



TINJAUAN YURIDIS PENGATURAN IRIGASI DALAM KEGIATAN PERTANIAN DI INDONESIA

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INTISARI

Peran sektor pertanian sangat strategis di Indonesia. Pasal 41 UU SDA menentukan pemanfaatan sumber daya air untuk kegiatan pertanian dilakukan dengan pengembangan dan pengelolaan sistem irigasi. Mengingat peran strategisnya, Negara wajib menguasai irigasi dan dipergunakan sebesar-besarnya untuk kemakmuran rakyat. Penulisan Hukum ini bertujuan untuk menganalisis pengaturan irigasi sejak Era Pra-kemerdekaan sampai pasca Putusan MK tentang UU SDA sekaligus mengkaji permasalahan hukum yang muncul pasca Putusan MK. Metode penelitian dalam penulisan hukum ini merupakan penelitian yuridis normatif, sehingga data yang digunakan adalah data sekunder.

Berdasarkan hasil penelitian, Penulis menyimpulkan secara historis, pertama, pengaturan irigasi Era Pra-kemerdekaan berorientasi pada kepentingan politis pemerintah kolonial sehingga pengaturan irigasi gagal membawa kemakmuran dalam masyarakat terutama terhadap petani Indonesia. Kedua, pengaturan irigasi Era Orde Lama masih menggunakan produk hukum pemerintahan kolonial karena masih dalam transisi, sehingga tidak ada perubahan berarti. Ketiga, pengaturan irigasi Era Orde Baru berorientasi swasembada pangan melalui pendekatan pembangunan ditopang utang luar negeri. Pemerintah berwenang secara dominan dalam hal irigasi tanpa membuka ruang partisipasi masyarakat dan pemberdayaan masyarakat yang berarti. Alhasil, pengaturan irigasi menjadi kacau balau tatkala Pemerintah mengalami keterbatasan dana dan kemampuan. Keempat, pengaturan irigasi Era Reformasi tidak dapat dipisahkan dari kondisi krisis moneter yang diwarisi dari Era Orde Baru. Pengaturan irigasi pada era ini memposisikan masyarakat sebagai subjek pembangunan. Kelima, pasca Putusan MK, penguasaan Negara atas sumber daya air irigasi dikuatkan sesuai dengan Pasal 28H dan Pasal 33 UUD NRI 1945 melalui enam prinsip dalam Putusan *a quo*.

Permasalahan hukum yang muncul pasca Putusan MK adalah timbul dua isu inkonstitusionalitas Putusan *a quo*; pertama, MK sebagai penafsir peraturan dibawah UU dan kedua, peran MK sebagai *positive legislator*. Mengenai pertama, tindakan MK tersebut tetap konstitusional karena sudah dinyatakan dalam Putusan MK mengenai sumber daya air sebelumnya, sementara mengenai kedua, tindakan tersebut semata-mata untuk mencegah adanya kekosongan hukum. Pasca Putusan MK, pengaturan soal penguasaan negara sudah jauh lebih baik, kendatipun terdapat disharmoni pengaturan peran masyarakat dalam pengembangan dan pengelolaan irigasi.

Kata Kunci: Irigasi, Penguasaan Negara, Putusan Mahkamah Konstitusi Nomor 85/PUU-XI/2013

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REVIEW ON THE REGULATION OF IRRIGATION IN AGRICULTURAL ACTIVITY IN INDONESIA

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ABSTRACT

The role of the agricultural sector is very strategic in Indonesia. Article 41 of the Water Law No. 7 Year 2004 determines the use of water resources for agricultural activities carried out by the development and management of irrigation systems. Considering its strategic role, the State must hold control of irrigation and utilize it as much as possible for the prosperity of the people. This legal research aims to analyze irrigation regulation since the Pre-independence Era until after the Constitutional Court Decision on the Water Law No. 7 Year 2004 while at the same time assessing the legal problems that emerged after the Decision. The method of the research encompasses legal normative research, hence the used data were secondary data.

Based on the research, it can be historically concluded that, first, the irrigation regulation in the Pre-Independence Era were oriented based on political interests of the colonial government, thus, the regulation failed to bring prosperity among peoples especially towards Indonesian farmer. Second, irrigation regulation in the Old Order era was still using the colonial government's legal products because Indonesia was still in transition, hence, did not make any substantial difference. Third, irrigation regulations in the New Order Era were oriented towards self-sufficiency in food through a developmentalism approach funded by foreign debt. The government has the dominant authority without leaving necessary public participation and community empowerment. As the result, irrigation regulation became disorder when the Government suffered limited funds and capabilities. Fourth, irrigation regulation in the Reformation Era cannot be separated from the conditions of the monetary crisis inherited by the New Order Era. Irrigation regulation in this era set the people as the subject of development. Fifth, after the Court Decision, the State's control over irrigation water resources was strengthened in accordance with Article 28H and Article 33 of the Constitution through six principles in the Decision.

There are two legal problems that emerged after the Court Decision; first, the Constitutional Court as the interpreter of regulations under the Law and second, the role of the Constitutional Court as a positive legislator. Regarding the first, the Court's decision remain constitutional because it has been stated in the previous Constitutional Court Decision regarding Water Law No. 7 Year 2004, while regarding the second, the legal action is solely to prevent legal vacuum. After the Constitutional Court's ruling, the state control is better, although there was a disharmony in regulating the role of the public participation in development and management of irrigation.

Keywords: Irrigation, State control, Constitutional Court Decision No. 85/PUU-XI/2013

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