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Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection

Bustaman³²⁶

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Abstract

Decree of the Minister of Home Affairs Number 47 of 1999 regarding Guidelines for Performance Assessment of Regional Water Supply Companies (PDAMs) roomates Determine the work assessment of PDAMs based on internal assessments without regard to customer satisfaction, is an Injustice and forgery of the Consumer Protection Act, so it must be Reconstructed.

Keywords: Reconstruction, Protection, Consumer, Fair

A. preliminary

Water is a national resource concerning lives of the people, hence its management is held by the government. This is in accordance with the 1945 Constitution, Article 33 paragraph (3), which reads as follows: "The earth and water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people". In Article 10 of Law No. 22 of 1999 on Regional Government states that the local authorities to manage regional resources available in the region and is responsible for maintaining the environment in accordance with the legislation.

PDAM is a company engaged in the provision of clean water, the other goal was engaged to develop the economy in order to support regional development by expanding employment and seek profit as the main source of financing for the region. Only companies that have advantages on a global level that is able to satisfy or meet the needs of consumers and is able to produce good quality products and cost effective)³²⁷, This situation forced the management intends to prepare new strategies that make taps able

to survive and thrive. In order to ensure the taps going well, then management needs to conduct an evaluation of its performance.

Interior Minister Decree No. 47 of 1999 on Guidelines for Performance Assessment of Regional Water Company (PDAM) (Kepmendagri 47/1999) rank the success of taps which is divided into three (3) aspects weighted as provided in paragraph (3) of Article 3 Kepmendagri 47 / 1999 include: Financial Aspects 45, Operational Aspects 40, 15 Administrative Aspects.

PDAM success rate as defined in Article 3 paragraph (3) Kepmendagri 47/1999 related to the consumer is the letter b on Operational Aspects, however, assessment of the Operational Aspects indicators, consumers are passive, because everything is just related to the report made by PDAM themselves, meaning that the report must be made as possible by PDAM, especially didatur in Article 3, paragraph (4) Kepmendagri 47/1999 regulates the reward in the form of a bonus if there is improvement compared to the previous year's success.

Given the weak position of consumers in general compared to the more powerful po-

³²⁶ Authors are employees of PDAM Tirta So Cirebon, Cirebon UNU lecturer, is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.

³²⁷ Mulyadi. 2001. "Balance Scorecard : Alat Kontemporer untuk Pelipatganda Kinerja Keuangan Perusahaan". Edisi Pertama. Salemba Empat, Jakarta.

sition of manufacturers in many respects, the discussion of consumer protection is always current and always important to be studied³²⁸ As mandated by Law No. 8 of 1999 on Consumer Protection (Consumer Protection Act).

Consumer protection is deemed materially and formally increasingly felt very important, given the rapid advancement of science and technology is the driving force for productivity and efficiency manufacturer of the goods or services they produce in order to achieve business objectives. In order to pursue and achieve those two things, eventually either directly or indirectly, the consumers who generally will feel the impact³²⁹, Based on the presented problems, problems that are formulated are:

1. Why appraisal Regional Water Company has not met the values of justice?
2. The weaknesses that arise in the assessment of the performance of the Regional Water Company in Indonesia?
3. How is the reconstruction of the performance assessment Regional Water Company based equitable consumer protection?

The method used is a qualitative research method with sociolegal approach, departing from constructivism³³⁰, with juridical empirical approach is a method or procedure used to solve the problem by first examining the existing secondary data, followed by a study of primary data in the

field³³¹, The approach is to understand that the law is not merely a set of rules that are normative, but legal as *menejala* community behavior in public life, interact and relate to aspects of society, socio-cultural aspects.

B. Results and Discussion

Justice according to the language (etymology) is balanced between weight and payload³³², in accordance with the rights and obligations, as between the work and the results obtained, according to science, according to the income and needs. According to Aristotle in his *Ethica Nichomacheia* and *Rethorica* sacred law which has the task of giving to each person what he is entitled to receive it. Meanwhile, according to Bentham, the assumption that prioritizes utilitet. The purpose of law according to Bentham, the law guarantees happy as much on people as much as possible³³³, The purpose of law to achieve justice, certainty and usefulness to society will be realized.

The sense of justice in view of utilitarianism is justice in the broadest sense, not to individuals or just distribution of goods. The only measure to measure something is fair or not is how big implications for human well-being (human welfare)³³⁴. John Rawls's theory of justice, justice as fairness begins with one of the most common choices that can be made of people together with a selection of the first principle of the concept of justice which regulates further criticism and institutional reform³³⁵. So when choosing a conception of justice, we can as-

