

CHAPTER II

REVIEW OF RELATED LITERATURE

The description on chapter III includes the main concepts as standard and analysis instrument. *First*, legislation theory. *Second*, green constitution concept. *Third*, green economy concept. *Forth*, green banking concept. And *fifth* productive financing concept.

A. The Legislation Theory

In the perspective of legislation theory, every legislation called as good legislation, legal validity, accepted by society (effective), and apply in the long time should based on legislation base. According to Rosjidi Ranggawidjaja, there are three legislation bases, they are philosophical base, sociological base, and juridical base.

1. Philosophical Base

Legislation making should base on the philosophical base, it is philosophy of a nation contained moral values or ethics of the nation it self.

Basically moral and ethics contained good and bad values. A good value is a ambition admirably. The meaning of good, true, fair, and ethical are base on the measuring owned by nation it self. Anything the kinds of nation philosophy, it should be reference in the making of law used in the nation life. Therefore, the norm of law formed (as contained in legislation) should reflect the nation philosophy. At least there is not conflict with nation morally values.

2. Sociological Base

The legislation called sociological basing if it has provisions suitable with social belief or law awareness in the society. It is needed to make legislation would be obeyed by society, and does not be words or sentences only. The law formed should be suitable with living law in the society.

3. Juridical Base

It is a law base (*juridische gelding*) that is become foundation or basis of legislation maker authority. Either the authority of official (civil servan) or corporation who have the law basis decided on the legislation.¹

The same opinion stated by Amiroeddin Sjarif, that the legislation should covered philosophical, sociological, and juridical aspect.

1. Philosophical Base

The legislation called philosophical basing (*pilosofische grondslag*) when its formula or norms got the social justification (*rechtsvaardiging*) and studied philosophically. So it have the reason and philosophical base could be justified when it tought deeply. The reason suitable with the goal and human life perspective in the society. It is also agree with goal of truth (*idee der waarheid*), goal of justice (*idee der gerechtigheid*), and goal of ethnics (*idiil der zadelijkheid*).

2. Sociological Base

A legislation called have a sociological base (*sociologisce gronslag*) when the provisions suitable with social justice or society law awareness.

¹Rosjidi Ranggawidjaja, *Pengantar Ilmu Perundang-Undangan Indonesia* (Bandung: Mandar Maju, 1998), p. 43-44.

3. Juridical Base

Also called as law base or legality ment a basis contained in the higher provision of law. There are two kinds of juridical base, ere;

- a. The juridical base in a formal aspect, it is law provisions given the authority to the competent authority.
- b. The juridical base in a material aspect, it is law provisions about the problem or case could be regulate.²

Furthermore, according to Satjipto Rahardjo, a good legislation should have a general, comprehensive, and universal quality.³

B. Green Constitution

The green constitution concept consisting three main ideas, they are green constitution in Indonesia, green constitution in other state, and ecological development.

1. Green Constitution in Indonesia

Green constitution is a new term in the world law in various countries. This term was popularized first in Indonesia by Prof. Dr. Jimly Asshiddiqie, S.H., former first chief of the Constitutional Court of Republic of Indonesia year 2003-2008.

Term of green constitution often has been used since the 1970s to describe the relation of something to the idea of environmental conservation.

²Amiroeddin Sjarif, *Perundang-Undangan: Dasar, Jenis, dan Teknik Membuatnya* (Jakarta: PT Rineka Cipta, 1997), p. 91-94.

³ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bhakti, 1991), p. 83.

Nowdays many terms that associate with the word “green”, for example, green jobs, green market, green paper, green festival, etc. In the environment of jurisdictions raises the terms like green court with green benches. Even this term has been used for political party or known by *green party* that formed to give a stronger political pressure in order resuscitation of environmental importance. Pouring green policy into product of legislation also commonly translated in English with green legislation. Therefore, if the legal norm adopted in the text of the Constitution 1945, it is called by green constitution.⁴

In Indonesia, green constitution concept reflected in the idea of authority and human right and also in the idea of economic democracy of Constitution 1945. The higher authority of sovereignty that is consist in the citizen reflected in human right concept that is every human have the right to good and helth environment, as stated in article 28H paragraph (1) of Constitution 1945, while the economic democracy related with ecological development stated in article 33 poin (4) of Constitution 1945.⁵

Article 28H paragraph (1) of Constitution 1945 stated “*Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.*”⁶ And article 33 paragraph (4) of Constitution 1945 stated “*Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, efisiensi berkeadilan, berkelanjutan, berwawasan*

⁴Asshiddiqie, *Green Constitution*, p. 4.

⁵Asshiddiqie, *Green Constitution*, p. 8

⁶Article 28H paragraph (1) as result of second changing hasil Constitution 1945 valided on 18 Agustus 2000.

lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional.”⁷

The rising of environment right as human right assured by article 28H paragraph (1) and the adopting of ecological development principle into article 33 paragraph (4), means that Constitution 1945 has illustrated green constitution concept.

Actually a discourse of green constitution rises in the end of 20th era and beginning 21th era, when people started to feel restless with the slowly of constitutional state government concrete response to the issues of environment conservation, its needed in order to human viability guaranteed based on ecological development. Because of it, since 1980s era developed the demand in order to state policies suitable with ecological environment. And also it is reflected in the legislation that obeyed by all of stakeholders. The demand also force the government to arrange a policy in the legislation term that regulated of environment.⁸

Since that event, in Indonesia rises various product of legislation specifically for environment conservation succeed regulated, it used as policy that is hoped could be a handle in every development activity, either done by government or society and corporations. The example of legislations are Act nomor 4 year 1982 of *Ketentuan-Ketentuan Pokok Pengelolaan Lingkungan Hidup* changed to Act nomor 23 year 1997 of *Pengelolaan Lingkungan Hidup* and the last this legislation changed to Act nomor 32 year 2009 of *Pelestarian dan*

⁷Article 33 paragraph (4) as result of second changing hasil Constitution 1945 valided on 10 Agustus 2002.

