

## THE REGULATORY FORMULATIONS OF CENTRAL JAVA AND EAST JAVA WATERSHED: STRENGTHENING LOCAL GOVERNMENT IN LEGISLATIVE DRAFTING PRACTICES TOWARDS GREEN LEGISLATION

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### ABSTRACT

*This study aims to determine the arrangements in the processing of mineral and coal mining business permits associated with regional autonomy. This research used a normative legal research method and empirical legal research. The data used include primary data and secondary data. The results of this study are that the strengthening of Regional Governments in Central Java and East Java in Legal Drafting Practices needs to be increased to realize Green Legislation. This can be done by increasing legislative capacity and sectoral ego awareness. In addition, strengthening local governments can be carried out by accommodating the role of the community in policy formulation so that policies can be implemented more.*

**Keywords:** Watershed, Legal Drafting, Local Government, Green Legislation

### 1. Introduction

Environmental damage in the watershed is increasing, this is indicated by the increase in natural disasters that are being felt, such as floods, landslides and increasing drought. The low carrying capacity of watersheds as an ecosystem is related to the occurrence of natural disasters related to water (Nurhidayah & Karjoko, 2017). Watershed damage is accelerated by the increase in the use of natural resources as a result of population growth and economic development, conflicts of interest and lack of integration between sectors, between upstream-middle-downstream areas. Likewise, what happened in the management of the Solo Watershed (Nurhidayah & Karjoko, 2017).

The Solo River Basin covers a fairly wide area, namely upstream at Mount Merapi, Mount Merbabu, Mount Lawu, and the karst hills of the Thousand Mountains in Wonogiri - Pacitan, as well as the Kendeng mountains in the north to the downstream area, and Gresik Regency is the estuary of This Solo watershed. Development activities in the Solo watershed, both upstream and downstream, are classified as intensive and have high population pressure, especially community growth in Surakarta City, Sukoharjo Regency and Klaten Regency. Development activities in the Solo watershed tend to decrease the ability of the land to absorb water and protect the soil from erosion. Ultimately causing high surface runoff and erosion. Floods, decreased river water quality, landslides and drought are indicators of failure to manage natural resources that have public benefits (Handayani, 2012).

In order to improve coordination and continue communication processes between stakeholders to solve problems in Solo Watershed management in an integrated manner, stakeholder initiatives are required. To realize the integration of programs, activities and funding, it is necessary to have an Integrated Plan for Solo Watershed Resource Management, which is prepared in a participatory manner, involving stakeholders (Karjoko et al., 2017). Stakeholders who play a role can come from the government bureaucracy who will act as facilitators and actors both in the business community, individuals and academics. The aim is to formulate a watershed management strategy based on the unique characteristics of natural resource conditions, namely air, soil and rock, flora, fauna, human resources and artificial resources (Handayani et al., 2015).

Based on the description above, it shows the need for integrated watershed management that must involve all stakeholders in natural resource management. Stakeholders who have many links in watershed management include the community, businessmen, government and local governments. Subsequent collaborations are based on integration and upholding the commitment to implementing effective, efficient, fair and sustainable natural resource management. This is intended to create comprehensive planning in watershed management, which is able to accommodate various interests. For this reason, guidelines for the preparation of an Integrated Watershed Management Plan are important so that they can be used as a reference for stakeholders. Thus, these related parties commit to the program and carry out activities in order to achieve the agreed goals (Asdak, 2004).

Integrated watershed management is expected to be a form of safeguarding natural resources, such as forests, land and water. Lack of precise information regarding the physical and social conditions presented in the analysis of watershed management will certainly affect the logical consequences for sustainable use of the watershed. This also spurs the degradation of natural resources. It can even damage the carrying capacity or capacity of the watershed to sustain the environmental balance. In line with the implementation of the autonomy policy, regional governments, both provincial and district/city, in this case have the authority and responsibility in regulating their governmental households. For this reason, the use of natural resources is one aspect of driving economic activity in the community. However, it is still in the context of and efforts to realize optimal management and utilization of natural resources, namely by maintaining environmental sustainability and not neglecting the harmony of stakeholders in watershed management (Handayani, 2013a).

