

# **Implementation of Verdict of the Constitutional Court of the Republic of Indonesia Against Judicial Review Act No. 7 of 2004 on Water Resources in the Ex Region Surakarta Indonesia**

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## **Abstract**

This study aims to determine how the implementation of the verdict of the Constitutional Court of the Republic of Indonesia Against Judicial Review Act No. 7 of 2004 on Water Resources noted in verdict on Case No. 058, 059.060, 063 PUU-II 2004 and Case No. 2005 008/PUU-III Ex Territory Surakarta Indonesia and the constraints that it faces. This study uses juridical-sociological approach. The type of data used in the form of primary data sourced from the parties related to the management of water resources in the Ex region Surakarta, as well as secondary data consisting in primary legal materials, legal materials secondary and tertiary. Sampling was done by purposive sampling. Data was collected through interviews and document study. The research concluded that: First, the Water Resources Management in the Ex area Surakarta after decision of the Constitutional Court of the Republic of Indonesia Against Judicial Review Act No 7 of 2004 on Water Resources in accordance with the what is decided by the Constitutional Court; Secondly, that in principle there is no obstacle in the management of Water Resources in Regional Ex Surakarta after verdict of the Constitutional Court of the Republic of Indonesia Against Judicial Review Act No 7 of 2004 on Water Resources.

**Keywords:** implementation, constitutional court, judicial review, water resources

## **1. Introduction**

Water has an important function and a guarantee of sustainability of human life on earth. Water whose existence is mandated and grace of Almighty God should be preserved for the sake of human survival itself. Seeing the importance of the function of the water, then its existence as a public goods controlled by the state. This is in accordance with the provisions of Article 33 UUD 1945, which is further elaborated by Act no. 7 of 2004 on Water Resources (UUSDA). UUSDA has been submitted 5 times substantive petition to the Constitutional Court noted in the verdict on Case No. 058, 059.060, 063 PUU-II 008/PUU-III 2004 and Case No. 2005.

Verdict of the Constitutional Court on Judicial Review Act of Water Resources on July 19, 2005 said countries responsible for meeting the basic needs of the people on the water. Decision of the Constitutional Court stated that the responsibility of water supply held by the government through state / local enterprises. But the Government Regulation No. 16 of 2005 on Water Supply System (SPAM) issued by the government the opportunity of drinking water by the private sector without limitation (at all stages of activity).

On the consideration of the Judicial Review Act No. 7 of 2004 on Water Resources, the Constitutional Court stated that the responsibility for the implementation of water supply system in principle is the responsibility of the government and the local government. The role of the cooperatives, private enterprises and the public is limited only in terms of the government have not been able to hold its own, and the government still allowed to run its authority in the setting, implementation and

monitoring in the management of water resources as a whole (page 494 of the Constitutional Court decision on judicial review Water Resources Law).

Management of existing water resources, is still experiencing some fundamental issues. In the midst of these existing problems of water resources are increasingly scarce availability of this would inspire efforts for investors to reap greater profits. While most people are still asleep, less caring, and surrender to the management of water resources are (Hardjosoemantri, Koesnadi: 1994: 24). Based on data from BPS 80% of the people of Indonesia in the early 21st century is not accessible clean water. Ironic and strange indeed, Indonesia is a country located in tropical regions with tropical forests wide water crisis. According to the theory, in terms of water resources as long as we can manage it during the rainy season and dry season water resources there will still be safe (Hardjosoemantri, Koesnadi, 1995: 17).

Regional autonomy has also conducted several consequences in the management of water resources. In this case the Government can invite both local and foreign investors to manage water resources. Conflicts that continue to occur in the midst of a critical water resources (which results in a dissertation written by Ayu shows the trend in the increase in the number of critical watershed from year to year. 1980s only about 22 critical watersheds, 1990s increased to 35 DAS critical in the 2000s and rose sharply to 69 critical watersheds and nearly 75% of critical watersheds are located in Java) is a challenge that must be addressed for the existence of water resources in quantity and quality maintained (Ayu, I Gusti, 2005).

