

Environmental Judge Certification in an Effort to Realize the Green Legislation Concept in Indonesia

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ABSTRACT

The purpose of this research is to find out, analyze, and explain the certification of environmental judges in an effort to realize the concept of green legislation in Indonesia. This research is a normative or doctrinal legal research. The data analysis was carried out qualitatively, so it is hoped that the discussion can accurately answer the problem formulation. This research resulted in the following conclusions: first; Environmental judge certification is important in the effort to implement green legislation in Indonesia based on four considerations, namely: in the context of realizing the 1945 Indonesian Constitution as a green constitution, the strategic role of judges' decisions in realizing human and environmental justice, contributing to the effectiveness of environmental law enforcement. as well as for the integrated exercise of judicial or judicial powers in the principles of trias politica. Second, that with regard to the application of environmental judge certification in an effort to realize green legislation, the government has issued the RI KMA Decree Number: 134/KMA/SK/IX/2011 which regulates Certification of Environmental Judges which is used as a reference point for legal development regarding the judge certification system. environment in the settlement of civil, criminal and state administration cases in the environmental field. At the same time, judges training and coaching are conducted every year so that the need for the number of certified environmental judges is met in each region. Third, that the direction of legal reform relating to the provisions of environmental judge certification in an effort to realize green legislation can be carried out through guarding the environmental judge certification policy by cooperating with

various parties; increase the capability of judges in the field of environmental science; as well as strengthening the judges' thinking paradigm so that it is pro-environment or pro-natura (green thinking) as a form of embodiment of environmental legal norms according to the green constitution and green legislation in Indonesia. The benefit of this research is in the context of gaining insight among legal experts and legislative parties in improving the substance of law, especially environmental law which represents the concept of green legislation. This research contains novelty and differences from other research in terms of discouraging ideas and models of public policy reform with the concept of green legislation which is used as a legal umbrella in the form of laws on legal substances related to environmental judge certification.

Keywords: *Judge, Environmental Certification, Green Legislation.*

PRELIMINARY

Indonesia as a country based on law (*Rechtsstaat*) instead of power (*Machtsstaats*) is clearly stated in the state constitution. The fourth statement of the Preamble of the 1945 Constitution emphasizes the legal means to achieve the goals of the state. Two articles in the 1945 Constitution, namely Article 28H subsection (1) and Article 33 subsection (4) indicate that the Indonesian constitution can be declared a *green constitution*. The *green constitution* has logical consequences for the absolute responsibility of the state in realizing environmental protection and management for the embodiment of sustainable development that is just for humans and the environment.

Even though the Indonesian constitution is said to be quite “green”, in the context of implementation it is not easy to make “green” the laws and regulations that are under the constitutional structure or the 1945 Constitution. Efforts are full of struggle to be able to make a “green” mindset and action in realizing state administration that prioritizes the principles of environmentally sound development. It is evident that the enforcement of environmental laws in Indonesia is still far away and concerning. Many cases of pollution and environmental damage have resulted in not fulfilling a sense of justice for humans and the environment.

Human domination of the environment which causes degradation of environmental functions is inseparable from the inherent anthropocentrism. Some people even think that

anthropocentrism is the first cause of environmental damage that is getting worse (Nadjamuddin Ramly: 23, 2007). In anthropocentrism ethics describes humans as the core or center of the universe, only humans have a level and standard of values, while nature and the contents of the universe are complementary and satisfying to what humans need on earth (Sony Keraf, 2006).

Environmental damage due to human behavior is explicitly stated in the Quran. In a verse, Allah says, *“Corruption has appeared throughout the land and sea by [reason of] what the hand of people have earned so He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness]”* (QS Ar-Ruum: 41). According to Islam, the universe is not only a material thing that has no meaning or value other than its usefulness, it is only intended for the fulfillment of human needs. The universe in Islamic studies and perspectives is an embodiment or part of the sign of Allah’s “existence and power” and is a guide and giver of paths to humans in order to explain His power and existence. In this case Allah says in His Word in Sura Adz-Dzariyah: verse 20, *“And on the earth are signs for the certain [in faith]”*.

In Quran, there is a lot of discussion about nature which is then a dissertation of commands to think, learn to understand, remember a lot and be grateful and meditate, which will lead people to something that is absolute. Nature is a sign of Allah’s existence because nature is seen as the manifestation of all divine names and attributes. Destroying nature means destroying the “face” or sign of Allah on earth. Humans are obliged to treat nature well, because nature is a way and an effort to contemplate the omnipotence of Allah who leads them to become people who feared Allah. (Nadjamuddin Ramly, 2007).

