

Legis ratio of governance of water resources

Indro Budiono^{1*}, Moch. Bakri², Moh Fadli³, Imam Koeswahyono⁴

¹ Doctoral Candidate at Faculty of Law, Brawijaya University, Indonesia

^{2,3,4} Lecturer at Faculty of Law, Brawijaya University, Indonesia

Abstract

Arrangements for water resources or irrigation governance designs from the colonial era to the reform order always cause controversies and problems. These problems are norm conflicts in governance of water resources, both vertically between Law 17 of 2019 on Water Resources with Article 33 (2) and (3) with the NRI Act 1945, and horizontally with the Act RI Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. Based on this, the purpose of this study is to analyze, and discover the philosophy of corruption based on state loss; analyze legis ratios of governance of water resources in a historical perspective. This research uses normative legal research methods with various approaches, including the statute approach, historical approach and conceptual approach. The analytic technique of this research is using an investigation strategy. The results showed that Ratio legis of Law Number 17 of 2019 which refers to Article 33 paragraph (2) and paragraph (3) of the 1945 NRI Law.

Keywords: water resources, legis ratio, regulation, governance

1. Introduction

Water is the main need for the life of living things, especially for humans. The existence of water with its management functions to maintain the continuity of life, develop civilization and modernization, as discussions and discussions on water law become a treasure to thinkers and jurists. In one of Vandana Shiva's work on "Water Wars" illustrates that the change in the basic philosophy of water has led to the birth of social and environmental issues seriously. As a result of changes in the way of looking at water slowly and surely there is a struggle for water resources that will and have given birth to open conflicts involving the community, business and the state ^[1].

In this context water is understood as a natural resource that must be put in place the laws of supply and demand and market prices. The scarcity of clean water is then used by large companies and international institutions as an economic commodity. So the rise in water-based commodities and the privatization of water management, this is an ecological crisis has been converted into a scarcity market.

The duty of the State is to respect, to protect, and to fulfill the human rights in water. The state that controls the land and the water and the wealth it contains is largely used for the prosperity of the people, a mandate contained in the constitution. In a sense, the people recognized as the source, owner, and holder of the supreme authority, in other words collective ownership of the people, that the land and water and natural resources contained within the realm of law are essentially the collective property of the whole people collectively relied on the State to set it aside for the sake of greater prosperity ^[2].

There are two different philosophical views underlying the governance of water resources, namely the ideology of libertarian paternalism and liberal socialism. Norm of Law Number 17 Year 2019 reflects the ideology of libertarian paternalism by providing opportunities and space for private involvement in managing clean water. So that the cause of conflicting norms is the regulation of water resources governance (Law Number 17 Year 2019) not derived from the provisions of a good water resource management system in managing water resources matters.

"Based on all the considerations outlined above, it appears that the right of state control over water is the 'spirit' or 'heart' of the SDA Act as mandated by the Constitution of 1945, the role of the government in safeguarding the interests of the people and the state," the branches of production important to the nation "and the "master" of the public life purpose is governed by the state, and the earth, water and natural resources contained therein are "state controlled" for "the great prosperity of the people." Article 33 Section 2 and 3 of the NRI Constitution. 1945, was not organized according to the tastes and requirements of the free market, but rather in accordance with the contemporary demands of the end of laissez-faire ^[3].

The Water Resources Law must guarantee the realization of the constitutional mandate on the state's right to control water. The right of control of the state over water exists, if the state through its policies still holds control in carrying out various actions including: outlining, administering, regulating, managing, and supervising. The concept of rights in water use rights must be in line with the concept of res commune which should not be an object of economic price. However, the problem of water governance occurs along with the good governance regimes of the colonial period until the reformation period, the problem of water is

¹ Shiva, Vandana, "Captive water", www.tnascad.org/t_database/priartarticle.php?, accessed on 17 th February 2020

² Muhammad Bakri, *Hak Menguasai Tanah oleh Negara (Paradigma Baru Untuk Reforma Agraria)*, (Malang.: UB Press, 2011, p. 45.

³ Barlow, Muade, and Clarke, Toni, *Blue Gold: The Fight To Stop The Corporate*, New Delhi, 200), p.82-83.

always compatible with the politics of law. Therefore, an old problem was identified, namely the regulation of water governance, which was marked by the interests and political orientation of the law at the time, although the output arising from the legal politics did not improve and provide protection to the community for water needs. So, in essence the approach to irrigation management in the colonial era is centralistic.

