

Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework

Xavier Nugraha*

University of Airlangga, Surabaya, Indonesia

Angelica Milano Aryani Wibisono

University of Airlangga, Surabaya, Indonesia

Alissa Angelia

University of Airlangga, Surabaya, Indonesia

Bryan Owen S.

University of Airlangga, Surabaya, Indonesia

Putri Riska Answendy

Australian National University, Canberra, Australia

ABSTRACT: The ongoing struggle of indigenous people fighting for their rights to preserve the customary forests underscores the critical need to protect both cultural heritage and environment. This research focuses on implementing the Green Constitution in Indonesia, aiming to strengthen the existence of indigenous peoples and their customary rights to customary forests. However, there are significant problems with Article 33(3) of the 1945 Constitution which emphasizes the welfare of the people through the exploitation of natural resources, often neglecting aspects of environmental conservation and contradicting Indonesia's commitment to the Sustainable Development Goals (SDGs). As a result, the Indonesian Constitution has an anthropocentric orientation that prioritizes environmental preservation for human interests rather than fully reflecting the Green Constitution principles that emphasize environmental sustainability in line with human needs. The research used in this study is juridical-normative approach to analyze the law and relevant regulation regarding the issue at hand to identify possible solution towards the existing legal issues. This research identifies two main problems: first, to what extent the 1945 Constitution reflects the principles of the Green Constitution, and second, how efforts to strengthen the rights of indigenous peoples to customary forests reflect the Green Constitution. The results show that the 1945 Constitution has not fully adopted the principles of the Green Constitution, therefore measures are needed to strengthen the rights of indigenous peoples related to customary forests, including the elimination of conditional recognition through judicial interpretation of Article 18B paragraph (2) of the 1945 Constitution, to secure environmental conservation democratically and sustainably.

KEYWORDS: Green Constitution, Indigenous People, Indigenous Forest.

* Corresponding author's e-mail: nugrahaxavier72@gmail.com



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HOW TO CITE:

Nugraha, Xavier, et al., "*Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework*" (2023) 3:2 *Jurnal Kajian Pembaruan Hukum* 217-250. DOI: <<https://doi.org/10.19184/jkph.v3i2.43367>>.

Submitted: 19/09/2023 Reviewed: 02/11/2023 Revised: 07/11/2023 Accepted: 17/11/2023

I. INTRODUCTION

The slogan "Only one earth" from the 1972 Stockholm Declaration has played a pivotal role in shaping global discussions on environmental matters within the legal framework.¹ Over time, international environmental law has evolved to prioritize the protection of the environment's intrinsic rights, illustrated by the recognition of natural entities like the Black Forest in Germany and the Gange River in India as independent entities.² This marks a shift towards an environmental paradigm that recognizes nature as deserving of its own protection, reflecting a heightened awareness of the significance of environmental sustainability through ecocentrism views.³

This evolving legal perspective emphasizes that nature should be at the center of moral considerations in decision-making, a concept referred to as ecocentrism.⁴ The strength and opportunities of the ecocentrism view lie in its ability to influence legal frameworks by emphasizing intrinsic value, environmental preservation, sustainability, and biodiversity conservation.⁵ In practice, the Green Constitution can be seen as the embodiment of an

¹ Lloyd Timberlake, *Only One Earth: Living for the Future* (New York: Routledge, 2021).

² Sandra Cassotta, "The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era" (2019) 30:1 *Yearbook of International Environmental Law* at 54.

³ Robyn Eckersley, *The Green State: Rethinking Democracy and Sovereignty*, 1st ed (Massachusetts: The MIT Press, 2004).

⁴ Haydn Washington, "Why ecocentrism is the key pathway to sustainability" (2017) 1:1 *The Ecological Citizen* 35–41.

⁵ Francis Tete, "Ecocentrism as Theoretical Framework for Environmental Ethics" (2022) 9:2 *Jurnal Sosialisasi* at 103.

ecocentric perspective within a nation's constitutional framework.⁶ The aim is to ensure the constitutionality of environmental rights, preventing over-exploitation of the environment, which could lead to adverse impacts on sustainability.⁷ Just as a constitution safeguards the human rights of its citizens, it is equally important for it to protect the environment, fostering legal arrangements that prioritize sustainability.⁸

Developments like these are suitable for incorporation into the management of natural resources in the Indonesian constitution, given the significant link between natural resources and the environment that should prioritize sustainability. Unfortunately, the current Indonesian Constitution has not shown any adequate effort in accommodating the spirit of the Green Constitution. The arrangements contained in the current Constitution, especially in Article 28H (1) and Article 33 (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) are still limited to a view that is thick with human interests or anthropocentric.⁹ This erroneous approach to nature is the main cause of the deterioration of the physical quality of the environment and its mistreatment.

To facilitate understanding, the author has prepared an illustrative case for this statement. Picture a forest in Indonesia that has proven to be of significant benefit to the needs of the Indonesian people. Unfortunately, the benefits for the population do not always align with the state of environmental preservation. Likewise, the loss of customary forests in North Sumatra due to pulp plantations by the giant Toba Pulp Lestari company and the development of the Food Estate on forest lands. Such exploitation, without regard for sustainability and environmental

⁶ Eko Nurmardiansyah, "Konsep Hijau: Penerapan Green Constitution dan Green Legislation Dalam Rangka Ecodemocracy" (2015) 1:1 *Veritas Et Justitia* at 183.

⁷ Meirina Fajarwati, "Green Constitution Sebagai Upaya Untuk Memperkuat Norma Lingkungan Hidup", *Rechtsvinding Online*, online: <https://rechtsvinding.bphn.go.id/jurnal_online/GREEN%20CONSTITUTION%20SEBAGAI%20UPAYA%20UNTUK%20MENGUATKAN%20NORMA%20LINGKUNGAN%20HIDUP%2027%20Jan%202016.pdf>.

⁸ Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi" (2015) 44:1 *Masalah-Masalah Hukum* at 18.

⁹ Meirina Fajarwati, *supra* note 7.

conditions, will persist due to the legal basis in Article 33 (3) of the 1945 Constitution, which adheres to an anthropocentric approach, emphasizing only the prosperity of the people through their needs. Through this, environment is seen only as a means to fulfill human needs.¹⁰

In such reality, the realization of a comprehensive legal framework that effectively integrates ecological considerations into the fabric of governance, be it at the governmental or individual level, appears to be an elusive aspiration.¹¹ Without this dedicated commitment to its enhancement, the prospects for achieving intergenerational equity remain uncertain.¹² This deficiency in legal guidance poses a significant risk, potentially undermining the stewardship of our environment and the long-term sustainability of our planet, casting doubt upon the legacy we will leave to posterity.

