

**THE RECONCEPTION OF STATE SOVEREIGNTY  
TOWARDS THE SUSTAINABLE DEVELOPMENT  
PARADIGM BASED ON GREEN AND BLUE CONSTITUTION  
AND ECOLOGICAL FIQH PERSPECTIVES**

**THESIS**

Submitted To Meet One Of The Requirements For Obtaining A Bachelor's Degree  
In Bachelor Of Law (S.H.) In The Constitutional Law Study Program (Siyasah)

BY:

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**CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)  
SHARIA FACULTY  
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM  
MALANG  
2022**

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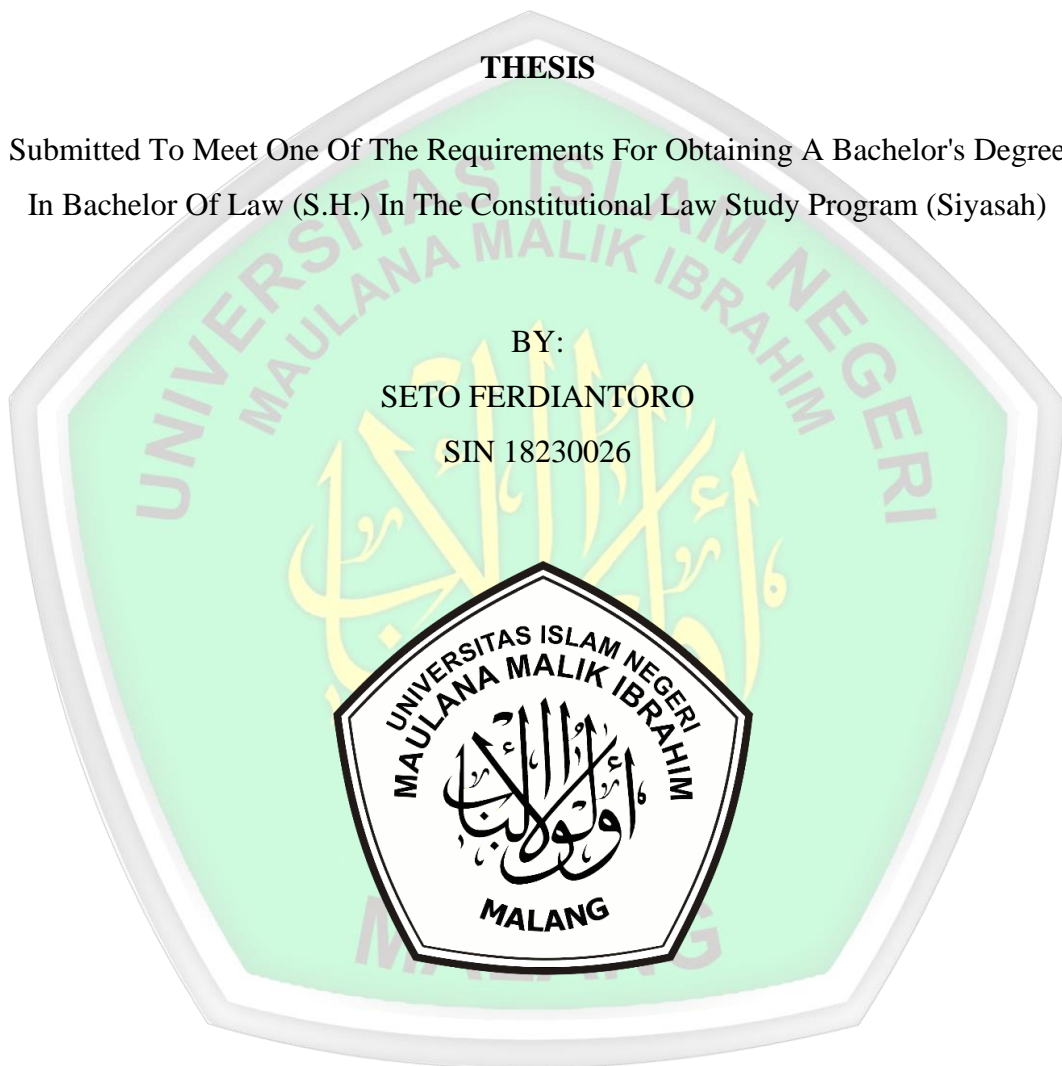
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2022**

## STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**THE RECONCEPTION OF STATE SOVEREIGNTY TOWARDS  
THE SUSTAINABLE DEVELOPMENT PARADIGM BASED ON GREEN  
AND BLUE CONSTITUTION AND ECOLOGICAL FIQH  
PERSPECTIVES**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 13 May 2022

Writer,



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## APPROVAL SHEET

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**THE RECONCEPTION OF STATE SOVEREIGNTY TOWARDS  
THE SUSTAINABLE DEVELOPMENT PARADIGM BASED ON GREEN  
AND BLUE CONSTITUTION AND ECOLOGICAL FIQH  
PERSPECTIVES**


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## MOTTO

“The most complete gift of God is a life based on science”

**(Ali ibn Abi Talib)**

“The idea of the Green and Blue Constitution is studied by expanding the understanding of the concept of a sovereign Indonesian state, covering not only land and waters, but also airspace, space, and even space that are very important to reach within the framework of Indonesian national constitutionalism based on Pancasila”

**(Prof. Dr. Jimly Asshiddiqie, S.H.)**

“I believe that sustainability and equality are a necessity to remain in the fight. Human Rights are the gift of God given to life including Man, environment and the whole of nature. Every religion has the potential to take the capacity for the world's prosperity”

**(Seto Ferdiantoro)**

## FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين. وبه نستعين على امور الدنيا والدين.

اشهدان لا اله الا الله وحده لا شريك له واشهد ان محمدا عبده ورسوله لاني بعده.

الهم صل وسلم على سيدنا محمد وعلي اله وصحبه اجمعين. اما بعد.

Praise and gratitude to Allah SWT for all the favors, blessings and mercy and help to all of us, so that thesis was written entitled: **"The Reconception of State Sovereignty Towards The Sustainable Development Paradigm Based on Green and Blue Constitution and Ecological Fiqh Perspectives"** We can complete it well as one of the requirements for the final project in obtaining a Bachelor of Laws degree at the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang. Shalawat and greetings we extend to the prophet Muhammad SAW who has given uswatun hasanah to us in living this life in syar'i. By following him, may we be classified as people of faith and get their intercession in the last day of the apocalypse. Amien.

With all the direction, advice, teaching, guidance/direction, and assistance both directly and indirectly that has been given, then with all humility the author expresses his sincere gratitude to:



1. Mr. Prof. Dr. H. M. Zainuddin, M.A., as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Mr. Dr. Sudirman, M.A., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Mr. Musleh Herry, S.H., M.Hum., as the Heda of Constitutional Law Department (Siyasah) Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
4. Mr. Dr. H. M. Aunul Hakim, M.H., (main tester), Mr. Mustafa Lutfi, S.Pd., S.H., M.H., (head), Mrs. Dra. Jundiani, S.H., M. Hum., (secretary) in the thesis session assembly thank you for being pleased to test and provide input, criticism and suggestions to the thesis that the author researched.
5. Mrs. Dra. Jundiani, S.H., M. Hum., as thesis supervisor thank you the author conveys who sincerely took the time, energy, and thoughts in providing motivational support, evaluation, and criticism in the process of completing the writing of this thesis.
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7. Both parents who always fully support the author so that they can complete the lecture period and write this thesis well. Thank you for the abundance

of prayer, advice and always teach the author to be mature in thinking and acting and to be a strong child.

8. The entire ranks of Lecturer Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang who have been patient and sincere in educating, and provide useful knowledge for the author, may their charity all be part of worship to get the blessings of Allah SWT.
9. Staff of the Sharia Faculty of State Islamic University Maulana Malik Ibrahim Malang, the author expresses his gratitude for his support and assistance in completing this thesis.
10. Mr. Imam Sukadi, S.H., M.H., and Hikam Hulwanullah, S.H., who have provided support and motivation and taught many things and provided opportunities for writers to be able to develop in legal debate and authorship competitions.
11. To all those who the author cannot name one by one. Thank you for all the support, encouragement and help that has been given. Hopefully, in the future, it can achieve convenience and success.

May all parties involved and help sincerely in completing this thesis will always get protection from Allah SWT, always be given ease in all their affairs and achieve the salvation of the hereafter. Writer is aware of the limitations and shortcomings of the author in the process of completing this thesis, therefore the author humbly accepts constructive criticism and suggestions for the improvement of the writing of this thesis. The author hopes that this thesis can provide benefits in nature to make a positive contribution to the development of science and

knowledge in general as well as the knowledge that the author gets during lectures in particular and in improving the study, research, and discussion of discourses related to the green and blue constitution and ecological fiqh.

Malang, 13 May 2022  
Writer,



Seto Ferdiantoro  
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## TRANSLITERATION GUIDELINES

Transliteration is the process of transferring Arabic writing into the letters of the Indonesian (Latin) alphabet and not the transfer of Arabic translations into Indonesian. Those included in this category are Arabic names of Arab origin, while Arabic names derived from nations other than Arabs are written as the spelling of the national language, or as written in the book to which it is referred. Writing the title of the book in a footnote as well as a bibliography, still uses this transliteration provision.

Among the various choices of transliteration guidelines or provisions that can be used in writing scientific papers, both scientific works with international, national standards and transliteration provisions that are specifically used by certain publishers. In this case, the guidelines used by the Faculty of Sharia, State Islamic University (UIN) Maulana Malik Ibrahim Malang use EYD plus, yes transliteration which is the result of a joint decision based on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1988, Nomor: 158 Year 1987 and Number: 0543. b/U/1987, as stated in the A Guide to Arabic Transliteration, INIS Fellow 1992.

## A. CONSONANT

A list of Arabic letters and their transliteration into Latin letters can be seen on the following pages:

| Arabic Letters | Name | Latin Letters | Name                   |
|----------------|------|---------------|------------------------|
| ا              | Alif | Not denoted   | Not denoted            |
| ب              | Ba   | B             | Be                     |
| ت              | Ta   | T             | Te                     |
| ث              | Sla  | S             | Es (with a dot above)  |
| ج              | Jim  | J             | Je                     |
| ح              | Hā   | H             | Ha (with a dot above)  |
| خ              | Kha  | Kh            | Ka dan Ha              |
| د              | Dal  | D             | De                     |
| ذ              | Z al | Z             | Zet (with a dot above) |
| ر              | Ra   | R             | Er                     |
| ز              | Zai  | Z             | Zet                    |
| س              | Sin  | S             | Es                     |
| ش              | Syin | Sy            | Es dan ye              |
| ص              | Sād  | S             | Es (with a dot below)  |
| ض              | Dād  | D             | De (with a dot below)  |
| ط              | Tā   | T             | Te (with a dot below)  |
| ظ              | Zā   | Z             | Zet (with a dot below) |
| ع              | 'Ain | ' ....        | Inverted apostrophe    |
| غ              | Gain | G             | Ge                     |
| ف              | Fa   | F             | Ef                     |
| ق              | Qof  | Q             | Qi                     |



|     |        |        |            |
|-----|--------|--------|------------|
| ك   | Kaf    | K      | Ka         |
| ل   | Lam    | L      | El         |
| م   | Mim    | M      | Em         |
| ن   | Nun    | N      | En         |
| و   | Wau    | W      | We         |
| هـ  | Ha     | H      | Ha         |
| ء/أ | Hamzah | .... ’ | Apostrophe |
| ي   | Ya     | Y      | Ye         |

Hamzah (A) located at the beginning of the word follows his vowel without being given any sign. If it is located in the middle or at the end, then it is written with a sign (’).

## B. VOCAL

Arabic vowels, such as Indonesian vowels, consist of single or monophthong vowels and double or diphthong vowels.

Arabic single vowels whose symbol is a sign or harakat, the transliteration of which is as follows:

| Sign | Name   | Latin Letters | Name |
|------|--------|---------------|------|
| أ    | Fathah | A             | A    |
| إ    | Kasrah | I             | I    |
| أ    | Dammah | U             | U    |

Arabic double vowels whose symbol is a combination of harakat and letters, the transliteration is in the form of a combination of letters, namely:

| Sig   | Name           | Latin Letters | Name    |
|-------|----------------|---------------|---------|
| اَ اِ | Fathah and ya  | Ai            | A and I |
| اَ اِ | Fathah and wau | Au            | A and I |

### C. MADDAH

*Maddah* or long vowels whose symbols are in the form of dignity and letters, the transliteration is in the form of letters and signs, namely:

| Letters and Sign | Name                  | Letters and Sign | Name             |
|------------------|-----------------------|------------------|------------------|
| يَ               | fathah and alif or ya | a>               | a and line above |
| يِ               | Kasrah and ya         | i>               | i and line above |
| وُ               | dammah and wau        | u>               | u and line above |

### D. TA MARBUTAH

The transliteration for ta marbutah is twofold, namely: ta marbutah who lives or gets the dignity of fathah, kasrah, and dammah, the transliteration is [t]. Whereas ta marbutah who died or got harakat breadfruit, the transliteration is [h].

If the word ending in ta marbutah is followed by a word that uses the word al - and the reading of the two words is separate, then *ta* marbutah is transliterated with ha (h).

#### **E. SYADDAH ADDAH (TASYDID)**

Syaddah or tasydid which in the Arabic writing system is denoted by a tasydid (ّ) sign, in this transliteration is denoted by the iteration of letters (double consonants) marked syaddah.

If the letter ّ tasydid at the end of a word and preceded by the letter kasrah (ِ), then it is transliterated like the letter maddah (i).

#### **F. CLOTHING SAID**

The word clothing in the Arabic writing system is denoted by a letter (alif lam ma'arifah). In this transliteration guideline, the word clothing is transliterated as usual, al-, both when it is followed by the letter syamsiah and the letter qamariah. The word clothing does not follow the sound of the direct letters that follow it. The word clothing is written separately from the word that follows it and is connected by a horizontal line (-).

#### **G. HAMZAH**

The rule of transliteration of the letter hamzah into an apostrophe (') applies only to hamzahs located in the middle and end of the word. However, when hamzah is located at the beginning of the word, it is not denoted, because in Arabic writing it is alif.

## H. WRITING ARABIC WORDS COMMONLY USED IN INDONESIAN

A transliterated Arabic word, term or sentence is a word, term or sentence that has not been standardized in Indonesian. Words, terms or sentences that are familiar and part of the Indonesian, or have often been written in Indonesian writings, are no longer written according to the above transliteration method. For example, *the* word Qur'an (from the Qur'an), Sunnah, special and general. However, if the words become part of a series of Arabic texts, then they must be transliterated as a whole.

Example:

Fi Zilal al-Qur'an

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz la bi khusus al-sabab

## I. LAFZ AL-JALALAH

The word 'Allah', which is preceded by particles such as jarr letters and other letters or is domiciled as mudaf ilaih (nominal phrase), is transliterated without hamzah letters. Example:

uCUoC CoC

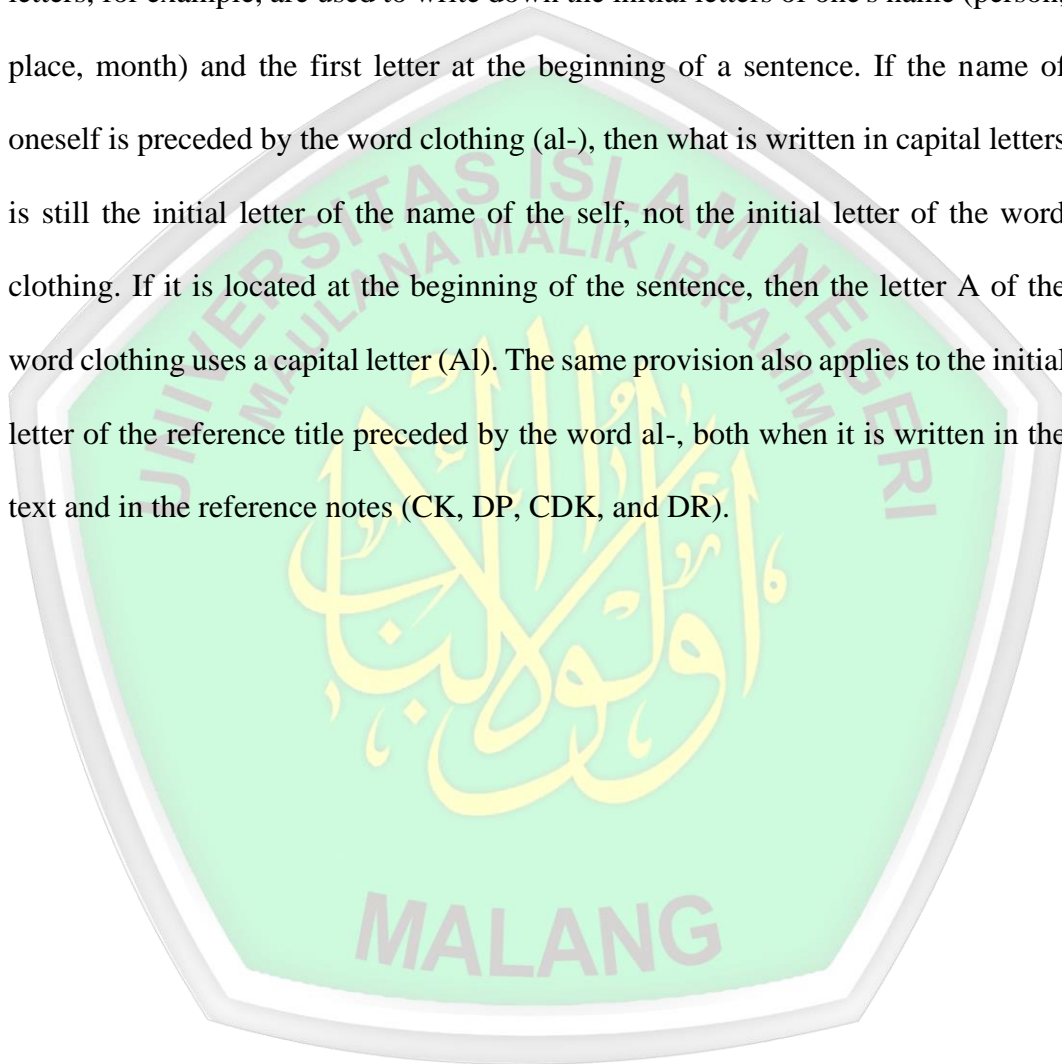
dinullah oC oC oC billah

As for ta marbutah at the end of the word which is backed up to lafz } al-the net, is transliterated with the letter [t]. Example:

rahmatillah fi hum oC uCU oC uCU oCU uC oCU oCU oC

## **J. HURUF KAPITAL**

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration the letters are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write down the initial letters of one's name (person, place, month) and the first letter at the beginning of a sentence. If the name of oneself is preceded by the word clothing (al-), then what is written in capital letters is still the initial letter of the name of the self, not the initial letter of the word clothing. If it is located at the beginning of the sentence, then the letter A of the word clothing uses a capital letter (Al). The same provision also applies to the initial letter of the reference title preceded by the word al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).





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## ABSTRAK

Seto Ferdiantoro, 18230026, 2022, **Rekonsepsi Kedaulatan Negara Terhadap Paradigma Pembangunan Berkelanjutan Perspektif *Green and Blue Constitution* Dan Fikih Ekologi**, Program Studi Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing Dra. Jundiani, M.Hum.

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**Kata Kunci:** Kedaulatan Negara, Pembangunan Berkelanjutan, *Green and Blue Constitution*, Fikih Ekologi.

Isu lingkungan dan pembangunan berkelanjutan akan selalu berdampak dengan kepentingan manusia yang akan berupaya memenuhi kebutuhannya sebagai makhluk hidup. Pencemaran dan kerusakan lingkungan yang terjadi selama ini memberikan ancaman pada keseimbangan alam dan keberlangsungan kehidupan manusia itu sendiri. Walaupun konstitusi Indonesia telah menganut hampir semua ajaran tentang kedaulatan termasuk kedaulatan negara. Kedaulatan dan penguasaan negara tercermin pada Pasal 25A Bab IXA dan Pasal 33 ayat (3) UUD NRI 1945. Selain itu, telah terkandung nilai-nilai konstitusi hijau dan pembangunan berkelanjutan berwawasan lingkungan, nyatanya belum mampu mengakomodir terjadinya kerusakan alam sampai ancaman perubahan iklim. Berdasarkan latar belakang tersebut, penulis memandang perlu untuk melakukan penelitian tentang konsep kedaulatan negara yang dilihat dari kacamata *Green and Blue Constitution* dan Fikih Ekologi.

Penelitian ini termasuk penelitian yuridis normatif dengan menggunakan *literature research* yaitu penelitian yang dilakukan dengan mengkaji sebuah peraturan perundang-undangan yang berlaku dan atau diterapkan terhadap sebuah permasalahan hukum-hukum tertentu, dimana objek kajiannya adalah meneliti bahan pustaka yang ada. Penelitian ini menggunakan pendekatan historis (*historical approach*), pendekatan perundang-undangan (*statue approach*), dan pendekatan konseptual (*conceptual approach*).

Hasil penelitian menunjukkan bahwa ketentuan terkait kedaulatan dan penguasaan negara pada konstitusi dapat ditambah dan disempurnakan. Terlebih belum adanya frasa “udara” di dalam Pasal 33 ayat (3) konstitusi berimplikasi pada sempitnya cara pandang terhadap kedaulatan maupun penguasaan negara. *Green and Blue Constitution* dan Fikih Ekologi sama-sama membahas Perlindungan dan penjagaan terhadap lingkungan yang bermuara pada kemaslahatan makhluk hidup.

## ABSTRACT

Seto Ferdiantoro, 18230026, 2022, **The Reconcept of State Sovereignty Towards The Sustainable Development Paradigm Based on Green and Blue Constitution and Ecological Fiqh Perspectives**, Constitutional Law Study Program (Siyasah), Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Dra. Jundiani, M.Hum.

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**Keywords: State Sovereignty, Sustainable Development, Green and Blue Constitution, Ecological Fikih.**

Environmental issues and sustainable development will always coexist with the interests of humans who will seek to meet their needs as living things. Pollution and environmental damage that has occurred so far pose a threat to the balance of nature and the sustainability of human life itself. Although the Indonesian constitution has embraced almost all teachings on sovereignty including state sovereignty. State sovereignty and control are reflected in Article 25A Chapter IXA and Article 33 paragraph (3) of the 1945 NRI Constitution. In addition, there have been values of the green constitution and environmentally sound sustainable development, but it has not been able to accommodate the occurrence of natural damage to the threat of climate change. Based on this background, the author considers it necessary to conduct research on the concept of state sovereignty as seen from the glasses of the Green and Blue Constitution and Ecological Fiqh.

This research includes normative juridical research using literature research, which is research conducted by reviewing a prevailing law and or applied to a particular legal problem, where the object of study is to examine existing library materials. This research uses a historical approach, a statutory approach (statue approach), and a conceptual approach.

The results showed that the provisions related to sovereignty and state control in the contitusi can be added and perfected. Moreover, the absence of the phrase "air" in Article 33 paragraph (3) of the constitution has implications for the narrowness of views on sovereignty and state control. Green and Blue Constitution and Ecological Fikih both discuss protection and care for the environment that boils down to the benefit of living things.



## مستخلص البحث

سيتوفريد يانتورو , 18230026 , 2022 , إعادة مفهوم سيادة الدولة نحو نموذج التنمية المستدامة من منظور الدساتير الخضراء والزرقاء والفقهاء البيئي، برنامج دراسة القانون الدستوري (سياسة)، جامعة مولانا مالك ابراهيم الاسلاميه الحكوميه مالانجسس، المشرف: جونداني

الكلمات الدالة: سيادة الدولة، التنمية المستدامة، الدستور الأخضر والأزرق، الفقيه البيئي. سوف تتعايش القضايا البيئية والتنمية المستدامة دائما مع مصالح البشر الذين سيسعون إلى تلبية احتياجاتهم ككائنات حية. ويشكل التلوث والأضرار البيئية التي حدثت حتى الآن تهديدا لتوازن الطبيعة واستدامة الحياة البشرية نفسها. على الرغم من أن الدستور الإندونيسي قد تبني تقريبا جميع التعاليم المتعلقة بالسيادة بما في ذلك سيادة الدولة. تنعكس سيادة الدولة وسيطرتها في المادة 25A الفصل التاسع (أ) والفقرة (3) من المادة 33 من دستور الهنود غير المقيمين لعام 1945. وبالإضافة إلى ذلك، كانت هناك قيم للدستور الأخضر والتنمية المستدامة السليمة بيئيا، ولكنها لم تتمكن من استيعاب حدوث أضرار طبيعية لتهديد تغير المناخ. واستنادا إلى هذه الخلفية، يرى المؤلف أنه من الضروري إجراء بحث حول مفهوم سيادة الدولة كما يتضح من نظارات الدستور الأخضر والأزرق والفقيه البيئي.

يشمل هذا البحث البحث القانوني المعياري باستخدام البحوث الأدبية ، وهو بحث يتم إجراؤه من خلال مراجعة قانون سائد أو تطبيقه على مشكلة قانونية معينة ، حيث يكون الهدف من الدراسة هو فحص مواد المكتبة الموجودة. يستخدم هذا البحث منهجا تاريخيا ، ومنهجيا قانونيا (نهج التمثال) ، ومنهجيا مفاهيميا .

وأظهرت النتائج أن الأحكام المتعلقة بالسيادة وسيطرة الدولة في الكونيتيوسي يمكن إضافتها وإتقانها. وعلاوة على ذلك، فإن غياب عبارة "الهواء" في الفقرة (3) من المادة 33 من الدستور له



آثار على ضيق وجهات النظر بشأن السيادة وسيطرة الدولة. يناقش كل من الدستور الأخضر والأزرق والفقهاء البيئي حماية البيئة ورعايتها التي تلخص في مصلحة الكائنات الحية.



## CHAPTER I

### INTRODUCTION

#### A. Research Background

The historical course of the teachings of sovereignty in the world began in France in the middle ages.<sup>1</sup> The concept of state sovereignty includes two contexts of understanding, namely understanding internally and externally.<sup>2</sup> Sovereignty dnature internal meaning, namely as the concept of the highest power known in the world of legal and political philosophy so far which includes teachings on the Sovereignty of God (*Theocracy*)<sup>3</sup>, People's Sovereignty (*Democracy*)<sup>4</sup>, Legal Sovereignty (*Nomocracy*)<sup>5</sup>, and Monarchy Sovereignty (*Monarchy*)<sup>6</sup>. Based on the development of the doctrine of sovereignty, there is currently a teaching of Environmental Sovereignty

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<sup>1</sup> Musnal Munir, "History of Thoughts about Sovereignty in Western Philosophy From Jean Bodin to JJ Rousseau and Its Influence in Indonesia," *Philosophy of Gadjah Mada University*, 1989, 2.

<sup>2</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the 1945 Constitution of the Republic of Indonesia*, 1st, Cet. 3 ed. (Jakarta: Rajawali Pers, 2016), 116.

<sup>3</sup> God's sovereignty: that is, the supreme power is in God (Von Schmid, 1980:169). And as the executor of this supreme power is the king, thus it can be interpreted that the king reigns or holds power based on the sovereignty of God.

<sup>4</sup> People's Sovereignty: a teaching that says that sovereignty is in the hands of the people (Theo Huijbers, 1988:91). According to this theory the highest power in a state is in the hands of the people, which determines and leads all the wisdom of government in a state. As the Daulat the people have the power to make laws, and laws are the main source of law.

