

# Developing the Framework for a Green Constitution: Strengthening Environmental Protection Initiatives in Indonesia

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## Abstract

The current global environmental crisis occurs due to various factors, such as failed policies, destructive technologies, and lack of political commitment. To address these issues, the green constitution approach has emerged as an effective solution. However, Indonesia has not fully implemented the concept of a green constitution. This research uses a normative legal research method with comparative, conceptual, and statutory approaches. Data is obtained from a literature study of national and

international regulations, books, articles, and scientific journals. Through a comparative study with Ecuador and France, the results show that Indonesia has the potential to integrate environmental principles that have been integrated into the constitutions of these countries. Ecuador, often referred to as "The Real Green Constitution," explicitly recognizes the rights of nature and regulates preventive measures against environmental damage. In France, the Environmental Charter has been integrated into the constitution, affirming the need for wise management of the environment and a balance between protection and utilization of natural resources. Indonesia can learn from these two countries in applying the concept of a green constitution and integrating environmental principles into its constitution in order to strengthen environmental protection, promote sustainable development, and help address the impacts of climate change. The resulting recommendation is an amendment to the constitution to further incorporate environmental principles as part of the main elements in the constitution.

## **Keywords**

*Green Constitution, Comparative Law, Environmental Policy, France, Indonesia, Ecuador*

## **I. Introduction**

**Matthias Finger** argues that the current global environmental crisis is caused by several factors. These include flawed and failed policies, destructive and inefficient technologies, lack of political commitment, ideologies and ideas that lead to adverse impacts on the environment, deviant behavior of actors in government, the spread of cultural patterns such as consumerism and

individualism, and lack of individual awareness.<sup>1</sup> Therefore, common approaches to address this include the formulation of more targeted policies, adoption of revolutionary technologies, strengthening political commitment and public participation, and the evolution of pro-environmental ideologies.<sup>2</sup>

In relation to what **Matthias Finger** stated above, the strengthening of political commitment and the evolution of pro-environmental ideology will be more effective if pursued through a constitution approach. This is because the constitution is a community political contract document that contains the main ideas or ideals of a country.<sup>3</sup> The constitution is also the highest guideline or basic law in the hierarchy of the legal system.<sup>4</sup>

Therefore, using constitution means is an effective way because it affirms the state's commitment to provide optimal protection and prevent environmental damage, namely by implementing the concept of a green constitution. However, Indonesia as a country that also feels the impact of environmental damage, still has not optimally implemented the green constitution in its constitution structure.

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<sup>1</sup> See Matthias Finger, "Which Governance for Sustainable Development? An Organizational and Institutional Perspective", in Jacob Park, Ken Conca, dan Matthias Finger, editor, *The Crisis of Global Environmental Governance: Towards a New Political Economy of Sustainability* (New York: Routledge Taylor & Francis Group, 2006), p. 125. As cited in Pan Mohamad Faiz, "Perlindungan terhadap Lingkungan dalam Perspektif Konstitusi", *Jurnal Konstitusi* 13, No. 4, (2016): 767.

<sup>2</sup> *Ibid.*

<sup>3</sup> Abdul Kholik Munthe, et al, "Perjalanan dan Problematika Konstitusi di Indonesia", *Jurnal Educandumedia* 2, No. 01, (2023): 1.

<sup>4</sup> I Made Sudira, "Kewenangan Mahkamah Konstitusi dalam Menyelesaikan Sengketa Hasil Pemilihan Kepala dan Wakil Kepala Daerah", *Jurnal Aktual Justice* 8, No. 1, (2023): 83.

