

Sambong/ & Legal Conflict of Water Rights :
*Portrait the Clash between State Law vs. Folk Law over
Water Management in Madiun District¹*

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Abstraction

Based on participatory rural appraisal, and focused on water and traditional irrigation management system in 7 villages, in Madiun District, East Java (Banjarsari Kulon, Banjarsari Wetan, Sewulan, Sukosari, Prambon, Brumbun, and Dagangan villages), where one of the largest farmers managed irrigation systems in East Java, that is being improved and enlarged with money from Asian Development Bank. In field research, we have found various local wisdom and knowledge on irrigation management³. But unfortunately those local wisdom and knowledge only the old-men story in kampong, because local traditions which have been told already extinguished by green revolution in early 1980s. This paper briefly analysis relations between green revolution and community based irrigation management in Madiun, Indonesia, and recently situation on water issues under big-scale project that has been supported by Multilateral Development Bank's.

In most of kampong in Madiun, many people work in wet rice field because the fertile land always get enough water supplies from surrounding forest and mountain. Water supply in those sub-districts were divided into several type of consumers, included the sugar factory, pipe water and rice-field. Before 1980s, the water conflicts usually occurred between subsistent farmer and sugar factory to access water from river and Dawuhan DAM. Sugar factories (PG. Kanigoro & PG Pagotan) can pay easily to local government for water supply and the people especially subsistent farmer only get the rest of water from Dawuhan River. So sometimes the people cannot cultivate regularly every year, because it is not enough water supply.

Traditionally, the communities have "*Sambong*", or *jogotirto*, the people who guard irrigation management to supply water for all, preserve irrigation technical, ecologically and sustainability. "*Sambong*" traditions have been existed hereditary, and always needed by local community to protect local system over natural resources. For instances, "*untu malang*" irrigation management as a irrigation for all communities. Sanctions will be given to person who violate common obligation and not regularly protect tertiary canal.

When government in early 1980s launched "*semenisasi*" (special solid material construction, and the peasant should pay for it) under green revolution program. "*untu malang*" traditions were seized with irrigation modern development, which were not

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³ This paper was adopted from participatory rural appraisal and field report during 2002-2003.

environment friendly, bad quality because many corruptions and weak constructions. The *Sambong*, have been changed with *Hippa* (*Himpunan Petani Pemakai Air*, or water user association), an uniform organization which created by state policy under green revolution scheme as well. Beginning in 1999, under World Bank and ADB debt program assistance and privatization after existing Water Resources Act 2004 No. 7, problem of poor people and social systems seems to be worst in Indonesia.

The examples of "*Sambong*" and "*Untu Malang*" as community based management are folk law which one of diversity the natural resources management in Indonesia. The *Sambong* socially as folk law to responsible over water and irrigation for all. In the future, conflict over water and irrigation system should be solved based on respecting legal pluralism perspective, community rights, and environmental/ecological friendly.

I. State Law : Starting Conflict over Water Access Management

Java Conceptions on Natural Resources Management

Environmental management according to Java conception, use several account resources, i.e.: season, season characteristic, astrology & astronomy (*palintangan*), and others, that called "*pranata mangsa*" (it was created by *Sri Sri Susuhunan Paku Buwana VII*). According to this knowledge, season in Java divided into 12 seasons (*mangsa*), that each *mangsa* has specific sign to show characters. Twelve *mangsa* be a guidance, or calendar for peasant to plant at field crop.

Javanese society has been developing ecological wisdom that has been gotten from the long experiences hereditary, for instance, people were very understand and know certain species that should be planted at sunny field or certain location. Javanese society also has ecological wisdom that pictured by mystical perspectives. For instance, in certain location surrounding the water resources, forest, certain trees, that believed to have a mystical or sacred occupied. Such "sacralization" brings positive implication to protect genetic resources.⁴

And also on forest management, in Javanese society has known relationship between mountain, forest, and natural resources as a strongly connected each other, that have social, ecological, religious, and supernatural values. *Siti Soro* conception, as a land forest that victimized because it can protect water ecology and local communities from flood threatening. Because the believing of *Siti Soro*, so that's why it could be a local law/folk law, that any moment will be broken and cause for environmental destructions, and will threaten communities living surround *Siti Soro*.

