

GOVERNMENT POLICY REPOSITION IN THE ECONOMIC DEVELOPMENT OF THE WATER RESOURCES SUPPLY

*The government policy reposition on a water
Exploitation of economic development*

Ronny Winarno

Email: rwinarno89@yahoo.co.id

Merdeka University Pasuruan

Jln.Ir.H.Juanda,Tapaan, Bungulkidul, Pasuruan, Jawa Timur

ABSTRACT

The exploitation of water development bases of article 33 paragraph (3) Constitution of Indonesia Republic in 1945 as a reflection of exhausted from more digger of nations prosperous. The state must have obligation to fill it on the base of respect, protection and fulfillment. The function of water became a capital development because it supports the life. In this context, there must be a move of paradigm emphasizing that the state plays a role as an agent of business. The reposition of the government policy on water exploitation for economic development is more recommended. The water management cannot ignore the principle of harmonization to protect the water rights.

Keywords : Government policy, water exploitation, water rights.

BACKGROUND

The utilization of water resources cannot be separated from the philosophical principles of water rights. One of the principles of water resources management regulates that the management of water resources is organized by observing the principle of non-disturbance, and eliminating the right to water (the right to water) as Article 2 paragraph (1) letter a PP RI. 121 of 2015 on the Management of Water Resources. If the right to water is granted the principle of protection, water rights should also be given the principle of protection that is not disturbing, overriding, and eliminating water rights.

Normatively, after the decision of the Constitutional Court of the Republic of Indonesia revoked Law no. 7 of 2004 on Water Resources and re-use Law No. 11 Year 1974 on Watering, the principles of water resources exploitation must be in line with the philosophical value of water designation as in the general explanation of Law No. 11 Year 1974 on Watering that all

forms of water utilization and its resources must be devoted to the interests and welfare of the people in all fields. Both the economic, social, cultural and defense fields of national security, while at the same time creating growth, social justice and the ability to stand on their own to a just and prosperous society based on *Pancasila*. Here is the morality if doing water resources exploitation under the pretext for economic development, should the water resource exploitation is a moral & ethical.

In reality, the regulatory values and policies of water resource management undertaken by the government and business actors are more focused and position the water resources on the aspect of the value of its usefulness, namely the right to the water (meaning the right to water) which is perceived as the right of every person to be able utilize water resources or have the right to use the water for both daily and commercial purposes. So that the meaning of water resource exploitation is more directed in the form of exploitation of water production or commercialization and commodification of water resources with the aim of obtaining profit (profit) that tends to side with business interests rather than the interests of the people.

Such regulations are vulnerable to conflict of norms, conflicts of interests, community disparities and even disharmonization. For this reason the government is responsible for the regulation of water resources utilization and seeks to realize harmonization of water resource exploitation law. Including the state must be present in the community by using the authority of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in order to prevent the occurrence of predators of water.

Thus the main problem as the legal issue of "government policy in economic development" is how to have reposition of the policy of economic development in the field of harmonious, just and moral resource exploitation from the perspective of law. Because the policy of water resources exploitation as one of the pillars and pillars of economic development is expected to be able to manage properly in accordance with the values of utilization and allocation of water resources as mandated by Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia for the greatest prosperity of the people and protect water rights. Therefore, to ensure and protect water resources as commercial objects economic development needs to maintain the integrity of water resources, water rights and repositioning government policies in the economic development of the field of water resources exploitation. The study of this problematic issue uses the analysis of the theory of justice.

DISCUSSION

1. Water Resources Management Characteristic after the Decision of MKRI

According to *PP RI. 121 of 2015* (State Gazette of the Republic of Indonesia Year 2015 Number 344 and Supplement to the State Gazette of the Republic of Indonesia Number 5801), the essence of water resource exploitation is the utilization of water resources to meet business needs. The regulation of the needs of the business itself corresponds to the economy which, when associated with the exploitation of water resources, means that differentiated water is used as raw material for production.

This arrangement indicates that Indonesia is a legal state (Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia) which embraces the concept of a welfare state. According to Lemaire, it includes a state of modern law aimed at maintaining security and conducting public welfare (*bestuurzorg*). For Indonesia, the realization of the general welfare must be in line with the values and norms of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia and in accordance with the legal functions which, according to Roscoe Pound, the function of law as social control, a tool of social engineering, an agent of development and as a means of guaranteeing justice. Therefore, if the achievement of welfare through water utilization, then the government policy must be consistent in the constitutional mandate, TAP MPR RI, regulations per-Law and requires legal politics that pay attention to aspects of democracy, basic values and environmental conservation.