Indeed, there have been many studies that discuss the theme of the green constitution, such as 1) Research conducted by **Richard V. Waas** with the title "Perlindungan Hukum Terhadap Hak Atas Lingkungan Hidup ditinjau Dari Perspektif Hukum Internasional dan Hukum Nasional Indonesia". In the study, it was stated that Indonesia needs to be more active in protecting people's rights to a good and healthy environment. Although there are regulations, their implementation still needs to be improved, and 2) Research conducted by **Pan Mohamad Faiz** with the title "*Perlindungan terhadap Lingkungan dalam Perspektif Konstitusi*". In this study, it is stated that efforts to protect the environment have been accommodated in the 1945 Constitution of the Republic of Indonesia. However, it is still subsidiar or supporting.<sup>5</sup>

Looking at previous relevant studies, this research tries to reflect back on the application of the green constitution in Indonesia using comparative studies with Ecuador and France, in order to provide a broad view that is solutive to environmental problems in Indonesia. There are two problem formulations that become the focus of the research, namely: a) How is the concept of green constitution in Indonesia? and b) How is the integration

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<sup>5</sup> See also Abdul Kadir Jaelani, et al. "Green Tourism Regulation on Sustainable Development: Droning from Indonesia and China." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 663-706.; Rodiyah, et al. "Capturing the Opportunity of Green Economic Policy for Environmental Sustainability." *IOP Conference Series: Earth and Environmental Science* 1248 (2023): 012035; Rahadyan Fajar Harris, Indria Wahyuni, and Wilda Prihatiningtyas. "The Legal Challenges to Regulate New Energy in Indonesia: A Context of Green Legislation Vs State Control." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 3, no. 2 (2023): 206-224.

of environmental principles in optimizing the green constitution in Indonesia?

## II. Method

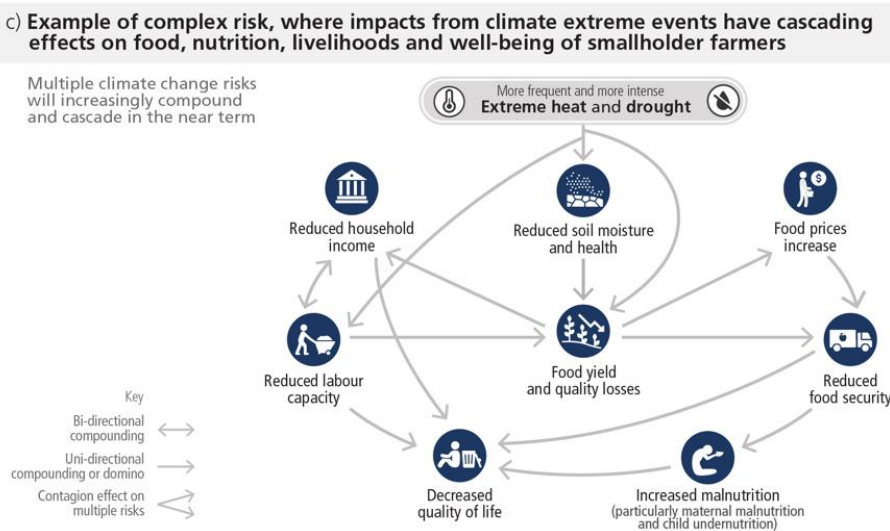
This research uses normative legal research methods with comparative, conceptual and statutory approaches. The comparative approach is used to look at the application of the green constitution in Ecuador and France, to be analyzed as a consideration for the application of the green constitution in Indonesia. While the conceptual and statutory approach is used to examine the integration of environmental principles into legal construction as the concept of the green constitution. The data collection technique used is a literature study technique sourced from national and international laws and regulations, books, articles and scientific journals to then be processed using content analysis techniques in order to obtain appropriate results and conclusions.

## III. The Green Constitution and Environmental Protection Efforts: Unraveling the Paradigm of the Green Constitutional Concept in Indonesia

Environmental degradation resulting in climate change has become a dangerous and increasingly complex global problem, requiring serious action from all countries to address its negative impacts. Admittedly, climate change is a major challenge that greatly affects economic, social and environmental sustainability

around the world. This is validated by the annual reports that are routinely submitted in the Intergovernmental Panel on Climate Change (IPCC) forum.