<sup>5</sup> Legal Sovereignty: that is, the teaching in Constitutional Law that states, that law is sovereign (d'Entreves, 1963:75). According to this theory of legal sovereignty, the power of law is independent of the power of the state, more than that the power of law is above the power of the state. The state must be subject to legal sovereignty, even if the will of the law does not match the will of the state.

<sup>6</sup> If there is sovereignty in a country, there must be a holder of power. Based on this theory, the highest power in a country rests with the king. Therefore, the king was instrumental in making rules and regulating his citizens. This is important for the king to do so that his citizens are prosperous, so that the country is able to stand firmly and firmly. Therefore, A country that adheres to the sovereignty of this king is often said to be a monarchical state.

which we can know as "Ecocracy" or ecological power.<sup>7</sup> The teaching or concept of Environmental Sovereignty was introduced by Jimly Asshiddiqie in his book entitled "green constitution Green Nuances of the Constitution of the Republic of Indonesia in 1945."<sup>8</sup> Whereas in the external sense, the concept of sovereignty can be understood in the context of relations between states. In international relations, regarding the status of a sovereign independent state can be interpreted outward and inward. The nature of the practice of relations between states is absolutely necessary for the existence of an International recognition or recognition from other countries of the status of a state that is considered independent and sovereign. Without recognition, if a country unilaterally claims itself as a country, it will be difficult to participate in international relations.<sup>9</sup>

Realizing this, within the framework of the Indonesian constitution, the drafters and drafters of our *founding fathers* in 1945 announced or unequivocally declared the principle of Indonesian state sovereignty, both in the Preamble and in the articles of the 1945 NRI Constitution. Paragraph I of the Preamble states, "That indeed Liberty is the right of all nations and therefore the colonization of the world must be abolished because it is incompatible with the fairies of humanity and the fairies of justice".<sup>10</sup>

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<sup>7</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 117.

<sup>8</sup> Jimly Asshiddiqie, 5.

<sup>9</sup> Jimly Asshiddiqie, "Regarding the Act," PT. RajaGrafindo Persada, Jakarta, no. 57 (2010), 1.

<sup>10</sup> Alenia I Preamble to the Constitution of the Republic of Indonesia in 1945

Furthermore, Paragraph II of the Preamble to the 1945 NRI Constitution also states, "And the struggle for the Indonesian independence movement has come to a happy time by safely delivering the Indonesian people to the gate of independence of the independent, united, sovereign, just and prosperous Indonesian State."<sup>11</sup> In exercising sovereignty and maintaining the integrity and sovereignty of the state, to carry out these duties is constitutionally imposed on the Indonesian National Army (TNI) which is expressly explained in Article 30 paragraph (3) of the 1945 NRI Constitution. Article 30 paragraph (3) specifies, "The Indonesian National Army consists of the Army, Navy, and Air Force as a state tool tasked with defending, protecting, and maintaining the integrity and sovereignty of the state".<sup>12</sup> From some of these quotations, it is clearly illustrated that the 1945 NRI Constitution also adheres to the teachings of state sovereignty in the context of relations between states of an external nature.

In addition to the idea of sovereignty in the context of a definition of an external nature in relations between states, the 1945 NRI Constitution can also be said to adhere to some teachings on sovereignty in an internal sense, especially in the relationship between the state and citizens and between fellow citizens. Of the four concepts of supreme power or sovereignty, namely God's Sovereignty (*Theocracy*), Monarchy Sovereignty, People's Sovereignty (*Democracy*), and the idea of Legal Sovereignty (*Nomocracy*),

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<sup>11</sup> Alenia II Preamble to the Constitution of the Republic of Indonesia in 1945

<sup>12</sup> Article 30 paragraph (3) of the 1945 NRI Constitution states, "The Indonesian National Army consists of the Army, Navy and Air Force as a state tool tasked with maintaining, protecting, and maintaining the integrity and sovereignty of the state."



at least the 1945 Constitution adheres to 2 (two) teachings that are clearly and unequivocally described, namely people's sovereignty and legal sovereignty related to ideas or ideas of democracy and the state of law. In fact, in a different sense from the classical conception of theocracy, the 1945 NRI Constitution also recognizes the existence of the highest principle of power derived from God Almighty, in addition to the practice of the royal system in the Yogyakarta Special Region (DIY) whose status is recognized and respected according to Article 18B paragraph (1) of the 1945 NRI Constitution.<sup>13</sup>

The preamble to the 1945 NRI Constitution in Paragraph III, states, "*By the blessing of the rakhmat of Allah Almighty and driven by the noble desire to live a free national life, the Indonesian people hereby declare their independence.*" The idea of God's Omnipotence in the Preamble to the 1945 NRI Constitution is clearly a recognition that the most powerful in state Life is God, that is, God Almighty.<sup>14</sup> Furthermore, Article 1 paragraph (2) of the 1945 NRI Constitution states, "*Sovereignty is in the hands of the people and is exercised according to the basic law*".<sup>15</sup> Meanwhile, Article 1 paragraph (3) of the 1945 NRI Constitution states, "*The State of Indonesia is a state of law*", with this confirming that the principle of legal sovereignty is adopted.

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<sup>13</sup> The Second Amendment to the 1945 Constitution of 2000, Article 18B paragraph (1), "*The State recognizes and respects special or special units of local government regulated by law*".

<sup>14</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 103.

<sup>15</sup> Third Amendment to the 1945 Constitution of 2001. Article 1 paragraph (2) of the 1945 Constitution reads, "*Sovereignty is in the hands of the people and is exercised according to the constitution*"; and Article 1 paragraph (3) of the 1945 Constitution reads, "*The State of Indonesia is a state of law*".



Thus, it can be said that the 1945 Constitution of the Republic of Indonesia contains and adheres to almost all the teachings of sovereignty, namely starting from the principle of State Sovereignty externally and all the teachings of sovereignty internally, namely the principle of Sovereignty of God, People's Sovereignty, Legal Sovereignty,<sup>16</sup> Sovereignty of the King,<sup>17</sup> and even Environmental Sovereignty that has been developed by Jimly Asshiddiqie in the book "*Green Constitution: Green Shades of the 1945 NRI Constitution*". The 1945 Constitution also adopted ideas related to the importance of the environment in the state power system. We can see this in Article 33 paragraph (4) has adopted related to the principles of *sustainable development* and the principle of environmentally sound development.<sup>18</sup>

Environmental issues and sustainable development are discussions that will never be completed. All aspects of life, both social, cultural, political and others depend on nature. The importance of nature to human life if not managed wisely will disrupt the balance of nature which has an impact on the sustainability of living things. The environment or ecology deals not only with the destruction of nature or the pollution of the environment.

Environment or ecology has a very broad, more philosophical and deep

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<sup>16</sup>Legal sovereignty is reflected in Article 1 paragraph (3) which reads, "*The State of Indonesia is the State of Law*". We can compare it with Jimly Asshiddiqie, *The Idea of People's Sovereignty in the Constitution and Its Implementation in Indonesia*, Ichtiar Baru-van Hoeve, 1994.

<sup>17</sup> The government system of the Sultanate of Yogyakarta which by Article 18B paragraph (1) of the 1945 Constitution is recognized and respected as a special regional government unit that is specifically regulated by Law No. 13 of 2012 concerning the Privileges of the Yogyakarta Special Region. Statute Book of the Republic of Indonesia of 2012 No. 170.

<sup>18</sup> Article 33 paragraph (4) of the 1945 NRI Constitution states, "*The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity*".

definition related to life and interactions occur in it. So philosophically, you must be able to know why pollution is bad, why water, soil, air and all nature that concerns the environment are important, because in fact it concerns the value of one's own life and is important to be saved.<sup>19</sup>

Environmental damage and natural disasters caused by human activities have an impact on political, economic, health and socio-cultural stability. The relationship between environmental destruction and disasters and the threat of global warming is increasingly felt throughout the world, including Indonesia. We can see this threat with the "code red" warning to the whole world by scientists who are members of the Intergovernmental Panel on Climate Change /IPCC delivered by UN Secretary-General Antonio Guterres after the publication of the results of the report of the IPCC scientists working group on August 9, 2021.<sup>20</sup>

The World Risk Report 14<sup>th</sup> Edition in 2019 also published its report related to environmental damage and natural disasters, Natural Disaster and Climate Change are the main factors affecting the world economy.<sup>21</sup> Southeast Asia is in the world's spotlight due to the high intensity of disasters including Indonesia, this makes Indonesia ranked 5th in ASEAN and 36th as a country that has a great potential for disasters in the world.<sup>22</sup>

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<sup>19</sup> A. Sony Keraf, *Philosophy of the Natural Environment as a Living System*, (Yogyakarta: Publisher PT. Kanisius, 2014), 46.

<sup>20</sup> "Environmental Conditions in Indonesia Amid the Issue of Global Warming | WALHI," accessed May 10, 2022, <https://www.walhi.or.id/kondisi-lingkungan-hidup-di-indonesia-di-tengah-isu-pemanasan-global>.

<sup>21</sup> World Economic Forum, "The Global Risks report 2019 14<sup>th</sup> Edition", Ganeva, 2019.

<sup>22</sup> World Economic Forum, "Edition", Ganeva, 2019. 1 1," 2019, 2.

Meanwhile, domestic conditions can be seen from data submitted by the National Disaster Management Agency (BNPB) summarizing the annual trend of disasters in Indonesia which tends to increase. The data revealed that from 2010 to 2020, the highest number of disasters occurred on an annual basis in 2019, namely 3,814 disasters. We can see this in the chart below:

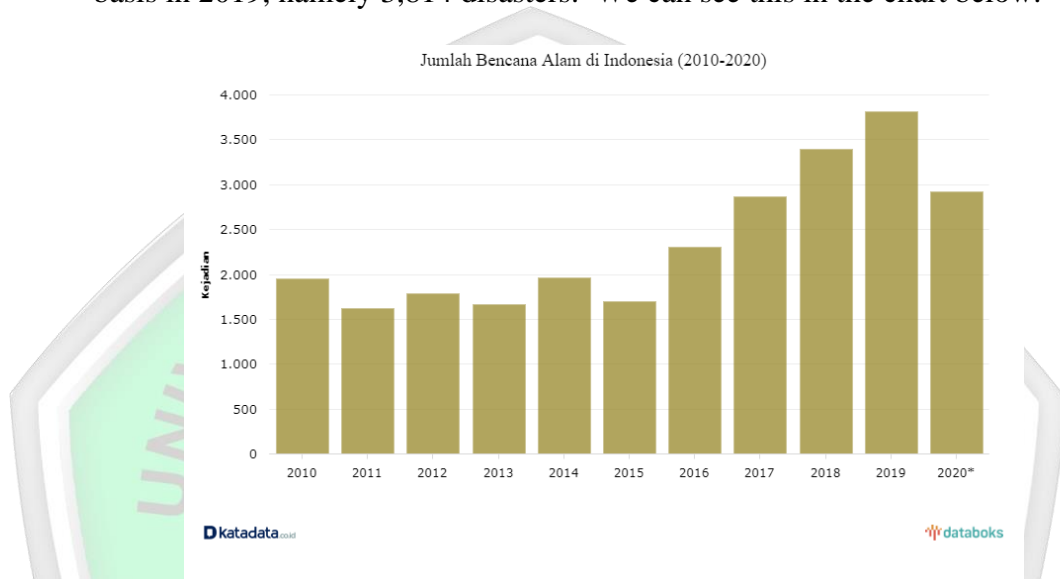


Figure 1. Graph of Indonesian Natural Disasters (2010-2020)

Indonesia's concern for the environment has been accommodated in the constitution. If studied in depth the 1945 NRI Constitution as the rule of law of the nation, the Indonesian constitution has been accommodated by all concepts of supreme power or doctrines regarding sovereignty. The concept of democracy is closely related to the sovereignty of the people and the concept of the state of law (rule of law, rechtsstaat). In addition, the 1945 NRI Constitution contains the concept of sovereignty of God Almighty and the concept of State Sovereignty, as well as a little understanding of the

doctrine of King's Sovereignty, which we can find in the Yogyakarta Special Region Government system.<sup>23</sup>

In addition to the five concepts of sovereignty, the amendment to the 1945 NRI Constitution which lasted for four times, has accommodated the development of human rights to the environment, namely human rights to obtain a good and healthy environment, as mandated by the constitution in Article 28 H (1) of the 1945 NRI Constitution, as follows:<sup>24</sup>

*"Everyone has the right to live a prosperous life in birth and mind to live and to have a good and healthy living environment and the right to obtain health services".*

And the guarantee of sustainable development with an environmental perspective is reflected in Article 33 paragraph (4) of the 1945 NRI Constitution which contains the concept of a *Green Constitution* which states that:

*"The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. "*<sup>25</sup>

The provisions in the Indonesian constitution contain at least two articles that have a context for environmental norms and the concept of sustainability or *sustainable development*, but this has not been able to answer environmental problems that are so complex and continue to develop.

On the other hand, if we look at Article 33 paragraph (3) of the 1945 NRI Constitution which states:

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<sup>23</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the 1945 Constitution of the Republic of Indonesia*, 111–112.

<sup>24</sup> The Constitution of the Republic of Indonesia of 1945 resulted from the 2nd Amendment in 2000

<sup>25</sup> The Constitution of the Republic of Indonesia of 1945 resulted from the 2nd Amendment in 2000



*"The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people. "*

Listed only the earth, water, natural wealth contained in the earth, and natural wealth contained in water. So that raises the question of how related to the natural wealth contained on the earth, air and even outer space have not been mentioned at all. The natural wealth contained in space, can include, among others: space planets that have been discovered and visited, star clusters, solar heat, air, birds and other flying animals, rainfall, wind and storms, and so on.<sup>26</sup>

Currently, green terms in making a policy or *green policy* continue to develop with the existence of terms associated with the color blue, either from the sea, air or from space "*space*" and even outer space "*outer space*" and cyberspace in general.<sup>27</sup> The more popular the terms "blue" can be attributed to territorial issues and the sources of natural wealth contained in and above the land, water, and air, so the perspective in looking at the constitution must be carried out as a whole with the aim of protecting the entire Indonesian nation and all Indonesian bloodshed, so it is important to be linked to the idea or concept of a blue constitution "*blue constitution*". However, the issues associated with the color blue, there are still few who pay attention to it. Whereas in the digital and virtual world and the rapid development of technology, the definition of the constitution as the source of

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<sup>26</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 1st ed. (Depok: PT Raja Grafindo Persada, 2021), 35–36.

<sup>27</sup> Jimly Asshiddiqie, 91.



the highest legal and ethical norms "*the source of the highest legal and ethical norms*" should be able to reach new definitions of the blue world in general, namely air, airspace, frequency in cyberspace, and the status of outer space as a gift of God Almighty intended for all mankind to be utilized and kept going.<sup>28</sup>

Protecting and caring for the environment has become a human obligation which is a Mandate from Allah swt. Basically, every religion will always teach its people to do good, including Islam always teaches goodness and balanced deeds, especially in treating the natural environment. Allah swt expressly forbids man to do mischief on the face of the earth, which says:

*"And you shall not make mischief on earth after (being) well created. Pray to Him with fear (will not be accepted) and hope (will be granted). Indeed, the grace of God is very close to those who do good".<sup>29</sup>*

Islam also encourages environmental sustainability so that life can be maintained, so that humans can continue to take whatever benefits are produced by the environment.<sup>30</sup> So it is important for all of us to always remind each other of the importance of taking care of nature. Because in fact every living thing will always interact and need one another and every generation of human beings is responsible for the previous generation and future generations. This is in line with the concept of sustainable development popularized by the World Commission on Environment and

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<sup>28</sup> Jimly Asshiddiqie, 93.

<sup>29</sup> Ministry of Religious Affairs of the Republic of Indonesia, "Al-A'raf - الاعراف | Qur'an Ministry of Religion," accessed February 28, 2022, <https://quran.kemenag.go.id/sura/7>.

<sup>30</sup> Miskahuddin, "Man And The Environment In The Qur'an," *Al-Mu'ashirah* 16, no. 2 (2019): 216.

Development (WCED)<sup>31</sup> in 1987 which states that sustainable development is a development that aims to meet the needs of the current generation without compromising the ability of future generations to meet their needs.<sup>32</sup>

Allah Almighty commands and forbids humans to do damage on the surface of the earth in any form and type that has detrimental consequences and brings natural disasters to all living things in it including humans themselves. On the other hand, God commands man (His servant) to always pray and thank Him with great earnestness and hope and have fear of Him, because the cause of his not being accepted of do'a and hope is because he has committed many sins and glooms on the face of the earth.

The effect of the sinful deeds and maxiates that man has done on the surface of the earth will result in removing the "*nur*" or light of knowledge that exists in humans even though they actually have high knowledge and if they do a lot of sins and mistakes, then God will uprooted the "*nur*" or light in his heart and there would come no *mau'nah* (God's help) and protection from Him. In fact, it is not uncommon based on the high science that a person has sometimes often encourages man to do damage that will have an impact on life itself, if a person does not have a strong religious and faith in God and if he does something that he forbids.<sup>33</sup>

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<sup>31</sup> The Brundtland Commission, formerly the World Commission on Environment and Development, was a sub-organization of the United Nations (UN) that aimed to unite countries in pursuit of sustainable development. Brundtland Report, also called Our Common Future, publication released in 1987 by the World Commission on Environment and Development (WCED) that introduced the concept of sustainable development and described how it could be achieved.

<sup>32</sup> Andri G. Wibisana, "Environmental Protection in the Perspective of Inter-Generational Justice: A Brief Theoretical Walkthrough | Wibisana | Legal Issues," Faculty of Law, Diponegoro University, 2017, 9–10, <https://ejournal.undip.ac.id/index.php/mmh/article/view/16219/12636>.

<sup>33</sup> Miskahuddin, "Man And The Environment In The Qur'an," 216–17.

Based on the description of the background of the problem above, the author is interested in studying and exploring the concept of State Sovereignty which is associated with the concept of the Green and Blue Constitution which is seen from the point of view of the paradigm of sustainable development and Ecological Fiqh. Then presented the argumentative implications of the Green and Blue Constitution on environmental damage in Indonesia. This research is expected to answer constitutional problems related to sustainable development with an environmental perspective that is oriented towards environmental rights and maintains human rights or constitutional rights of citizens.

Therefore, the author tries to reconception the concept of state sovereignty in the 1945 Constitution of the Republic of Indonesia related to the ownership of territory and control by the state contained in Article 25 (Chapter IXA) and Article 33 (Chapter XIV) which only covers the territory of the earth (land) and water only and all the wealth contained in it, while the area above land and above water and those contained in it have not been mentioned which in the future the paradigm of *The Blue Constitution* (Blue Constitution) includes not only maritime issues, but also arrangements related to various dynamics of air and space issues as well as complex future issues (in this case related to digital technology and others) which are still slightly affordable or have not become the attention of many people.<sup>34</sup> This aims to maintain the sovereignty and integrity of the Unitary State of the

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<sup>34</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 36.

Republic of Indonesia (NKRI) and to protect the constitutional rights of citizens. Thus, the constitution as the highest legal instrument of the state can be a guide for the life of the nation and state in responding to the needs and challenges of each era.

Therefore, a reconception or effort to reconception the content of state sovereignty in the constitution (1945 Constitution of the Republic of Indonesia) namely in Chapter IXA Article 25 concerning State Territory and Chapter XIV Article 33 Paragraph (3) concerning the National Economy and Social Welfare can be one of the materials for proposals for discourse or ideas for the possibility of the fifth amendment to the Constitution of the Republic of Indonesia in 1945.<sup>35</sup> By conducting a theoretical analysis of the sustainable development paradigm through the perspective of the concepts of green and blue constitution (green constitution and blue constitution) and Ecological Fiqh, so the author takes a research entitled "**Reconception of State Sovereignty to the Sustainable Development Paradigm *green perspective and Blue Constitution And Ecological Jurisprudence***".

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<sup>35</sup>The discourse of the Green Constitution "*green constitution*" cannot be denied is indeed a new phenomenon, both in the world of practice and the academic world, including among legal and constitutional experts. In fact, scholars of constitutional law themselves have never heard of the term *green constitution* on average. As an anecdote, when the leadership and members of the Constitutional Court (MK) visited the leadership of the Regional Representative Council (DPD) at the end of August 2008, a constitutional judge (Prof. Dr. Ahmad Sodiki, S.H.), in response to the idea of a possible fifth amendment to the 1945 Constitution, expressed the importance of studying this first, including the possibility of adopting the idea of a "*green constitution*". Jimly Asshiddiqie, *Green Constitution: Green Nuances of the 1945 Constitution of the Republic of Indonesia*, 1.



## **B. Statement of Problem**

In order to realize the quality of systematic research and focus on the topic in question from the background of the problem that the author has described above, the core problems in this study are as follows:

1. What is the concept of state sovereignty in the issue of green and blue Constitution and its correlation in the Indonesian constitutional system?
2. What is the correlation between the green constitution and the blue constitution in the 1945 NRI Constitution and environmental damage in Indonesia in the lens of ecological fiqh?
3. What is the idea of a reconception of state sovereignty to sustainable development as an effort to protect the constitutional rights of citizens?

## **C. Objective of Research**

In general, the purpose of the research to be carried out is to provide a comprehensive understanding by presenting a more in-depth analysis of the concept of State Sovereignty in the lens of the Green and Blue Constitution.

The purpose of this study in particular is to:

1. Knowing and analyzing and conducting studies on the conception of state sovereignty to the concept of the Green and Blue Constitution in the existing legal system in Indonesia.
2. Knowing and analyzing and describing how the development of the concept of state sovereignty and the phenomenon of environmental



damage in the dimension of the Ecological Fiqh view of the concept of the Green and Blue Constitution.

3. Understand and reconception to the concept of state sovereignty to sustainable development as an effort to protect the constitutional rights of citizens.

#### **D. Benefit of Research**

The author really hopes that this paper can later provide benefits or be useful for theoretical (academic) and practical interests in the form of:

1. Theoretical Benefits
  - a. This research is expected to add to the treasures of science about the Green and Blue Constitution and Ecological Fiqh to the concept of State Sovereignty in the Constitutional Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang by comparing theories and realities in the field so that it can be used as a reference for further research.
  - b. The results of this study can be useful in providing an element of novelty related to actual and factual problems to develop discourses related to the concept of Green and Blue Constitution and Ecological Fiqh for legal sciences, especially Constitutional Law in Indonesia.
  - c. The results of this study can be used as an alternative in reviewing the constitution and regulations below related to the importance of a

broader paradigm related to the environment or nature and sustainable development of environmental rights perspectives.

## 2. Practical Benefits

- a. The results of this study are expected to add suggestions and input to the government and the shapers of laws and regulations and open discourses related to the Green and Blue Constitution and Ecological Fiqh to the renewal of the concept of state sovereignty in the constitution and laws and regulations.
- b. The author hopes that this research can provide benefits for law students who have concerns about environmental issues in particular and society and readers in general.
- c. The results of this study are expected to provide understanding and knowledge for researchers in understanding science so broadly, especially in the field of constitutional law and actual and factual problems surrounding the constitution, especially discourses related to environmental rights and human rights.

## E. Conceptual Definition

Conceptual definitions are abstractions that are depicted in words, so that they can be used in understanding a thing, even considered capable of

describing something in terms of abstract characteristics and their relationship with other conceptual materials.<sup>36</sup>

Conceptual Definitions in thesis research are carried out agar there is no misunderstanding in defining and understanding this research, then the author will explain the meaning of several terms that are considered important. It aims to get a directed picture and to avoid errors in understanding the intentions contained in the thesis entitled "Reconception of State Sovereignty to the Sustainable Development Paradigm of the Green and Blue Constitution Perspective and Ecological Fiqh" is:

#### 1. Reconception of State Sovereignty

Reconception<sup>37</sup> comes from the Latin "*conceptum*" which means something that can be understood. Konsep is part of knowledge built from a wide variety of characteristics.<sup>38</sup> Thus reconception is part of the knowledge rebuilt from the various characteristics of the law that once existed before. The reconceptions needed in this study refer to several concepts of sovereignty that continue to develop, especially the concept of state sovereignty which has implications for the sustainable development of a country.

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<sup>36</sup> Rina Hayati, "Understanding Conceptual Definitions, Goals, Benefits, And Examples," 2021, <https://penelitianilmiah.com/definisi-konseptual/>.

<sup>37</sup> The phrase "reconception" is the basic word of "concept" meaning draft or opaque letter and so on; ideas or notions abstracted from concrete events. Meanwhile, the reconception that gets the affix "re" has the meaning of understanding; opinion (understanding); the design (ideals and so on) that has been in mind.

<sup>38</sup> "Understanding the Concept of | Definition, Functions, Elements, And Characteristics [Complete]," accessed February 26, 2022, <https://www.zonareferensi.com/pengertian-konsep/>.

Sovereignty means the highest power in a state or a power that does not lie under the power of another state. The concept of supreme power known as sovereignty in this case is state sovereignty. According to Jimly Asshiddiqie, state sovereignty contains two meanings, namely the internal sense of the highest power of a country. And the second is the external sense that is the highest power in the context of relations between countries.<sup>39</sup> In the context of this study, we can understand that state sovereignty is as stated in Chapter IXA of the 1945 Constitution on State Territory and Article 33 of the 1945 Constitution whose implications are for state control and the paradigm of sustainable development.

## 2. Sustainable Development Paradigm

Fritjof Capra<sup>40</sup> in 1991 in his book entitled *Tao of Physics* explained that paradigms are basic assumptions that require supporting evidence for the assumptions he enforces, in describing and coloring his interpretation of the historical reality of science.<sup>41</sup>

Thomas Kuhn in 1962 in his book entitled *The Structure of Scientific Revolution* stated:

*“By choosing it, I mean to suggest that some accepted examples of actual scientific practice-examples which include law, theory,*

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<sup>39</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 116.

<sup>40</sup> Fritjof Capra was born on February 1, 1939 in Austria. When he grew up, Capra continued his studies at the University of Vienna, it was at this university that Capra's thinking began to develop widely and has opened up a new paradigm about the similarities between modern science and metaphysics (in this case studying the metaphysics of the Eastern world) in the midst of scientific developments of the 20th to 21st centuries.

<sup>41</sup> Erlina Diamastuti, "The Paradigm of Science a Critical Study," *Journal of Accounting, University of Jember* 10, no. 1 (2015): 61, <https://doi.org/10.19184/jauj.v10i1.1246>.



*application and instrumentation together-provide models from which spring particularcoherent traditions of scientific reseach.*"<sup>42</sup>

Based on the statement above, Kuhn said paradigms are some examples of actual scientific practice that are accepted. In this case examples include laws, theories, applications, and sections that are models that are mutually accepted models and become a source of special tradition in scientific research. So that a paradigm is a combination of the results of studies consisting of a set of laws, beliefs, concepts, values, theories, techniques and others that are used together in a community to determine the validity of a problem along with its solution.<sup>43</sup>

Paradigms can be defined assorted depending on the point of view that uses them. If from the author's point of view, then paradigm is a person's perspective on a fundamental subject matter to understand a science or basic beliefs that lead a person to perform certain actions.

The concept of sustainable development introduced by Rachel Carson<sup>44</sup> in her book entitled *Silent Spring* which was first published in 1962 explained that the development process is expected to meet the needs

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<sup>42</sup> Kuhn, Thomas S., 1962, *The Structure of Scientific Revolution* (Leiden: Institut Voor Theoretische Biologie, 1962), 10

<sup>43</sup> Inayatul Ulya and Nushan Abid, "The Thought Of Thomas Kuhn And Its Relevance To Islamic Scholarship," *Fikrah: A Journal Of Aqidah Science And Religious Studies* 3, no. 2 (2015), 255.

