

THE IMPORTANCE OF LOCAL REGULATION OF WATERSHED MANAGEMENT IN ORDER TO ACHIEVE MASTER PLAN FOR THE ACCELERATION AND EXPANSION OF INDONESIA'S ECONOMIC DEVELOPMENT

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ABSTRACT

It is time for the legal product formulations made at the local level in the form of legislation in the Watershed basin management framework for achieving good governance. Lawrence Friedman refers to the theory, that the working of the law influenced by three factors, called structure, substance and culture. First, the structure. In terms of the structure of existing institutions at both the central and local levels that address watershed management, the Ministry of Forestry, Ministry of Public Works, Ministry of Environment and related agencies at the central level. At the local level there is the Forest Service, the Environment Agency, Regional Development Planning Board and other relevant agencies at both provincial and district levels. Second, the substance. On the substance of the weakness, although existing at the central level Water Resources Law, the Forestry Law, the Law on Environmental Protection and Management at the local level, but there has been no local regulations that regulate watershed management specifically in the form of legislation. In addition to the above problems, there is now PP No. 37 Year 2012 on Watershed Management that need to be followed up with a decision at the local level.

Keywords: Local Regulation, Watershed Management, Master Plan for the Acceleration and Expansion of Indonesia's Economic Development

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INTRODUCTION

Humans are often regarded as obstacles or even as a destroyer of natural resources. Forms of destruction of natural resources by humans due to a lack of awareness and knowledge of mankind or because of the pressure of economic necessity. Therefore, human factors need to be taken into account as well, in connection with the ultimate goal of watershed management is to improve the welfare and prosperity to the people living inside or outside the watershed. Development of human activity in the utilization of natural resources in the watershed management framework is intended to generate and increase awareness, willingness and ability of people to be able to participate actively in the management of natural resources in order to achieve maximum benefit and sustainable. Watershed conservation success is ultimately determined by the user and the owner of the land itself. In this matter the motivation for the owners and land users feel obliged, willing, and able to carry out soil conservation in the context of watershed management. Watershed conservation efforts is intrinsically part of the environmental management in general. It is reasonable because the watershed is one form of the environment. Form of environmental management, such management of marine, mining and industrial businesses, which all have the same goal, which is to the welfare of mankind both present and future generations.

According to watershed conservation goal is the realization of the optimal conditions of vegetation resources, land, and end so as to give the maximum and sustainable benefits to human welfare. By looking at the watershed conservation purposes as described above, then the first watershed conservation is facing public awareness and the ability to use and maintain the natural resources wisely. Although, public awareness of the environment is not a direct target, but this is an initial state must be created in order to achieve the ultimate goal. In an effort to further improve the results of watershed conservation, need to be put on a steady basis fundamentals or principles adopted in the management in order to maintain consistency, especially at district or city. Basics in watershed conservation efforts realized in principal to achieve the ultimate goal of watershed management as mentioned above. By looking at the purpose and effect of watershed conservation, then according to Lee, watershed management includes 4 main effort, namely : a) the management of land through conservation efforts in the broadest sense, b) water management through the development of water resources; c) vegetation management, particularly the management of forest which has the function of protection against soil and water ; d) development of human consciousness and the ability to use natural resources wisely through information and outreach efforts .

RESEARCH METHOD

This study used empirical methods or non-doctrinal Juridical intended as an attempt to approach the problem studied by the nature of the law in accordance with the realities of life in the community. The approach is sociological/empirical non-positivistic approach and uses qualitative analysis. Empirical research means collecting and analyzing data about law. It is a method of research rather than an end in itself and may be conducted with different aims in mind: simply to know more about some aspect of law, or to lay the groundwork for reform, or to build a set of generalizations about law (D.J. Galligan, 2010). The descriptive nature of developmental research that provides a systematic overview of the object to be studied, developed a model

that can be further developed to solve problems in the field. The research approach using qualitative research approach. In this study the data needed include the primary data and secondary data. Primary data, ie the data obtained directly from the data source or first hand, especially concerning aspects of behavior, perception, attitude, and motivation of the Legislature in lawmaking. Secondary Data can be magazines, reports, results of previous research, legislation, and other publications. Secondary data sources include primary legal materials, secondary and tertiary. In this study, Researchers used a qualitative analysis techniques, the data collected given the largely qualitative data. This technique is appropriate for research that results are qualitative data, ie the data that cannot be statistically Categorized as qualitatively.

B. RESEARCH OBJECTIVE

The purpose of this study is to investigate and analyze the urgency of the watershed management legislation is needed in order to strengthen the function of the environment and good governance.