Thus according to Article 1 point 9 PP RI. 121 of 2015 concerning the efforts of the utilization of water resources normatively shows the existence of water resource exploitation characteristic. In this perspective can be interpreted as follows:

1. Regarding the efforts of utilization of water resources that are intended are efforts that are in accordance with the philosophy values as much as possible for the welfare of the people.

See Article 1 point 9 PP RI No. 121 of 2015 on the Management of Water Resources

- 1) Diana Halim K., *Law of State Administration*, (Bogor: Ghalia Indonesia, 2004), p. 37
- 2) SoetandyoWignyosubroto, *Law of Paradigm, Method and Dynamics The problem*, (Jakarta: Elsum and Huma, 2002), p.60.

AsArticle 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, since the essence of water in principle concerns the livelihood of the people. Water becomes an

important part of human life even every human being and other God beings are very dependent on water.

However, it should be observed in the competence of efforts to utilize water resources here tend to the dominant model, form and characteristic oriented to profit. So those in the effort of utilization of water resources normatively need to keep harmonization and reposition government policy when determining regulation of exploitation of water resources in context of economic development.

2. While relating to the importance of meeting the business needs that can be interpreted, that water resources as development capital, because water has economic value and can be a commodity goods of all interests both in the interests of social, economic, law and even political commodities.

In order to fulfill the business needs, the utilization of water resources can not be separated from the characteristics of the water position is said to be the capital of development and also as the life support, as defined in Law no. 17 of 2007 on the National Long-Term Development Plan of 2005-2025. Of course, by positioning water resources as the fulfillment of business needs, then the function of water other than to meet the needs in running business activities such as for machines in the company also functions water as a commodity goods business that can be exploited, sold and taken advantage of the results of water sales.

This is in line and still supported by the policy of Presidential Regulation Number 36 Year 2010 on the list of closed business fields and open business fields with requirements in the field of investment, May 25, 2010, that foreign parties may conduct "drinking water" maximum with a capital up to 95%.

- 1) Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.
- 2) Production branches that are important to the state and which affect the livelihood of the people are controlled by the state.
- 3) See Chapter II letter I explanation of Law Number 17 Year 2007 on the National Long-Term Development Plan for 2005-2025.

If it is based on Law no.17 Year 2007 seen government policy in economic development seeks to utilize water resources to meet business needs by positioning water resources as development capital and also as life support. As a juridical consequence, the government should be able to keep all its economic development policies consistent in Article 33

paragraph (3) of the Constitution considering that there are still many people who have not fully fulfilled the water needs in their life. Whereas the state is obliged to guarantee and protect vulnerable groups to access sufficient, safe and affordable water. This social role can not be replaced by a profit-oriented private sector (provit).

This is also confirmed in the decision of the Supreme Court of the Republic of Indonesia Year 2005 in the case of judicial review of Law no.7 of 2004 on Water Resources to the 1945 Constitution of the Republic of Indonesia, stated that in principle the state has the right to regulate the control and utilization of water is because water concerns the livelihood of the people. The right to water is the highest right in the field of law (as a human right), so the position of the state must respect (to respect), protect (to protect) and fulfill (to fulfill).

If it is based on the characteristics of water resource exploitation. Implicit in Article 1 point 9 PP RI No. 121 Year 2015 as a reflection of the normative water resource utilization effort also shows that it has to do with the values of justice. But whether the achievement of justice that can be realized comprehensively or not is very dependent on how government policy and its implementation in economic development, because the exploitation of water resources is one of the pillars of economic development in Indonesia as water resources are positioned as development capital and as well as the life support which has been stated in Law no. 17 of 2007.

In relation to the nature of the exploitation of water resources as an effort to utilize water resources to meet business needs related to the theory of justice, the first rationale that can be understood is to place the value of justice as the main parameter in order to carry out the exploitation of water resources both on ground and water objects surface. It is understood here that the value of justice is an important guideline and backbone when the government determines the policies in order to carry out the exploitation of water resources in accordance with the laws and regulations. The value of justice as a guideline and important backbone is intended to avoid any conflict of interest either from aspects of regulation making, water resources utilization priority, licensing including the authority to issue water resource exploitation permit.

