JILS (JOURNAL *of* INDONESIAN LEGAL STUDIES)
NATIONALLY ACCREDITED JOURNAL (SINTA 2)
Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 5 Issue 1, May 2020 ■ ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

RESEARCH ARTICLE

WATER, GLOBALIZATION AND LIBERALIZATION

Impact of the Decision of Indonesian Constitutional Court Number 85/PUU-XI/2013 concerning Water Resources Perspective of the Welfare State

Ari Shoviani [1]✉, Rodiyah[2]
[1] Municipal Waterworks of Semarang City, Indonesia
[2]Department of Administrative & Constitutional Law, Faculty of Law, Universitas Negeri Semarang, Indonesia
✉ arishovianii@gmail.com

Submitted: September 12, 2019 **Revised**: January 15, 2020 **Accepted**: April 11, 2020

ABSTRACT

Privatization, liberalization and globalization of water resources in Indonesia has become a complicated problem. In one hand, it will increase the economic values and investment but in the other hands it is contrary with the 1945 Constitution. Indonesian Water Resources Act has raised polemics and complaints from many parties, so that the proposed judicial review to the Constitutional Court. Finally, the Court cancelled this Act. This research is intended to analyse and describe the implementation of Water Resources Act that has been cancelled by the Court in the context of Friedman Theory, especially in Semarang City. The research emphasized and highlighted that the exploitation of water resources, as well as privatization and liberalization is not allowed by the 1945 Constitution.

Keywords: Water Resources; Privatization; Liberalization; Globalization, Constitutional Court Decision; Welfare State

TABLE OF CONTENTS

HOW TO CITE:
Shoviani, A., & Rodiyah, R. (2020). Water, Globalization and Liberalization. *JILS (Journal of Indonesian Legal Studies)* 5(1), 1-28. DOI: https://doi.org/10.15294/jils.v5i1.34017.

INTRODUCTION

Empirical argument, the real condition of the Constitutional Court Decision Number 85/PUU-XI/2013 has not been fully implemented by the community because of the assumption of the community that the cancellation of the Water Resources Act will hamper the development of the drinking water supply system. The thing that is feared about the cancellation of the Water Resources Act is that there is no definite funding for building water supply system infrastructure that will certainly require a significant amount of money. The Irrigation Law, which was born in 1974, is considered not up to date on the complexity of the problem of developing drinking water supply systems in Indonesia and the sustainability of the Indonesian drinking water world, in addition to the problem of how the future of water utilization permits granted prior to the Constitutional Court Decision Number 85 / PUU-XI / 2013 needs to be considered further. What needs to be underlined also is that the Water Resources Act has been around 11 years long and has become the legal basis for the drinking water supply system in Indonesia which has given birth to many implementing regulations, one of which is Government Regulation Number 16 of 2005 concerning Drinking Water Supply Systems and regulations others related to water resources.

The sociological argument for the cancellation of Law Number 7 of 2004 concerning Water Resources (hereinafter Water Resources Act) has a positive impact on the lives of the wider community. The spirit of the community over water can be fulfilled according to the constitutional basis of the 1945 Constitution Article 33 paragraph (3). Natural wealth in the form of water can be fully utilized for the prosperity of the community and the opportunity for water commercialization by private companies must be strictly regulated and monitored. However, in fact, in the preliminary research, the author gets the results regarding the impact of the cancellation. In Semarang City of Waterworks (PDAM), Authors conducted an interview with Amelia P., as Head of Legal, Public Relations and Cooperation Section of Semarang City of Waterworks and Mr. Arifinal, S.H. as Head of Personnel Section of Semarang City of Waterworks who gave results so far there has been no legal effect felt by

Waterworks Semarang City, all water management processes carried out are still the same both before and after the Water Resources Act was canceled.[1]

Normative argument, the Constitutional Court canceled all the articles contained in Law Number 7 of 2004 because in its consideration, the Constitutional Court stated that as an element that controlled the lives of many people, according to Article 33 paragraph (2) and paragraph (3) water must be controlled by country. So, in the business of water there must be strict restrictions in an effort, to maintain the preservation and availability of water for life. In other words, according to the Constitutional Court there has been a commercialization of water under Law Number 7 of 2004 so that many water consumers rights have been ignored and treated unfairly.

Along with the rate of population growth, the consumption of water will continue to increase. As a result, the Bottled Drinking Water Industry (AMDK) experienced a rapid increase in Indonesia. AMDK is a lucrative business. The implication of the proliferation of bottled water business is that more and more areas are being targeted for water exploitation, so it is not uncommon for conflicts to occur because the communities around the spring experience water shortages. This fact is considered as a result of the implications of Law Number 7 of 2004 concerning Water Resources (Water Resources Act). Then a petition for the case was submitted by the Muhammadiyah Central Leader, Al-Jami'yatul Washliyah, Solidarity Parking Attendant; Street vendors; Businessman; and Employees, Vanaprastha Society.[2]

Several individual petitioners submitted constitutional tests for Article 6, Article 7, Article 8, Article 9, Article 10, Article 26, Article 29 paragraph (2) and paragraph (5), Article 45, Article 46, Article 48 paragraph (1), Article 49 paragraph (1), Article 80, Article 91 and Article 92 paragraph (1), paragraph (2), and paragraph (3) of Law Number 7 of 2004 concerning Water Resources (Water Resources Act) to the Law Basic

---

1 Interview with Arifinal SH, Head of Personnel Section of Semarang City PDAM, in Semarang. (Mar. 21, 2019).

2 Edy Sriyono, Tantangan Pengelolaan Sumber Daya Air (PSDA) Sesudah Dibatalkannya Undang-Undang RI No. 7 Tahun 2004 tentang Sumber Daya Air (UU SDA), 5 *PROCEEDINGS SEMINAR NASIONAL TEKNIK SIPIL UMS*: 208, 209-211 (2015).

State of the Republic of Indonesia 1945 (Constitution of 1945).[3]

Decision of the Constitutional Court Number 85 / PUU-XI / 2013 concerning Testing of Law Number 7 of 2004 concerning Water Resources which has completely canceled the Water Resources Act, in its ruling the decision states: 1. Petitioner III's application cannot be accepted; 2. Granting Petitioner I, Petitioner II, Petitioner IV, Petitioner V, Petitioner VI, Petitioner VII, Petitioner VIII, Petitioner IX, Petitioner X, and Petitioner XI for all; 3. Law Number 7 of 2004 concerning Water Resources (State Gazette of the Republic of Indonesia Number 32 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4377) contrary to the 1945 Constitution of the Republic of Indonesia; 4. Law Number 7 of 2004 concerning Water Resources (State Gazette of the Republic of Indonesia of 2004 Number 32, Supplement to the State Gazette of the Republic of Indonesia Number 4377) does not have binding legal force; 5. Law Number 11 of 1974 concerning Irrigation (State Gazette of the Republic of Indonesia of 1974 Number 65, Supplement to the State Gazette of the Republic of Indonesia Number 3046) applies again; 6. Order the loading of this decision by placing it in the State Gazette of the Republic of Indonesia as appropriate.

