

The Efforts to Make a Green Constitution Through Judicial Review Conducted by the Constitutional Court

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Abstract-One of the protection of the constitutional rights of citizens is related to the right to the environment. The concept of the Green Constitution which was adopted explicitly in the Indonesian constitution in the 1945 Constitution, namely Article 28H paragraph (1) which reflects constitutionally guaranteed rights to the environment, and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which reflects the environmentally sound development and sustainable. The authority of the Constitutional Court in conducting judicial review provides an opportunity to protect the rights to the environment of citizens. Several laws relating to the environment that have been tested by the Constitutional Court, include the Law on Natural Resources, the Mineral and Gas Law, the Forestry Law. The existence of an examination of laws relating to the environment, the law will be more in line with developments relating to the latest environmental issues and felt by the community, so that the existence of the Green Constitution is an absolute must in the constitutional system in Indonesia. Public awareness of the right to the environment will certainly play a role in realizing the Green Constitution.

Keywords-*Green Constitution, Constitutional Court, Judicial Review.*

I. INTRODUCTION

Indonesia is a rich country in natural resources. Renewable and non-renewable natural resources, and in the form of natural resources stock, such as watersheds, lakes, protected areas, coastal areas, or in the form of commodities such as wood, rattan, minerals and natural gas, fish, and all of them evenly distributed almost in the territory of Indonesia.

The wealth of Indonesia's natural resources is understood by the government as an important model in the implementation of national development. On behalf of the development that is devoted to the target of economic growth, for the sake of increasing the country's income and foreign exchange, the use of natural resources is carried out without regard to the principles of justice, democracy, and the sustainability of the function of natural resources. The implications arising from the practices of utilizing natural resources that prioritize the achievement of economic growth is only slowly, but certainly, cause damage and degradation of the quantity and quality of natural resources.

Environmental issues are being a concern to the public both in Indonesia and abroad. State's attention to environmental issues is also a form of protection of human rights. The development of human rights in Indonesia cannot be released with changes to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution). Article 28 H paragraph (1) confirms that everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and the right to obtain health services. Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia affirms that the national economy shall be based on economic democracy with the principle of togetherness, fair efficiency, sustainable, environmentally sound, independence, and by maintaining a balance of progress and national economic unity. Based on these provisions, it is clear explicitly in the 1945 Constitution of the Republic of Indonesia there are regulations relating to the environment. Based on these two articles is a manifestation of the country's commitment to environmental issues, although if explored further these two articles are still very general in regulating environmental issues.

The environment is a unity of space with all objects, power, conditions and living things including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things. This is confirmed in Law No. 32 of 2009 concerning Environmental Management. This means that the concept of the environment will ultimately lead to human survival and the well-being of humans and other living things. This shows how important it is that the environment must be a common concern including the state. This concept of Green Constitution thinking is not a new thing, because in some countries it already regulates it. The idea of thinking related to efforts to protect the environment, among others, places the regulation of human rights to the environment in the state constitution which is a manifestation of the commitment to environmental protection and management. This is what has become known as the Green Constitution in its development.

The elaboration of regulations relating to the environment is regulated in the law. These laws include Law No. 32 of 2009 concerning Environmental Management, the Forestry Law, the Oil and Gas Law, the Electricity Law, the Natural Resources Law, the Mineral

and Coal Law. Law of the Republic of Indonesia Number 39 of 2014 concerning Plantations Law of the Republic of Indonesia Number 37 of 2014 concerning Land and Water Conservation Law of the Republic of Indonesia Number 32 of 2014 concerning Maritime Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction of Law Number 41 of 1999 concerning Forestry, Law Number 19 of 2004 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Laws.

One of the authorities of the Constitutional Court is the judicial review of the 1945 Constitution of the Republic of Indonesia. For this reason, it is necessary to conduct research related to the efforts made to realize the Green Constitution through judicial review by the Constitutional Court. This article will explore some of the decisions of the Constitutional Court relating to environmental issues to realize the Green Constitution.

II. RESEARCH METHOD

The approach method used in this research is the normative juridical approach, because the problem to be investigated relates to the authority of the Constitutional Court in conducting judicial review of the law against the Constitution and its implications for the development of national law in Indonesia.