Several concepts of the theory of justice that need to be understood related to the exploitation of water resources in the context of PP RI. 121 of 2015 as follows:

1. Its principle as the main thought of justice exists in the concept of justice is the goal to be achieved by law, because the law in its function as the protection of human interests. Law is a fair law. If a concrete law (law) is contrary to the principles of justice, then the law is not normative anymore. The law is just a fair law, so fair is itself a constitutive element of all understanding of the law. In this context can occur when the government determines the regulatory policy of water resource management which in fact its regulations are contradictory to justice as happened in Law No.7 of 2004.
2. The relationship with the theory of justice, in achieving its objectives, the law is in charge of dividing the rights and obligations between individuals within society, dividing authority and regulating ways of solving legal problems and maintaining legal certainty. According to Thomas Aquinas, law is a sensible command, aimed at general welfare, made by those who undertake the task of a society and promoted (enacted). According to Geny in ethical theory, the content of the law is determined by ethical beliefs about just and unjust or fair sayings; justice must be realized as a legal objective.

If this is linked to the exploitation of water resources, then the value of justice will underlie the quality of government policy when establishing and inviting regulations to be enforced. See if there are still weaknesses in the arrangement.

- 1) Zainudin, *Philosophy of Law*, (Jakarta: SinarGrafika, 2009), p. 86
- 2) Sumaryono, *Ethics and Law (Relevance of the Theory of Natural Law of Thomas Aquinas)*, (Yog-yakarta: Kanisius, 2002), p. 5
- 3) Sudikno M, *Know the Law (An Introduction)*, (Yogyakarta: Liberty, 2008), p. 77

3. The order of justice is reflected in the concept of law that has been developed by Greek thinkers, especially Plato and Aristotle. Plato explains that justice will be realized if the state is organized in accordance with ideal forms as established by the king and linked to the applicable law. While Aristotle, distinguish the concept of law from the concept konstutusi. Law (nomos) relates to inter-agency organizations within a country, and the constitution (polytheia) relates to the things that the institution does in organizing the state. This concept of justice when associated with government policy in conducting water resources exploitation is based on the regulation that comes from the principles of justice in

the constitution and the theory of legislative formation. Interpreted here means the government should be more selective and more measurable when handling the development of the economy based on the exploitation of water resources such as empowering *BUMDes*, Cooperatives, etc. related to the provisions of Article 2 paragraph (3) PP RI. 121 Year 2015, namely the exploitation of water resources carried out by referring to the principle of joint effort and kinship.

4. In the theory of justice, then justice is part of the general welfare element in addition to the elements of peace, peace of life, security and security for its citizens. According to Aquinas, one means of realizing the common welfare is law, and not only positive law is considered important, but natural law must also be considered.

In this context, if the policy of economic development in the field of water management is done also need to consider local wisdom. Included in Kodoatie, for human and commercial interests, the availability of water in terms of quality and quantity is absolutely necessary. It should be remembered that the characteristics of water resources such as groundwater are limited in existence, the damage can lead to extensive impact and recovery is difficult.

5. In general justice is seen from only one party

- 1) Robert J. Kodoatie and RoestamSjarief, *Integrated Water Resources Management*, (Yogyakarta: Andi, 2008), p.1

Giving justice. Justice should be seen from both sides, namely those who determine the treatment of justice with the law and those who receive regulatory treatment.

6. In the course of history, the content of justice is determined historically and always changing according to place and time, it is not easy to determine the content of justice. It is also consistent in determining the exploitation of water resources of the desired Justice in the regulation of water conveying as a positive law as Thomas Aquinas argues, there must be a moral basis in positive law. The law must reflect and help human beings develop according to their nature, uphold the nobility of human dignity, be just, guarantee equality and freedom, advance the interests and common welfare .

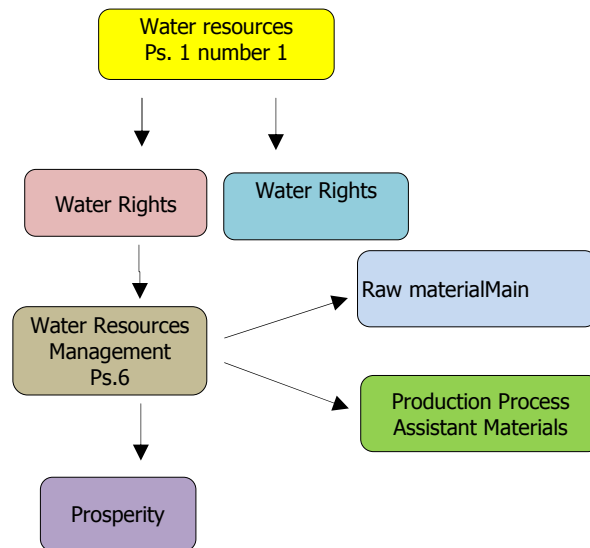
Thus based on PP RI No. 121 Year 2015 can be known the characteristics of water resources exploitation if associated with government policy in the development of the economy of water business from the perspective of the theory of justice can be done as follows:

1. The scope of the utilization of water resources is still oriented to commercial values, although in the provisions of Article 2 paragraph (2) PP RI.121 of 2015 regulates that water resource management is aimed at increasing the utilization of water resources for the people's welfare. This means that efforts to reach the right point of justice in the enjoyment of the utilization of water resources utilization should still be fought to realize the ideals of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia.
2. Viewed from the aspect of water rights protection that leads to water continuity is still not a concern, since the utilization of water resources prioritizes water utilization aspect or water rights as mentioned in the following articles:
 - a. Article 1 number 1 PP RI No. 121 of 2015 which regulates that water resources are water, water resources, and water resources contained there . In this sense does not reflect the right of water (water rights) that should be the identity of water to be protected or maintained its continuity.
 - b. Article 1 number 4 PP RI No. 121 of 2015 which regulates, that water power is the potential contained in water and / or at water sources that can provide benefits or harm to the life and livelihood of humans and the environment.
3. The importance of water rights.

Normative water rights (water rights) contained in the nature of water resources, but according to PP RI. 121 of 2015 has not been explicitly stated about the rights of water (water rights).The right to water has the function of preventing, maintaining and protecting exploitation of water which tends to be in any exploitation of water is to gain a profit (provit). In addition, the right of water (water rights) is also to eliminate the predatory actions of the state of natural resources, predators of water and illegal water and mall administration on the exploitation of water

The following chart of the status of water rights (water rights) in the exploitation of water resources (PP RI No. 121 of 2015)

Water Resource Establishment Establishment



Source: Analysis of Ronny Winarno, Politics, Desertasi, 2013, p. 374

and the results of the authors analysis of PP RI. 121 Year 2015

From this chart it is seen that from water resources issue 2 (two) rights, namely water rights and water rights. The right to water is in principle the right of water resources to defend against water exploitation, water damage & water reduction.

While the right to water is the right to use water or use water.

Water rights in the general provisions of PP RI No. 121 The year 2015 have not been accommodated.

4. Affirm the principle of Dublin Arrangement of water resources exploitation.

Although still felt the influence of Dublin principles (dublin principles 1982) related to water has value (value), then in the PP RI. 121 of 2015 have sought to integrate social functions, economic functions and environmental functions as defined in Article 4 PP RI. 121 of the year 2015 which regulates that the exploitation of water resources as carried out by paying attention to social and environmental functions, as well as ensuring the safety of state property and environmental sustainability.

Thus based on some understanding of water resource exploitation management characteristic, from the perspective of the theory of justice, there is a regulation of PP RI. 121 Year 2015 strives to provide and realize the values of justice and legal protection in the

exploitation of water resources. Therefore, since the exploitation of water resources become part of economic support, it is necessary to have government policy in economic development that leads to a harmonious, just and moral policy.

2. Repositioning Economic Development Policy in the Field of Water Resources Management

Policies in general can be interpreted etymologically, that policy is a translation of the word policy. Policies can also mean as a set of concepts and principles that serve as the line of execution of a job, leadership, and mode of action. Policies can take the form of decisions that are carefully considered and cautioned by top decision makers and not recurrent and programmed recurring activities or related to decision rules.

If taking into account the characteristics of water resources exploitation and the decision of the Constitutional Court of the Republic of Indonesia No. 85 / PUU-XI / 2013 in principle can be the basis of the government's foothold in determining the economic development policy in the field of water resource management. In addition, also based on Law no.17 of 2007

- 1) <http://www.pengertianahli.com/2014/08/pengertian-kebijakan-menurut-para-ahli.html> accessed 15/11/2017

States that water resources are positioned as development capital and also as life support, it is clear that water resources is considered as one of natural resources potential that must be empowered through economic development with government policy that is able to realize prosperity for society.

In view of the economic policy of the status of Law no. 17 Year 2007 states that water resources are positioned as development capital and also as life support, hence it is related to legal politics. According to Ronny, legal politics is the official policy of state organizers that include the establishment, implementation and enforcement of laws concerning the regulation of activities (economy) to seek water to obtain material benefits made by individuals or business entities based on permits to meet the needs of production raw materials, potential use, business media and auxiliary materials or production processes.

Thus, government policy in economic development involving water resource exploitation sector can not be separated with the role of provincial government and district / city government in supporting the process of forming the economic policy. Government policy in economic

development that leads to a harmonious, just and moral policy. Harmonious meaning, that the policy there is no conflict between laws and regulations that apply. While fair, that the policy made by the government should be fair for the whole community. And morally meaningful to have a good attitude and able to safeguard the rights of others and always fight for kemaslahatan.