Decision of the Constitutional Court mentioned above, if used as a reference, then this research is interesting to study because there are several problems that need to get an answer, including whether the Constitutional Court Decision Number 85/PUU-XIV/2013 has provided justice for the state and people of Indonesia so that can provide prosperity for the country and people of Indonesia? Does the Constitutional Court have the authority to live laws that are no longer valid? these questions

---

[3] Santi Puspitasari & Utari Nindyaningrum, Implikasi Putusan Mahkamah Konstitusi Nomor 85/PUU-Xi/2013 Terhadap Sistem Penyediaan Air Minum, 2(1) *JURNAL PENELITIAN HUKUM*: 45, 47-48 (45-61) (2015). Furthermore, it is emphasized that the cancellation is about water exploitation and water use rights, in several articles in Law 7/2004 considered more inclined to commercialize water and eliminate the government's role to provide water. MK requires six basic principles to limit water resources management, namely: (1) Business on water must not interfere with, disregard, let alone negate people's right to water; (2) The state must fulfill the people's right to water. Access to water is a human right in itself; (3) Environmental preservation, as one of human rights, in accordance with Article 28 H paragraph (1) of the 1945 Constitution; (4) State supervision and control over water is absolute; (5) The main priority given for exploitation of water is a State-Owned Enterprise or Village-Owned Enterprise, and (6) the Government is still possible to give permission to a private business to undertake business on water with certain conditions.

certainly must be answered and proven. This is to find out how big the Constitutional Court Decision Number 85/PUU-XIV/2013 realizes the welfare state of Indonesia based on the constitution.

The main anxiety of the researcher is whether the Constitutional Court's decision is in accordance with the perspective of the welfare state. *Das sollen* (supposedly) the Constitutional Court's decision No. 85/PUU-XI/2013 in accordance with the perspective of the welfare state, but in terms of the reality Constitutional Court Decision No. 85/PUU-XI/2013 tends to be disharmony in the laws and regulations and causes a setback especially in the responsibility of the State in the provision of domestic drinking water clean and healthy. The consequence of the Constitutional Court Decision Number 85/PUU-XI/2013 was the cancellation of Law Number 7 of 2004 concerning Water Resources, so that Law Number 11 of 1974 concerning Water Resources was reinstated. With these consequences, it should be immediately formed a law on new water resources along with implementing regulations that are more comprehensive and able to accommodate the interests of the people from the perspective of the welfare state.

To obtain several data and conducting the research, Authors use a qualitative legal approach by examining the ruling of the Constitutional Court Number 85/PUU-XI/2013 towards the Indonesian state's welfare state perspective. This research is included in non-doctrinal research with the type of juridical-sociological research. Data collection techniques using interviews, observation, and documentation. This study uses data validity techniques in the form of triangulation. This research was basically carried out in two places namely DKI Jakarta Province and Semarang City. Data analysis uses descriptive qualitative legal analysis, and interactive analysis developed by Miles and Huberman.

AFTER WATER RESOURCES ACT CANCELED, HOW WAS THE IMPACT?

I. IMPLEMENTATION OF LAW NUMBER 7 OF 2004 CONCERNING WATER RESOURCES CANCELED BY THE CONSTITUTIONAL COURT IN ITS DECISION NUMBER 85 / PUU-XI / 2013

The approach used in analyzing the implementation of Law Number 7 of 2004 concerning Water Resources which was canceled by the Constitutional Court is a theory put forward by George C. Edwards III. Implementation can be started from abstract conditions and a question about whether the conditions for policy implementation can be successful, according to Edwards III there are four variables in public policy namely Communication, Resources, Attitudes and Bureaucratic structure.[4]

a. Communication in the Implementation of Laws

Empirical argument according to the author, the real condition of the Constitutional Court Decision No. 85 / PUU-XI / 2013 has not yet been fully implemented by the community because of 1) the lack of communication messages to the public regarding MK Decision No. 85 / PUU-XI / 2013; 2) lack of human resources. This is as the public policy theory proposed by Edward in Winarno[5], according to him, there are several factors that influence the implementation of policies to work simultaneously and interact with each other, namely *communication*. Sociological argument, the cancellation of Water Resources Act has a positive impact on the lives of the wider community. The spirit of the community over water can be fulfilled according to the constitutional basis of the 1945 Constitution Article 33 paragraph (3). Government

[4] BUDI WINARNO, PUBLIC POLICY (PROCESS THEORY AND CASE STUDY) 117-118 (2014); M. IRFAN ISLAMY, PRINSIP-PRINSIP PERUMUSAN KEBIJAKAN NEGARA 60-71 (2009).

[5] *Id.*

communication is one of the important variables that influence the implementation of MK Decision No. 85 / PUU-XI / 2013 concerning Testing Law No. 7 of 2004 concerning Water Resources which has completely annulled the SDA Law, government communication largely determines the success of achieving the objectives of public policy implementation". Effective implementation will be carried out if the decision makers know about what they will do. Information that is known to decision makers can only be obtained through good communication.

Normative argument, the Constitutional Court canceled all the articles contained in Law Number 7 of 2004 because in its consideration, the Constitutional Court stated that as an element that controlled the lives of many people, according to Article 33 paragraph (2) and paragraph (3) water must be controlled by country. Communication plays an important role in policy implementation. In communication there are essential elements in implementing policies. Edward explained three important things in the communication process namely: transmission (transmission), clarity (clarity), consistency (consistency). The substance of the policy must be understood by the implementers as well as possible. Policies must be communicated clearly, accurately and consistently. If submitting the contents of the policy is unclear and inaccurate, it will result in a misinterpretation of the contents of the policy or may even conflict. There are six factors in the unclear policy communication, namely the complexity of public policy, the desire not to disturb community groups, the lack of consensus on policy goals, problems in starting a new policy, avoiding a policy responsibility, and the nature of policy making.

Implementation will be effective if the measures and objectives of the policy are understood by the individuals responsible for achieving the policy objectives. Clarity in size and policy objectives thus needs to be communicated appropriately with implementers. The consistency or uniformity of basic measures and objectives needs to be communicated so that implementors know the exact size and purpose of the policy. Communication in organizations is a very complex and complicated process. Someone can hold it only for certain purposes or disseminate it. In addition, different sources of information will also give birth to different interpretations. For implementation to be effective, who is responsible for implementing a decision must know whether they can do it. In fact, the implementation of the policy must be accepted by all personnel and must

understand clearly and accurately the purpose and objectives of the policy. If the policymakers have seen the uncertainty of the actual policy specifically do not understand what the real thing is to be directed. Policy implementers are confused by what they will do so that if it is forced it will not get optimal results. Insufficient communication to the implementors seriously influences policy implementation.

