation for environmental protection and sustainable natural resource utilization. These legal norms in UUD 1945 indicate that Indonesia is committed to protecting and managing the environment responsibly. They also reflect Indonesia's recognition of human rights related to the

environment, control over natural resources for the welfare of the people, and the organization of a national economy with environmental awareness.

Although UUD 1945 has provided a strong legal foundation for environmental regulation, its implementation still faces several issues and challenges. Some of these include a lack of awareness and public participation in protecting and managing the environment, insufficient coordination and synergy between the central and regional governments in regulating and supervising the environment, and challenges in enforcing the law against polluters and environmental destroyers (Sartika, 2019; Anwar & Farhaby, 2021; Riksfardini, 2023). In addition, issues include a lack of availability and accessibility of information, education, and environmental justice for the public, as well as an imbalance between economic development and environmental preservation. These challenges underscore the need for collaborative efforts from various stakeholders to strengthen the implementation and supervision related to environmental provisions in the 1945 Constitution.

Based on the aforementioned background, this research aims to examine the regulation of the environment in the 1945 Constitution, both normatively and empirically. The research also aims to provide recommendations and suggestions to enhance the effectiveness and efficiency of environmental regulation in the 1945 Constitution. This study is expected to benefit various parties, such as the government, the public, academics, practitioners, and researchers interested in environmental issues. Furthermore, this research is anticipated to contribute to the development of legal science, particularly environmental law in Indonesia.

### METHODS

The research method used in this research is a normative legal research method. Normative legal research methods are research methods that focus on research into applicable legal norms, both written and unwritten, as well as examining theoretical, philosophical and dogmatic aspects of law. The normative legal research method is suitable for examining the regulation of the environment in the 1945 Constitution because the 1945 Constitution is the highest legal source in Indonesia containing environmental legal norms.

This research involves a series of steps to investigate the regulation of the environment in the 1945 Constitution. The first step is to identify the research problem, focusing on understanding normative and empirical aspects related to environmental regulation and exploring challenges and solutions. The research objectives are formulated to examine the regulation of the environment in the 1945 Constitution, provide critical analysis, and formulate recommendations to improve the effectiveness and efficiency of such regulation. The types and sources of data used include primary data from interviews with relevant informants such as academics, practitioners, activists, and public officials, as well as secondary data from literature studies, including books, journals, laws, and other official documents. The data collection process involves literature review and interviews, conducted with relevant questions aligned with the research objectives. Data analysis utilizes qualitative methods, involving data reduction, data presentation, and drawing conclusions.

### RESULTS AND DISCUSSION

#### **Environmental legal norms in the 1945 Constitution**

The environment is an important aspect of human life. The environment influences welfare, health and human rights (Tost et al., 2015). Therefore, environmental protection and management is a shared responsibility between the state, society and individuals. One way to protect and manage the environment is to regulate legal norms relating to the environment (Ansari, 2014). These legal norms can be in the form of laws, government regulations, regional regulations, or other regulations that regulate rights and obligations related to the environment (Arba, 2013).

In Indonesia, environmental legal norms are contained in various laws and regulations, from the constitutional level to the implementing regulations level. The constitution is the basic law that regulates the government system, people's sovereignty, human rights, and other basic matters relating to the state (Lane, 1996; Fajarwati, 2016; Istinah et al., 2021). The Constitution in Indonesia is the 1945 Constitution (UUD 1945). The 1945 Constitution is the highest legal source in Indonesia

that binds all other legislation (Sihombing & Hamid, 2020). The 1945 Constitution also contains legal norms for the environment that serve as the basis for further regulations on the environment in Indonesia. The environmental legal norms in the 1945 Constitution are mentioned in several articles. In Article 28H, paragraph (1), it is stated that everyone has the right to live in physical and mental prosperity, to reside, and to have a good and healthy environment and is entitled to obtain health services. This article is included in Chapter XA on Human Rights added through the third amendment to the 1945 Constitution in 2001. This article acknowledges that a good and healthy environment is one of the human rights that must be guaranteed and protected by the state. This article also implies that everyone has the obligation to preserve and maintain the environment to keep it good and healthy for themselves and others. Article 33, paragraph (3), states that land and water and the natural wealth contained therein are controlled by the state and used to the greatest extent for the prosperity of the people. This article is included in Chapter XIV on National Economy and Social Welfare, which did not undergo changes in the amendment process of the 1945 Constitution. This article emphasizes that the state has sovereignty over natural resources within its territory and is obliged to manage them wisely and sustainably for the welfare of the people. This article also indicates that the people have the right to utilize natural resources in accordance with their interests and well-being, while still considering environmental aspects (Lisdiyono, 2017).

Article 33, paragraph (4), states that the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, self-reliance, and by maintaining the balance of progress and the unity of the national economy. This article is included in Chapter XIV on National Economy and Social Welfare, added through the second amendment to the 1945 Constitution in 2000. This article regulates the principles that must be applied in the organization of the national economy, one of which is the principle of environmental awareness. This principle indicates that in every economic activity, whether by the state or private sector, attention must be paid to the impact and consequences on the environment, and measures must be taken to prevent, reduce, or restore environmental damage caused.

From the three articles above, it can be seen that the 1945 Constitution has regulated the environment in two dimensions: the dimension of human rights and the dimension of the national economy. In the dimension of human rights, the 1945 Constitution guarantees and protects everyone's right to have a good and healthy environment and imposes an obligation on everyone to preserve and maintain the environment (Pinilih, 2018). In the national economic dimension, the 1945 Constitution stipulates that the state has sovereignty over natural resources and is obliged to manage them sustainably, as well as determining that the national economy must be run with an environmental perspective.