Guidelines for the preparation of an Integrated Watershed Management Plan which can be used as a reference for stakeholders can actually have a fundamental impact on the implementation of optimal watershed management. Through comprehensive guidelines, these commit to formulate programs/activities and implement them to achieve mutually agreed goals. The integrated watershed approach also focuses on the presence of community participation in the management of the watershed itself. Community participation is accommodated from the planning stage, policy formulation, implementation, to collection of benefits. Initially, watershed management planning was mostly carried out by approaching physical factors and having a sectoral character (Mitchell et al., 2016).

Legislations related to the environment at the regional, city, district and provincial levels need to follow scientific developments at the national and international levels to protect democracy and the rule of law, as well as good governance. Local government (in this case the executive agency) plays an important and strategic role in producing local regulations that refer to environmental sustainability. In addition, regional regulations do not overlap and are in harmony with regional regulations or laws and regulations above them.

However, in fact there are still regional regulations that are not harmonious and overlapping, even not protecting the function of the environment. Not a few regional regulations were eventually canceled because they contradicted the law. This is due to the lack of knowledge and experience of local government officials regarding the formation of regional legal products, the culture of 'copying' other regional regulations, and budget constraints. The understanding and sensitivity of the legal apparatus regarding green legislation is also very limited. This has resulted in the formulation of regional regulations that are not responsive to the importance of environmental functions in the future. The importance of awareness that conditions from one region to another are different so that it will greatly affect the resulting legal products later (Handayani, 2012).

Therefore, it is necessary to strengthen the Regional Government in developing and creating Regional regulations regarding the management of watersheds so that they are based on green laws and the creation of good governance practices. The long-term objective of this study is to formulate a model for formulating policies on Regional Regulations (Regional Regulations) based on Green Legislation in the context of developing good governance practices in the regions through strengthening roles through strategies, mechanisms and empowerment of potentials, as well as improved procedures drafting regional regulations to pay attention to the preservation of environmental functions.

## **2. Research Methods**

The approach to the problem used in this study uses a juridical empirical and normative juridical approach. An empirical juridical study with the aim of looking at problems in the field so that they can be resolved or a legal reference can be found (Marzuki, 2011). The document study with analysis consisting of laws and regulations and various policies related to the main problems studied in Central Java Province and East Java Province, and the problems it faces.

The data used in this study are primary data in the form of data from interviews and field observations. Meanwhile, secondary data is in the form of laws, government regulations, and other related laws and regulations, books, journals, etc. The method of collecting data in the form of primary legal materials and secondary legal materials as well as tertiary legal materials was carried out by document study or literature study. The data analysis technique is done inductively, that is, all existing data is analyzed based on the theories used. The analysis model in research is interactive (interactive model of analysis).

## **3. Result and Discussion: Strengthening Local Government in Formulating Participatory Watershed Management Regulations**

Watershed degradation in Central Java and East Java is generally reflected in the occurrence of floods, drought, silting reservoirs, lakes and rivers. This natural disaster shows that the applied watershed management system is still weak. The weakness of this watershed management system is definitely related to the policies and regulations made by the government as a policymaker. Some of the weaknesses of the watershed system that are included in the weaknesses of the management function in general today are as follows (Handayani, 2013b):

- 1) The current watershed management planning system is still partial (not integrated), does not have a common goal or is still sectoral in nature;
- 2) The policymaking process is not yet participatory, that is, it has not accommodated the role of other parties, especially the community. Policies do not have strong legal force, and are less effective and less efficient;
- 3) Institutions related to watershed management are still sectoral, each working independently based on their interests; there is no clear division of tasks, functions and work mechanisms in watershed management. The existing watershed forums have not worked effectively.
- 4) The implementation of activities in the field tends to be sectoral ego. Local government policies tend to exploit watershed natural resources to increase local revenue. Meanwhile, watershed conservation and rehabilitation rely on the central government, especially the forestry sector;
- 5) The function of monitoring and evaluation is only played by certain institutions, there is no coordination and information exchange on control has not involved much supervision and the community where the enforcement of violations of regulations is not implemented consistently

(Esty & Porter, 2005) argues that empirical evidence shows a country can derive environmental benefits not only from economic growth but also from developing a legal role and strengthening its governance structures. On the other hand, it cannot be denied that the pouring of environmental policies (green policy) into green legislation has not been carried out for too long so that it is not widely known (Asshiddiqie, 2009). Advocates of environmental ideas have had to face a very unequal challenge from political authorities, from business leaders, and from society itself.