It must be realized that the water occupies a central position in human life. It could even be said that water is the source of life. We can not imagine a world or life without water. At first the water is a lot of free stuff there is everywhere. However, along with the development of society, population growth, industrial activities, land clearing for agriculture and settlements, etc., the water becomes more and more reduced inventory. The water was still available even more reduced quality (Hardjosoemantri, Koesnadi, 1999: 37). Democracy as the basis of a state of life in general gives the sense that at last people leave provisions of the key issues that affect their lives, including in assessing the state of government policy because the policy determines people's life. Thus democracy is a country held by the will and power of the people or if he meant in terms of the organization as an organizing country by the people themselves or with the consent of the people because sovereignty belongs to the people. According to the perspective of life as a community organic can only run if there is harmony and harmonious cooperation in the machine's (Gaffar, Jadedjri M., 2004: 131)

One of the important principles of the rule of law is the principle of legality. The substance of the principle of legality requires that every action is the agency / administrative officer under the law. Without basic law, the agency / state administration officials are not authorized to perform any act which may alter or affect the legal situation of the community. The principle of legality is closely related to the idea of democracy and the idea of the rule of law. Idea of democracy demand that any form of laws and decisions approved by the representatives of the people and the interests of the people as much as possible. The idea of the rule of law requires that the implementation of state and government should be based on the law and guarantee the people's basic rights contained in the bill (HR Ridwan, 2002: 68-69).

In the political context of procurement law should be the law of water resources and the debate that is in it, including the judicial review conducted of the Constitutional Court should be directed to the political interests in favor of people's rights and the preservation of water resources themselves. In order to democratize the law then the level of formal legal provision of water resources should be shifted to the spirit of the law is responsive, and in practical terms at the level of implementation of the law enforcement officials (judges) have to venture out of the positivist understanding of law-formal, in order to protect the interests of rights community rights. The concept of sustainable development should be the "ideology" of the government and law enforcement officials. It required a law enforcement officials who have a vision of sustainable water resources not only for the present generation but for generations untold.

Law reform policy of water resources in the legal political framework must be on the state ideology, Pancasila, and placed on the development of the legal framework relating to natural resources aspect of the earth, water and the natural riches contained therein do in order to achieve maximum welfare of the people as mandated by Article 33 of the 1945 Constitution.

## 2. Methodology

This study uses juridical-sociological approach. The type of data used in the form of primary data sourced from the parties related to the management of water resources in the Ex boast Surakarta, as well as secondary data consisting in primary legal materials, legal materials secondary and tertiary. Sampling was done by purposive sampling. Data was collected through interviews and document study. Once all the data collected were then analyzed qualitatively.

## 3. Result and Discussion

The research activities carried out in the ex Surakarta are some areas that are within the Agency Regional Coordinator (Bakorwil) (first: Vice Governor) in Central Java Province. The ex Surakarta is composed of one city and six (6) counties, including: Surakarta City, Boyolali district, Karanganyar, Sragen, Klaten, Sukoharjo and Wonogiri.

Based on existing data UUSDA has filed a petition for 5 times recorded in Case No. 058, 059.060, 063 PUU-II 008/PUU-III 2004 and Case No. 2005. Here is a table that contains any provisions petitioned:

Article Contents Issues in Natural Resources Law Against The 1945 Constitution Article:

1. Article 9 paragraph (1) Privatization and Commercialization SDA. Right to Water Enterprises can be given to individuals or business with the permission of the Government or a local government pursuant to the authority. Article 33 paragraph (3) and (4).
2. Article 40 paragraph (4) Privatization and Commercialization SDA. Cooperatives, private enterprises and the public can participate in the organization of the development of drinking water supply systems. Article 33 paragraph (3) and (4).
3. Article 6 paragraph (2) and (3) The existence of indigenous peoples. (2) control of water resources referred to in paragraph (1) conducted by the Government and / or the Local Government while recognizing customary rights of local and indigenous people rights that are similar to it, not contrary to the national interest and legislation.
4. Article 8 paragraph (1) Restrictions on the use of water for agriculture people. Right to Water Use without permission is obtained to meet daily basic needs for individuals and for the people who are farming in irrigation systems. Explanation of Article 8 paragraph (1) Act No.7 of 2004 states that agriculture is a farming folk are covering a wide range of commodities, the agricultural crops, fisheries, livestock, crops, and forestry are managed by people with a particular need water is not more than 2 liters per second per household. Explanation of Article 8 paragraph (1) Act No.7 of 2004 states that the irrigation system is to include irrigation, irrigation water management of irrigation, irrigation management institutions and human resources. Article 33 paragraph (3) UUD 1945.
5. Article 8 paragraph (2c) The right to water outside the irrigation system. Right to Use Water requires a permit when used for farming folk outside the irrigation system. 1. Article 28D paragraph (1) of the 1945 Constitution.
6. Article 29 paragraph (3) Priority provision of SDA. Provision of water to meet the basic needs of everyday people and irrigation for agriculture in the existing irrigation system is a top priority in the provision of water resources for all needs. Section 28H and Article 28I Paragraph (2) of the 1945 Constitution.
7. Article 38 Weather Modification Development functions and benefits of rainwater implemented by developing weather modification technology and can be operated by entities and individuals. Article 28H Paragraph (1) of the 1945 Constitution.
8. Article 11 paragraph (3) Privatization and commercialization of natural resources. Pattern management of water resources

by involving the communities and businesses as possible. Article 33 paragraph (3) and (4).

9. Article 39 The use of sea water on land Individuals can use sea water on land for business activities after obtaining the permit of the water resources of the Government and / or Local Government. Article 28A of the 1945 Constitution.

10. Article 49 of the privatization and commercialization of natural resource utilization of water for other countries are not allowed unless the water supply for a variety of needs referred to in Article 29 paragraph 1e (2) were met. Article 33 paragraph 3 and 4 of the 1945 Constitution.

Based on the consideration of the Court found that the petition for judicial review of Act No. 7 of 2004 on Water Resources both formal and material can not be granted. Associated with the possibility of commercialization of water resources, then an implementation leads to commercialization UUSDA will be reviewed.

### **3.1. Water Resources Management in Former Region Surakarta after the Indonesian Constitutional Court Decision No. 058, 059.060, 063 PUU-II 008/PUU-III 2004 and Case No. 2005.**

Constitutional Basis for Water Resources Management in Indonesia is Article 33 (3) UUD 1945, hereinafter described in Article 2 of the BAL, which reads as follows:

(1) On the basis of the provisions of Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, earth, water and air space, including natural resources contained in it, at the highest levels controlled by the state as organization all the people;

(2) The master of the countries referred to in paragraph (1) of this article gives the authority to:

- a. manage and organize allocation, use, supply and maintenance of the earth, the water and air space;
- b. determine and regulate legal relations between people and the earth, water and air space;
- c. determine and regulate legal relations between persons and legal actions regarding the earth, air and space.

(3) The powers are derived from the right to take control of the country in paragraph (2) of this article, is used to achieve the maximum benefit of the people, in the sense of nationhood, prosperity and freedom in society and the state laws of Indonesia an independent, sovereign, just and prosperous ;

(4) The master of the country in the implementation can be authorized to autonomous regions and communities customary law, merely necessary and not contrary to the national interest, in accordance with the provisions of Regulation.

With this provision, the Act has enough natural resources provide to the Government an obligation to respect, protect and fulfill the right to water, which is the Government implementing regulations must consider the opinion of the Court was delivered in consideration of legal basis or reason for the decision. Thus, if the Act is interpreted in the implementation of a quo other than the purpose as stated in the Court's consideration of the above, it is against the law a quo was likely to be brought back testing (conditionally constitutional).