The normative argument, the Constitutional Court removes the existence of all articles in Law Number 7 of 2004 concerning Water Resources submitted by the Central Leadership Muhammadiyah. Because the regulation (policy) is considered not to guarantee restrictions on water management by the private sector, so it is considered there is potential conflict with the 1945 Constitution. The Constitutional Court also states that government regulations as implementing the Water Resources Law issued do not meet the basic principles of water resource management restrictions. Government Regulations which are declared not to meet the basic principles of water resources management restrictions are: Government Regulation Number 16 of 2005 concerning the Development of Water Supply Systems; Government Regulation Number 20 of 2006 concerning Irrigation; Government Regulation Number 42 of 2008 concerning Management of Water Resources; Government Regulation Number 43 of 2008 concerning Groundwater; Government Regulation Number 38 of 2011 concerning Rivers; and Government Regulation Number 73 of 2013 concerning Swamps.

b. Bureaucracy in the Implementation of Laws

Empirical argument, the real condition of the Constitutional Court Decision No. 85/PUU-XI/2013 bureaucracy has not yet been fully implemented. Sociological argument, the cancellation of Law Number 7 of 2004 concerning Water Resources has an impact on the bureaucracy in managing water for the lives of the people at large. The normative argument is that the bureaucracy must be able to implement Law No. 11/1974 on Irrigation that has been reinstated. Edwards, the effectiveness of bureaucracy has an effect on the success of policy implementation. There are two main characteristics of the bureaucratic structure, namely standard work procedures and fragmentation. Standard Operating Procedures were

developed in response to the limited time and resources of implementers for uniformity in the workings of complex and widespread organizations. While fragmentation comes from pressures outside bureaucratic units such as legislative committees, interest groups, executive officials, state constitutions and policy tools that influence public bureaucratic organizations.[6]

Bureaucratic structures are characteristics, norms, and patterns of relationships that occur repeatedly in executive bodies that have both potential and tangible relationships with what they have in carrying out policies. Van Horn & Van Meter[7] emphasized several elements that might affect an organization in policy implementation, namely: 1) Competence and size of staff of an agency; 2) The level of hierarchical oversight of sub-unit decisions and processes within the implementing body; 3) Political sources of an organization (for example support between legislative and executive members); 4) the vitality of an organization; 5) The level of "open" communication, namely the network of horizontal and vertical communication freely and the relatively high level of freedom in communication with individuals outside the organization; 6) Formal and informal links of a body with the decision-making body or the decision maker.

Implementation still fails if the existing bureaucratic structure impedes the coordination needed to implement the policy. Complex policies require the cooperation of many people, and waste of resources will affect the results of implementation. Changes made will certainly affect the individual and in general will affect the system in the bureaucracy.

Ripley and Franklin in Winarno[8] identified six characteristics of bureaucracy as the result of observations of bureaucracy in the United States, namely: 1) Bureaucracy was created as an instrument in dealing with public needs (public affair); 2) Bureaucracy is the dominant institution in the implementation of public policies that have different

---

6 BUDI SETIYONO, BUREAUCRACY IN POLITICAL AND ADMINISTRATIVE PERSPECTIVE 11-15 (2012); ROGER COTTERELL, THE POLITICS OF JURISPRUDENCE: A CRITICAL INTRODUCTION TO LEGAL PHILOSOPHY 78-80 (1992).

7 ABDULKAHAR BADJURI & TEGUH YOWONO, PUBLIC POLICY: CONCEPT AND STRATEGIES 123-125 (2010).

8 *Supra* note 4, at 149-160.

interests in each hierarchy; 3) Bureaucracy has a number of different objectives; 4) The function of the bureaucracy is in a complex and broad environment; 5) Bureaucracy has a high survival instinct with so rarely found dead bureaucracy; 6) Bureaucracy is not a neutral force and is not in full control of outsiders.

Edward III in Widodo[9] states that although the resources to implement a policy are sufficient and the implementors know what and how to do it, and have the desire to do it, but that "policy implementation may still not be effective because of inefficiency bureaucratic structure". This bureaucratic structure according to Edward includes aspects such as bureaucratic structure, division of authority, relations between organizational units and so on.[10]

c. Resources in the Implementation of Laws

Resources in implementing policies are an important part. Empirical argument, if the implementation of the policy wants to run effectively, then the implementor must not only know what is done and have the capability to do that, but they must also be eager to bring the implementation into practical practice. Many implementors try to connect important things because the implementor has the authority to do so.

Therefore, experts and relevant personnel are needed in the right size, because policy implementation will not be effective if it is not handled by experts who are relevant to their duties.[11] So, Edward III in Widodo[12] argues that resource factors have an important role in policy implementation. According to Edward III in Widodo[13] (2010: 98) that these resources include human resources, budget resources, and equipment resources and authority resources.

---

9 JOKO WIDODO, ETIKA BIROKRASI DALAM PELAYANAN PUBLIK 106-107 (2001) [hereinafter WIDODO, ETIKA BIROKRASI]; JOKO WIDODO, MEMBANGUN BIROKRASI BERBASIS KINERJA 78-80 (2004) [hereinafter WIDODO, BIROKRASI BERBASIS KINERJA].

10 *Id.*

11 *Supra* note 4, at 177-178.

12 *See* WIDODO, ETIKA BIROKRASI, *supra* note, at 110-111.

13 *See* WIDODO, ETIKA BIROKRASI, *supra* note, at 110-111; WIDODO, BIROKRASI BERBASIS KINERJA, *supra* note, at 93-94.

d. Disposition and Policy in the Implementation of Laws

Normative argument, disposition (attitude). The fourth factor in policy implementation is disposition or attitude of the implementer. In implementing policies, there should not be a gap between policy makers and policy implementers and there should be a mutually supportive relationship between them so that policy implementation is successful. Empirical argument, disposition in policy implementation is defined as the tendency, desire or agreement of the implementers to implement the policy. Certain trends may hinder policy implementation if the implementors really disagree with the substance of the policy. Sometimes implementation is hampered by very complex circumstances such as when implementing Poverty Reduction Policy Implementers in Urban Areas policies delay the implementation of a policy that they agree to increase the likelihood of achieving other different policy objectives.

The definition of disposition according to Edward III is said to be "the will, desire and tendency of policy actors to carry out the policy seriously so that what is the goal of the policy can be realized". Edward III said that if policy implementation is to be effective and efficient, implementers not only know what needs to be done and have the ability to carry out the policy, but they must also have the will to implement the policy.

Factors that are of concern to Edward III concerning dispositions in policy implementation consist of:

1) Appointment of bureaucracy. Disposition or the attitude of the executor will cause real obstacles to the implementation of the policy if the existing personnel do not implement the policy desired by the higher-ranking officials. Therefore, the appointment and selection of personnel implementing the policy must be people who are dedicated to the policies that have been set, more specifically in the interests of citizens.
2) Incentives are one of the techniques suggested to overcome the problem of the attitude of policy implementers by manipulating incentives. Basically, people move based on their own interests, then manipulate incentives by policy makers to influence the actions of policy implementers. Adding certain benefits or costs might be a motivating

factor for executors to carry out orders well. This is done as an effort to meet personal or organizational interests.