**Figure 1. Complex Risks of Climate Change Impacts**



Source: IPCC, 2022

Figure 1 above is from the IPCC's 2022 report on the complex risks of climate change, which shows that there are significant impacts of extreme climate change on food security, nutrient availability, and the livelihoods and well-being of smallholder farmers. According to the report, climate hazards can trigger a cascade of risks that affect multiple sectors and propagate across regions based on complex natural and social relationships. The figure above clearly shows that heat waves and droughts affecting agricultural areas present multiple, interconnected risks and cause biophysical, economic and social impacts that can extend even to far-flung areas, with particular impacts on

vulnerable groups, such as smallholder farmers, children and pregnant women.<sup>6</sup>

In Indonesia, the impact of climate change is also being felt. This can be analyzed from the results of research released by the Ministry of National Development Planning of the Republic of Indonesia (BAPPENAS RI) in 2021 under the title "Executive Summary of the 2020-2045 Climate Resilience Development Policy". This research shows that as many as 514 districts/cities in Indonesia are hit by hydrometeorological disasters as a result of climate change, such as floods and droughts that have an impact on physical losses in the form of infrastructure damage.<sup>7</sup> Not only physical impacts are a concern, but potential disruptions to the economy and livelihoods of the Indonesian population could also be affected by climate change. From the 2019 analysis, it is estimated that Indonesia's economic losses in four key sectors, namely marine and coastal, water, agriculture, and health, will reach IDR 102.3 trillion in 2020 and increase to IDR 115.4 Trillion in 2024. This indicates that there has been a 12.76% increase in losses in just five years.<sup>8</sup>

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<sup>6</sup> IPCC (Intergovernmental Panel on Climate Change), "Climate Change 2022: Impacts, Adaptation and Vulnerability" (New York: 2022). *See also* Empire Hechime Nyekwere, et al. "Constitutional and judicial interpretation of environmental laws in Nigeria, India and Canada." *Lex Scientia Law Review* 7, no. 2 (2023): 905-958; Adi Wijayanto, Hatta Acarya Wiraraja, and Siti Aminah Idris. "Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement." *Unnes Law Journal* 8, no. 1 (2022): 105-132.

<sup>7</sup> Kementerian Perencanaan Pembangunan Nasional Republik Indonesia (BAPPENAS RI), "Ringkasan Eksekutif Kebijakan Pembangunan Berketahanan Iklim (Climate Resilience Development Policy) 2020-2045" (Jakarta: 2021).

<sup>8</sup> *Ibid.*

The scientific data presented earlier clearly indicates that the effects of climate change are evident now and will certainly affect us in the future. Therefore, in view of the complexity of this problem, concerted action is needed involving various stakeholders, including the government, private sector, civil society and international organizations. Awareness of the importance of environmental conservation also needs to grow in society, in order to encourage individual and group efforts to contribute to reducing the negative impacts of climate change.

In connection with this, according to **Mochtar Kusumaatmadja**, the best approach in overcoming environmental problems is through a legal approach. This is because environmental protection is the responsibility of the government through juridical instruments, namely environmental laws.<sup>9</sup>

However, according to **Andi Hamzah**, the implementation of regulations in environmental law enforcement is considered quite complicated and has its own complexity, because it is multidisciplinary, covering aspects of administrative, civil, and criminal law, even in some cases it can also involve tax law, land, government, and aspects of international law both public and private.<sup>10</sup> Therefore, a holistic and integrated approach is needed

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<sup>9</sup> Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia, cetakan ke-4*, (Jakarta: Pusat Studi HTN FH-UI, 1981) p. 12.

<sup>10</sup> Andi Hamzah, *Penegakan Hukum Lingkungan*, (Jakarta: Sinar Grafika, 2005) pp. 49-50. See also Widodo Dwi Putro, and Adriaan W. Bedner. "Ecological Sustainability from a Legal Philosophy Perspective." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 595-632; R. Arifin, R. Rodiyah, and R. Wulansarie. "Climate Justice in Indonesian Environmental Protection: Past, Present and Future Challenges." *IOP Conference Series: Earth and Environmental Science* 1248 (2023): 012037.



in integrating the principles of environmental protection into the national legal framework.