Of course, local governments must understand the policy values that must be determined and enforced in accordance with the authority set forth in Law no. 23 of 2013 on Regional Government. In shaping the economic policy in the field of water resource exploitation as a capital of development as well as business capital in order to support the state economy must be consistently oriented to the basic principles of Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. It is understood here that government policy in carrying out the exploitation of water resources is related to the interests of the livelihood of the public. So the commercial value of commercialization in water resources should reflect economic policies that address the following aspects:

- (1) To protect water rights;
- (2) As an effort to fulfill the right to water of pro people;
- (3) The concept of reducing the gap due to inequality in the use of water;
- (4) Repositioning of water rights; and
- (5) Harmonization of management arrangements of water resources that are moral.

If based on the imperative value of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia as a guideline for the economic policy in the field of water resources exploitation, the state has the right to control the natural resources summarized in the earth and the water and natural resources contained therein are controlled by the state and used for the great prosperity of the people.

Normatively this can be taken to mean that to any country, government, society, including legislators and stakeholders, is obliged to comply with the provisions of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that if there are any irregularities of interpretation and denial in the management water resources, it will have an impact to injure the people's prosperity. Even the maximum exploitation of water for a commodity that is not strictly controlled will result in reducing and shutting down water sources and even water rights.

Based on the basic principles of water resource exploitation related to the principle of state protection of people's right to water, indirectly the regulation of water resource exploitation as if only concerned with the value of state protection. See also decision of Indonesia Constitutional Court No. 85 / PUU-XI / 2013, presented in the plenary session of the Constitutional Court of the Republic of Indonesia on 18 February 2015.

- 1) Budi Santoso Wignyosukarto, Integrated Water Resources Management In Achieving the Millennium Development Goals 2015, Inaugural Speeches of Professors at the Faculty of Engineering, Gajah Mada University Yogyakarta, September 5, 2007, p. 6.
- 2) Ronny Winarno, Political Law Management of Ground Water Management, Dissertation, Doctoral Program of Law Science, Faculty of Law Universitas Brawijaya Malang, 2013, pp. 234
- 3) Ronny Winarno, Harmonization of Management Settings of Water Resources of the Mental, Scientific Oration at Graduate S-1 Universitas Merdeka Pasuruan, November 28, 2015.
- 4) Some wrote that there were indications of the disharmony of the law on the regulation of water resource exploitation:
 - a. Kompas, 28-11-2011, Eddy Purwanto, "State Budget and National Capital," that the country's wealth is permanently reduced.
 - b. Kompas, 03-09-2012, "Rice Is Cleared for Animal Feed. Farmers of Karawang Ask for Water Justice ".
 - c. JawaPos, Radar Bromo, 24-12-2012, "Observing the Patterns of Ground Water Utilization in Pasuruan Five Years Down One Meter"

Article 2 paragraph (1) letter b PP RI No. 121 Year 2015

- a. Kompas, 28-11-2011, Eddy Purwanto, "State Budget and National Capital," that the country's wealth is permanently reduced.
- b. Kompas, 03-09-2012, "Rice Is Cleared for Animal Feed. Farmers of Karawang Ask for Water Justice ".
- c. JawaPos, Radar Bromo, 24-12-2012, "Observing the Patterns of Ground Water Utilization in Pasuruan Five Years Down One Meter"

Article 2 paragraph (1) letter b PP RI No. 121 Year 2015

of the right to water, not including water rights. The people's right to water is given priority in accordance with the spirit of Law no. 11 Year 1974 which put forward social function. However, if examined more deeply based on the political nature of the law of Article 33 of the 1945 Constitution of 1945 there is an important value left, the water rights (water rights). According to Ronny, legal politics here is a reflection of *staatsidee* and *rechtsidee* who want to realize the equality of utilizing and enjoying the results of water resources management within the limits of the same rights and obligations. Water is life itself (*aqua vitae*, life water). Water is a non-renewable natural resource. Without water, there can be no life as Q.S Al Furqan 25:54 (we created man from water); Q.S. An Nur 24:25 (we created all animals from water); and Q.S. Al Anbiyaa '21:30 (we created something living from water).

Considering the understanding of the nature of water rights, in the case of water resources management, determining the policy of economic development in the field of water management, issuing water exploitation permits including exploiting water resources in areas deemed to contain water resources large, should consider the harmonization values of water rights law, local wisdom and basic needs of water for the community. Have it all placed and functioned in the right position. This is where a just government policy in determining and regulating the regulation of water resources exploitation is very necessary if it wants the exploitation of water resources as one element of the ongoing economic development for the welfare of the people, the nation and the state of Indonesia.