As soon as the existence of nature is important for human livelihoods, efforts to protect nature and the environment so that its functions remain sustainable must be placed into an important paradigm in the implementation of development in Indonesia. One of the strongest tools in the struggle to care, protect and manage the environment is through the effectiveness of law enforcement, especially the application of laws and regulations in the environmental sector. In connection with the 1945 Constitution as a green constitution, in its embodiment, support from all related institutions, both the executive, legislative and judiciary are required. The context of a green constitution or green constitution cannot be separated

from the concept of green legislation. Judicial institutions have a strategic role in realizing green legislation through judges' decisions that prioritize human and natural justice in environmental disputes that fall within the realm of the court. Judges' verdicts with a "green" nuance are seen as capable of making a positive contribution to the effectiveness of environmental law enforcement in Indonesia.

However, so far it turns out that judicial institutions in resolving environmental disputes are considered to have not fully provided a sense of justice. Not a few court decisions on the environmental disputes that were filed resulted in disappointment in the failure to fulfillment of the justice for humans and the preservation of the environmental functions. Formal law is still used as the main orientation by judicial institutions in resolving disputes in the environmental realm. Judges have not fully used other legal considerations contained in legal fundamentals that have a higher position and laws that stay in society (Absori : 172, 2009). Even though these fundamentals and principles are very needed in order to answer and provide solutions to legal problems in matters or cases that are not accommodated in the laws and regulations. Judges are also seen as not being critical, sharp, and analytical in processing the legal facts revealed in the trial. The contribution of the failure of court institutions to resolve environmental disputes is due to the factors of law enforcement officials, especially judges in understanding and implementing new laws, only using the logic of formal legal regulations and procedures (Absori, 2009).

Responding to the lack of understanding of judges in deciding environmental disputes, the Supreme Court has actually issued a regulation regarding environmental judge certification through Supreme Court Decree Number 134/KMA/SK/IX/2011. Based on the Supreme Court Decree, environmental cases must be handled by an environmentally certified judge.

Although the environmental judge certification program has been running for nine years, since 2011, this provision has not been fully implemented. Until now, the adequacy of the quantity and quality of judges through environmental certification is deemed inadequate. It is estimated that of the eight thousand judges in Indonesia, only about five to ten percent have been certified environmental judges. Efforts through judges' decisions that are fair to humans and the environment in the framework of green legislation are still far from expectations. In fact, through judges' decisions that are fair to humans and the environment, it is hoped that

they will be able to make an important contribution to the implementation of the concept of green legislation in Indonesia.

Based on the background description as explained above, three problem formulations can be taken, namely:

- a. Why is environmental judge certification important in an effort to realize the concept of green legislation in Indonesia?
- b. How should environmental judge certification be in an effort to realize the concept of green legislation in Indonesia?

RESEARCH METHOD

This research is aimed at examining legal fundamentals, norms or rules and a set of regulations related to environmental judge certification and the concept of green legislation in Indonesia. Based on the research objectives, the type of research used is oriented towards a normative or doctrinal approach. According to Mukti Fajar and Yulianto Achmad, normative legal research is legal research that places law as a norm system building, including fundamentals, norms, rules of regulations, court decisions, agreements, and doctrines (teachings) (Mukti Fajar dan Yulianto Achmad : 34, 2010). Meanwhile, according to Peter Mahmud Marzuki, normative legal research is a mechanism or process for discovering legal regulations, rules and principles of law and legal doctrine in responding to legal problems and cases that are being resolved (Peter Mahmud Marzuki :35, 2008).

The secondary data is a type of data used in this study, obtained through literature in the form of legal materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data collection is carried out through literature study or documentation and inventory. Literature/document studies are carried out by studying in-depth, analyzing in-depth, and reviewing regulations related to environmental judge certification, green constitution, and green legislation. Literature and document searches as research material are carried out manually or through the use of electronic media.