One approach that can be taken is through the application of the concept of a green constitution, where the principles of environment and nature protection are accommodated in the constitutional structure. This concept will not only provide a strong legal basis for environmental protection, but also encourage effective climate change mitigation efforts. This is because the constitution is the "supreme law of the land" which serves as a goal, guide and measuring tool in the life of the nation and state.<sup>11</sup>

Theoretically, the concept of a green constitution stems from the idea of ecocracy. According to **Jimly Asshiddiqie**, ecocracy is a concept of environmental sovereignty that is equivalent to other concepts such as nomocracy, democracy and theocracy.<sup>12</sup> This concept has logical consequences for the placement of the environment in relation to humans in the political structure. In other words, the environment is recognized as a separate entity from humans that requires protection of its

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<sup>11</sup> I Gusti Ayu Ketut Rachmi Handayani, "Green Constitution sebagai Penguatan Norma Hukum Lingkungan dan Pedoman Legal Drafting Peraturan Daerah dalam Rangka Praktik-Praktik Tata Kelola Pemerintahan yang Baik di Daerah", *Yustisia* 1, No. 1, (2012): 134.

<sup>12</sup> Jimly Asshiddiqie, *Gagasan Kedaulatan Lingkungan: Demokrasi Versus Ekokrasi*, (Jakarta: Rajawali Grafindo Persada, 2009) pp.18-19. See also R. Arifin, et al. "The Potential of Carbon-Offset as an Integrative Ecocide Prevention Instrument with Climate Change Mitigation." *IOP Conference Series: Earth and Environmental Science* 1270 (2023): 012027; D. Muhtada, I. S. Utari, and R. Arifin. "The synergy model of village development based on environmental education (biotic approach) in Indonesia perspective of Law Number 6 of 2014." *Journal of Physics: Conference Series* 1567, no. 4 (2020): 042056.

interests by the state through legal regulations.<sup>13</sup> In this regard, the green constitution is an application of ecocratic views into the state constitution as an appropriate solution to alleviate environmental problems.<sup>14</sup>

Still related to that, there is a view from **Jimly Asshiddiqie** that is interesting to study. According to him, the 1945 Constitution of the Republic of Indonesia has green nuances even though it is still relatively young.<sup>15</sup> This is based on the incorporation of environmental norm provisions into the constitution, namely in Article 28H paragraph (1) and Article 33 paragraph (4) which reads as follows:

Article 28H paragraph (1) : *"Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services."*

Article 33 paragraph (4) : *"The national economy is organized based on economic democracy with the principles of togetherness, **fair efficiency, sustainability, environmental perspective,** independence, and by maintaining a balance of progress and national economic unity."*

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<sup>13</sup> Muhammad Pasha Nur Fauzan, "Meninjau Ulang Gagasan Green Constitution: Mengungkap Miskonsepsi dan Kritik" *Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 1, No. 1, (2021): 4.

<sup>14</sup> *Ibid.*

<sup>15</sup> Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Rajawali Press, 2009) p. 181.

The provisions of Article 28H paragraph (1) and Article 33 paragraph (4) above show that the principles of environmental protection have indeed been adopted into the Indonesian constitution. However, when examined, the construction in the formulation of the articles above still places the environment as a subsidiary factor under other factors, such as economic factors that are only utilized for human interests.<sup>16</sup> In fact, if examined in a conceptual approach, it can be said that the provision still does not adopt the concept of a true green constitution. This is because it does not place the environment as a separate legal entity.

Furthermore, the concept of a green constitution is not just about incorporating the provisions of environmental norms into the constitution, but more than that, namely giving a central position to the environment in the political structure. In other words, the green constitution is the antithesis of the constitutional structure that places the relationship between humans and the environment in an anthropocentric manner, where in the green constitution the relationship between the environment and humans is equal as subjects whose interests must be protected.

Thus, the concept of a green constitution is not like the paradigm that has been built so far, which is limited to the constitutionalization of environmental norms into the constitution, but also places the environment as a separate entity from humans. Consequently, environmental protection is not based on the fulfillment of human rights, but based on constitutional moral responsibility. Therefore, it is necessary to

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<sup>16</sup> Faiz, *Op.Cit.* 781.

reorganize the green constitution in Indonesia by integrating environmental principles into the constitution more explicitly.

