

The Urgency of Harmonization of Regulations Regarding Groundwater Utilization in Industrial Activities in Batang Regency



Faisyal Karim¹, Budi Ispriyarso², Mahendra Ridwanul Ghoni³

^{1,2,3} Faculty of Law, Diponegoro University

ABSTRACT: This study will analyze the negative impacts of natural resource management in the form of environmental damage and pollution, agrarian conflicts, impoverishment, and neglect of community rights. This is a serious problem that must be resolved. These problems are related to the ineffectiveness of implementing a Regional Regulation (Perda) in the community and the disharmony at the stage of forming a Regional Regulation. This research is a normative juridical law research. Based on the results of the research, it is known that the Law has determined that "every Draft Regional Regulation (Raperda) before being stipulated as a Regional Regulation must first be harmonized at the stage of drafting the Raperda". However, at the practical level, there is often a neglect of the harmonization of the Raperda on executive initiatives, this does not only lead to certain legal consequences (*procedural defects*) but also raises assumptions related to the existence of overlapping powers. As also happened, there is material in the Batang Regency Regional Regulation number 13 of 2019 concerning the Batang Regency Spatial Plan for 2019-2039, especially in article 128 letter i of the Batang Regency Regional Regulation Number 13 of 2019 regarding the 2019 Batang Regency Spatial Plan. -2039 states that "it is forbidden to use groundwater for industrial activities and industrial support activities and direct industrial activities to utilize surface water, contrary to Central Java Provincial Regulation Number 3 of 2018 so that legal harmonization is necessary.

KEYWORDS: Harmonization; Rule; Groundwater Utilization; Industry

A. INTRODUCTION

Natural Resources (SDA) is regulated in the 1945 Constitution as an important economic sector in supporting the development of the welfare of the Indonesian people. The 1945 Constitution states that "Earth, water and natural resources in it are controlled by the state and used for the greatest prosperity of the people". The regulation of natural resources matters cannot be separated from the regulation of national economic matters which are carried out with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and maintaining a balance between progress and national economic unity.^[1] Natural resource management provides economic benefits, but also has negative impacts in many ways, which will reduce its economic benefits. These negative impacts include: environmental damage and pollution, agrarian conflicts, impoverishment, and neglect of community rights. Unfortunately, the loss due to the negative impact has not been calculated as a decrease in the added value of the natural resource economy^[2].

This important position of natural resources encourages and creates conditions known as regulatory corruption. This condition occurs "when a regulatory body established to serve the public interest advances the interests of groups that dominate the industry or sector that the agency is supposed to regulate". Corruption can be done to influence the content of the regulation or the enforcement of the regulation so that they benefit from the regulation. *Regulatory capture* is carried out by hijacking, intervening in the process of drafting, and implementing regulations through bribery, pressure, and influence trading. ^[3]

The negative impact of regulatory hijacking is inequality in the use of natural resources and agrarian conflicts.^[4] Regulatory piracy eventually creates laws and regulations related to natural resources with strong sectoral interests, not in favor of sustainability and the community, and ultimately creates overlapping arrangements. The regulatory conditions related to natural resources above encourage conflicts, decrease in the quality of natural resources and inequality in the control and utilization of natural resources which then gives birth to regulations that are substantially not pro-sustainability, not pro-community, and create strong sectoral walls. A vicious circle. The condition of overlapping regulations can also create vulnerability to corruption in the natural resources sector. Corruption is certainly not the only factor that causes overlapping regulations. Another factor that also contributes to the occurrence of overlapping regulations is hyperregulation or the number of regulations issued by various state institutions. No less

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than 12,471 regulations issued by state institutions in the period 2000-2015 (PSHK and the Ministry of National Development Planning/Bappenas, 2019).

One way to resolve the overlapping of these regulations is to harmonize regulations. Harmonization of laws and regulations is an effort to harmonize the material of a statutory regulation with other laws and regulations that are in a certain category. Harmonization is carried out on the same level of statutory regulations, for example harmonization of laws and regulations in the form of laws in the environment and natural resources sector, as well as harmonization of vertical regulations (with lower or higher laws and regulations).