<sup>44</sup> Rachel Carson was born in 1907 and died in 1964. He earned an M.A. in "Zoology" from John Hopkins University in 1932. During his lifetime, carson devoted himself to research activities, publications, and fighting for the awakening of mankind regarding the importance of preserving the environment. The five books he wrote are constantly in print until now. Therefore, Carson is considered the foundation for the subsequent development of the study of the environment.



of the current generation without compromising the ability of future generations to utilize natural resources to meet their needs.<sup>45</sup>

So we can understand the sustainable development paradigm as a way of looking at the fundamental problems to understand a science and basic beliefs related to the development process carried out whether it is in accordance with factual needs and can be accepted for use in a generation without sacrificing future generations to meet their needs.

### 3. Green Constitution

Green Constitution or translation of the Konstitusi Hijau is a method of constitutionalizing environmental law norms into the constitution by raising the degree of environmental protection norms to the constitutional level. Thus, the importance of the principle of sustainable development that is environmentally sound and environmental protection has a strong foothold in laws and regulations. Based on this foundation, the green constitution then integrates terminology and concepts called *ecocracy* which emphasizes the importance of environmental sovereignty.<sup>46</sup>

### 4. Blue Constitution

Blue Constitution or translation of the Konstitusi Biru is an idea that is studied by expanding the understanding of the concept of a sovereign Indonesian state, where the "territory" includes not only land and waters, but also airspace, space and cyberspace in general, and even space

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<sup>45</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 134.

<sup>46</sup> "Green Constitution," accessed February 27, 2022, <https://www.jimlyschool.com/diklat/green-constitution/>.

(*aerospace*) which is very important to be reached within the framework of the constitutionalism of the Indonesian nation based on Pancasila.<sup>47</sup>

## 5. Ecological Fiqh

Ecological Fiqh can be translated into Fikih Ekologi which etymologically is environmental jurisprudence which in Arabic is called *fiqh bi'ah*. Ecological fiqh is an arrangement of compound sentences (*idhafah*) consisting of two words, namely the words *fiqh* (*mudhaf*) and ecology (*mudhaf ilaih*).<sup>48</sup> Linguistically the word "Fiqh" comes from the word *Faqiha-Yafqahu-Fiqhan* which means *al-'ilmu bis-syai'i* (knowledge of something) *al-fahmu* (understanding).<sup>49</sup> In terms the word "Fiqh" is the science of the laws of syara' which is practical in nature taken from detailed postulates (*tafshili*).<sup>50</sup> Meanwhile, "Al-Bi'ah" is a living environment that includes the unity of space with all activities in it.<sup>51</sup>

The explanation above, we can understand that ecological *fiqh* or *ecological fiqh* is the provisions of Islamic law which are based on detailed postulates (*tafshili*) about human behavior in the environment (*Al-Bi'ah*) in realizing the benefit of living beings (humans) for the purpose of preventing damage in advance of the earth. In the context of this research, we can draw a common thread or we can pull the relationship between ecological fiqh

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<sup>47</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*.

<sup>48</sup> Agus Hermanto, *Ecological Jurisprudence*, ed. Rohmi Yuhani'ah, Cet.1 (Malang: CV. Nusantara Abadi Literacy, 2021), 1.

<sup>49</sup> Mariatul Istiani and Muhammad Roy Purwanto, "Fiqh Bi'ah In The Perspective Of The Qur'an," *At-Thulab* 1, no. 1 (2019), 29, <https://journal.uin.ac.id/thullab/article/download/13246/9636>.

<sup>50</sup> Amaluddin Abdurrahman, *Nihayatu As-Sul Fi Syarhi Minhaji Al-Wushul 'ila 'ilmi Al-Ushul*, (Beirut: Dar Ibn Hazm, 1999) cet. 1 juz 1, 16.

<sup>51</sup> Istiani and Purwanto, "Fiqh Bi'ah In The Perspective of the Qur'an," 30.

and the concept of green and blue constitution is the realization of state sovereignty in sustainable development that is environmentally sound to realizing the protection of human rights and environmental rights.

## F. Methode of Research

In general, research methods are intended as a scientific way for research methods in research activities are intended for the purpose of expressing the truth systematically, methodologically, and consistently in explaining and describing how the research is carried out.<sup>52</sup> As for what the author will do in this study, it is as follows:

### 1. Type of Research

In scientific paper research, you can choose one of the grand method sections including *Literature Reasearch* is a scientific work that is guided by literature or literature; Field Research and Bibilographich Research (research that focuses on the ideas contained in a theory)

Based on the subject of research and the types of problems that have been described previously, then of the three types of grand methods mentioned above, in this study the author will use a type of normative legal research method using *literature research* or literature research, namely research using literature that is in accordance with the subject matter analyzed or studied as a data source,<sup>53</sup> so that in collecting the

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<sup>52</sup> Soerjono Soekanto and Sri Mamudji, *Normative Law Research a Brief Goal* (Jakarta: Raja Grafindo Persada, 2008), 45.

<sup>53</sup> Soekanto and Mamudji, 12–14.

necessary data using sources that are connected with the main problem of research, namely about the concept of state sovereignty towards sustainable development which is viewed from the point of view of the Green and Blue Constitution and ecological fiqh / fikih ekologi. Related to this kind of research can also be referred to as "Legal Research".<sup>54</sup> Legal research in this perti does not recognize field research or field research, because what is studied is legal materials so it can be said to be literature based, focusing on reading and analysis and analysis of the primary and secondry materials.<sup>55</sup>

Normative legal research is also legal research that is conceptualized as something that has been written in laws and regulations or laws that are conceptualized in the rules of norms that rely on human behavior that is considered appropriate or appropriate.<sup>56</sup> In addition, to review the norms in written regulations, namely the 1945 Constitution of the Republic of Indonesia. This concept sees that the law is the same as the written norms created and promulgated by institutions or officials who have arbitrariness. Such a conception sees law as a normative system that is independent, closed and detached from real societal life.<sup>57</sup>

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<sup>54</sup> Soerjono Sukanto and Sri Mamudji, *Normative Law Research Brief Review*, (Jakarta: Rajawali Press, 2006), 23.

<sup>55</sup> Johnny Ibrahim, *Normative Legal Research Theory and Methodology* (Malang: Bayumedia Publishing, 2005), 46.

<sup>56</sup> Amiruddin and H. Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: PT. Raja Grafindo Persada, 2014), 18.

<sup>57</sup> Johnny Ibrahim, *Normative Legal Research Theory and Methodology*, 295.



Soerjono Soekanto and Sri Mamudji explained that normative legal research is also called literature research where research is carried out by examining library materials or mere secondary data. Literature law research or literature research that refers to the legal norms contained in the fundamental laws and regulations<sup>58</sup> on distinctive characteristics that are different from social science research in general.<sup>59</sup> This research author conducts literature research or secondary data obtained in laws and regulations.

## 2. Research Approach

The research approach is a method or way of conducting a research.<sup>60</sup> In accordance with the type of research described above, namely normative legal research (juridical-normative) it can be used more than one approach.<sup>61</sup> The approach that will be used in this study is 3 (three) approaches, namely the historical approach, the statute approach and the conceptual approach.

The historical approach is carried out in order to trace the history of the concept of sovereignty from time to time in this case state sovereignty. This historical approach can help the author to know the development of the teachings of state sovereignty over time as well as what underlies the teachings of sovereignty.<sup>62</sup>

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<sup>58</sup> Soekanto and Mamudji, *Normative Legal Research a Brief Goal*, 23.

<sup>59</sup> Wijayanti and Lilik Sofyan Achmad, *Strategi Writing Law* (Bandung: Lubuk Agung, 2011), 43.

<sup>60</sup> Suharsimi Arikunto, *Research Procedures; A Practical Approach*, (Jakarta: Rineka Cipta, 2002), 23.

<sup>61</sup> Johnny Ibrahim, *Normative Legal Research Theory and Methodology*, 300.

<sup>62</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenda Media, 2011), 126.

The statute approach is research on legal products. This approach is also used to find out the whole rule of law. The products and legal norms in question, namely: the Constitution of the Republic of Indonesia of 1945.

*The conceptual approach is a study of the principles, doctrines and sources of law in the sense of philosophy that is derived from the concept of State Hood and how the review of the concept of green and blue constitution initiated by Jimly Asshidique and ecological fiqh against the paradigm of sustainable development.*

### 3. Law Material

In conducting legal research, there is no known data, because normative legal research the source of research is obtained from library materials or literature not from the field, therefore the known term is legal material. Legal materials are the most important source in solving legal problems or problems in a study. Legal materials in normative research can be classified into three, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of legislation, minutes or official records in the process of making laws and regulations.<sup>63</sup> The primary legal material used in this study is: the 1945 Constitution of the Republic of Indonesia.

The Secondary Legal Material used in this study is in addition to official documents about the published law. These law-related

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<sup>63</sup> Marzuki, 141.

publications such as books, legal dictionaries, law journals, and the views or comments of legal experts.<sup>64</sup>

Tertiary legal materials are materials that can provide further instructions or explanations to primary legal materials and secondary legal materials. The tertiary legal materials used in this study are: Legal Dictionary and Big Indonesian Dictionary (KBBI) which is carried out by accessing through the website of the Ministry of Education and Culture of the Republic of Indonesia.

#### 4. Law Material Collection

In normative legal research in the formulation of this thesis aims to obtain legal materials, the technique of collecting legal materials is carried out by conducting library research studies on legal materials, both primary, secondary and tertiary legal materials. This is done to find and collect laws and regulations, books, and legal research results in the form of papers, journals, and theses and the like. The technique of collecting legal materials is carried out by means of inventory, identification, classification, and systematization in order to find valid legal materials to be analyzed and studied further. In normative legal research, legal materials are the basic material in conducting research. The technique of collecting legal materials is obtained from three classifications of secondary materials:<sup>65</sup>

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<sup>64</sup> Marzuki, 141.

<sup>65</sup> AbdulKadir Muhammad, *Law and Legal Research* (Bandung: PT. Image of Aditya Bakti, 2004), 82.

a. Primary Law Material

The primary legal material that the author uses is all the provisions of laws and regulations related to the Green and Blue Constitution, namely:

- 1) Article 1 Paragraph (2) of the Constitution of the Republic of Indonesia of 1945
- 2) Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia of 1945.
- 3) Article 18B Paragraph (1) of the Constitution of the Republic of Indonesia of 1945.
- 4) Article 25 of the Constitution of the Republic of Indonesia of 1945
- 5) Article 28H Paragraph (1) of the Constitution of the Republic of Indonesia of 1945.
- 6) Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia of 1945.
- 7) Article 33 Paragraph (4) of the Constitution of the Republic of Indonesia of 1945.

b. Secondary Law Material

The secondary legal materials that support the primary legal materials in this research are Research Results, Books, Scientific Journals, Opinions and News related to research.



c. Tertiary Law Material

Other legal materials outside of primary legal materials and secondary legal materials that the author used in this study are in the form of legal dictionaries, and the Big Dictionary of Indonesian (KBBI) which is accessed on the website of the Ministry of Education and Culture of the Republic of Indonesia by accessing the website carried out using electronic media.

5. Analysis of Law

This research uses the processing of legal materials by editing, namely re-examination of legal materials obtained mainly from their completeness, clarity of meaning, suitability and relationship with other groups.<sup>66</sup>

After editing, the next step is coding, which is to give notes or marks stating the type of source of legal material (statutory literature or documents), copyright holders (author's name, year of publication) and the order of problem formulation. After that, material reconstruction (reconstructing) is carried out, namely reordering legal materials regularly, sequentially, logically, so that they are easy to understand and interpret. The last step <sup>67</sup> is to systematize legal materials (systematizing) which is to place sequential legal materials according

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<sup>66</sup> Mukti Fajar and Yulianto Achmad, *Dualism of Normative & Empirical Legal Research*, Yogyakarta: Pustaka Pelajar, 2010, 183-187.

<sup>67</sup> Marzuki, *Legal Research*, 136.

to the systematic framework of the discussion based on the order of the problem.<sup>68</sup>

Based on the research objectives to be achieved, it is started by examining all the data that is already available from various data sources obtained, namely documentation and data obtained from the library. By reducing data, namely data obtained from the literature and summarized by choosing the main things and arranged more systematically so that they are easy to control. So based on this, the author uses qualitative juridical analysis, where the data is analyzed by a descriptive method of analysis. This method is used with the aim of describing objectively in order to reconceptualize the meaning of state sovereignty in the 1945 Constitution of the Republic of Indonesia to the sustainable development paradigm which is reviewed with the concept of green and blue constitution and ecological *fiqh*.

#### **G. Previous Research**

Previous research in order to support the writing of this research, the author has tried to trace various scientific works in the form of books, journals, scientific papers and other forms of research that have relevance to this research. Based on the results of the search that the author did, there is no research title or thesis title that is the same as the title of this thesis research, but there are several titles that are related, including:

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<sup>68</sup> Muhammad, *Law And Legal Research*, 82.

**Tabel 1. Previous Research**

| No. | Name/Title/<br>Institutions/Year   | Statement of<br>Problem   | Research Results   | Difference   | Elements of<br>Novelty  |
|-----|--|---|--|--|---|
| 1.  | Jimly Asshiddiqie / "Green Constitution The Green Nuances of the Constitution of the Republic of Indonesia of 1945"/ PT RAJAGRAFINDO PERSADA / 2016. | 1. Has the 1945 Constitution adopted or contained the values and principles of sustainable and environmental development? | 1. Provides an overview of the green concept in the post-reform constitution that has constitutionalized the principles of sustainable development and provisions regarding human rights to a good and healthy living environment. | 1. This previous research only focused on efforts to constitutionalize the green concept into the constitution, while this research wanted to try to reconceptualize the paradigm of state sovereignty in the constitution | 1. Previous research only examined issues related to the development of the green and blue constitution, while this study tried to analyze the concepts of state sovereignty, green and blue constitution and ecological fiqh which were seen from the point of view of |

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|----|---|--|--|--|---|
|    |   |  |  | through the concepts of green and blue constitution and ecological fiqh  | the sustainable development paradigm as an effort to maintain the constitutional rights of citizens   |
| 2. | Jimly Asshiddiqie / "Green and Blue Constitution of the Indonesian-Minded Constitution/ PT RAJAGRAFINDO PERSADA / 2021. | 1. Has the 1945 Constitution been accommodated by new developments related to the blue constitution? | 1. This book is here to expand the meaning of the concept of the Indonesian State Territory which includes not only land and water but also air, space and even cyberspace in general. | 1. This previous research only focused on the urgency of expanding meanings related to sovereignty and state control in the constitution, while this research wanted to draw a | 1. Previous research only examined issues related to the development of the green and blue constitution, while this study tried to analyze the concepts of state sovereignty, green and blue constitution and |



|    |   |  |   |  |   |
|----|---|--|---|--|---|
|    |   |  |   | <p>common thread between the concepts of green and blue constitution and ecological fiqh.</p>  | <p>ecological fiqh which were seen from the point of view of the sustainable development paradigm as an effort to maintain the constitutional rights of citizens.</p> |
| 3. | <p>Cholida Hanum/ "Green Constitution in Indonesia Constitutional Perspective and Siyasa Dusturiyyah/ UIN Sunan Kalijaga Yogyakarta/2014.</p> | <p>1. What is the concept of the Green Constitution in the Indonesian constitution?<br/>2. What is the correlation between green shades in the</p> | <p>1. Even though there are already two articles on environmental provisions in the 1945 Constitution, it is realized that these provisions still</p> | <p>1. This previous research only discussed the practice of green constitution in Indonesia in terms of the point of view of siyasa dusturiyyah.</p> | <p>1. Previous research only discussed the practice of green constitution using the concepts of green constitution and siyasa</p>                                     |

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|----|---|--|--|---|---|
|    |   | <p>constitution and environmental damage in Indonesia?</p> <p>3. How is the Green Constitution in the view of siyasah dusturiyyah?</p> | <p>need to be added and refined.</p> <p>1. The mandate of Law Number 15 of 2019 concerning the Establishment of Laws and Regulations requires good and careful planning so that the initial purpose of forming this institution can be achieved.</p> |   | <p>dusturiyyah, while this research combined the concepts of green and blue constitutin and ecological fiqh which aims to reconcile state sovereignty related to sovereignty and state control.</p> |
| 4. | <p>Mukhlis,<br/>Mustafa Lutfi/<br/>The Ecology of<br/>the Constitution:</p> | <p>1. How to practice environmental administrative</p>   | <p>1. Environmental issues are currently reaching the</p>  | <p>1. This research only discusses the problem of environmental</p> | <p>1. Previous research only examined the relationship</p>  |

|  |                                 |  |                                     |  |
|--|---------------------------------|--|-------------------------------------|--|
| <p>Between Reconstruction, Investment or Exploitation on Behalf of the Republic of Indonesia/2011.</p> | <p>law policy in Indonesia.</p> | <p>highest culmination point. Destruction and pollution of the environment as well as natural disasters that often occur show disharmony between the state, people and the state and conflict between development and the environment.</p> | <p>administrative law practice.</p> | <p>between the state, humans and the environment, while this research tried to provide a design of the concept of state sovereignty based on the results of the analysis of the concepts of green and blue constitution and ecological fiqh.</p> |
|--|---------------------------------|--|-------------------------------------|--|

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|----|--|--|--|--|--|
| 5. | Eko Nurmansyah /<br>Green Concept:<br>Application of<br>Green<br>Constitution and<br>Green Legislation<br>in the Context of<br>Eco-Democracy"/<br>2015 | 1. How<br>is the<br>application of<br>green<br>constitution<br>and green<br>legislation? | 1. Our obsession<br>with<br>everything that<br>is<br>environmental<br>ly friendly<br>represents a<br>transitional<br>stage, that is,<br>the emergence<br>of awareness<br>of ecological<br>impacts but<br>still lacks in<br>terms of<br>accuracy,<br>depth of<br>understanding,<br>and clarity. | 1. This previous<br>research only<br>discussed<br>green<br>constitution<br>and green<br>legislation in<br>realizing eco-<br>democracy. | 1. Previous<br>research only<br>examined the<br>urgency of<br>green<br>constitutions<br>and green<br>legislation,<br>while this<br>research tried to<br>reconceptions of<br>state<br>sovereignty and<br>illustrated a new<br>paradigm for<br>sustainable<br>development<br>reviewed<br>through green<br>and blue<br>constitutions<br>and ecological<br>fiqh. |
|----|--|--|--|--|--|



*First*, the book written by Jimly Asshiddiqie entitled "Green Constitution Nuances of Green Law of the Republic of Indonesia in 1945". This book discusses and illustrates the importance of the concept of the Green Constitution (konstitusi hijau) and the teachings of environmental sovereignty "*ecocracy*" which are connected in order to realize sustainable development (Environmental Sustainable Development). This is the first book published in Indonesia that introduces and discusses the idea or concept of the Green Constitution.<sup>69</sup>

*Second*, the book written by Jimly Asshiddiqie entitled "Green and Blue Constitution of the Constitution of the Archipelago". This book is a development of the previous concept related to the concept of the Green Constitution which describes the idea of the Blue Constitution (The Blue Constitution), by expanding the understanding of the concept of a sovereign Indonesian State area, not only covering land and waters, but also airspace, space and cyberspace in general. This is the first book published in Indonesia that introduces and discusses the idea or concept of the Blue Constitution.<sup>70</sup>

*Third*, the thesis written by Cholida Hanum, a Student of Strata-1 Jinayah Siyasah UIN Sunan Kalijaga Yogyakarta, entitled "Green Constitution in Indonesia Constitutional Perspective and Siyasah Dusturiyyah". The results of this study show that although there are already

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<sup>69</sup> Jimly Asshiddiqie, *Green Constitution: Green Nuances of the 1945 Constitution of the Republic of Indonesia*, 1–3.

<sup>70</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 91.

two articles regarding environmental provisions in the 1945 Constitution, it is realized that these provisions still need to be added and refined again.

*Fourth*, the journal written by Mukhlis and Mustafa Lutfi entitled "The Ecology of the Constitution: Between Reconstruction, Investment or Exploitation on Behalf of the Republic of Indonesia", in this journal describes environmental problems that today reach the highest culmination point. Environmental destruction and pollution as well as natural disasters that often occur show disharmony between the state, people and the state.<sup>71</sup>

*Fifth*, a scientific article written by Eko Nurmardiansyah with the title "Green Concept: Application of Green Constitution and Green Legislation in the Framework of Eco-Democracy", was published on June 30, 2015 in *veritas et Justitia Journal of Legal Sciences*. The results of this study show that our Obsession with everything that is environmentally friendly represents *a transitional stage*, namely the emergence of awareness of ecological impacts but is still lacking in terms of accuracy, depth of understanding, and clarity. Generally what is heralded as "green" is in reality just a fantasy or something exaggerated. The concept of ecocracy must be a guiding rule in making state policies (legal politics) in environmental protection and management. The concept of echoration in order to be carried out in the state system, it needs to be described in the green constitution, green legislation and green budgeting.

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<sup>71</sup> Mukhlis and Mustafa Lutfi, "The Ecology of the Constitution: Between Reconstruction, Investment Or Exploitation On Behalf Of The Republic of Indonesia," *Journal of the Constitution* 8, no. 3 (2011), 161–206.

In this thesis research, the author will look at previous studies or researches. The differences and novelty (elements of novelty) that the author is trying to present are in the form of analysis related to the concept of state sovereignty in the constitution as an alternative study of the development of paradigms related to sustainable development that can be adopted by law makers and policy makers that provide output in the form of concept design state sovereignty and state control based on the concept of green and blue constitution and ecological fiqh as an effort to protect the constitutional rights of citizens.

The reconception of state sovereignty in the constitution can be carried out through the Amendment to the Constitution or the fifth Amendment to the 1945 NRI Constitution when it rolls out by including in-depth studies, especially related to Article 25 and Article 33 paragraph (3) by expanding the meaning of state sovereignty over the entire territory of the Unitary State of the Republic of Indonesia and adding the phrase "air".

#### **H. Structure of Discussion**

In writing the research entitled "Reconception of State Sovereignty to the Sustainable Development Paradigm of the Green and Blue Constitution and Ecological Fiqh Perspective" will be described the logic of discussion that will be used in the author of this study from the first chapter to the closing chapter, conclusions and suggestions. The systematic description of the

discussion in this study is arranged in the form of paragraphs instead of point by point. The systematics of the discussion of writing is as follows:

*The first chapter*, in this thesis begins with an introduction that contains the background of the problem that the author raised so that the author is very interested in discussing it, problem formulation, research objectives, research benefits, operational definitions , research methods , previous research, and discussion systematics that function to provide an overview of the research to be carried out.

*The Second Chapter*, continued with a literature review that contains a comprehensive presentation related to theories or concepts related to state sovereignty, sustainable development, green constitution, blue constitution, and ecological fiqh which will be used as an analytical knife in researching the Reconceptation of State Sovereignty to the Sustainable Development Paradigm Perspective Green and Blue Constitution and Ecological Fiqh.

*Third Chapter*, explanation of the results of research and discussion containing an explanation of the principle of state sovereignty, then in this chapter there is also a sub-chapter on the reasons for the need for reconceptation of state sovereignty, a sub-chapter on the implementation of the idea or concept of the green and blue constitution in Indonesia, a sub-chapter on the consequences or implications of ideas or concepts of the green and blue constitution and ecological fiqh to sustainable development.



*Chapter Four*, is a conclusion that contains conclusions and suggestions from research which is equipped with a bibliography used to collect references or references from the research carried out.



## CHAPTER II

### LITERATURE REVIEW

John D. Finch gave his views regarding the definition of legal theory the definition of legal theory, namely:

*... Legal theory involves a study of the characteristic features essential to law and common to legal systems. One of its object is analysis of the basic elements of law which make law distinguish it from other forms of rules and standards. It aims to distinguish it from systems of order which cannot be (or are not normally) described as legal systems, and from other social phenomena. It has not proved possible to reach a final and dogmatic answer to the question "What is law?"*

Manheim and Rich define theory as, "*theories are sets of logically related symbols that represent what we think happens in the world*".<sup>72</sup>

Where this theory is a study because it includes the essential characteristics that exist in laws and customs. The theory is general in nature. This happens if a legal system has the purpose of analyzing the various basic elements that make it legal and distinguishing it from various other regulations.<sup>73</sup>

The theoretical framework is present as a representation of the results of the researcher's interpretation of pre-existing theories or concepts from previous research that are relevant to the variables to be studied, including:

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<sup>72</sup> Jarol B. Manheim Richard C. Rich, *Empirical Political Analysis: Research Methods in Political Science* (London: Longman Publisher, 2006), 21.

<sup>73</sup> "Legal Theory According to John Finch | DPC PERADI TASIKMALAYA," accessed May 12, 2022, <https://peradi-tasikmalaya.or.id/teori-hukum-menurut-john-finch/>.

## A. The Development of the Doctrine of Sovereignty in the World

The term sovereignty historically appeared in France in the middle ages. At that time not only the sovereign king, the "baron"<sup>74</sup> who ran into the hands of government in his area as a "vazal" (accomplice of the king) was also sovereign. In this case the notion of sovereignty is a comparative sense (together). When the king's power rises upwards to the power of the baron, then the meaning of sovereignty is changed to the supreme power, that is, only the king is the one who is in deciding everything.<sup>75</sup>

Although the term sovereignty existed in the middle ages, the first person to analyze and give an unequivocal understanding of sovereignty as a trait and characteristic of a state was Jean Bodin (1530-1596), in his book "Six Livres de la République"<sup>76</sup> said that kedaulatan is kekuasaan tertinggi against citizens and the people, tanpa any restrictions from the law. In nature this sense also contains the meaning of the state. Sebagai the highest power holder is the king and often the king is referred to as the sovereign. Raja as the

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<sup>74</sup> Baron is known in England, England is one of the countries in the world that adheres to the constitutional monarchical system. The country has the head of state of a king or queen and the title is inherited by descent. Meanwhile, the head of government is held by a prime minister. In England there are two parliaments, the *House of Commons* and the *House of Lords*. The *House of Commons* contains members of the legislature who are democratically elected through elections. Whereas the *House of Lords* is filled by a number of nobles and chosen people who are elected by the queen or king by hearing the advice of the prime minister.

The *House of Lords* was originally a collection of nobles, particularly barons, in the 13th century. This group of barons originally formed the Royal Council to advise the King of England. although not as popular as before, the title of nobility in England has remained preserved today. "Baron was the last rank in the nobility title in England". The noble couple with the title of baron is baroness. The word in old French means "free man". Although barons and baroness are old titles, this title is rarely used for the present. The title baron or baroness is used only in legal or formal documents.

<sup>75</sup> L. J. Van Apeldorn, *Introduction to Legal Science*, cet. XI (Jakarta: Pradnya Paramita, 1976), 307.