### **3.2. Institutional Management of Water Resources in Surakarta.**

Based on data obtained related to institutional management of water resources (especially water) in various regions in the ex Surakarta is as follows.

#### **3.2.1. Surakarta.**

Potable water is a basic human need, so that public health is highly dependent on the ability to provide drinking water facilities and infrastructure, in addition to the supply of drinking water is the driving factor of economic growth. Given the supply of drinking water is one of the strategic areas of the water supply system in the city of Surakarta conducted by the Regional Water Company (PDAM) Surakarta. PDAM Surakarta is one of urban development activities in the framework of regional autonomy. PDAM Surakarta is a water services company that provides clean water and wastewater treatment for the city of Surakarta. Implementation services for the water sector from the taps is not only limited to the city of Surakarta

City in the Territory, but it also covers some areas Sukoharjo, Karanganyar regency and Boyolali. While in wastewater management, while only serving the community for the city of Surakarta.

As an operational basis PDAM Surakarta City, among others:

- 1) PERDA No. 1 of 2004, which is a revision of By Law No. 3 Year 1977 on the Establishment of the Regional Water Company Surakarta.
- 2) PERDA No. 3 of 1999, about the Liquid Waste Management.
- 3) Decree Surakarta PDAM Directors No. 800/229/PAM In 2003, on the establishment of the Functional Unit Branch Office Northern Territory.

### **3.2.2. Sukoharjo.**

In Sukoharjo development of water supply systems by PDAM Sukoharjo. PDAM Sukoharjo is one part of the development and service of basic facilities (water) in Sukoharjo in the implementation of regional autonomy. PDAM Sukoharjo is a company that provides drinking water clean water and wastewater treatment for communities Sukoharjo. Unlike in Surakarta, taps Sukoharjo not burdened with the duties and functions of wastewater management, serving the community Sukoharjo.

### **3.2.3. Sragen.**

For the district of Klaten management of water resources especially in relation to water supply systems by PDAM Klaten. PDAM Klaten is one part of the development and service of basic facilities (water) in Klaten for the implementation of regional autonomy. PDAM Klaten is a company that provides drinking water clean water and wastewater treatment for communities Klaten. Unlike in Surakarta and Sukoharjo, in Klaten in order to management of water resources particularly drinking water also involve the private sector engaged in the production business Bottled Drinking Water (mineral water) which utilizes water source Tunggak Kedawung Klaten District.

### **3.2.4. Karanganyar.**

For the district water resources management of Karanganyar particularly concerning water supply systems by PDAM Karanganyar. PDAM Karanganyar is one part of the development and service of basic facilities (water) in the District Karanganyar the implementation of regional autonomy. PDAM Karanganyar a water services company that provides clean water and wastewater treatment for communities Karanganyar. The geographical conditions of ecologically Karanganyar have many sources of water, so in order to management of water resources particularly drinking water also involve the private sector engaged in the production business Bottled Drinking Water (mineral water) that utilizes water from the mountains Lawu.

### **3.2.5. Klaten District.**

For the district of Klaten management of water resources especially in relation to water supply systems by PDAM Klaten. PDAM Klaten is one part of the development and service of basic facilities (water) in Klaten for the implementation of regional autonomy. PDAM Klaten is a company that provides drinking water clean water and wastewater treatment for communities Klaten. In Klaten in order to management of water resources particularly drinking water also involve the private sector engaged in the production business Bottled Drinking Water (mineral water) which utilize water resources in the region Klaten, such as PT Danone Aqua.

### **3.2.6. Boyolali.**

For the region Boyolali management of water resources especially in relation to water supply systems by PDAM Mexico. PDAM Boyolali is one part of the development and service of basic facilities (water) in Boyolali the implementation of regional autonomy. PDAM Boyolali a water services company that provides clean water to people Boyolali.