Even so, there is still some opportunities to implement the Green Constitution in Indonesia, one of them being through Article 18B (2) of the 1945 Constitution.¹³ This is because indigenous peoples have a close attachment to nature and has considered it as an integral part of their lives. Conservation carried out by indigenous peoples to exercise their customary rights to customary forests has resulted in customary forests having their own ecological and cultural value.¹⁴ Forest management rooted in local

¹⁰ Yusup R Yuono, “Melawan Etika Lingkungan Antroposentris melalui Interpretasi Teologi Penciptaan sebagai Landasan Bagi Pengelolaan-Pelestarian Lingkungan” (2019) 2:1 Fidei: Jurnal Teologi Sistematis dan Praktika at 182.

¹¹ JB Ruhl, “Legal and Institutional Foundations of Adaptive Environmental Governance” (2017) 22:1 Ecology and Society at 32.

¹² Edith Brown Weiss, *The Theoretical Framework for International Legal Principles of Intergenerational Equity and Implementation through National Institutions* (Cambridge: Cambridge University Press, 2021) at 16.

¹³ Christina Ella Yonatan & Xavier Nugraha, “Analysis on the Legal Force of Copyright Registration Document as Evidence of Ownership of Indigenous Land” (2021) 36:1 Yuridika at 17.

¹⁴ Nadira Apricia, “Hak Negara dan Masyarakat Hukum Adat atas Hutan Adat” (2021) 1:7 Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi dan Pendidikan 1255–1262 at 1255.

wisdom guides community behavior and interactions with nature.¹⁵ For example, the Lindu indigenous community has a motto, "ginoku situhuaku", which means that this place (forest) is our life. Based on this motto, the Lindu customary law community formed a Lindu Customary Council whose task is to ensure that all activities in their customary forest run according to predetermined rules.¹⁶ This indicates that the indigenous community as the closest community group to nature has played a significant role in implementing environmental conservation and preservation.

However, Article 18B (2) of the 1945 Constitution faces several challenges, primarily related to the recognition of indigenous communities. The Constitutional Court's decision Number 35/PUU-X/2012 clarified and strengthened the rights of indigenous peoples to natural resources, especially their customary forests. However, it only applies to indigenous peoples recognized by the state, which introduces several criteria for recognition.¹⁷ This creates significant obstacles for most indigenous communities, potentially leading to their exclusion from protection for customary forests. The difficulty in recognizing indigenous communities poses a threat to their conservation efforts because without legal authority, their actions can be easily overruled by the government, impacting the bond between indigenous peoples and their territories.¹⁸ In the context of achieving a Green Constitution, it is essential to strengthen the recognition of indigenous peoples and grant them authority in protecting their

¹⁵ Rahayu Salam, "Kearifan Lokal Masyarakat Adat Dalam Pengelolaan Hutan Di Pulau Wangi-Wangi" (2017) 8:1 Walasuji: Jurnal Sejarah dan Budaya at 113.

¹⁶ Kementerian Lingkungan Hidup dan Kehutanan, "Masyarakat Adat Kearifan Lokal yang Menjaga Hutan", *Kementerian Lingkungan Hidup dan Kehutanan* (29 January 2018), online: <<http://pskl.menlhk.go.id/berita/281-masyarakat-adat-kearifan-lokal-yang-menjaga-hutan.html>>. Accessed on 2023/07/17.

¹⁷ Joeni Arianto Kurniawan, *Kedudukan Hak Masyarakat hukum Adat atas Sumber Daya Alam Pasca Putusan MK No. 35/PUU-X/2012* (Jakarta: Epistema Institute, 2016).

¹⁸ Jawahir Thontowi, *Aktualisasi Masyarakat Hukum Adat (MHA): Perspektif Hukum dan Keadilan Terkait dengan Status MHA dan Hak-Hak Konstitusionalnya* (Jakarta: Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2012).

customary forests, which they consider as the "mother" of nature.¹⁹ This is one of many significant steps toward the development of laws that guarantee and protect the environment as an entity equal to humans, promoting a shift from anthropocentrism to ecocentrism.²⁰

Based on the description above, the formulation of problems in this article are: First, does the 1945 NRI Constitution reflect the Green Constitution? Second, how to strengthen the rights of customary law communities to forest customs reflect the Green Constitution?

Research on strengthening the rights of indigenous peoples over customary forests has been conducted in several writings, including 1) Research written by Wahyu Nugroho with the title "Konstitusionalitas Hak Masyarakat Hukum Adat Dalam Mengelola Hutan Adat: Fakta Empiris Legalisasi Perizinan".²¹ The research discusses the protection given to customary forests under one unit with customary law communities to realize the principle of ecocracy. 2) Research written by Faiq Tobroni with the title "Menguatkan Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)".²² This research reveals how the regulation of the category of customary forests after the Constitutional Court Decision which separates customary forests from state forests. 3) Research written by Safrin Salam with the title "Perlindungan Hukum Masyarakat Hukum Adat Atas Hutan Adat".²³ This research explores the regulation of customary forests based on Constitutional Court Decision Number 35/PUU-X/2012, with a focus on the role of local governments in protecting them. Prior studies have mainly concentrated on the significance of this decision and favored an anthropocentric viewpoint, overlooking the

¹⁹ Joeni Arianto Kurniawan, "Contested Land, Contesting Laws" (2014) 6:2 *Sortuz*, *Onati Journal of Emergent Socio-Legal Studies* at 93.

²⁰ Robyn Eckersley, *supra* note 3.

²¹ Wahyu Nugroho, "Konstitusionalitas Hak Masyarakat Hukum Adat Dalam Mengelola Hutan Adat: Fakta Empiris Legalisasi Perizinan" (2014) 11:1 *Jurnal Konstitusi* at 110.

²² Faiq Tobroni, "Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)" (2013) 10:3 *Jurnal Konstitusi* 461–482.

²³ Safrin Salam, "Perlindungan Hukum Masyarakat Hukum Adat Atas Hutan Adat" (2016) 7:2 *Novelty* at 209.

environment's intrinsic rights. To achieve environmental justice and sustainability, a more comprehensive approach is necessary. This research aims to shift towards a broader perspective, prioritizing the environment's intrinsic well-being and livelihood. It seeks to promote a balanced and sustainable approach to legal arrangements and the concept of a Green Constitution.

Based on the discussion and previous research, this study aims to review efforts to strengthen the rights of indigenous peoples to customary forests and the positive implications in the form of conservation of customary forests to reflect the Green Constitution in the Constitution. Such study will follow a structured approach in firstly assessing the feasibility of implementing the Green Constitution through examining other countries that have incorporated such provisions into their own constitution or related regulations. Secondly, it evaluates whether these efforts contribute to realizing intergenerational equity. Finally, it aims to envision the creation of a green constitution as a possible outcome of this process.