Harmonization of laws and regulations is widely understood as an activity to compare the articles in one regulation with the articles in other regulations. This comparison is carried out with higher or equivalent regulations, whether in one regulatory family or not, but closely related.

However, this process raises questions about the criteria for disharmony: whether it is not harmonious because the content is different or because there are other norms (usually more fundamental, such as respect for human rights and anti-corruption) that are regulated differently in two or more regulations being compared. What has been done by the National Legal Development Agency (BPHN) and the Corruption Eradication Commission (KPK) with a study of harmonization of regulations moves to the second disharmony criterion, which is not only examining differences in the content of articles, but also comparing differences in norms, principles, and rules contained in the law. each law. The activities carried out are first, determining the criteria for disharmony, and second, the criteria are used to compare various laws (or regulations under them).^[5]

It should be understood that the formation of a regional regulation is not a simple matter, there are various stages that must be passed and involve many parties. Perda is a political product made and designed by two political bodies, the Regional Government and the Regional People's Representative Council (DPRD) and has a normative reference from the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945) and Law Number 23 of 2014 concerning Governance. Region (Law 23/2014). Therefore, the mechanism for the formation of a regional regulation must comply with mandatory provisions which include the technique of drafting and its content.

With regard to the effectiveness of implementing a regional regulation in society and as one of the steps to minimize the cancellation of a regional regulation, the role of harmonization at the stage of forming a regional regulation is a very vital preventive effort and must be implemented. For this reason, in Law 12/2011 and Law 15/2019 as well as their implementing regulations, there are provisions that instruct each Draft Regional Regulation (Raperda) before being stipulated as a Regional Regulation, it must first be harmonized at the stage of drafting the Raperda. Specifically for the Raperda originating from the executive (Regional Head), in Article 58 paragraph (2) of Law 15/2019, the harmonization is carried out by the ministry or institution that carries out government affairs in the P3 sector. Article 99A of Law 15/2019 also confirms that before the ministry or institution as referred to in Article 58 paragraph (2) of Law 15/2019 is formed, the implementation of the P3 function (including the stage of Harmonization of Raperda) is carried out by the ministry that carries out government affairs in the legal field, namely Ministry of Law and Human Rights (Kemenkumham).

Even though the Law has explicitly ordered in Article 58 paragraph (2) of Law 15/2019, in practice many regions have missed this harmonization stage on the grounds that budget constraints and harmonization have become ineffective because they were carried out before the stage of joint discussion at level I (first) with DPRD. The results of the harmonization of Raperda tend to be changed, both in terms of the material aspect and the technical aspects of its preparation at the time of the joint discussion. The other reason is that harmonization can actually be carried out at the same time at the Raperda facilitation stage by

The Regional Government (Province) or the Ministry of Home Affairs after the discussion stage of the Raperda (level I) based on Article 87 of the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning Regional Legal Products (Permendagri 80/2015) and Article 1 number 18 of the Regulation of the Minister of Home Affairs Number 120 of 2018 concerning Amendment to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products (Permendagri 120/2018).

According to Permendagri 120/2018, facilitation is the written development of a regional legal product in the form of a regulation on content material and drafting techniques before it is stipulated, the regional legal product includes Regional Regulations, Regional Head Regulations (Perkada), and DPRD Regulations. Regency/City legal products must be facilitated by the Provincial Government through the Provincial Legal Bureau (Birkum Prov) and for provincial legal products it is facilitated by the Ministry of Home Affairs through the Directorate General of Regional Autonomy (Ditjen Otda). The term facilitation in Permendagri 80/2015 and Permendagri 120/2018 is in principle unknown in Law 12/2011 but refers to the provisions stipulated in Law 23/2014 regarding general guidance on regional policies, namely the harmonization of regional legal products. Departing from the thoughts above, the question arises regarding the existence of the Harmonization of the Raperda of executive initiatives based on Article 58 of Law 15/2019 by the Ministry of Law and Human Rights.