### **3.2.7. Wonogiri.**

In Wonogiri development of water supply systems by PDAM Winton. PDAM Winton is one part of the development and service of basic facilities (water) in Wonogiri in the framework of the implementation of regional autonomy. Winton is a company PDAM water supply that provides clean water and wastewater treatment for communities Wonogiri. Unlike in Surakarta, taps Wonogiri not burdened with the duties and functions of wastewater management, serving the community Winton.

Based on the data related to the management of water resources especially regarding water supply in the region is predominantly ex Surakarta is still done by the state (in this case the Government) in the form of regional enterprises. While the concerns of private involvement in water resource utilization especially for mineral water in various areas such as: Sragen, Karanganyar and Klaten by researchers is still in accordance with the provisions of Article 33 UUD 1945, because although the private conduct but the government still has capability to control through licensing mechanism.

Related to the management of water resources for the private sector concerning leasehold Water and water resources exploitation permit, in fact it will not lead to mastery of the water will fall into private hands. Countries in implementing the right to water control activities include: (1) formulate policy, (2) the maintenance action, (3) make arrangements, (4) managing, and (5) supervision.

Generally, there are (3) three characteristics of the taps in the region Ex Surakarta as the agency is authorized to perform the functions of water supply, namely:

1. PDAM is a Government-owned company that is local autonomy fittings or implementing elements that regulate the use of areas and organize the provision of drinking water.
2. PDAM held companies on the basis of economic principles in the unity of Indonesia's economic development system based on Pancasila and the 1945 Constitution.
3. PDAM serve as a means or a tool to improve the welfare of society that includes social, health and public services without leaving the principle of profit-oriented.

Of the three (3) characteristics, it can be said that the management of water resources in particular in the provision of drinking water in the region Ex Surakarta in accordance with the provisions of Article 33 of the 1945 Constitution. Article 33 (3) UUD 1945, hereinafter described in Article 2 of the BAL.

3.3. Barriers in the management of Water Resources in Regional Ex Surakarta after the Indonesian Constitutional Court Decision No. 058, 059.060, 063 PUU-II 2004 and Case No. 2005 008/PUU-III

In principle there is no obstacle in the management of Water Resources in Regional Ex Surakarta after decision of the Constitutional Court of the Republic of Indonesia Against Judicial Review UUSDA. Regarding the implementation of the Decision of the Constitutional Court of the Republic of Indonesia No. 058, 059.060, 063 PUU-II 008/PUU-III 2004 and Case No. 2005 concerning the management of water resources in particular for the provision of drinking water found several obstacles that need to be addressed include: the absence of regulation (rules) in accordance with current legal developments and the lack of law enforcement, is the lack of coherence in the concept and implementation of development among regions; regarding the conservation of natural resources for present and future generations; utilization of natural resources that are less fair and less steady support economic growth, lack of information and data concerning the condition of water resources that can be accessed by the public, and the weakness of human resource development and financial resources are limited.

#### **4. Conclusion**

From the research it can be concluded that the existence of the Law of Water Resources has caused much controversy in recent years, causing judicial review petition filed to the MOJ and has been disconnected. The Constitutional Court found UUSDA not violate the 1945 Constitution. Implementation Decision of the Constitutional Court of the Republic of

Indonesia No. 058, 059.060, 063 PUU-II 008/PUU-III 2004 and Case No. 2005 concerning the management of water resources in particular for the provision of drinking water according to research needs to be done these things: (1) deregulation in a way evaluation and harmonization of laws concerning the area of water resources in particular water supply, (2) perception related to the concept and implementation of regional development, (3) the conservation of water resources by involving all stakeholders in the field of water resources; (3) increasing community involvement in order to take a policy related to the management of water resources in particular water supply, and (5) providing data base concerning the condition of water resources that can be accessed by the public.

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