⁸Asshiddiqie, *Green Constitution*, p. 10.

Pengelolaan Lingkungan Hidup, Government Regulation nomor 52 year 2008 of *Jenis dan Tarif Penerimaan Negara Bukan Pajak yang Berlaku pada Kementerian Lingkungan Hidup*, Government Regulation nomor PP No. 4 year 2001 of *Pengendalian Kerusakan dan atau Pencemaran Lingkungan Hidup yang Berkaitan dengan Kebakaran Hutan dan atau Lahan*, Government Regulation nomor 54 year 2000 of *Lembaga Penyedia Jasa Layanan Penyelesaian Sengketa Lingkungan Hidup di Luar Pengadilan*, and the others.

2. Green Constitution in Other States

At first, most of state constitutions in the world does't relate environment provisions with human right yet. Many constitutions also doesn't contain about human right provisions. But, the increasing of awareness about the importance of environment in the world causing many states pouring the environment provisions in their constitution formula and also relate it with human right.

According to Jimly Asshiddiqie there are four model and mecanism of environment conservation idea. *First*, the constitution contained environment conservation specifically, included the concrete provision of implementation procedural, for the example is Constitution of Spain 1978. *Second*, the constitution integrated the environment provision with human right, for the example is Constitution of Polandia 1997. *Third*, the constitution regulated explicitly or determine the guaranty of human right used to environment conservation practically, in example is constitution of Indonesia. Article 33 paragraph (4) Constitution 1945 only stated the basic principles as basis of environment policy. *Fourth*, the constitution correlated environment policy with

the responsibility of state institution to conserve and handle the environment, the example is Constitution of Portugal 1976.⁹

Some of state in United States of America also have the constitution contained human right provision of healthy environment. It is as seen in Illionis constitution stated that *“each person has the right to a healthful environment”*, konstitusi Rhode Island yang menyebutkan *“rights to use and enjoyment of the natural resources of the state with due regard for the reservation of their values”*, and constitution Pennsylvania stated that *“the people have a right to clean air, pure water, and to the preservation of thenatural, science, historicand esthetic values of environment.”* While, in constitution of Japan also stated *“all people shall have the right to maintain standarts of the wholesome and cultured living.”*¹⁰

Until now, the development of environment thought and its policy resounding broadly as well as the development of sustainable development. Nonetheless, only a little of states explicitly relate between sustainable development and environment in their constitution.

3. Ecological Development

The suistable development is an planned eforts that is combaine environment apect, social, and economic into strategy development. It is needed to guaranty the integrity of environment, safety, ability, prosperity, and life quality, not only for today’s but also for the next generation.¹¹ This concept consist in

⁹ Asshiddiqie, *Green Constitution*, p. 20.

¹⁰ Asshiddiqie, *Green Constitution*, p. 21-23.

¹¹ Article 1 (3) Act Nomor 32 year 2009 on *Perlindungan dan Pengelolaan Lingkungan Hidup*

democracy economic principles that is followed by Constitution 1945 as stated in article 33 paragraph (4) of Constitution 1945 “*Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip berkelanjutan, berwawasan lingkungan,.....*”¹²

Definition of sustainable development also stated by Sumarwoto as quoted in Aca Sugandhy book, it is a social economic change that isn't ignore the technology and social system where the society depend on it. Its implementation need policy, planning, and process of integreted society learning, and also the politic viability. The success of its implementation need an authority, planning, cohesiveness social learning process, politic viability that is hang on society support, social institution, and also the bussiness activity.¹³

The principle of “continuing” can be associated with sustainable development concept. So its mean that the development does not be quite of idea about maintenance, conservation, and protection of environtment that is been a general discourse and awareness around the world.¹⁴

Term of sustainable development introduced by Rachel Carson in his book entitled *Silent Spring*. According to him, process of development hoped to fill needs nowadays without break the next generation to fill their needs in utilising of natural resources potential for life.¹⁵

¹²Articlel 33 (4) UU Nomor 32 year 2009 on *Perlindungan dan Pengelolaan Lingkungan Hidup*

¹³Aca Sugandhy dan Rustam Hakim, *Prinsip Dasar Kebijakan Pembangunan Berkelanjutan Berwawasan Lingkungan* (Jakarta: Bumu Akasara, 2007), p. 21

¹⁴Asshiddiqie, *Green Constitution*, p. 133

¹⁵Asshiddiqie, *Green Constitution*, p. 134

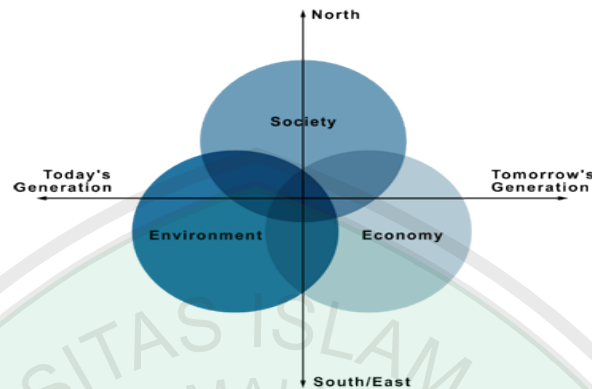
Term of sustainable development first time written formally in Act Nomor 23 year 1997, whereas term ecologically written earlier in Act Nomor 4 year 1982. The term written in Act Nomor 4 year 1982 more complete that state “*pembangunan berkelanjutan yang berwawasan lingkungan hidup*”. The term can be known that the thought of development in relation to the environment has been developed to the conception that more fundamental, namely sustainable development which is already contained the principle of environmental perspectives.¹⁶

Sustainable development is one of an embodiment of environment insight that is defined by the Constitution 1945. On the other hand, the principle of sustainable development should also be applied in the ecological development policy. There is no sustainable development without living environment as its main element, and there is no ecological environment without sustainable development.