<sup>76</sup> *Les Six Livres de la République* is a book on political theory written by Jean Bodin, a French historian, jurist and philosopher. The book was published in Paris in 1576.

one who is in question is the one who establishes the laws, therefore the king is not bound by the laws he made himself. What is meant by law is a positive law, not a law of god or a law of nature.<sup>77</sup>

Jean Bodin's opinion was reinforced by the statement of the Dutch philosopher Hugo de Groot or better known as Grotius (1583-1645) who stated that sovereignty is the highest power to rule. Sovereignty is held by a person who is not subject to the power of others, and cannot be contested by the power of that other person. The state is sovereign, and the holder of sovereignty consists of one or more prescribed by law, custom, or by his own people.<sup>78</sup>

In addition, the English philosopher Thomas Hobbes<sup>79</sup> gave his views on the notion of sovereignty as an unlimited power for the benefit of state goals. The daulat as the holder of sovereignty is in charge of giving a final verdict in case of disagreements or differences in teachings, as well as issuing legislation regarding property rights. Also organized the judiciary,

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<sup>77</sup> J.J. Von Schmid, *Experts on The Great Thought Of The State And Law* (Medan: Scholar's Library, 1980), 109.

<sup>78</sup> Schmid, 131.

<sup>79</sup> Thomas Hobbes was born in Malmesbury, Wiltshire, England on 5 April 1588 and died at the age of 91 in Derbyshire, England on 4 December 1679. Hobbes was an English philosopher of empiricism.

His famous view is the concept of man from the point of view of empiricism-materialism, as well as a view on the relationship of man to the state system.

Hobbes had an influence on all members of moral studies in England as well as political philosophy, particularly in his very famous book "*Leviathan*".

Hobbes is not only famous in England but also in Mainland Europe. In addition to being known as a philosopher, Hobbes was also famous as a master of mathematics and a classical scholar. He was a mathematics teacher of Charles II and published homeros' translations of *Illiad* and *Odysey*.



declared war and tied peace, the holders of military power, as well as the leaders of the civil servants.<sup>80</sup>

Sovereignty is the implementation of the general will, this was conveyed by J.J. Rousseau<sup>81</sup> in his book "*Du Contrat Social*" (1762) which has the meaning of the desire of citizens as a collective whole, so that sovereignty is inalienable and indivisible. For if sovereignty can be divided, then sovereignty will no longer be a general desire, but will be a special desire.<sup>82</sup>

*Rousseau's Du Contrat Social* was an important milestone for the events that occurred in the French revolution. The motto or symbol of "independence, equality, and brotherhood" comes from Rousseau's book. Rousseau's view is that democracy is directly placed on the basis of reasonable rights, giving a system for a concession, and providing guidance for its implementation. In essence, Rousseau wanted people to admire the primitive way of life, which was considered a happier life. According to him, civilization with its science, laws and world institutions, is only the bearer of evil and misery. Democracy is a human right and the most appropriate for the spiritual realm.<sup>83</sup>

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<sup>80</sup> Schmid, *Great Thinkers About Country and Law*, 138.

<sup>81</sup>Jean Jacques Rousseau was born on June 28, 1712 and on died July 2, 1778. Rousseau was a French philosopher and composer of the Enlightenment Era where his political ideas were influenced by the French Revolution, the development of liberal and socialist theories, and the growing development of nationalism.

Through his own recognition and his writings, he practically created a modern autobiography and encouraged renewed attention to the construction of subjectivity a foundation for the works of assorted great thinkers of the future such as Georg Wilhelm Friedrich Hegel and Sigmund Freud.

<sup>82</sup> J.J. Rousseau, *Social Contract (Transfer: Sumardjo)* (Jakarta: Erlangga, 1986), 23.

<sup>83</sup> Louis L. Snyder, *The Century of Thought, (Translation: Nyoman)* (Jakarta: Bhratara, 1962), 151.

Since the meaning of sovereignty was formulated and conveyed by Rousseau in his book, the definition of sovereignty has become commonly used throughout the world including Indonesia. the different definitions of sovereignty (sovereignty of God, sovereignty of the state, sovereignty of the people, sovereignty of the law), illustrate that the doctrine of sovereignty since its strict inception by Jean Bodin in the 16th century has undergone a worldwide development.<sup>84</sup>

The development of the doctrine of sovereignty in the 21st century initiated and developed by Jimly Asshiddiqie is the teaching or concept of environmental sovereignty which in this case can be called by the term Ekokrasi "*ecocracy*" or ecological power. According to him environmental sovereignty in the context of power can be constructed in the mechanism of the relationship between God, Nature and Man. In modern times, power relations are only seen as a human problem or known as anthropocentrism which puts life only as human-centered, thus placing man as a subject for himself. This puts humans as determinants with the support of science and technology has made efforts in mastering, exploiting and exploring nature for the benefit of man himself.<sup>85</sup>

Etymologically sovereignty is taken from the Arabic language, *Daulat* which means power or dynastic government.<sup>86</sup> In addition, from the English

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<sup>84</sup> Moh. Yamin, "Preparatory Texts of the 1945 Constitution" 1 (1971): 38–89.

<sup>85</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 117.

<sup>86</sup> Hafizul Ihsan, "Kedaulatan," *Journal of Chemical Information and Modeling* 53, no. 9 (2013), 1689–99.

"Sovereignty" which comes from the Latin language, namely, "*Superanus*" means "the top". The state is said to be sovereign or *sovereign* because sovereignty is a trait or essential feature of a state. When it is said that a country is sovereign or has sovereignty, it is intended that it has the highest power. Nevertheless, this supreme power has its limits. The scope of this supreme power is limited by the territorial boundaries of the country itself, meaning that a sovereign state has only the highest power within the boundaries of its territory. The principle of sovereignty in the UN Charter is one of the most important and respected basic principles, especially in the equality of rights positions between countries in the world,<sup>87</sup> and this is one of the principles or doctrines called "*jus cogens*" or "*peremptory norms*", namely:

*"A norm that is accepted as the basic norm of international law and recognized by the international community as a whole as a norm that should not be violated."*

A country's sovereignty and international recognition are an integrally important part of a country's journey. Therefore, recognition and respect for a sovereign state is an important basic principle in every country that has equal rights and obligations without discriminating as a unit of the international community.

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<sup>87</sup> This principle is contained in Article 2 paragraph (1) of the UN Charter that "*The organization is based on the principle of the sovereign equality of all its members*". This principle in the UN Charter is reaffirmed in General Assembly Resolution No. 2625/1970 (*General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*) states that: "Every country enjoys equal sovereignty and every state has the same rights and obligations as a member of the international community without distinction of economic systems, social, political."

## B. The Concept of Sustainable Development

We can see the concept of sustainable development from the recommendations by the World Commission on Environment and Development (WCED) regarding the conditions needed for a country's sustainable development to be achieved, namely:<sup>88</sup>

- a) A political system that ensures the effective participation of the people in decision-making;
- b) An economic system capable of producing surpluses and technical knowledge based on its own capabilities and is sustainable;
- c) A social system that provides a solution to the tensions that arise as a result of misaligned development;
- d) A production system that honors the obligation to preserve ecology for development;
- e) A technological system that can constantly find new answers;
- f) An international system that assists in the development of sustainable trade and financial patterns;
- g) An administrative system that is flexible and has the ability to improve itself.

Sachiko Morita and Durwood Zaelke in one of their article works stated that:

*“It is widely recognized that good governance is essential to sustainable development. Wellfunctioning legal institutions and governments bound by the rule of law are, in turn, vital to good governance”.*<sup>89</sup>

The statement explained that the enforcement of the principles of the state of law and the embodiment of *good governance* in the administration

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<sup>88</sup> World Commission on Environment and Development, *Our Common Future*, UN Documents Gathering a Body of Global Agreements, 1987, 90-91.

<sup>89</sup> Sachiko Morita dan Durwood Zaelke, *Rule of Law, Good Governance, and Sustainable Development, Prosiding Seventh International Conference on Environmental Compliance and Inforcement*, Marakesh, Maroko, 9-15 April, 2005, 15.



of government, are essential and vital in achieving the sustainable development goals.<sup>90</sup>

Departing from what has been described above, the spirit of the *Green Constitution* in the form of a spirit to always consider sustainable environmental interests has been inherent in the organizational behavior of government organizers or public policy shapers in carrying out their main duties and functions. The problem is that various facts and environmental problems still occur in various forms and intensities. Such facts show two things, namely: *first*, that the opinions of Sachiko Morita and Durwood Zaelke as outlined above still require further elaboration, and *secondly*, it turns out that in realizing sustainable development is not synonymous with carrying out procedures for environmental protection and management alone.

### **C. The Concept of Green and Blue Constitution**

Constitution terms used by political science experts is something of a very broad meaning, namely all regulations, both written and unwritten, that regulate the administration of government in a binding manner. However,

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<sup>90</sup> The affirmation that the State of Indonesia is a state of law is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the context of sustainable development, the manifestation of the principles of the Indonesian legal state is clearly also affirmed in Article 27 paragraphs (2), 28A, and 28C paragraph (1) which has the right of citizens to a decent livelihood, and that the fulfillment of these rights must not result in environmental damage that can result in the right to a good and healthy environment as guaranteed in Article 28H paragraph (1) being disrupted. Meanwhile, formally Good Governance has also become part of the State's policy to realize it in government practice. Values such as participation, rule of law, transparency, responsiveness, concensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision, as mentioned by UNDP as the characteristics of Good Governance have become part of the regulation of various laws and regulations related to the implementation of government in Indonesia.

along the way, we often get used to translating the term constitution in English into the Constitution.<sup>91</sup> And in this discussion, the constitution is interpreted by the Constitution as the supreme law of the land.

According to Sri Soemantri in his dissertation, that all countries in the world must have a constitution or in the sense that none of the countries in the world today have no constitution.<sup>92</sup> Thus a constitution must exist in a country, no matter how small a country may be.<sup>93</sup> The state and the constitution can be defined as two sides of an inseparable coin. The purpose of the state is the goal of the people because the existence of the state is the implication of the existence of a social contract of society.<sup>94</sup>

Green constitution in principle constitutionalizes environmental law norms into the constitution through raising the degree of environmental protection norms to the level of the constitution. Thus, the importance of the principle of sustainable development that is environmentally sound and environmental protection has a strong foothold in laws and regulations. On that basis, the green constitution then integrates a terminology and concept called ecocracy which emphasizes the importance of environmental sovereignty.<sup>95</sup>

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<sup>91</sup> Miriam Budiarjo, *Basics of Political Science*, (Jakarta: Gramedia Pustaka Utama, 2008), revised edition cet. 1st, 169th.

<sup>92</sup> Dahlan Thaib et al, *Theory and Constitutional Law*, cet.ke 5 (Jakarta: Rajawali Press, 2005), 53.

<sup>93</sup> Sri Soemantri, *The Constitution and History of the MPR in the Development of the Indonesian Constitutional System* in book A.M. Fatwa *Portrait of the Constitution After the 1945 UUD Amendment*, (Jakarta: Kompas Book Publishers, 2009), 198.

<sup>94</sup> Ni'matul Huda, *State of Law, Democracy and Judicial Review*, cet. 1st (Yogyakarta: UII Press: 2005), 7.

<sup>95</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the 1945 Constitution of the Republic of Indonesia*, 79–83.

In the Indonesian context, the green and blue constitution and ecocracy are reflected in the idea of power and human rights as well as the concept of economic democracy as affirmed by the 1945 Constitution of the Republic of Indonesia. Article 28H Paragraph (1) and article 33 Paragraph (4) of the 1945 Constitution provide a constitutional basis for the green and blue constitution. Thus, environmental protection norms in Indonesia actually now have a stronger foothold. However, there are still not many public policymakers or the wider community in the country who know and understand this. That is why a program is needed to disseminate knowledge and understanding of the green and blue constitution and ecocracy. The Green and blue Constitution program is designed to meet these needs.

The blue constitution or konstitusi biru is a constitution that has sensitivity related to the regulation of aspects of the sea, air, and space. Prof. Jimly said that the Indonesian constitution is still not in the insight of the blue constitution, and its shortcomings can be found in Article 33 paragraph (3) of the 1945 NRI Constitution.<sup>96</sup>

*"The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people."*<sup>97</sup>

From the phrase "*contained in it*", it raises the question of who controls the wealth above the surface of nature? Whereas the aspects and the majority of the activities of the virtual or digital world are located above the surface

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<sup>96</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 107.

<sup>97</sup> Article 33 paragraph (3) of the 1945 NRI Constitution states: "*The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people*".

of nature? Who controls and is responsible there?" Departing from these questions, it is important to conduct an in-depth study of the concept of sovereignty and state control in the constitution.

#### **D. Ecological Fiqh**

In Arabic the language of ecological fiqh, environmental fiqh or in Arabic nuance is called *fiqhul bi'ah*. In Arabic environmental or ecological fiqh is popularized with the term *fiqhul bi'ah*, which consists of two words (compound sentences; *mudhaf* and *mudhaf ilaih*), that is, the words *fiqh* and *al-bi'ah*. Linguistically "*fiqh*" comes from the word *faqih*-*yafqahu*-*fiqhan* which means *al-'ilmu bis-syai'i* (knowledge of something) *al-fahmu* (understanding)<sup>98</sup> Whereas in terms, fiqh is the science of the laws of syara' which is practical which is taken from the postulates of tafshili (detailed) As for the word "*al-bi'ah*" can be interpreted by the living environment, namely: The unity of space with all objects, potentials, states, and living beings, including humans and their behavior, which affects nature itself, the continuity of life, and the well-being of man and his other living beings.<sup>99</sup>

The environment is a land of worship that is still abandoned by the Islamic ummah, ecological fiqh is a new breakthrough in answering the problems of sustainability and environmental law and the birth of the concept of environmental law. This Fiqh is present because so far the Quran

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<sup>98</sup> Muhammad ibn Ya'qub al-Fayrus Abadi, *Al-Qamus Al-Muhith*, Beirut: Muassasah Ar-Treatise, 2005 cet. VIII, 1250.

<sup>99</sup> Law of the Republic of Indonesia No. 32 of 2009 concerning Environmental Protection and Management.



and Fiqh have only explained the principles of conservation and environmental restoration. Thus, Islamic environmental fiqh means fiqh whose material object of study is in the field of the environment and its formulation is based on the source of the value of islamic religious teachings. In other words, Islamic environmental fiqh is a science that discusses the basic teachings of Islam regarding the environment.<sup>100</sup>

Then after ecological fiqh, it is then combined with environmental theology which in general context wants to carry out and build *a theological* concept that is pro-environment and this is also a new realm of study in general raising ethical formulations. The study of environmental theology emerged as a positive perception of theological society towards environmental problems.<sup>101</sup> Just as classical fiqh scholars do not study ecological fiqh, namely environmentally based fiqh, classical theological scholars and the middle theological society do not develop environmental theological studies. Because at that time the environment had not caused problems and had not been problematic. The environment is still friendly and has *an optimum* carrying capacity for human life and other creatures.

Meanwhile, in modern contemporary times, the environment has become a

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<sup>100</sup> In the Hadith of shahih Bukhari-Muslim, it is stated "A Muslim who grows a tree, if anyone eats (makes use of) part of the tree (fruit, leaves, twigs, akang, trunk, even used for shelter) then it becomes alms, if it is stolen it also becomes alms; if eaten birds also become alms, if damaged by someone it also becomes alms.

<sup>101</sup> Environmental issues are one of the five contemporary contemporary actual issues. The five actual issues are globalization, democratization, human rights, gender equality and the environment. These five issues are projected to remain actual in the 21st century.

big problem.<sup>102</sup> even the problem has become a serious concern globally.<sup>103</sup> Therefore, environmental theology is an ecological plus theological fiqh that is contextual.<sup>104</sup>

As for the ecological cosmic understanding, man as *an image dei*, is to believe that man is called by God to participate in maintaining the integrity of creation. Without this maintenance man's life is also threatened, for man is essentially an integral part of creation itself. Man as His image is the cooperator and cocreator of the Creator. Thus, man acts creatively in efforts to transform, reconstruct and conserve the universe. In this ecological cosmic understanding God is further depicted as a symbol of the "Mother of the Universe". As the mother of the universe, God expresses creative affection. God takes care of the universe lovingly and sincerely, for God has given birth to the universe. Such a formulation was designed by the initiators of ecofeminism.<sup>105</sup> Behind the symbolization of God as the mother of the universe, Francisco aseisi formulated a system of belief that the sun

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<sup>102</sup> Environmental problems that are as old as the world are indeed very complex, but if studied carefully, they are actually sourced from 5 aspects, namely: aspects of population dynamics, exploitation of natural resources and the environment, economic growth, development of science and technology and impacts on the environment. The five issues are related to each other so that they become serious problems. See: M.T. Zen ed., *Towards Environmental Sustainability*, Gramedia, cet II, Jakarta, 1980, 2.

<sup>103</sup> This global concern over environmental issues was the background for the holding of the first international environmental conference in Stockholm. The conference was attended by 58 leaders of countries whose unofficial report was written by Barbara Ward and Rene Dubos under the title *Only One Earth*. The book is written in 9 (nine) languages simultaneously, namely: Arabic, Danish, Dutch, English, French, Italian, Japanese, Spanish and Swedish. While the Indonesian edition is a translated edition by S. Supomo, published first by the publisher PT. Gramedia, Jakarta in 1974.

<sup>104</sup> According to Maulana Azad, theology is contextual. If theology is not contextual then it will be of no use to society at the time and place related See: Maulana Azad, *Tartransmah al-Qur'an*, Sahitya Akademi, New Delhi, 1988.

<sup>105</sup> Further description can be seen in the article *Eco Feminism*: Ratna Megawangi, "Eco Feminism" in *Tarjih Journal*, PP MTPPI, PP Muhammadiyah, Issue I, 1996, 12-21.

and the earth and other beings in the universe are brothers and sisters of man as well as a symbol of His presence. These are the embryotic seeds of ecosophy birth that need further care and development.<sup>106</sup>

According to Atho' Mudzhar,<sup>107</sup> there are at least four main reasons related to the significance of the emergence of ecological fiqh development, namely:

1. The objectives of the current environmental crisis are getting worse both in Muslim countries and at the global level. This requires the attention and participation of the teachings of the Islamic religion as a religion of rahmatan lil' alamin. One of these participations is realized by the formulation of environmental fiqh. This concept has been formulated by Muslim scholars and intellectuals and needs to be developed again to more operational concepts and through formal institutionalization. The combination of the value of Islamic teachings with formal socio-cultural and legal wisdom will certainly strengthen. In the context of Muslims, this will reinforce the soul aspect of a formal law.

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<sup>106</sup> Freddy Buntaran, OFM, *Sister of the Earth Brothers of Man*, Cet I, (Yogyakarta: Kanisius, 1996), 76.

<sup>107</sup> Prof. Dr. H. Mohammad Atho' Mudzhar was born on October 20, 1948 in Serang City, West Java (now Banten Province).

He continued his studies at IAIN Jakarta as a student of the task of studying from the Ministry of Religion, stopped in 1975. In 1972-1975 he taught at PGAN Cijantuk East Jakarta for 4 years. In 1975, he moved his duties to the R&D Agency of the East Jakarta Department. In 1977, for 11 months he participated in a social sciences research training program at Hasanudin Ujung Pandang University. In 1978, he was assigned to study in Australia as taking a master of social and defelopment at the University of Queensland Brisbane, he quit in 1981. In 1986 he continued his studies at the University Of California Los Angles in America, and in mid-1990 was able to complete his studies by obtaining a Doctor of Philosophy and Islamic degree. In 1991-1994, he served as director of Islamic religious education development at the Ministry of Religious Affairs' public schools. In 1994-1996 he became the director of development of the Islamic Religious College of the Ministry of Religion. In 1996 he became the Rector of IAIN Sunan Kalijaga Yogyakarta and taught at several universities of postgraduate programs in Yogyakarta and in Jakarta.

2. Umat Islam requires a comprehensive guideline framework on views and ways of participating in environmental conservation issues. Classical fiqh is seen as inadequate and has not accommodated in operational form guidelines on environmental conservation in the perspective and insights of the modern environmental crisis.
3. Fiqh environment has not been considered a discipline that enters the realm of Islamic studies. Its ontological and epistemological roots are so debatable that it is considered part of environmental science. Indeed, in fiqh mu'amalah there are themes about the environment such as thaharah, ihya almawat, hunting law, hima', and so on, but they are still generic and ethical. This of course requires a more operational, contextual, and ecologically weighted explanation.
4. Fiqh environment as the '*parent*' of environmental conservation based on teaching Islam is importantly contained into educational programs. This is very important because awareness about environmental conservation is very effective through educational and cultural strategies. Thus, the development of environmental fiqh gains a place that will be able to encourage the quality of human understanding on the preservation and preservation of the environment.<sup>108</sup>

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<sup>108</sup> Atho' Mudzhar, "*Grounding Environmentally Friendly Jurisprudence' in Mudhofir Abdullah, the Qur'an and Environmental Conservation*", (Jakarta, Dian Rakyat, 2010), 30-36.



## CHAPTER III

### A. National Sovereignty In The Green and Blue Constitution Concept

#### 1. Conception and Development of the Doctrine of Sovereignty

State Sovereignty is one of several types of Sovereignty that exist in the theories of jurists, including:

- a. The sovereignty of God (*Theocracy*), is a teaching that has the view that God is the highest holder of power in the state.<sup>109</sup> Then, in praktiknya knya sovereigngod undergoes a transformation in the law that harus obeyed by the head of state or can transform on the power of the king as the head of state whoproclaims to have the arbitrariness to settlekan law in the name of God, so that it can be interpreted that the head of state or king rules or has power based on god's sovereignty.<sup>110</sup>
- b. Monarchy, is a teaching that has the view that the king is the highest power holder in a country.
- c. People's Sovereignty (*Democracy*), is a teaching that has the view that the people are the highest holders of power in a country.<sup>111</sup> The people are the determinants and directers of all government policies, so the people are the only source of power for every government.

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<sup>109</sup> Schmid, *Great Thinkers About Country And Law*, 169.

<sup>110</sup> Munir, "A History of Thoughts On Sovereignty In Western Philosophy From Jean Bodin To JJ Rousseau And Its Influence In Indonesia," 11.

<sup>111</sup> Theo Huijbers, *Philosophy of Law in the Trajectory of History* (Yogyakarta: Kanisius, 1988), 91.

- d. State Sovereignty, is a teaching in Constitutional Law that has the view that absolute sovereignty rests with the ruler of the state or government.<sup>112</sup> The existence of state sovereignty since the country was born or founded, so that the will of the state is the highest source of law.
- e. Legal Sovereignty or Supremacy of Law (*Nomocracy*), is a teaching in Constitutional Law that has the view that law is sovereign.<sup>113</sup> Legal power is not bound by state power, furthermore legal power is the highest power above state power. Therefore, the state must be subject to legal sovereignty, even if the will of the law is not the same as the will of the state. So that the ruler of the state or the people must be subject to the law.
- f. Environmental Sovereignty (*Ecocracy*), is a teaching that has the view that nature has its own human rights (environmental rights), so that humans cannot damage and disrupt their balance.<sup>114</sup> Environmental rights have the same position as human rights, because they need each other.

According to Budi Ispriyarso, the word sovereignty in State Sovereignty comes from the Latin "*Superanus*" which means the highest. In addition, the word sovereignty can also be called sovereignty

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<sup>112</sup> Huijbers, 134.

<sup>113</sup> A.P. D'Entreves, *Natural Law: An Introduction to the Philosophy of Law* (Jakarta: Bhartara, 1963), 75.

<sup>114</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 120.

(English), *souvereiniteit* (Dutch), *souverainete* (French) and *sovranus* (Italian), where the word sovereignty symbolizes certain features of a country.<sup>115</sup>

The meaning of sovereignty over time undergoes development and change. Some experts have differences in seeing sovereignty because they depart from various points of view or perspectives, including:

a. C.S.T. Kansil, stated that sovereignty is the highest power in a state that applies to the entire territory and all the people in the country.

Sovereignty is also a full power to regulate the entire territory of the country without interference from the governments of other countries.<sup>116</sup>

b. Jean Bodin, conveyed a new idea or idea of theory related to the state, namely the idea of sovereignty (*Souverainety*). Although, the term sovereignty-related is not new because it has appeared since the middle ages, it was the first person to give an unequivocal definition of the meaning of sovereignty as a trait and characteristic of a state.<sup>117</sup>

in his book "*Six Livres de la Republique*"<sup>118</sup> says that sovereignty is the highest power over citizens and the people, in the absence of restrictions from legislation. The supreme power according to bodin

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<sup>115</sup> Budi Ispriyarso, *The Functional Relationship Between People's Sovereignty Dun Legal Sovereignty to the Development of State Administrative Law: Dimensions of State Administrative Law Edited By SF Marbun Et al* (Yogyakarta: UII Press, 2001), 26.

<sup>116</sup> C.S.T. Kansil and Christine S.T. Kansil, *State Science*, Cet.1 (Jakarta: PT. Pradnya Paramita, 2001), 138.

<sup>117</sup> Schmid, *The Great Thinkers Of The State And The Law*, 109.

<sup>118</sup> *Les Six Livres de la République* is a book on political theory written by Jean Bodin, a French historian, jurist and philosopher. The book was published in Paris in 1576.

is held by the king who has unlimited power and is not bound by laws and no power can limit his power.

“Sovereignty is the ultimate power over citizens and people, without any restrictions from the law.”

- c. Hugo de Groot (Grotius), according to him the state was formed because of an agreement whose establishment had the aim of protecting the public interest.<sup>119</sup> With an agreement, a power to govern (govern and take care of the people) is born, so that the highest power in a country is called sovereignty. The holder of sovereignty is a person who is not subject to the power of others and that sovereignty cannot be interfered with by other powers.<sup>120</sup>
- d. Thomas Hobbes, had a view regarding sovereignty which is an unlimited and absolute power in the interests and objectives of the state.<sup>121</sup>
- e. Jean Jacques Rousseau, Rousseau gave a new definition of sovereignty, namely the implementation or implementation of the general will. The meaning of Rousseau's sovereignty is much different from the meaning of sovereignty of previous experts (Bodin, Grotius, and Hobbes) who emphasized sovereignty as a power held by a person or several people. The general will or General will is the inalienable

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<sup>119</sup> Schmid, *The Great Thinkers Of The State And The Law*, 131.

<sup>120</sup> Munir, "A History of Thoughts On Sovereignty In Western Philosophy From Jean Bodin To JJ Rousseau And Its Influence In Indonesia," 14.

<sup>121</sup> Schmid, *Experts on The Great Thought Of The State And The Law*, 138.



and divisible desire of the whole people or citizens, because if it can be divided it will turn into a special desire not a general *will*.<sup>122</sup>

**B. The Relationship between the Concept of Green and Blue Constitution and Ecological Jurisprudence in the 1945 NRI Constitution with Environmental Damage**

1. Response to Environmental Damage and the Threat of Climate Change

a. Istanbul Declaration

Climate Change, has become a concern and concern for all nations, governments, canyonsand even religions. We can see thatthere is no global agreement (united nations) that is so important that every year the problem is discussed and discussed and discussed in a negotiation forum for more than 25 years, except for efforts to tackle climate change through the United Nations treaty on Climate Change (UNFCCC).

On August 17-18, 2015, in Istanbul, Turkey, a meeting was held by a number of leading environmental and climate Scientists and scholars from the Islamic world, jointly declaring the Islamic Declaration on Global Climate Change which can be called IDGCC. The IDGCC is an important strategic and affirmative part that complements international agreements that address the environment/nature such as: the Earth

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<sup>122</sup> Rousseau, *The Social Contract (Transfer: Sumardjo)*, 23.