Policy implementation is a complex and complex process. However, despite this complexity and complexity, policy implementation plays a vital role in the policy process. Without a policy implementation phase, the policy programs that have been prepared will only become official records on the table of policy makers. Next, talking about policy implementation, it is important to understand who are involved in the implementation, and what methods or techniques are used in order to implement public policies. There are number of actors and institutions, such as the bureaucracy, the legislative body, the judiciary, pressure groups and community organizations that have direct and substantial involvement in the formulation and implementation of public policy.

II. THE IMPACT OF THE CONSTITUTIONAL COURT DECISION NUMBER 85 / PUU-XI / 2013 REGARDING THE TESTING OF LAW NUMBER 7 OF 2004 CONCERNING WATER RESOURCES ON THE INDONESIAN STATE'S WELFARE PERSPECTIVE

The Constitutional Court (MK) canceled the overall enactment of Law Number 7 of 2004 concerning Water Resources (SDA) because it did not meet the six basic principles of water resource management restrictions. Thus, the decision with Number 85 / PUU-XII / 2013 was read by Chief Justice of the Constitutional Court Arief Hidayat on Wednesday (18/2) in the Plenary Court Room of the Constitutional Court.

a. The Impact of the Constitutional Court Decision Number 85 / PUU-XI / 2013 Legal Structure Perspective

The approach used in analyzing the impact of the Constitutional Court Ruling Number 85 /PUU-XI/2013 is the theory of Lawrence Meir Friedman. Lawrence Meir Friedman's perspective that the legal system consists of three elements, namely elements of the structure (structure) or legal

structure, substance (substance) and legal culture (legal culture).[14] The structural element of a legal system includes various institutions created by the legal system with various functions in the framework of the operation of the legal system. One of them is the court. While the substance component includes everything that is the result of the structure, including legal norms in the form of regulations, decisions, and doctrines. For example, provisions regarding the obligation of certification for mediators, provisions regarding the length of time the mediation process and of course the provisions regarding mediation procedures in court.[15]

In addition to structure and substance, legal culture is still needed for the operation of a legal system. Legal culture includes people's attitudes or values that determine the operation of the legal system in question. These attitudes and values will influence both positive and negative behavior related to the law. So that the legal culture is an embodiment of community thought and social forces that determine how the law is used, avoided or abused.[16] In other words, legal culture is none other than the overall attitude of the community and the existing value system in society that will determine how the law should apply.

Theory about the elements of the legal system proposed by Lawrence M. Friedman is well known for the three elements of the legal system (three elements law system). According to him, in a country that implements a legal system, there must be at least three elements that will be used as the basis or foundation for the country's legal system to be strong. The three elements are: legal structure (legal structure), legal substance (legal substance), legal culture (legal culture).[17]

To be able to implement the Constitutional Court Decision Number 85 / PUU-XI / 2015, in addition to the importance of 1) communication factors and; 2) human resources, there must be: 3) consistency, transparency from law enforcers; 4) Decision of the Constitutional Court Number 85 / PUU-XI / 2015 must be accompanied by the acceleration of the birth of a new law; 5) The new law must be in accordance with the legal culture of the community. This is as the theory of Lawrence M.

---

14 LAWRENCE M. FRIEDMAN, AMERICAN LAW: AN INRODUCTION 96-98 (1984).

15 SAIFULLAH, REFLECTION ON LEGAL SOCIOLOGY 26-28 (2013).

16 *Id.*

17 *Supra* note 14, at 112; JAENAL ARIFIN, RELIGIOUS COURTS WITHIN THE FRAME OF LEGAL REFORM IN INDONESIA 45-51 (2018).

Friedman who argued that effective and successful law enforcement depends on three elements of the legal system, namely the structure of the law (structure of law), the substance of the law (substance of the law) and legal culture (legal culture).[18]

Related to the legal structure, namely all existing legal institutions and their apparatuses, progressive law in Indonesian legal practices is recognized as an alternative to law enforcement. According to Rodiyah[19] "Progressive law in Indonesian legal practices is recognized as one of an alternative law enforcement". So progressive law in Indonesian legal practice is recognized as an alternative to law enforcement. Rodiyah[20] stated that "progressive law is a pillar of achieving the substance of justice that prioritizes the benefit of human life. Therefore, all by law enforcers namely law enforcers and legal academics in higher education in law must have the character of spirit and souls of progressive law. So that the law really becomes something beneficial for not only humans but living things ". Progressive law has characteristics that distinguish it from others. First, law is for humans, not humans for law.

This basic grip, optics or beliefs do not see law as central to the law, but human beings are at the center of the cycle of law. The law revolves around humans as the center. Law exists for humans, not humans for law. If we hold on to the belief that humans are for the law, then humans will always be endeavored, perhaps also forced, to be able to enter into the schemes created by law. Humans or human deeds are always a unicum. Nevertheless, these characteristics have no place in law. Here the law works like a machine that just presses the button, like a tomato machine (*subsumptieautomaat*). Meanwhile, law must work with legal formulations in

---

[18] *Supra* note 14, at 115.

[19] Rodiyah, Waspiah, Andry Setiawan, *Acceleration Model in Obtaining Intellectual Property Rights (IPR) on Micro, Small and Medium Enterprises (SMEs) in Semarang City Central Java*, 6 INTERNATIONAL JOURNAL OF BUSINESS, ECONOMICS AND LAW. 18, 19-20 (2015).

[20] Rodiyah, *Ideologi Kiblat Pembaharuan Hukum Indonesia*, 2 SEMINAR NASIONAL HUKUM UNIVERSITAS NEGERI SEMARANG. 65, 70-71 (2016) [hereinafter Rodiyah, *Ideologi*]; Suwandoko & Rodiyah, *The Implementation of Bureaucratic Reform Pillars in Increasing Taxpayer Compliance at Semarang Tax Service Office*, 3 JILS (JOURNAL OF INDONESIAN LEGAL STUDIES). 5, 8-10 (2018) [hereinafter Suwandoko & Rodiyah, *Bureaucratic Reform Pillars*]; Ridwan Arifin, *Legal Protection and Law Enforcement: The Unfinished Works*, 2 INDONESIAN JOURNAL OF ADVOCACY AND LEGAL SERVICES 1, 2-3 (2020) [hereinafter Arifin, *Legal Protection*].

legislation, which have narrowed or reduced unique human actions into schemes or standards.

b. The Impact of the Constitutional Court Decision Number 85 / PUU-XI / 2013 Perspective of Legal Substance Perspective

The substance of the law (legal substance), namely the rules, norms, and patterns of real human behavior in the system. In short according to the authors, the substance is a product produced by the institutions that exist in the structure. Requests for retesting the Water Resources Act Law are contained in case Number 085 / PUU-XI / 2013. In the case the Court decided to grant the petitioner's petition in its entirety and declared Law No.7 of 2004 concerning Water Resources contrary to the 1945 Constitution of the Republic of Indonesia and had no binding legal force.

