Understanding Natural Resources Clause in Indonesia Constitution

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Abstract. This paper analyzed the regulation of natural resources in the 1945 Constitution. Regulations regarding the natural resources affairs in the Indonesian constitution can be found in Article 33 section (3) of the 1945 Constitution. The study's objective is to discover how the clauses in the Indonesian constitution concerning natural resources are interpreted and applied in theory and practice. By using the normative juridical method, this paper discovers that the control of natural resources in the Indonesian constitution is constructed on the concept of economic management. As for the management of this economy, the state is obliged to apply a welfare state for the benefit of the Indonesian people.

1. Introduction

Every constitution in the world provides different arrangements regarding the management and protection of its natural resources. Several works of literature indicate the existence of the term green constitution to indicate the protection of the earth and the environment, which is explicitly stated in the constitution \([1]\). This concept then produces an approach to governance based on democracy \([2]\). Countries like Ecuador are often said to have a green constitution because a clause gives constitutional rights to mountains, rivers, oceans, wild animals and plants. Articles 10, 71, and 72 of the 2008 Ecuador Constitution clearly state the environment and nature protection. According to Jimly Asshiddiqie, this constitutional construction is called a green constitution \([3]\).

The 1945 Indonesian Constitution, namely Article 33 section (3) of the 1945 Constitution, regulates Indonesia's natural resources affairs. This article is the only clause that states the elements of natural resources such as the word "the land", "the waters," and "the natural resources". As the text of Article 33 section (3) of the 1945 Constitution states, "Earth, water and natural resources contained therein are controlled by the state and used maximally for the welfare of the people."

In light of the arrangements of Article 33 section (3) of the 1945 Constitution, there are essential elements in the exertion of Indonesia's land, water and natural assets. These elements include: "controlled by the state" and "the greatest benefit of the people". These two extraordinary elements become the spirits of those who profit from the land, the waters, and natural resources. \([4]\).

The fundamental question of this paper is how can the clauses in the Indonesian constitution regarding natural resources be interpreted and applied in theory and practice? This paper is divided into five sections; first, it discusses the background of the study regarding the existence of a constitutional text that recognizes the land, the waters and the natural resources. The second part discusses the methods used in the discussion of this paper. The third part discusses the construction and conception of the meaning of natural resource management in the Indonesian constitutional text. The fourth part discusses...
the interpretation practices in the Constitutional Court in interpreting Article 33 section (3) of the 1945 Constitution. The fifth part is the conclusion of this paper.

2. Method
The method used in this paper is normative legal research conducted by literatures review [5]. Normative legal research focuses on positive legal norms in the form of the Constitution, namely by examining provisions related to Natural Resources many constitutions around the world. The use of statutory approach carried out by reviewing the Constitution. the statutory approach is aimed at studying the meaning of the provisions of the relevant articles.

The conceptual approach relates to the theories and debates that emerge in legal academics to find ideas that give exploration to legal notions, legal theories, and legal doctrine relevant to the science of law. The concept of law can be found in laws which are then understood through the views of scholars and existing doctrines. Furthermore, The Constitutional Court's Decision is essential to collaborate with analysis to seek a juridical understanding of Indonesia's natural resource management.

3. Results and discussion
3.1. Construction and Conception of Resource Management in the Indonesian Constitution
The construction in the 1945 Constitution, Article 33 section (3), regulates natural assets in Indonesia is part of the concept of economic regulation. The constitution's content, which states, "The earth, water and natural resources contained therein shall be controlled by the state and used maximally for the welfare of the people," is accommodated in CHAPTER XIV concerning the National Economy Economic and Social Welfare. The clauses on natural resource management as a dimension of the economy and welfare are a sign of the constitutional mandate for the state to manage for economic interests.

One preeminent professor in Indonesia, Bagir Manan, stated that the elucidation of being constrained by the state or the choosing control the state in Article 33 section (3) of the 1945 Constitution could be interpreted into three things [6]. First, the existence of control such as possession by the state, implying that the state through the Government is the sole body to choose the advantage of control over it, including the earth, water, and common assets. Second, there is the authority to regulate and supervise their use and utilization. Third, there is capital participation and in the form of state enterprises for certain businesses.

The option to control the state with the best thriving individuals brings forth the state's commitment to give all types of utilization (land and water) and the outcomes (characteristic riches), to expand the success and government assistance of the community welfare. The state is obliged to ensure and secure every one of the privileges of individuals contained in or on the earth, water, and certain natural assets that can be created straightforwardly or appreciated straight by individuals. This additionally incorporates forestalling all activities by any party that will make individuals have no chance or lose their privileges to appreciate natural resources [7].