Summit in Rio de Janeiro in 1992, the Kyoto Protocol in 1997, and the Paris Agreement in 2015.<sup>123</sup>

Furthermore, on August 9, 2021, the Intergovernmental Panel on Climate Change (IPCC) released its sixth report since its debut in 1988 on Climate Change 2021: The Physical Science Basis. In its latest report, the IPCC unequivocally and consistently shows data that human actions have resulted in increased heat and rapid changes in the layers of the atmosphere, sea and land. This gives a significant impact, climate change is expected to occur faster. Global temperatures could reach more than 1.5 degrees celsius in the next 20 years.<sup>124</sup>

The IDGCC declaration is made very short, 8 pages thick which in essence aims to show the world that Islam and Muslims can contribute to bringing solutions to the serious climate crisis facing humans. Fazlun Khalid, founding director of the Islamic Foundation for Ecology and Environmental Sciences (IFEES) who was the initiator of the declaration along with six other drafters<sup>125</sup>, hoped that the IDGCC declaration would at least be a guideline that directed all Muslims to participate together with the rest of the earthlings.

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<sup>123</sup> "The Spirit of the Islamic Declaration on Climate Change," accessed May 18, 2022, <https://kemenag.go.id/read/spirit-deklarasi-islam-tentang-perubahan-iklim-bgebd>.

<sup>124</sup> "AR6 Climate Change 2021: The Physical Science Basis — IPCC," accessed May 18, 2022, <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>.

<sup>125</sup> The Islamic Foundation for Ecology and Environmental Sciences (IFEES) is a UK registered charity operating internationally, through programmes designed to increase knowledge and awareness, alleviate poverty, combat climate change and deal with other major environmental issues.

As stated in the declaration, that basically the climate change that is happening today is different from what happened in the past because climate change is caused by human actions. Modern man is now already a force of nature. Even our species/class could be the cause of the end of the life we know today on this planet.

The declaration also cites the *Millennium Ecosystem Assessment* (2005) report which underlines "humans as a whole have made major changes to ecosystems during the latter half of the 20th century, compared to any era in history, these changes have improved human well-being, but are followed by a decline in the quality of life in the 20th half, compared to any era in history, these changes have improved human well-being, but followed by a decline in the quality of life in the 20th century, these changes have improved human well-being, but followed by a decline in the quality of life in the 20th half the continuous experience of man himself. The declaration also called on Muslims in particular to listen to the opinions of 1300 scientists from 95 countries who warned that two-thirds of the natural systems that support life have been degraded by human pressure.<sup>126</sup>

The declaration's appeal, however, can be seen as an articulation of the Muslim World's involvement in responding to climate change, supporting the Muslim delegation at COP 21 in Paris to engage seriously

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<sup>126</sup> "Islamic Declaration for Climate Change - Greenpeace Indonesia," accessed May 18, 2022, <https://www.greenpeace.org/indonesia/cerita/45962/deklarasi-islam-untuk-perubahan-iklim/>.

in dialogue and produce favorable negotiations to safeguard the future of planet earth.

This declaration is made more focused and short containing preambles and considerations, a reference to a verse from the Quran that contains the importance of maintaining balance (*mizan*) on planet earth and so that humans do not damage the fritters (Qs. 55:7-10). Planet Earth, now threatened with its equilibrium due to excessive concentrations of CO<sub>2</sub> emissions in the atmosphere is now up to 400ppm compared to only 280ppm of pre-Industrial times which in turn causes temperature rises to increase due to more heat being trapped on Earth, then resulting in global warming and climate change.<sup>127</sup>

The IDGCC declaration is aimed at all levels of Muslims around the world including heads of state, political leaders, COP- UNFCCC delegates, scholars, business people, mosque pilgrims, clerical figures, community leaders, civil society activists and all Muslims wherever they are, to take a stand and support as well as action to reduce climate change that results in the Earth created by Allah SWT and all its inhabitants will be threatened extinction. Man is urged, not to be arrogant and ignorant of the power of technology and the abilities he possesses. The declaration reminds by quoting the word of Allah SWT:

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<sup>127</sup> "Islamic Declaration on Global Climate Change," accessed May 18, 2022, <https://readgur.com/doc/2737713/deklarasi-islam-tentang-perubahan-iklim-global>.



"And ye shall not walk on the face of this earth proudly, for verily ye shall never be able to penetrate the earth and at times ye shall not be as high as a mountain." (Qur'an 17:37)

## 2. Islamic Views on Sustainable Development with Environmental Insights In The Lens Of Ecological Jurisprudence

Ecological Jurisprudence or Environmental Jurisprudence in Arabic is called *fiqh al-bi'ah*, ecological jurisprudence is a new breakthrough in answering increasingly complex environmental logics, answering the problems of environmental sustainability and environmental law and the birth of the concept of environmental law. This jurisprudence has a purpose because so far the Qur'an and existing jurisprudence have only discussed and explained the principles of conservation and restoration. Thus, ecological jurisprudence has a material object of study in terms of the environment and its formulation is guided by the source of the value of Islamic teachings.<sup>128</sup>

Islam emphasizes its people to maintain environmental sustainability and also apply environmental wisdom (*ecoshophy*). In the holy text of surah al-Anbiya' (21): verses 35-39 where Allah tells the case of the Prophet Adam. Adam had been warned by Allah not to uproot and eat the fruit of khuldi. However, he violated the ban. Finally, Adam was driven out of heaven. It was relegated to the world. Here, heaven is like a prosperous life, while the world is like a miserable life. Because Adam

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<sup>128</sup> Agus Hermanto, *Ecological Jurisprudence*, 32–33.

had corrupted the ecology of heaven, he was thrown into a barren, dry, hot and arid field. This doctrine reminds humans to be aware of environmental issues and endeavor to preserve natural ecosystems.

Muhammad Abid Al-Jabiri,<sup>129</sup> once said that if for example we want to give the name of one of the products of Islamic civilization then it can be said that it is a text civilization, a *fiqh* civilization (*hadharat fiqh*). Even an orientalist said the same thing as al-Jabiri, he was Charles J. Adam, he said that "there is no most important subject of Muslims than the word Islamic law".<sup>130</sup> Thus, *fiqh* is one of the most vital religious expressions in Islamic doctrine.<sup>131</sup>

The resulting *fiqh* civilization is present to always be present in different contexts and faces, *fiqh* which is critically faced, responsive, progressive, humanist and now *fiqh* must appear with a naturalist feel. Creating *fiqh* as a spirit to respond to the problem of the environmental crisis which is now increasingly urgent to strive to find solutions to

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<sup>129</sup> Muhammad Abid Al-Jabiri was born in Figuig, south of Morocco, on December 27, 1935. He completed his primary education at the madrasa hurrah wathaniyah, a private religious school founded by an independence movement at the time. He studied secondary education from 1951-1953 in Casablanca and obtained a Diploma in Arabic High School after Morocco became independent. He spent a year in philosophy at the University of Damascus, Syria.

After that he continued his diploma education at the College of Philosophy, Faculty of Letters, Muhammad V University in Rabat, and earned a master's degree with a thesis on "The Philosophy of History of Ibn Khaldun" (*Falsafatut Târîkh 'inda Ibn Khaldûn*) under the guidance of N. Aziz Lahbabi. Doctorate in Philosophy, he achieved at the Faculty of Letters of Muhammad V University, Rabat, with a dissertation that still discusses the thoughts of Ibn Khaldun, especially on Arab Fanaticism. His dissertation speaks of "Fanaticism and the State: The theoretical Elements of Khaldunian in Islamic History". (*Al-'Ashabiyyah wad Dawlah: Ma'âlim Nadzariyyah Khaldûiyyah fit Târîkhil Islâmî*). The dissertation was then recorded in 1971.

<sup>130</sup> Charles J Adam (ed), *A Reader's guide to the great religions*, New York: The Free Press, 1965, 316.

<sup>131</sup> Ahmad Syafi'i, "*Environmental Fiqh: The Revitalization of Ushul al-Fiqh For The Conservation and Restoration of the Cosmos*", a paper presented in the #9 Annual Conference on Islamic Studies (ACIS). Surakarta 2 – 5 November 2009.

ijtihadi. Formulating ecological fiqh is an effort to develop scientific insights and change the scientific thinking system with religious nuances, considering that fiqh science in the current context is certainly inverse to the situation of fiqh science when it was initially built, formulated, designed and systemized.

Ecological fiqh (*ecological fiqh*) which is the core discourse in this paper, aims to lead orientasi thinking towards religion that has the value of praksis which has a clear partiality towards environmental development which often humans show their greed in oaks natural exploitation, at least will be a kind of *guide line* for Muslims to be aware and friendly to treat ecology or the environment as the embodiment of a caliph who pays attention to the common good and prosperity of the earth.

Menurut Yusuf Qardhawi in caring for and maintaining ecological or natural sustainability is a demand in maintaining and protecting the five goals of Shari'a.<sup>132</sup> Thus, all human actions that lead to pollution and destruction of the environment, are tantamount to actions that can threaten life, reason, property, nasab, and religion.<sup>133</sup> Perilaku pollution and destruction of the environment and behavior that can cause chaos or danger that has a bad impact on the sesame of living beings is a behavior

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<sup>132</sup> Yusuf Al-Qardhawi, *Ri'ayatu Al-Bi'ah fi As-Shari'ah Al-Islamiyah*, Cairo: Dar Al-Syuruq, 200, 39.

<sup>133</sup> Yusuf Al-Qardhawi, *Ri'ayatu Al-Bi'ah fi As-Shari'ah Al-Islamiyah*, 39.

that is contrary to the rules fiqh that has been formulated by the fuqaha (*al-Qawaid al-Fiqhiyyah*), among others:<sup>134</sup>

1) Norm: لا ضرر ولا ضرار (It is not permissible to do harm to oneself

and others)

2) Norm: الضرر يزال بقدر الامكن (The mudharatan must be eliminated

as much as it can)

3) Norm: الضرر لا يزال بضر مثله (Mudharatan cannot be eliminated by

something that brings the same mudharat)

4) Norm: يتحمل الضرر الادنى لدفع الضرر الاعلى : (It is okay to do a

lighter mudharat to overcome a larger mudharat)

5) Norm: يتحمل الضرر الخاص لدفع الضرر العام (Doing special

Mudharat to prevent general mudharat)

6) Norm: إذا تعارض مفسدتان روعي أعظمهما ضررا بارتكاب أخفهما

(If there is a conflict between two harmful things, then it is

permissible to do a less dangerous one)

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<sup>134</sup> Fahmi Hamdi, "Environmental Jurisprudence in an Islamic Perspective," n.d., <http://kalsel.muhammadiyah.or.id>.



7) Nomr: درء المفسد مقدم على جلب المصالح (Resisting damage takes

precedence over expecting benefit).<sup>135</sup>

Yusuf Qardhawi In the context of ecological preservation even affirmed the application of sanctions in the form of confinement (*At-Ta'zir*) for perpetrators of environmental destruction determined by the government (*Waliyyul amr*), in line with the law contained in the hadith of the Prophet Muhammad saw: <sup>136</sup>

*"The parable of those who uphold the law of God and those who transgress, is like a people who are aboard a ship. Some of them occupy the place of the above and the other part is at the bottom. So the people who are placed below, if they are to take water they must pass the one who is above them. So take the initiative to make a hole in their part, so as not to disturb the people above. If their will is left alone, it will surely perish all the passengers of the ship, and if they are prevented then they are safe and survived by others entirely."*<sup>137</sup>

Nature is everything that exists or is considered to exist by humans in this world, other than Allah Almighty and His *Dzat* and Nature. Everything that exists like langit, earth dan all contents and events that occur in it is a very impressive and amazing reality of human reason. That is the universe or called *alkaun (universum)*.<sup>138</sup>

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<sup>135</sup> Muhammad Khalid Mas'ud, *Fislat of Islamic Law, Studies on the life and thought of Abu Ishaq Al-Syatibi*, Bandung: Publishers Library, 1996, 200.

<sup>136</sup> "Indonesia.Go.Id - KH Masjkur And The Title Of Waliyy Al-Amr Al-Daruri Bi Al-Syaukah," accessed May 18, 2022, <https://indonesia.go.id/kategori/komoditas/1376/kh-masjkur-dan-gelar-waliyy-al-amr-al-daruri-bi-al-syaukah>.

<sup>137</sup> Yusuf Al-Qardhawi, *Ri'ayatu Al-Bi'ah fi As-Shari'ah Al-Islamiyah*, 40-42.

<sup>138</sup> *Universum* in kbbi is defined as the universe; the universe; something that is the nature of the universe. "The Meaning of the Word Universum - Big Indonesian Dictionary (KBBI) Online," accessed May 18, 2022, <https://kbbi.web.id/universum>.

The struggle against the universe according to Islam is not based solely on reason. The universe gives the function of moving human emotions and feelings towards the majesty of the creator (*al-Khaliq*), the dwarfism of man before Him, and the importance of submission to Him. That is, the universe is seen as a *qath'i*<sup>139</sup> *postulate* that shows the oneness and divinity of God (Allah Almighty). Allah SWT has arranged all the processes of the creation of the earth and told his people about the creation of the earth and the universe through his words (*the Qur'an*). One of the signs of the power of Allah Almighty is the Creation of the universe. Not a few verses of the Qur'an invite us to reflect on all his creations including about the universe.

One of the verses contained in the Qur'an that explains the process of creating the universe is Q.S. As-Sajdah (32): 4 which means

*"It was God who had created the heavens and the earth and all that was between them within six days, and then he resided on Arsy. You all have no helper and intercessor but Himself. Then, don't you pay attention to it? "*

The meaning of this teaching for the author is that we as beings created by Allah SWT, who are given a mandate in caring for and preserving nature / environment should not be arrogant, and must always be grateful, because the relationship between nature and humans and other living beings is very close, so that man's deeds towards nature will provide reciprocity. Religion as a "*device*" that Allah Almighty has ordained to humans in controlling all human actions, as well as calling on humans to always be wise to nature.

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<sup>139</sup> The Qath'i postulate formulated by Asy-Syatibi is a postulate whose historical origins (*al-wurud*), the pointing to meaning (*ad-dalalah*) or the argumentative power of its meaning itself (*al-hujjiyah*) are certain and convincing.

Among the postulates that contain religious invitations, especially Islam, is not to be arbitrary towards nature, such as the word of Allah Almighty which is listed in the Quran Surah al-A'raf Verse 56 which means as follows:

*"And you shall not make mischief on the face of the earth, after (Allah) has repaired it and Pray to Him with fear (will not be accepted) and hope (will be granted). Indeed, The grace of God is very close to those who do good."*

The preservation and sustainability of nature is an important part of survival for all living things in it, especially humans in living life will always depend on nature. The mechanisms of Nature (*Sunnatullah*) are the provisions of God as laws that govern the universe and its contents. God created the universe and its contents are equipped with laws (*Sunnatullah*). And if these laws are not used and even violated, then nature will be unbalanced and experienced destruction. That is the essence of *sunnatullah* that has been determined by the "Dzat" of the Most High as the Creator, The Governor and the place of return of all nature. Therefore, beings of god occupying this universe must treat nature as well as possible.<sup>140</sup>

The purpose of nature being created is not to be undermined, polluted and even overexploited or even destroyed. Rather, how to be utilized and functioned as much as possible in life. As a creature created by god we are also tasked with preserving the environment and have principles in preserving it in the nature of daily life, these principles include:<sup>141</sup>

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<sup>140</sup> Hamdi Fahmi, "Environmental Jurisprudence In Islamic Perspective," 64.

<sup>141</sup> Atho' Mudzhar, "Grounding Environmentally Friendly Jurisprudence' in Mudhofir Abdullah, *The Qur'an and Environmental Conservation*", (Jakarta, Dian Rakyat, 2010), 40.

a) The Principle of *Respect For Nature*

In the Qur'an surah Al-Anbiya 107, Allah Almighty says:

It means: "*And we did not send you, but to (be) a mercy to the universe*".

1. Moral Responsibility For Nature

Dalam surah A l-Baqarah: 30, Allah Almighty said:

That is to say: *Remember when your Lord said to the angels: "Verily I will make a caliph on the face of the earth"*.

2. Principles of Compassion and *Caring For Nature*

These principles should be our guide as God's creatures in treating other living beings, especially the living environment (the universe).

**C. Reconception of State Sovereignty According to the Concept of The Green and Blue Constitution as *Ius Constituendum***

**1. The Development of the Green Constitution to the Blue Constitution**

Discussions and studies related to *the issue*<sup>142</sup> of green policy will continue to be a concern and experience developments. Policy practices related to the environment in the world have undergone at least 2 stages of development, namely:<sup>143</sup>

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<sup>142</sup> Green political theory is a political ideology that aims to create an ecologically sustainable society rooted in concern for the environment, social justice and democratic life built from the behavior and culture that each individual has. "Green Policy by Abdush Shomad," accessed June 7, 2022, [https://prezi.com/rfnzzm6xu\\_tz/green-policy/](https://prezi.com/rfnzzm6xu_tz/green-policy/).

<sup>143</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 65.



1) Departing from the encouragement of human awareness in general which is increasingly widespread throughout the world about the importance of efforts to protect nature or the environment (earth) from human behavior and the rapid development of technology that has a negative impact on the environment and can pollute and damage the environment. In response to this, environmental policies are contained in the form of formal or official laws and regulations. Thus, around the world rolling waves of legislation or efforts to legislate environmental policies into legislation. After the enactment of so many formal or official laws and regulations, it turns out that many of these regulations have become ineffective in preventing pollution and destruction of the environment and the threat of *climate change*, resulting in *over-regulation* and even the presence of regulatory overlaps. Discontent and waves of protests are not infrequently conveyed and develop widely in various countries of the world, so that the next wave appears;

2) Environmental policy is evolving as many demands to evaluate and strengthen the legal umbrella of environmental policy into the constitution as a country's highest legal instrument. The development of this second stage is by constitutionalizing environmental policies into the formulation of the basic law in the Indonesian context, namely the 1945 Constitution of the Republic of Indonesia.

Terms associated with green such as "*green economy*", "*green policy*" and so on have experienced such rapid development along with the increasing awareness and concern of many countries, especially policyholders and increasingly popular in society in general. However, simultaneously and even after that, there are also terms associated with the color blue, in this case both related to the sea, space and even cyberspace in general. Therefore, currently and in the future, terms such as "blue economy", "blue policy", and so on will continue to develop and receive the attention of many circles.<sup>144</sup>

Over time, after the establishment of a separate ministry in the marine sector, in the Indonesian context the terms blue economy became increasingly popular in use along with the increasing one of the government's focuses in terms of the marine economy and fisheries. This is in line with the territory of Indonesia which consists of 2/3 of the sea area so that Indonesia is called a maritime country. Based on the National Reference to Regional Data of the Republic of Indonesia, namely;

- 1) 3,110,000 km<sup>2</sup> The area of inland waters and waters of the Indonesian archipelago.
- 2) 290,000 km<sup>2</sup> The area of Indonesia's territorial sea.
- 3) 270,000 km<sup>2</sup> Additional zone area of Indonesia.
- 4) 3,000,000 km<sup>2</sup> The area of Indonesia's exclusive economic zone.
- 5) 2,800,000 km<sup>2</sup> The area of indonesia's continental shelf.

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<sup>144</sup> Jimly Asshiddiqie, 91–92.

- 6) 6,400,000 km<sup>2</sup> The total area of Indonesian waters.
- 7) 8,300,000 km<sup>2</sup> Area of the Republic of Indonesia (land + water).
- 8) 108,000 km Long Indonesian coastline.
- 9) Approximately 17,504 islands in Indonesia, and 16,056 islands that have been standardized and adapted to the United Nations.<sup>145</sup>

Based on this, the demands on the state government to develop an orientation in a direction that no longer depends only on land, but should also pay attention to the sea, water and air and even outer space areas with all their potential and problems that have an impact on the life of the nation and state and have the potential to injure environmental and human rights. Thus, in managing a country, the government or policy holders should develop from "green oriented to blue oriented governance".

## **2. The Urgency of Reconceptation of Article 25 and Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia of 1945**

The urgency of reconceptation of the meaning and understanding of state sovereignty and state control in the constitution, especially in Article 25 and Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia is due to the narrow understanding of the state in looking at state territory and the lack of provisions related to the territory above land and

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<sup>145</sup> "KKP | Ministry of Marine Affairs and Fisheries," accessed June 7, 2022, <https://kkp.go.id/brsdm/poltekkarawang/artikel/14863-menko-maritim-luncurkan-data-rujukan-wilayah-kelautan-indonesia>.

above water. Along with this, efforts are also efforts to respond to the challenges and needs of the times that are increasingly complex environmental problems due to human behavior and the rapid development of technology by constitutionalizing environmental policies.

The concept of state sovereignty has two contexts of understanding, namely understanding internally and externally. Internally, sovereignty as the concept of supreme power as previously described above is related to the teachings of God's Sovereignty, King's Sovereignty, People's Sovereignty, State Sovereignty, Legal Sovereignty and Environmental Sovereignty. As for externally, the concept of sovereignty must be interpreted in the context of relations between states.

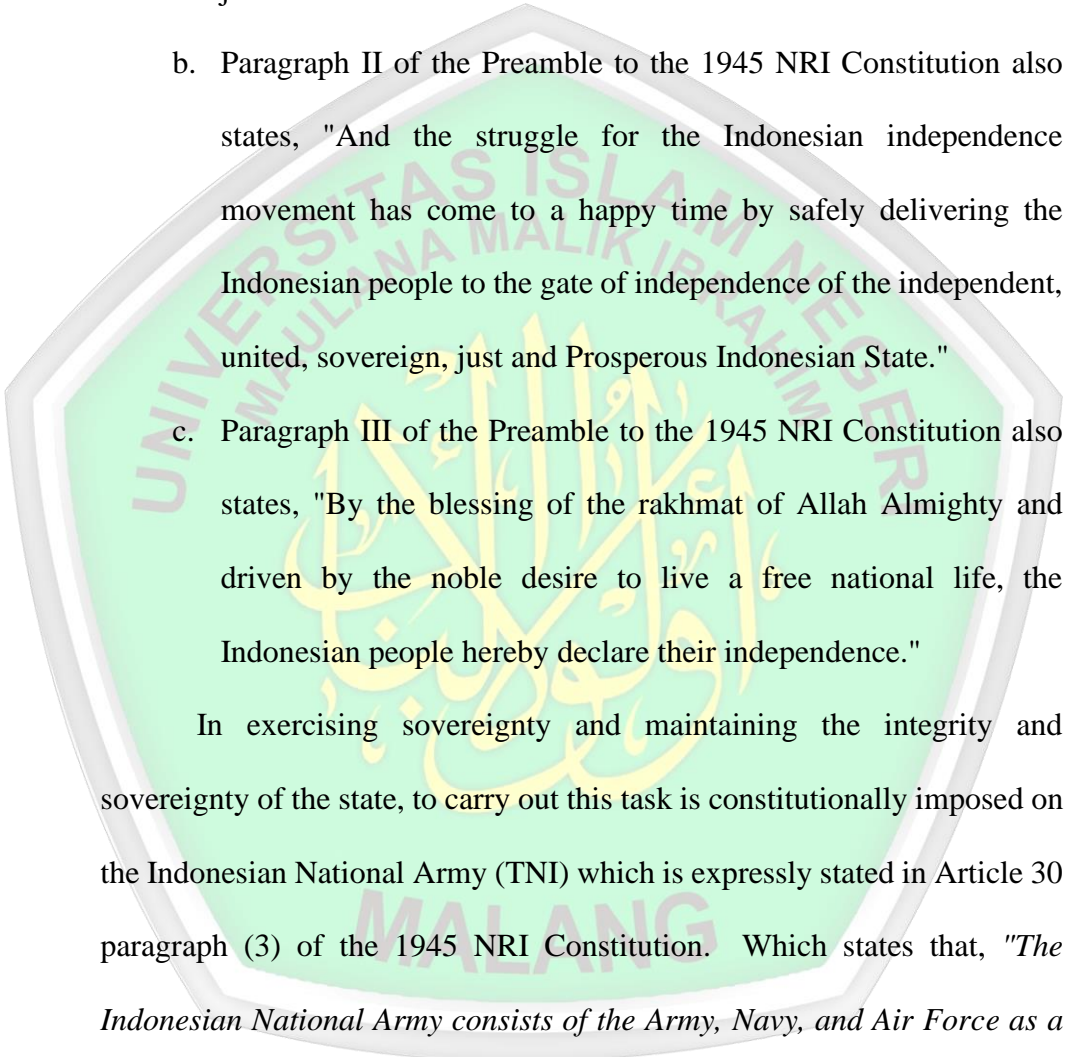
Based on International Law, relations between states absolutely require recognition from other countries or international recognition of the existence of a state that is considered independent and sovereign. If a country recognizes its own independence and sovereignty or is unilateral without getting recognition from another country, it will be difficult to establish international associations.<sup>146</sup>

Realizing this, the drafters and drafters of the *founding fathers* in 1945 announced or declared explicitly and unequivocally the principle of Indonesian state sovereignty, both contained in the Preamble and in the articles of the 1945 NRI Constitution, including:

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<sup>146</sup> Jimly Asshiddiqie, *Green Constitution: The Green Nuances of the Constitution of the Republic of Indonesia in 1945*, 116.



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- a. Paragraph I of the Preamble to the 1945 NRI Constitution states, "That indeed Freedom is the right of all nations and therefore the colonization of the world must be abolished because it is incompatible with the fairies of humanity and the fairies of justice."
- b. Paragraph II of the Preamble to the 1945 NRI Constitution also states, "And the struggle for the Indonesian independence movement has come to a happy time by safely delivering the Indonesian people to the gate of independence of the independent, united, sovereign, just and Prosperous Indonesian State."
- c. Paragraph III of the Preamble to the 1945 NRI Constitution also states, "By the blessing of the rakhmat of Allah Almighty and driven by the noble desire to live a free national life, the Indonesian people hereby declare their independence."

In exercising sovereignty and maintaining the integrity and sovereignty of the state, to carry out this task is constitutionally imposed on the Indonesian National Army (TNI) which is expressly stated in Article 30 paragraph (3) of the 1945 NRI Constitution. Which states that, "*The Indonesian National Army consists of the Army, Navy, and Air Force as a state tool tasked with defending, protecting, and maintaining the integrity and sovereignty of the country*".

The existence of the Army, Navy, and Air Force has an important role in achieving state goals, to protect the entire Indonesian nation and all

Indonesian blood spills in land, sea and air areas. therefore, in understanding the concept of sovereignty and control of the state as reflected in Article 25A<sup>147</sup> concerning state territory and Article 33 paragraph (3)<sup>148</sup> of the 1945 NRI Constitution, it should be related to the systematic meaning of its interpretation with Article 10 which explicitly confirms the existence of the Indonesian National Army, as a state tool that has the task of maintaining, protecting and maintaining the integrity and sovereignty of the state as explained in Article 30 paragraph (3) of the Constitution NRI 1945.<sup>149</sup>

According to Jimly Ashiddiqie in his book "Green and Blue Constitution: The Constitution of the Archipelago", the regulation related to the territory of the state in the constitution, the formulation of changes to Article 25A during the Second Amendment to the 1945 NRI Constitution in 2000 there were shortcomings. It should be that the provisions related to the territory of the country in Chapter IXA may contain several articles, for example Article 25A and Article 25B, or Article 25A which is detailed into several paragraphs, so that it can contain or contain related:

- 1) The need for the expansion of new provinces from pre-existing provincial territories;
- 2) The need in the framework of the formation of a new province or a new autonomous region of the new region;
- 3) As well as the expansion of the meaning of land, sea, and air areas in one unified Indonesian sovereign territory.<sup>150</sup>

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<sup>147</sup> Article 25A states: *"The Unitary State of the Republic of Indonesia is an archipelagic state characterized by the Archipelago with its territory and boundaries and rights stipulated by law."*

<sup>148</sup> Article 33 paragraph (3) states: *"The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people."*

<sup>149</sup> Article 30 paragraph (3) states that, *"The Indonesian National Army consists of the Army, Navy, and Air Force as a state tool tasked with maintaining, protecting, and maintaining the integrity and sovereignty of the state"*.