Environmental interests that are sidelined by regulations rather than other factors do not only occur in forums of a technical nature in the executive branch, but also in political forums in the legislature. Therefore, in addition to environmental laws that are in favor of the environment, it is not uncommon to find laws in other fields that are not environmentally friendly. This has become a part that has been shamelessly shown to the public. In the people's representative institution which is the mouth of all kinds of interests that exist and fight each other in society. Research result (Faure & Johnston, 2009) mentioning "pollution haven" i.e. testing the extent to which differences in environmental regulations are important to companies to such an extent and the extent to which they will decide to consider cost differences when making decisions on where to place their companies or to move (Handayani, 2012).

Mentioning "pollution haven" i.e. testing the extent to which differences in environmental regulations are important to companies to such an extent and the extent to which they will decide to consider cost differences when making decisions on where to place their companies or to move (Steinzor, 1998) argued that If one agrees that different styles of law enforcement are also linked to cultural differences, the shift in the US from traditional command and control to a more flexible system of industrial self-regulation is likely to be a perilous journey. Likewise, in Indonesia, which is currently facing the same demands, namely the need to formulate a policy that can be enforced in the form of a separate Law regulating the environment.

Partially, policies regarding environmental issues have been accommodated in several regional policies, such as Surakarta City, Sukoharjo Regency, Sragen Regency, Tangerang City, Ngawi Regency, Blora Regency. In fact, the City/Regency already has a Regional Regulation on Environmental Control. However, the problem arises in the political will of both the central and local governments that need to be encouraged. Especially in the executive and legislative realms (Handayani, 2012).

This is because the regional legislature for the preparation of a policy is discussed by the DPRD with the regional government in a legal formulation in the form of a Regional Regulation. Based on a juridical perspective, both implicitly and explicitly, the legal basis for making green policy is getting stronger. Due to the increasing awareness around the world recognizing the importance of protecting the environment from the threat of pollution and destruction, environmental policies are outlined in the form of official legislation. Therefore, there is a worldwide wave, namely a wave of environmental policy legalization or legislation.

After the enactment of so many regulations, it is ineffective to prevent environmental pollution and destruction. (Gunningham & Grabosky, 1998) mentioned in his book, there is not only one optimal instrument to achieve environmental goals at the lowest cost. The strengths and weaknesses of certain institutional features of a particular legal system may play an important role in this. Article 28 H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution states that the right to obtain a good and healthy living environment and good health services is a human right. Therefore, the 1945 Constitution has great concern for the environment, so that it can be called a green constitution.

Thus, all policies and actions of government and development must comply with the provisions regarding human rights to a healthy and healthy environment that supports environmental sustainability. Moreover, Indonesia is one of the archipelago countries that are vulnerable and prone to natural disasters. If the environment is allowed to be damaged, it could potentially cause harm to the Indonesian nation itself. Starting from the realm of the constitution, Law Number 32 of 2009 concerning Environmental Protection and Management regulates how important the philosophy of green values is necessary in the legal drafting of the Lindang Law, including Regional Regulations.

In the preparation of statutory regulations, of course, it will be related to the regulations that have preceded it. For this reason, there is a need for an alignment of the juridical basis, this will prevent disharmony of laws and regulations (Raharjo, 2000) expresses the opinion that at least statutory regulations must have the following characteristics:

- 1) General and comprehensive, this is contrary to special and limited characteristics;
- 2) Universal in nature, laws and regulations are created to deal with future events that are not yet concrete. The statutory regulation is not formulated to deal with certain events.
- 3) Has the power to correct and improve itself, namely a statutory regulation to include a clause containing the possibility of a review.