In 1976, as an example of case in Kelud Slope Mountain, Blitar District, it has many forest logging and land exploitation in *Siti Soro* location that was conducted by coffee entrepreneur, NV. (*Namloose Vennotschapt*) Gambar. After exploitation, the flood from *Siti Soro* area attacked agricultural plantations and community houses, two citizen were killed

⁴ Triharso, "Pengelolaan Sumberdaya Alam Menurut Konsepsi Jawa" (Natural Resources Management Based on Java Conception), cited from Bunga Rampai Kearifan Lingkungan, Kantor Menteri Negara Lingkungan Hidup, Jakarta, 2001, pp. 816.

and the lost of local community property. In addition, water resources that as a resource for local community also broken.⁵

The case above as one of Java conceptions over local knowledge and local wisdom values that is a customary law, which easily destroyed, not only environmentally, but also social systems, by a kind of project debt through legal system facilitating.

State Law Conflict

Water regulation through normative law is very important to be understood as a significant factor, in term of its influence on water management process. Based on description above, it was found many forms destruction systems of irrigation, and also social systems that related to water management as impacts of regulation policies.

This part will describe and explain shortly, all at once to relate important variant that has covered why this policy existed, from historical context and empirical-reality. That be a key question for that, is how the role of law which has influenced water resources management system in rural? Or in the other words, how the state approach on pluralism water management?

In historical perspective, Dutch Colonial government regulated on water law before 1945, i.e. *Algemeen Waterlement 1936* (Level of general water regulation), which has existed for certain location. In that year, water policy more functionalized for supporting sugar cane industry or sugar cane plantations, which need water supply a quite large. So that, the history of irrigation infrastructure in Indonesia actually cannot be separated from development of agricultural historical context and downstream industry. It can be seen from how the area of *culturplannen* (plantation planning, especially plantation for supplying sugar cane industry). The administrative policy also has strongly intervened water license from province level, district level down to village level.

In colonial period, adat law (indigenous law) was placed at the lowest position with law creation (classification) based on law for European society, law for *Timur Asing* (i.e. Arab, China) society, and law for *Bumiputera* (local communities). Each law group still follow on each law system and was operated by government apparatus in administration system that was different each others. In this law system, law for European society was placed on the top (the highest classification), *Timur Asing* group at the middle, and *Bumiputera* group at lower position and underbow European law system. Law classification based on race which a main characteristic of European law system over land rights, water rights and other natural resources rights.⁶

After Indonesia independence declaration in 1945, law classification for certain community has implications for law enforcement that conducted by Indonesian apparatus. This was a consequence in transition regulation of *Undang-Undang Dasar 1945* (Indonesian

⁵ Perdana, R. Herlambang, "Serangan Akar Rumput di Lereng Gunung Kelud" (Grassroot Movement in Kelud Slope Mountain), A participatory action research of peasant struggle on reclaiming movement in Gambar Village, Blitar District, 2000.

⁶ Prof. Dr. M. Daud Silalahi, SH., "Pengaturan Hukum Sumberdaya Air dan Lingkungan Hidup di Indonesia" (Regulation on Water Resources and Environment in Indonesia), Alumni Publishing, Bandung, 2003, pg. 7.

Constitution) that stated: "all of state bodies and regulations still existed, as long as not regulate yet new (regulation) based on this constitution." This was called as a transplanted law from colonial to national law and the transplantation of law not reflect the diversity of local situation.⁷

Traditional water management, especially irrigation, as colonial heritage still exists until now. But water management tradition at local level already arose before and very diverse, consecutively with early community agriculture tradition in field crop areas.

For instance, in Javanese society basically is agrarian community, where daily activity which conducted shows closely with natural environment surrounding their life. It is known from *pentungan* system as work guidance which called *pranata mangsa*. Javanese peasant fully understand with "*nyabuk gunung*" (mountain belt) agricultural tradition, where (in *serat centini*) was pictured various plantation based on level of mountain slope. And also peasant in rural areas that can minimize the impact of flood, which called as "*sistem surjan*".⁸

Because physically and social-culture characteristic from Indonesian islands that diverse, not only their communities, but also their law that plural, where adat/indigenous law, western law and government law product under constitution 1945 after freedom declaration, strongly influenced regulation system at local level.

"*Sambong*" tradition in Madiun District, East Java, "*mitra caik*" in Garut District, West Java, "*Subak*" in Bali and others, are examples of various community based water resources management.

In Act Number 5/1960 on Basic Agrarian Law, it has been spelled out various water rights, i.e. *hak guna air* (right to use water), *hak pemeliharaan* (right to preserve), and *hak penangkapan ikan* (right to catch fish).⁹ But these rights were not described on more concretely policy and terms, except relation on right to catch fish which adopted on government regulation (*Peraturan Pemerintah*).¹⁰

In irrigation sector, policy implementation on water resources administratively more occupied by government, including regulation on *sempadan* or lands in surrounding of irrigation river. In the field context, this policy more focused on irrigation infrastructure development, dam development, and construction which support industrial sector.