The next issue is the regulation of water resources governance through Law Number 17 Year 2019 on Water Resources, which has new problems but substantially contains provisions that open up new investment opportunities and the sustainability of water resources investment reduces the fulfillment of people's rights to water and supervisory authority should refer to the decision of the Constitutional Court Number 85/PUU-XI/2013, whereby the formulation of these rules can be formulated in Act Number 17 of 2019 by adopting Law Number 32 of 2009 concerning Environmental Protection and Management. The SDA Law also does not regulate the evaluation provisions of existing SDA business licenses.

Other problems in the management of water resources governance also impact on philosophical aspects (ontology, epistemology and axiology), theoretical and juridical, and all of them will be answered through academic tests. In physiological issues, there is no known change in the meaning of water as a public good being a private good. Theoretical problems, the basis for the design theory of management of chaotic water resources is in line with the existence of law 17 of 2019 concerning water resources. Juridical issues, the legis ratio ratio is not known to be positive implementation of Law no. 17 in 2019.

Based on the description above, the purpose in this paper is the legis ratio in managing water resources management in a historical perspective given that water is a vital need that is used as jargon and is implemented in the style of market mechanism. Through this method, the private sector has the right to produce and distribute water as a necessity. Water privatization arises in public policy as a very complex phenomenon.

Research Method

This type of research is normative juridical research, which asks about the application of rules or standards in positive law^[4]. The research approach used is the statute approach, historical approach and conceptual approach^[5]. The legal material from normative research can be divided into three namely,

1. Primary legal material, is the main legal material in this study, made up of the NRI Constitution of 1945, the law relating to water resources.
2. Secondary legal law, Academic texts Draft Law on Water Resources, the results of research related to water resources governance laws.
3. Tertiary Law Materials are legal materials that provide an understanding of primary and secondary legal materials, consists of legal dictionaries, legal encyclopedias and index lists of court decisions or judicial institutions relating to water resources governance arrangements.

⁴ Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media, 2011, p.35.

⁵ Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Banyumedia Publishing), p. 295.

The technique of searching primary and secondary legal materials is done by studying literature which is a way to gather information by looking at and examining library materials (literature, previous research results, scientific magazines, scientific bulletins, scientific journals, Web Ministries or institutions) and internet earching^[6]. The analysis technique in this research is investigation strategy^[7]. by using the deduction method which is to explain a general thing then draw it to a more specific conclusion. Furthermore, inventorying and identifying the laws and regulations, and then analyzing the relevant cases and the laws and regulations by interpreting the law, to then draw conclusions from the results of the analysis. Interpretation of the law used in this research is Grammatical Interpretation (interpreting the law according to the meaning of words (terms)) and Systematic Interpretation (connecting one article with another article in a law or with other laws)^[8].

Results and Discussion

A. History of Water Resources Governance Regulations in Indonesia

In its development the Law on water and water resources in Indonesia since 1871, the period before independence or the Dutch East Indies, the period of independence, the period 1970 to 1990, the period 2000 to 2014, the period 2015 to 2017, the period 2018 to 2019 There are four legislative products enacted, each of which is a reflection of the political interests of its time. In politics is an aggregate and complex between people in a society or a nation that seeks power. Good water governance is a political dimension in the management of water resources, so that when a water crisis occurs, it is called a crisis of governance. The problem of water is not only a matter of management, operation and maintenance but is a matter of social and political structure. There is a link between power and social networks in water management^[9]. From a historical perspective, Indonesia has experienced three generations of laws related to water, namely the Algemeene Water Regulation in 1936, Law Number 11 of 1974 concerning Irrigation, Law Number 7 of 2004 concerning Water Resources and Law Number 17 of 2019 concerning Water resources.

Algemeen Water Regulation (AWR) 1936 AWR succeeded in realizing the development of water resources, especially irrigation in the independence era. The first generation of irrigation development was initially driven by the construction of infrastructure and hydraulic technology. This was followed by institutional trials of management for decades that had to do with the political interests of the colonial government to produce legislation called AWR in 1936. Basically, irrigation management in the colonial era with a centralized approach^[10].

Law No. 11 of 1974 succeeded in supporting the fulfillment of rice self-sufficiency but the irrigation infrastructure built

⁶ Satjipto Rahadjo, *Ilmu Hukum*, Bandung: Citra Aditya Bhakti, 2000, p. 255.

