

Research Article

Constitutional Review of Green Bond Regulation in Indonesia

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Abstract.

Indonesia's vision of the Long-Term Development Plan (RJPJ) in 2005-2025, is to actualize an independent, advanced, just, and prosperous Indonesia. One of the missions conducted is to realize a beautiful and sustainable Indonesia. This vision has shown that the effort of economic development must pay attention to the balance of the use, sustainability, existence, as well as the use of natural resources and environment. In an industrial context, financial relations between the financial institution and financial product are in one hand. And the other hand is the optimization of natural resources. This context has termed as "sustainable finance". The implementation of the principle of finance sustainable is actualized through the green bond regulation which has been regulated in the Financial Services Authority Regulation No. 60/POJK.05/2017 on the Issuance and the Terms of Green Bond. This study aimed to explore the constitutional aspects of implementing the regulation of green bond in Indonesia. The method used is normative legal research with statute and conceptual approach. The study's result that green bond regulation related to human rights, particularly a right to obtain good environment as mandated in 28 H paragraph 1 and economic democracy as mandated in the Constitution of the Republic of Indonesia's Article 33 paragraph 4.

Keywords: Green bond regulation; Indonesia; sustainability; industrial context

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1. Background

Economic development in Indonesia is based on long-term development planning, According to the vision of the Long Term Development Plan (RPJP) in 2005-2025 is to achieve independent, advanced, just and prosperous Indonesia. The actualization of the national development vision is chased through 8 (eight) development missions. One of the related mission is to actualize a sustainable environment of Indonesia in:

1. Management of development implementation by maintaining a balance between the use, sustainability, and existence of natural resources and the environment;
2. Sustainable economic use of natural resources and the environment; and
3. Preservation and use of biodiversity as a basic capital of development [12].


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From that vision and mission, it can be seen that economic development does not only focus on strengthening the real sector and financial industry, but also it is oriented towards a balance of the use, sustainability, existence, and the use of the natural resources and environment. The relationship between financial institution and financial product is on the one hand, and the optimization of natural resources on the other hand, which is then known as the principle of 'sustainable finance'. Sustainable finance as an embodiment to the realization of sustainable development in Indonesia is a concrete form of Indonesia's commitment to providing funding sources that can mitigate and adapt climate change.

Financial Services Authority as the authority in the financial industry had compiled Sustainable Finance Roadmap in 2015-2019, which is the implementation of the Indonesian Financial Services Sector (MPSJKI) Master Plan. This Roadmap determined and prepared the benchmark for improvements related to the sustainable finance [6]. One thing that should be actualized in the Roadmap is the development of green bond in Indonesia. In an effort to provide a legal basis of developing green bonds, the Financial Services Authority has an obligation to issue green bond regulation. From the background described above, the relevant problem to be reviewed in this study is, how the constitutional concept of environmentally sustainable economic development in the Indonesian market place can be seen.

2. Discussion

2.1. The Overview Concept of Sustainable Development

1. Natural resources owned by a country must provide maximum benefits for the economic interests, as well as provide environmental and socio-cultural benefits. The use of natural resources was initially interpreted as mere exploitation that only had an economic impact. But in current policy development, the use of natural resources also emphasizes a non-economic approach that becomes a principle inherent in the use of natural resources [1].
2. The concept of natural resource utilization that is oriented environmentally is known as the concept of *sustainable development*. The concept of *sustainable development* has been formulated in Law Number 32 of 2009 on Environmental Protection and that is interpreted as "consciously planned effort that combines the environmental, social, and economic aspects into developmental strategies to

ensure the environmental integrity and safety, capability, welfare, and quality of life of the present generation and future generations"[1].

3. Another principle thing that must be considered related to *sustainable development* is the negative impact on the other elements of natural resources, especially water, land, and *biodiversity* [1]. This is understandable considering that Indonesia is known as an agricultural country that has rich and diverse *biodiversity*, as well as has the potential to quickly experience the impact of *global climate changing*. In state concept, Mas Ahmad Santosa said that Indonesia's environmental damage level continues to increase. Therefore, there is no other choice, but to strengthen the concept of a state. This way is not only emphasizing the aspects of democracy and nomocracy, but also strengthening the concept of *ecocrazy* [1]. It was also explained that the concept of environmental sustainable development is an offer of a development paradigm in strengthening *ecocrazy* by introducing a development orientation that emphasizes three important pillars, i.e. (1) economic growth, (2) social development, particularly for vulnerable and marginalized people; and (3) protection of the carrying capacity of the ecosystem [1].

2.2. The Overview of Greenbond

The existence of a capital market aims to support the implementation of national development in the context of increasing equity, growth and national economic stability towards improving people's welfare. One of the instruments traded on the capital market is obligation or bond, which is then called evidence of bond [2]. This definition becomes clearer when it refers to Black Law Dictionary that is defined bond as debt security which means a security representing funds borrowed by the corporation from the holder of the debt obligation; esp., a bond, note, or debenture [12]. In relation of financial services industry to the environmentally oriented, the recognition of green bond has emerged. As an instrument of product of the financial services industry, the presence of green bond is expected to reduce the level of environmental damage, improve the quality of environmental sustainability, and encourage the economy to grow in a sustainable manner. Substantially, green bonds are as same as ordinary bonds, but there are differences in the process selection and verification projects that will be funded using a green eligible project.