Does the facilitation provisions regulated in the Permendagri contradict the provisions of Harmonization regulated by law or in another sense, the harmonization that has been carried out by vertical agencies that carry out government affairs in the field of

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law still cannot be said to be in harmony before being corrected again by regional agencies and agencies equal vertical. The neglect of the Harmonization of the Raperda of executive initiatives regulated in Article 58 paragraph (2) of Law 15/2019 by the Regional Government does not only lead to certain legal consequences (procedural defects) but also raises assumptions related to overlapping authorities.^[6]

As also happened, there is material in the Batang Regency Regional Regulation number 13 of 2019 concerning the Batang Regency Spatial Plan for 2019-2039, especially in article 128 letter i of the Batang Regency Regional Regulation Number 13 of 2019 regarding the 2019 Batang Regency Spatial Plan. -2039 states that "it is forbidden to use groundwater for industrial activities and industrial support activities and direct industrial activities to utilize surface water, contrary to Central Java Provincial Regulation Number 3 of 2018. Groundwater is water contained in the underground layer or in the ground water. rock on the bottom surface of the ground. Water under the ground has a role important as a source of water that is used to meet the water needs of the community. The main thing is to meet the basic need for water in daily life, as well as being used for other purposes. One of the functions or roles of underground water is for business purposes. However, it is different from the use of the fulfillment of daily needs which do not have to have a permit, but if it is used for business, one must seek a usage permit by following the procedures carried out.^[7]

The procedure for seeking permission to use groundwater has been regulated in the applicable regulations. Not only that, if the permit has been issued, then the holder or the owner of the permit must heed the permit held. If the permit holder commits a violation with various activities that can exceed the limits of the provisions on the use of ground water, causing damage to natural ecosystems, he can be subject to legal sanctions as regulated in laws and regulations (Nagara, 2009). Nothing goes smoothly if there is no awareness from the permit holder of the existing rules.

Related to the regulations governing groundwater, one of them is Law Number 7 of 2002 concerning Water Resources which in Article 9 paragraph (1) states: "The right to use water can be granted to individuals or business entities with permission from the Government or regional governments. according to their powers." This implies that in order to use groundwater in large quantities it is necessary to apply for a permit. This is intended to prevent exploitation of groundwater use, considering that in the midst of the development of the business world, the level of groundwater use is also increasing. Violation of the right to use the water permit should not continue because it has actually been regulated and the legal sanctions stipulated in the laws and regulations.

Based on the background described above, the problem (*legal issue*) that arises in this paper is how is the regulation regarding the use of groundwater for industrial activities and industrial supporting activities in regional regulation?. and What is the solution for overlapping regulations regarding the use of groundwater for industrial activities and industrial support activities?

B. RESEARCH METHOD

This research is a normative research, namely legal research conducted by examining library materials or primary legal materials and secondary legal materials and non-legal legal materials to understand the relationship between legal sciences and positive law (in this case it is written, because concerning legal research or "*gegevens van het recht*").^[8] The approach in this study uses a case approach, namely what needs to be understood is the *ratio decidendi*, namely the legal reasons used by judges to arrive at their decisions. *This ratio decidendi* shows that legal science is a science that is perspective rather than descriptive. As for the dictum, the decision is something descriptive. Therefore, the approach does not refer to the dictum of the court's decision but to the reference to the *ratio decidendi* which pays attention to material facts.

C. RESULTS AND DISCUSSION

Regulation Regarding Groundwater Utilization for Industrial Activities and Industrial Supporting Activities in Relevant Regional Regulations

Batang Regency Regional Regulation Number 13 of 2019 concerning Batang Regency Spatial Planning for 2019-2039, Article 128: general provisions of zoning regulations for industrial designation areas as referred to in article 118 letter f are prepared with the following provisions: in letter i it is prohibited to use groundwater for the purposes of industrial activities and industrial supporting activities and directing industrial activities to utilize surface water."