⁷ Abdlatif and Hasbi Ali. *Perihal Kaedah Hukum*, Bandung: Citra Aditya Bakti, 2010, p.9.

⁸ Yudha Bhakti Ardiwisastra, *Penafsiran dan Konstruksi Hukum*, PT. Alumni, Bandung, 2012, p.9

⁹ Norman, E.S., K. Bakker, and C. Cook. *Introduction to the themed section: water governance and the politics of scale*. *Water Alternatives*, 2012, 5(1):52-61.

¹⁰ Pasandaran, E., Haryono, dan T. Pranadji. *Reformasi kebijakan dalam perspektif sejarah politik pertanian Indonesia*. Jakarta: IAARD Press, 2014, p.932.

was much shorter and of lower quality than the first generation (AWR). In the Irrigation Law, Article 1 paragraph (3) of Law No. 11 of 1974 provides for the definition of water, that is, all water contained in or derived from water sources, both above and below the ground, is not included in this definition of water found in the sea. The meaning of water in Law No. 11 of 1974 exempted water from the sea or the sea itself as a source of water. Article 2 and Article 3 of Law No. 11 of 1974 provide that water is state-controlled and has social functions and is used for the greater prosperity of the people. In accordance with the Law, managing water as a state property and for the benefit of the people should work as it should, rather than causing problems that would harm the people. The problem may be due to the ongoing water crisis especially in major cities in Indonesia. The general definition of Law No. 11 of 1974, the use of water and its resources must be for the benefit and well-being of the people in all areas, both economically, socio-cultural, and national security, at the same time creating growth, social justice and the ability to standing on his own strength towards a just and prosperous society based on Pancasila^[11].

Article 3 paragraph (2) of Law No. 11 of 1974 authorizes the government to^[12].

1. Manage and develop water and/or water resources utilization;
2. Prepare, authorize, and/or authorize based on water use and irrigation planning and technical planning;
3. Regulate, authorize and or give permission for the designation, use, supply of water, and/or sources of water;
4. Regulate, authorize and/or authorize water concessions, and or sources of water;
5. Determine and regulate the actions of people and/or legal entities in matters of water and water sources. The implementation of this article while respecting the rights held by indigenous peoples, as long as it does not conflict with national interests/

These activities include the need to protect and secure water and or water sources to maintain the sustainability of their functions as regulated in Article 13 of Law Number 11 of 1974.

Law Number 7 of 2004 the interests of refusing the role of the private sector for the dominance of the water sector cannot be accommodated. Article 1 of Law Number 7 of 2004 provides a definition of water is all that is on, above, or below the surface of ground water, rain water, and sea water that is on land. Surface water is all water that is on the ground surface. Groundwater is water that is contained in layers of soil or rock below the surface of the soil. Article 7 of Law Number 7 of 2004 concerning Water Resources provides restrictions on the right to use water, namely the right to use water and the right to use water. Article 8 of Law Number 7 of 2004 stipulates that the right to use water is obtained without permission to meet the basic daily needs for individuals and for people's agriculture which is in the irrigation system. Article 9 of Law Number 7 of 2004 states that water use rights can be granted to individuals or

business entities with the permission of the government or regional government in accordance with their authority. The legal basis for regulating water resources lies in Law Number 7 of 2004 concerning Water Resources Management, but this Law has been revoked so as to revive Law Number 11 of 1974 concerning Water Resources.

Law Number 17 of 2019 substantially contains provisions that open up new investment spaces and with the ongoing investment in water resources that has eliminated the fulfillment of people's rights to water. This law is philosophically in substance still has the same meaning and purpose as Law Number 7 of 2004 concerning Water Resources (SDA) which was revoked by the Constitutional Court in 2015.

B. Provisions of the rule of law relating to governance of water resources

The provisions of Article 33 paragraph (3) of the 1945 Constitution that determines: "the earth and water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people" above, it can be concluded that "controlled by the state" means the state regulates, a state that has authority manage and regulate water for the maximum prosperity of the people. In other words, it is the highest level of state that has the right to regulate its designation and use. Regulations by the state are needed because of concerns that without state intervention there will be injustice in access to the acquisition and utilization of natural resources by the public, "controlled by the state" refers to the meaning of legal power in the field of public law which is an embodiment of state service to the people to achieve people's welfare through water as a public domain. Such assertiveness is an authority attributed to the Basic Law so that the state has the right to demand obedience, this authority which gives birth to state authority over water is legally public. Thus the state's authority over water through the management of new water resources can be found if it is based on an expanded interpretation of article 33 paragraph (3) of the 1945 Constitution.