For this reason, in the formulation of regional regulations it is necessary to pay attention to more specific aspects, especially those related to regional autonomy. The following are some important notes when formulating Regional Regulations, including:

- 1) The contents of the Provincial Regulations and Regency/City Regulations contain material in the framework of implementing regional autonomy and regional special assistance tasks and/or accommodating conditions for the further elaboration of higher laws and regulations (Article 14 of Law No.12 of the Year 2011). This means that in preparing Regional Regulations, one should pay attention to the provisions regarding the content of the Regional Regulations because otherwise it will potentially be canceled;
- 2) In preparing Regional Regulations, the planning of Regional Regulations should be carried out in a Regional Legislation Program;
- 3) Preparation of Regional Regulations must be carried out following the techniques for drafting statutory regulations as listed in the Attachment to Law No. 12 of 2011;

- 4) In the case of promulgation and dissemination of Regional Regulations to make everyone aware of them, the Regional Regulations must be promulgated by placing them in the Regional Gazette or Regional Gazette.

In the practice of drafting Regional Regulations proposed by the Government (executive agency) it can be sorted as follows:

- 1) Preparation, the Regional Head proposes the Draft Regional Regulation to the DPRD Leadership through the Regional Head's letter. Then, the DPRD Leadership submits the Draft Regional Regulation to all DPRD Members;
- 2) Phase I, Explanation of the Regional Head in a plenary session
- 3) Phase II, General views at the plenary session by Members who cast their fraction of the Draft Regional Regulation;
- 4) Phase III, Discussions in commission meetings, joint commission meetings or special committee meetings, which are held together;
- 5) Phase IV, Decision making in a plenary session, which is preceded by a report on the results of the stage III discussion, the final opinion of the faction; and Giving opportunities to Regional Heads;
- 6) Faction Meeting, regional regulations that have obtained the approval of DPRD (which are stipulated by a DPRD Decree) are signed by the Regional Head.

In addition to strengthening the Regional Government in terms of practice and substance of the preparation of Regional Regulations, there is strengthening in terms of money that can be done by the Regional Government, namely community participation. Where the community has access in making Regional Regulations related to DAS. According to Arnstein, community participation is based on the power of society to determine an end product. Arnstein describes it in stages with the form of a ladder of participation that is differentiated according to the corresponding to the extent of citizen's power in determining the plan and/or program. argued that participation shows the distribution of power from managers to society. The highest level of participation is at the level of citizen control, where the community can influence policy (Arnstein, 1969).

Community participation in the management of the watersheds in Central Java and East Java can be carried out either individually or through a watershed management coordination forum. For community participation, which is carried out through the watershed management coordination forum, it is carried out to support integrated watershed management.

The watershed management coordination forum has the following functions:

- 1) Accommodate and channel community aspirations regarding watershed management;
- 2) Contributing thoughts in watershed management; and fostering and developing the role of community monitoring in watershed management.

Individual community participation can be in the form of:

- 1) Maintain and relish environmental quality produced by watershed ecosystems;
- 2) Get consideration in watershed management; and
- 3) Receive training and counseling related to watershed management.

The threat of a crisis in the carrying capacity of ecosystems and the environment that is occurring in Indonesia today is increasingly real. Therefore, the specific target to be achieved is the optimization of the regional government and DPRD in the framework of formulating and subsequently producing Regional Regulations based on green legislation. Not only Regional Regulations in the environmental sector but the basis for making Regional Regulations in general, so that they do not merely make Regional Regulations without considering the sustainability of environmental functions, especially when associated with Regional Original Improvement, but Regional Regulations that are good norm and good process and green. Optimizing the role of local governments and DPRD in producing green legislation is absolutely necessary in order to accelerate the implementation of good regional governance, especially in making policies to anticipate the impact of global warming (climate change) at the local or regional level.

#### 4. Conclusion

There are several problems in the management of the watersheds in Central Java and East Java, namely the planning system for watershed management which is partial, sectoral in nature; the policymaking process is not yet participatory. The result of this research is that the strengthening of Local Government in Legal Drafting Practices needs to be increased to realize Green Legislation. This can be done by increasing legislative capacity and sectoral ego awareness. In addition, strengthening local governments can be carried out by accommodating the role of the community in policy formulation so that policies can be implemented more.

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