In fact, government policy is still needed in the development of economy based on utilizing various potential of natural resources. However, in the implementation there are still weaknesses in determining the policies such as resulted in the revocation of Law no. 7 of 2004 on Water Resources through the decision of the Constitutional Court of RI No. 85 / PUU-XI / 2013, as it is stated contrary to the basic values of Article 33 of the 1945 Constitution of the Republic of Indonesia

- 1) Decision of the Constitutional Court of the Republic of Indonesia, Decision on Case of Testing Law. 7 of 2004 on Water Resources Against the 1945 Constitution of the Republic of Indonesia, (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2005), p. 525

2) Constitutional Court Decision No. RI. 85 / PUU-XI / 2013, decided on September 17, 2014 and declared on February 18, 2015.

Shows the policy of positioning Law no. 7 of 2004 as the basis of various regulations on the field of water resources exploitation is not in accordance with the principles and objectives of the establishment of Article 33 of the 1945 Constitution of the Republic of Indonesia. As a result of government policy related to economic development should be repositioned government policies more precisely according to the basic concept political law Article 33 of the 1945 Constitution of NRI, harmonious, fair and moral.

Therefore, the policy of economic development that leads to the utilization of the field of water resources exploitation and its relation with the regulation on other government policies needs to be done repositioning, reviewing, reviewing and changing according to the decision of the Constitutional Court of RI No. 85 / PUU-XI / 2013.

It is here ideally necessary to reposition the policy of economic development in order to utilize water resources for the fulfillment of business needs must be harmonious, just and moral. The purpose of repositioning the policy of economic development in the field of water resources exploitation is to make improvements and order the rules-making model, the basic and the policy objectives must be determined clearly so as not to reoccur the less harmonious, just and moral policies. Therefore, the direction of economic policy repositioning should take into account the components of legislation, institutional harmonization, various criteria and corrections of policies, the results of the study as well as various public grievances, the results of evaluations of economic development performance, the weakness of supervision, policy inconsistencies which will then be determined as a foothold and commitment and attention of the Government, namely:

1. The policy of economic development in the field of water resource exploitation in forming the management arrangement of water resources must be harmonious.

Government policy in economic development is closely related to the achievement of community welfare. Therefore, the policy formed by the government must be harmonious meaning between the rules that one with the other rules does not occur overlap, conflict of norm. Because if the policy of economic development is not harmonious will result in weakening the legal system and hamper development to the community.

The contradictory arrangement which means also the economic policy in the field of water resource exploitation is not conducive, because the regulation is not in accordance with the 1945 Constitution of the Republic of Indonesia, so that it could result in harm to society, even to the detriment of the state. Moreover, if related to the management and exploitation of water resources, because water resources concern the interests of the livelihood of many people. This is evidenced by some contradictory forms of water resources arrangements that result in the following:

- a. The existence of material test of Law no. 7 of 2004 in the case Number 058-059-060-063 / PUU-II / 2004 and the case Number 008 / PUU-III / 2005.

Some of the points in the material test are:

- 1) That water is a component of nature and the environment which is the grace of God Almighty. Water is a human right, which is the subject of people's welfare.
- 2) Whereas in the perspective of the concept of human rights (HAM), in terms of state relations with its citizens, the people are positioned as right holder, while on the other hand the state is a duty holder. In principle, the basic obligation of the state is to protect and guarantee the rights of its citizens (people) in which one of them is the right to water, seeks to fulfill positively or guarantee the people's access to healthy water for all their needs from household affairs, irrigation and other production affairs .
- 3) That the implication is that the existence of water is more than consumption goods, water is a social good, meaning that people are not merely a consumer, but rather as owners of rights. So by itself any attempt by the state or other forces outside the country to treat water as a commodity "must be rejected"

In general, there are at least two main reasons for the community's rejection of the Water Resources Law, namely:

1. Law no. 7 of 2004 contradicts the basic principles of the formation of an anti-colonial state of the Republic of Indonesia and prioritizes unity and sovereignty, the welfare of the people and prioritization
 - 1) Decision of the Constitutional Court of the Republic of Indonesia in the case of judicial review of Law no.7 of 2004 on Water Resources to the 1945 Constitution of the Republic of Indonesia, (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2005), p. 6-9. economic democracy.

2. UU no.7 of 2004 is a legislation aimed at removing the value of water as social goods into commercial goods.

Law no.7 of 2004 is contrary to the principles of human rights protection guaranteed by the 1945 Constitution and the guarantees contained in the Universal Declaration of Human Rights.