RESULT AND DISCUSSION

1. The Urgency of Environmental Judge Certification in an Effort to Realize the Concept of Green Legislation in Indonesia

Environmental judge certification is important in an effort to realize the concept of green legislation in Indonesia based on four basic considerations, namely:

a. Embodiment of the 1945 Indonesian Constitution as the Green Constitution

Observing the arrangements in the 1945 Indonesian Constitution, it can be said that the Indonesian constitution has “green nuances”. In this context, Article 28H subsection (1) and Article 33 subsection (4) constitute evidence and deserve to be embedded as a green constitution. Article 28H subsection (1) reads “Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services.” Meanwhile, Article 33 subsection (4) reads, “The national economy shall be carried out based on economic democracy with the principles of togetherness, justice-efficiency, sustainability, environmental insight, independence, and by maintaining a balance between progress and national economic unity.” The two articles emphasize the green nuances of the 1945 Indonesian Constitution through the right to a good and healthy environment as human rights and the adoption of the principles of sustainable and environmentally sound development. Although in reality, not many parties are aware of the green nuances of the 1945 Indonesian Constitution (Jimly Asshiddiqie :8-9, 2016).

The 1945 Indonesian Constitution is the constitution in the context of the Indonesian constitutional legal system, therefore the constitutionalism of the products of legislation is tested based on the 1945 Indonesian Constitution which contains the fundamentals and rules of state administration (Titon Slamet K. : 2, 2012). Its correlation with the recognition of the 1945 Indonesian Constitution as a green constitution will have logical implications for the regulation of environmental policies into legislative products, which in English is translated as green legislation. This means that between green constitution and green legislation have a very strong attachment. If a constitution is said to be a green constitution, then there is an obligation to put environmental policies in the laws and regulations under the 1945 Indonesian Constitution. With regard to the legislation in question, Indonesia already has Law no. 32 of 2009 concerning Environmental Protection and Management Law or UUPPLH as an umbrella act in the environmental sector. As the umbrella act, it becomes a reference and

guideline for the regulation of other laws relating to the environment. Products of other laws and regulations in the environmental sector must be in harmony with the umbrella act and are not allowed to conflict in their regulations.

The government has successfully stipulated various legislative products in the environmental realm and has become a guideline and development activities. However, the products of legislation in the environmental sector are deemed not strong enough to “force” policy makers to submit to and comply with them. The issue of preserving the environment is often still in an insufficient and strategic position compared to other sectors which are more measurable in terms of direct benefits and benefits for the human life needs.

Based on the description above, the discussion of green legislation is of course very complex, not only on the substance of the regulated material, but also in relation to how a product of legislation in the environmental sector is formed and implemented. In Indonesia, the division or separation of powers which can be divided into three, including the legislative, executive and judiciary is not without clear aims and objectives. The doctrine of separation of powers (K.C. Wheare: 38, 2019), in its simplest statement, means that each government process is believed to be an inseparable government institution, it cannot overlap in terms of its function or implementation. Furthermore, this means that the three power distribution known as the trias politic concept require a division of authority in accordance with predetermined provisions, while of course prioritizing the principle of harmonious integration between forms of power. The implementation of the provisions of legislation products in the environmental sector by the judicial power makes a major contribution to the implementation of the perspective of environmental protection and management mandated by the 1945 Indonesian Constitution. Judicial institutions, through judges’ decisions with environmental justice, are part of the implementation of green legislation that comes from the basic norms of the 1945 Indonesian Constitution as a green constitution.

b. The Strategic Role of Judges’ Decisions in Realizing Justice for Human and the Environment

Law enforcement officers are an important aspect of law enforcement in Indonesia. The existence of judges in the judiciary has a key role to realize the legal certainty, benefit, and justice in the practice of community life. Article 1 point 8 of the Criminal Procedure Code

confirms that judges are judicial officials who are authorized by law to judge. With the authority they have, judges are required to make court decisions that fulfill a sense of justice for cases delegated to them. So strategic is the court decision made by a judge, that it can be concluded that the judge is the spearhead of the concretization of justice which greatly determines the success and failure of the law enforcement process in Indonesia.

The court is positioned as the last way for justice seekers to resolve legal cases. Of course, this meaningful expression is not an exaggeration. The judiciary is the foundation of the hopes of the people who are litigating when a problem in the realm of law does not get a solution. Observing the importance of the position of the judiciary, the judiciary should be able to provide maximum legal services to citizens by prioritizing legal fundamentals in fulfilling a sense of justice. A judicial institution that is professional in its functions and obligations will enhance its image as a trustworthy institution. Upholding the law and striving for justice without discrimination, the law must be comprehensive up and down, and prioritize equality before the law for everyone without exception. Ideally, the performance of the judiciary and judges as the funnel of justice must always prioritize independence, be free not to take sides with the possibility of intervention that is received.