There are three pillars of sustainable development since the Stockholm Declaration which stresses the need for coordination and integration of natural resources, human resources, and resources artificial in any national development, with the approach of population, development, and the environment to the integration of social aspects, the economy, and the environment. Three pillars above are known with Three Dimensional Model,¹⁷ as the following diagram;

¹⁶Asshiddiqie, *Green Constitution*, p. 144

¹⁷Aca Sugandhy dan Rustam Hakim, *Prinsip Dasar*, p. 21.

Image 2.1***The Dimensional Model***¹⁸

Base on diagram above, known that nowadays sustainable development is often depicted schematically using three circles for the target dimensions of environment, economy and society, to which are added the time and north-south dimensions. The diagram illustrates that:

First, economic, social and environmental processes are interlinked. Public and private agents alike cannot be permitted to act one-dimensionally and in isolation. Instead, their actions must take into account the interplay between the three dimensions of environment, economy and society.

Second, sustainable development goes beyond environmental conservation. In order to satisfy our material and immaterial needs, we require economic prosperity and solidarity in our society.

Third, the implications for the future of the actions of today must be factored in (the intergenerational aspect) so that future generations are also able to satisfy their needs.

¹⁸The image download from <http://www.are.admin.ch/themen/nachhaltig/00260/02006/index.html?lang=en>, accessed on 16-01-2015.

Forth, sustainable development calls for long-term structural change in our economic and social systems, with the aim of reducing the consumption of the environment and resources to a permanently affordable level, while maintaining economic output potential and social cohesion.

Fifth, global interdependencies must also be considered (the north/south aspect). From the environmental standpoint, the current lifestyle in industrialized and more and more also in emerging countries cannot be spread around the globe. Sustainable development aims to bring about a long-term improvement in the quality of life of the majority of the human race, which lives in bitter poverty and inhuman conditions.¹⁹

The concept of sustainable development give implication limits as stipulated by the community and social organization regarding to the natural resources, and ability biosphere in absorbings various of human activity influence. The development process going on continuously and supported resource existing. It is known by the quality of the environment and human beings that are kept growing in the limits of its capacity. The development inspires generation now to improve the welfare without reducing an opportunity for future generations welfare.²⁰

C. Green Economy

The emergence of green economy concept cannot be separated from the industrial revolution that raised the seeds of greed that marked in modern

¹⁹ "Three Dimensional Model", <http://www.are.admin.ch/themen/nachhaltig/00260/02006/index.html?lang=en>, accessed on 16-01-2015.

²⁰ Aca Sugandhy dan Rustam Hakim, *Prinsip Dasar*, p. 22.

imperialism. Imperialism became the root of the nature exploitation problem that is brought out to global warming. Since the industrial revolution rolled on, the temperatures begin increased, because of the invention of technology that has the ability to exploit nature deeper. The forest chopped down, mountain perforated, the settlement and factories become more, so many produces emissions caused air and water pollution. They just pursuit of profit with no care in importance of ecology.²¹

Globalization is a threat and challenge of national economic development survival. It always could be resolved if national economic security can always be maintained. A country has economic maintained when it has the economic ability wich is not be shaken by uncertainty caused globalization, also capable of giving increased welfare to society through development. So related with the illustration, the concept of green economy evolved.²²

Green economy is a model of economic development approach that is no longer relies on economic development based on exploitation of natural resources and environment excessive. Green economy is a great leap leaves the practice of economic that is advanced on the short term profits, because it has bequeath to various urge problems wich is needed solving likes actuate the low carbon economy.

The concept of green economy is a new paradigm of economics development replaces environmental policies that are focused on short solutions. Green economy approach is win-win solution in to end the policy maker debate

²¹Syadullah, *Menuju Green*, p.1

²²Syadullah, *Menuju Green*, p.52

related to the environment conservation and economic growth. Green economy is a economic development model based on knowledge of ecological economic that aims to answer the interdependence between economic and the ecosystem as well as negative impact caused economic activity including climate change and global warming.²³

The concept of green economy began discussed officially at the preparation meeting of the United Nations Conference for Sustainable Development (UN CSD) in May 2010. In this meeting still found plenty of debate and exchange of ideas interactively among countries of UN member States with major groups on what the meaning of a green economy approach in the context of sustainable development and the poverty elimination. A subsequent meeting was held in 2009, in which held the General Assembly of United Nations which decided holding of the on sustainable development conference in Brazil 2012.

Although the concept of green economy is still be a debate, some international organizations have defines this concept. Among those is the United Nations Environment Program (UNEP) that define the green economy as follows:

Greening the economy refers to the process of reconfiguring business and infrastructure to deliver better returns on natural, human and economic capital investment, whie at the ame time reducing greenhouse gas emissions extracting and using less natural resources, creating less waste and reducing social disparities”.

The other definition of green economy is economics of the real world, the work world, human needs, raw materials from the earth, and how all these things combined into one harmoniously. Green economy is the study about ‘use-value’

²³Syadullah, *Menuju Green*, p.40

not 'exchange-value'; 'quality' not 'quantity'; and 'regeneration' of individuals, community, and the ecosystem, it does not about the accumulation of money or material.

UNEP stated that the application of green economy can be seen through the increase of public and private sector investment in green sector, an increase in quality and quantity of employment in the green sector, an increase in GDP of the green sector, the descent in energy / resources using per unit of production, the descent of CO₂ and pollution using / GDP, and a descent in consumption which is produced waste.

The implementation form of international pro green economy policies such us in the form of multilateral and bilateral trade agreements for goods and services associated with environment, international aid to support the application of green economy, activation of global carbon market, gobal market development in ecosystem service, the development and technology transfer that based on environmentally, and international coordination in the implementation of green stimulus package.

UNEP in 2008 began to develop the green economy Initiative (GEI) designed to support countries in greening their economics through the proclaming and focusing of policies, investments, and government financing to several sectors such as clean technology, renewable energy, water use, waste management, green transportation, green buildings, also agriculture and forestry the directness.