Material test on Law no. 7 of 2004 when it was founded and not granted by the Constitutional Court of the Republic of Indonesia, even in this decision there was a desenting opinion submitted by A. MukthieFadjar and Maruarar Siahaan.

b. The second material test of Law no. 7 of 2004 which was then decided by the Constitutional Court RI No. 85 / PUU-XI / 2013, presented in the plenary session of the Constitutional Court of the Republic of Indonesia on 18 February 2015.

1) Law no. 7 of 2004 is considered contrary to the spirit and mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia.

2) Law No. 7 of 2004 triggered by economic crisis. More bureaucratic bureaucracy than the previous Law, private sector is more dominant and public access is limited. This law is full of political interests.

3) Decision of the Constitutional Court of the Republic of Indonesia Number 85 / PUU-XI / 2013, as stated in the verdict, namely to hear:

1. Petitioner III's petition is unacceptable;

2. To grant the petition of Petitioners I, II, IV, V,VI, VII,VIII, IX,X and Applicant XI for all;

3. Law no. 7 of 2004 on Water Resources (State Gazette of the Republic of Indonesia Year 2004 Number 32, Supplement to the State Gazette of the Republic of Indonesia Number 4377) is contradictory to the 1945 Constitution of the Republic of Indonesia;

4. Law no. 7/2004 on Water Resources (Statute Book of 2004 No. 32, Supplement to Statute Book No. 4377) has no binding legal force;

5. Law no. 11 of 1974 on Irrigation (State Gazette of the Republic of Indonesia Year 1974 Number 65, Supplement to State Gazette Number 3046) shall be valid again.

The Constitutional Court revoked the enactment of Law no. 7 of 2004 on Water Resources (SDA) on the grounds not to meet the basic principles of natural resource management restrictions. With regard to the regulation of water resource exploitation, the

Constitutional Court Decision No. RI. 85/PUU-XI / 2013 shall serve as guidance and opportunity to realize harmonization of water resources management regulation law and reflect the principles of Good Water Governance. Here it is then important to pay attention to the water rights position again.

2. Policies on economic development in the field of water resources management shall be subject to and adapt to the principles of water resource management as set forth in Article 2 paragraph (1) of PP RI No. 121 Year 2015

In order for the policy of economic development in the field of water resource exploitation can be implemented properly that is harmonious, fair and moral policy, the government through its authority to determine the exploitation of water resources must be organized by considering the following principles:

- a. Do not disturb, override, and eliminate people's right to water
- b. State protection of people's right to water
- c. Environmental sustainability as one of human rights
- d. Supervision and control by the state on Water is absolute
- e. The main priority of the exploitation of water is provided to state-owned enterprises or regional-owned enterprises; and
- f. The granting of water resources exploitation license and groundwater exploitation permit to private business can be done with certain condition and strict after the principle as meant in letter a to letter e is fulfilled and there is still water availability.
- g. The utilization of water resources is aimed at increasing the utilization of water resources for the people's welfare.
- h. The utilization of water resources shall be conducted based on the principle of joint effort and kinship.

3. The policy of economic development in the field of water resources exploitation should re-actualize the National Movement of Water Rescue Partnership (GN-KPA) in preventing water crisis.

One of the attitudes to the condition of water resources in Indonesia has reached the level of crisis that directly affects poverty, food shortage, almost the growth of socio-cultural economy of the nation and the disruption of ecosystems, it is necessary to re-actualize the National

Movement of Water Rescue Partnership (GN-KPA) Susilo BY in Jakarta on April 28, 2005 to improve the integration of the implementation of management policies for the sustainability of water resources functions. GN-KPA basically contains 6 (six) strategic components, namely:

- a. Spatial arrangement, physical development, land and population;
- b. Land and land rehabilitation and conservation of water resources;
- c. Control of damaged water power;
- d. Quality management and control of water pollution;
- e. Water savings and water demand management; and
- f. Efficient use of water resources, efficient and sustainable

4. The policy of economic development in the field of water resource exploitation should revitalize the role of state-owned enterprises and enterprises in the development of drinking water supply system.

In this case that needs to be done is to reflect the decision of the Constitutional Court RI No. 85 / PUU-XI / 2013 become the guidance and opportunity to realize harmonization of law and to empower SOE and BUMD based on the role of BUMN and BUMD related with PP RI. 16 Year 2005 on Development of Water Supply System. Revitalization is done by reaffirming Article 63 PP RI No. 16 Year 2005, that BUMN / BUMD more prioritize the scope of duties and responsibilities covering

- a. Conducting integrated SPAM development with the development of established sanitation facilities and facilities;
- b. Implement plans and procurement process programs, including the implementation of the construction to which it is responsible, and the operation, maintenance and rehabilitation;
- c. Conducting business includes collecting payments for services in accordance with established tariffs;
- d. Providing drinking water supply service with quality and quantity in accordance with the stipulated standard;
- e. Make transparent, accountable, and accountable reports in accordance with the principles of good corporate governance;
- f. Submitting reports to the Government / Local Government in accordance with their authority; and
- g. Publish audited financial reports to the public at large.