C. RESERACH METHODS

This study used empirical methods or non- doctrinal juridical intended as an attempt to approach the issues examined by the nature of the law in accordance with the reality of living in society. The approach used is sociological / empirical approach using a non-positivistic and qualitative analysis. The descriptive nature of developmental research that provides a systematic overview of the object to be studied, then compiled models can be developed to solve problems in the field. The research approach using qualitative research approach. By quoting the opinion of Denzin and Lincoln explained that qualitative research is a research that uses natural background, with the intention of interpreting phenomena and performed by letting the various existing methods. In this study the data needed include primary data and secondary data. Primary data, i.e. data obtained directly from the data source or first hand, especially concerning aspects of behavior, perception, attitude, and motivation of the executive and the legislature in lawmaking. Secondary data, i.e. data is not collected by the researcher raised privately. Secondary data can be in the form of magazines, reports, results of previous research, legislation, and other publications. Secondary data sources include primary legal materials, secondary and tertiary. Data collection instrument is divided into two for primary data using interviews and questionnaires. This interview was conducted by in deep interview, the method of collecting data through in-depth interviews were conducted to the data source. Refinement and elaboration to provide further data conducted Focus Group Discussion (FGD) with the parties involved stakeholders. As for secondary data use content identification with literature study method , where the method is used in order to obtain secondary data , which collects data in the form of scholarly books dealing with the problem under study , the documents , the appropriate legislation and others by reading and studying it. In this study the authors used qualitative analysis techniques, given the data collected mostly qualitative data. This technique is appropriate for research that produces qualitative data, i.e. data that cannot be statistically categorized qualitatively.

D. RESULT AND DISCUSSION

1. Watershed Management

Watershed management goal is to get the full benefits of the watershed as well as possible according to his ability, to meet the needs of diverse communities and evolving over time. In the phrase "according to his ability" implied understanding harmony and sustainable. The phrase " full benefits " and " the needs of diverse communities and evolving over time " suggests that (1) the output of the watershed should not be just a single variety , but should consist of a combination of the output range of the optimum , and (2) the plan management must be flexible (flexible) which contains a number of alternatives . To direct the management, required three steering elements, namely: first, the decision variables (decision variables), which is a source of alternative manufacturing. Second, the purpose and goals (objectives). Third, constraints (constraint), which restrict the movement of the variables in the decision making alternatives to achieve the objectives set . Especially with regard to watershed management , which can be used as decision variables , are : (1) The fourth basis for watershed management that has been mentioned earlier (DAS as connecting two main natural water reservoirs , the presence of DAS supported by materials and energy exchanges , developing watershed through a process of change in DAS and double that can be used for a variety of allotment) , (2) the use of the watershed should be able to give rise to equitable distribution of benefits between upstream and downstream areas , and (3) development of the watershed should be able to contribute to regional and or national interests , such as watershed management intent or purpose mentioned above .

As for the obstacles to the development of the watershed is climate , relief , soil , water , mineral resources , vegetation , some specific human , space / area , shape , and achievement . In short all the elements are or are involved in watershed management. The management plan, the watershed is divided into two management units, namely: first, the management unit covers the entire area upstream reservoir or river head area. Second, the management of the downstream unit covers the entire drainage area or areas subordinates. The term "watershed" is used on a limited basis to name -fed regions, being subordinate area known as the "commanded area ". Called "commended area "means areas potentially. In the watershed that could be built a dam or reservoir then the whole area possessed by the building (the area located below the high line doors dam or reservoir) is "commended area ". Management of the reservoir area is intended to accomplish the following: (1) flow control surface (excess) that damage, as a flood control efforts, (2) facilitate water infiltration into the soil. (3) to promote the utilization of surface runoff for useful purposes , (4) seek all land and water resources to maximize production . Powerful factors (Affect) on program management or watershed area upstream are : (1) the shape, (2) slope and macro generation (3) soil conditions , including soil physiography and hydrology, (4) the intensity , duration and rainfall bill (5) looks and quality of vegetation cover , (6) current land use. The purpose of the downstream watershed management can be summarized as follows: (1) preventing or controlling floods and

sedimentation harmful, so it does not spoil and degrade the ability of the land. (2) improve drainage of land to enhance its capabilities. (3) increase water from water sources. (4) soil melioration, including improving the responsiveness of land to water, and if necessary also the land reclamation of lands, alkali, sulfuric acid, thick peat, and crude minerals. Principal factors that empowered the downstream area management program are: (1) forms downstream and comparison with the extent of the area, (2) differences in slope (gradient) general slope of the talus slope downstream common areas, (3) generation macro, face height of land on an average, container (depth) at average soil water, and soil conditions, (4) the intensity, duration and rainfall; (5) looks and vegetation cover, (6) land use now.