This strengthening is based on Article 3 subsection (1) of Law no. 48 of 2009 concerning Judicial Power, which states that in carrying out their duties and functions, judges are obliged to maintain the independence of the judiciary. Meanwhile, Article 3 subsection (2) states that all interference in court matters by other parties outside the judicial power is prohibited, except in cases as referred to the 1945 Indonesian Constitution. The regulation of the article emphasizes that in carrying out his function in court, a judge must be independent, free from any pressure. Decisions made must be based on the virtue of the judge's conscience and the truth revealed in the trial.

The independence of judges is the main weapon in carrying out the obligations and functions of judges in order to produce fair decisions. In line with this, driving Franz Magnis Suseno's opinion, that the freedom of judges contains the understanding that judges in carrying out their duties and functions should not be bound and pressured by anyone, must be free to carry out their profession in a professional manner. This kind of interpretation of freedom is defined as individual freedom or essential freedom (Firman F: 222, 2015). The independence or judges' freedom is a topic that is always interesting to discuss and criticize because this is related to the decision produced by the judge. It is not possible to fully verify

the quality of the decisions produced, but they can be used as indicators. Judges who are granted independence in carrying out their duties have discretion in carrying out the legal discovery process of a given case. According to Sudikno Mertokusumo (Sudikno: 142, 1996), legal discovery is interpreted as a process of legal formation by judges or other legal officers who are assigned the task of implementing the law on concrete legal events. It is clear that there is a strong relation between the independence of the judge and the legal findings made by the judge to formulate the truth as the basis for the judge's decision.

Consideration of the value of justice in deciding a case is not only aimed at humans or in this case the interests and rights of citizens. If it is related to cases of violating or unlawful acts in the environmental sector, the context of justice that must be fulfilled by judges must also be connected with the substance of justice for the environment. Judges' decisions that support environmental justice will make a major contribution to efforts of protecting and conserving the environment in Indonesia. As the vanguard in law enforcement, the judge's decision will be very strategic in an effort to give the environment the right to remain sustainable and protected.

A judge who has good awareness and competence in controlling environmental law, of course when faced with a case in the environmental field, will take into consideration the interests of the environment. There are two important aspects that must be fulfilled by judges in carrying out their duties in deciding cases in the environmental sector. Justice for the perpetrator includes victims whose interests are violated, as well as justice for the environment. In the context of carrying out the duties of judges in adjudicating cases in the environmental sector, judges are required to carry out legal findings in order to obtain the truth.

The judge's decision consists of the head of the decision which reads: "For the sake of Justice based on the Almighty Godhead", the identity of the parties or the convicted person, the consideration or consideration of the case and the law, as well as the dictum or amar which includes the so-called declarative and dispositive parts. In civil cases, the consideration of sitting in a case is usually described separately from considerations regarding the law, whereas in criminal decisions the two considerations become one. In the declarative part of amar, the legal relation or legal event is described, while in the dispositive part, the main point of the decision is explained. (Sudikno: 53, 2001).

In connection with the judge's decision, it contains two important meanings, namely that a judge's decision has binding power for the parties mentioned in the judge's decision. In this context, it will be closely related to how the sense of justice for the parties must be fulfilled by the judge through his decision. This means that the judge's decision has strategic value in the embodiment of justice for the parties without exception. The imposition of sanctions or penalties for the parties contained in the judge's decision, must prioritize justice for legal rights and interests of the parties. In addition, apart from that, the second point of the strategic understanding of the judge's decision is related to the existence of a judge's decision as a guide for other judges in carrying out legal formation in cases similar to those decided by the decision. In this understanding, it is clear that a judge's decision prioritizing justice for the environment in cases in the environmental field will have a positive influence on the decisions of other judges with regard to similar environmental cases.