<sup>150</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 106.

The opportunity to perfect the constitution related to the understanding of the concept of state sovereignty and state control has in fact not been put to good use in the agenda of changes (amendments) to the 1945 NRI Constitution, especially the Fourth Amendment in 2002. The Fourth Amendment to the Constitution in 2002, instead, the thoughts and discussions focused on efforts to respond to the proposed draft proposal by the Ad Hoc Committee (PAH) I of the Workers' Body (BP) of the People's Consultative Assembly (MPR) which contained provisions regarding regional boundaries that tended to be technical and rigid.<sup>151</sup> In addition, the absence of the phrase "air" in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia reflects the narrow definition of state control and the understanding of the state regarding the understanding of a unitary territory as a sovereign state based on Pancasila. Therefore, Chapter IX on State Territory and Article 33 paragraph (3) on state control should be refined again by including the content of the study of the concept of green and blue constitution on the possibility of discourse on the Fifth Amendment to the Constitution of the Republic of Indonesia of 1945.

Therefore, the reconception of the understanding of state sovereignty in the *First constitution*, in Chapter IXA on The Territory of the State should be further refined by including the above contents in full in its outlines by detailing Article 25A into several paragraphs as follows;

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<sup>151</sup> Jimly Asshiddiqie, *Green and Blue Constitution: The Constitution of the Archipelago*, 105–106.

- 1) The Unitary State of the Republic of Indonesia is an archipelagic state characterized by the Archipelago with its territory and boundaries and rights stipulated by law;
- 2) The boundaries of land, lau, and air areas owned and controlled by the Republic of Indonesia are annexed by the president based on international conventions ratified by law;
- 3) The territory of the new autonomous region or the local government of the new province, stipulated by law provided that if it affects the boundaries of the territory of the regional government of another province, has received the approval of the local government concerned.

*Second*, a reconception of the understanding of state control in the constitution in Article 33 paragraph (3) of the 1945 NRI Constitution which only contains state control over the earth and water and the natural wealth contained therein. However, the provisions of the paragraph only regulate aspects of economic values to be used as much as possible for the prosperity of the people. Article 33 paragraph (3) also does not contain airspace and all the potential contained in and above it which should also be understood to have economic value for the benefit of the people or citizens. Article 33 paragraph (3) should be added and refined into "The earth and water and air and the natural wealth contained in and above it are controlled by the state and used for the greatest prosperity of the people."



## CHAPTER IV

### CLOSING

#### A. Conclusion

1. The concept of state sovereignty and state control in the constitution as stated in Article 25 and Article 33 Paragraph (3) has been in line with the concept of a green constitution. However, there is no concept of the blue constitution which has implications for the narrow scope of understanding the meaning of sovereignty and state control. The paradigm shift towards the concept of state sovereignty in the constitution is a progressive step in Indonesia's constitutional system. Although all the teachings of sovereignty have been contained in the 1945 NRI Constitution including state sovereignty, it is necessary to be refined again in seeing the concept of control and sovereignty of a state.
2. The relationship between the Green and Blue Constitution and Ecological Jurisprudence is that they both discuss the protection and protection of the environment which boils down to the benefit of living things. Ecological Jurisprudence is based on the principle of protection of the environment, not on the principle of environmental use. Ecological Jurisprudence became a new discourse in looking at the interactions that occurred between living beings based on Islamic values. The common thread between the Green and Blue Constitution and Ecological Fiqh has the same goal, namely the benefit of the people.

3. The idea of a reconception of state sovereignty to the paradigm of sustainable development, as follows;

*First*, Chapter IXA Article 25A:

- 1) The Unitary State of the Republic of Indonesia is an archipelagic state characterized by the Archipelago with its territory and boundaries and rights stipulated by law;
- 2) The boundaries of land, lau, and air areas owned and controlled by the Republic of Indonesia are annexed by the president based on international conventions ratified by law;
- 3) The territory of the new autonomous region or the local government of the new province, stipulated by law provided that if it affects the boundaries of the territory of the regional government of another province, has received the approval of the local government concerned.

*Second*, Article 33 Paragraph (3) "The earth and water and air and the natural wealth contained in and above it are controlled by the state and used for the greatest prosperity of the people."

## **B. Suggestion**

1. The concept of state sovereignty and state control in the constitution should be perfected by constitutionalizing the concept of green and blue constitution. The 1945 NRI Constitution has contained the concept of a green constitution but has not contained the concept of a blue constitution. Thus, constitutionalization by including the concept of a blue constitution will increase the degree of environmental protection.
2. Studies related to the environment, especially related to the concepts of the Green and Blue Constitution and Ecological Fiqh, have not been so much and have become a concern for many people, compared to other scientific studies. Meanwhile, environmental or natural problems in the world, including Indonesia, are increasingly complex in line with the rapid development of technology. Thus, studies and research related to environmental discourse are needed which in turn will make a positive contribution to sustainable development.

In addition, universities as educational institutions should include curriculum related to Ecological Fiqh or Environmental Jurisprudence into student academic courses, especially the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang as a university that integrates general science (science) with religious science or Islamic religious teachings.

The problems about the environment today are increasingly complex, for this reason, the responsibility in maintaining and preserving the

environment is not only imposed on the state or government, but all components of the nation contribute to encouraging efforts to protect and preserve the environment and sustainable development with environmental insight in realizing the ideals of the nation as stated in the constitution. Thus, the existence of mutual cooperation in achieving these goals will be easier to achieve.

3. In order to obtain legal arrangements that can answer the needs and challenges of each era, it should be necessary to make changes (amendments) to the fifth amendment to the 1945 NRI Constitution, one of which is by constitutionalizing the concept of the Green and Blue Constitution. This is so that the 1945 NRI Constitution becomes a document or the highest legal instrument that can answer the needs and challenges of the times. Because in fact, according to Satjipto Rahardjo, the law is for humans, not for humans, it is for the law.



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## Appendix I

### CHARACTER BIOGRAPHIES

#### **Prof. Dr. Jimly Asshiddiqie, S.H.**

He lahir in Palembang, South Sumatra on April 17, 1956. He earned a law degree from the Faculty of Law, University of Indonesia (1982) and later became a lecturer at his alma mater origin. S-2 education (1987) was completed at the Faculty of Law UI (1987). Doctoral degree in Law was obtained from the Faculty of Postgraduate UI, Sandwich Program in collaboration with Rechtsfaculteit Rijks-Universiteit and Van Voolenhoven Institute, Leiden (1990). In 1998 he was appointed as a Full Professor of Constitutional Law, Faculty of Law UI and was trusted as the Chairman and Person in Charge of the Postgraduate Program in the Field of Constitutional Law, Faculty of Law UI.

In addition to serving his alma mater, his devotion to the nation and state has never been interrupted. He has served as Expert Advisor to the Minister of Industry & trade, Expert Advisor to the Secretariat General of the MPR-RI, 2002-2003, Expert Advisor to the Minister of Industry and Trade of the Republic of Indonesia in the period 2002-2003, Member of the expert team of various draft laws in the field of law and politics, Ministry of Home Affairs, Ministry of Justice and Human Rights, as well as the Ministry of Industry and Trade, in the period 1997-2003 and many more.

He has also served as Chairman of the Honorary Board of The Organizers of the Republic of Indonesia (DKPP) for the period 2012-2017. Previously served as Chairman of the Constitutional Court of the Republic of Indonesia for the period 2003-2008 and Member of the Presidential Advisory Council (Wantimpres) of the Republic of Indonesia in 2010. Before becoming a Constitutional Judge, he also served as Assistant to the Vice President of the Republic of Indonesia B.J. Habibie.

#### **Dr. Yusuf Al-Qaradhawi**

Dr. Yusuf Al-Qaradhawi is a very famous scholar in the world because of his depth of knowledge and da'wah. He became a reference to many circles because of his ability to answer all the problems of the people in accordance with the guidance of the Quran and hadith. His full name is **Yusuf bin Abdullah bin Ali bin Yusuf**. Meanwhile, al-Qaradhawi is a surname taken from the name of the area where they came from, namely al-Qardhah. When he was not even 10 years old, he had been able to memorize the Qur'an al-Karim. After completing his education at *Ma'had Thantha* and *Ma'had Tsanawi*, he continued his education at the **Ushuluddin Faculty of al-Azhar University**, Cairo. His thoughts were heavily influenced by the Muslim scholar Hasan Al Banna.

There are approximately 125 books that he has written in various Islamic departments, there are at least 13 aspects of categories in Qaradhawi's work, such

as problems: fiqh and ushul fiqh, islamic economics, Ulum Al Quran and As sunnah, akidah and philosophy, fiqh behavior, proselytizing and tarbiyah, islamic movements and revivals, unification of Islamic thought, general Islamic knowledge, series of Islamic figures, literature and others. some of his works have been translated into various languages including Indonesian, noted, at least 55 Qaradhawi book titles have been translated into Indonesian.

### **Prof. Jean Bodin**

Jean Bodin was a political philosopher originally from France. His theory regarding the principle of stable rule had a very strong influence on mainland Europe in those days, when the middle system was transformed into centralized. Jean Bodin, who was born in 1530 in Anger, is highly regarded for his assertions regarding the concept of sovereignty of a state. Jean Bodin was born after the events of the Protestant Reformation and although he was a devout Catholic, in his time he was already very concerned about the issue of religious differences. At the end of his life, Jean Bodin even wrote about interfaith dialogue, including representatives of judaism, Islam, and natural theology.

Having received religious education in his youth, Jean Bodin decided to study at the Law Department of the University of Toulouse. Not only being a student, at the university Jean Bodin also dedicated himself as a teacher after he finished his education. He also briefly worked for the government as a lawyer in the government but in the end he decided to quit.

Jean Bodin is also known as a book author. His books were mostly written in French and briefly translated into Latin. Jean Bodin's writings were much inspired by Ramism, especially on its structure. His most notable book, The Six Bookes of a Commonweale published in 1576 made him famous throughout Europe around the seventeenth century. Jean Bodin chose to spend his retirement in a town called Laon. There, he lived quietly for thirteen years before finally being hit by the onslaught of the epidemic of the plague that was then rampant attacking residents and causing him to die.

### **Hugo de Groot**

Hugo de Groot or commonly known as Gratius is a Dutch thinker of international caliber with a myriad of monumental works which of course his work is used in international community references. Not only that grotius's thinking is also very useful and relatively enduring to world history. born in the city of Delft, Netherlands on April 10, 1583. Grotius began his academic career at the University of Laiden at the age of eleven in 1594, so he was dubbed a precocious child. Grotius graduated from Leiden University in 1597 then joined Jusn van Nasau and Johan van Oldenbarnevelt on a diplomatic mission to France aimed at preventing France

from entering into a peace treaty with Spain, as the Netherlands was involved in a war to liberate itself from Spain.

In 1601 Grous began a career as a historian who among others wrote about the legitimacy of the Dutch independence struggle from the Spanish Government as outlined in his book *De Anquitate Reipublicae Batavicae* (The Anquity of the Batavian Republic). Three years later in 1604 when he turned 23, Grous opened a law office and one of his main clients was the Dutch East India Company. As a legal praction Grous was involved in the settlement of a legal dispute between the Portuguese and the Dutch in the trade issue in the Strait of Malacca in 1602. As a result of his involvement, Grous later wrote a book under the title *De Jure Praedae* (The legal spoils). Although the book is incomplete it contains Grous' legal arguments in the case. For no apparent reason, Grous never published the book. The manuscript was later found at an auction in 1864. One of the important parts of the manuscript is the chapter that discusses the concept of the *Mare Liberum* (Free Sea) which contains legal arguments for defending the trading rights of the Dutch East India Company in the 11-year negotiations of an armistice between Spain and the Netherlands in 1609.

### **Thomas Hobbes**

Thomas Hobbes was born in Westport, adjacent to Malmesbury, England, on 5 April 1588. In 1640, Hobbes wrote an article defending King Charles I's broad interpretation of his own rights on the subject, and the royalist member of Parliament used part of Hobbes' treatise in the debate.

The treatise was circulated, and *The Elements of Law, Natural and Politic* became Hobbes' first work of political philosophy (although he never intended to publish it as a book).

### **Jean-Jacques Rousseau**

Jean-Jacques Rousseau was born June 28, 1712 in Geneva, Switzerland. (French: [ʒɑʁzak ʁuso]) was an 18th-century Geneva philosopher, writer, and composer. His political philosophy influenced the French Revolution as well as the overall development of modern political, sociological, and educational thought. It is known that his works could not be separated from the experiences of childhood, his father always read romance stories while Jean slept at night.

In 1750, at the age of thirty-eight Rousseau suddenly became famous. The Dijon Academy offers the best essay prize on the subject matter: "whether art and science do have benefits for humanity", managed to get the first prize. After that his name crossed. Other works came, including *Discourse on the Origin of Inequality* (1755); *La nouvelle Heloise* (1761); *Emile* (1762); *The Social Contract* (1762); *Confessions* (1770), all his works made him even more famous. Because Rousseau

loved music, he composed two operas, each of which was *Les muses galantes* and *Le devin du village*.





## Appendix II

### UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945

#### PEMBUKAAN

##### (Preamble)

Bahwa sesungguhnya Kemerdekaan itu ialah hak segala bangsa dan oleh sebab itu, maka penjajahan di atas dunia harus dihapuskan, karena tidak sesuai dengan peri-kemanusiaan dan peri-keadilan.

Dan perjuangan pergerakan kemerdekaan Indonesia telah sampailah kepada saat yang berbahagia dengan selamat sentausa mengantarkan rakyat Indonesia ke depan pintu gerbang kemerdekaan Negara Indonesia, yang merdeka, bersatu, berdaulat, adil dan makmur.

Atas berkat rakhmat Allah Yang Maha Kuasa dan dengan didorongkan oleh keinginan luhur, supaya berkehidupan kebangsaan yang bebas, maka rakyat Indonesia menyatakan dengan ini kemerdekaannya.

Kemudian daripada itu untuk membentuk suatu Pemerintah Negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial, maka disusunlah Kemerdekaan Kebangsaan Indonesia itu dalam suatu Undang-Undang Dasar Negara Indonesia, yang terbentuk dalam suatu susunan Negara Republik Indonesia yang berkedaulatan rakyat dengan berdasarkan kepada Ketuhanan Yang Maha Esa, Kemanusiaan yang adil dan beradab, Persatuan Indonesia dan Kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam Permusyawaratan/Perwakilan, serta dengan mewujudkan suatu Keadilan Sosial bagi seluruh rakyat Indonesia.

#### UNDANG-UNDANG DASAR

##### BAB I

##### BENTUK DAN KEDAULATAN

###### Pasal 1

- (1) Negara Indonesia ialah Negara Kesatuan yang berbentuk Republik.
- (2) Kedaulatan berada di tangan rakyat dan dilaksanakan menurut Undang-Undang Dasar. \*\*\*)
- (3) Negara Indonesia adalah negara hukum.\*\*\*)

##### BAB II

##### MAJELIS PERMUSYAWARATAN RAKYAT

###### Pasal 2

- (1) Majelis Permusyawaratan Rakyat terdiri atas anggota-anggota Dewan Perwakilan Rakyat, dan anggota Dewan Perwakilan Daerah yang dipilih melalui pemilihan umum dan diatur lebih lanjut dengan undang-undang.\*\*\*\*)
- (2) Majelis Permusyawaratan Rakyat bersidang sedikitnya sekali dalam lima tahun di Ibu Kota Negara.
- (3) Segala putusan Majelis Permusyawaratan Rakyat ditetapkan dengan suara yang terbanyak.

###### Pasal 3

- (1) Majelis Permusyawaratan Rakyat berwenang mengubah dan menetapkan Undang-undang Dasar. \*\*\*)
- (2) Majelis Permusyawaratan Rakyat melantik Presiden dan/atau Wakil Presiden.\*\*\*/\*\*\*\*)
- (3) Majelis Permusyawaratan Rakyat hanya dapat memberhentikan Presiden dan/atau Wakil Presiden dalam masa jabatannya menurut Undang-Undang Dasar.\*\*\*/\*\*)

##### BAB III

##### KEKUASAAN PEMERINTAHAN NEGARA

###### Pasal 4

- (1) Presiden Republik Indonesia memegang kekuasaan pemerintahan menurut Undang-Undang Dasar.
- (2) Dalam melakukan kewajibannya Presiden dibantu oleh satu orang Wakil Presiden.

#### **Pasal 5**

- (1) Presiden berhak mengajukan rancangan undang-undang kepada Dewan Perwakilan Rakyat.\*)
- (2) Presiden menetapkan peraturan pemerintah untuk menjalankan undang-undang sebagaimana mestinya.

#### **Pasal 6**

- (1) Calon Presiden dan calon Wakil Presiden harus seorang warga negara Indonesia sejak kelahirannya dan tidak pernah menerima kewarganegaraan lain karena kehendaknya sendiri, tidak pernah mengkhianati negara, serta mampu secara rohani dan jasmani untuk melaksanakan tugas dan kewajiban sebagai Presiden dan Wakil Presiden.\*\*\*)
- (2) Syarat-syarat untuk menjadi Presiden dan Wakil Presiden diatur lebih lanjut dengan undang-undang.\*\*\*)

#### **Pasal 6A**

- (1) Presiden dan Wakil Presiden dipilih dalam satu pasangan secara langsung oleh rakyat.\*\*\*)
- (2) Pasangan calon Presiden dan Wakil Presiden diusulkan oleh partai politik atau gabungan partai politik peserta pemilihan umum sebelum pelaksanaan pemilihan umum.\*\*\*)
- (3) Pasangan calon Presiden dan Wakil Presiden yang mendapatkan suara lebih dari lima puluh persen dari jumlah suara dalam pemilihan umum dengan sedikitnya dua puluh persen suara disetiap provinsi yang tersebar di lebih dari setengah jumlah provinsi di Indonesia, dilantik menjadi Presiden dan Wakil Presiden.\*\*\*)
- (4) Dalam hal tidak ada pasangan calon Presiden dan Wakil Presiden terpilih, dua pasangan calon yang memperoleh suara terbanyak pertama dan kedua dalam pemilihan umum dipilih oleh rakyat secara langsung dan pasangan yang memperoleh suara rakyat terbanyak dilantik sebagai Presiden dan Wakil Presiden.\*\*\*\*)
- (5) Tata cara pelaksanaan pemilihan Presiden dan Wakil Presiden lebih lanjut diatur dalam undang-undang.\*\*\*)

#### **Pasal 7**

Presiden dan Wakil Presiden memegang jabatan selama lima tahun, dan sesudahnya dapat dipilih kembali dalam jabatan yang sama, hanya untuk satu kali masa jabatan.\*)

#### **Pasal 7A**

Presiden dan/atau Wakil Presiden dapat diberhentikan dalam masa jabatannya oleh Majelis Permusyawaratan Rakyat atas usul Dewan Perwakilan Rakyat, baik apabila terbukti telah melakukan pelanggaran hukum berupa pengkhianatan terhadap negara, korupsi, penyuapan, tindak pidana berat lainnya, atau perbuatan tercela maupun apabila terbukti tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden.\*\*\*)

#### **Pasal 7B**

- (1) Usul pemberhentian Presiden dan/atau Wakil Presiden dapat diajukan oleh Dewan Perwakilan Rakyat kepada Majelis Permusyawaratan Rakyat hanya dengan terlebih dahulu mengajukan permintaan kepada Mahkamah Konstitusi untuk memeriksa, mengadili, dan memutus Dewan Perwakilan Rakyat bahwa Presiden dan/atau Wakil Presiden telah melakukan pelanggaran hukum berupa pengkhianatan terhadap negara, korupsi, penyuapan, tindak pidana berat lainnya, atau perbuatan tercela; dan/atau pendapat bahwa Presiden dan/atau Wakil Presiden tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden.\*\*\*)
- (2) Pendapat Dewan Perwakilan Rakyat bahwa Presiden dan/atau Wakil Presiden telah melakukan pelanggaran hukum tersebut ataupun telah tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden adalah dalam rangka pelaksanaan fungsi pengawasan Dewan Perwakilan Rakyat.\*\*\*)
- (3) Pengajuan permintaan Dewan Perwakilan Rakyat kepada Mahkamah Konstitusi hanya dapat dilakukan dengan dukungan sekurang-kurangnya 2/3 dari jumlah anggota Dewan Perwakilan Rakyat yang hadir dalam sidang paripurna yang dihadiri oleh sekurang-kurangnya 2/3 dari jumlah anggota Dewan Perwakilan Rakyat.\*\*\*)
- (4) Mahkamah Konstitusi wajib memeriksa, mengadili, dan memutus dengan seadil-adilnya terhadap Dewan Perwakilan Rakyat tersebut paling lama sembilan puluh hari setelah permintaan Dewan Perwakilan Rakyat itu diterima oleh Mahkamah Konstitusi.\*\*\*)
- (5) Apabila Mahkamah Konstitusi memutuskan bahwa Presiden dan/atau Wakil Presiden terbukti melakukan pelanggaran hukum berupa pengkhianatan terhadap negara, korupsi, penyuapan, tindak pidana berat lainnya, atau perbuatan tercela; dan/atau terbukti bahwa Presiden dan/atau Wakil Presiden tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden, Dewan Perwakilan Rakyat menyelenggarakan sidang paripurna untuk meneruskan usul pemberhentian Presiden dan/atau Wakil Presiden kepada Majelis Permusyawaratan Rakyat.\*\*\*)
- (6) Majelis Permusyawaratan Rakyat wajib menyelenggarakan sidang untuk memutuskan usul Dewan Perwakilan Rakyat tersebut paling lambat tiga puluh hari sejak Majelis Permusyawaratan Rakyat menerima usul tersebut.\*\*\*)

- (7) Keputusan Majelis Permusyawaratan Rakyat atas usul pemberhentian Presiden dan/atau Wakil Presiden harus diambil dalam rapat paripurna Majelis Permusyawaratan yang dihadiri oleh sekurang-kurangnya ¾ dari jumlah anggota dan disetujui oleh sekurang-kurangnya 2/3 dari jumlah anggota yang hadir, setelah Presiden dan/atau Wakil Presiden diberi kesempatan menyampaikan penjelasan dalam rapat paripurna Majelis Permusyawaratan Rakyat.\*\*\*)

#### **Pasal 7C**

Presiden tidak dapat membekukan dan/atau membubarkan Dewan Perwakilan Rakyat.\*\*\*)

#### **Pasal 8**

- (1) Jika Presiden mangkat, berhenti, diberhentikan atau tidak dapat melakukan kewajibannya dalam masa jabatannya, ia digantikan oleh Wakil Presiden sampai habis masa jabatannya.\*\*\*)
- (2) Dalam hal terjadi kekosongan Wakil Presiden, selambat-lambatnya dalam waktu enam puluh hari, Majelis Permusyawaratan Rakyat menyelenggarakan sidang untuk memilih Wakil Presiden dari dua calon yang diusulkan oleh Presiden.\*\*\*)
- (3) Jika Presiden dan Wakil Presiden mangkat, berhenti, diberhentikan, atau tidak dapat melakukan kewajibannya dalam masa jabatannya secara bersamaan, pelaksanaan tugas Kepresidenan adalah Menteri Luar Negeri, Menteri Dalam Negeri dan Menteri Pertahanan secara bersama-sama. Selambat-lambatnya tiga puluh hari setelah itu, Majelis Permusyawaratan Rakyat menyelenggarakan sidang untuk memilih Presiden dan Wakil Presiden dari dua pasangan calon Presiden dan wakil Presiden yang diusulkan oleh partai politik atau gabungan partai politik yang pasangan calon Presiden dan Wakil Presidennya meraih suara terbanyak pertama dan kedua dalam pemilihan umum sebelumnya, sampai berakhir masa jabatannya.\*\*\*\*)

#### **Pasal 9**

- (1) Sebelum memangku jabatannya, Presiden dan wakil Presiden bersumpah menurut agama, atau berjanji dengan sungguh-sungguh di hadapan Majelis Permusyawaratan Rakyat atau Dewan Perwakilan Rakyat sebagai berikut :

Sumpah Presiden (Wakil Presiden) :

"Demi Allah saya bersumpah akan memenuhi kewajiban Presiden Republik Indonesia (Wakil Presiden Republik Indonesia) dengan sebaik-baiknya dan seadil-adilnya, memegang teguh Undang-Undang Dasar dan menjalankan segala undang-undang dan peraturannya dengan selurus-lurusnya serta berbakti, kepada Nusa dan Bangsa."

Janji Presiden (Wakil Presiden) :

"Saya berjanji dengan sungguh-sungguh akan memenuhi kewajiban Presiden Republik Indonesia (Wakil Presiden Republik Indonesia) dengan sebaik – baiknya dan seadil – adilnya, memegang teguh Undang-Undang Dasar dan menjalankan segala undang-undang dan peraturannya dengan selurus-lurusnya serta berbakti, kepada Nusa dan Bangsa".\*)

- (2) Jika Majelis Permusyawaratan Rakyat atau Dewan Perwakilan Rakyat tidak dapat mengadakan sidang, Presiden dan Wakil Presiden bersumpah menurut agama, atau berjanji dengan sungguh-sungguh di hadapan pimpinan Majelis Permusyawaratan Rakyat dengan disaksikan oleh Pimpinan Mahkamah Agung.\*)"

#### **Pasal 10**

Presiden memegang kekuasaan yang tertinggi atas Angkatan Darat, Angkatan Laut dan Angkatan Udara.

#### **Pasal 11**

- (1) Presiden dengan persetujuan Dewan Perwakilan Rakyat menyatakan perang, membuat perdamaian dan perjanjian dengan negara lain.\*\*\*\*)
- (2) Presiden dalam membuat perjanjian internasional lainnya yang menimbulkan akibat yang luas dan mendasar bagi kehidupan rakyat yang terkait dengan beban keuangan negara, dan/atau mengharuskan perubahan atau pembentukan undang-undang harus dengan persetujuan Dewan Perwakilan Rakyat.\*\*\*)
- (3) Ketentuan lebih lanjut tentang perjanjian internasional diatur dengan undang-undang.\*\*\*)

#### **Pasal 12**

Presiden menyatakan keadaan bahaya. Syarat-syarat dan akibatnya keadaan bahaya ditetapkan dengan undang-undang.