2. Principles of Good Governance

From the perspective of the development of the administrative system, the root of the problem lies in the failure of environmental destruction workings of natural resources and environmental governance system to encourage the exchange of ecological processes in an effective, efficient and equitable between the two spaces are different but tied another. The space is "a human system" and "space for non-human system" in the watershed area. Environmental governance system failures → look at the regulatory inconsistencies between regions in managing the watershed area. Administrative authorities of each region within the catchment area failed to produce a synergistic environmental policy in cross-system of local administration (trans-local environmental policy implementation). When failures continuous, then in the end there was ecological crisis whose roots lie in the failure of the whole system of environmental governance (environmental governance failure). Chaos - management system and the regulation of natural resource use and the environment in the "social space" might lead to a crisis in the "space ecological systems" watershed, where ecosystems increasingly co-opted and received a very heavy load due to errors or inconsistencies in policy and decision making performed by the system administration. This fact led to the thesis that the ecological crisis is an environmental governance crisis. If problems arise in harmony with the governance system failure decentralization (OTDA), which has led to the strengthening of the "centralization of local authorities", then immediately thought of one solution is to renew the spirit of decentralization in order to re-centralize governance of natural resource and environmental management at the regional / district or the city does not continue getting chronic. Renewal of institutional governance and environmental governance is deemed important, even during the classical human ecological perspective believe that the ecological system (nature) has the adaptability to stabilize any shocks and instability, as well as the destruction of the ecosystem that happened without human intervention. Therefore, immediate intervention at the macro level of socio-ecological systems DAS became very important to realize. This view is based on the premise that environmental improvements that rely on "without any engineering and institutional governance" will be difficult to help the regeneration and stabilization of watershed ecological system quickly. Especially if the idea is to restore the ecological status of the watershed ecosystem. From these considerations, it attempts to update the system back governance of natural resources and the environment in the watershed to be highly relevant and urgent to be realized through regulation at the local level (Watershed Management Regulation). Product good law is one of the conditions of the implementation of good governance in the region.

Conceptually it is understood that good governance suggests a process that people can manage their economic position. Institutions as well as social and political resources are not just used for development, but also to create an integration for the welfare of the people. Good governance is also understood as a government management organization responsible for the solid and in line with the principles of democracy and markets, efficient governance, and governance activities are free and clean of corruption, collusion and nepotism (KKN). Relating to good governance Thoha Miftah, argued as an open governance, clean, dignified, transparent and accountable. Further in the opinion of the World Bank in its report on 'Good Governance and Development' in 1992, said that 'good governance' as a public service that is efficient, reliable judicial system, the government is responsible (accountable) to the public. While the notion of good governance by Abhimanyu Anggito cited by Mahfud MD, that 'good governance' is "participatory, transparent and accountable, effective and equitable. And it promotes the rule of the law" and "good governance will never credible as long as conditionality governance is imposed on a country without consulting civil society".

Philipus M. Hadjon et al, in the administration of justice in the Netherlands known *nomencelatur* general principles of good governance (ABBB) which is the legal norms are not written, that should always be adhered to by the government or by other language ABBB are the principles of common law, which for certain circumstances can be drawn legal rules that can be applied. include:

1. Principle of equality, the principle that the same things should be treated equally, regarded as one of the most fundamental principles of law and rooted in the consciousness of the law, specifically the understanding of wisdom is to show the principle of equal treatment embodiment or the principle of equality;
2. Trust principles, including the principle of confidence in the principles of the most fundamental laws in public law and civil law, the administrative law adopted as a principle that the expectations generated must be met wherever possible. This principle as the juridical basis of the promises, descriptions, rules and forms plan (which is not regulated by law);
3. The principle of legal certainty, the principle of which has two aspects, one is more material law, the other is formal. Material law is closely linked to the principle of trust, the principle of legal certainty preclude government agencies to waive a statute or a change to loss of interest.
4. Principles of accuracy, this principle sense that a decision must be carefully prepared and taken. Or can be interpreted as a decision must contain a sense, that a decision must be carefully prepared and taken.
5. The principle of giving the reason (motivation), is a decision must be supported by reasons which made basically.

6. Detournement de pouvoir ' (abuse of authority), is an authority may not be used for any purpose other than for the purpose given.

7. Prohibition of arbitrary action.

According to UNDP , good governance is a synergistic relationship between the state , private sector (market) , and a society based on nine characteristics , namely : participation , rule of law, transparency , responsive attitudes , consensus -oriented , welfare / togetherness , effective and efficient , accountability , and strategic vision .