Decisions in environmental cases made by a judge who has awareness, high commitment to the importance of preserving the function of the environment will make a positive contribution in the effort to realize justice for the parties in the decision, as well as for other parties outside the decision who also need to remember that they have rights to a good and healthy environment life as a constitutional right guaranteed in the 1945 Indonesian Constitution. Because acts of breaking and violating the law in the environmental field are not only a matter of justice for the perpetrators but also justice for other people or citizens who also feel the impact of the perpetrator's actions that threaten the preservation of environmental functions. In addition, of course, the judge's decision must also consider justice for the environment to remain sustainable and its existence can be enjoyed fairly for the entire community. Judges' decisions that are fair to humans and the environment will certainly not be made by the judge if the judge does not have awareness, commitment, and competence in understanding the importance of placing environmental sustainability as a matter that must be fought for. Therefore, equipping judges through environmental judge certification is one of the efforts that can be made to realize judges' decisions that are just for humans and the environment.

c. The Effectiveness of Environmental Law Enforcement In Indonesia

Environmental law as a means of law in order to protect and manage the environment is growing rapidly. Not only in line with the function of law as protection, benefit, and legal certainty for the community but also as a means of development through the role of an agent

of development or agent of change. Environmental law concerns the application of values that are currently in force (*ius contitutum*) and values that are expected to apply in the future (*ius constituendum*). Environmental law as a law that regulates the environment, in general, can be understood as a law that regulates reciprocal relations that occur between humans or between humans and other living things, for example, nature, which if violated and not properly obeyed can be given sanctions (Siti Sundari Rangkuti: 1-2, 2000).

Keith Hawkins argues that law enforcement can be seen from two systems or strategies called compliance with a conciliatory style as its characteristic, and sanctioning with a penal style as its characteristic. Block stated that conciliatory style is remedial, a method of social repair and maintenance, assistance of people in trouble, related to what is necessary to ameliorate a bad situation. Meanwhile, penal control prohibits with punishment are accusatory, and the result is binary (all or nothing, punishment or nothing) (Koesnadi H: 376, 2002).

Still in the same context, Koesnadi Hardjasoemantri provides an understanding of law enforcement as an obligation of the entire community, and for that an understanding of rights and obligations is an absolute requirement. Meanwhile, according to (Siti Sundari Rangkuti, 2000), environmental law enforcement is closely related to the ability of the apparatus and the compliance of citizens with applicable regulations, covering three areas of law, namely administrative, civil, and criminal. Thus, environmental law enforcement is an effort to achieve compliance with regulations and requirements in applicable legal provisions in general and individually, through direction and application of administrative, civil, and criminal sanctions. Furthermore, Siti Sundari Rangkuti explained that environmental law enforcement can be carried out or implemented either through preventive or repressive measures based on their nature and effectiveness. Preventive law enforcement means that the supervisory function can actively be carried out or implemented at the level of compliance with existing regulations or rules without direct events related to concrete events that cause suspicion that legal rules or regulations have been violated and not obeyed. Instruments in law enforcement that are preventive in nature can be pursued through activities or activities similar to monitoring, coaching, counseling, and even monitoring the use of existing powers. Meanwhile, law enforcement that is repressive in nature can be pursued through various

mechanisms or means in case of action violates the rules or regulations. Another case is related to criminal prosecution, which is generally pursued by following the violation of rules or policies and as usually does not cause the impact or consequence of the violation of the law.

The process of enforcing the law will be greatly influenced by many factors. Broadly speaking, these factors include five things, namely: legal factors themselves, law enforcement factors, facilities factors, community factors, and cultural factors (Soerjono Soekanto:5, 1983). Ali Budiardjo also shared his opinion, as quoted (Darwinsyah Minin: 115, 2002), that there are two main factors affecting law enforcement in courts, namely inconsistency in the application of regulations by court officials and a lack of public respect for the law. Apart from these two main factors, other things that also influence are the existence of feudal legal culture and incomplete or old supporting facilities.

Based on this explanation, it can be reaffirmed that the existence of Environmental Protection and Management Law as the umbrella act in the environmental sector is not without direction and purpose. It means that other laws and regulations relating to the environment are not allowed to conflict with the Environmental Protection and Management Law. In an effort to concretize environmental law rules, the judge's factor as law enforcer has the most relevance to the function of the judiciary. Herein lies the importance of human resources of judges who have awareness, commitment, and competence in the field of environmental law, so that the decisions made by judges, in addition to prioritizing human justice, will also prioritize justice for the environment. Because a judge's decision that supports human justice and the environment shows the alignment of judges as a representation of judicial power who has sides with the green constitution and green legislation in Indonesia.