#### **Pasal 13**

- (1) Presiden mengangkat duta dan konsul.
- (2) Dalam hal mengangkat duta, Presiden memperhatikan pertimbangan Dewan Perwakilan Rakyat.\*
- (3) Presiden menerima penempatan duta negara lain dengan memperhatikan pertimbangan Dewan Perwakilan Rakyat.\*)

#### **Pasal 14**

- (1) Presiden memberi grasi dan rehabilitasi dengan memperhatikan pertimbangan Mahkamah Agung.\*)
- (2) Presiden memberi amnesti dan abolisi dengan memperhatikan pertimbangan Dewan Perwakilan Rakyat.\*)

#### **Pasal 15**

Presiden memberi gelar, tanda jasa, dan lain-lain tanda kehormatan yang diatur dengan undang-undang.\*)

#### **Pasal 16**

Presiden membentuk suatu dewan pertimbangan yang bertugas memberikan nasihat dan pertimbangan kepada Presiden, yang selanjutnya diatur dalam undang-undang.\*\*\*\*)

### **BAB IV**

#### **DEWAN PERTIMBANGAN AGUNG**

Dihapus\*\*\*\*)

### **BAB V**

#### **KEMENTERIAN NEGARA**

#### **Pasal 17**

- (1) Presiden dibantu oleh menteri-menteri negara.
- (2) Menteri-menteri itu diangkat dan diberhentikan oleh Presiden.\*)
- (3) Setiap menteri membidangi urusan tertentu dalam pemerintahan.\*)
- (4) Pembentukan, pengubahan, dan pembubaran kementerian negara diatur dalam undang-undang.\*\*\*)

### **BAB VI**

#### **PEMERINTAH DAERAH**

#### **Pasal 18**

- (1) Negara Kesatuan Republik Indonesia dibagi atas daerah-daerah provinsi dan daerah provinsi itu dibagi atas kabupaten dan Kota, yang tiap-tiap provinsi, kabupaten, dan kota itu mempunyai pemerintahan daerah, yang diatur dengan undang-undang.\*\* )
- (2) Pemerintah daerah provinsi, daerah Kabupaten, dan Kota mengatur dan mengurus sendiri urusan pemerintahan menurut asas otonomi dan tugas pembantuan.\*\*)
- (3) Pemerintahan daerah provinsi, daerah kabupaten, dan kota memiliki Dewan Perwakilan Rakyat Daerah yang anggota-anggotanya dipilih melalui pemilihan umum.\*\*)
- (4) Gubernur, Bupati, dan Walikota masing-masing sebagai kepala pemerintah daerah provinsi, kabupaten dan kota dipilih secara demokratis.\*\*)
- (5) Pemerintahan daerah menjalankan otonomi seluas-luasnya, kecuali urusan pemerintahan yang oleh undang-undang ditentukan sebagai urusan Pemerintahan Pusat.\*\*)
- (6) Pemerintahan daerah berhak menetapkan peraturan daerah dan peraturan-peraturan lain untuk melaksanakan otonomi dan tugas pembantuan.\*\*)
- (7) Susunan dan tata cara penyelenggaraan pemerintahan daerah diatur dalam undang-undang.\*\* )

#### **Pasal 18A**

- (1) Hubungan wewenang antara pemerintah pusat dan pemerintahan daerah provinsi, kabupaten, dan kota, atau provinsi dan kabupaten dan kota, diatur dengan undang-undang dengan memperhatikan kekhususan dan keragaman daerah.\*\*)
- (2) Hubungan keuangan, pelayanan umum, pemanfaatan sumber daya alam dan sumber daya lainnya antara pemerintah pusat dan pemerintah daerah diatur dan dilaksanakan secara adil dan selaras berdasarkan undang-undang.\*\* )

#### **Pasal 18B**

- (1) Negara mengakui dan menghormati satuan-satuan pemerintahan daerah yang bersifat khusus atau bersifat istimewa yang diatur dengan undang-undang.\*\*)



- (2) Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang.\*\*)

## **BAB VII**

### **DEWAN PERWAKILAN RAKYAT**

#### **Pasal 19**

- (1) Anggota Dewan Perwakilan Rakyat dipilih melalui Pemilihan Umum.\*\*)
- (2) Susunan Dewan Perwakilan Rakyat diatur dengan undang-undang.\*\*)
- (3) Dewan Perwakilan Rakyat bersidang sedikitnya sekali dalam setahun.\*\*)

#### **Pasal 20**

- (1) Dewan Perwakilan Rakyat memegang kekuasaan membentuk undang-undang.\*)
- (2) Setiap rancangan undang-undang dibahas oleh Dewan Perwakilan Rakyat dan Presiden untuk mendapat persetujuan bersama.\* )
- (3) Jika rancangan undang-undang itu tidak mendapat persetujuan bersama, rancangan undang-undang itu tidak boleh diajukan lagi dalam persidangan Dewan Perwakilan Rakyat masa itu.\* )
- (4) Presiden mengesahkan rancangan undang-undang yang telah disetujui bersama untuk menjadi undang-undang.\* )
- (5) Dalam hal rancangan undang-undang yang telah disetujui bersama tersebut tidak disahkan oleh Presiden dalam waktu tiga puluh hari semenjak rancangan undang-undang tersebut disetujui, rancangan undang-undang tersebut sah menjadi undang-undang dan wajib diundangkan.\*\*)

#### **Pasal 20A**

- (1) Dewan Perwakilan Rakyat memiliki fungsi legislasi, fungsi anggaran, dan fungsi pengawasan.\*\* )
- (2) Dalam melaksanakan fungsinya, selain hak yang diatur dalam pasal-pasal lain Undang-Undang Dasar ini, Dewan Perwakilan Rakyat mempunyai hak interplasi, hak angket, dan hak menyatakan pendapat.\*\* )
- (3) Selain hak yang diatur dalam pasal-pasal lain Undang-Undang Dasar ini, setiap anggota Dewan Perwakilan Rakyat mempunyai hak mengajukan pertanyaan, menyampaikan usul dan pendapat, serta hak imunitas.\*\*)
- (4) Ketentuan lebih lanjut tentang hak Dewan Perwakilan Rakyat dan hak anggota Dewan Perwakilan Rakyat diatur dalam undang-undang.\*\*)

#### **Pasal 21**

Anggota Dewan Perwakilan Rakyat berhak mengajukan usul rancangan undang-undang.\*)

#### **Pasal 22**

- (1) Dalam hal ihwal kegentingan yang memaksa, Presiden berhak menetapkan peraturan pemerintah sebagai pengganti undang-undang.
- (2) Peraturan pemerintah itu harus mendapat persetujuan Dewan Perwakilan Rakyat dalam persidangan yang berikut.
- (3) Jika tidak mendapat persetujuan, maka peraturan pemerintah itu harus dicabut.

#### **Pasal 22A**

Ketentuan lebih lanjut tentang tata cara pembentukan undang-undang diatur dengan undang-undang.\*\*)

#### **Pasal 22B**

Anggota Dewan Perwakilan Rakyat dapat diberhentikan dari jabatannya, yang syarat-syarat dan tata caranya diatur dalam undang-undang.\*\*)

## **BAB VIIA\*\*\*)**

### **DEWAN PERWAKILAN DAERAH**

#### **Pasal 22C**

- (1) Anggota Dewan Perwakilan Daerah dipilih dari setiap provinsi melalui pemilihan umum.\*\*\* )
- (2) Anggota Dewan Perwakilan Daerah dari setiap provinsi jumlahnya sama dan jumlah seluruh anggota Dewan Perwakilan Daerah itu tidak lebih dari sepertiga jumlah anggota Dewan Perwakilan Rakyat.\*\*\*)
- (3) Dewan Perwakilan Daerah bersidang sedikitnya sekali dalam setahun.\*\*\*)
- (4) Susunan dan kedudukan Dewan Perwakilan Daerah diatur dengan undang-undang.\*\*\*)

#### **Pasal 22D**

- (1) Dewan Perwakilan Daerah dapat mengajukan kepada Dewan Perwakilan Rakyat rancangan undang-undang yang berkaitan dengan otonomi daerah, hubungan pusat dan daerah, pembentukan dan pemekaran serta penggabungan daerah, pengelolaan sumber daya alam dan sumber daya ekonomi lainnya, serta perimbangan keuangan pusat dan daerah, serta yang berkaitan dengan perimbangan keuangan pusat dan daerah.\*\*\*)
- (2) Dewan Perwakilan Daerah ikut membahas rancangan undang-undang yang berkaitan dengan otonomi daerah; hubungan pusat dan daerah; pembentukan, pemekaran, dan penggabungan daerah; pengelolaan sumber daya alam dan sumber daya ekonomi lainnya, serta perimbangan keuangan pusat dan daerah; serta memberikan pertimbangan kepada Dewan Perwakilan Rakyat atas rancangan undang-undang yang berkaitan dengan pajak, pendidikan dan agama.\*\*\*)
- (3) Dewan Perwakilan Daerah dapat melakukan pengawasan atas pelaksanaan undang-undang mengenai : otonomi daerah, pembentukan, pemekaran dan penggabungan daerah, hubungan pusat dan daerah, pengelolaan sumber daya alam dan sumber daya ekonomi lainnya, pelaksanaan anggaran pendapatan dan belanja negara, pajak, pendidikan, dan agama serta menyampaikan hasil pengawasannya itu kepada Dewan Perwakilan Rakyat sebagai bahan pertimbangan untuk ditindaklanjuti.\*\*\*)
- (4) Anggota Dewan Perwakilan Daerah dapat diberhentikan dari jabatannya, yang syarat-syarat dan tata caranya diatur dalam undang-undang.\*\*\*)

### **BAB VIIB\*\*\*)**

#### **PEMILIHAN UMUM**

#### **Pasal 22E**

- (1) Pemilihan umum dilaksanakan secara langsung, umum, bebas, rahasia, jujur, dan adil setiap lima tahun sekali.\*\*\*)
- (2) Pemilihan umum diselenggarakan untuk memilih anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Presiden dan wakil presiden dan Dewan Perwakilan Rakyat Daerah.\*\*\*)
- (3) Peserta pemilihan umum untuk memilih anggota Dewan Perwakilan Rakyat dan anggota Dewan Perwakilan Rakyat Daerah adalah partai politik.\*\*\*)
- (4) Peserta pemilihan umum untuk memilih anggota Dewan Perwakilan Daerah adalah perseorangan.\*\*\*)
- (5) Pemilihan umum diselenggarakan oleh suatu komisi pemilihan umum yang bersifat nasional, tetap, dan mandiri.\*\*\*)
- (6) Ketentuan lebih lanjut tentang pemilihan umum diatur dengan undang-undang.\*\*\*)

### **BAB VIII**

#### **HAL KEUANGAN**

#### **Pasal 23**

- (1) Anggaran pendapatan dan belanja negara sebagai wujud dari pengelolaan keuangan negara ditetapkan setiap tahun dengan undang-undang dan dilaksanakan secara terbuka dan bertanggung jawab untuk sebesar-besarnya kemakmuran rakyat.\*\*\*)
- (2) Rancangan undang-undang anggaran pendapatan dan belanja negara diajukan oleh Presiden untuk dibahas bersama Dewan Perwakilan Rakyat dengan memperhatikan pertimbangan Dewan Perwakilan Daerah.\*\*\*)
- (3) Apabila Dewan Perwakilan Rakyat tidak menyetujui rancangan anggaran pendapatan dan belanja negara yang diusulkan oleh Presiden, Pemerintah menjalankan Anggaran Pendapatan dan Belanja Negara tahun yang lalu.\*\*\*)

#### **Pasal 23A**

Pajak dan pungutan lain yang bersifat memaksa untuk keperluan negara diatur dengan undang-undang.\*\*\*)

#### **Pasal 23B**

Macam dan harga mata uang ditetapkan dengan undang-undang.\*\*\*

#### **Pasal 23C**

Hal-hal lain mengenai keuangan negara diatur dengan undang-undang.\*\*\*

#### **Pasal 23D**

Negara memiliki suatu bank sentral yang susunan, kedudukan, kewenangan, tanggung jawab, dan independensinya diatur dengan undang-undang.\*\*\*

## **BAB VIII \*\*\*)**

### **BADAN PEMERIKSA KEUANGAN**

#### **Pasal 23 E**

- (1) Untuk memeriksa pengelolaan dan tanggung jawab tentang keuangan negara diadakan satu Badan Pemeriksa Keuangan yang bebas dan mandiri.\*\*\* )
- (2) Hasil pemeriksaan keuangan negara diserahkan kepada Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah, sesuai dengan kewenangannya.\*\*\* )
- (3) Hasil pemeriksaan tersebut ditindaklanjuti oleh lembaga perwakilan dan/atau badan sesuai dengan undang-undang.\*\*\* )

#### **Pasal 23F**

- (1) Anggota Badan Pemeriksa Keuangan dipilih oleh Dewan Perwakilan Rakyat dengan memperhatikan pertimbangan Dewan Perwakilan Daerah dan diresmikan oleh Presiden.\*\*\*)
- (2) Pimpinan Badan Pemeriksa Keuangan dipilih dari dan oleh anggota.\*\*\* )

#### **Pasal 23G**

- (1) Badan Pemeriksa Keuangan berkedudukan di ibu kota negara, dan memiliki perwakilan di setiap provinsi.\*\*\* )
- (2) Ketentuan lebih lanjut mengenai Badan Pemeriksa Keuangan diatur dengan undang-undang.\*\*\*)

## **BAB IX**

### **KEKUASAAN KEHAKIMAN**

#### **Pasal 24**

- (1) Kekuasaan Kehakiman merupakan kekuasaan yang merdeka untuk menyelenggarakan peradilan guna menegakkan hukum dan keadilan.\*\*\* )
- (2) Kekuasaan kehakiman dilakukan oleh sebuah Mahkamah Agung dan badan peradilan yang berada di bawahnya dalam lingkungan peradilan umum, lingkungan peradilan agama, lingkungan peradilan militer, lingkungan peradilan tata usaha negara, dan oleh sebuah Mahkamah Konstitusi.\*\*\*)
- (3) Badan-badan lain yang fungsinya berkaitan dengan kekuasaan kehakiman diatur dalam undang-undang.\*\*\*)

#### **Pasal 24A**

- (1) Mahkamah Agung berwenang mengadili pada tingkat kasasi, menguji peraturan perundang-undangan di bawah undang-undang terhadap undang-undang, dan mempunyai wewenang lainnya yang diberikan oleh undang-undang.\*\*\* )
- (2) Hakim Agung harus memiliki integritas dan kepribadian yang tidak tercela, adil, profesional, dan berpengalaman di bidang hukum.\*\*\*)
- (3) Calon Hakim Agung diusulkan Komisi Yudisial kepada Dewan Perwakilan Rakyat untuk mendapatkan persetujuan dan selanjutnya ditetapkan sebagai hakim agung oleh Presiden.\*\*\* )
- (4) Ketua dan wakil ketua Mahkamah Agung dipilih dari dan oleh hakim agung.\*\*\*)
- (5) Susunan, kedudukan, keanggotaan, dan hukum acara Mahkamah Agung serta badan peradilan di bawahnya diatur dengan undang-undang.\*\*\*)

#### **Pasal 24 B**

- (1) Komisi Yudisial bersifat mandiri yang berwenang mengusulkan pengangkatan hakim agung dan mempunyai wewenang lain dalam rangka menjaga dan menegakkan kehormatan, keluhuran martabat, serta perilaku hakim.\*\*\*)
- (2) Anggota Komisi Yudisial harus mempunyai pengetahuan dan pengalaman di bidang hukum serta memiliki integritas dan kepribadian yang tidak tercela.\*\*\* )
- (3) Anggota Yudisial diangkat dan diberhentikan oleh Presiden dengan persetujuan Dewan Perwakilan Rakyat.\*\*\* )
- (4) Susunan, kedudukan, dan keanggotaan Komisi Yudisial diatur dengan undang-undang.\*\*\* )

#### **Pasal 24C\*\*\***

- (1) Mahkamah Konstitusi berwenang mengadili pada tingkat pertama dan terakhir yang putusannya bersifat final untuk menguji undang-undang terhadap Undang-Undang Dasar, memutus sengketa kewenangan lembaga negara yang kewenangannya diberikan oleh Undang-Undang Dasar, memutus pembubaran partai politik dan memutus perselisihan tentang hasil pemilihan umum.\*\*\* )
- (2) Mahkamah Konstitusi wajib memberikan putusan atas pendapat Dewan Perwakilan Rakyat mengenai dugaan pelanggaran oleh Presiden dan/atau Wakil Presiden menurut Undang-Undang Dasar.\*\*\* )

- (3) Mahkamah Konstitusi mempunyai sembilan orang anggota hakim konstitusi yang ditetapkan oleh Presiden, yang diajukan masing-masing tiga orang oleh Mahkamah Agung, tiga orang oleh Dewan Perwakilan Rakyat, dan tiga orang oleh Presiden. \*\*\*)
- (4) Ketua dan Wakil Ketua Mahkamah Konstitusi dipilih dari dan oleh hakim konstitusi.\*\*\*
- (5) Hakim konstitusi harus memiliki integritas dan kepribadian yang tidak tercela, adil, negarawan yang menguasai konstitusi dan ketatanegaraan, serta tidak merangkap sebagai pejabat negara.\*\*\*)
- (6) Pengangkatan dan pemberhentian hakim konstitusi, hukum acara serta ketentuan lainnya tentang Mahkamah Konstitusi diatur dengan undang-undang.\*\*\*)

#### **Pasal 25**

Syarat-syarat untuk menjadi dan untuk diberhentikan sebagai hakim ditetapkan dengan undang-undang

### **BAB IXA\*\*)**

#### **WILAYAH NEGARA**

##### **Pasal 25\*\*\*\*)**

Negara Kesatuan Republik Indonesia adalah sebuah negara kepulauan yang berciri Nusantara dengan wilayah dan batas-batas dan hak-haknya ditetapkan dengan undang-undang.\*\*)

### **BAB X**

#### **WARGA NEGARA DAN PENDUDUK**

##### **Pasal 26**

- (1) Yang menjadi warga negara ialah orang-orang bangsa Indonesia asli dan orang-orang bangsa lain yang disahkan dengan undang-undang sebagai warga negara.
- (2) Penduduk ialah warga negara Indonesia dan orang asing yang bertempat tinggal di Indonesia.\*\*)
- (3) Hal-hal mengenai warga negara dan penduduk diatur dengan undang-undang.\*\*)

##### **Pasal 27**

- (1) Segala warga negara bersamaan kedudukannya di dalam hukum dan pemerintahan dan wajib menjunjung hukum dan pemerintahan itu dengan tidak ada kecualinya.
- (2) Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan.
- (3) Setiap warga negara berhak dan wajib ikut serta dalam upaya pembelaan negara.\*\*\*)

##### **Pasal 28**

Kemerdekaan berserikat dan berkumpul, mengeluarkan pikiran dengan lisan dan tulisan dan sebagainya ditetapkan dengan undang-undang.

### **BAB XA\*\*)**

#### **HAK ASASI MANUSIA**

##### **Pasal 28A**

Setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya.\*\*)

##### **Pasal 28 B**

- (1) Setiap orang berhak membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah.\*\*)
- (2) Setiap anak berhak atas kelangsungan hidup, tumbuh, dan berkembang serta berhak atas perlindungan dari kekerasan dan diskriminasi.\*\*)

##### **Pasal 28C**

- (1) Setiap orang berhak mengembangkan diri melalui pemenuhan kebutuhan dasarnya, berhak mendapat pendidikan dan memperoleh manfaat dari ilmu pengetahuan dan teknologi, seni dan budaya, demi meningkatkan kualitas hidupnya dan demi kesejahteraan umat manusia.\*\*)
- (2) Setiap orang berhak untuk memajukan dirinya dalam memperjuangkan haknya secara kolektif untuk membangun masyarakat, bangsa dan negaranya.\*\*)

##### **Pasal 28D**

- (1) Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum.\*\*)
- (2) Setiap orang berhak untuk bekerja serta mendapat imbalan dan perlakuan yang adil dan layak dalam hubungan kerja.\*\*)
- (3) Setiap warga negara berhak memperoleh kesempatan yang sama dalam pemerintahan.\*\*)
- (1) Setiap orang berhak atas status kewarganegaraan.\*\*)



#### **Pasal 28E**

- (1) Setiap orang berhak memeluk agama dan beribadat menurut agamanya, memilih pendidikan dan pengajaran, memilih pekerjaan, memilih kewarganegaraan, memilih tempat tinggal di wilayah negara dan meninggalkannya, serta berhak kembali.\*\* )
- (2) Setiap orang berhak atas kebebasan meyakini kepercayaan, menyatakan pikiran dan sikap, sesuai dengan hati nuraninya.\*\*)
- (3) Setiap orang berhak atas kebebasan berserikat, berkumpul dan mengeluarkan pendapat.\*\*)

#### **Pasal 28F**

Setiap orang berhak untuk berkomunikasi dan memperoleh informasi untuk mengembangkan pribadi dan lingkungan sosialnya, serta berhak untuk mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi dengan menggunakan segala jenis saluran yang tersedia.\*\*)

#### **Pasal 28G**

- (1) Setiap orang berhak atas perlindungan diri pribadi, keluarga, kehormatan, martabat, dan harta benda yang di bawah kekuasaannya, serta berhak atas rasa aman dan perlindungan dari ancaman ketakutan untuk berbuat atau tidak berbuat sesuatu yang merupakan hak asasi.\*\*)
- (2) Setiap orang berhak untuk bebas dari penyiksaan atau perlakuan yang merendahkan derajat martabat manusia dan berhak memperoleh suaka politik dari negara lain.\*\* )

#### **Pasal 28H**

- (1) Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.\*\*)
- (2) Setiap orang berhak mendapat kemudahan dan perlakuan khusus untuk memperoleh kesempatan dan manfaat yang sama guna mencapai persamaan dan keadilan.\*\* )
- (1) Setiap orang berhak atas jaminan sosial yang memungkinkan pengembangan dirinya secara utuh sebagai manusia yang bermartabat.\*\*)
- (4) Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapapun.\*\* )

#### **Pasal 28I**

- (1) Hak untuk hidup, hak untuk tidak disiksa, hak untuk kemerdekaan pikiran dan hati nurani, hak beragama, hak untuk tidak diperbudak, hak untuk diakui sebagai pribadi dihadapan hukum, dan hak untuk tidak dituntut atas dasar hukum yang berlaku surut adalah hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun.\*\* )
- (2) Setiap orang bebas dari perlakuan yang bersifat diskriminatif atas dasar apapun dan berhak mendapatkan perlindungan terhadap perlakuan yang bersifat diskriminatif itu.\*\*)
- (3) Identitas budaya dan hak masyarakat tradisional dihormati selaras dengan perkembangan zaman dan peradaban.\*\*)
- (4) Perlindungan, pemajuan, penegakan, dan pemenuhan hak asasi manusia adalah tanggung jawab negara, terutama pemerintah.\*\* )
- (5) Untuk menegakkan dan melindungi hak asasi manusia sesuai dengan prinsip negara hukum yang demokratis, maka pelaksanaan hak asasi manusia dijamin, diatur, dan dituangkan dalam peraturan perundang-undangan.\*\*)

#### **Pasal 28J**

- (1) Setiap orang wajib menghormati hak asasi manusia orang lain dalam tertib kehidupan bermasyarakat, berbangsa, dan bernegara.\*\* )
- (2) Dalam menjalankan hak dan kebebasannya, setiap orang wajib tunduk kepada pembatasan yang ditetapkan dengan undang-undang dengan maksud semata-mata untuk menjamin pengakuan serta penghormatan atas hak dan kebebasan orang lain dan untuk memenuhi tuntutan yang adil sesuai dengan pertimbangan moral, nilai-nilai agama, keamanan, dan ketertiban umum dalam suatu masyarakat demokratis.\*\* )

### **BAB XI**

#### **A G A M A**

#### **Pasal 29**

- (1) Negara berdasar atas Ketuhanan Yang Maha Esa.
- (2) Negara menjamin kemerdekaan tiap-tiap penduduk untuk memeluk agamanya masing-masing dan untuk beribadat menurut agamanya dan kepercayaannya itu.

### **BAB XII**

## **PERTAHANAN NEGARA DAN KEAMANAN NEGARA\*\*)**

### **Pasal 30**

- (1) Tiap-tiap warga negara berhak dan wajib ikut serta dalam usaha pertahanan dan keamanan negara.\*\*)
- (2) Usaha pertahanan dan keamanan negara dilaksanakan melalui sistem pertahanan dan keamanan rakyat semesta oleh Tentara Nasional Indonesia dan Kepolisian Negara Republik Indonesia, sebagai kekuatan utama, dan rakyat, sebagai kekuatan pendukung.\*\*)
- (3) Tentara Nasional Indonesia terdiri atas Angkatan Darat, Angkatan laut dan Angkatan Udara sebagai alat negara bertugas mempertahankan, melindungi, dan memelihara keutuhan dan kedaulatan negara.\*\*)
- (4) Kepolisian Negara Republik Indonesia sebagai alat negara yang menjaga keamanan dan ketertiban masyarakat bertugas melindungi, mengayomi, melayani masyarakat, serta menegakkan hukum.\*\*)
- (5) Susunan dan kedudukan Tentara Nasional Indonesia, Kepolisian Negara Republik Indonesia, hubungan dan kewenangan Tentara Nasional Indonesia dan Kepolisian Negara Republik Indonesia di dalam menjalankan tugasnya, syarat-syarat keikutsertaan warga negara dalam usaha pertahanan dan keamanan diatur dengan undang-undang.\*\*)

## **BAB XIII**

### **PENDIDIKAN DAN KEBUDAYAAN**

#### **Pasal 31**

- (1) Setiap warga negara berhak mendapat pendidikan\*\*\*\*)
- (2) Setiap warga negara wajib mengikuti pendidikan dasar dan pemerintah wajib membiayainya.\*\*\*\*)
- (3) Pemerintah mengusahakan dan menyelenggarakan satu sistem pendidikan nasional, yang meningkatkan keimanan dan ketakwaan serta ahlak mulia dalam rangka mencerdaskan kehidupan bangsa, yang diatur dengan undang-undang.\*\*\*\*)
- (4) Negara memprioritaskan anggaran pendidikan sekurang-kurangnya dua puluh persen dari anggaran pendapatan dan belanja negara serta dari anggaran pendapatan dan belanja daerah untuk memenuhi kebutuhan penyelenggaraan pendidikan nasional.\*\*\*\*)
- (5) Pemerintah memajukan ilmu pengetahuan dan teknologi dengan menunjang tinggi nilai-nilai agama dan persatuan bangsa untuk kemajuan peradaban serta kesejahteraan umat manusia.\*\*\*\*)

#### **Pasal 32**

- (1) Negara memajukan kebudayaan nasional Indonesia di tengah peradaban dunia dengan menjamin kebebasan masyarakat dalam memelihara dan mengembangkan nilai-nilai budayanya.\*\*\*\*)
- (2) Negara menghormati dan memelihara bahasa daerah sebagai kekayaan budaya nasional.\*\*\*\*)

## **BAB XIV**

### **PEREKONOMIAN NASIONAL DAN KESEJAHTERAAN SOSIAL\*\*\*\*)**

#### **Pasal 33**

- (1) Perekonomian disusun sebagai usaha bersama berdasar atas asas kekeluargaan.
- (2) Cabang-cabang produksi yang penting bagi negara dan yang menguasai hajat hidup orang banyak dikuasai oleh negara.
- (3) Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat.
- (4) Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, efisiensi berkeadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional.\*\*\*\*)
- (5) Ketentuan lebih lanjut mengenai pelaksanaan pasal ini diatur dalam undang-undang.\*\*\*\*)

#### **Pasal 34**

- (1) Fakir miskin dan anak-anak terlantar dipelihara oleh negara.\*\*\*\*)
- (2) Negara mengembangkan sistem jaminan sosial bagi seluruh rakyat dan memberdayakan masyarakat yang lemah dan tidak mampu sesuai dengan martabat kemanusiaan.\*\*\*\*)
- (3) Negara bertanggung jawab atas penyediaan fasilitas pelayanan kesehatan dan fasilitas pelayanan umum yang layak.\*\*\*\*)
- (4) Ketentuan lebih lanjut mengenai pelaksanaan pasal ini diatur dalam undang-undang.\*\*\*\*)

## **BAB XV**

### **BENDERA, BAHASA, DAN LAMBANG NEGARA, SERTA LAGU KEBANGSAAN \*\*)**

### **Pasal 35**

Bendera Negara Indonesia ialah sang merah Putih.