328 Yusuf Sofie, 2007, *Kapita Selektia Hukum Perlindungan Konsumen di Indonesia* GhaliaIndonesia, Jakarta, h. 17

329 Happy Susanto, 2008, *Hak-Hak Konsumen Jika Dirugikan*, Visimedia, Jakarta, h. 39.

330 Lihat Sudarwan Danim, 2002. *Menjadi Peneliti Kualitatif*, Pustaka Setia, Bandung. Lihat juga dalam Lexy J. Maleong, 2005, *Metodologi Penelitian Kualitatif*, Rosda Karya, Edisi Revisi, Bandung, hlm. 165. Juga dalam Anas Saidi, 2005 " *Metode Penelitian Kualitatif*", *Makalah Workshop Penyusunan Proposal Penelitian*, LIPI, Jakarta. hlm. 6. Dan Juga dalam S. Nasution, *Metode Penelitian Naturalistik Kualitatif*, Transito, Bandung, hlm.12. lihat juga Esmi Warassih, 2006, " *Penelitian Socio-Legal: Dinamika Sejarah Dan Perkembangannya*", *Makalah Workshop, Forum Kajian Dinamika Hukum dan Majalah Ombudsman*, Bandung, hlm. 5. Juga dalam Bambang Sunggono, 2003, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, hlm. 103.

331 Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, UI Press, Jakarta, hlm, 52.

332 Ibnu Miskawaih, 1995, *Menuju Kesempurnaan Ahlak*, Mizan, Bandung, h. 115.

333 E. Utrecht, 1965, *Pengantar Dalam Hukum Indonesia*, Edisi *Fotografi*, (selanjutnya disebut E. Utrecht II), h. 26.

334 *loc.cit.*

335 John Rawls, 1995, *A Theory of Justice Teori Keadilan*, Pustaka Pelajar, Yogyakarta, h.14.

sume that they choose the constitution and the laws to enforce the law and others, all in accordance with the principles of justice that were previously agreed upon.³³⁶ Similarly, in Kepmendagri 47/1999 should correspond to the previously disepaktinya justice, namely the Consumer Protection Act. But if Kepmendagri 47/1999 taps measure success based only on Operational Aspects that the indicator does not involve consumer satisfaction but only based on the report made by PDAM itself then it will be up to justice and consumer protection in question.

Protection of the law can be interpreted by all the government's efforts to ensure legal certainty to provide protection to its citizens that their rights as a citizen is not violated, and those who violate them will be penalized according to regulations³³⁷. If Kepmendagri 47/1999 referred not ensure consumer protection taps, then it makes the published Kepmendagri 47/1999 Consumer Protection Act does not become effective. Effective or not the law can be measured by how much the system in achieving its objectives. Working of the law in society will be determined by several key factors. These factors include the entire legal system components, namely a substantial factor, structural factors, and cultural factors. 47/1999 Kepmendagri issuance ineffectiveness implications Consumer Protection Act in order to provide protection to the consumer. Based on three main factors tersebutlah legal system actually supports the enforceability Kepmendagri 47/1999 not reverse the three main factors supporting the enactment of the Protection of the Consumer Act,

Satjipto Rahardjo with its progressive legal notion assumes that progressive legal basis is the view of the relationship between law and human. There affirmation principle that "the law is for man" and not vice ver-

sa³³⁸. In connection with that that law does not exist for itself, but for something larger and larger. Whenever there is a problem with the law, is the law that is reviewed and improved and not the man who pushed for inclusion in the legal scheme³³⁹. Thus for Kepmendagri 47/1999 imposed laws to human nature and contrary to a higher law, namely the Consumer Protection Act, the Kepmendagri 47/1999 must be reconstructed.

C. Conclusions and suggestions

1. knot

- a. Assessment of Regional Water Company's performance based on the Kepmendagri 47/1999 not meet the values of justice, due to taps is an internal performance assessment and disregard consumers should assess the performance of PDAM whether or not received satisfaction for the service taps.
- b. The weaknesses that arise in the assessment of the performance of the Regional Water Company in Indonesia based Kepmendagri 47/1999 is based on internal ratings and ignore consumer protection as set out in the Consumer Protection Act.
- c. Reconstruction of the performance assessment Regional Water Company based equitable consumer protection is to reconstruct Kepmendagri 47/1999 in particular Article 3 (3) that the assessment of the successful performance of taps in addition based on the internal assessment should also make customer satisfaction questionnaire as a consumer taps.

2. Suggestion

- a. PDAM should realize taps consumer

³³⁶ *loc.cit.*

³³⁷ *Pemegang Paten Perlu Perlindungan Hukum*, *Republika*, 24 Mei 2004.

³³⁸ *Satjipto Rahardjo, Hukum Progresif, Hukum Yang Membebaskan, Jurnal Hukum Progresif, PDIH Semarang, Volume I Nomor 1, April, 2005, hal. 5.*

³³⁹ *Endang Sutrisno, 2013, Bunga Rampai Hukum dan Globalisasi, In Media, Jakarta., hlm. 67.*

protection as regulated and mandated
Consumer Protection Act.

- b. Within the framework of assessing the performance of the success and satisfaction of customers or consumers, taps should create a questionnaire for the kosumennya to be able to know the

satisfaction of its customers, so that the taps will continue to improve its performance for customer satisfaction.

- c. Minister of the Interior should immediately reconstruct Kepmendagri 47/1999.

D.References

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