II. METHOD

The research employs a juridical-normative methodology, involving the examination and analysis of legal arrangements pertaining to existing issues.²⁴ Research is conducted to solve legal issues through the identification of legal problems, legal reasoning, problem analysis, and problem-solving.²⁵ The data for this research was collected through a statue and systematic approach to national and international legal sources. Primary sources included statutes, regulations, and court decisions, while secondary sources encompassed working papers, literatures, regulation reviews, and a comprehensive analysis of the current statistical data of real-world situations. Specifically, the research assesses the pertinence of current regulations in relation to the recognition of customary forests and the concept of a Green Constitution. Additionally, it endeavors to explore the

²⁴ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum" (2021) 8:8 Nusantara at 2464.

²⁵ Peter M Marzuki, *Penelitian Hukum*, revisi ed (Jakarta: Kencana, 2013).

possibility of implementing a Green Constitution by studying international best practices and examining whether such efforts contribute to achieving intergenerational equity. As a refined result, this research will then be able to discuss the relevance of the current arrangements to the recognition of customary forests and the concept of the Green Constitution. By reviewing the existing regulations, it is possible to identify areas with gaps, which can then be addressed by introducing specific additions regarding changes to the constitution and related subsidiary regulations concerning the recognition and designation of customary forest areas.

III. ANALYSIS OF THE IMPLEMENTATION OF THE GREEN CONSTITUTION IN THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

Unlike the opposing discourses of heliocentrism and geocentrism, the ideas of anthropocentrism and ecocentrism are two sides of a coin that are more or less interrelated. The concept of anthropocentrism focuses on humans as the center of life. At the same time, the idea of ecocentrism holds that alongside humans, the environment has an equal position in life with humans as an entity that must be preserved. Evidence that ecocentrism and anthropocentrism are like two sides of a coin can be seen with the Sustainable Development Goals (SDGs), a global vision to encourage development that considers sustainability in the aspects of people, profit and planet.²⁶ Although there is the word "planet", all development goals are oriented to be useful for humans or "people". In factory activities, for example, a company must keep the factory waste from exceeding the Environmental Quality Standard (BML).²⁷ Of course, the ratio legis of the company's obligation not to exceed the BML is based on the idea that if

²⁶ Badan Perencanaan Pembangunan Nasional, *Metadata Indikator Tujuan Pembangunan Berkelanjutan (TPB)/Sustainable Development Goals (SDGs) Indonesia* (Jakarta: Kementerian Perencanaan Pembangunan Nasional, 2020).

²⁷ Article 1 no. 13 of Law No. 6 of 2023: "Environmental Quality Standard is a measure of the limit or level of living beings, substances, energies, or components that exist or must exist and/or polluting elements whose existence is tolerated in a certain resource as an element of the environment."

the waters around the factory become polluted, the surrounding community is not guaranteed a healthy environment so that disease can infect them. In the end, the obligation to protect the environment returns to human interests.

This view or paradigm shifted slightly when ecocentrism and ecocracy emerged in academia. This idea tries to explain that the law should accommodate human interests, but also the interests of the environment as an independent entity.²⁸ This principle is then reflected in the Green Constitution.

In Jimly Asshiddiqie's view, the Green Constitution is the constitutionalization of norms to protect the environment. Green Constitution means giving a portion of the regulation of the environment into the Constitution so that the environment is also related to state power and supreme power.²⁹ The emergence of the Green Constitution concept in Indonesia itself can be divided into two phases, namely:

In the early stages, after having fought for the values of human rights in international legal instruments such as the United Nations Declaration of Human Rights (UDHR), countries began to realize the importance of preserving the environment to ensure human survival. Therefore, various international conventions resulted in an agreement to conserve the environment. These principles were then included in Indonesian legislation through legislation, which later gave birth to Law Number 32 of 2009 concerning Environmental Protection and Management. However, in practice, legislation implementation is considered ineffective because it does not have a solid constitutional foundation. This is because if only based on regulations at the level of the law if there are two different regulations, the principle of preference will be used and potentially, the regulations that do not favor the environment will be used. Thus, without a

²⁸ Otong Sulaeman, RWS Sumadinata, & Dina Yulianti, "Polemik Antara Antroposentrisme Dan Ekosentrisme Dalam Perspektif Filsafat Mulla Sadra" (2021) 19:2 *Khazanah: Jurnal Studi Islam dan Humaniora* at 161.

²⁹ I Gde Dharma Atmaja, *Ilmu Negara: Sejarah, Konsep Negara dan Kajian Kenegaraan*, revised ed (Malang: Setara Press, 2012).

solid constitutional foundation, in the end, environmental protection and management returns to human interests.

Then, in the renewal stage, implemented to reflect the principle of ecocracy or ecocentrism, it is necessary to embed environmental legal norms in the Constitution. Thus, the hope is that there will be a shift in the pattern of achieving ecocracy, which was initially limited to legislative products, turning into a desire to actualize the concept of the environment into the Constitution. This process is then referred to as the Green Constitution.

The implication is that the environment has its autonomy and sovereignty, which can be termed the principle of ecocracy or ecology.³⁰ Thus, it can be understood that the Green Constitution is a step towards achieving ecocracy or governance based on environmental development principles.³¹

To facilitate understanding, the author will present the implementation of the Green Constitution in several countries that are considered successful in reflecting it in their respective constitutions.

Ecuador	Egypt	India	Indonesia
Article 71 (1)	Article 44	Article 21	Article 28H (1)
Nature, or Pacha Mama, where life is reproduced and occurs, has the right to respect for its integral existence and the maintenance and regeneration of its life cycles, structures, functions and	The state is obliged to protect the Nile and preserve the historical rights of Egypt contained in it, rationalize and maximize its benefits, do not waste or pollute its water. The state must	No one shall be deprived of life or personal liberty, except in accordance with procedures established by law. Indian Supreme Court Judgment No. 126 of 2014	Every person has the right to live in physical and mental prosperity, have a place to live, have a good and healthy environment, and receive health services. Article 33 (3)

³⁰ Jimly Asshiddiqie, *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 1st ed (Jakarta: Raja Grafindo, 2009).

³¹ Eko Nurmardiansyah, *supra* note 6.

evolutionary processes.	protect its groundwater, implement appropriate methods to achieve water security, and support research in this area.	The Court stated that the Ganges and Yamuna and their surrounding streams are legal subjects and carry all rights and obligations.	<u>The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.</u>
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Table 1. Comparison of Green Constitution Implementation in Several Countries

Based on the comparison table above, it is known that three countries are pioneers in the implementation of the Green Constitution, namely Ecuador, Egypt, and India.