Based on the description above, it can be analyzed that the cancellation of the enactment of Law Number 4 of 2007 concerning Water Resources through the Constitutional Court's Decision is a monumental decision because this decision is the second time the Constitutional Court decided to cancel the whole through testing the norm material. There are some interesting things which then arise which are then considered unsolvable. In addition, the question which is then interesting is whether constitutional issues arise due to the enactment of the Water Resources Act which then the Constitutional Court finally overturned the entire Water Resources Act.[21]

---

[21] Ibnu Sina Chandranegara, *Purifikasi Konstitusional Sumber Daya Air Indonesia*, 5 JURNAL RECHTS VINDING: MEDIA PEMBINAAN HUKUM NASIONAL. 359, 362-364 (2016) [hereinafter Chandranegara, *Purifikasi Konstitusional SDA*]; Ibnu Sina Chandranegara, *Genealogy of Checks and Balances Formula on the Constitution*, 2 PROCEEDINGS THE 2ND INTERNATIONAL MULTIDICIPLINARY CONFERENCE. 1010, 1012-1014 (2016) [hereinafter Chandranegara, *Genealogy*], also see CARL J. FREDRICH, CONSTITUTIONAL GOVERNMENT AND DEMOCRACY 176-178 (1968)[hereinafter FREDRICH, CONSTITUTIONAL GOVERNMENT]; PIETRO COSTA, THE RULE OF LAW: HISTORY, THEORY AND CRITICISM 150-162 (2006) [hereinafter COSTA, THE RULE OF LAW]; ABDUL MUKHTIE FADJAR, HUKUM KONSTITUSI DAN MAHKAMAH KONSTITUSI 66-68 (2006) [hereinafter FADJAR, HUKUM KONSTITUSI]; CHARLES DE SECONDAT BARON DE MONTESQUIEU, THE SPIRIT OF LAW 251-252 (2001) [hereinafter MONSTESQUIEU, THE SPIRIT OF LAW]; for further context also *see* Saby Ghishray, *Searching for Human Rights to Water amidst Corporate Privatization in India: Hindustan Coca-Cola Pvt. Ltd. v. Premuatty Grama Panchayat*, 19 GEORGETOWN

When looking at the posture of the SDA Law in its entirety, and the historical course of its testing it cannot be separated from the constitutional testing of several laws in the field of other natural resources. The issue of privatization, commercialization, globalization vs. state sovereignty over natural resources has indeed become an easy cushion that covers the testing of laws in the field of natural resources. The issue of privatization and commercialization indeed for some opinions stated that it is still in the form of a classic myth that should not be gossiped about in the modern era and industrialization, but for some opinions that the national framework and national interests wrapped in the form of sovereignty are non-negotiable filters. Such circumstances, in the end, provide a position for some elements in the country to participate in guarding the desired value of the law enforcement that is considered to touch the public interest, in this case for example the Law on Natural Resources.[22]

The annulment of the Water Resources Act will certainly have an impact on water management by companies. In theory, the impact of the cancellation of the SDA Law will be felt by three parties, namely the government, water management business entities, and the community.

1. Impact on Government:
   a. Implied by the laws and regulations as the rules of implementing the SDA Law do not apply, so as a legal umbrella the Law on Water Resources is reinstated, and
   b. The state has the right to control water resources, the top priority of controlling water is given to BUMN and BUMD
2. Impact on Water Management Business Entity
   a. The cancellation of the SDA Law has implications for the derivation of regulations as implementing regulations to be canceled so that the loss of legal umbrella which is the basis for the issuance of water collection permits for Water Management Enterprises both at the central and regional levels;

INTERNATIONAL ENVIRONMENTAL LAW REVIEW. 643 (650-659) (2007) [hereinafter Ghishray, *Searching for Human Rights to Water*]; Richard Ausness, *Water Rights, the Public Trust Doctrine and the Protection of Instream Uses*, 25 UNIVERSITY OF ILLINOIS LAW REVIEW. 407 (411-412) [hereinafter Ausness, *Water Rights*].

22 *See* Chandranegara, *Purifikasi Konstitusional SDA*, *supra* note 21, at 326; Arifin, *Legal Protection*, *supra* note 20, at 3.

b. For the water exploitation process, it must partner with BUMN or BUMD in the area, and
c. Will have an impact on the obstruction of the climate that is not conducive and the investment process that has not been legally established to regulate the establishment of water-based industries in Indonesia.

3. Impact on the Community
   a. The cancellation of the SDA Law will have a positive impact on people's lives at large. The spirit of the community over water can be fulfilled in accordance with the constitutional basis of the 1945 Constitution Article 33 paragraph (3),and
   b. Natural wealth in the form of water can be fully utilized for the prosperity of the community and the opportunity for water commercialization by private companies must be strictly regulated and monitored.[23]

Constitutional Court Decision No. 85 / PUU-XI / 2013 cancels Law 7/2004 and re-enacts Law 11/74. The annulment of Law 7/2004 was based on the consideration that the regulations for implementing the law contradicted the Constitutional Court's interpretation in decision No. 058-059-060-063 / PUU-II / 2004 and decision No. 80 / PUU-III / 2005.

c. The Impact of the Constitutional Court Decision Number 85 / PUU-XI / 2013 Legal Culture Perspective

Legal culture, namely public attitudes or values, moral commitment and awareness that encourage the operation of the legal system, or overall

[23] Ria Tri Vinata, *Power of Sharing Sumber Daya Kelautan Republik Indonesia*, 24 LEGALITY: JURNAL ILMU HUKUM. 213, 216-219 (2016) [hereinafter Vinata, *Power of Sharing*]; Mohamad Shohibuddin, *Peluang dan Tantangan Undang-Undang Desa dalam Upaya demokratisasi Tata Kelola Sumber Daya Alam Desa: Perspektif Agraria Kritis*, 21 MASYARAKAT: JURNAL SOSIOLOGI. 1, 13-15 (2016) [hereinafter Shohibuddin, *Peluang dan Tantangan UU Desa*]. In the same context, the water resources and privatization have global impacts to multi-sectors, please *see* Alberto Cavaliere, Mario Maggi, & Francesca Stroffolini, *Water Losses and Optimal Network Investments: Price Regulation Effects with Municipalization and Privatization*, 18 WATER RESOURCES AND ECONOMICS. 1, 10-13 (2017) [hereinafter Cavaliere et.al, *Water Losses*]; Mary Gearey, *Participation or Exploitation: How can concepts of community and privatization coalesce around water efficiency approaches?*, 6 BRITISH JOURNAL OF ENVIRONMENT AND CLIMATE CHANGE. 2231, 2248-2255 (2016) [hereinafter Gearey, *Participation or Exploitation*].

factors that determine how the legal system obtains a logical place in the cultural framework of the community (Salman S and Susanto, 2010: 153-154).

Regarding the definition of legal culture explained by Friedman the following:

> "Besides structure and substance, then, there is a third and vital element of the legal system. It is the element of demand. What creates a demand? One factor, for what of a better term, we call 'the legal culture'. By this we mean ideas, attitudes, beliefs, expectations, and opinions about law."