#### **IV. Towards the Real Green Constitution: Integration of Environmental Principles in the Constitution (Comparative Study of Ecuador and France)**

Environmental management should pay attention to environmental principles as an effort to protect it from damage. In fact, awareness of this has been outlined in many international legal instruments and through various conventions of countries where these principles become the basis for regulating environmental issues, both at the global level and at the national level. These principles include:

*First*, the principle of Sustainable Development. Sustainable development is an environmental principle that is recognized globally and has even been embraced by the United Nations (UN) in its various Declarations, Resolutions and Conventions. According to the World Commission on Environment and Development (WCED) as presented in the Brundtland commission report, defines sustainable development as "if it meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>17</sup>

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<sup>17</sup> WCED (World Commission on Environment and Development), "Our Common Future" (1987), p. 51.

Similarly, **Susan Smith**<sup>18</sup> interprets sustainable development as an attempt to improve the quality of life of the current generation while preserving natural resources for future generations. According to her, through this approach, four things must be achieved, namely: a) Conservation of sustainably obtained results from renewable resources, b) Preservation and replacement of exhaustible resources, c) Maintenance of ecological support systems, and d) Preservation of biodiversity.

At the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, five key principles of sustainable development were established. These principles are formally:

1. Intergenerational Equity Principle: This principle emphasizes the need to consider the right of future generations to enjoy the same natural resources and environment as current generations. This principle is set out in the 1992 Rio Declaration in the third principle, which states that "*The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations*".<sup>19</sup>
2. Intragenerational Equity Principle: This principle refers to the understanding that every individual within the same generation deserves equal access to the benefits of natural resources and a healthy environment.<sup>20</sup>

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<sup>18</sup> N. H. T. Siahaan, *Hukum Lingkungan dan Ekologi Pembangunan* (Jakarta: Erlangga, 2004), p. 148.

<sup>19</sup> United Nations Conference on Environment and Development (Rio de Janeiro, 1992), Principle 3.

<sup>20</sup> Cavin Juan Kuhu, Theodorus H.W. Lumunon, Marchel R. Maramis, "Perlindungan Hukum Terhadap Masyarakat di Kecamatan Bunta Kabupaten Banggai atas Pertambangan Nikel dalam Menunjang

3. Precautionary Principle: This principle underscores the need to take precautionary measures when there is a serious threat to the environment, even if full scientific evidence is lacking. This is done to avoid potential irreparable damage. In the Rio Declaration, the Precautionary Principle is described in Principle 15 which states:

*“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environment degradation.”*<sup>21</sup>

This principle addresses environmental management policies that depend on one thing: preventive or countermeasures can only be taken if they are known and proven with certainty. In this context, it is detrimental if action to address potential or actual environmental damage is only taken after it has been proven with certainty that the damage has occurred. Therefore, the principle of early prevention emphasizes the importance of preventive and anticipatory measures in environmental management.

4. Conservation of Biological Principle: This principle emphasizes the importance of maintaining natural biodiversity, including species and ecosystems, as an integral part of sustainable development. The protection of biodiversity is a must-have to ensure the success of the

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Pembangunan Berkelanjutan," *Jurnal Fakultas Hukum Unsrat Lex Administratum* XII, No. 5 (2023): 2.

<sup>21</sup> United Nations Conference on Environment and Development (Rio de Janeiro, 1992), Principle 15.

Intergenerational Equity Principle. In addition, the protection of biodiversity also has a close relationship with the precautionary principle as preventing the extinction of species in biodiversity is an important part of early preventive action.<sup>22</sup>

5. Environmental Cost Internalization Principle: This principle mandates that environmental costs associated with the exploitation of natural resources should be included in economic and business decisions, so that environmental impacts are accounted for in decision-making. This principle is set out in the 16th principle of the 1992 Rio Declaration.

*Second*, the Polluter-Pays Principle states that business entities or individuals that produce large amounts of pollution should be responsible for the cost of managing it to prevent damage to human health as well as the environment.<sup>23</sup>

Furthermore, many countries have integrated environmental protection principles into their constitutions, such as Ecuador, France, Bolivia, Mexico, South Africa, Nepal, Maldives and Colombia. However, of these various countries, Ecuador is the country that really reflects the implementation of a green constitution, so it is often dubbed as "the Real Green Constitution". This is because the Ecuadorian state explicitly recognizes the environment as a separate entity through the concept of "nature rights" or Pachamama as stated in Part II of Chapter Seven of the Ecuadorian Constitution as follows:

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<sup>22</sup> Wahyu Nugroho, *Buku Ajar Hukum Lingkungan dan Pengelolaan Sumber Daya Alam* (Yogyakarta: GENTA Publishing, 2022), p. 39.