5. The policy on economic development in the field of water resource management shall take the national policy of water resources management in the next 20 (twenty years) conducted through five (5) missions.

This policy is related to the national guidance on water resources management in the next 20 (twenty years) conducted through five (5) missions set forth in Presidential Decree No. 33 of 2011 dated June 20, 2011 on National Policy on Water Resources Management. This policy is also intended to maintain the availability of water needed in a position for the benefit of everyday society and for business needs. Therefore, the national policy on deep water resources management conducted through five (5) missions as follows:

- a. Increasing the conservation of water resources continuously;
- b. Utilize water resources for the justice and welfare of the community;
- c. Controlling and reducing water damage;
- d. Increasing the role of the community and the business community in managing water resources; and
- e. Establish a network of integrated national water resources information systems between sectors and between regions.

If the repositioning of this policy is done seriously for the benefit of the nation and the country and the people of Indonesia, it can be realized that the gemah ripah loh jinawi state, the order tentrem kertoraharjo and the realization of good government Indonesia.

CONCLUSIONS

The repositioning of economic development policy in the field of water resources exploitation must be done with goodwill, political will and the spirit of realizing Good Water Governance by paying attention and guiding decision of Indonesia Constitutional Court No. 85 / PUU-XI/2013. The purpose of repositioning is to harmonize and harmonize various related laws and regulations so that the policy of economic development can realize good government in accordance with national goals based on Pancasila and NRI 1945 Constitution.

BIBLIOGRAPHY

- Diana Halim K., *Law of State Administration*, Bogor: Ghalia Indonesia, 2004
- Robert J. Kodoatie and RoestamSjarief, *Integrated Water Resources Management*, Yogyakarta: Andi, 2008
- Ronny Winarno, *Political Law Arrangement of Ground Water Management*, Dissertation of Doctoral Program of Law Science UniversitasBrawijaya Malang, 2013
- SoetandyoWignyosubroto, *Paradigm's Law, Methods and Dynamics The Problems*, Jakarta: Elsum and Huma, 2002
- Sudikno M, *Know the Law(An Introduction)*, Yogyakarta: Liberty, 2008
- Sumaryono, *Ethics and Law (Relevance of The Natural Law Theory of Thomas Aquinas)*, Yogyakarta: Kanisius, 2002
- Suteki, *Reconstruction of the Right to Water Pro People*, Malang: Surya Pena Gumilang, 2010
- Zainudin, *Philosophy of Law*, Jakarta: SinarGrafika, 2009

CONSTITUTION

- Of the 1945 Constitution of the Republic of Indonesia
- Law Number 23 Year 2014 on Regional Government
- Law Number 11 Year 1974 on Irrigation
- Law Number 17 Year 2007 regarding the Long-Term Development Plan 2005-2025
- RI Government Regulation PP RI No. 121 of 2015 on the Management of Water Resources
- Government Regulation No. 16 of 2005 on the Development of Water Supply System

COURT RULING

- Decision of the Constitutional Court of the Republic of Indonesia Number: 85 / PUU-XI / 2013 (decided on 17 September 2014, pronounced 18 February 2015)
- Constitutional Court of the Republic of Indonesia, Decision on Case of Judicial Review of Law Number 7 Year 2004 regarding water resources to the 1945 Constitution of the Republic of Indonesia, in the case no. 058-059-060-063 / PUU-II / 2004 and Case No. 008 / PUU-III / 2005

JOURNAL, MEDIA AND INTERNET

Budi SantosoWignyosukarto, *Integrated Water Resources Management In Achieving the Millennium Development Goals 2015*, Inaugural Speeches of Professors at the Faculty of Engineering, Gajah Mada University Yogyakarta, September 5, 2007.

Kompas, 03-09-2012, "*Rice Is Cleared for Animal Feed. Farmers of Karawang Ask for Water Justice*".

JawaPos, Radar Bromo, 24-12-2012, "*Observing the Patterns of Ground Water Utilization in Pasuruan Five Years Down One Meter*"

<http://www.pengertianahli.com/2014/08/pengertian-japan-menurut-para-ahli.html>.