GEI focus on a positive relationship between being green and economic growth or job creation or reduce poverty. GEI also promote green sectors and

encourage developing countries to go to modern economics. Besides, GEI also has the potential to overcome the challenges faced by human nowadays, is like a recession, hunger and malnutrition etc.

GEI have three main pillars, they are increase the value and give priority to natural resources at nationally internationally, the development of employment opportunities through green job, and set policies also the using of instrument to accelerate transition towards green economy.²⁴

There are ten principles of the Green Economy,²⁵ they are;

1. Priority to use value, intrinsic value, and quality

It is a basic principle of the green economy as the economy serving, focused on the end result and environmental needs. The main matter is a medium to the last satisfaction of the real needs, and can be conserved radically. Money also must be returned to its status as a medium to facilitate the renewal of the exchange, rather than the end result.

2. Following the natural flow

Economic moves like a ship that sailed with the wind as a natural process. People have become more sensitive to the ecological aspects until political and economic limits will be in line with the ecosystem boundaries, and growth the concept and bioregional activities.

3. Garbage is food

Nature does not recognize the garbage, so that each output of a process to be intake for other processes. This principle not only has implications on the

²⁴Syadullah, *Menuju Green*, p.54-58

²⁵Surna Tjahja Djajadiningrat, (eds.), *Green Economy* (Bandung: Rekayasa Sains, 2014), p. 132.

high complexity of the organization but also an output of by-product should be quite nutritious and has no toxic so it can become fodder for the other activities.

4. Neat and diversity of functions

Complex foods webs are implications of the various relationships that integrated where diametrically opposed to the segmentation and fragmentation of industrial society. In this case the problem solving strategy rests on the joint victory of the positive values of other activities.

5. Appropriate scale

This does not imply that 'small is beautiful' but implies that each regenerative activity has an operational scale most appropriate. A little activity will have a greater impact and a purely ecological activity is an integrated plan in multiple scales and reflect a big influence to a small or contrary.

6. Diversity

In a world with constant change, health and stability depend on diversity. This applies to all levels / biodiversity (plants, animals, ecosystems, and regional), as well as social diversity and ecological organizations.

7. The ability of self, self-organization and self-design

A complex system requires a 'hierarchy nest' of intelligence that coordinates the system itself in a structured movement. In an economy that is moving along with an ecosystem processes, must be provided an environment for local people's responses, design, and adaptation.

8. Participation and direct democracy

To be able to flexible and resilient, design economy that based on ecology should include public participation in the decision-making process.

9. Creativity and community development

Needed the community development with a holistic concept until needed a quality seedlings.

10. Strategic role in an artificial environment, landscape, and spatial planning

Great efficiency capable implemented through the spatial arrangement of the system components of an activity. Neatness joint use, integrated design that moves with nature is the foundation, so that conservation and efficiency improvements in the spatial arrangement gave a positive impact on economic activity.

D. *Green Banking*

In order to practice green economy not only needed fiscal policy alone, but also the necessary monetary policy. For that monetary policy should be able to direct the banking to clean business or in other words the Bank Indonesia should be able to direct banking been green banking.

Green banking is a term taken on various uses. At the simplest level, green banking was chosen as trade name of private commercial banks, for example, The Green Bank of Houston, Texas, and The Green Bank of Greenville, Tennessee. In the context of economy politic, has become fashionable to add a prefix as a way to show that policy or institutions are contributed to improving the environment. While in the context of banking, green can be applied as a strategy

of bank and activities to encourage customers to engage in active participation in alternative energy projects financing.²⁶

Green banking is a concept of financing, banking services products, which prioritizes sustainable aspects of economic, environmental, socialist culture, and technology simultaneously. Green banking began to be practiced in the Americas where this concept is used in connection with public projects. This bank concept began to be applied either at the federal or state level to finance schemes designed to improve the quality of citizens life and save the consumption of valuable natural resources.

Green banking is introduced by Chris Van Hollen in a congress in March 2009. Based on the initial concept of the formation of the Green banking is intended to offer financial support in an effort to increase the efficiency of energy use and reduce carbon emissions and other pollution as result from the creation of the energy. In addition it is hoped that this institution will work to reduce the country dependence on foreign energy sources, combating climate change, and create many job openings through the providing of healthy energy facilities.

Members of congress proposed the formation of green bank with initial capital of ten billion dollars which will be doubled by US Treasury through the issuance of bonds maximum fifty billion dollars. The idea of investment increasing through the issue of the bonds get a lot of criticisms, because at the same time America is being beset financial crisis. Nevertheless this suggestion widely accepted by a group of investors, energy industry experts, and

²⁶Syadullah, *Menuju Green.*, p. 197.

manufacturer who held under a flag coalition for green bank. Supporters of this scheme stated that so far the initiative on the prospect of private capital investment to create new energy capacity is low.

Although the suggestion to set up a national green bank is in discussion stage, various practical measures have been taken. The America government was finally set aside reached almost twenty million dollars as loans to fund Green Bank of Kentucky. This fund will be used to fund an energy efficiency program in public buildings belonging to the state. The loans with low interest is also intended to fund the state projects qualified with the payment of back loans funded by energy savings.

The first private bank that follow the Green Bank of Kentucky is The First Green Bank Of Eustis, Florida. This bank introducing itself as the first traditional bank which is promotes environmental and social responsibility. This bank allocated in a fifth of its loans in energy and environment projects designed to save energy.²⁷

Green banking also means the form of real business done by the multi stakeholders where a bank must work with close cooperation with the government, public interest group, international financial institution (IFI)/ international government organization (IGOs), central bank, the customers, and the business community to reach green banking purposes. The initiative of green banking includes management of internal environment, financing environment/

²⁷Syadullah, *Menuju Green.*, p. 198-199.

product ecology, environment audit and the report, formulate and adopt the principles of green banking then promote it to the other stakeholders.²⁸

Green banking role in the world creating sustainable development that based on environmentally is very important. Even the banking as one of financial institutions should become one of the important pillars of sustainable development paradigm. The principle of sustainable development should ensure that the development should be balance between economic, social life, and environmental preservation (profit, people and planet). In this context explained that bank as financial institutions became one of the important pillars of sustainable development mainstream. Various ways can be taken banker for example by changing the financial customers report from paper based into electronic based. Through interaction with customers, bankers can influence the behavior of customers in order to implement the protection of air and water pollution. Bankers are also able to start financing the green projects that are environmentally friendly and inhibit projects that damage the environment.²⁹

The central bank having a greater role in forming a concrete guidelines for green banking practices. While banking and financial institutions not bank can formulate the strategy is and guidelines for financing. Of course this should be an obligation for any finance businessman as a responsible for environmental problems.