Irrigation development that physically, more massive after special policy on water that regulated by Act Number 11/1974 about Water. Since this existed regulation, water regulation in Indonesia has been a seriously problem, this was related to process of early the political decentralization of government post Act Number 5/1974 about Regional Government.

⁷ Prof. Soetandyo Wignyosoebroto, SH., MPA., "Hukum : Paradigma, Metode, dan Dinamika Masalahnya" (Law: Paradigm, Method, and Problems), HuMa & Elsam, 1st edition, Jakarta, 2002.

⁸ Triharso, "Pengelolaan Sumberdaya Alam Menurut Konsepsi Jawa" (Natural Resources Management Based on Java Conception), cited from "Bunga Rampai Kearifan Lingkungan, Kantor Menteri Negara Lingkungan Hidup", Jakarta, 2001, pg. 816-817.

⁹ Vide: Article 16 (2) - Agrarian Basic Act No. 5/1960.

¹⁰ Vide: Government Regulation No. 15/1990 (Fisheries Regulation).

It can be seen from water resources management to management authority.¹¹ Authority of right to water also be a problem when explained that water and other natural resources inside, occupied by state. State authority over natural resources regulate for:

- a. Manage and develop water and water resources utilities;
- b. Planning, legalize, and or give license based on planning and technical planning water management;
- c. Regulate, legalize, and or give license for using water, water availability, and or water resources;
- d. Regulate, legalize, and or give license to develop water and water resources business;
- e. Decide and regulate activity and law relation between subjects of law on water resources management.

Whereas, management authority was delivered to government bodies, both of at central level or regional level, and also certain law institution that procedures and requirements were stated by government regulation.

The problem after that is, how far state authority give rights, especially on water management, can guarantee traditional rights recognition that has been developed a long time ago before regulation released. Actually, state authority over water resources should respect community rights, as long as not against with national (state) interest. The problem was, the interpretation of "as long as not against to national interest" (*sepanjang tidak bertentangan dengan kepentingan nasional*), has opened opportunity the state to interpret separately to exploit in the name of national interest, because national interest terms that explained not properly or bias explanation.

In addition, when political decentralization in regional government after enactment of Act Number 5/1974, administrative functions still more dominated by powerful centralized model, also symbol uniformity and government bureaucracy structure. Of course, it has also very influenced on decision procedures, included on deciding the access of natural resources at local level, also offensively exploit and develop in the name national interest.

One of national interest that has very clear influence over water resources at local level was green revolution program that has been released in early 1980s. In Indonesia, green revolution has been done by "commando" and "subsidy." Subsidies in those terms included: (1) Greatly charity for chemical inputs (manure price); (2) subsidy for agricultural credit; (3) state payment for rice-field through basic price payment operation and facilitating rice-field stock availability; (4) advancement of irrigation quantity and also capitalization through foreign debt.¹²

With those strategy, green revolution has been giving fantastically result, mainly agriculture in Java can produce twice per year comparing with early 1960s rice-field production. And because of that, the production of Java agriculture change status of Indonesia, from rice imported become self-producing of rice in 1985.

¹¹ Vide: Article 3, 4 - Water Act No. 11/1974 *juncto* Chapter V Government Regulation No. 22/1982 (Water Regulations)

¹² Mansour Fakhri, "Revolusi Hijau, Suatu Tinjauan Kritis" (Green Revolution, A Critical View), in Sunanto-Hatta, dkk. (ed.), Yogyakarta, 2000.

But, if it has been seen from reality that following a quantity “success story”, there were found number of problems, i.e. arising of poverty, rural urbanization to city, political repression over peasantry communities, etc. Included water sector, water management tradition has been banned, adat or indigenous institutions or local water user association should be uniformed and responsible to regional/district government, irrigation ecologically broken, also ironically, the broken of social-cultural systems, including local/folk law that has existed.

In that context, a state law power to destruct local law has been placing centralized law over pluralism law. Water politic has been started with interest construction based on capital owner that has influenced state law that must to facilitate this scheme. Bias state based interpretation that intentionally spread opened, which caused no respecting of local wisdoms on law society.

II. Destructions of Local Irrigation Management Traditions

The failure on respecting traditional values and local wisdoms, including the local knowledge on water resources management, included on policy making that based on socio legal concept, it has caused technically worst and destructed. In this phase, the social system destructions which have been caused imperative and uniform approach over water policy regulation.