The application of the Green Constitution in Ecuador is formulated *expressis verbis* in the Constitution by interpreting that in addition to humans who have the status of people, the environment is also interpreted as a people and is given its place as a holder of rights and powers.³² Therefore, in Ecuador, the entire environment is a legal subject recognized by the state and can fight for its right to remain sustainable in court. Unlike Ecuador, which gives legal standing as a legal subject to the environment or nature in general, Egypt only gives the Nile River the right to remain ecologically and culturally historically sustainable. Thus, it can be understood that in Egypt, any form of pollution of the Nile River violates the constitutional rights of the Nile River itself. Egypt even has its own laws to protect the Nile River.

Meanwhile, the Indian Constitution does not directly recognize the Ganges and Yamuna Rivers as legal subjects or have rights as separate environmental entities. The journey of recognizing the Ganges and

³² Maret Priyatna, "Penerapan Konsep Konstitusi Hijau (Green Constitution) di Indonesia Sebagai Tanggung Jawab Negara Dalam Perlindungan dan Pengelolaan Lingkungan Hidup" (2010) 7:4 Jurnal Konstitusi at 123.

Yamuna Rivers so that they can become legal subjects and have separate rights was born from the Indian Supreme Court Judgment No. 126 of 2014 which said that the Ganges and Yamuna Rivers are legal subjects and separate entities with legal rights and responsibilities. Thus, in accordance with Article 21 of the Indian Constitution, the Ganges and the Yamuna River have the right to livelihood on an equal footing with humans such as the right to flow.³³

In Indonesia's legal constellation, the forerunner of the constitutional obligation to maintain the environment has been seen in Article 28H (1) of the 1945 Constitution of the Republic of Indonesia.³⁴ When conducting a comprehensive analysis of the elements in the norm above, it appears that the norm "entitled" operator is attached to the subject of the norm "every person" which means human. The implication is that a "healthy environment" is a right instrument, not a separate effort to strive for a healthy environment. Thus, it can be understood that a healthy environment is a right of everyone that can be used or not, because the norm operator "entitled" means that it can be pursued or not. Not only that, the regulation is still anthropocentric because the environment is only an instrument of human livelihood and environmental conservation efforts are still not oriented towards using the environment for the environment itself. A healthy environment is solely used to fulfill human needs.

Apart from Article 28H (1), the Constitution also regulates the use of nature, especially the earth, water, and space (Baraka) through Article 33 (3).³⁵ Similarly, Article 33 (3) states that the earth, water, and natural resources contained therein are under the control of the state and are used for the prosperity of the people. The implication is that the pattern of

³³ Stellina Jolly & Roshan Menon, "Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India" (2021) 10:3 *Transnational Environmental Law* at 467.

³⁴ Article 28H (1) of the 1945 Constitution of the Republic of Indonesia which reads: "Every person has the right to live in physical and mental prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services."

³⁵ Article 33 (3) of the 1945 Constitution reads: "The land and water and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people."

Baraka's existence is seen as a tool to fulfill the needs of human life alone. Although Indonesia already has instruments of legislation that provide conditions for the sustainable use of natural resources, in the Constitution, the utilization is still exploitative for human needs. This means that if in the future an application for a mining concession is submitted in a forest area, if the government considers that the mining will prosper the people even though it results in degradation of local environmental functions, then such utilization is constitutional. This confirms that although our national environmental law development regime has entered the stage of constitutionalization, the vital essence of achieving a healthy environment is still oriented toward human interests.³⁶

As explained earlier, the idea of ecocentrism emerged due to a shift in the realization that the world is not only lived and used for humans alone but also the environment as a place for humans to live. Proponents of this paradigm shift see it as a necessary response to the dominance of human needs in the legal system as well as the failure of the state to enact and/or enforce environmental regulations sufficient to protect nature from damage due to human activities and pollution.³⁷ For this reason, it is understood that the state is obligated not only to guarantee the constitutional rights of citizens, but also the environmental entities that coexist with them. Although some previous studies have said that the Indonesian Constitution has reflected the Green Constitution, it needs to be studied again that efforts to protect forests or other environmental elements are pursued to fulfill human welfare alone, so that the understanding adopted still views that the environment is a supporting element of human life. The existence of Article 28H (1) and Article 33 (3) of the Constitution still fails to reflect the actual Green Constitution.

Not only that, until now, there is no special regulation in the Constitution that accommodates environmental sustainability outside the fundamental rights of human rights. The direction of environmental utilization and

³⁶ I Gede Yusa, *Hukum Tata Negara: Pasca Perubahan UUD NRI 1945* (Malang: Setara Press, 2016).

³⁷ Christopher Stone, "Should Trees Have Standing? Toward Legal Rights For Natural Objects" (1972) 45 *California Law Review* at 450.

management is still anthropocentric, oriented only towards human interests. Thus, a conflict between the implementation of ecocentrism and anthropocentrism fails to be realized in the Constitution. Concerning the relationship between humans and nature, anthropocentrism in the Indonesian Constitution reflects a subordinate relationship between the environment and humans, which then becomes the source of environmental damage problems.³⁸ Finally, the failure to interpret the Constitution becomes the basis for justifying acts of environmental destruction for the sake of human interests. The potential damage to customary forests caused by the construction of the national capital, for example, is evidence that human actions not only derogate the rights of other communities (customary law communities in exercising their customary rights on customary land), but also derogate the sustainability and sustainability of the environment.³⁹

In fact, interpreting the Green Constitution means placing the environment in line with human rights as currently recognized in the Constitution. The difference with the status *quo* is that the Constitution should also recognize that an environment has rights that must be respected and everyone should respect them. Similar to the concept of the implementation of human rights, which should not derogate the interests of other *natuurlijk persoon* legal subjects, if a constitution also actualizes the concept of the environment, then everyone should also not be able to exercise their rights if these rights reduce the sustainability of the environment. Thus, the implementation of human rights will be able to coexist with environmental conservation efforts. This concept of justice for the environment is still not visible in the legal constellation in Indonesia.⁴⁰

³⁸ Gary Steiner, *Anthropocentrism and its Discontents: The Moral Status of Animals in the History of Western Philosophy*, 1st ed (Pennsylvania: University of Pittsburgh Press, 2005).

³⁹ I Nyoman Sujana, "Penguatan Hak Penguasaan Tanah Adat Masyarakat Hukum Adat di Kalimantan Timur sebagai Rencana Ibu Kota Negara" (2019) 2:2-2 Ganaya: Jurnal Ilmu Sosial dan Humaniora 49-57 at 49.

⁴⁰ I Gede Yusa & Bagus Hermanto, "Implementasi Green Constitution di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan" (2018) 15:2 Jurnal Konstitusi at 306.

Therefore, since the Constitution in Indonesia still does not reflect the Green Constitution, efforts to actualize this concept are needed.