So, in Friedman's view, besides 'structure' and 'substance', there is a third and vital element of the legal system. That element is 'demand' or 'need'. What creates a demand or need? One factor, which is good termed as a legal culture. The term 'legal culture' is defined as ideas, attitudes, beliefs, hopes, and opinions about law.[24] The following is Lawrence M. Friedman's explanation of the legal culture or social forces:

> "Social forces are constantly at work on the law—destroying here, renewing there; invigorating here, deadening there; choosing –what parts of 'law' will operate, which parts will not; what substitutes, detours, and bypasses will spring up; what changes will take place openly or secretly. For want of a better term, we can call some of these forces the legal culture. It is the element of social attitude and value. The phrase 'social forces' is itself an abstraction; in any event, such forces do not work directly on the legal system. People in society have needs and make demands; these sometimes do and.' sometimes do not invoke legal process—depending on the culture...The values and attitudes held by leaders and members are

[24] Harry A. Blackmun, *The Supreme Court and the Law of Nations*, 104 YALE LAW INTERNATIONAL JOURNAL. 115, 120-124 (1994); FRIEDMAN, *supra* note 14, at 118; Vinata, *Power of Sharing*, *supra* note 23, at 220; FADJAR, HUKUM KONSTITUSI, *supra* note 21, at 45; Shohibuddin, *Peluang dan Tantangan UU Desa*, *supra* note 23, at. 16; FREDRICH, CONSTITUTIONAL GOVERNMENT, *supra* note 21, at 180; MONSTESQUIEU, THE SPIRIT OF LAW, *supra* note 21, at 130; *supra* notes 19-20 and see accompanying text.

> among these factors, since their behavior depends on their judgment about which options are useful or correct. Legal culture refers, then, to those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law and in particular ways."

Furthermore, it is stated and highlighted that the term legal culture has been loosely used to describe a number of related phenomena. First, it refers to public knowledge of and attitudes and behavior patterns toward the legal system. It is defined that legal culture to mean attitudes, values, and opinions held in society, with regard to law, the legal system, and its various parts. So defined, it is the legal culture which determines when, why, and where, people use law, legal institutions, or legal process; and when they use other institutions, or do nothing. In other words, cultural factors are an essential ingredient in turning a static structure and a static collection of norms into a body of living lam Adding the legal culture to the picture is. like winding up a clock or plugging in a machine. It sets everything in motion.

In theory, one ought to be able to classify and compare legal systems by means of their cultures. This would be more meaningful for the social study of law than the conventional method of classification. But the study of legal culture, as such, is in its infancy. Until it grows stronger, it is hardly adequate to this task.

Basically, legal culture refers to two rather different sets of attitudes and values: that of the general public (we can call this '*lay legal culture*'), and that of lawyers, judges, and other professionals (vie can call this 'internal legal culture'). 'Lay legal culture can exist on many levels. It is possible to speak of the legal culture of France or Nigeria as a whole (attitudes and values which, on the whole are characteristic of Frenchmen or Nigerians) There are also regional, local, or group attitudes and values about law, those of the Toruba, or Jews, or Britons, or plumbers, cabdrivers, big business executives.

In the same context, it is emphasized that a word should be said at the outset about the concept of 'legal culture'. Scholars have used the term in numbers of senses. Sometimes the phrase describes legal consciousness—attitudes, values, beliefs, and expectations about law and

the legal system. At other times, scholars employ the term in a broader but somewhat vaguer meaning—to capture what is distinctive about patterns of thought and behavior in, say, American law. Some sweep even more into the category: legal institutions and the distinctive ways they function In any case, the term refers to living law, to law as a dynamic process; if the dry texts of statutes and cases, and the organizational charts that describe legal institutions are the bones and skeleton of a legal system, then legal culture is what makes the system move and breathe. The authors of the essays, however they make use of the term, never stray too far from the core meaning of legal consciousness, the law as image and incentive, in the minds of members of some public.

We know that in society there are many types of norms that work together, namely norms of customs, morals, religion, and law. In a traditional society, among these norms, there is not yet a large gap. In contrast, in modern society, sharp differences between these norms are getting thicker, especially the sharp differences between legal norms on the one hand, and non-legal norms on the other. In other words, there is also a sharp difference between the concept of 'justice' between the concept of 'common sense', moral concepts or even rational scientific concepts, dealing with the concept of formal justice from the government, or law enforcement.[25]

When viewed using the lens of the welfare state theory, free state intervention in the management of water resources is precisely something important to do. The great responsibility of the state in protecting and promoting the economic and social welfare of citizens is an important aspect of the welfare state. In a welfare state, the state or government has many choices that can be made that cannot be done by other institutions. In this case the state can determine the rules (state establish rules) as part of the legal system that is the basis for service delivery, the government provides subsidies and services (government subsidize and provide). The

[25] ACHMAD ALI, REVEALING LEGAL THEORY AND JUDICIAL THEORY: INTERPRETATION OF THE LAW (LEGISPRUDENCE), 53-56 (2015) [hereinafter ALI, REVEALING LEGAL THEORY]; Cavaliere et.al, *Water Losses*, *supra* note 23, at 15; Chandranegara, *Purifikasi Konstitusional SDA*, *supra* note 21, at 328.

government can also take coercive action (government coerce) which can be done in the form of drafting rules that contain orders and prohibitions.[26]

Referring to the Indonesian constitution, according to Bagir Manan, from the socio-economic point of view, the 1945 Constitution was prepared on the basis of the understanding of the welfare state (welfare state, *verzorgingstaat*) as illustrated in the provisions of article 28H (right to prosperity), Article 31 (right to education), Article 34 (economy), and Article 34 (maintenance of the poor and neglected children, social security systems, health services, etc.). Understanding the welfare state to achieve prosperity of the people (*materielerechstaat* / social service state) is also illustrated in the fourth paragraph of the opening of the 1945 Constitution which states "*... and to advance public welfare ...*"[27]

Constitutional Court Decision No. 85 / PUU-XI / 2013 cancelled Law 7/2004 and re-enacts Law 11/74. MK Decision No. 85 / PUU-XI / 2013 concerning Testing Law No. 7 of 2004 concerning Water Resources has completely canceled the Water Resources Act. Thus, a new law is needed. In fact, Law Number 11 of 1974 concerning Irrigation is outdated to be used as a guideline for the implementation of natural resource management. The current water resources management must be implemented in a holistic, integrated, and environmentally friendly manner, with due regard to functions: social, environmental and economic. The water resources management must also be based on: River Basin for surface water and Groundwater Basin for groundwater. The water resources management policy must also involve aspects of: Conservation, Utilization, Damage Control, and Information Systems, therefore a new Water Resources Act needs to be made. But before the new Water Resources Act is formulated and passed, the new Water Resources Act must be ready to adopt a new paradigm and leave the old paradigm.

The new Water Resources Act must reflect responsive law in line with the understanding of Nonet and Selznick, that responsive law is a law that is ready to adopt a new paradigm and leave the old paradigm. Thus, in responsive law there is wide open space for dialogue and discourse and the

---

[26] PAUL SPICKER, THE WELFARE STATE: A GENERAL THEORY, 178-180 (2000); ALI, REVEALING LEGAL THEORY, *supra* note 24, at 70-74.