Placing natural resources in Article 33 of the Indonesian constitution has brought inevitable consequences in the state's duties concerning society. In the theoretical context, the Indonesian constitution, especially in Article 33 of the 1945 Constitution, implies that Indonesia is a welfare state. In the article, it is plainly expressed that there is a commitment for state managers to advance public government assistance and give fundamental requirements to the community. Hence, the state is given the power to control and oversee characteristic assets throughout Indonesia to advance the thriving of these networks [8].

The foundation regarding natural resource management in the economic dimension can also be found in several provisions in the world constitution. For example, Article 21 of the Kuwaiti Constitution states that "natural resources and income from natural resources belong to the state, the state ensures its preservation and proper exploitation, to safeguard state security and support the national economy" [9]. Based on the country of Kuwait, the government has an essential role in regulating guidelines identified
with the utilization of common assets. In addition to improving the country's economy, the government regulates natural resource reserves that will be used for future generations.

The South Korean constitution also provides clauses regarding the management of natural resources in economic management. Article 120 of the South Korean Constitution states, "The license to exploit, develop or utilize minerals and all underground resources, marine resources and natural resources for a certain period is regulated following applicable laws in the South Korean countries, to support the national economy" [10].

The meaning of making constitutional arrangements for the management of natural resources associated with the economy can also be found in various world constitutions such as the Bahrain's Constitution [11], the Iranian’s Constitution [12], the Kazakhstan’s Constitution [13], and various other constitutions. The clause to provide natural resources as holders of constitutional rights is not yet explicit in the constitution in Indonesia.

3.2. Judicial Interpretation Regarding Article 33 of the Indonesian Constitution

As per the Constitutional Court, the significance of being constrained by the state is that individuals, all things considered, command the state to set up strategies (beleid) and the executives' activities (bestuursdaad), guideline (regelendaad), the board (beheersdaad) and oversight (toezichthoudensdaad) for the best potential advantage of the nation. That way, as indicated by the understanding of the Constitutional Court Article 33 of the 1945 Constitution, it does not dismiss privatization, given that privatization does not discredit state control.

The Constitutional Court stated that state control of production branch business entities is not always 100% [14]. In one of its decisions, the Constitutional Court interpreted; "Ownership of Government shares in business entities related to creation branches which are essential to the state and/or controlling the livelihood of people being referred to, can be an absolute majority (above 50%) or a relative majority (under 50%) as long as the Government acts as an absolute majority. The relative majority shareholder remains legally in the determining position in making decisions in the said business entity.

The understanding gave by the Constitutional Court is not entirely different from the aftereffects of the preliminary of the Board of Investigators for the Preparation for Indonesian Independence (BPUPKI). Around then, the First Republic of Indonesia's Vice President, Mohammad Hatta, translated the importance of being constrained by the State. As indicated by Hatta, the Government is not just a director and controller for individuals, yet "land" to "mining organizations" are run as state ventures [15].

When connected with the idea of the government assistance state and state capacities as indicated by W. Friedman, a basic report can be found as follows: the option to control the state as expressed in Article 33 of the Indonesian Constitution positions the state as the controller and underwriter of individuals' government assistance. The state does not need to be "claimed" by the state, implying that it tends to be possessed by private or unfamiliar organizations However, it very well may be acknowledged regarding the spirit of Article 33 of the Indonesian Constitution. It implies that the public authority is truly in charge, so section (3) Article 33 of the 1945 constitution was carried out [16].

4. Conclusion

Because of the conversation that has been expressed in the previous section, it can be inferred that the Indonesian constitution builds the presence of regular assets concerning monetary administration and the acknowledgment of the government assistance state. The presence of Article 33 section (3) of the 1945 Constitution avows the significance of the state in controlling the earth, water, and common assets for government assistance to benefit the people's welfare.

The concept of control of natural resources possessed by the state means that the state is obliged to up strategies (beleid) and the executives' activities (bestuursdaad), guideline (regelendaad), the board (beheersdaad) and oversight (toezichthoudensdaad) for the immense possible benefit of the nation and not liberal economic interests. Support for the critical role of the state is manifested in the interpretation
of the Constitutional Court, which emphasizes the state's role to remain in control in natural resource management despite privatization and other business schemes.

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