Implementing the Green Constitution to reflect the constitutional right to the environment can be measured through several key indicators.⁴¹ First, the legal indicator emphasizes the need for fundamental changes in the interpretation of the concept of environment in the Constitution to create harmonization with the laws and regulations under it, with the implication that regulations that conflict with the principle of conservation will be declared unconstitutional. Second, the legal practice implementer indicator highlights the importance of commitment from the legal implementer in implementing the Green Constitution, which is based on a shift in interests from the elite to the community and the environment. Third, the community indicator emphasizes the importance of community awareness and support for the Green Constitution, focusing on the community's desire to implement the law, as seen in various community organizations engaged in environmental advocacy. Finally, the culture indicator underscores the importance of a legal culture consistent with the Green Constitution, which should be an integral part of the guarantee of human rights and the environment, ensuring that state apparatus adhere to and understand the concept in carrying out their duties and authorities. As such, these indicators play an important role in assessing the successful implementation of the Green Constitution and maintaining the constitutional right to the environment.

Concrete steps in implementing the Green Constitution can use the opportunity to involve indigenous peoples, which is directly attributed to the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945) through Article 18B (2).⁴² In the Comprehensive Manuscript of the Amendment of the 1945 Constitution Book IV Volume 2 Page 1317, it is explained that the recognition of indigenous peoples and customary rights

⁴¹ I Gde Dharma Atmaja, *Filsafat Hukum*, 1st ed (Malang: Setara Press, 2013).

⁴² Article 18B (2) of the 1945 Constitution reads: "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

or rights attached to them provides an understanding that the state protects and guarantees the existence of indigenous peoples, customary rights, and rights attached to them.

The control of customary forests to indigenous peoples born from constitutional attribution rights provides an opportunity to reflect the Green Constitution because indigenous peoples tend to utilize customary forests not only economically and fulfill human needs, but also for the preservation of customary forests due to the strong religio-magical aspects of the meaning of forests by indigenous peoples. Therefore, strengthening customary rights to customary forests owned by indigenous peoples is an opportunity to provide a genuinely green nuance in the Indonesian Constitution.

Strengthening the customary rights of indigenous peoples is a logical consequence considering, as in the previous discussion, that the legal constellation in Indonesia, especially at the constitutional level, has not sufficiently shown the spirit of the Green Constitution. The strengthening of the customary rights of indigenous peoples can be realized through several changes and adjustments to the laws and regulations. K.C. Wheare identifies four methods that can be used to make changes in the context of the Constitution, namely through several primary forces, changes stipulated in the Constitution itself, legal interpretation, and customs that apply in the realm of state administration.⁴³ The most appropriate way to amend the Constitution to reflect the Green Constitution is through judicial interpretation. Reinterpretation of the provisions of Article 18B (2) of the 1945 Constitution can be a way to overcome the difficulty of recognizing existing indigenous peoples.⁴⁴ Constitutional change through judicial interpretation also reflects the progressiveness of the setbacks found in Constitutional Court Decision No. 31/PUU-V/2007, where the technical recognition of indigenous forest communities was very rigid and difficult to fulfill. This judicial interpretation will reinterpret the requirements for the

⁴³ Alope Kumar Ghosal, "Modern Constitutions by K. C. Wheare Review" (1968) 19:2 *The Indian Journal of Political Science* at 190.

⁴⁴ Dominikus Rato, "Realisme Hukum: Peradilan Adat dalam Perspektif Keadilan Sosial" (2021) 1:2 *Jurnal Kajian Pembaruan Hukum* at 298.

recognition of indigenous peoples so that they can be fulfilled easily and in accordance with the principles of recognizing the existence and rights of indigenous peoples in international legal instruments, one of which is the principle of self-determination.

This fundamental change in the Constitution will address the problem of legislation that still does not favor indigenous peoples to be declared unconstitutional. Thus, there will be significant progress towards implementing customary rights of indigenous peoples if recognition of their existence is easy and possible. In addition, this judicial interpretation will provide opportunities for the conservation of customary forests within the customary territories of indigenous peoples to be appropriately conserved to achieve ecocracy

IV. AN EFFORT TO STRENGTHEN THE RIGHTS OF INDIGENOUS PEOPLES TO CUSTOMARY FORESTS TO REFLECT THE GREEN CONSTITUTION

Article 18B (2) in the 1945 Constitution is a great opportunity for Indonesia to correct the misconception of the Green Constitution so far. Customary law communities hope to conserve customary forests that are oriented towards meeting human needs and solely for the benefit of customary forests included in the customary territory. Thus, judicial interpretation of the Constitution can give indigenous peoples strong customary rights to conserve their customary forests. Therefore, with an optimal process of recognition of indigenous peoples and strengthening indigenous peoples' rights to their customary forests, the ideals of ecocracy through the Green Constitution can be implemented.

The existence of customary forests rests on the existence of customary law communities themselves. This is regulated in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA).⁴⁵ Then, the regulation

⁴⁵ Article 3 of the UUPA which reads: "Keeping in mind the provisions of Articles 1 and 2, the implementation of hak ulayat and similar rights of customary law communities, to the extent that they still exist in reality, must be in such a way that it

of customary forests is further regulated in Article 1 no. 6 of Law Number 41 of 1999 concerning Forestry (Forestry Law) as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law).⁴⁶ The definition given by the Forestry Law has a repressive or derogable repressive nature of protection, which means that customary forests must be considered as state forests because the recognition of customary forests can be suspended, so that in any case customary forests are state forests.⁴⁷ For this reason, the Forestry Law was then submitted for review to the Constitutional Court so that the definition of customary forest was changed through Constitutional Court Decision Number 35/PUU-X/2012.⁴⁸

However, customary forests still depend on customary law communities as stipulated in Article 5 (3) and (4) of the regulation, which basically states that customary forests exist as long as the customary law communities concerned still exist. Thus, the existence of customary forests can be mapped as follows:

In managing their customary forests, customary law communities cannot be separated from traditional characteristics that differentiate the characteristics of customary forest management by customary law communities from the state and ordinary people. Indigenous peoples still uphold their traditional values and have a strong religio-magical understanding. This is because indigenous peoples consider the earth a sacred place and analogous to mother earth and indigenous peoples are children of mother earth. Like the bond between parents and their children, the indigenous people believe that the earth is a living being that

is in accordance with the national and State interests, which are based on national unity, and must not conflict with laws and other higher regulations."

⁴⁶ Article 1 no. 6 of the Forestry Law as amended by Law No. 6 of 2023 reads: "Customary forests are state forests located within the territory of customary law communities."

⁴⁷ Faiq Tobroni, *supra* note 22.