[27] Helmi Kasim & Titis Anindyajati, *Constitutional Perspectives Regarding the Position of State and Private Sector in Water Resources Management Based on the 1945 Constitution*, 13 JURNAL KONSTITUSI. 455, 474-475 (2016).

existence of pluralistic ideas as a reality. Therefore, responsive law no longer always bases its consideration on juridical considerations but rather tries to see an issue from various perspectives in order to pursue what is called as *substantive justice*.[28]

The new Water Resources Act in order to be implemented, the law must be ensured that there will be no constraints, then the timing of socialization and sufficient resources, the policy to be implemented is based on a reliable causal relationship. This is as stated by Hogwood and Gun in public policy theory, that to be able to implement state policy perfectly (perfect implementation), certain conditions are needed, the conditions are as follows:

1) External conditions faced by implementing agencies / agencies will not cause serious disruption / obstacles
2) For the implementation of the program, adequate time and resources are available
3) The combination of required sources is really available
4) The policy to be implemented is based on a reliable causal relationship
5) Causality relationships are direct and there are only a few links to them
6) The relationship of interdependence must be small
7) Deep understanding and agreement on goals
8) The tasks are detailed and placed in the right order
9) Perfect communication and coordination
10) The parties that have the authority of power can demand and get perfect compliance.

The new Water Resources Act must be able to provide legal protection. Basically, the theory of legal protection is a theory relating to the delivery of services to the community. Roscoe Pound argues that law is a social engineering tool (law as a tool of social engineering). Human interest is a demand that is protected and fulfilled by humans in the field of law.[29]

---

[28] Rodiyah, *Aspek Demokrasi Pembentukan Peraturan Daerah dalam Perspektif Socio-Legal*, MASALAH-MASALAH HUKUM 41. 144, 149-150 (2012).

[29] SALIM HS & ERLIES SEPTIANAN NURBANI, PENERAPAN TEORI HUKUM PADA PENELITIAN DISERTASI DAN TESIS, 266-268 (2013); SOLICHIN ABDUL WAHAB, ANALISIS KEBIJAKAN: DARI FORMULASI KE PENYUSUNAN MODEL-MODEL

CONCLUSION

Implementation of Law Number 7 of 2004 concerning Water Resources was canceled by the Constitutional Court in its Decision Number 85 / PUU-XI / 2013. The Constitutional Court on 18 February 2015 canceled the overall enactment of Law Number 7 of 2004 concerning Water Resources because it did not meet the six basic principles of limiting natural resource management as stipulated in the 1945 Constitution. In its consideration, the Court stated that water resources as part of human rights, the resources contained in water are also needed by humans to meet other needs, such as for agricultural irrigation, power generation, and for industrial purposes, which have an important role in the progress of human life and are an important factor as well for humans to be able to live decent lives.

The impact of the Constitutional Court Decision Number 85 / PUU-XI / 2013 concerning the testing of Law Number 7 of 2004 concerning Water Resources on the Indonesian state of welfare state perspective will be felt by three parties namely the government, water management business entities, and the community.

REFERENCES

Arifin, R. (2020). Legal Protection and Law Enforcement: The Unfinished Works. *Indonesian Journal of Advocacy and Legal Services 2*(1), 1-4. https://doi.org/10.15294/ijals.v2i1.38035.

Arifin, J. (2018). *Religious Courts within the Frame of Legal Reform in Indonesia*. Jakarta: Kencana.

Ausness, R. (1986). Water Rights, the Public Trust Doctrine and the Protection of Instream Uses. *University of Illinois Law Review 1986*(2), 407-249.

IMPLEMENTASI KEBIJAKAN PUBLIK 71-75 (2011); Rodiyah, *supra* note 28; Cavaliere et.al, *Water Losses*, *supra* note 23.

Ali, A. (2015). *Revealing Legal Theory and Judicial Theory, including Interpretation of the Law (Legisprudence)*. Jakarta: Pradnya Paramita.

Badjuri, A., & Yuwono, T. (2010). *Public Policy: Concepts and Strategies*. Semarang: UNDIP.

Blackmun, H.A. (1994). The Supreme Court and the Law of NationsVolume. *Yale Law International Journal* 39(1), 104-155.

Bluemel, E.B. (2004). The Implications of Formulating a Human Right to Water. *Ecology Law Quarterly 31*(3), 957-1006. SSRN: https://ssrn.com/abstract=1367759.

Cavaliere, A., Maggi, M., & Stroffolini, F. (2017). Water losses and optimal network investments: Price regulation effects with municipalization and privatization. *Water Resources and Economics 18*(1), 1-19.

Chandranegara, I.S. (2016). Purifikasi Konstitusional Sumber Daya Air Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, 5*(3), 359-379. https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/150.

Chandranegara, I.S. (2016). Genealogy of Checks and Balances Formula on the Constitution. *Proceedings The 2nd International Multidisciplinary Conference 2*(November), 1010-1022. https://jurnal.umj.ac.id/index.php/IMC/article/view/1301.

Cotterrell, R. (1992). *The Politics of Jurisprudence, A Critical Introduction to Legal Philosophy*. Philadelphia: University of Pennsylvania Press.

Crotty, S.N., & O'Toole Jr, L.J. (2004). Public Management and Organizational Performance: The Case of Law Enforcement Agencies. *International Journal of Public Administration Research and Theory 12*(1), 1–18 .

Cross, F.B. (1999). The Relevance of Law in Human Rights Protection. *International Journal Review of Law and Economics 19*(1), 87–98.

Costa, P. (2006). *The Rule of Law: History, Theory, and Criticism*. New York: Springer.

Fadjar, A.M. (2006). *Hukum Konstitusi & Mahkamah Konstitusi*. Yogyakarta: Citra Media.

Faur, D.L. (2010). Regulation and Regulatory Governance. *Working Paper No. 1* (February). http://levifaur.wiki.huji.ac.il/images/reg.pdf.

Friedrich, C.J. (1968). *Constitutional Government and Democracy*. Harvard: Blaisdell Publishing.

Friedman, L.M. (1984). *American Law: An Introduction*. New York: W.W. Norton and Company.

Gearey, M. (2016). Participation or exploitation: How can concepts of community and privatization coalesce around water efficiency

approaches?. *British Journal of Environment and Climate Change*, 6(3), 2231-4784.

Ghishray, S. (2007). Searching for Human Rights to Water amidst Corporate Privatization in India: Hindustan Coca-Cola Pvt. Ltd. V. Perumatty Grama Panchayat. *Georgetown International Environmental Law Review 19*(4), 643- 672.

Gleick, P.H. (1998). The Human Right to Water. *Water Policy 1*(1998), 487-503. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.487.6590&rep=rep1&type=pdf

Haber, H. (2011). Regulating-for-Welfare: A Comparative Study of Regulatory Welfare Regimes in the Israeli, British, and Swedish Electricity Sectors. *Law and Policy 33*(1), 116-148. https://doi.org/10.1111/j.1467-9930.2010.00332.x

Islamy, M.I. (2009). *Prinsip-prinsip Perumusan Kebijakan Negara.* Jakarta: Bumi Aksara.