In this case, not many law studies which conducted by lawyer or policy maker over water resources that establish based on interdisciplinary studies, for instance inserting local legal pluralism and exploring social-cultural values inside. In the field context, what kind of destructions that occurred after water policy which adopted uniformity and centralized understanding?

- a. Local law, or folk law that regulate water management and also punishment, local duties, were erased and changed by state law instrument.
- b. Local tradition on water management, or *Sambong*, as a symbol of collectivity and *guyub* (solidarity) tradition in Javanese society, especially in Madiun District, to preserve and save tertiary irrigation, was lost and changed by uniform water user associations under state instructions (HIPPA/P3A). So those, *Sambong* tradition as social-cultural system become seriously broken.
- c. The values in social relation, such as collectivity, or also friendship, solidarity/*guyub*, has been changed by structural instrument under state control, so that if there is something conflict or dispute, so the authority who can manage the conflict fully under state authority (bureaucracy). In the past, irrigation and water that flow inside as community ownership, including responsibilities, now, the government fully responsible to take measure on those problems (centralized approach).
- d. The local infrastructure that environmental friendly, because of that, irrigation as a place to reproduce aqua fauna, now they were gone. In the other hand, the construction of naturally irrigation, stronger that “semen” construction that very low quality and easily broken. So that’s why, many water flow were lost everywhere can not be controlled by authority. The difference between natural construction and “semen” construction was related to their resistances. “*Untu malang*” constructions stronger if processed in a long time, adversely, “semen” construction will be easily broken, so that’s why it needs regularly rehabilitation.

Learning from the destructed and failure policy on irrigation, especially to preserve water supply in rural areas, can be concluded that it cannot drive the uniformity effort of water resources management through state laws. Moreover, the intention of this policy is for pressuring policy as a part of development interest, but it has suffered local community that already preserved traditions, knowledge and local believing. In this context, law more seen as repressive law rather than responsive law, local law died, which has caused many wrapped oppression over social-cultural systems in society.¹³

III. Debt Project and Water Political Regulation

As a critical response over the problem above is, how the law study on water resources management was given more strongly to establish interdisciplinary, for example socio-legal approach through socio-technique concept, are a big issue that should be concerned on water policy making process.

Indonesian experiences, when debates to legalize draft of water resources act (2003-2004), it has been various debated relation to strengthen the local pluralism respecting over water resources. Such issues that very sensitive on regulation policy are the problem of water privatization, which as monopoly gate into water resources management for number of capital investment interest.

Various critical recommendation, alternative research for proving a failure of this water policy,¹⁴ also the effort to stop or pending up to hundreds mass strike in all of part Indonesia, cannot stop the politician in DPR (Indonesian House of Representative) to release Water Resources Act 2004. Now, this policy already exists, and of course in the near future will threaten pluralism on water management, that so far the community can preserve their local values.¹⁵

There are a numbers of question that addressed to Act Number 7/2004 policy, regarding to water resources, whether this regulation policy using socio-legal approach which based on community protection or, using capital/infestation only. Because according to "Sambong" case experiences in the past, under green revolution program and supporting from Multinational Development Banks, the project was fail, because there was without respecting socio legal approach. Is the Act Number 7/2004 repeating the failure of green revolution, or as a part of sustainable (violence) development?¹⁶

Actually, state agencies, local communities, national and international donor agencies all define rights to water differently and have procedures that do not correspond with each other, so that's why it seems confliction situation under transnational law perspectives.¹⁷

¹³ Philipe Nonet and Selznick, "Law and Society in Transition : Toward Responsive Law", Verson, 1978.

¹⁴ Perdana, R. Herlambang, Sandra Moniaga, and Mappinawang, "The field research for IISLEP assessment, relation to Irrigation and Community Based Water Resources Management in East Java, South Sulawesi, Lampung, and West Java", unpublished report, 2002.

¹⁵ When this paper was being written, there has been running two separately litigation process for judicial review through Constitution Court, it was examined by several NGO's and people organization, indigenous community, and the peasant to cancel existence of Act Number 7/2004.

¹⁶ Water privatization is the critical issues in World Summit on Sustainable Development, as a compromising between developing/poor countries and transnational regimes.

¹⁷ Keebet von Benda-Beckman, Transnational Dimensions of Legal Pluralism, a paper for Course on Legal Pluralism, New Brunswick University, August, 2004.