Principle of Decision of the Constitutional Court Number 85/PUU-XI/2013 dated February 18, 2015. Six principles are clear signs that water management must be managed by the State, some problems interpreting the basic principles of the Constitutional Court (MK) which are the basis for the preparation of the SDA Bill by the DPR. Among them is the question of the definition of private and business, the importance of the emphasis on the ecological quality of water, and the question of the extent to which "private" can be involved in drinking water and wastewater services. The six basic principles of the Constitutional Court's Decision are first, that every exploitation of water must not interfere, exclude, or even negate people's rights to water. Second, the state must fulfill the people's right to water. Third, must remember the preservation of the environment. Fourth, supervision and control by the state over water are absolute. Fifth, as a continuation of the right to control by the state and because water is something that really controls the livelihoods of many people, the top priority given to the operation of water is a State-Owned Enterprise or a Regional-Owned Enterprise. Sixth, if all of these restrictions have been met and it turns out there is still water availability, the Government is still possible to give permission to private businesses to conduct business on

¹¹ Abdurrahman, Ketentuan-ketentuan Pokok tentang Masalah Agraria, Kehutanan, Pertambangan, Transmigrasi, Pengairan, dan Lingkungan Hidup, Alumni, Bandung, 1992, p. 235 8

¹² Mohammad Taufik Makarao, Aspek-aspek Hukum Lingkungan, PT. Indeks Kelompok Gramedia, Jakarta, 2004, p. 29

water with certain conditions and strict. Interpretation of the Right to Control the State (HMN) there are two sources, namely - Basic Agrarian Law (UUPA), several decisions of the Constitutional Court that describe HMN in policy (regulation), regulation (regulation), management (bestuurdaad), direct management (beheersdaad), and supervision (toezichthoudendaad).

C. Water Resources Management in several Countries

Each country has a system and regulation of water resources management in accordance with the vision and concept of the policy, as a comparison and comparison of water resources governance policies, the following are described in the concept and implementation of water governance in several countries based on the State of civil law and common law.

Water supply and sanitation in the People's Republic of China is undergoing a massive transition, while facing challenges such as rapid urbanization and widening economic disparities between urban and rural areas^[13]. The World Bank in its 2007 report stated that between 1990 and 2005 there had been a large financial investment in water infrastructure. While urban water supply coverage has increased from 50% to 90%, there is still a shortage of seasonal water in many cities. Urban wastewater treatment more than tripled from 15% to 52%. The installed wastewater treatment capacity grows faster because of the increasing amount of wastewater. The absolute release of city pollutants has declined slightly since 2000^[14]. According to a 2007 article, SEPA stated that the quality of water in central drinking water sources for large cities was "especially good"^[15]. The responsibility for dealing with water is shared between several agencies within the government. Water pollution is the responsibility of the environmental authority, but the water supply itself is managed by the Ministry of Water Resources. Waste management is managed by the Ministry of Construction, but groundwater management is under the scope of the Ministry of Land and Resources. China assesses its water quality on six levels, from Class I to Class VI, with Class VI being the most polluted^[16].

The Kingdom of the Netherlands has laws called the Water Act. Water management in the Kingdom of the Netherlands is carried out by the central government in this case the Ministry of Infrastructure and Local Government with an institution called the Regional Water Authority Agency, while for drinking water is managed by the regional water company. Water management in the Netherlands cannot be carried out by foreign companies and cannot be privatized. The Dutch government's water resource management policy is in the document:

- 1) *Water Act*, is a national framework developed as a basis for drafting national policies on water resources;
- 2) *National Water Plan 2016-2021*, is a national policy prepared by the central government as a basis for the preparation of programs and activities related to water

resources management^[17].

Brazil is a country that is rich in water. It is estimated that around 12% of the world's surface water resources are located in this country. In 2007, water availability per capita reached 43,027 m³ per year, above the world average of 8,209 m³ per capita in the same year. However, this impressive average masked a very uneven distribution of water resources between regions. The Brazilian government is carrying out a number of water resource management initiatives such as PROAGUA and PRODES. PROAGUA (Programa Nacional de Desenvolvimento dos Recursos Hídricos - Federal Water Resources Management Project) aims to improve the quality of life of the population, especially the poor, by combining integrated water resource management with the expansion and optimization of hydraulic infrastructure, promoting rational integrated and sustainable use and participatory water resource management in Brazil. PRODES (Programa Despoluição de Bacias Hidrográficas or Basin Restoration Program) is an innovative program by the Brazilian Federal Government to finance wastewater treatment plants while providing financial incentives to operate and maintain the plant properly. This is a type of Output-based assistance, in contrast to funding programs that are only targeted at inputs^[18].