Kasim, H., & Anindyajati, T. (2016). *Constitutional Perspectives Regarding the Position of State and Private Sector in Water Resources Management Based on the 1945 Constitution. Jurnal Konstitusi 13*(2), 455-479.

Larson, R.B. (2013). The New Right in Water. *Washington and Lee Law Review 70*(2), 2181-2267. https://scholarlycommons.law.wlu.edu/wlulr/vol70/iss4/10/.

Majone, G. (1997). From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance. *Journal of Public Policy*, *17*(2), 139-167. Retrieved May 3, 2020, from www.jstor.org/stable/4007608.

Marcuzzo, M.C. (2010). *Keynes and the Welfare State*. http://www.ie.ufrj.br/eventos/seminarios/pesquisa/texto_02_12.pdf

Montesquieu, C.S.B. (2001). *The Spirit of Law*. Canada: Batoche Books.

Mertokusumo, S. (2012). *Teori Hukum*. Yogyakarta: Cahaya Atma Pustaka.

Mertokusumo, S. (2015). *Penemuan Hukum: Suatu Pengantar*. Yogyakarta: Liberty.

Nonet, P. (1999). For Jurisprudential Sociology. *International Journal Law & Society*. University of California, Berkeley.

Nonet, P., & Selznick, P. (2001). Law and Society Transition: Toward Responsive Law, in Satya Arinanto, *Political Law 2*. Jakarta: Collection of Law Political Lecture Papers, FH UIEU Postgraduate Program.

Nonet, P., & Selznick, P. (2013). *Responsive Law*, trans. Raisul Muttaqien, Bandung: Nusa Media.

Parsons, W. (2002). From Muddling Through to Muddling Up-Evidence Based Policy Making and the Modernisation of British Government. *Public Policy and Administration 17*(3), 43-60. https://doi.org/10.1177/095207670201700304.

Parker, C. (2008). The Pluralization of Regulation. *Theoretical Inquiries in Law 9*(2), 349-369. https://www7.tau.ac.il/ojs/index.php/til/article/view/687/646.

Petrova, V. (2006). At the Frontiers of the Rush for Blue Gold: Water Privatization and the Human Right to Water. *Brooklyn Journal of International Law 31*(1), 577-625.

Pierson, P. (2010). The New Politics of The Welfare State. *International Journal of Public Policy 18*(1), 245-316.

Praja, J.S. (2011). *Legal Theory and Its Application*. Bandung: CV Setia Loyal.

Rasyidi, L. (2012). *Legal Philosophy*. Bandung: Remadja Karya.

Rodiyah, R. (2012). Aspek Demokrasi Pembentukan Peraturan Daerah dalam Perspektif Socio-Legal. *Masalah-Masalah Hukum*, *41*(1), 144-152. doi:10.14710/mmh.41.1.2012.144-152.

Rodiyah, R., Waspiah, W., & Setiawan, A. (2015). Acceleration Model in Obtaining Intellectual Property Rights (IPR) On Micro, Small and Medium Enterprises (SMEs) in Semarang City Central Java. *International Journal of Business, Economics and Law 6*(4), 18-26.

Rodiyah, R. (2016). Ideologi Kiblat Pembaharuan Hukum Indonesia. *Seminar Nasional Hukum Universitas Negeri Semarang* 2(1), 65-78.

Rokhmad, A. (2012). Progressive Law of Thought Satjipto Rahardjo in Perspective of Maslahah Theory. *Thesis*, Semarang: Postgraduate IAIN Walisongo Semarang.

Saifullah, S. (2013). *Reflections on Legal Sociology*. Bandung: Aditama.

Salim, HS & Nurbani, E.S. (2013). *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis*. Jakarta: PT. Raja GrafindoPersada.

Salman, S.O., & Susanto, A.F. (2010). *Legal Theory: Remembering, Collecting, and Reopening*, Bandung: Refika Aditama.

Setiyono, B. (2012). *Bureaucracy in Political and Administrative Perspectives*. Bandung: Nuansa.

Shohibuddin, M. (2016). Peluang dan Tantangan Undang-Undang Desa dalam Upaya Demokratisasi Tata Kelola Sumber Daya Alam Desa: Perspektif Agraria Kritis. *MASYARAKAT: Jurnal Sosiologi 21*(1), 1-33.

Spicker, P. (2000). *The Welfare State. A General Theory*. London: SAGE Publications.

Sriyono, E. (2015). Tantangan Pengelolaan Sumber Daya Air (PSDA) Sesudah Dibatalkannya Undang-Undang RI No. 7 Tahun 2004

tentang Sumber Daya Air (UU SDA). *Proceedings Seminar Nasional Teknik Sipil UMS* 5(1), 208-213. https://publikasiilmiah.ums.ac.id/handle/11617/6437.

Subarsono, A.G. (2011). *Analisis Kebijakan Publik*. Yogyakarta: Pustaka Pelajar.

Suwandoko, S., & Rodiyah, R. (2018). The Implementation of Bureaucratic Reform Pillars in Increasing Taxpayer Compliance at Semarang Tax Service Office. *JILS (Journal of Indonesian Legal Studies) 3*(1), 5-28. https://doi.org/10.15294/jils.v3i01.23244.

Tjokroamidjojo, B., & Mustopadidjaya, M. (2009). *Development Policy and Administration Development Theory and Application*. Jakarta: LP3ES.

Vinata. R.T. (2016). Power of Sharing Sumber Daya Kelautan Republik Indonesia. *Legality: Jurnal Ilmu Hukum*, *24*(2), 213-223.

Wahab, S.A. (2011). *Analisis Kebijakan: Dari Formulasi Ke Penyusunan Model Model Implementasi Kebijakan Publik*. Jakarta: Bumi Aksara.

Widodo, J. (2001). *Etika Birokrasi dalam Pelayanan Publik*. Malang: Citra Media.

Widodo, J. (2004). *Membangun Birokrasi Berbasis Kinerja*. Malang: Banyumedia.

Williams, M. (2007). Privatization and the Human Rights to Water: Challenges for the New Century. *Michigan Journal of International Law 28*(1), 469-579.

Winarno, B. (2014). *Public Policy (Process Theory and Case Study)*. Yogyakarta: Center of Academic Publishing Service (CAPS).

Zain, M. (2017). Politics of Law on the State Control of Oil and Gas in Indonesia: Gas Liberalization and the Hesitancy of Constitutional Court. *JILS (Journal of Indonesian Legal Studies)*, *1*(1), 69-86. https://doi.org/10.15294/jils.v1i01.16569

ABOUT AUTHORS

Ari Shoviani is working on Municipal Waterworks of Semarang City. She concerns on Water Resources especially in the context of Privatization of Water Resources and its impact to the basic rights of people. She obtained her Master of Laws degree from Universitas Negeri Semarang, Indonesia.

Rodiyah is Associate Professor on Administrative & Constitutional Law Department, Faculty of Law, Universitas Negeri Semarang, Indonesia. Now, she working as Dean and researcher at Legal Drafting Studies Center. Her concerned on Law and Public Policy, Legal Drafting and Constitutional Law.