The authority to Issuing Permits for Utilization of Groundwater is enshrined in:

- 1) Law Number 17 of 2019 concerning Water Resources
 - Article 1 point 1 "water resources are water, water sources, and the water resources contained therein"
 - Article 1 point 2 "water is all water found on, above, or below the ground surface, including in this sense surface water, ground water, rain water, and sea water on land."
 - Article 1 point 4 "ground water is water contained in layers of soil or rocks below the ground surface"
 - Article 9 paragraph (1) on the basis of State control of Water Resources as referred to in Article 5, the Central Government and/or Regional Governments are given the task and authority to regulate and manage Water Resources.

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- Article 44 paragraph (1) the use of Water Resources as referred to in Article 29 paragraph (2) letter c for business needs and non-business needs is carried out based on a permit.
 - Article 44 paragraph (3) permits for the use of Water Resources as referred to in paragraph (1) shall be granted by the Central Government and/or Regional Governments in accordance with their respective authorities.
 - Article 49 paragraph (2) Use of Water Resources for business needs as referred to in paragraph (1) must have a permit.
 - Article 53 further provisions regarding licensing of the use of Water Resources for non-business needs as referred to in Article 45 and licensing of the use of Water Resources for business needs as referred to in Article 46 to Article 51 as well as licensing of the use of Water Resources for other countries as referred to in Article 53 Article 52 is regulated by Government Regulation.
- 2) Government Regulation Number 121 of 2015 concerning Water Resources Business
- Article 1 point 3 "Water Resources are places or containers of natural and/or artificial water found on, above, or below the ground surface"
 - Article 1 point 6 "Groundwater is water contained in layers of soil or rocks below the ground surface"
 - Article 1 point 11 "Groundwater Concession Permit is a permit to obtain and/or extract Groundwater to carry out business activities"
 - Article 15 paragraph (4) "Groundwater Concession Permit is the basis for implementing Water Resources Concession activities for permit holders who carry out business activities using Groundwater Resources"
 - Article 33 paragraph (1) "To obtain a Groundwater Concession Permit, the applicant is obliged to submit a written application to the governor"
- 3) Government Regulation Number 26 of 2008 concerning National Spatial Planning
- Article 48 Paragraph (1) "The water resources network system as referred to in Article 10 Paragraph (1) letter e is a water resource system in each river and groundwater area"
 - Article 48 Paragraph (6) "The pattern of water resources management is stipulated by a regulation of the Minister whose duties and responsibilities are in the field of water resources".
- 4) Central Java Provincial Regulation Number 3 of 2018 concerning Groundwater Management
- Article 18 paragraph (4) "the use of ground water and exploitation of ground water as referred to in paragraph (2) and paragraph (3) can only be carried out after obtaining permission from the Governor"
- Article 23 :
- paragraph (1) "The governor issues a permit in the field of groundwater within the region"
- paragraph (2) "permits as referred to in paragraph (1) include:
- a. Groundwater drilling;
 - b. Groundwater excavation;
 - c. Ground water use;
 - d. Groundwater exploitation.
- 5) Regional Regulation of Central Java Province Number 16 of 2019 concerning Amendments to Regional Regulation of Central Java Province Number 6 of 2010 concerning Spatial Planning of the Province of Central Java for 2009-2029
- Article 26 B
- Paragraph (1) : Water sources as referred to in Article 26A letter a consist of:
- a. Surface water; and
 - b. Groundwater in CAT
- Paragraph (3) : groundwater in CAT as referred to in paragraph (1) letter b is located at : in letter aa. CAT Subah;
- Article 35 paragraph (1) water catchment area as referred to in Article 32 letter c, includes.....Regency of Batang.....
 - Article 35 paragraph (2) the regulation of spatial use of water catchment areas as referred to in paragraph (1) shall be further regulated in the Regency/City Spatial Planning.
 - Article 63 (1) : the water recharge area as referred to in article 60 letter c, is located at : in the letter aa. CAT Subah;
 - Article 63 paragraph (2): the determination of the recharge area for groundwater is determined by statutory regulations.
- Regarding the formation of laws governing the use of ground water, several applicable laws and regulations can be examined, including;
- 1) Law Number 12 of 2011 concerning the Establishment of Legislation
- In chapter 7
- Paragraph (1) Types and hierarchy of Legislations consist of:
- a. the 1945 Constitution of the Republic of Indonesia;
 - b. Decree of the People's Consultative Assembly;
 - c. Laws/Government Regulations in Lieu of Laws;
 - d. Government regulations;