<sup>23</sup> Oktaviani br Sipayung, Ismanyah, "Polluter Pays Principle dalam Perspektif Hukum Pidana," *Unes Law Review* 5, no. 4 (2023): 4037-4038.

*“Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.*

*All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.*

*The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.*

*Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.*

*In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.*

*Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.*



*The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.*

*Article 74. Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living. Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.”<sup>24</sup>*

**TABLE 1. Integration of Environmental Principles in the Constitution of Ecuador**

No.	Environmental Principles	Constitution of Ecuador
1.	Principle of Sustainable Development	Article 71, 72 and 73
2.	Principle of Intergenerational Justice	Article 72
3.	Principle of Intragenerational Justice	Article 74
4.	Principle of Early Prevention	Article 73
5.	Principle of Biodiversity Protection	Article 71 and 73
	Principles of Environmental Cost	
6.	Internalization	Article 74
7.	Polluter Pays Principle	Article 74

**Sources:** Author's Analysis, 2023

Based on the table above, it can be analyzed that the Ecuadorian Constitution contains a series of articles that provide

<sup>24</sup> ConstitutionNet, "Constitution of the Republic of Ecuador," [http://www.constitutionnet.org/files/ecuador\\_constitution\\_english\\_0.pdf](http://www.constitutionnet.org/files/ecuador_constitution_english_0.pdf)

a strong foundation for environmental protection by integrating environmental principles through the various articles regulated. The principle of Sustainable Development, for example, is reflected in Article 73, which emphasizes preventive and restrictive measures against activities that could lead to the destruction of ecosystems, as well as other articles that recognize the rights of nature (Articles 71 and 72), indicating Ecuador's commitment to sustainable development.

In addition, the Ecuadorian constitution also recognizes the principle of Intergenerational Justice by guaranteeing the restoration and protection of nature (Article 72), as well as the principle of Intragenerational Justice through Article 74 which regulates the use of environmental services by the State, demonstrating the equal rights of individuals, communities, societies, and nations to benefit from the environment.

The principle of Early Prevention is reflected in Article 73 which emphasizes preventive action against activities that may cause permanent destruction of ecosystems. Furthermore, the principle of Biodiversity Protection is reflected in Article 73 which demands preventive and restrictive measures to protect ecosystems, as well as Article 71 which recognizes nature's right to the maintenance of its life cycles, functions, and evolutionary processes. The principle of Environmental Cost Internalization is reflected in Article 74 which regulates the production, delivery, use, and development of environmental services by the State by regulating the responsibility for the use of natural resources.

Finally, the Polluter Pays Principle is also reflected in Article 74 which regulates the regulation of production and use of environmental services by the State, affirming that production and use must be regulated in accordance with this principle. Thus,

Ecuador's constitution explicitly regulates environmental principles and demonstrates a strong commitment to environmental conservation and sustainable development.

Besides Ecuador, another country that has integrated environmental principles into its constitution is France. In 2006, (the Charter for the Environment) was integrated into (the Constitution of the French Fifth Republic) by the National Assembly.<sup>25</sup> The integration of the Charter for the Environment can be seen in the preamble of the Constitution of the French Fifth Republic which states:

*“the French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.”*<sup>26</sup>

Unlike Ecuador, France does not include the principle of environmental protection in the body of the constitution but rather puts it in the preamble, which recognizes the 2004 Environmental Charter as an integral part of the constitution. To note that in the French legal system, the Charter of the Environment (Charte de l'environnement) is a French constitutional law that is an integral part of the constitutional bloc

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<sup>25</sup> Jimly, *Op.Cit.*, 60-61.

<sup>26</sup> Elysee, "The Constitution of the French Fifth Republic," diakses pada 30 Agustus 2023, <https://www.elysee.fr/en/french-presidency/constitution-of-4-october-1958>.