Meanwhile, according to Jazim Hamidi, meaning the General Principles of Proper Governance (AAUPL) or good governance are:

1. AAUPL are ethical values that live and thrive in an environment of administrative law;
2. AAUPL serves as a handbook for state administrative officials in carrying out its functions relating to beschikking;
3. Most of AAUPL still the principles of the unwritten, abstract, and can be extracted in practice at the life of the community;
4. AAUPL in part already written rules and regulations are split into positive law.

3. The working theory of the Law

The legal system does not only refer to the rules (codes of rules) and rules (regulations) , but covers a wide field , covering structures , institutions and processes (procedures) are filled and laws related to living in the community (living law) and legal culture (legal structure) . According to Lawrence Friedman, the elements of the legal system that consists of a structure of law (legal structure) , the substance of the law (a legal substance) and the culture of law (legal culture) . Legal structure includes the executive, legislative and judicial branches as well as related institutions, such as the Attorney General, Police, Courts, Judicial Commission, the Corruption Eradication Commission (KPK) and others. While the substance of the law is about the norm, regulations and laws. Legal culture is covering the views, habits and behavior of people thinking about the values and expectations of the legal system in force, in other words, the legal culture is the social climate of thinking about how the law was applied, violated or implemented. Without the legal culture of the legal system itself will not be helpless , like a dead fish lying in the basket , not like a live fish that swim in the sea (without legal culture , the legal system is inert, a dead fish lying in a basket , not a living fish swimming in its sea) .

Every society, the state and communities have legal culture. Always there attitudes and opinions about the law. This does not mean that everyone in the community provide the same thought. Many sub cultures of tribes that exist, religion, rich, poor, criminals and police have different cultures with each other. The most prominent is the legal culture of the people inside, the judges and lawyers who work within the legal system itself, because of the attitude they form a lot of diversity in the legal system. At least this impression will affect law enforcement in the community. The law is the social control of the government (law is governmental social control), as the social rules and processes that try to encourage the behavior, either useful or prevent bad behavior. On the other hand is a network of social control or regulation and comprehensive process that carries legal consequences for certain behaviors, for example, the general rule against the law. There is no other way to understand the legal system than to see behavior that is influenced by the rule of law government decisions or laws issued by the competent authority.

If someone behaves in particular is because it is commanded by the actions of law or governmental or other authority or the legal system. But we also need social control of the government, because we cannot deny, that no horse without a bridle. So also no ruler and apparatus that is free of social control. Everyone knows there are people who abuse the authority of office, bribery and corruption frequently occurs in bureaucratic tyranny. So to fix should be built into the system control. In other words, the law has the task of overseeing the authorities themselves far, the control is done on the controller. This thinking was behind the checks and balances (checks and balances) and behind the State Administrative Court, Inspector General , Auditor and institutions such as the Commission , the Judicial Commission . All of this must have a strong commitment to combat all forms of abuse of authority of the ruler.

Law would be meaningless if human behavior is influenced by the law and obey the law if the public use behavior, while on the other hand is closely related to the effectiveness of the legal issues legal compliance as the norm. This is in contrast with the basic policy of the relatively neutral and universal values depend on the purpose and reason for the formation of legislation. In practice we see no law/local regulation largely adhered to and there law/local regulation are not adhered to. Clear legal system would collapse if everyone does not comply with the laws and legislation that would lose its meaning. Ineffectiveness of legislation likely to affect attitudes of time and quantity of non-compliance as well as having a real effect on the behavior of the law, including the behavior of offenders. This condition will affect law enforcement that ensures certainty and fairness in law. Certainty we can see from two angles, namely certainty in the law itself and the rule of law. "Certainty in the law " meant that every legal norm that must be formulated with the sentences in it does not contain a different interpretation. The result will bring submissive behavior or do not comply with the law.

Arise in practice many legal events , where when faced with the substance of the legal norms that govern it , sometimes not obvious or less perfect that arise different interpretations which will consequently lead to legal uncertainty . While the " certainty because the law" meant , that because the law that made it a certainty , determining the existence of institutions such as the law expired , with the passing of time a person will gain or lose the right to the right . Legal means to ensure certainty for someone with expired agencies will get something specific right or rights will lose something not identical with the law , if the law is

identified with legislation, then one of the effects can be felt, is that there are areas of life not regulated by law, then the law says people left behind by development. Similarly, the rule of law is not identical to the certainty of the law.