### **Implications, Challenges, and Solutions Related to the Regulation of the Environment in the 1945 Constitution**

Regulating the environment in the 1945 Constitution certainly has implications for legislation, policies, and practices related to the environment in Indonesia. These implications can be positive or negative, depending on how the regulation is implemented and adhered to by the relevant parties. The regulation of the environment in the 1945 Constitution has positive implications by providing a strong and clear legal foundation for the protection and management of the environment in Indonesia. The presence of legal norms for the environment in the 1945 Constitution establishes the basis that must be followed by every regulation, policy, and practice related to the environment. Thus, consistency, coherence, and harmonization among various regulations, policies, and practices related to the environment in Indonesia can be improved, creating a framework that aligns with the 1945 Constitution.

Another positive implication is providing legitimacy and authority for the state to effectively and efficiently protect and manage the environment. With legal norms for the environment in the 1945 Constitution, the state has the authority and responsibility to regulate, control, preserve, supervise, and enforce laws related to the environment. This can strengthen the role and function of the state in the protection and management of the environment in Indonesia. Moreover, this regulation also raises awareness and encourages active and responsive participation from the public in protecting

and managing the environment. With legal norms for the environment in the 1945 Constitution, the public has the right and obligation to obtain, preserve, and maintain a good and healthy environment. This can motivate the public to be more concerned and contribute to the protection and management of the environment in Indonesia.

The negative implications of environmental regulation in the 1945 Constitution involve the potential for conflicts and overlaps among various regulations, policies, and practices related to the environment. The lack of coordination between the central and regional governments in regulating and supervising the environment, coupled with differences in the interpretation and implementation of legal norms, can lead to legal uncertainty and disparities of interests among disputing parties. These challenges pose serious obstacles to achieving harmony and clarity in the enforcement of environmental law in Indonesia (Chandra & Sobirov, 2023). Furthermore, negative impacts include worsening and widespread environmental damage and pollution due to insufficient law enforcement against polluters and environmental destroyers. The imbalance between economic development and environmental preservation can also have negative effects on health, well-being, and human rights (Rifa & Hossain, 2022). Threats to the sustainability and independence of natural resources and the environment can also be observed due to the lack of availability and accessibility of information, education, and environmental justice for the public, as well as excessive and irresponsible exploitation of natural resources and the environment in Indonesia.

To address the negative implications and strengthen the positive implications of environmental regulation in the 1945 Constitution, several strategic solutions are needed. First, there is a need to enhance coordination and synergy between the central and regional governments in regulating and supervising the environment. This can be achieved through the drafting and harmonization of regulations, policies, and practices related to the environment in accordance with the legal norms of environmental law in the 1945 Constitution. Additionally, there is a need to increase the capacity and authority of regions in managing the environment according to local conditions and needs, ensuring the more effective and coordinated implementation of rules.

Second, enforce laws against polluters and environmental destroyers firmly and fairly. This can be done by improving the quality and quantity of law enforcement officers, both at the central and regional levels, and providing legal sanctions that are commensurate and effective for the perpetrators. Additionally, it is necessary to provide protection and facilitation for victims and reporters of environmental pollution and destruction.

Third, balance economic development and environmental preservation sustainably. This can be achieved by applying environmentally conscious economic principles such as efficiency, justice, balance, and self-reliance. Moreover, it is necessary to develop and encourage environmentally friendly development models, such as green economy, creative economy, social economy, and circular economy.

Fourth, improve the availability and accessibility of information, education, and environmental justice for the public. This can be done by enhancing the transparency and accountability of the government and private sector in environmental management and providing easy and fast access to information for the public. Additionally, it is necessary to improve the quality and quantity of environmental education, both formal and non-formal, and provide easy and affordable access to justice for the public affected by or in dispute over environmental issues.

Fifth, reduce excessive and irresponsible exploitation and import of natural resources and the environment. This can be done by applying strict and clear standards and criteria in granting permits and supervising activities related to the use of natural resources and the environment, both by the government and the private sector. Additionally, it is necessary to reduce dependence on and openness to the import of natural resources and the environment, as well as enhance self-reliance and diversification of natural resources and the environment in Indonesia.

## CONCLUSION

In conclusion, this study has delved into the regulation of the environment in the 1945 Constitution of Indonesia, exploring its dimensions in human rights and the national economy. The constitutional

provisions, particularly in Article 28H and Article 33, outline the rights of individuals to live in a good and healthy environment and the state's responsibility to manage natural resources sustainably for the prosperity of the people. The findings highlight the significant role of the 1945 Constitution as the highest legal source, influencing subsequent legislation, policies, and practices related to the environment in Indonesia.

The theoretical implications of this research extend to the recognition of the 1945 Constitution as a cornerstone for environmental legal norms, shaping the legal framework and providing legitimacy for state intervention in environmental protection and management. The identified positive implications include improved consistency, coherence, and harmonization among regulations, as well as heightened legitimacy and authority for the state to safeguard the environment. Conversely, challenges arise from potential conflicts, overlaps, and disparities in interpreting legal norms, leading to uncertainties and hindered environmental law enforcement.


Moving forward, addressing these challenges requires strategic solutions. Enhancing coordination between central and regional governments, enforcing laws against environmental violations, balancing economic development and environmental preservation, improving public access to information and education, and reducing excessive exploitation of natural resources are key measures. These recommendations aim to foster a more effective and sustainable implementation of environmental legal norms embedded in the 1945 Constitution, contributing to the advancement of environmental law in Indonesia and promoting responsible environmental practices among government, society, and relevant stakeholders.

Several recommendations to address the negative implications and strengthen the positive implications of the regulation of the environment in the 1945 Constitution include enhancing coordination and synergy, enforcing the law, balancing development and preservation, improving availability and accessibility, and reducing the exploitation and import of natural resources and the environment.

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