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- e. Presidential decree;
- f. Provincial Regulations; and
- g. Regency/City Regional Regulations.

Paragraph (2) reads “legal provisions Legislation in accordance with the hierarchy as referred to in paragraph (1)”

- In the explanation of paragraph (2) "in this provision what is meant by hierarchy is the hierarchy of each type of legislation based on the principle that lower laws and regulations must not conflict with higher laws and regulations"
- Article 33 paragraph (3) "the regulated material as referred to in paragraph (2) which has gone through review and alignment is set forth in an Academic Paper"
- Elucidation of Article 33 paragraph (3) "what is meant by assessment and alignment is a process to find out the linkage of the material to be regulated with other laws and regulations that are vertical or horizontal so as to prevent overlapping arrangements and authorities"

2) Minister of Home Affairs Regulation Number 80 of 2015 concerning the Establishment of Regional Legal Products

- In the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Establishment of Regional Legal Products In article 4 paragraph (2) it states that the Regional Regulation contains the following material: in letter b "further elaboration of the provisions of higher laws and regulations"
- In the Minister of Home Affairs Regulation Number 80 of 2015 Article 4 paragraph (4) Provincial regulations as referred to in paragraph (1) letter a have a higher hierarchy than Regency/city regulations

Based on the laws and regulations described above, it can be clearly seen that the authority to issue permits for groundwater utilization is the authority of the Central Java Provincial Government. And when observed from the regulation, it is clear that the Central Java Provincial Regulation has a higher hierarchy than the Batang Regency Regional Regulation and there is a legal principle that lower laws and regulations must not conflict with higher laws and regulations. Based on this, it can be said that there is material in the Batang Regency Regional Regulation number 13 of 2019 concerning the Batang Regency Spatial Plan for 2019-2039, especially in Article 128 letter i of the Batang Regency Regional Regulation Number 13 of 2019 concerning the Batang Regency Spatial Plan in 2019. 2019-2039 states that "it is forbidden to use groundwater for industrial activities and industrial support activities and direct industrial activities to utilize surface water", contrary to Central Java Provincial Regulation Number 3 of 2018 as described above.

Whereas based on the laws and regulations described above, there are no provisions in these regulations that prohibit the use of ground water for business activities, however, the use of groundwater for business activities must meet certain conditions in accordance with the provisions of the legislation.^[9] This shows the importance of intermediate regulation to fill the policy vacuum. From the description above it can be concluded that “intermediate regulation” is very important to fill the void. The initiative will be more important than relying solely on the legal principle, that the authority for water management currently rests with the Provincial Government. These intermediate regulations can be drawn up by the Regency/City Government and also by the division of roles in water resource management.^[10]

Based on the results and discussion, the selection of aspects of conservation and empowerment as aspects that can be collaborated between the provincial government and district/city governments is the right choice because: this aspect is more related to monitoring or monitoring aspects that are not related to components that are most considered economically valuable such as components licensing and taxation. In which case, it would be better for the district/city government to conduct monitoring because the scale of the mapping is more detailed, than if it was carried out at the provincial scale. In addition, the monitoring instrumentation owned by district/city level organs is more complete than that of the provincial government.

The aspect of community empowerment regarding the importance of groundwater conservation is also something that district/city governments can contribute.^[11] This activity will have more impact if it is carried out at the district/city level given the closer relationship with stakeholders, especially business actors. The local wisdom component can also be introduced better than if it was implemented at the heterogeneous provincial level. In addition, the conservation aspect was chosen because it can be linked to other regulations: Law no. 26/2007 on Spatial Planning, Law no. 32/2009 concerning Environmental Management, and Law no. 37/2014 on Soil and Water Conservation.