The specification of this research is descriptive analysis with the object to be studied, that is related with the implication of judicial review to law national development in Indonesia. Data used in this research is secondary data.

The type of research used in this writing is a type of normative research, namely research by looking at the legal provisions in the applicable laws and regulations, which are then associated with the issues discussed [1]. The type of approach used is the legislative approach, historical approach, and conceptual approach. The data used in this study are secondary data, namely data obtained from library materials.

III. RESULT AND DISCUSSION

A state that embraces constitutionalism is a state that in organizing government depends and obeys a set of laws and fundamental principles that have been outlined in the constitution [2]. Constitutionalism is part of the prerequisites of democracy, because democracy requires a limitation of the authority of the powers regulated in a clear set of laws.

The nature of the constitution according to Sri Soemantri M., that the constitution was held to limit state power [3]. The nature of the constitution as such shows

that the constitution is a tool to limit the state. There are various ways to grow and develop the constitution or the Constitution, including (1) The growth and development of the constitution through the interpretation of the rules contained in the Constitution. The power to carry out this interpretation can be conducted by judicial, legislative and executive powers. (2) Growth and development of the constitution through the growth and development of unwritten provisions. Both countries with parliamentary and presidential systems of government have developed and developed conventions or constitutional habits in addition to constitutional rules that are not written [4].

Provisions regarding environmental protection and management must be explicitly stated in the constitution bearing in mind that issues and interests concerning the environment which are critical due to development activities will exacerbate damage and pollution to the environment, with the commitment of the executive and legislative branches in particular Indonesia can propose constitutional changes. Arrangements in this constitution will be used as a basis for the legislation under it so that all provisions will be sourced to a constitution that is oriented towards preservation of environmental functions. [5].

Further explanation of the provisions in the constitution of course there is in the legislation below. Laws related to the environment include Law No. 32 of 2009 concerning Environmental Management, the Forestry Law, the Oil and Gas Law, the Electricity Law, the Natural Resources Law, the Mineral and Coal Law. Law of the Republic of Indonesia Number 39 of 2014 concerns on the Plantations, Law of the Republic of Indonesia Number 37 of 2014 concerns on the Land and Water Conservation, Law of the Republic of Indonesia Number 32 of 2014 concerns on the Maritime, Law Number 18 of 2013 concerns on the Prevention and Eradication of Forest Destruction, Law Number 41 of 1999 concerns on the Forestry, and Law Number 19 of 2004 concerns on the Establishment of Government Regulations in lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Laws.

The development of environmental policies according to Jimly Asshiddiqie consists of 2 (two) stages of environmental development. At the first time, due to the encouragement of a broader awareness throughout the world about the importance of protecting the environment from pollution and destruction, environmental policies are outlined in the form of legislation officially. Thus, a world wave arises, namely a wave of legalization or environmental policy legislation. After so many official regulations have been established, it turns out that most of the regulations are not effective in preventing pollution and environmental damage. Such dissatisfaction is widespread in many countries, so there is a setback to increase the umbrella of environmental law in the constitution as the highest law. This latest development is

what Jimly Asshiddiqie calls the second wave or the second development with the constitutionalization of environmental policies to the formulation of the 1945 Constitution [6].

One of the authorities of the Constitutional Court is to examine, hear, and decide upon applications for judicial review of the 1945 Constitution of the Republic of Indonesia. In its implementation, the Constitutional Court has the authority to further regulate matters required for the smooth implementation of its duties and authorities, the regulation is contained in Constitutional Court Regulation No. 06 / PMK / 2005 concerning Guidelines for Procedure in Case Judicial Review of the Constitutional Court of the Republic of Indonesia.

All constitutional cases in the Court are called petition cases, not lawsuits. The reason is because the nature of constitutional cases is not adversarial or contentious concerning parties who conflict with each other's interests as in civil cases or state administration. The interests that are being sued in the review of the law are broad interests regarding the interests of all people in a common life. The law being sued is a law that is binding on the general public of all citizens. Therefore, the case filed is not in the form of a lawsuit, but a petition, therefore the legal subject who filed it is called an applicant not a plaintiff.