d. The Exercise Of Judicial Power Is Based On The Principles Of *Trias Politica*

The existence of the 1945 Indonesian Constitution as a green constitution has a logical consequence. Having the status as the state constitution, the 1945 Indonesian Constitution is positioned as the basic law which must be obeyed by all elements of the nation, especially by the configuration of the three types of power in the *Trias Politica* which includes the legislative, executive, and judiciary or judicial power. All of these powers in carrying out their duties, functions and authorities are based on the provisions of the state constitution. The stipulation of the 1945 Indonesian Constitution as a green constitution must be followed by

commitment and efforts to heed the laws and regulations under the 1945 Indonesian Constitution or understood as green legislation. In this context, it is very relevant and important for the integrated implementation of the three power configurations in the administration of the state administration. The legislative and executive institutions that have the duty of forming laws and regulations are obliged to implement the provisions for greening legal products that are formed and stipulated in accordance with their respective authorities. One of the legal products in the environmental sector that has been stipulated is the Environmental Protection and Management Law as the umbrella act for the formation of sectoral laws and regulations in the environmental sector. As a positive law in effect, the judicial power provides an important existence in law enforcement mechanisms in the environmental field.

Article 1 subsection (2) of the 1945 Indonesian Constitution, which confirms that sovereignty is in people's hands and implemented according to the Constitution, demands a democratic paradigm in the exercise of people's sovereignty. This context also shows that people's sovereignty of democracy must be implemented based on law. The simple understanding is that the implementation of democracy must be directly proportional to the implementation of the law. The paradigm of exercising people's sovereignty which is built on the foundation of democracy based on law has logical consequences for the existence of state institutions, the characteristics of the power exercised by the state, the concept of separation of powers and checks and balance, and supervision of the concretization of law whose implementation is in the power of the judiciary. Therefore, it is important to apply the paradigm of parliamentary supremacy to the principle of rule of law.

The principle that positions the law as the supreme commander in a country can be realized from one of which is through judicial power, in this case, an independent and authoritative judiciary. Judicial idealism (judicial power) as an independent and authoritative power in carrying out its functions, is based on several aspects, namely: as a cover to suppress actions that are against the law by punishing anyone and any party who commits an unconstitutional violation; as the ultimate weapon to seek and uphold truth and justice; as the guardian of community independence by prioritizing the constitutional rights of citizens and human rights; as a community guardian, a place of protection and restoration of their former situation for people who feel their interests have been harmed; as well as court decisions such

as God's decisions, as a consequence of the principles of freedom and independence given by the constitution and laws to the judiciary and judges (Zainal Arifin H: 2-3, 2016). The issue of judicial power is an important aspect in testing the authority of the law. Apart from that the judicial power is one of the institutions of state power as a manifestation of the rule of law based on the constitution (Zainal Arifin H: 2-3, 2016).

In the context of the exercise of judicial power, the existence of the judiciary is the spearhead in realizing justice, especially in relation of how a judge fulfills a sense of justice for cases that are mandated to be given a decision. In connection with cases of violations or acts against the law in the realm of the environment, a judge in giving his decision, in addition to considering justice for humans, is also obliged to pay attention to fulfilling a sense of justice for the environment. A court decision that is pro-environmental justice will be made by a judge who has the competence and awareness of the importance of fighting for the preservation of environmental functions. This description shows a picture of the importance of judges in the judiciary under the authority of the judiciary in carrying out their duties and powers. Representation of judges' decisions that contain human justice and the environment will make a major contribution to the success of the implementation of judicial power, which indirectly also influences the implementation of legislative and executive powers. All configurations of power from the legislative, executive and judicial branches are fair in the embodiment of green legislation in Indonesia. Therefore, it is important to strengthen awareness, understanding, and competence for judges through the certification of environmental judges in an effort to realize green legislation in Indonesia.