### **Pasal 36**

Bahasa Negara ialah Bahasa Indonesia.

### **Pasal 36A**

Lambang Negara ialah Garuda Pancasila dengan semboyan Bhineka Tunggal Ika.\*\*

### **Pasal 36B**

Lagu Kebangsaan ialah Indonesia Raya.\*\*)

### **Pasal 36C**

Ketentuan lebih lanjut mengenai Bendera, Bahasa dan Lambang Negara, serta Lagu Kebangsaan diatur dengan undang-undang.\*\*)

## **BAB XVI**

### **PERUBAHAN UNDANG-UNDANG DASAR**

#### **Pasal 37**

- (1) Usul perubahan pasal-pasal Undang-Undang Dasar dapat diagendakan dalam sidang Majelis Permusyawaratan Rakyat apabila diajukan oleh sekurang-kurangnya 1/3 dari jumlah anggota Majelis Permusyawaratan Rakyat.\*\*\*\*)
- (2) Setiap usul perubahan pasal-pasal Undang-Undang Dasar diajukan secara tertulis dan ditunjukkan dengan jelas bagian yang diusulkan untuk diubah beserta alasannya.\*\*\*\*)
- (3) Untuk mengubah pasal-pasal Undang-Undang Dasar, sidang Majelis Permusyawaratan Rakyat dihadiri oleh sekurang-kurangnya 2/3 dari jumlah anggota Majelis Permusyawaratan Rakyat.\*\*\*\*)
- (4) Putusan untuk mengubah pasal-pasal Undang-Undang Dasar dilakukan dengan persetujuan sekurang-kurangnya lima puluh persen ditambah satu anggota dari seluruh anggota Majelis Permusyawaratan Rakyat.\*\*\*\*)
- (5) Khusus mengenai bentuk Negara Kesatuan Republik Indonesia tidak dapat dilakukan perubahan.\*\*\*\*)

#### **ATURAN PERALIHAN**

##### **Pasal I**

Segala peraturan perundang-undangan yang ada masih tetap berlaku selama belum diadakan yang baru menurut Undang-Undang Dasar ini.\*\*\*\*)

##### **Pasal II**

Semua lembaga negara yang ada masih tetap berfungsi sepanjang untuk melaksanakan ketentuan Undang-Undang Dasar dan belum diadakan yang baru menurut Undang-Undang Dasar ini.\*\*\*\*)

##### **Pasal III**

Mahkamah Konstitusi dibentuk selambat-lambatnya pada 17 Agustus 2003 dan sebelum dibentuk segala kewenangannya dilakukan oleh Mahkamah Agung.\*\*\*\*)

#### **ATURAN TAMBAHAN**

##### **Pasal I**

Majelis Permusyawaratan Rakyat ditugasi untuk melakukan peninjauan terhadap materi dan status hukum Ketetapan Majelis Permusyawaratan Rakyat Sementara dan Ketetapan Majelis Permusyawaratan Rakyat untuk diambil putusan pada sidang Majelis Permusyawaratan Rakyat tahun 2003.\*\*\*\*)

##### **Pasal II**

Dengan ditetapkannya perubahan Undang-Undang Dasar ini, Undang-Undang Dasar Negara Republik Indonesia tahun 1945 terdiri atas Pembukaan dan pasal-pasal\*\*\*\*)

Perubahan tersebut diputuskan dalam Rapat Paripurna Majelis Permusyawaratan Rakyat Republik Indonesia ke-6 (lanjutan) tanggal 10 Agustus 2002 Sidang Tahunan Majelis Permusyawaratan Rakyat Republik Indonesia, dan mulai berlaku pada tanggal ditetapkan.\*\*\*\*)

**Ditetapkan di Jakarta  
Pada tanggal 10 Agustus 2002.**

#### **KETERANGAN :**

Perubahan UUD 45 dengan diberi tanda bintang : \* pada BAB, Pasal dan Ayat seperti;

- Perubahan Pertama :\*
- Perubahan Kedua :\*\*
- Perubahan Ketiga :\*\*\*
- Perubahan Keempat :\*\*\*\*

## Appendix III

### Deklarasi Islam tentang Perubahan Iklim Global

#### Pembukaan

- 1.1. Tuhan -- yang kami sebut Allah – telah menciptakan alam semesta beserta keragaman, kekayaan dan kehidupan di dalamnya: Bintang-bintang, matahari, bulan, bumi beserta makhluk-makhluk hidup. Semua ini merupakan wujud kebesaran dan mahakasih sang Pencipta yang tak terbatas. Semua makhluk hidup mengabdikan dan mengagungkan sang Maha Pencipta. Semua tunduk kepada kehendak Tuhan. Kita manusia diciptakan untuk mengabdikan kepada Tuhan segenap makhluk; untuk bekerja sebaik yang kita bisa bagi semua spesies, individu dan generasi-generasi ciptaan Tuhan.
- 1.2. Planet kita telah hadir selama empat milyar tahun dan perubahan iklim di dalamnya bukanlah hal yang baru. Iklim bumi telah melalui tahapan basah dan kering, dingin dan hangat, sebagai reaksi terhadap banyak faktor alam. Banyak dari perubahan-perubahan ini berlangsung secara bertahap, sehingga bentuk-bentuk dan komunitas-komunitas hidup bisa menyesuaikan diri. Pernah ada perubahan-perubahan iklim yang bersifat bencana, menimbulkan kepunahan banyak makhluk hidup. Tapi sejalan dengan waktu, kehidupan menyesuaikan diri dengan dampak-dampak ini; muncul sebagai kehidupan baru bersama kemunculan ekosistem yang seimbang seperti yang kita warisi hari ini. Perubahan iklim di masa lalu juga berperan penting dalam penyediaan minyak fosil yang kita nikmati manfaatnya hari ini. Ironisnya, penggunaan sumber energi yang tidak bijaksana dan berpandangan pendek menimbulkan kerusakan kehidupan di muka bumi.
- 1.3. Tahapan perubahan iklim sekarang berbeda dari perubahan iklim bertahap yang pernah terjadi di masa lalu – Zaman Cenozoic. Perubahan iklim sekarang adalah hasil perbuatan manusia. Kita telah menjadi kekuatan dominan di alam. Epos yang kita jalani sekarang menurut istilah geologi disebut *Anthropocene*, atau Zaman Manusia. Spesies kita, meski terpilih menjadi khalifah di muka bumi, telah menyalahgunakan peran itu dan menimbulkan kerusakan sehingga bisa mengakhiri kehidupan yang kita kenal sekarang. Tingkat perubahan iklim sekarang tidak bisa dipertahankan, dan bumi akan segera kehilangan keseimbangannya. Karena kita manusia terjalin kedalam alam, maka segala yang ada di dalamnya harus kita pelihara. Tetapi minyak fosil yang membantu kita mencapai kesejahteraan yang kita miliki sekarang adalah sebab utama perubahan iklim. Pencemaran berat dari penggunaan minyak fosil mengancam berbagai anugerah lain yang diberikan Tuhan kepada kita – seperti iklim yang berfungsi dengan baik, udara bersih, musim yang teratur dan kehidupan laut. Tapi kita telah menyalahgunakan anugerah ini. Apa pandangan anak-cucu kita terhadap kita yang mewariskan kepada mereka planet yang rusak? Bagaimana kita mempertanggungjawabkan ini kepada Tuhan?



- 1.4. Kita mencatat bahwa *Millennium Ecosystem Assessment* (UNEP 2015) yang didukung 1300 ilmuwan dari 95 negara, menemukan bahwa “manusia secara keseluruhan telah membuat perubahan besar pada ekosistem selama paruh akhir abad ke-20, dibanding zaman apa pun dalam sejarah...perubahan-perubahan ini telah meningkatkan kesejahteraan manusia, tapi dibarengi dengan penurunan mutu kehidupan yang terus menerus:

*“Kegiatan manusia membuahakan ketegangan pada fungsi-fungsi alamiah bumi sehingga kemampuan ekosistem planet ini untuk menghidupi generasi mendatang tidak lagi bisa diabaikan.”*

- 1.5. Hampir sepuluh tahun kemudian, kendati berbagai konferensi yang berusaha melanjutkan Protokol Kyoto, bumi secara keseluruhan makin memburuk. Sebuah studi yang dilakukan oleh the *Intergovernmental Panel on Climate Change* (IPCC), yang melibatkan perwakilan-perwakilan dari 100 negara pada bulan Maret 2014, menyampaikan lima sumber kekhawatiran sebagai berikut:

- Ekosistem dan kebudayaan sudah terancam akibat perubahan iklim.
- Perubahan iklim menimbulkan berbagai risiko dari peristiwa-peristiwa ekstrem, seperti gelombang panas, hujan besar mendadak, dan banjir pantai yang semakin meningkat.
- Risiko-risiko itu tersebar secara tidak merata dan umumnya lebih besar menimpa masyarakat miskin dan tak beruntung di setiap negara, pada semua tingkatan pembangunan.
- Dampak-dampak buruk itu akan menimpa keanekaragaman hayati, produk dan jasa yang dihasilkan dari ekosistem dan mempengaruhi perekonomian dunia.
- Sistem bumi terancam perubahan yang mendadak dan tidak bisa dipulihkan.

Kita terdorong untuk berkesimpulan bahwa ada kesalahan serius dalam cara kita menggunakan sumberdaya alam – sumber kehidupan di bumi. Peninjauan ulang yang radikal diperlukan. Ummat manusia tidak dapat mengandalkan kemajuan yang lambat pada semua proses perundingan COP (Conference of Parties – Climate Change Negotiation) sejak Millennium Ecosystem Assessment terbit pada tahun 2005, atau ada kebuntuan negosiasi sekarang ini.

- 1.6. Dalam babakan waktu singkat sejak revolusi industri, kita telah mengonsumsi minyak fosil sebanyak yang dihasilkan bumi selama 250 juta tahun – semua atas nama pembangunan ekonomi dan kemajuan umat manusia. Kita memperhatikan dengan khawatir dampak gabungan dari konsumsi per kapita yang meningkat dan pertumbuhan penduduk. Dengan kekhawatiran yang sama, kita juga melihat perebutan cadangan minyak fosil antar perusahaan-perusahaan multi-nasional tengah berlangsung di bawah lapisan es yang mencair di daerah antartika. Kita mempercepat kehancuran kita sendiri melalui proses-proses ini.

- 1.7. Kita mencatat pernyataan para ilmuwan terkemuka bahwa pada saat ini kenaikan dua derajat suhu bumi yang dianggap 'titik puncak' menjadi 'sangat tidak mungkin' dihindari dengan menganggapnya sebagai keadaan yang biasa. Para ilmuwan terkemuka lain menganggap 1,5 derajat sentigrad lebih mungkin menjadi titik puncak. Inilah titik yang dianggap sebagai ambang bencana perubahan iklim yang akan membawa jutaan manusia dan makhluk lain yang tak terhitung kepada kekeringan, kelaparan dan banjir. Bagian terbesar dari proses ini akan terus ditanggung oleh masyarakat miskin, saat bumi mengalami peningkatan drastis penumpukkan karbon di atmosfer sejak zaman revolusi industri.
- 1.8. Adalah pertanda bahaya bahwa meski peringatan-peringatan dan perkiraan-perkiraan yang merupakan kelanjutan Protokol Kyoto, yang seharusnya sudah berlaku sejak 2012, tertunda terutama karena sikap mementingkan diri sendiri negara-negara kaya dan kuat. Sangatlah penting bagi semua negara, terutama negara-negara maju, untuk meningkatkan upaya dan menerapkan pendekatan pro-aktif yang diperlukan untuk menghentikan, dan mudah-mudahan membalikkan, kerusakan yang tengah berlangsung.

## KAMI MENEGASKAN

2.1. Allah adalah Tuhan dan Pemelihara segala sesuatu

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

Segala puji bagi Allah, Tuhan semesta alam

Qur'an 1:1

Dialah Maha Pencipta

هُوَ اللَّهُ الْخَالِقُ الْبَارِئُ الْمُصَوِّرُ

Dialah Allah, Yang Menciptakan, Yang Menjadikan, Yang memberi bentuk

Qur'an 59: 24

الَّذِي أَحْسَنَ كُلَّ شَيْءٍ خَلَقَهُ

Dialah yang menyempurnakan segala sesuatu yang Dia ciptakan

Qur'an 32: 7

Tidak ada yang Dia ciptakan sia-sia: Segala sesuatu diciptakan dengan haq, dalam kebenaran dan untuk kebenaran

وَمَا خَلَقْنَا السَّمَاوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا لِأَعْيُنٍ مَا خَلَقْنَاهُمَا إِلَّا بِالْحَقِّ

Dan Kami tidak menciptakan langit dan bumi dan segala sesuatu di antara keduanya dengan main-main. Kami tidak menciptakan keduanya kecuali dengan haq.

Qur'an 44: 38

2.2. Dan kami menegaskan bahwa dia Maha meliputi ciptaan-Nya - *Al Muhit*

وَاللَّهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَكَانَ اللَّهُ بِكُلِّ شَيْءٍ مُّحِيطًا

Kepunyaan Allah apa yang ada di langit dan di bumi. Dia meliputi segala sesuatu

Qur'an 4:125

2.3. Kami lebih jauh menegaskan bahwa:

- Allah menciptakan bumi dalam keseimbangan yang sempurna (*mizan*)
- Karena kasih sayang-Nya kita telah dianugerahi tanah yang subur, udara segar, air bersih dan segala yang baik-baik di bumi
- Bumi bekerja dalam irama dan putaran musim secara alamiah
- Anugerah Allah kepada kita adalah iklim di mana makhluk hidup bisa bertumbuh-kembang
- Perubahan iklim adalah akibat dari ulah manusia terhadap keseimbangan ini -

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ

أَلَّا تَطْغَوْا فِي الْمِيزَانِ

وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

وَالْأَرْضَ وَضَعَهَا لِلْأَنَامِ

Dan Allah telah meninggikan langit dan Dia meletakkan keseimbangan  
Supaya kamu jangan melampaui batas keseimbangan itu  
Dan tegakkanlah timbangan dengan adil dan janganlah kamu mengurangi keseimbangan itu  
Dan Allah telah membentangkan bumi untuk makhluk-Nya

Qur'an 55: 7-10

2.4. Kami lebih jauh menegaskan fitrah ciptaan Allah:

فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقِيمُ وَلَكِن كَثُرَ النَّاسُ لَا يَعْلَمُونَ

Maka hadapkanlah wajahmu dengan lurus kepada agama Allah; tetaplah atas fitrah Allah yang telah menciptakan manusia menurut fitrah itu. Tidak ada perubahan pada fitrah Allah. Itulah agama yang lurus; tetapi kebanyakan manusia tidak mengetahui.

Quran 30: 30

2.5. Kami menyadari bahwa kami telah berbuat kerusakan (*fasad*) di bumi dan akibat-akibatnya adalah:

- Perubahan iklim
- Pencemaran laut dan sistem air, daratan dan atmosfer
- Erosi tanah dan penggersangan
- Penghancuran keanekaragaman hayati
- Pengrusakan hutan
- Pengrusakan terumbu karang

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ

Telah nampak kerusakan di darat dan di laut disebabkan karena perbuatan tangan manusia, supaya Allah merasakan kepada mereka sebagian dari akibat perbuatan mereka, agar mereka kembali ke jalan yang benar.

Qur'an 30: 41

2.6. Kami lebih jauh menyadari bahwa kita tidak lain dan tidak bukan adalah bagian tak terpisahkan dari keteraturan yang diciptakan:

- Bahwa kita tak lain adalah salah satu makhluk dari banyak makhluk lain yang berbagi bumi dengan kita
- Bahwa ini tidak memberikan kepada kita hak untuk mendominasi makhluk lain
- Bahwa intelegensi dan kesadaran mengharuskan kita, sebagai perintah iman, untuk memperlakukan segala sesuatu dengan kepedulian dan khidmat kepada sang Maha Pencipta (*takwa*), kasih sayang (*rahmah*) dan kebajikan (*ihsan*).

وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ وَلَا طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلَّا أُمَّمٌ أُمَّتِكُمْ

Tidak ada satu binatang di muka bumi, burung yang terbang, melainkan ummat seperti kamu.

Qur'an 6: 38

لَخَلْقِ السَّمَاوَاتِ وَالْأَرْضِ أَكْبَرُ مِنْ خَلْقِ النَّاسِ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ

Sesungguhnya penciptaan langit dan bumi lebih besar daripada penciptaan manusia akan tetapi kebanyakan manusia tidak mengetahui.

Qur'an 40:57

Kita lebih jauh memahami bahwa kita bertanggung jawab atas tindakan-tindakan kita –

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ

وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

*Maka barang siapa berbuat kebaikan sebesar zarah, niscaya dia akan melihat balasannya. Dan barang siapa berbuat kejahatan sebesar zarah pun, niscaya dia akan melihat balasannya pula*

Qur'an 99:6-8

Atas dasar pertimbangan-pertimbangan tersebut, kami menegaskan bahwa tanggungjawab kita sebagai Muslim adalah bertindak sesuai dengan yang dicontohkan Nabi Muhammad S.A.W., yang:

- Menegaskan dan melindungi hak-hak semua makhluk hidup, mengutuk tindakan mengubur hidup-hidup bayi perempuan, melarang membunuh makhluk hidup untuk olahraga, membimbing para pengikutnya untuk memelihara air bahkan ketika berwudhu, melarang menebang pohon di gurun pasir, memerintahkan seorang lelaki yang mengambil anak burung dari sarangnya untuk mengembalikannya ke induknya, dan ketika dia menjumpai seorang lelaki yang menyalakan api untuk membakar sarang gundukan semut, beliau berkata: “Padamkan! Padamkan!”
- Menetapkan wilayah yang pantang dirambah (Haram) di sekitar Makkah dan Madinah; tidak diperbolehkan menebang pohon, berburu dan mengganggu binatang di dalamnya.
- Menetapkan kawasan lindung untuk konservasi (*Hima*) dan pemanfaatan tanah, tanaman dan kehidupan liar secara berkesinambungan.
- Hidup hemat, tidak berlebihan, boros dan takabur.
- Membarukan dan mendaur ulang barang-barang yang tidak terpakai dengan jalan memperbaiki atau menyedekahkannya.
- Memakan makanan yang sederhana dan sehat, hanya saat-saat tertentu memakan daging.
- Menunjukkan kasih sayang kepada makhluk-makhluk lain, seperti digambarkan al-Qur'an, menjadi '*rahmatan lil 'alamiin*'.



## **KAMI MENYERU**

3.1. Kami menyerukan Conference of the Parties (COP) untuk Konvensi Perubahan Iklim Perserikatan Bangsa-Bangsa (UNFCCC) dan Meeting of the Parties (MOP) untuk Protokol Kyoto yang akan berlangsung di Paris Desember ini membawa pembahasan mereka kepada sebuah kesimpulan yang adil dan mengikat dengan mempertimbangkan--

- Konsensus ilmiah tentang perubahan iklim, yakni menstabilkan konsentrasi Gas Rumah Kaca (GRK) di atmosfer pada tingkatan yang dapat mencegah campur tangan manusia pada sistem iklim.
- Kebutuhan untuk menetapkan target dan sistem pemantauan yang jelas.
- Konsekuensi serius terhadap bumi bila kita tidak melakukan hal-hal tersebut.
- Tanggung jawab besar di pundak COP atas umat manusia, termasuk membawa kita ke jalan baru dalam berhubungan dengan bumi milik Allah.

3.2. Kami mengimbau negara-negara makmur dan produsen minyak untuk

- Mempelopori pengurangan buangan GRK sedini mungkin, dan tidak melewati pertengahan abad ini.
- Menyediakan dukungan finansial dan teknis kepada negara-negara yang kurang makmur untuk mencapai pengurangan buangan GRK secepat mungkin.
- Menyadari kewajiban moral mengurangi konsumsi sehingga masyarakat-masyarakat miskin mendapat manfaat dari sumber daya yang tak terbarukan yang masih tersisa.
- Bertahan dalam batas 2 derajat, atau lebih dianjurkan dalam batas 1,5 derajat, dengan mempertimbangkan bahwa dua pertiga cadangan minyak fosil masih berada di bawah tanah.
- Mengalihkan fokus perhatian mereka dari pencarian keuntungan tanpa etika dari lingkungan, ke pemeliharaan dan perbaikan kondisi masyarakat miskin.
- Menanam modal dalam penciptaan ekonomi hijau.

3.3. Semua bangsa dan para pemimpinnya --

- Mengurangi buangan GRK sesegera mungkin untuk menstabilkannya kembali di atmosfer.
- Bertekad untuk 100 persen beralih ke energi terbarukan dan strategi nihil emisi sedini mungkin, untuk menghindari dampak lingkungan dari aktivitas mereka.
- Berinvestasi dalam pengembangan energi terbarukan yang menyebar, yang merupakan cara terbaik mengurangi kemiskinan dan mencapai pembangunan yang berkesinambungan.
- Menyadari bahwa mereka mengejar pertumbuhan ekonomi di atas bumi yang terbatas dan sudah kelebihan beban.
- Menggerakkan sebuah model kesejahteraan baru yang berbeda dengan model intermediasi finansial yang telah terbukti merusak planet ini.

- Memprioritaskan usaha-usaha penyesuaian seraya memberi dukungan kepada negara-negara yang rentan terhadap dampak perubahan iklim, yang sekarang sudah terasa dan diperkirakan akan terus berlanjut dalam tahun-tahun mendatang.

#### 3.4. Kepada perusahaan besar, lembaga-lembaga keuangan dan dunia usaha:

- Menanggung konsekuensi dari dorongan keuntungan dan mengambil peran yang lebih aktif dalam mengurangi jejak karbon mereka dan bentuk-bentuk dampak lain terhadap lingkungan.
- Menghindarkan dampak terhadap lingkungan dari kegiatan mereka, berkomitmen 100 persen kepada penggunaan energi terbarukan dan strategi nihil emisi karbon sesegera mungkin.
- Beralih dari model usaha sekarang yang hanya berdasarkan percepatan ekonomi yang tidak berkesinambungan ke ekonomi sirkular yang sepenuhnya berkesinambungan.
- Menaruh perhatian lebih kepada tanggung jawab sosial dan ekologis, khususnya ketika memanfaatkan dan mengeksploitasi sumber daya yang langka.
- Membantu peralihan dari ekonomi yang didorong oleh penggunaan minyak fosil ke pemanfaatan energi terbarukan dan alternatif-alternatif lain.

3.5 Kami menyeru semua pihak bergabung dengan kami untuk berkolaborasi, bekerja sama, dan bersaing sehat dalam gerakan ini dan menyambut baik sumbangsih-sumbangsih penting dari kelompok-kelompok keagamaan lain, karena kita semua bisa menjadi pemenang dalam perlombaan ini.

وَلَكِن لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَأَسْتَبِقُوا الْخَيْرَاتِ

Allah hendak menguji kamu terhadap pemberian-Nya kepadamu, maka berlomba-lombalah berbuat kebajikan.

Qur'an 5:48

Bila setiap kita menawarkan yang terbaik, maka kita bisa melihat jalan keluar dari kesulitan-kesulitan kita ini.

#### 3.6. Akhirnya, kami menghimbau semua Muslim:

Para kepala negara  
Pemimpin politik  
Delegasi UNFCCC

Para cendekiawan  
Jama'ah-jama'ah Masjid  
Para tokoh masyarakat  
Para pegiat masyarakat madani  
Semua Muslim di mana pun mereka berada

Untuk memainkan peran mereka di bidang masing-masing; mengikuti tauladan Nabi Muhammad SAW guna menghasilkan suatu pemecahan bagi tantangan-tantangan yang ditimbulkan oleh perubahan iklim. Allah berfirman:

وَلَا تَمْشِ فِي الْأَرْضِ مَرَحًا إِنَّكَ لَنْ تَخْرِقَ الْأَرْضَ وَلَنْ تَتَلَوَّجَ الْجِبَالَ طُولًا

Dan janganlah kamu berjalan di muka bumi ini dengan sombong,  
karena sesungguhnya kamu sekali-kali tidak dapat menembus bumi dan sekali-kali kamu tidak akan  
sampai setinggi gunung.

Qur'an 17:37

Kita harus ingat sabda Rasulullah SAW:

Dunia ini manis dan hijau, dan sesungguhnya Allah menjadikan kamu khalifah di atasnya,  
dan Dia melihat bagaimana kalian menunaikan kewajiban kalian...  
(Hadits Riwayat Muslim dari Abu Sa'id Al-Khudri)

## Appendix IV

### CURRICULUM VITAE



**Name** : Seto Ferdiantoro  
**TTL** : Pasuruan, July 26, 1999  
**Original Address** : Jl Tanjung, Dusun Sukun RT/RW 005/002, Bakalan Village, Purwosari District, Pasuruan Regency - East Java, 67162  
**Address Malang** : Jl. Tirto Mulyo No. 36, Dau, Kab. Malang Jawa Timur  
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[setoferdiantoro@gmail.com](mailto:setoferdiantoro@gmail.com)

#### Parents' Names

**Father** : Nur Cahyo Hadi Prayitno

**Mother** : Mutmainah

## Educational Background

| No | Educational Institution   | Graduate Years |
|----|---------------------------|----------------|
| 1  | TK Miftahul Ulum          | 2006           |
| 2  | SDN 1 Bakalan             | 2012           |
| 3  | SMPN 2 Wonorejo           | 2015           |
| 4  | SMAN 1 Kejayan            | 2018           |
| 5  | UIN Maulana Malik Ibrahim | 2022           |

## Organizational Experience

1. Legal Debate Team of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang 2018-2022
2. Law Debate Community (LADEC) Faculty of Sharia, Maulana State Islamic University Malik Ibrahim Malang
  - Head of Debate Division for the Period 2019-2020
  - Head of Debate Division for the 2020-2021 Period
3. Intellectual Student Communication and Discussion Forum (FKD MANTEK)
  - President of the Forum for the Period 2019-2021

## Achievement

| No | Appreciation   | Year |
|----|--|------|
| 1  | 1st Winner of the Internal Law Debate Competition gebyar Sharia Law Week (GPHS) Faculty of Sharia, Maulana State Islamic University Malik Ibrahim Malang | 2018 |
| 2  | 2nd Winner of Student Level Essay Competition in East Java, Sunan Ampel State Islamic University Surabaya  | 2018 |
| 3  | PPA Scholarship Recipients (Academic Achievement Enhancement)  | 2019 |
| 4  | 2nd Winner of The Law Debate Competition in East Java, Sharia Festival of ponorogo State Islamic Institute   | 2019 |
| 5  | 1st Winner of The Constitutional Debate Competition in Java, Tulungagung State Islamic Institute   | 2020 |



|   |  |      |
|---|--|------|
| 6 | 3rd Place Kompetisi Debat Konstitusi Mahasiswa Tingkat Nasional FORMATION Law Fair, University of Mataram                                  | 2021 |
| 7 | 1st Winner of the Justice Festival National Constitutional Debate Competition, Sayyid Ali Rahmatullah Tulungagung State Islamic University | 2021 |
| 8 | 2nd Winner of the University of Indonesia Law Debate Competition FORDEHKONSMERO Law Fair VII, Gorontalo University                         | 2021 |
| 9 | Recipient of the Maulana State Islamic University Student Achievement Award Malik Ibrahim Malang   | 2021 |