If legal certainty identified with certainty of the law, then the law enforcement process is done without regard to the legal reality (*Werkelijkheid*). Law enforcement only starts from the substance of formal legal norms that exist in the law (*law in book's*), would tend to injure the public sense of justice. Should the emphasis here, should also start from point on the law of life (*living law*). Further, law enforcement officials must consider the culture of law (*legal culture*), to understand the attitudes, beliefs, values and expectations of the public and the legal reasoning in the legal system in force. Law enforcement should in principle be able to benefit or power (*utility*) for the community, but in addition the community also expects law enforcement to achieve justice. Even so, we cannot deny, that what is considered to be useful (*sociologically*) is not necessarily fair, and vice versa what feels fair (*philosophically*), is not necessarily useful for the community. In such conditions, the public just wants a legal certainty, that the existence of a rule of law that can fill the void, regardless of whether the law is fair or not. Social reality as it forced the government to make regulations in a practical and pragmatic, prioritize the areas most urgently in accordance with the demands of society without strategic estimates, thus giving birth to the regulations are a patchwork of behavior that power does not last long. Consequently less guarantees rule of law and justice in society. Substance laws or local regulations and should be arranged in a consistent, harmonious with the values embodied in the Pancasila and the Constitution of 1945. For it must be done by abstracting the values contained in Pancasila and the 1945 Constitution then derive, which is to reduce a number of principles to be used as basis the legislation. All legal regulations issued by the sectoral ministries and provincial governments, district / city in question must be harmonious and in sync with the provisions of the law.

Needs to be understood that many regulatory laws or local regulations are often not grounded in the moral basis people, and often contradictory. The extent and situation like this, the moral consciousness of citizens again certainly will not always be congruent with people's legal awareness. Law developed from the ideals of renewal and development of national states will therefore require any other legitimate basis, which is not always granted free of the moral legitimacy of the people who have been there all along. The laws of economics, traffic and urban planning which is based pragmatic purposes it is clear that apart from the traditional moral consciousness.

Instrument Protection and Watershed Environment Management Functions
UUPLH Article 5 mandates that the implementation of environmental management is done through the inventory of environmental, zoning and development ecoregion Protection Plan and Environmental Management (called RPPLH). Integrated watershed management is also ideally suit RPPLH. RPPLH consists national, provincial RPPLH, RPPLH District/City, National RPPLH made by Minister of Environment under the national inventory, RPPLH province RPPLH made by national, inventory level island / island and inventory levels of ecoregions, RPPLH district / city level are made based RPPLH province, inventory level island / islands ecoregion and inventory levels. Preparation RPPLH attention following aspects: a) the character and function of ecological diversity, b) distribution of the population, c) the distribution of natural resources, d) local knowledge e) and f) aspirations climate change. RPPLH contains plans on the following aspects: a) the use and / or reserves of natural resources b) the maintenance and protection of the quality and / or environmental functions, c) control, monitoring, and utilization and conservation of natural resources, and d) adaptation and mitigation of climate change. RPPLH be included in the basis of preparation and long-term development plans and medium-term development plan.

Strategic Environmental Assessment (SEA) as defined in Article 1, point 10 UUPLH is "a series of systematic, thorough and participatory to ensure that the principles of sustainable development has become a basic and integrated development of an area and / or policies, plans and/or programs. Integrated Watershed Management Ideally based in SEA. "SEA is an instrument that is not known in UUPLH 1997 and 1982, so that it can be regarded as a new instrument in environmental management. Enactment of SEA prove that the instruments that previously were unable to prevent and cope with the emergence of environmental issues. Instruments that existed before the SEA primarily oriented individual activities, e.g. EIA and permits, while environmental problems can arise due to the government's macro policies or government programs that are not in line with the concept of sustainable development. SEA in UUPLH settings contained in Article 4, namely Article 15, Article 16, Article 17 and Article 18. Article 15 obliges UUPLH "government and local governments to make the SEA to ensure that sustainable development has become a basic and integrated development of the region and / or policy or program".

E. CONCLUSION

Refers to the theory of Lawrence Friedman that the working of the law influenced by three factors, called structure, substance and culture. First, the structure. In terms of the structure of existing institutions at both the central and local levels that address watershed management, the Ministry of Forestry, Ministry of Public Works, Ministry of Environment and related agencies at the central level. At the local level there is the Forest Service, the Environment Agency, Regional Development Planning Board and other relevant agencies at both provincial and district levels. Second, the substance. On the substance of the weakness, although existing at the central level Water Resources Law, the Forestry Law, the Law on Environmental Protection and Management at the local level, but there has been no local regulations that regulate watershed management specifically in the form of legislation. In addition to the above problems, there is now PP No. 37 Year 2012 on Watershed Management that need to be followed up with a decision at the local level.

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