⁴⁸ The definition of customary forest is based on Constitutional Court Decision No. 35/PUU-X/2012 which reads: "Customary forests are forests located within the territory of customary law communities."

has life, and life itself is an integral element with humans so human existence will not exist without the earth so that the existence of the earth is highly respected.⁴⁹ Therefore, the deep meaning of the earth, which includes forests, makes customary law communities very careful in managing and utilizing forests in their customary territories.

Today, many customary law communities live in or around forests within their customary territories, which are called customary forests. Indigenous peoples continue to carry out various important activities in their customary forests, such as finding food, worshiping, and ceremonies of their traditional beliefs. One example of an indigenous community that carries out many activities and conserves forests well is the indigenous community around the forests of Wangi-Wangi Island, namely Kaindea Forest and Motika Forest in Wakatobi Regency. The local customary law communities use their forests as socio-cultural facilities such as religious ceremonies and gathering places for customary law communities who want to discuss all community conditions related to customary governance.⁵⁰ Local customary forests also play an important role as a source of firewood, building materials and natural food such as vegetables and fruit.

Given that the local customary law community is very dependent on the customary forest, forest management is very much maintained so that it remains sustainable and its existence is highly respected as a source of livelihood for the local community. This is evident in one of Kaindea's management philosophies, "Te Pamonini'a, u'toko." The phrase means water conservation, land fertility and creating a micro economy. The customary law communities around the forests of Wangi-Wangi Island have always upheld these three principles. So, in using the resources available in the forest, the customary law community still pays attention to preserving water and land fertility in the forest. Thus, the customary law community uses the customary forest not solely for livelihoods or human-related matters, but the local customary law community believes that the

⁴⁹ Sri Hajati, *Buku Ajar Hukum Adat*, 1st ed (Jakarta: Prenadamedia Group, 2018).

⁵⁰ Nur Arafah, "Kaindea: Dinamika Pengelolaan Hutan Adat di Pulau Kecil (Studi Kasus: Pulau Wangi-Wangi Kabupaten Wakatobi)" (2011) 5:1 Jurnal Ilmu Kehutanan at 30.

existence of the forest itself is something that must be maintained. Forest conservation that is not only human-oriented is progress in achieving ecocracy.

Therefore, it can be understood that strengthening the recognition of indigenous peoples can be a strategy in realizing a green constitution because indigenous peoples have an essential role in protecting the customary forests that are their customary rights. However, there are problems in the convoluted process of recognizing indigenous peoples. Consequently, indigenous peoples cannot apply for an area designated as their customary forest and thus cannot exercise their customary rights in that place. One concrete example is the Suku Anak Dalam indigenous community on the island of Sumatra, especially in the provinces of Jambi and South Sumatra with a population of around 3,198 people.⁵¹

The Anak Dalam tribe, also known as Orang Rimba, considers the forest their place of residence so that the Orang Rimba rely on their lives.⁵² In addition, the Orang Rimba also uses the customary forest as a medium of worship because they believe that the forest is the dwelling place of the Gods and supernatural beings, so access to the forest is limited.⁵³ That way, the Orang Rimba are very concerned and care for their forest by utilizing the resources in the forest. This is reflected in the systematic process owned by the Orang Rimba in managing the forest. This activity is carried out systematically so land use can be carried out in a prolonged manner. In addition, this activity is also part of the Suku Anak Dalam religious rituals. The stages in forest management by the Orang Rimba can be described as follows: First, Mancah, where they slash and clear shrubs, roots, and briars using a machete as an initial activity. Then, the Matiko Ukor stage is done after Mancah to dry the results of the Mancah slash. The next stage is Nobong, which involves cutting down the dried shrubs, roots and bushes.

⁵¹ Muhammad Ibrahim, "Kehidupan Suku Anak Dalam: Di Kecamatan Air Hitam Kabupaten Sarolangun" (2013) 1:3 Antologi Pendidikan Geografi at 6.

⁵² Muhammad Ridho, *Budaya Lokal dan Pendidikan Islam: Studi Kasus Suku Anak dalam di Jambi* (Master Thesis, Institut PTIQ Jakarta, 2018).

⁵³ Lia Yosephin Sinaga & Nuryani Rustaman, *Nilai-Nilai Kearifan Lokal Suku Anak Dalam Provinsi Jambi Terhadap Perladangan Di Hutan Taman Nasional Bukit Duabelas Sebagai Sumber Belajar Biologi* (Surakarta: Universitas Sebelas Maret, 2015).

Ngengong Totobongon is the next step, which involves cutting down the dried trees. Bekor is the stage of burning the dried shrubs, roots, shrubs and trees. Then, they do Menugal, which involves hollowing out the cleared land, and then start seeding with planting other plants. After that, there is the Care and Weeding stage, where they take care of the seeds that have been planted and weed out parasitic plants without using a machete. The last stage is Manen or harvesting, which is followed by ritual activities and eating together.⁵⁴

With such systematic management, Suku Anak Dalam has indirectly contributed to protecting the environment in the Unitary State of the Republic of Indonesia (NKRI) territory. Unfortunately, until now, the recognition of Suku Anak Dalam as a customary law community in Indonesia has not been well accommodated. The weak legal standing of Suku Anak Dalam makes it difficult for them to protect their customary rights to their customary forests. A report in 2009 shows that around 2.3 million hectares of the Suku Anak Dalam area have become industrial timber plantations, oil palm plantations, settlements, and forest tenure areas.⁵⁵

Apart from Suku Anak Dalam, other indigenous peoples have difficulty obtaining legal standing as indigenous peoples. Based on data from the Indigenous Peoples Alliance of the Archipelago, in 2022, the number of indigenous peoples in Indonesia totaled 2,449.⁵⁶ However, of the thousands of indigenous peoples, only 538 indigenous communities have been designated by the government as customary law communities.⁵⁷ This

⁵⁴ *Ibid.*

⁵⁵ Wandu, "Konflik Sosial Suku Anak Dalam (Orang Rimba) di Provinsi Jambi" (2019) 2:2 *Simulacra* at 195.

⁵⁶ Alboin Samosir, "Memahami Pentingnya Menjaga Keberadaan Masyarakat Adat", *Aliansi Masyarakat Adat Nusantara (AMAN)* (16 August 2022), online: <<https://www.aman.or.id/news/read/memahami-pentingnya-menjaga-keberadaan-masyarakat-adat>>. Accessed on 14 July 2023.