²⁸Departemen Perbankan Syariah Bank Indonesia, *Kajian Model Bisnis Perbankan Syariah* (Jakarta: Direktorat Perbankan Syariah, 2012), h. 38. Accessed at <http://www.bi.go.id/id/perbankan/syariah/Documents/KajianModelBisnisPerbankanSyariah.pdf>, on 30-10-2014.

²⁹Syadullah, *Menuju Green*, p. 200.

Banking industry is important institution in a round of economic activities and business, so the bankers not only be indifferent to environmental problems. Banking industry can handle problems to save the environmental damage and preserve the ecological balance.

The role of banking in maintaining the environment can be started from internal banks alone, for example in handling waste. A bank should provide a good example at consuming resources such as water gas electricity paper and so on. For the examples, makinf a draft letter use computer better than paper. Saving the using of paper will impact on the felling of thousands of trees that provide the raw material for the production of paper. Similarly the election of the branch bank location with enough light and air access will save electricity and create large healthy environment.³⁰

Whereas in the context of credit distribution, the financing focused on green project aimed to safeguard the environment. Bankers should be aware of the environmental issues, so they have to finance the projects that don't pollute the environment. Industry funded by bank should have the installation of waste processing, recycling facilities and smoke, and the others. Industry shouldn't to release all types of waste, chemicals, or smoke on the environment. And also bank should not finance any dirty project caused pollute the environment.

According to Glen Croston as quoted by Sakariza that green business is a lucrative business concept because it can provide an profit and adequate of economy scale so it will useful for the overall business. In the banking context,

³⁰Syadullah, *Menuju Green*, h. 201.

the green business or environmentally credit distribution, known by green lending. Green lending can be defined as loan facility of financial institution to debtors who act in the business that no impact on the environment decline and the quality of community social conditions.³¹

Some principles related with green banking are;

a. *Customer Segment*

The customers segment of green banking are business entities that have concern with the environment preservation and the reduction of carbon emissions. In general, a company given financing by green banking is a company that having environmentally certification of the operational business in accordance with applicable regulations in countries each. It is as happened in the First Green Bank, Florida USA, where a company that funded is companies that have certification of Leadership In Energy and Environmental Design (LEED) such as certification of Environmental Impact Analysis (AMDAL) in Indonesian case.

b. *Value Proposition*

Type of financing and service provided by green banking are financing to the environmentally company, it is a excellence form which is owned by green banking. Moreover, many environment issues recently become a topic much discussed in International meetings so banks who practice on environment concern will receive a place in the society and the state.

³¹Syadullah, *Menuju Green*, h. 202.

c. *Channel*

Channel used by green banking to reach out to its customers segment are B2C (Business to Customer) where a bank is also should promote the green banking principles to the stakeholders, government and big corporations.

d. *Customer Relationship*

Personal approach (personal touch) is a form of maintain good relations with customers that commonly done by green banking. Assistance or technical assistance also is one way of green banking to maintain good relations with the customers, especially for ascertaining that the financing that have been channeled used for environmentally.

e. *Revenue Streams*

The main income source of green banking is the margin interest rates as commercial bank in general, the commission/ fees of services performed and intangible revenue are as brand image for the bank because has funded an environmentally projects that the benefits can be perceived by general public.

f. *Key Resource*

The main power or main resource for the banks social is human resources who have knowledge or understanding about the environment. In practice of First Green Bank, Florida USA, human resources used are having certification of Energy and Environmental Design (LEED) which means that employees understand with green banking practices.

g. *Key Activity*

Green banking do activities associated with in-house environment management, finance a number of environment-friendly projects, creating the funding for reducing the climate change risks, use the online banking facility to serve customers as alternative delivery channels and hold workshops or training for capacity building and awareness about green banking.

h. *Key Partner*

Working partner of green banking is environmental communities who have high awareness of environment, and also the government who support green banking operational.

i. *Cost Structure*

The highest cost is human resources because human resources as green banking implementation should have knowledge and understanding on green banking practices. Besides, a charge in screening project funded is also be a component costs for green banking.³²

Indonesia has extrardinary natural resources. The government of Indonesia also have the power to create a financial institution (bank and non-bank) that care to environment. So its mean that Indonesia supposed to carry out the green banking. According to Bank Indonesia, as presented by Ruth A. Sekaryuni, confirmed, researchers and banking regulation of Bank Indonesia, green banking is defined as banking industry that running their business based on the principle of sustainable development. Especially in credit or financing, there

³²Departemen Perbankan Syariah Bank Indonesia, *Kajian Model Bisnis.....*, p. 38-40.

are ecological balance (environment), human welfare, and culture-social development society.³³

In Indonesia there are no banks that claim to be green bank, but Bank Indonesia as the central bank has to accommodate the concept of green banking into regulation, for example Regulation of Bank Indonesia No.8/21/PBI/2006 on 5th October 2006 of “*Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah*” and Bank Indonesia Circular Letter No. 8/22/DPbS on 18th October 2006 to all commercial banks in Indonesia that conducting business based on sharia principles concerning “*Penilaian Kualitas Aktiva Bank Umum Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah*”.

E. Productive Financing

Productive financing is intended to fill the needs of production as a way to increase business both in trade and investment. According to the need of this financing is divided into two kinds, namely financing for working capital and investment financing.