1. Implementation concept of the eligible project is adopted from International Organization of Securities Commissions (IOSCO) that was issued the Principles, Green

Bond Principles (GBP), and Strategic Framework for Development and Climate Change. In the issuance of green bonds, IOSCO identifies 2 potential risks:

2. The implementation of green eligible projects in the use of proceeds from the issuance of green bonds has not been clearly defined and there is still various interpretation regarding the green projects.
3. The liquidity is in the secondary market, because green bond is not well standardized [13].
4. To minimize those potential risks, World Bank has issued guidelines of the issuance of green bonds that are explained in Strategic Framework for Development and Climate which can be used as a reference in preparing the regulation of green bonds, as follows:
 5. Specific criteria or green bond's definition must match to the criteria of eligibility projects, i.e. mitigation and adaptation projects of the climate change.
 6. Steps for selecting projects that qualify to be funded through the issuance of green bonds by the World Bank.
 7. Determination and allocation of proceeds from green bond issuance must be in accordance with liquidity policies.
 8. Supervision of reporting the project must be able to show the progress, results, and impact of the project being financed to evaluate and measure the effectiveness of activities in terms of determined goals.
 9. Fulfillment of green bond requirements must be ensured by reviewing projects that is financed through green bond issuance [14].

From the explanation above, it showed that green bond development in Indonesia which is based on Roadmap for Sustainable Finance in Indonesia 2015-2019, has followed up by the issuance of the Financial Services Authority Regulation No. 60/POJK.05/2017 on the Issuance and the Terms of Green Bond. The related regulation to the green bonds itself has been referred to the Strategic Framework for Development and Climate Change which is formulated by IOSCO and Strategic Framework for Development and Climate which is arranged by World Bank.

2.3. The Overview Concept of Green Bond According to the Constitution of Indonesia

The 1945 State Constitution of Indonesia (UUD NRI 1945) as a constitutional foundation means as a groundnorm or basic norm as well as a source of all sources of law. Thus all laws and regulations under it must not conflict with basic norms of UUD NRI 1945 [8]. Therefore, the reflection of the conceptual basis regarding environmental issues and sustainable development should ideally be aligned with the concept of democracy. Jimly Asshiddiqie believes that environmental issues and sustainable development are part of the ecocrazy concept which is the most recent stage of legal philosophy and legal politics regarding the state power [3].

The concept of ecocrazy is reflected in the concept of human rights to a good and health environment as regulated in Article 28 H paragraph 1 of UUD NRI 1945, which reads: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services" [1]. While the concept of democracy that is related to sustainable development principles and environmental insight is stated in Article 33 paragraph (4) of UUD NRI 1945, which is determined: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability with environmental insight, independence, and by maintaining a balance between progress and national economic unity." [1].

From the two formulations of the article, Jimly Asshiddiqie believed that the issue of the right to the environment as a human right has been guaranteed in Article 28 H paragraph (1), and the adoption of the principle of sustainable development and environmentally friendly into the provisions of Article 33 paragraph (4), has been shown that UUD NRI 1945 has been in green constitution [3]. It is explained that the word "sustainable" is actually related to the concept of "sustainable development". This is closely related to the development of ideas about the importance of insight into the maintenance, preservation and protection of a healthy environment, because nowadays it has become a common discourse and awareness in all corners of the world to apply it. There is no sustainable development without the environment as its main element, and there is no environmental insight without sustainable development [2]. To actualize sustainable development, the constitution of NKRI serves as the source of the highest values and norms and references in the framework of government policies and economic development [2].

3. Conclusions

The regulation of green bond in Indonesia, has been oriented to the concept of sustainable development. The concept of sustainable development, constitutionally referred to the concept of human rights, particularly related to the the right to obtain good living environmental as mandated in 28 H paragraph (1) and economic democracy which is contained sustainable development and environmentally friendly as mandated in Article 33 paragraph (4) of The 1945 State Constitution of the Republic of Indonesia.

References

- [1] Redi A. Forestry sector natural resources law. Jakarta: Sinar Grafika; 2014.
- [2] Setiadi A. Bonds in Indonesian legal perspective. Bandung: Penerbit PT. Citra Aditya Bakti; 1996.
- [3] Asshiddiqie J. Green constitution of the Constitution of Republic of Indonesia in 1945. Jakarta: Rajawali Pers; 2016.
- [4] Sitorus T. Indonesia bond market: Theory and practice. Jakarta: RajaGrafindo Persada.; 2015.
- [5] Jened R. Theory and law policy of direct investment. Bandung: Prenada Media Group; 2016.
- [6] Financial Services Authority. Sustainable finance roadmap. Jakarta; 2014.
- [7] Financial Services Authority. Reports of development review of green bond in Indonesia. Jakarta, 2016.
- [8] State Constitution of the Republic of Indonesia in 1945.
- [9] Constitution No. 8 of 1995 on capital market.
- [10] Constitution No. 32 of 2009 on environmental protection and management.
- [11] Financial services authority regulation no. 60/pojk.05/2017 on the issuance and the terms of green bond.
- [12] Garner BA. Black law dictionary. Thomson Reuters; 2009.
- [13] IOSCO. Principles, Green Bond Principles (GBP), dan strategic framework for development and climate change. 2018.
- [14] World Bank. Strategic framework for development and climate. World Bank; 2012.