⁵⁷ Epistema Institute, "Siaran Pers Epistema Institute 538 Komunitas Masyarakat Hukum Adat telah Ditetapkan Pasca Putusan MK 35", *Epistema Institute* (29 January 2016), online: <<https://epistema.or.id/kabar/siaran-pers/komunitas-masyarakat-hukum-adat/>>.

happens because there are obstacles and constraints in recording and recognizing indigenous peoples. The concept of recognition of indigenous peoples in the Indonesian legal constellation is the concept of conditional recognition.⁵⁸ The recognition requirement is clearly seen in Article 18B (2) of the 1945 Constitution.⁵⁹

The requirement for recognition of indigenous peoples is then concretized by Law Number 41 of 1999 concerning Forestry (Forestry Law) as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law). The elucidation of Article 67 (1) of the Forestry Law outlines the elements that must be met by customary law communities for their existence to be recognized.⁶⁰

The requirements for recognizing indigenous peoples have become more complex after the issuance of Constitutional Court Decision No. 31/PUU-V/2007 and Constitutional Court Decision No. 35/PUU-X/2012. In Constitutional Court Decision Number 31/PUU-V/2007 Paragraph 3.15.3, 5 cumulative elements of customary law communities are determined, namely (1) the existence of in-group feeling in the community; (2) the existence of a customary government order; (3) the existence of customary assets and/or objects; (4) the existence of a set of customary law norms; and (5) for territorial customary law communities, there needs to be a certain area.

⁵⁸ Muhammad Dahlan, “Rekognisi Hak Masyarakat Hukum Adat dalam Konstitusi” (2019) 1:2 Undang: Jurnal Hukum at 187.

⁵⁹ Based on this Article, Soetandyo Wignjosoebroto states that a community can be recognized as a customary law community if it meets the following cumulative requirements: (1) the customary law community is still alive; (2) in accordance with the development of society; (3) in accordance with the principle of the Unitary State of the Republic of Indonesia; (4) shall be regulated by law.

⁶⁰ The elements that must be met by customary law communities include: (1) The society is still in the form of a paguyuban or rechtsgemeenschap; (2) it has institutions in the form of its customary ruling apparatus; (3) has a clear customary jurisdiction; (4) has legal institutions and devices, especially customary courts that are still respected; and (5) still collect forest products in the surrounding forest area to fulfill their daily needs.

These elements were clarified again in Constitutional Court Decision Number 35/PUU-X/2012, so that when summarized, there are ten elements so that a community can be categorized and recognized as a customary law community, namely: (1) the existence of the indigenous community has existed since ancient times and continues to exist today uninterrupted; (2) the existence of in-group feeling; (3) the existence of a customary government; (4) the existence of customary property and/or customary objects; (5) the existence of a set of customary legal norms; (6) the existence of a certain territory for territorial indigenous communities; (7) the substance of traditional rights is still recognized and respected by the customary law community and does not conflict with human rights; (8) does not threaten the sovereignty and integrity of the Republic of Indonesia; (9) does not conflict with laws and regulations; (10) is recognized based on laws and regional regulations; and (11) still collect forest products for daily needs.⁶¹

The existence of conditions as a limitation of recognition (conditional recognition) thus prevents indigenous peoples themselves from obtaining juridical recognition. This can be proven through indigenous peoples whose existence is lost because they do not fulfill the elements of recognition that have been determined. One example is Nagari in West Sumatra and Dusun and Marga in South Sumatra, which were marginalized during the New Order era. This marginalization was reflected in the enactment of Law No. 5/1979 on Village Government (Village Government Law). Through the Village Law, the village is the lowest government organization as defined in Article 1 a of the Village Law, so the village is not a legal community unit. This definition of village then derogates the existence of customary law communities. In addition, the Village Law does not accommodate the values of multiculturalism in Indonesia, which is illustrated by generalizing villages, which causes the loss of the unique nature of villages with their own rights of origin and legal institutions.⁶² Such marginalization certainly eliminates the existence

⁶¹ Joeni Arianto Kurniawan & Christiani Widowati, *Perlindungan Eksistensi Masyarakat Hukum Adat dalam Konstruksi Negara Hukum Indonesia* (Surabaya: Fakultas Hukum Universitas Airlangga, 2015).

⁶² Jawahir Thontowi et al, *supra* note 18.

of a customary law community. With the severance of this existence, the customary law community is no longer considered "as long as it still exists" so the first cumulative element is not fulfilled, and this will cause the community not to be recognized as a customary law community. The implication is that such customary law communities can no longer enjoy their customary rights and no longer have rights over customary forests.

In addition, based on the requirements for recognition as above, the recognition of customary law communities is potentially difficult to realize because recognition can only be done through laws or regional regulations. In fact, the formation of such legislation products requires a relatively long stage because there needs to be synchronization between the government and the legislative body.⁶³ In the absence of a determination regarding the status of indigenous peoples, then of course, the indigenous community cannot execute and use the rights they should get if they have been determined as indigenous peoples. Therefore, the concept of conditional recognition needs to be revised and facilitated so that customary law communities in Indonesia continue to exist and this certainly makes it easier for indigenous peoples or communities to obtain their status so that there is comprehensive legal protection of their rights, especially customary rights to customary forests.

Not only that, if recognition of the existence of customary law communities is achieved, then the concept of customary law customary rights must certainly be strengthened. So far, there is a high possibility that indigenous peoples' ulayat rights have been undermined because they are used for the public interest. The use of land for public purposes has indeed been regulated in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA).⁶⁴ This certainly degrades indigenous peoples' ownership over customary forests that they use as a source of livelihood. Based on data from the Ministry of Environment and Forestry in 2021, Indonesia has 31,957 villages, and 71.06% of villages depend on forests and the livelihoods of village communities rely on forests and the resources they

⁶³ Muhammad Fadli, "Pembentukan Undang-Undang yang Mengikuti Perkembangan Masyarakat" (2018) 15:1 Jurnal Legislasi Indonesia at 49.

⁶⁴ Article 6 of the UUPA which reads: "All land rights have a social function."

produce.⁶⁵ The erosion of this right can be reflected in the Nusantara Capital City project on the island of Kalimantan. More than 20,000 indigenous peoples are potentially affected by the development of IKN.⁶⁶ The indigenous people in Penajam Paser Utara Regency depend on the forest for their livelihoods. The project's existence, of course, has a direct or indirect impact on the existence of forests used by these indigenous peoples. The government in this case can certainly use Article 3 and Article 6 of the UUPA as a shield, but this will result in the loss of indigenous peoples' rights. Thus, it is necessary to strengthen the status of customary rights, as the basis of the rights of indigenous peoples over customary forests, so that the rights of indigenous peoples cannot be contested. With the strengthening of the customary rights of indigenous peoples, there will be a strengthening of customary forests, which directly protects forests in Indonesia, so that it can be one of the manifestations of the green Constitution in Indonesia.