Working capital financing is financing to fill the needs of increased production, both quantitatively (amount of production) and (improved quality of production). In addition, this financing is also used to fulfill the trade needs or increase the utility of place of some goods. While investment financing is used to fulfill the needs of capital goods and also the facilities closely related to it.³⁴

³³Sigit Kurniawan, “Praktik Green Banking (I)”, <http://www.the-marketeers.com/?post=praktik-green-banking-bagian-i>, accessed on 12 Januari 2015.

³⁴Syafi'i, *Bank Syariah*, p. 160.

1. Capital Work Financing

Generally, capital work financing is a short term financing granted to a company to finance capital work needs that their business based on sharia principle. A period of capital work financing maximum one years and can be extended in accordance the needs. Extended facilities of capital work done on the basis of the analysis of the debtor and financing facility as a whole.

A facility of capital work financing could be given to all of economy sectors/subsector that prospect valued, not contrary to Islamic valued, and not prohibited by the provisions of applicable legislation. The facility of capital work financing to debtor or candidates aimed to eliminate the risk and optimizing bank profit.

Some things should be paid attention in analyzing of financing are;

- a. *Kind of business*; a need of capital work of each business are different.
- b. *Business scale*; amount of business capital work needs depend on business scale operated. A bigger business scale operated, need the capital work more.
- c. *Business level operated*.
- d. *A character of transaction in business sector would be funded*. In this case, that should be accurated is how the paying system of buying materials and how the saling of production product, either cash or pay in installments.

In order to giving capital work, Islamic bank also sould having the strong analysis of the return of payment source, it is project income would be funded. It known by classified the project to be two kinds, with contract or without.

Based on contract used in sharia financing, kinds of capital work financing divided to five kinds, are; capital work of *Mudharabah*, *Istishna'*, *Salam*, *Murabahah*, *Ijarah*.³⁵

In another literature stated that working capital funding can be pervaded by two types of ways, namely the profit and loss sharing and purchase.

Profit and loss sharing financing use *musyarakah* and *mudharabah* contracts, in examples business of restaurants, business of workshop, car wash business, and so forth. By profit and loss sharing, working capital needs of businessman fulfilled and both sides also get benefited from the of the fair risk division.

The requirement working capital of trading businesses to finance some goods can filled by purchase financing with *murabahah* contract. By using this contract, requirement capital traders filled with a fixed price, while Islamic bank got fixed profit margins by minimizing risk. Besides *murabahah* contract, Islamic bank also use *salam* contract that is used to fill working capital of craft business and small manufacturer. In this case Islamic bank supply them with of production inputs as *salam* capital exchanged with their commodity to market back.³⁶

2. Islamic Financing for Investment

By way of definition, investment here is meant as the staking of funds in order to gain future reward, benefits or profits by taking into consideration the following:

³⁵Adiwarman A.Karim, *Bank Islam: Analisis Fiqh dan Keuangan* (Jakarta: PT Raja Grafindo Persada, 2006), p. 231-236

³⁶Ascarya, *Akad dan Produk Bank Syariah* (Jakarta: PT Raja Grafindo Persada, 2006), p. 124

- a. Reward expected from investment are benefits in the form of *financial benefits* or money;
- b. Business entities generally aim to gain benefits in the form of money, while social institutions as well as governmental agencies aim to provide more *social benefits* than financial benefits.
- c. Business agencies receiving investment financing from the bank must be able to generate financial benefits so as to be able to remain alive, grow and meet their obligation to the bank.

Investment can be grouped into three categories, are: investment in any component of current assets, investment in fixed assets or projects, investment in stocks or securities.

Investment financing is medium or long-term financing for purchasing capital goods required for any of the following purposes:

- a. *Development of a new project*, namely establishment or development of a project or factory relating to the opening of a new business;
- b. *Rehabilitation*, or replacement of machinery or equipment that has been obsolete or out of order with the new one;
- c. *Modernization*, or overall upgrading of old machinery or equipment with the new one of better or higher technology;
- d. *Expansion*, or addition of a set of new machinery of equal, better or higher technology to the existing machinery or equipment.

- e. *Relocation*, or moving an entire existing project or factory (including its supporting operational equipment, such as laboratory and storage) from one location to another that is considered better or more suitable

On of bank activity is support the implementation of development policies, such assessment also aims to evaluate a project's socio-economic benefits. Investment financing is provided to projects that can help boost export, absorb labor, emit double impacts (multiplier effects) to other sectors, improve performance of corporative, empower the economically weak as well as the informal sectors, and render social benefits

The Islamic bank can provide investment financing under the conditions that:

- a. It evaluates the prospective project based on the prudential financing principles;
- b. It abides by the Government Regulation on the Environmental Impact Assessment (AMDAL);
- c. It may not exceed the maximum period of 12 years;
- d. It complies with the prevailing bankability requirements (such as the requirements on financing recipients, and on collateral).³⁷

Base on the contract used in sharia financing product, investment financing divided to three kinds, they are; *Murabahah* investment financing, *IMBT* investment financing, *Salam* investment financing, and *Istishna'* investment financing.

³⁷Karim, *Bank Islam*, p. 236.

Determining an investment financing contract involves several steps as follows:

- a. The first thing to do is identify whether the investment financing is for ready stock or in-process goods;
- b. If it is for ready stock, the next factor to identify whether the goods are sensitive to tax issues. If so, the bank's financing is *ijarah muntahiyah bit tamlik (IMBT)*. If they are sensitive to tax issues, the financing to be offered by the bank is *murabahah*.
- c. If the good categorize as goods in process, the next factor to identify is whether or not they will be ready within 6 months. If they can be made ready within 6 month, *salam* financing is to be offered. Otherwise, if they take more than the period, it will be *istishna'* financing.³⁸

Stated in other literature, investment financing contract could be filled by profit and loss sharing, purchase, and lease.