D. Political Law Formation of the Law on Water Resources and Water Resources

Current legal problems can be said that the incompatibility between *ius constitutum* and the applicable laws and regulations. Law and morals are two entities that have the same goal to achieve justice. But the problem is that both law, morals and justice are abstract. Of course both law in reality (law in action) and law in the form of rules as contained in the legislation (law in book), the ideal side to be achieved as the highest achievement as the law aspired (*ius constituendum*) is certain the purpose of law to achieve justice, where is the "law" to achieve certainty and worthiness? The answer is of course contained in law as a running event and law as reality.

Law Number 11 of 1974 concerning Irrigation (Law on Irrigation) is a Law that replaces the *Algemene Water Regulation (AWR)* of 1936, AWR only regulates and administers one area of water use and does not provide a solid basis for development efforts water usage/utilization, locus is only valid in parts of Indonesia especially Java and Madura. At the time of promulgation of the Law on Irrigation in 1974, this Law applies to all Indonesian people, in general regulating: understanding of terms commonly used in the field of irrigation, control of water by the state and the exercise of authority of its authorities, as well as the use and regulation water and water sources. Regulations in the Law on Irrigation are simpler, prudent and cover all aspects of irrigation, even though they originate from the 1974 Law.

Law Number 7 of 2004 concerning Water Resources (Law on Natural Resources) is a substitute for Law Number 11 of 1974 concerning Irrigation that is no longer in accordance with the demands of the development of conditions, and

¹³ BBC News. Cina membersihkan danau yang tercemar. 27 Oktober 2007.

¹⁴ World Bank: Stepping up - Improving the performance of China's urban water utilities, by Greg Browder et al., 2007

¹⁵ International Water Association Magazine, China pays the price of water for progress", Water 21, August 2007, p. 6

¹⁶ Ma, Xiangcong (21 February 2007). "Tata kelola lingkungan China". *china dialogue*.

¹⁷ Academic Draft Law on Water Resources Law, DPRI. 2018.

¹⁸ Barraqué, B., Formiga Johnson, RM, dan Britto, AL. "Layanan air berkelanjutan dan interaksi dengan sumber daya air di Eropa dan di Brasil" (PDF). *Discussion of Hydrology and the Earth System*. 2007. p. 3447-3449, 3463.

changes in people's lives. The political politics contained in Law Number 7 of 2004 are strongly influenced by the development of political bureaucracy after the 1998 monetary crisis, economic liberalization as a World Bank loan requirement and global pressure to carry out integrated water resources management. The act of returning the Law on irrigation is an act so that there is no legal vacuum, but at the enactment of Law Number 11 of 1974 an anomaly occurred due to centralization, did not regulate and organize the fulfillment of community rights to water, and did not regulate water management and handling controls, and added the government made an approach that still opened the release clause for water privatization by implementing Government Regulation Number 121 of 2015, Government Regulation Number 122 of 2015 concerning Water Supply System, and Minister of Public Works and Public Housing (PUPR) Regulation Number 50/PRT/M/2015 concerning Water Resources Utilization Permit. Law No. 11/1974 concerning Irrigation does not regulate the fulfillment of people's rights, the need for water and does not regulate the principles of water exploitation restrictions. The law contradicts the regulation of the six principles of water control restrictions decided by the Constitutional Court, so the government established Government Regulations and Ministerial Regulations to regulate the control of water resources, water supply systems and water use permits, including:

1. Government Regulation Number 121 Year 2015 concerning Mastery of Water Resources;
2. Government Regulation Number 122 Year 2015 concerning Water Supply System;
3. Minister of Public Housing Public Works (PUPR) Regulation Number 50/PRT/M/2015 concerning Water Resources Utilization Permit Regulations.