The petitioner in the judicial review of the Act against the 1945 Constitution is carried out by a party who considers his constitutional rights and / authorities impaired by the coming into effect of the Law. This constitutional impairment is certainly related to the definition of constitutional rights, namely the rights regulated in the 1945 Constitution. When these constitutional rights are reduced, limited or can not be realized as they should with the enactment of a law, then this law can be assessed or considered to harm the right constitutional person or legal subject concerned. Public awareness of the right to the environment is even greater because when there is a policy that harms the constitutional rights of the community they will submit a judicial review to the Constitutional Court. The following is the recapitulation of data of judicial review to the 2013 Constitutional Court until August 2019: Based on the data above it can be seen that the number of laws tested by the Constitutional Court up to 2019 amounted to 632 Laws including laws relating to the environment. The number of judicial review decisions that have been decided by the Constitutional Court is 1258.

According to I Putu Sastra Wibawa that (1) the political politics of laws relating to the environment in Indonesia experienced two periodicisations, namely, the period of the new order with the enactment of Law No. 4 of 1982 and Law No. 23 of 1997, which applies authoritarian politics with its orthodox legal character, and the reform order with the enactment of Law no. 32 of 2009, which applies democratic politics with responsive legal character. (2) with the enactment of Law No. 32 of

2009 which is characterized by a responsive law with a democratic government regime can be a gateway to Indonesia towards 'ecocracy' (an environment-based state) with the participation of the community and the lack of centralized authority in the central government and the existence of sustainable environmental principles [8].

The judicial review conducted by the Constitutional Court resulted in several decisions that had an impact on environmental issues, including MK Decision No. 001 / PP-I / 2003, MK Decision No. 021 / PUU-I / 2003, MK Decision No. 022 / PUU-I / 2003 states that there are five functions of state control over agrarian and natural resources, namely: Regulatory function, Management function (beherdaad), Policy function (regulation), Management function (bestuurdaad), and Supervision Function (toezichhoudens-daad). This will certainly become the basis for the function of state control in agrarian and natural resources.

Another Constitutional Court Decision related to environmental management is the Constitutional Court Decision No. 3 / PUU-VIII / 2010 concerning Judicial Review No. 27 of 2007 concerning Management of Coastal Areas and Small Islands. In the decision, the Constitutional Court outlines the principles of the greatest prosperity of the people in four benchmarks, namely: (1) the existence of natural resources for the people, (2) the level of equitable distribution of natural resources for the people, (3) the level of people's participation in determining the benefits natural resources, (4) respect for the people's rights for generations in utilizing natural resources [9].

The Constitutional Court as the executor of judicial power has a difficult task in maintaining democratic life. The Constitutional Court is always confronted with always upholding the rule of law in a formal or material sense based on the constitution (Constitution is the supreme law of the land). The existence of this Constitutional Court as one of the perpetrators of judicial power with one of the authorities to conduct a review of the Law on the Constitution is a means to protect the constitutional rights of its citizens. Protection of human rights is one of the mandates of the constitution and is an embodiment of the rule of law.

Based on the decision of the Constitutional Court above, the implications of judicial review are seen as one of the authorities of the Constitutional Court to realize the green constitution.

IV. CONCLUSION

The conclusions in this study were: (i) the reciprocal learning style model of students with overall eye, hand and foot coordination has an influence on the ability of the groundstroke to be in a good category; (ii) the reciprocal style learning model of students with high eye, hand and foot coordination influences the ability of the

groundstroke in a good category; (iii) the reciprocal learning model of students with low eye, hand and foot coordination influences the ability of the groundstroke to be in a good category. It is recommended for instructors and field tennis lecturers to use reciprocal teaching styles in applying field tennis courses.

The Constitutional Court as one of the perpetrators of judicial power after constitutional reform also contributed to the development of constitutional law through decisions that had been issued when exercising its constitutional authority. Various decisions both emphasizing the constitutionality of a provision of the law and vice versa cancel the material of a law, become a new source through the interpretation of the constitution in the process towards law enforcement with legal certainty. The verdict on judicial review as one of the Constitutional Court's authorities has implications for realizing green constitution. This is certainly not separated also by public awareness of the constitution, meaning that if there are laws that violate the constitutional rights, they must immediately be asked to test the Court.

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