2. The Ideal Concept of Environmental Judge Certification in an effort to Realize the Concept of Green Legislation in Indonesia

The concept of green legislation or commonly referred to as green legislation has a relation with the protection and management of life which is realized by the promulgation of Law Number 32 of 2009, so that in legal development within the regulatory framework relating to the protection and management of the environment, both at the regional and central levels, apart from having to comply with the principles of the formation of laws and regulations, as in the regulation of Article 5 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations (last promulgated in Law No.15 of 2019 concerning Amendments to Law No.12 of 2011 concerning the Formation of Law and Regulations) and It

must also comply with the material principles of the content of laws and regulations as stipulated in Article 6 subsection (2) of Law Number 12 of 2011, which must also comply with the principles in the provisions of Law No. 32 of 2009, namely the principles and principles of environmental protection and management which are regulated in the provisions of Article 2 of Law Number 32 of 2009 that in this article it is stated that environmental protection and management must be carried out and implemented based on the following principles and fundamentals: the fundamental of state responsibility, the fundamental of preservation and sustainability, the fundamental of harmony and balance, the fundamental of integrity, the fundamental of benefit, the fundamental of prudence, the fundamental of justice, the fundamental of the ecoregion, the fundamental of biodiversity, the fundamental of participation, the fundamental of local wisdom, the fundamental of polluters to pay, the fundamental of good governance, and also the fundamental of regional autonomy.

Based on what is mandated in Article 44 of Law Number 32 of 2009 concerning Environmental Protection and Management, it provides urgency related to the enactment of environmental regulations or policies in the form of green policies into the embodiment of any existing laws and regulations, which are not only contained in regulatory policies closely related to the protection and management of the environment but also in the development of legal substance which relates to all laws and regulations. The inclusion of green policy or environmental policy into every statutory regulation can be referred to as the development of the green legislation concept, where every statutory regulation must be green in the sense that the substance of the policy must be balanced and in line with the goal of achieving environmental justice. So that the concept of green legislation which is based on Article 44 of Law no. 32 of 2009 must consider 2 main principles, namely *first*, protection of environmental functions, *second*, the principles of environmental protection and management as described and explained in the previous description (Eko Nurmadiansyah:208, 2015).

After the issuance of Decree of the Minister of Religion (KMA) Number 134/KMA/SK/IX/2011 concerning Certification of Environmental Judges, it is a form of the seriousness of the government's steps in responding to green policy by referring to green legislation that has been regulated in Law No. 32 of 2009 concerning Protection and Management of the Environment based on the green constitution which has been mandated by Article 28 H subsection (1) of the 1945 Indonesian Constitution which states, "Everyone has

the right to live in physical and spiritual prosperity, have a place to live, and have a good living environment and healthy and entitled to health services.”

In this case, it can be said that the role of the constitution is as “the sky” which is the highest point of the pyramid of state rules of all applicable legal rules. Likewise with the juristocracy, which is based on the Ran Hirschl concept, it is stated that the mechanism for making decisions is very urgent for judges in court so that it can affect the flow of state policy and the wheels of government running (Pan Mohamad Faiz: 778: 2016).

So that the direction of legal development in the future in environmental law enforcement which is manifested in the settlement of environmental disputes that is environmentally sound based on sustainable development in the context of realizing green legislation in Indonesia can be carried out in a number of steps, including: *first*, escorting the environmental judge certification policy by collaborating between the Supreme Court, ICEL (Indonesian Center for Environmental Law), UNDP (United Nations Development Programme), and related parties in the form of continuing to carry out training and education and training as well as seeking evaluation and monitoring as a form of supervision, *kedua*, increasing the capability of judges in the field of environmental science in deciding environmental cases, as well as strengthening the paradigm of pro-environment or pro-natura thinking (green thinking) as a manifestation of the implementation of environmental norms contained in the living constitution of the 1945 Indonesian Constitution.

CONCLUSION

Environmental judge certification is important in an effort to implement green legislation in Indonesia based on four considerations, namely: in the context of realizing the 1945 Indonesian Constitution as a green constitution, judges’ decisions have a strategic role in realizing human and environmental justice, contributing to the effectiveness of environmental law enforcement, as well as the exercise of judicial power in harmony with the principles of *Trias Politica*.

The direction of legal development in the future in environmental law enforcement which is manifested in the settlement of environmental disputes with an environmental perspective guided by sustainable development in the context of realizing green legislation in Indonesia can be carried out in a number of steps, including: *first*, escorting the environmental judge certification policy by collaborating between the Supreme Court, Indonesian Center for

Environmental Law, United Nations Development Programme, and related parties in the form of continuing to carry out training and education and training as well as seeking evaluation and monitoring as a form of supervision, *second*, increasing the capability of judges in the field of environmental science in deciding environmental cases, as well as strengthening the paradigm of thinking that is pro-environment or pro-natura (green thinking) as a manifestation of the implementation of environmental norms in the living constitution of the 1945 Indonesian Constitution.

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