- a. Profit and Loss Sharing

Generally, the investments financing can be fulfilled by profit and loss sharing financing with *mudharabah* or *musyarakah* contract. For examples, building of new factory or business, doing factory or business expansion, and the others. With this manner, Islamic bank and bussinessman share the risk to get the benefit and fair. In order to Islamic bank can be actively participated in business activity and alo reduce the risks as moral hazard, so bank can choose to use *musyarakah* contract.

³⁸Karim, *Bank Islam*, p. 243.

b. Purchase

Investment needs can also be filled with purchase financing with *murabahah* contract. As an example, the purchase of machine, the purchase of a vehicle for business, the purchase of business place, and so forth. By using this way, Islamic bank get profit margin of purchase with minimal risk. Meanwhile, entrepreneurs get the needs of their investment with an estimated of fixed cost and ease planning.

The investment need that requires time to build up can also be filled with *istishna* contract, for example to high-tech industry like airplane industry, a locomotive industry, and so on. In addition, *istishna* contract also can be applied in construction industry for example the apartment building, the hospital, schools, and so on.

c. Lease

The investment assets that have very high cost of and need long time to produces it, filled with to lease financing or called by *Muntahiya Bit Tamlik* (IMBT). For the examples, airline and ship financing or the other kinds. In addition, *ijarah* financing can also be used to finance the industrial equipment, agricultural machines, and transportation equipment.

By using this manner, Islamic bank can take the benefits with stays to be the owner of asset, and at the same time receives also get income from rent. The lessors are also taking benefits and this skin fulfill urged investment needs and

achieving an objective in a reasonable time without expend of massive capital cost.³⁹

F. Syaria Principles in Environment Conservation

Contribute in the socialization of nature preservation importance (conservation) and the environment is one of moslem duty as *khalifatu fil ardhi*. Islam as guide the majority of human in this planet have inquired to human on efforts of rescue human life, both regard to the private lives of ourself, society, or the environment widely. In the religion science, it was commonly called *fiqh*.⁴⁰

The Islamic law expert (*fuqaha*) defines *fiqh* from two sides, *fiqh* as science and *fiqh* as science product. According to Priest Al-Baydawi, *fiqh* is a science which is seek the of establishment legal *syara' amali* from arguments (*dalil*) detailed. While Mohammed Al-Maliki defines that *fiqh* as a collection of legal *syara'* that is produced by *ijtihad*.

Fiqh has ten science identity (*al-Mabadi al Ashrah*), as follow;

1. *Al-Hadd* (definition) : Science which seek the establishment of legal *syara' amali* from *dalil* detailed.
2. *Al-Maudhu'* (object of study) : Human *mukallaf* activity.
3. *Al-Faidah* or *al-Thamrah* (benefit) : Able to carry out the Allah commands and away from He's prohibition.
4. *Al-Masa'il* (subject) : Cases of Islamic law.
5. *Al-Ism* (name) : *Fiqh* science.

³⁹Ascarya, *Akad dan Produk.....*, p. 125.

⁴⁰Ali Yafie, *Merintis Fiqh Lingkungan Hidup* (Jakarta: Ufuk Press, 2006), p. 163.

6. *Al-Istimdad* (source of referece) : *Al-Quran, al-Sunnah, al-Ijma', and al-Qiyas*.
7. *Al-Hukm* (legal of learn) : Wajib 'ain.
8. *Al-Nisbah ma' al-ghayr* (position with the other discipline) : Having special characteristics which easy to known.
9. *Al-Fadhl* (superiority) : Surpass from the other discipline.
10. *Al-Wadi'* (author) : Priestes of *mujtahid*.⁴¹

In *fiqh* also known the term of *fiqh* legal maxims (*al-Qawa'id al-fiqhiyyah*) means sharia norms that have a function to facilitate *mujtahid* or *faqih* doing *istinbat* of law against a problem by combining a similar problem under one of norms specified.⁴²

Among the *al-Qawa'id al-fiqhiyyah* related with environment conservation are as following;⁴³

1. Not allowed to do injury with ourselves and others (لا ضرار و لا ضرار).
2. An injury should disappeared as able as (الضرر يزال بقدر الإمكان).
3. An injury cannot disappeared with another thing conducived to same injury (الضرر لا يزال بضرر مثله).

⁴¹Abbas Arfan, *Kaidah-Kaidah Fiqh Muamalah dan Aplikasinya dalam Ekonomi Islam & Perbankan Syariah*. 2012, p. 75.

⁴²Arfan, *Kaidah-Kaidah Fiqh.....*, p. 1.

⁴³Fahmi Hadi, "Fikih Lingkungan dalam Prespektif Islam [1] (Sebuah Pengantar)", <http://kalsel.muhammadiyah.or.id/artikel-fikih-lingkungan-dalam-perpektif-islam1-sebuah-pengantardetail289.html>, accessed on 13-01-2015

4. Permitted to do an lighter injury to solve a greater injury

(يتحمل الضرر الأدنى لدفع الضرر الأعلى).

5. Doing special injury to restrain general injury

(يتحمل الضرر الخاص لدفع الضرر العام).

6. If occur the conflict both endanger thing, permitted to do the lighter

(إذا تعارض مفسدتان روعي أعضمهما ضررا بارتكاب أخفهما).

7. Rejecting the damage prior than hoping the goodness

(درء المفسد مقدم على جلب المصالح).

Yusuf Al-Qardhawi stated that environment conservation is an effort to create the goodness (*mashlahah*) and rejecting the damage (*mudharat*). It is in line with sharia purpose (*maqasid al-syari'ah*), that has formulated in *kulliyat al-khams*, they are: *hifdzu al-din* (protect the religion), *hifzu al-nafs* (protect the soul), *hifdzu al-nasl* (protect the generation), *hifzu al-aql* (protect the mind), and *hifdzu al-mal* (protect the wealth/property). So protect the environmet means also protect the fifth of sharia purpose.⁴⁴

Furthermore, Ali Yafi explains that the basic principles of environment conservation are;

⁴⁴Yusuf Al-Qardhawi, *Ri'ayatu Al-Bi'ah fi As-Syari'ah Al-Islamiyah*, (Kairo: Dar Al-Syuruq, 2001) p. 44.