The law on natural resources since it was enacted has been tested for 2 (two) times, the examination being submitted to the Constitutional Court is as follows:

1. Case Decision Number 058 - 059 - 060 - 063/PUU-II/2004 and Case Number 008/PUU-III/2005 dated July 19, 2005, examined the provisions of Article 6 paragraph (3), Article 7 paragraph (1) and paragraph (2), Article 8 paragraph (2) letter c, Article 9 paragraph (1), Article 29 paragraph (3) and paragraph (4), Article 29 paragraph (5), Article 38 paragraph (2), Article 40 paragraph (1), paragraph (4), and paragraph (7), Article 45 paragraph (3) and paragraph (4), Article 46 paragraph (2), Article 91 and Article 92 paragraph (1), paragraph (2), and paragraph (3)) Law on natural resources. Decision ruling: Refusing the Petitioners' petition, with the dissenting opinion (Constitutional Justice A. Mukthie Fadjar and Maruarar Siahaan) which states that the Law on Natural Resources has no binding legal force as a whole.
2. Decision Number 85/PUU-XI/2013 dated 18 February 2015, examines the provisions of 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 the Law on Natural Resources. Amar Decision: Law on natural resources is contrary to the 1945 Constitution and does not have binding legal force, Law No. 11 of 1974 concerning

Irrigation is valid again.

Decision of the Constitutional Court Number 85/PUU-XI/2013 which states that the Law on Natural Resources is contrary to the 1945 Constitution and has no binding legal force. In considering the law in the Constitutional Court's Decision, the Constitutional Court divided the case sit into the main issues as follows:

1. Water management by using water rights utilization instruments is regulated in Article 6, Article 7, Article 8, Article 9, and Article 10.
2. Utilization of water resources, including water exploitation, is regulated in Article 26, Article 29, Article 45, Article 46, Article 48, Article 49.
3. Financing, regulated in Article 80
4. Lawsuits from the community and organization are regulated in Article 90, Article 91 and Article 92.

The Constitutional Court considers that the article petitioned for judicial review in the Water Resources Act is the essence of the Water Resources Act so that the Constitutional Court through decision No. 85/PUU-XI/2013, the Constitutional Court in the decision also re-enacts the Law - Law on Watering.

On February 18, 2015 the Constitutional Court through Decision Number 85/PUU-XI/2013 canceled the enactment of Law Number 7 of 2004 concerning Water Resources. This decision was the culmination of two previous Constitutional Court decisions regarding the Water Resources Act, where before the Constitutional Court had twice decided on a material test of the Water Resources Act, previously the Constitutional Court had issued Decision Number 058-059-060 -063/PUU -II/2004 and Decision Number 008/PUU-III/2005 related to the material test of the Law on Water Resources.

There are several legal implications of MK Decision No. 85/PUU-XI/2013, namely: first, the Constitutional Court has re-enacted the Water Law that was revoked since 11 years ago as a means to fill the legal vacuum (*rechtvacuum*) that existed after the annulment of the SDA Law. It turns out that in the Irrigation Law, there are articles that are old and unconstitutional because they are not in accordance with the spirit of the 1945 Constitution. However, there are articles that are still relevant and constitutional because they are in accordance with the 1945 Constitution. Second, the Court has indirectly expanded its authority to test PPs six principles for limiting natural resource management that were formulated by the Constitutional Court in its decision, although carried out in a limited manner. The Court has tested the constitutionality of the PP with Article 33 of the 1945 Constitution which the Court has interpreted well in Decision No. 058-059-060-063/PUU-II/2004 and Decision No. 8/PUU-III/2005 and Decision No. 85/PUU-XI/2013. The Court did not cancel the PP because it was not its authority. In practice, there may be legal products under the law that do not conflict with the law but contradict the constitution. Therefore it is important to reconstruct the authority of the Constitutional Court, so that the Court is not only given the authority to test the Law on the 1945 Constitution, but also to test the constitutionality and legality of legal products under the Law on the 1945 Constitution (judicial review system under one roof). In several of its decisions, the Court has formulated the meaning of the phrase "controlled by the state" in general.

Law Number 17 of 2019 concerning Water Resources revokes and does not apply Law Number 11 of 1974 concerning Irrigation (State Gazette of 1974 Number 65, Supplement to State Gazette Number 3046). Even though Law Number 11 of 1974 concerning Water Resources was reinstated after Law Number 7 of 2004 concerning Water Resources was canceled by the Constitutional Court, there are still many shortcomings and have not been able to regulate thoroughly the management of water resources in accordance with developments and people's legal needs. According to ancient knowledge that water is one of the basic elements of life along with air, fire and earth. One of the considerations in Law 17 of 2019 on Water Resources said that in facing an imbalance between water availability that tends to decrease and water demand that is increasing, water resources need to be managed by paying attention to social, environmental and economic functions in harmony to create synergy and integration between regions, between sectors and between generations to meet people's needs for water.