(*bloc de Constitutionnalité*) in French law, which means it has the same force as the French Constitution itself.

The 2004 Environmental Charter recognizes that human well-being is inseparable from the balance of natural resources. It affirms that the environment is a vital legacy that affects human development and biodiversity. The Charter also emphasizes the need for wise management of the environment and a balance between the protection and utilization of natural resources for the sustainability of ecosystems. Not only that, but awareness of the impact of current decisions on the future is also highlighted. The Charter underscores the importance of taking sustainable steps that do not compromise the interests of future generations.<sup>27</sup>

The integration of the Environmental Charter into the French Constitution reflects the country's determination to safeguard the environment and realize sustainable development. The Charter, which has become an integral part of the French Constitution, recognizes the need for environmental protection as a fundamental principle in the national order.

Reflecting on the implementation of green constitutions from the two countries mentioned above, Indonesia needs to take important lessons in implementing the concept of a green constitution in its constitutional structure. In this context, towards environmental protection and climate change mitigation efforts, Ecuador provides an inspiring example in recognizing environmental rights, restoring ecosystems, preventing damage, and realizing sustainable use of the environment.

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<sup>27</sup> Conseil Constitutionnel, "Charter for the Environment," diakses pada 30 Agustus 2023, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html>.

In general, the integration of the environmental principles mentioned above into Indonesia's national legal framework can be achieved through three main mechanisms: *First*, ratification of binding international legal instruments (hard law). Indonesia can adopt the principles of global environmental law by ratifying environmentally-focused international treaties. By ratifying these instruments, Indonesia formally agrees to abide by the provisions of the treaties, as they become part of national law.

*Second*, direct adoption in national legislation. Indonesia can also adopt environmental principles by integrating them directly into national legislation. This can be done through the drafting of laws, government regulations, or regional regulations that reflect the principles of global environmental law in the context of Indonesian law. *Third*, through constitutional amendments. In this case, Indonesia integrates environmental principles into the state constitution by recognizing the rights of nature as in Ecuador or simply integrating environmental principles more explicitly as in France.

Indonesia has currently carried out the first and second mechanisms, better known as the legalization of environmental norms in legislation. Although the state constitution also contains environmental principles. It is just that the constitutionalization of environmental norms into the Indonesian constitution is still placed under other factors such as economic factors which are only exploited for profit. This is certainly far different from what has been regulated by Ecuador and France which more explicitly incorporate environmental principles in their state constitutions.

Therefore, Indonesia needs to optimize the constitutionalization of environmental principles into the state constitution by taking important lessons from Ecuador and

France. There are two regulatory models, namely the first integration by recognizing the rights of nature as a separate entity as in Ecuador or only explicitly integrating environmental principles by not explicitly placing nature as a separate entity as in France.

## V. Conclusion

Based on the previous discussion, this paper concludes that Indonesia has not been optimal in integrating environmental principles in its constitution. Although in the Indonesian constitution, there are several articles that implicitly reflect a commitment to environmental conservation, such as Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, the construction in the formulation of these articles still places the environment as a subsidiary factor under other factors, especially economic factors that are only utilized for human interests. This shows that the concept of a true green constitution, which places the environment as a separate legal entity and makes it a subject that has rights that must be protected, has not been fully reflected in the Indonesian constitution.

Therefore, it is time for Indonesia to prepare for this momentum by making fundamental constitutional changes. This would involve reorganizing the fabric of the nation, state and society by incorporating more values and principles of environmental protection into its constitution. For example, Indonesia can take inspiration from Ecuador, which explicitly recognizes the right of nature or Pachamama in its constitution.

The alternative is for France to integrate environmental principles into the preamble of its constitution. Although it does not place the environment as a separate entity, France firmly recognizes the need for environmental protection as a fundamental principle in the national order.

Based on the results and conclusions above, recommendations that can be considered are in the form of amendments to the constitution. The government needs to consider fundamental constitutional changes to further incorporate environmental principles as a key element in the constitution. This could include the addition of articles that explicitly recognize environmental rights and mandate them as legal subjects who have rights that must be respected and protected.

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