1. Protection of soul (*hifdzu al-nafs*) is the main obligation.

The environment maintenance comes from human soul himself (*nafs al-insan*). Terms of self (*al-nafs*) in *fiqh* study is one package of three elements attached to humans, they are the soul, body, and respect. Human will grow up physical and mentally. So his soul, body, and respect should be protected.

2. Wordly is not the aim but it just as footbridge to hereafter

Islamic studi introduce the existence of two kinds of life; namely life in the real nature (*'alam asy-syahadah*) or known with worldly life (*al hayat ad-dunya*) and life in the hereafter (*al-hayat al-akhirah*). God had given some pleasure to human in the world, but it does not mean that human may take own course and follow the worldly life indefinitely. On the contrary, life in world is determinig of the afterlife calculation in the hereafter. Thus, worldly life is very important. The opportunity to work and do something is just in the worldly life, and it is as human capital to get Allah blessings.

3. Production and consumption should be suitable with worthy of human needs (*hadd al-kifayah*).

The desire to acquire and fulfill human life (as food, garment, domicile, furniture, a family, and position) is not in contradiction with *zuhd* study (turned left the pleasure of the world but does not make it as the goal of life). Even fill the primary need is an obligation in order to protect human soul (*hifdh an-nafs*). It is called contrary if intemperate of need measuring (*hadd al-kifayah*). Intemperate of measuring means take over the properly, or in other language means exploit excessively and unnatural. If there is an exploitation of source excessively, it

means that human loving excessively on the worldly lives. The nature of greed and gluttony are the cause of disasters of this earth that caused ecosystem damage.

4. Harmony and balance nature (ecosystem) absolute enforced.

Natural life in Islamic view mean walk on the principle of harmony and balance. Universe walks on the basis of harmonious arrangement and with appropriate calculations. Even in this nature appear as different units (*wahdat*), but actually everything is in a work system which is dependent each other.

Human and nature is one unified whole, so the human should keep them well. Human forgetfulness in keeping the environment caused terrible natural disasters. So the harmonic relations is what actually should be laid out in the science *fiqh* through *mashlahah* approach.

5. All creatures are noble (*muhtaram*).

Fiqh contains the basic provisions that all creatures have *muhtaram* status, not in the sense of honored, but it should be protected its existence (personality). If the living thing, then anyone forbidden to kill them. If the lifeless thing, then anyone forbidden to ruin it. In other words anyone forbidden exploit all kinds of things that cause life interrupted, because all of thing has the right personality to be reserved.

6. Humans are the main doer of universe processing that determines the sustainability life.

Besides as a *muhtaram*, they also called as *mukallaf* who hold the trusteeship (*taklif*). Completed with *jasmaniyah* and *ruhaniyah*, at a specific maturity (*bulugh*), *taklif* is adhere automatically to human. Allah also complete

the human with choosy ability (*ikhtiyar*) and effort ability (*kasb*). These abilities be a dynamic generator in every human activity.

With any variety of equipments, human acquire proficiency (*istitha'ah*) to do any changes (*taghyir*) both of themselves and their environment. In *Fiqh* stated that the changes done by human known as *al-akhdzu bi al-asbab*. All of them being the base of renewal and progress in the human civilization.⁴⁵

Environment conservation also in line with sharia principles in Islamic banking, it is as regulate in the Regulation of Bank Indonesia Nomor 9/19/PBI/2007 concerning *Pelaksanaan Prinsip Syariah dalam Kegiatan Penghimpunan Dana dan Penyaluran Dana serta Pelayanan Jasa Bank Syariah*.

Article 2 of regulation above explained that in funding, financing, and service activity, Islamic banking obligate to fill sharia principles. It done by fill the main provision of Islamic law, such us justice and balance principle (*'adl wa tawazun*), beneficence (*mashlahah*), and universalism (*alamiyah*), also it does not contain of *gharar*, *maysir*, *riba*, *dzalim*, *riswah*, and *haram* object.⁴⁶

The sharia principles explained as follow;

1. “*'Adl*” is put something only on its place, give something only on who rightful claimant and treats something appropriately.
2. “*Tawazun*” is covering the balance of material and spiritual aspects, private and public aspect, financial and real sector, business and social , and balance of utilization and sustainability aspect. `

⁴⁵Yafie, *Merintis Fiqh.....*, p. 163-188.

⁴⁶Article 2 The Regulation of Bank Indonesia Nomor. 9/19/PBI/2007.

3. "*Mashlahah*" is all form of beneficence related to worldly and hereafter, material dan spiritual, individual and collective, also should fill three elements, are; sharia compliance (*halal*), beneficial, and carries goodness (*thoyib*) in various aspects that did not generate some injuries.
4. "*Alamiyah*" means can be done by, with, and for all parties who having an interest (*stakeholders*) without dicrimination of quarter, religion, race, and class base on spirit of gracefully universe (*rahmatan lil alamin*).
5. "*Gharar*" is a transaction that the object unclear, unowned, unknown whre is it, or couldn't handed at the transaction done except regulate by sharia.
6. "*Maysir*" is speculative that is not related direcly with productivity real sector.
7. "*Riba*" is assuring of additional revenue unlawfully (*bathil*) such us in transaction of similar goods exchange that unequal both quality, quantity, and the time of surrender (*fadhhl*), or in a saving and loan transaction that is required to customer as a facilities receiver to bringing back the fund more than main loan because of the time running (*nasiah*).
8. "*Dzalim*" is transaction that occur injustice for another parties.
9. "*Risywah*" is a mouthful activity of money, facilities, or another forms that break the law as an effort to get the facilities or easy of a transaction.
10. *Haram* object is a goods or service forbidden by sharia.⁴⁷

⁴⁷Explanation article 2 Regulation of Bank Indonesia Nomor. 9/19/PBI/2007.