Conclusion

Legis Ratio of Law Number 17 of 2019 referring to Article 33 paragraph (2) and paragraph (3) of the NRI Act of 1945. Lagis Ratio of Act Number 17 of 2019 is based on the principle of good governance and with the dominance of the NRI Law 1945 and other laws (Law Number 5 of 1960) and taking into account Article 33 Paragraphs (2) and (3), ARTICLE 28 H paragraph (1) of the NRI Constitution and Constitutional Court Decision No.85/PUU-XI/2013.

The Water Resources Law must guarantee the realization of the constitutional mandate on the state's right to control water. The right of control of the state over water exists, if the state through its policies still holds control in carrying out various actions including: outlining, administering, regulating, managing, and supervising. The concept of rights in water use rights must be in line with the concept of res commune which should not be an object of economic price.

References

1. Abdlatif, Hasbi Ali. *Perihal Kaedah Hukum*, Bandung: Citra Aditya Bakti, 2010.
2. Abdurrahman. *Ketentuan-ketentuan Pokok tentang Masalah Agraria, Kehutanan, Pertambangan, Transmigrasi, Pengairan, dan Lingkungan Hidup*, Bandung: PT Alumni, 1992.
3. Barraqué B, Formiga Johnsson RM, dan Britto AL. "Layanan air berkelanjutan dan interaksi dengan sumber daya air di Eropa dan di Brasil" (PDF). *Discussion of Hydrology and the Earth System*, 2007.
4. Barlow Muade, Clarke Toni, *Blue Gold: The Fight To Stop The Corporate*, New Delhi, 2002.
5. BBC News. *Cina membersihkan danau yang tercemar*, 2007.
6. Greg Browder. *World Bank: Stepping up - Improving the performance of China's urban water utilities*, 2007
7. *International Water Association Magazine*, China pays the price of water for progress, *Water 21*, August 2007.
8. Johnny Ibrahim. *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Banyumedia Publishing, 2006.
9. Ma Xiangcong. "Tata kelola lingkungan China". *china dialogue*, 2007.
10. Marzuki Peter Mahmud. *Penelitian Hukum*, Jakarta: Kencana Prenada Media, 2011.
11. Mohammad Taufik Makarao, *Aspek-aspek Hukum Lingkungan*, Jakarta: PT. Indeks Kelompok Gramedia, 2004.
12. Muhammad Bakri. *Hak Menguasai Tanah oleh Negara (Paradigma Baru Untuk Reforma Agraria)*, Malang: UB Press, 2011.
13. Norman ES, Bakker K, Cook C. Introduction to the themed section: water governance and the politics of scale. *Water Alternatives*. 2012; 5(1):52-61.
14. Pasandaran E, Haryono dan T Pranadji. *Reformasi kebijakan dalam perspektif sejarah politik pertanian Indonesia*. Jakarta: IAARD Press, 2014.
15. Satjipto Rahadjo, *Ilmu Hukum*. Bandung: Citra Aditya Bhakti, 2000.
16. Shiva Vandana. "Captive water", www.trnasced.org/t_database/priartarticle.php?, accessed on, 2020.
17. Yudha Bhakti Ardiwisastra. *Penafsiran dan Konstruksi Hukum*, Bandung: PT Alumni, 2012.
18. Indonesia, the Constitution of the Republic of Indonesia, 1945.
19. Indonesia, *Naskah Akademis Rancangan Undang-undang Tentang Sumber Daya Air*, DPRI, 2018.
20. Indonesia, *Law Concerning Irrigation*, 1974, 11.
21. Indonesia, *Law of concerning Water Resources*, 2004, 7
22. Indonesia, *Law of concerning Regional Government*, 2014, 23.
23. Indonesia, *Constitutional Court Decision Number 85/UNDANG-UNDANG-XI2013*.
24. Indonesia, *Algemene Water Reglement (AGR 1936)*, 1936.
25. Indonesia, *Law Number 11 of 1974 concerning Irrigation*.
26. Indonesia, *Law of concerning Water Resources*, 2004, 7.
27. Indonesia, *Law concerning Water Resources*, 2019.
28. Indonesia, *Law of concerning Basic Principles on Agraria*, 1960, 5.