The perspective over water management is very important to be understood that many various management that cover local rights which should be protected. Cited from Beccar et.all (2002) opinion that, water rights can be seen from table below:

Water Rights¹⁸

Operational Rights	Rights to take part in collective decision making
Right to use part of the water flow	Right to take part in decision making about management/system operation: Defining details about water distribution, irrigation schedules, flow rates, organizational posts and responsibilities, etc.
Right to use the water intake and conduction and distribution infrastructure to get the water to a certain community or plot	Right to take part in decision making about inclusion/exclusion of members: Defining who can and who cannot be system members
Right to be eligible and to occupy positions in the water users organization, and to implement decisions regarding water distribution and system management	Right to take part in decision making about changing or expanding the hydraulic system and irrigation technology
	Right to take part in decision making about transferring rights to use part of the water flow, the source it self or hydraulic infrastructure

Community access over using, managing, and organization who manage the water resources democratically (especially at decision making level), are rights that should be protected. In this point actually the water resources conflict on Act Number 7/2004 policy become a problem. It was pretty clear that foreign debt policy in Indonesia can be received from Asian Development Bank, has made fall water resources management based on financial capital. In this context, water policy on Act Number 7/2004 be a poison for Indonesian legal pluralism.

Learning from research case that was conducted in Dagangan, Madiun District shows that state law that regulate water resources centralized and state based also pseudo the conflict manifestation at local level. The conflicts of that, more caused by several factors, i.e. can be seen from table below:

¹⁸ Lily Beccar, Rutgerd Boelens and Paul Hoogendam, "Water rights and Collective Action in Community Irrigation", cited from "Water Rights and Empowerment", KvG, 2002, pg. 5-6.

Water Conflict: Learn from Society Problems¹⁹

Conflict Pseudo	Conflict Manifestation
State Based Paradigm	State & capital based vs. community based paradigm
Instrumental Values	Instrumental values that see water as good vs. water as life resources (molecular values to ecosystem friendly/intrinsic value)
Centralized Policy/Regulation	Law as a tool to enforce community and facilitate capital (repressive law) vs. legal pluralism at local or indigenous community
Monopoly authority	Monopoly/privatization management vs. collectivity/solidarity management (community access)
Uniformity of Water User Association	Uniformity of water user association vs. adat/local/indigenous organization
Eco-Developmentalism	Eco-Developmentalism (ecological that support procedurally development) vs. Eco-populism

Water conflict like those already started in Indonesia when agricultural expansion in Java-Sumatra in the last of 18 centuries, especially to support sugar cane industry. After that, the green revolution scheme in 1980s that facilitate foreign debt to support agricultural sector. When infrastructure and social system were broken, so now, the foreign scheme coming back to influence the water resources policy in Indonesia, following the economic liberalism, and release privatization/monopoly project that rigidly facilitated by specific regulations.

The history and development water management that covered by economic motives, that facilitated by many regulations, and all of state based character, so already happened a destruction the local wisdom and knowledge. In this context, legal pluralism already removed by state law.

IV. Conclusion : Respecting Legal Pluralism on Community Based Natural Resources Management

As conclusion of this paper,

1. State law on water resources management that centralized to support economic motives (capital based) was inclined toward expulsion of local wisdom and local knowledge that have been developed through local law.
2. Legal pluralism in natural resources management, especially over water resources, as refer from Dagangan case in Madiun District, is one of portraits that show and reflect of Indonesian cultural pluralism and diversity, which are continually facing legal conflict reality.

¹⁹ Perdana, R. Herlambang, "Water, From Debt Flow until Global Capitalism Mainstream", a paper for *Walhi Discussion*, Human Rights Studies Center, University of Airlangga, Surabaya, 2003.

3. The legal conflict reality that has happened on water resources management, caused not only irrigation infrastructure broken, but also it has continuously destructed social-cultural systems and local community rights.
4. Legal pluralism shows that the social field of an irrigation system not only stands in a semi autonomous relationship to the state and its law, but also transnational law that has been facilitated systematically through legislation (Act Number 7/2004).

These conclusions, finally, reflect that state law not always mention for community welfare, social justice and sustainable development, but adversely with the ideality aims, that in fact, it made fall into destructions situation that unpredictable before, by policy makers who even if an expertise.

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Regulation

- Act Number 5/1960 on Basic Agrarian Law .
- Act Number 11/1974 on Water
- Act Number 7/2004 on Water Resources
- Government Regulation Number 22/1982 (Water Regulations)
- Government Regulation Number 15/1990 (Fisheries Regulation).