Therefore, it is important for the government first to improve the provisions on recognition of customary law communities to provide space for customary law communities to exercise their customary rights. So it can be understood that a strong recognition of customary law communities can provide ample space for them to exercise their customary rights over customary forests. This strengthening effort must first provide strong legal standing to indigenous peoples to be recognized. The convoluted recognition process as stipulated by the government is a setback in the state's progressive efforts to recognize the existence of indigenous peoples. To optimally recognize indigenous peoples, the government can refer to the principles in the United Nations Declaration on the Rights of Indigenous

⁶⁵ Kementerian Lingkungan Hidup dan Kehutanan, "Empat Pesan Menteri LHK Pada Peringatan Hari Hutan Internasional", *Kementerian Lingkungan Hidup dan Kehutanan* (31 March 2021), online: <<https://ppid.menlhk.go.id/berita/siaran-pers/5898/empat-pesan-menteri-lhk-pada-peringatan-hari-hutan-internasional>>. Accessed on 14 July 2023.

⁶⁶ Vitorio Mantalean & Bagus Santosa, "20.000 Masyarakat Adat Diperkirakan Tergusur Proyek Ibu Kota Baru", *Kompas* (20 January 2022), online: <<https://nasional.kompas.com/read/2022/01/20/19254121/20000-masyarakat-adat-diperkirakan-tergusur-proyek-ibu-kota-baru>>.

People (UNDRIP), one of which is the principle of self-determination in Article 3 of UNDRIP which can be used as the basis for recognizing indigenous peoples.⁶⁷ The principle of self-determination means that indigenous peoples can be free in determining their own fate, in determining political status, and in carrying out economic and socio-cultural activities. This means that indigenous peoples should be free to determine their existence and legal status.

When the government changed the technical provisions for recognizing indigenous peoples, which were originally very restrictive based on conditional recognition to self-determination, the government was progressive in recognizing indigenous peoples to the fullest. This change is expected to facilitate the process of recognizing indigenous peoples as customary law communities, which also impacts the easy process of applying for customary rights. Because without clear recognition, conservation carried out through the implementation of customary rights by indigenous peoples will not be achieved optimally and end up like Suku Anak Dalam and many other indigenous peoples who have difficulty in applying to become indigenous peoples.

If the recognition of indigenous peoples is running optimally, then the next step is to strengthen the customary rights of indigenous peoples over their customary forests. Regarding the use of natural resources, the principle in UNDRIP is to provide freedom for indigenous peoples to manage natural resources within their customary territories. This can be seen in the regulation of Article 26 (2) UNDRIP.⁶⁸ The consequence of this arrangement means that indigenous peoples have full control or sovereignty in using all resources within their customary territories freely. In other words, indigenous peoples have full control over their customary rights, including land and forests within the scope of their customary territories.

⁶⁷ Article 3 of UNDRIP which reads: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

⁶⁸ Article 26 (2) which reads: "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired".

The government in this case is not justified in arbitrarily seizing land. Today's frequent case is the loss of customary forests because they are used for development and public interests. Article 3 of the UUPA is often used to derogate indigenous peoples' rights to customary forests because it is considered contrary to the state's national interest. The wide room for interpretation of various statutory provisions that still restrict customary law communities' control of customary forests must be improved.

In addition to providing great freedom for indigenous peoples to manage their customary forests, the state also needs to make organic regulations that can implement the Constitutional Court Decision No. 35/PUU-X/2012 consequently and consistently so that the concept of customary forests in the legal constellation in Indonesia also becomes stronger in principle. Therefore, the state needs to make separate laws and regulations that regulate the principles of recognition of the existence of indigenous peoples in accordance with the provisions in UNDRIP, the principle of recognition and protection of strong customary rights (as also emphasized in UNDRIP), which also includes recognition and protection of customary forests, principles of customary forest management, as well as sanctions imposed on individuals who use customary forests unlawfully.

Two positive implications are obtained through the legal improvements that will be made. **First**, for indigenous peoples, holistic and principled improvements in recognizing indigenous peoples and their customary rights will reflect a democratic state. This is because democracy is often related to respect for human rights.⁶⁹ Of course, recognition of the legal status of an entity becomes a human right in itself. Thus, Indonesia has succeeded in becoming a people-oriented country. As Indonesian people, customs law communities have a definite position in Indonesian law. The legal certainty gained by technical changes to recognize their existence is

⁶⁹ Ekawahyu Kasih, "Pelaksanaan Prinsip- Prinsip Demokrasi Dalam Sistem Politik Di Indonesia Guna Mewujudkan Keadilan Sosial Bagi Seluruh Rakyat Indonesia" (2020) 6:2 Jurnal Lemhannas RI.

progress for democracy and justice.⁷⁰ Such recognition will also impact justice for indigenous peoples if other parties do not easily take their rights away. This change will make indigenous peoples have clear and easily obtainable legal standing. **Second**, it relates to the conservation of customary forests within the customary territories of indigenous peoples. Changes that strengthen the existence of indigenous peoples and their customary rights will make it easier for indigenous peoples to manage customary forests. Given the characteristics of indigenous forest community management, which is carried out to respect the customary forest as a living being, the preservation and sustainability of customary forests can also be guaranteed. The preservation and survival of customary forests is what ultimately reflects ecocracy.

Thus, it can be understood that strengthening indigenous peoples' existence and customary rights is a brilliant middle point in accommodating human interests and the interests of the environment itself. A comprehensive interpretation of Article 18B (2) of the 1945 Constitution that reflects the Green Constitution proves that the efforts mentioned above can overcome the misconceptions about the Green Constitution. In the end, the Indonesian Constitution is not only anthropocentric, where control over resources is only for the benefit of humans, but also ecocentric, which means that the environment's survival is no less important than human interests.

V. CONCLUSION

Green Constitution is an effort to concretize environmental norms into the Constitution. However, Article 33 paragraph (3) of the 1945 Constitution and Article 28H paragraph (1) only consider environmental conservation as a tool to fulfill interests. The Indonesian Constitution has not fully reflected the Green Constitution that places environmental conservation as the goal of ecocracy. Article 18B paragraph (2) of the 1945 Constitution

⁷⁰ Xavier Nugraha, "Optimization of Environmental and Defense of the New Capital City 'Nusantara' Based on Pancasila and SDGs" (2022) 24:2 Journal of Judicial Review.

regarding the recognition of customary law communities could provide a "green" feel in the Constitution. However, Constitutional Court decisions No. 35/PUU-X/2012 and No. 31/PUU-V/2007 have made it difficult for indigenous peoples who want to be recognized as customary law communities so they cannot exercise customary rights to conserve customary forests. Recognition of indigenous peoples' existence and customary rights is important because they tend to protect the environment, and the earth is considered a "mother" for them. This recognition also reflects a democratic state because it respects the human rights of indigenous peoples. With this recognition, it is easier for customary law communities to conserve the environment, especially customary law, and realize a democratic Green Constitution

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