The range of regulations that can be proposed if there are new regulations at a higher level, of course, this perda on groundwater conservation needs to be revised again. This regional regulation was drafted with the principle that: first, there is no intention to take over provincial authority, the spirit is to contribute to sustainable groundwater management. Second, its content is more dominant towards conservation which involves monitoring and supervision, groundwater conservation efforts, complemented by sanctions in the context of conservation. Third, the main objective of this Raperda is to maintain the condition of ground water so as not to be further damaged.

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Solutions for Overlapping Regulations Regarding the Utilization of Groundwater for Industrial Activities and Industrial Supporting Activities

There needs to be a solution so that the industry can continue to use groundwater and the Batang Regency Government can hold meetings and discussions between the Batang Regency Government and the Central Java Provincial Government to sit down together and discuss the arrangements for groundwater management and submit jointly to the BPHN in order to create harmonization of laws and regulations so that there are no conflicts in their implementation.^[12]

Regarding the solution so that the industry can continue to use groundwater and the Batang Regency Government can realize a groundwater tax from the industrial sector without any rules being violated, namely by complying with the provisions of the applicable laws and regulations, as long as the Batang Regency Regional Regulation has not been changed, the use of water remains land for industrial activities cannot be carried out until there is a change/review of the Batang Regency Regional Regulation No. 13 of 2019 concerning the Batang Regency Spatial Plan for 2019-2039. Because Law Number 7 of 2004 concerning Water Resources in Article 3 which is also the goal of water resources management mandates " water resources are managed in a comprehensive, integrated and environmentally sound manner with the aim of realizing the sustainable use of water resources for the prosperity of the people".

Based on this regulation, water resources that need to be managed properly will be able to improve people's welfare, and the community's need for daily air needs can be supported. Due to violations utilization of underground water conducted by the offending party pursuant to Article 15 paragraph (1) of Law No. 11 of 1974 on Water Resources, stated that: "Threatened with punishment in prison forever 2 (two) years and or a fine as high as -a maximum of IDR 5,000,000 (five million rupiah): anyone who intentionally does business in water sources and or water that is not based on planning and technical planning for water regulation and irrigation and irrigation development; anyone who deliberately exploits water and or water sources without permission from the Government; goods who are already obtained permission from the Government for the utilization of water and or water sources as mentioned in Article 11 (2) of this Act, but deliberately did not do and or deliberately not come to help in the effort to save the soil, water, water resources and irrigation buildings as referred to in Article 13 paragraph (1) letters a, b, c, and d of this Law. The thing that causes the use of underground water without a permit is the lack of awareness of the business owner, then it is constrained by the applicable procedures, and does not heed the existing regulations.

D. CONCLUSION

Based on the description in the discussion above, it can be concluded that the impact of the vacuum of groundwater management regulations in the region, the Regional Government is faced with various very crucial problems including: 1). There is no legal certainty regarding the issuance of new licenses and or extension of the validity period of permits that have expired; 2). There is a transfer of authority in the management of groundwater from previously being the authority of the district/city government to the authority of the province, as stipulated in Law Number 23 of 2014 concerning Regional Government (UU Pemda); 3). The levy of taxes/levies on the utilization of ground water is still the authority of the district/city; 4). Local governments must provide good government administration services related to governance in the field of groundwater management, as stipulated in Law no. 30 of 2014 concerning Government Administration, otherwise government officials in the regions can be sued at the State Administrative Court (PTUN).

There needs to be a solution so that the industry can continue to use groundwater and the Batang Regency Government can hold meetings and discussions between the Batang Regency Government and the Central Java Provincial Government to sit down together and discuss the arrangements for groundwater management and submit jointly to the BPHN in order to create harmonization of laws and regulations so that there are no conflicts in their implementation.

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